



Appeal Decision

Hearing Held on 23 August 2022

Site visit made on 23 August 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2022

Appeal Ref: APP/B5480/W/22/3297547

29-31 Upminster Road South, Rainham RM13 9YR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by the Rainham Education and Cultural Society against the decision of the Council of the London Borough of Havering.
 - The application Ref P1852.21, dated 22 September 2021, was refused by notice dated 19 November 2021.
 - The development proposed is Change of Use from Class E (c) (i) Financial Services to Place of Worship F1(f)(b) and Community Facilities F2(b) Halls or Meeting Place for the Principal Use of the Local Community.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application form states the applicant was the Rainham Cultural and Education Soc. At the hearing it was clarified this was an error and the application was made by the Rainham Education and Cultural Society (RECS). The appeal proceeds on this basis.
3. In the banner heading above I have omitted the reference to 'resubmission' from the application form as it is not an act of development. The Council and appellant agreed to this at the hearing. They also agreed that I should consider the appeal based upon the hours of use within the original application form, and not upon the further hours set out in the appeal submissions. I have considered the appeal on this basis.
4. Having regard to the advice in paragraph 21a-014-20140306 in the Planning Practice Guidance, the Council and appellant agree that while the proposal is for a permanent land use, I could grant a temporary planning permission, were I minded, without it constituting a material change in the development. I return to this matter below.
5. While referring to adverse effects upon neighbouring occupiers, the Council's first and second reasons for refusal do not state which receptors it alleges would be adversely affected. At the Hearing I sought the comments of the Council and the appellant on this matter. I have had regard to these as well as the evidence before me in setting out the main issue in this regard.

6. At the visit internal alterations were being undertaken on part of the first floor. The appellant advises these are in relation to a fall-back position for the lawful use. There is no substantive evidence before me that they represent the commencement of the proposed development, or that the application is retrospective. I have considered the appeal on this basis.

Main Issues

7. The main issues are:

- whether or not the proposed development is compliant with policies in respect of town centre development;
- the effect of the proposed development upon highway safety; and,
- the effect of the proposed development upon the living conditions of the occupiers of Nos 2 – 8 Upminster Road South, and Nos 4 – 15 Parkway with particular reference to noise and disturbance.

Reasons

Town centre development

8. Paragraph 93 of the National Planning Policy Framework (2021) (the Framework) seeks positive planning for facilities to meet community needs. Policies 15 and 16 of the Havering Local Plan (2021) (the HLP) aim to provide facilities for the community where this supports diversity, and a need exists. Policy SD6 of the London Plan (2021) (the LP) seeks to promote and enhance the vitality and viability of town centres by encouraging strong, resilient, accessible and inclusive hubs with a diverse range of uses that meet Londoner's needs. As the proposal seeks to meet community social, educational and cultural needs there is broad policy support for the proposal.
9. The appeal site lies within the District Centre (DC) of Rainham, which is a second tier of centre in the hierarchy set out in Map 1 of Policy 13 of the HLP. Policy 13 seeks to enhance the vitality and vibrancy of centres to maintain their important role for local communities. It sets out support for proposals including changes from A2 uses within centres, that meet criteria set out.
10. The proposal does not conflict requirements such as the use class stipulations in Policy 13. However, proposals must also be i) appropriate to the scale and function of the town centre's position within the network, x) not result in significant adverse noise and highway effects, and (ii) result in effects harmful the vitality and viability of the centre. Policy 13 does not elaborate or provide guidance on criteria i). In principle the re-use of an existing building would not appear inappropriate to the scale and function of the DC.
11. The appellant expects the development would bring a significant number of people to the DC, of benefit to vitality and viability. However, were it to result in adverse effects in respect of highways, parking, noise and disturbance, these could negatively affect vitality and viability. My findings in respect of these matters will determine whether the proposal complies with Policy 13 and as a whole and the aims of Policy SD6.

Highway safety

12. This part of Upminster Road South (URS) is lined by commercial premises, services and facilities, including, retail uses, cafes, restaurants, takeaways, professional services, and a church. Outside the site frontage URS is a single lane busy one way street, with time-limited parking spaces and double yellow lines. The easterly pavement is a relatively generous width, although despite a build out outside the appeal site, it is relatively constrained, and is narrow in a westerly direction. Some nearby vehicular and pedestrian routes converge onto URS and there is a well-served bus stop a short distance opposite the site. As well as providing access to the rear parking, Parkway provides access to a significant number of commercial and residential properties. Therefore, the appeal site is within a particularly concentrated area of activity within the DC.
13. The appeal site comprises approximately 528 square metres of floorspace and 12 available parking spaces. The new layout includes a reception/lobby space, community hall, learning space, offices, prayer space and ancillary facilities. I am informed the facility would have a maximum capacity of 135 people. Therefore, it would have the potential to generate a considerable number of daily comings, goings and associated transportation movements and activity.
14. The use of short-term parking bays along this section of URS for either driving past, parking or dropping-off in frequent concentrated episodes could significantly disrupt traffic flows. Numbers of people entering or leaving the appeal site close together would also be likely to prevent free pedestrian flow on the pavement, leading to numbers of people walking on or crossing the carriageway, resulting in the potential for conflicts between highway users. Given the capacity of the proposed development, the limited carriageway and pavement widths, available parking, and general activity levels, the proposal has the potential to cause significant congestion and harm to highway safety.
15. The Predicted Attendance Levels¹ indicate that for 48 weeks of the year if all spaces are used at the same time typical attendances might be 100 people. The highest anticipated would be between approximately 120 – 135 at Friday Prayer. However, throughout the day for much of the time it is anticipated it would typically be less than 35 people, except for Friday prayers where it may be around 70. Total daily attendances are expected to be between 120 – 255. During Ramadan, attendances are expected to be between 140 – 260, with up to 50 for the sunset prayer², and approximately 110 at Friday prayers. On the 2 days of Eid, it is also anticipated attendances would be higher than normal.
16. The pattern of usage is one of increased levels of activity at certain times of the day around classes, sessions and events. This is not untypical of such classes of land use. Most people would be likely to use the front entrance. The submissions state that some sessions would be significantly less than one hour so short stay parking spaces on URS may be utilised for parking, and they may be used for dropping off and picking up.
17. Before and after some larger events such as Friday prayers and sunset prayers even if it were possible to filter at people at 8 – 10 per minute as suggested, the pavement could soon become severely congested. The proposed level of activity could obstruct pedestrian and carriageway flows, and cause particular

¹ Section 14 of the Planning Statement by djh Architectural and Planning Consultants (August 2021).

² Paragraph 13.9 of the Appeal Statement by djh Architectural and Planning Consultants (April 2022).

difficulties for those with disabilities. People may seek to walk on or across the carriageway, resulting in conflict between highway users, causing congestion, and significantly prejudicing highway safety at certain times.

18. The Management Plan sets out positive intentions and measures. However, it is not possible for the land use to control how people use the highway. I am not satisfied the management plan would guarantee people are filtered in a steady flow when approaching the site, can be prevented from leaving of their choosing, or effectively dispersed if necessary when on the public highway. I am also not satisfied barriers could be placed without narrowing the pavement.
19. The appellant is of the view a planning condition can restrict the numbers of people using the appeal site, although the Council expressed concerns that this could realistically be monitored and enforced. I allowed the parties the further opportunity to provide a condition to meet the six tests in the Framework to effectively restrict occupancy, monitor and regulate the proposal to ensure the proposed development would not result in harmful effects upon highway safety. However, the condition provided does not give me sufficient detail or assurance that the numbers of users can be enforceably restricted, monitored or that management measures can be effectively secured, to ensure there would not be harmful effects upon highway safety. Therefore, the timetable and management plan measures are attributed only limited weight.
20. The evidence before me suggests the site would offer a permanent and significantly enhanced facility for users, of significant benefit to the local community. RECS has approximately 85 members. I am informed that approximately 6,500 dwellings have been recently constructed or are under construction in the area. At the hearing I heard that new denominations may form from new communities, although there is no certainty of this, and the new facility is not intended to operate as member only use. Given the number of houses recently constructed or under construction in the area, and the large number of supporting representations, these suggest there may well be a significant demand for use of the site, resulting in a significantly increased usage from that set out in the forecasts.
21. I was informed that TRICS data is an important reference for traffic generation. While I am informed that none is available for a comparable sized facility, it is not verified from the providers that there are not similar comparable uses of the use classes proposed that would be suitable for comparison. This application post-dates a nearby leisure centre. This together with other developments such as the 6,500 dwellings I was referred to could have significant implications for traffic flows around the appeal site. As it is not classed as a major development, the absence of a Transport Assessment itself does not conflict Policy 23 of the HLP. However, I would expect an application to be accompanied by sufficient robust evidence in respect of trip generation and traffic flows to help demonstrate that it would not be prejudicial to highway safety including from traffic flows.
22. Presently RECS does not operate permanently from one premises, with weekly sessions organised by RECS at Rainham Library. Members are also understood to attend sessions at the Royals Centre (by the Rainham Islamic Cultural Group), and at wider facilities such as Romford, Barking or Dagenham Mosques. Therefore, some traffic associated with such a use already takes place. However, despite its proximity, the appeal site is not directly

comparable to the library, as the library does not have off-street parking, and it has much fewer on-street spaces outside it. These are likely to influence travel behaviours and modes to it, and may result in less travel by private car, than may occur at the appeal proposal.

23. The submitted modal survey is based upon the use of Rainham Library, by existing members only. It showed a high proportion of members intend to use the site every day. The survey shows 61% of members live within half a mile and all within 3 miles, 90% travelled from home and 89% of members attended the library by walking, cycling and bus. However, for reasons already outlined, the library does not present a directly comparable location.
24. The graphical breakdown³ does not appear to ask how people will travel to the new facility, or include questions in respect of any seasonality for travel patterns, when walking, cycling and public transport may be viewed as less desirable. The absence of TRICS data, and the professional Council's Highway Engineer view that the modal split for cars is considerably lower than is typical in the Borough, adds to my concerns. Therefore, while I acknowledge the appeal site is well located to be accessed by public transport, and there are some good quality walking routes, the modal survey data is attributed limited weight.
25. The condition for a full travel plan provides for targets, implementation, monitoring, enforcement and interventions of approved measures. However, it provides little detail, so does not give adequate assurance on the nature of interventions and the means of on-going enforcement of interventions. Even if it did, it would not mitigate all of my concerns outlined above.
26. There would be parking available at the appeal site and appellant's beat parking survey shows with paid off-street and other short-term on-street parking, between 435 – 520 spaces were available. Parking is located to be reasonably desirable and convenient for people to park and walk to the site. I see no reason why on-street parking restrictions would not be enforced. Therefore, this suggests there is sufficient parking available in the area.
27. No assessment has been made of the likely number of disabled users. One parking space within the site is able to provide sufficient dimensions, but no formal designated spaces are shown. Due to level changes, some with mobility issues may need to use the front entrance and blue badge holders might be able to park on URS. However, were spaces not available, then this would also have the potential to disrupt the flow of traffic. The Council might be able to use the provisions of the Highways Act to introduce other spaces. However, this is not part of the proposals, and no means have been put to me to secure this. The conflict with the objectives of Policies D5 and T6 of the LP and Policy 24 of the HLP in respect of disabled parking provision adds to my concerns.
28. The former bank use experienced an average of 230 visits per day. However, the pattern would have been significantly different, because the appeal proposal is primarily based upon attendance by significant numbers of people for events at specific times. Therefore, the highway implications differ markedly from the former use. Even if it were demonstrated there is a current demand for a lawful Class E use of this site, there is no substantive evidence demonstrating it would result in the same pattern and intensity of vehicle

³ Appendix A5 of the Planning Statement by djh Architectural and Planning Consultants (August 2021).

movements as the proposed development. Overall, I cannot conclude there is a greater than theoretical possibility that such a similar character of use would take place. Therefore, the fall-back position attracts limited weight.

29. It is suggested that the Council has been inconsistent with its approach to this proposal and an approved Leisure Centre. I do not have the full details and circumstances of that proposal before me. However, it would add further users on the local highway. I am also not satisfied the level of use or pattern of movements, would be of the same concentrated focused nature as the appeal proposal. Like the Royals Centre and the Library, the location of the leisure centre does not have the same constrained nature of highway outside it. Therefore, it is not directly comparable to the appeal proposal.
30. I have considered whether it would be appropriate to grant a temporary consent. However, this would still result in the potential for significantly harmful effects to highway safety and a temporary period would not mitigate the harm. Therefore, granting a temporary consent would not be appropriate.
31. For the reasons set out above I cannot be certain the proposed development would not be significantly harmful to highway safety. Therefore, it would conflict with the aims of Policies 16, 18 and 23 of the HLP. Amongst other things these require that development ensures a safe and efficient use of the highway network, especially with reference to pedestrians and cyclists.
32. As they relate specifically to the design of parking provision, I do not find a direct conflict with Policies D5 and T6 of the LP and Policy 24 of the HLP in respect of this main issue. The proposal does not conflict with Policy S1 of the LP insofar as it requires are new facilities are encouraged in high streets and town centres. The evidence suggests that suitable cycle parking provision can be secured by means of a suitably worded planning condition. Therefore, I do not find a conflict with Policy T5 of the LP. However, these do not mitigate the other harm I have found.

Noise and Disturbance

33. The Council advised that its objection in respect of noise and disturbance primarily relates to Friday Prayers, morning and evening usage during Ramadan, and Eid. The Noise Assessment (NA) suggests breakout noise from activities within the building would be 10 dB below background noise levels at the nearest measured residential receptors. Subject to the imposition of suitable planning conditions in respect of matters such as measured noise levels and the closing of windows during certain activities, I am satisfied that internal noise generation would not be harmful at nearby receptors.
34. However, the NA concentrates upon breakout noise. Although I understand it has been sought by the Council, there is no data set out in the calculation to demonstrate the effects from users travelling to and from, and entering and leaving the site. Nos 2 – 8 URS are located above and close to a retail premises which only opens during the day. They are in a DC location with noise from traffic and general pedestrian movements using services and facilities along URS during the day. Nos 4 – 15 Parkway are to the rear. At my visit noise levels were more limited, although, there was some noise and disturbance already associated with the rear of properties on URS and Tesco's. Once open, the new leisure centre may add to this.

35. Were the usage patterns to be broadly consistent with appellant's anticipated usage, it would appear it is unlikely that morning and most general daytime use would result in harmful living conditions to neighbouring occupiers. However, there would be large numbers of people attending the site for Friday prayers. This level of intensity of use is likely to generate significant levels of noise and disturbance associated with entering and leaving the building, talking or socialising, and getting out of or into, and driving off in cars. Even if this level of usage were only on Friday afternoons, the proximity of neighbouring occupiers and levels of activity suggest it is likely to result in significant episodes of noise and disturbance, that would be likely to result in harmful living conditions to the occupiers of Nos 2 – 8 URS and Nos 4 – 15 Parkway.
36. A number of premises open to 22:00hrs and 23:00hrs in close proximity to Nos 2 – 8. The uses result in moderate footfall from individuals and small groups of people entering and leaving premises by foot and in vehicles throughout the evening, contributing towards a moderate level of late evening noise on URS. Although it is in proximity to the rear of premises on URS and a limited distance from part of the Tesco's car park, Parkway appeared a quieter location than URS, and of a more residential character.
37. The use by 10 or so attendees is unlikely to result in harmful living conditions to neighbouring occupiers for some evening activities. However, the modal travel survey was undertaken for attendees at Friday prayers and not evenings. Moreover, for reasons already set out I am not satisfied that the use of the premises can be secured in accordance with the usage or management measures set out.
38. There is likely to be sporadic episodes of activity including from car doors, manoeuvring vehicles, and people on foot in the late evenings. The pattern of usage suggested during Ramadan and Eid, suggests attendance at some evening sessions would be much more elevated. In some years the time of evening prayer will fall later into the evening within the suggested opening hours. Given the suggested level of intensity use at these times, I cannot be satisfied that later evening use would not result in harmful living conditions to neighbouring occupiers at Nos 2 – 8 URS or Nos 4 – 15 Parkway at a time when background noise levels will be quieter.
39. For reasons already outlined, the fall-back position in respect of the effects of a future Class E use attracts limited weight. Based upon the evidence provided, I am not satisfied that planning conditions such as limiting the number of people are enforceable, or could secure management measures to mitigate the harmful effects from the proposed development. Were a condition reducing the hours to earlier in the evening to be imposed, this would not meet the appellant's needs, so it would not be reasonable.
40. Therefore, for the reasons set out above, I cannot be certain the proposed development would not result in harmful living conditions for the neighbouring occupiers of Nos 2 – 8 URS and Nos 4 – 15 Parkway with reference to noise and disturbance. It would conflict with the aims of Policies 16 and 34 of the HLP and Policy D14 of the LP. These seek to ensure that development does not harmfully affect the living conditions of neighbouring occupiers due to noise.
41. I do not find a conflict with Policy S1 of the LP as this does not make specific requirements in respect of noise and disturbance.

Other Matters

42. Under the Public Sector Equality Duty (PSED) set out under s149(1) of the Equality Act 2010 I must have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; and advance equality of opportunity, and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
43. This facility would be a place of worship, education and other facilities for people of Islamic faith. It would provide a facility for the elderly and women, and I see no reason why it could not be attended by those who are pregnant or disabled. Therefore, the protected characteristics of race, religion, age, gender, pregnancy and maternity and disability are engaged. Allowing this appeal would provide a permanent dedicated place of worship and community facility for the local community, would advance equality of opportunity and foster good relations. This carries significant weight in favour of the proposal.
44. Article 9 of the European Convention on Human Rights as transposed into the Human Rights Act 1998 (the HRA), sets out that everyone has the right to freedom of religion and to manifest the religion or belief, in worship, teaching, practice and observance. This is a qualified right rather than an absolute right.
45. Members and guests of RECS currently use nearby facilities for some faith related sessions and classes such as Friday payers (except where this falls on a bank holiday) and some premises in the wider area. However, as these are not under the control of the appellant, few gatherings, sessions and classes can be run. Moreover, there is not always certainty of being able to book a specific location in the future with any frequency. I am informed that RECS considered 7 or 8 different premises before advancing the appeal site.
46. Providing a permanent place of worship and educational facility would make it easier and more convenient for the local community to attend and benefit from the facilities. However, I was advised that just because there is not a place to pray, does not mean people would give up their religious beliefs and it is not suggested that the local community would be prevented from practicing its religion should this proposal be dismissed. Therefore, a dismissal would not violate the appellant's, its members or the community's rights under Article 9. This matter therefore carries limited weight in favour of the scheme.
47. RECS undertake work and charitable activities for all faiths and the wider community, which could be enhanced by the new facility, although the magnitude and frequency of this is not before me. I attribute this matter moderate weight. The proposal is likely to result in footfall and associated purchase of goods, use of services and facilities in the DC. However, I cannot be certain there would not also be some harm to vitality and viability in respect of my highway concerns. At best it is likely the development would overall, result in limited benefits to vitality, viability, and employment, consistent with the aims of Policy SD6 of the LP and Policy 13 of the HLP, attracting limited weight. The short-term benefits through the construction of the development are attributed moderate weight. Compliance with policies set out such as those in respect of design and achieving a more efficient use of the site would be neutral matters in the balance.

48. The appeal site lies within the Rainham Conservation Area where there is a requirement under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCAA) to have special regard to the desirability of preserving or enhancing its character or appearance. It is also in close proximity to the Grade II Listed Nos 2 – 8 Upminster Road South and the Grade I Listed Church of St Helen and St Giles. Under section 66(1) of the LBCAA there is a duty to have special regard to the desirability of preserving the setting of listed buildings. However, as I am dismissing this appeal for other substantive reasons, the development would not take place as a result of my decision. Therefore, I have not considered these matters further.
49. There has been post application discussions between the Council and the appellant, some correspondence of which was submitted as evidence accompanying the appeal proposal. While I note the appellant's dissatisfaction with the way the Council has handled the application and some of the pre- and post-determination correspondence, my assessment of the proposal relates to its planning merits only.

Planning Balance and Conclusion

50. The appeal proposal is to meet the social, educational and cultural needs of the local community. It would provide a permanent facility for the local Islamic community, would advance equality of opportunity and foster good relations for multiple protected characteristics. This carries significant weight in favour of the proposal. The appellant's rights under Article 9 of the HRA carry limited weight in favour of the proposal. Together with the other benefits I have set out above, in combination all these matters attract significant weight in favour of the proposal.
51. However, I cannot be certain the proposed development would not result in significant harm to highway safety and the living conditions of neighbouring occupiers with particular reference to noise and disturbance. For these reasons, while I do not find a conflict with Policy SD6 of the LP, the proposed development conflicts with Policy 13 of the HLP as a whole. Having regard to the potential harm from the development in respect of highway safety and the living conditions of neighbouring occupiers, these matters are of a magnitude that carry significant weight against the scheme, such that they outweigh the policy compliance and the benefits of the development. Therefore, the appeal should not succeed.
52. The proposed development would be contrary to the development plan read as a whole. There are no material considerations advanced including the policies of the National Planning Policy Framework that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr David Hutchinson, BArch PG Dip TP (DJH Architectural and Planning Consultants)

Mr Michael Kitching, BSc (Hons) MSc CMLILT (Director, SK Transport Planning)

Mr Muhammad Rahman BEng (Hons) (Trustee and Secretary of Rainham Education and Cultural Society)

Mr Nozrul Islam Ghuznavi (Trustee and Treasurer of Rainham Education and Cultural Society)

FOR THE COUNCIL:

Mrs Victoria Collins, MTP (Senior Planning Officer, London Borough of Havering)

Mrs Maria Bailey (Head of Development Management, London Borough of Havering)

Ms Jill Warren (Development Planning Deputy Team Leader, London Borough of Havering)

Mr Masood Karim (Highway & Transport Engineer, London Borough of Havering)

Mr Cole Hodder (Planning Officer, London Borough of Havering)

INTERESTED PARTIES:

Councillor Sarah Edwards (Ward Member, London Borough of Havering)

Councillor Matt Stanton (London Borough of Havering)

Mr David Durant (Ex-Councillor)

Mr Emrul Hassan (Virtual Attendee)

DOCUMENTS SUBMITTED AT THE HEARING

URS-1: Traffic flow diagram.

URS-2: Signage at Tesco's car park.

URS-3: Planning Practice Guidance ID: 21a-014-20140306.

URS-4: Policy 13 of the Havering Local Plan and supporting text.

URS-5: Policy 24 of the Havering Local Plan and supporting text.