



Appeal Decision

Site visit made on 21 April 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 APRIL 2023

Appeal Ref: APP/B5480/W/22/3309349

34 The Broadway, Hornchurch RM12 4RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Shah Zaman against the decision of the Council of the London Borough of Havering.
 - The application Ref P0681.22, dated 27 April 2022, was approved on 22 June 2022 and planning permission was granted subject to conditions.
 - The development permitted is change of use of basement, mezzanine, and ground floor from Use Class E(a)(Retail) to Use Class F1(a) (Provision of Education) with associated waste, recycling, car parking, and cycle parking.
 - The condition in dispute is No.3 which states that: *'Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) the use hereby permitted shall be a tuition centre only and shall be used for no other purpose(s) whatsoever including any other use in Class F1(a) of the Order, unless otherwise agreed in writing by the Local Planning Authority'*.
 - The reason given for the condition is: *'To restrict the use of the premises to one compatible with the surrounding area and to enable the Local Planning Authority to exercise control over any future use not forming part of this application'*.
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Decision

1. The appeal is dismissed.

Background

2. The appellant sought change of use of No.34 The Broadway to a 'tuition centre' and referred to Class F1(a)¹ which is for the provision of education. The Council granted planning permission for 'Use Class F1(a) (Provision of Education)'. Plain reading of condition No.3 is that it restricts use to a tuition centre and no other education use in Class F1(a). It also provides that No.34 shall be used for no other purpose whatsoever, so including any other Class F1 use.
3. The appellant wants condition No.3 removed as a means to achieve any other Class F1 use, including Class F1(f) which is use for, or in connection with, public worship or religious instruction. Alternatively, condition No.3 should be altered to permit only Class F1(a) and Class F1(f) uses.

Main Issue

4. The main issue in this appeal is whether removing, or altering the wording, of condition No.3 is justified having regard to the effect of noise or general disturbance on the living conditions of the existing occupiers of nearby residential properties.

¹ Schedule 2, Part B, Class F1 - The Town and Country Planning (Use Classes) Order 1987, as amended (the UCO)

Reasons

5. No.34 is a tuition centre over three lower floors of a split level, five-storey mid-terraced building with pedestrian access front and rear. A separate flat occupies the two upper floors. The front of this building is in a parade of ground floor commercial uses with flats above along both sides of The Broadway Road in the Elm Park District Centre. At the rear it is opposite blocks of flats at Diban Court, which is accessed by a cul-de-sac. I refer to all these flats as the nearby residential properties.
6. The UCO sets out that the change of use of part of a building for any other purpose within the same use class is not development that requires planning permission. While Planning Practice Guidance (PPG) cautions that conditions restricting future changes of use 'may' not be reasonable or necessary, they can enable development to proceed where planning permission would otherwise be refused by mitigating adverse impacts. In this respect, it is clear from the officer report and the Council's appeal statement that it took a reasonable and justified approach to granting planning permission for Class F1(a). This included regard to the proximity of the nearby residential properties and the potential for adverse impacts on the existing occupiers. Moreover, condition No.3 is precisely defined by reference to relevant provisions of the UCO and reflects the specific use applied for, so it is not overly restrictive or excessive.
7. I have also been referred to the Explanatory Memorandum (EM) published with amendments to the UCO². These changes were made to reflect the diversity of uses in high streets and town centres and to provide flexibility for businesses. These general aims are broadly consistent with objectives of the Council's development plan (DP)³, the National Planning Policy Framework (Framework) and Planning Practice Guidance (PPG).
8. However, there is no evidence that the EM (DP, Framework or PPG) considers Class F1 uses innately suitable as of right in high streets and town centres; that is the purpose of Class E commercial, business and service uses. The EM sets out that Class F1 uses are more likely to involve buildings which are regularly in wider public use and the primary aim is to protect buildings in this use. The EM extracts provided, relating to multiple use of buildings at different times of the day and allowing movement between uses so businesses can adapt to changing circumstances and respond more quickly to the needs of their communities, apply in the context of Class E not Class F1.
9. Although the permitted F1(a) use is within Class F1, the appellant has provided no details or supporting information about the scale or nature of any other Class F1 use, including Class F1(f); other than that Class F1(f) use could provide a secondary or ancillary prayer space to complement existing Arabic classes and Islamic studies conducted in the tuition centre.
10. The Broadway is a bustling road corridor during normal daytime business hours. Despite some later opening uses, an appreciable reduction in footfall and vehicular movements along this road in the evening would result in lower ambient background noise levels and less general disturbance at the front of

² The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (Statutory Instrument 2020 No.757)

³ The London Plan March 2021 and Havering Local Plan November 2021

- No.34. Despite intermittent passing trains, the environment behind No.34 and this terrace (barrier) of buildings, at a significantly lower level, is more secluded and much quieter even during the day.
11. Condition No.5 is not in dispute. It controls the hours of the 'permitted' use but this allows until 21:00 Monday to Friday. No other hours of use have been suggested. Evenings and early night-time include when the nearby residential properties are most likely to be occupied. It is also when people reasonably anticipate enhanced living conditions, including more peace and quiet, open windows and use of terraces at the rear of the flats above and next to No.34.
 12. Condition No.4 is also not in dispute. It limits a maximum of 34 'students' in No.34 at any one time, not 'people'. There is no mechanism before me to prevent an unspecified, potentially significant number of additional visitors who were not students entering No.34. This could be for any other Class F1 use, including Class F1(f) use for prayer and be at the same time as students or before, after or between student classes and up to 21:00 Monday to Friday. Nor is there any means to ensure that Class F1(f) use remained secondary or ancillary to a primary F1(a) use.
 13. There is no objective evidence of baseline levels of existing noise or general disturbance at or in the vicinity of No.34, or about future predicted noise or general disturbance from any other Class F1 use; including Class F1(f) and, for example, potential amplification of sound for call to prayer or the leading of prayers including during religious events. Nor is there any information about the acoustic attenuation performance of windows or internal building sound insulation at No.34, use of the rear outside courtyard and the comings and goings of people from No.34, including people gathering or congregating outside the building at the front or rear. Nor to explain a pattern of usage or intensity of activity or how these uses would be managed or operated.
 14. Furthermore, notwithstanding the high accessibility of the area and that some local people could walk, cycle or use a bus or train to travel to No.34, it would not be reasonable or enforceable to impose a condition to prevent people from travelling by car. While there are public car parks nearby, and albeit potentially for short periods of time, there could be significant additional on-street parking and associated noise and general disturbance, including vehicle movements, next to the front of No.34, along either side of this stretch of The Broadway or at the rear of No.34 including (even though it is a private road) in the cul-de-sac at Diban Court as this also gives vehicular access to No.34.
 15. In the absence of any objective evidence to the contrary, such as details or supporting information about a noise impact assessment or a parking survey and travel, traffic management or dispersal plan, there is a real prospect of potential significant noise and general disturbance experienced by the occupiers of the residential properties from other Class F1 uses, including Class F1(f). Given the starting point in this appeal of the restriction to Class F1(a) use, details such as these are material to an in-principle decision to permit alternative Class F1 use of No.34, including Class F1(f), so cannot be relegated to subsequent approval by the Council.
 16. Accordingly, I am not satisfied that the appellant has justified that removing condition No.3, or altering its wording as sought, would not harm the living conditions of the existing occupiers of the residential properties having regard to the effect of noise and general disturbance. There is, therefore, conflict with

Policies 7 and 12 of the Havering Local Plan November 2021 which seek to ensure that the amenity, quality of life and well-being of existing residents is not adversely affected. In this appeal there are no additional considerations that outweigh this conflict.

17. In these circumstances, I find that the condition in dispute (No.3) is reasonable and necessary, serves a useful planning purpose and meets all of the relevant tests of the Framework and PPG.

Other Matters

18. I have been referred to an application refused by the Council for other development at No.34⁴. That scheme was for an additional Class F2(b) use and ancillary F1(f) use, with enlargement of the building to increase floor area. While there are some parallels it was a materially different proposal so is not directly comparable. I have considered this appeal on its individual planning merits and the evidence before me.
19. I appreciate that Class F1 uses, and Class F1(f) in particular, are important to the appellant and the other owner of No.34, as well as to some people in the local community. I recognise that dismissing the appeal would interfere with rights to freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association and prohibition of discrimination⁵. I have also had due regard to the race and religion, or belief protected characteristics in this appeal for the purposes of the Public Sector Equality Duty⁶, including the need to eliminate discrimination and advance equal opportunity. Nevertheless, these factors must be weighed against the wider public interest. For the reasons given above, I consider that this legitimate aim can only be adequately safeguarded by dismissing the appeal which would be a proportionate outcome.

Conclusion

20. Considering all of the above the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR

⁴ P1883.22

⁵ Articles 9, 10, 11 and 14 respectively of the Human Rights Act 1998

⁶ Section 149 of the Equality Act 2010