



Appeal Decision

Site visit made on 31 May 2023

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Appeal Ref: APP/M2372/W/22/3312377

Masjid E Zainabia and Imambargah, Logwood Street, Blackburn BB1 9TU

- 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 Zainabia Imambargah against the decision of Blackburn with Darwen Borough Council.
 - The application Ref 10/22/0309, dated 3 April 2022, was refused by notice dated 13 July 2022.
 - The development proposed is replacement roof and use of unit for the storage of motor vehicles.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address in the banner heading above is taken from the application form. However, it was apparent from my site visit that the appeal site is located between Logwood Street and Holly Street, with access to the site taken from Holly Street. The appellant has confirmed there was an error on the forms and that the address on the decision notice (Holly Street/Logwood Street) is correct. Consultation by the Council was carried out on that basis. In my decision, I have therefore used the same address as the decision notice.
3. The description of development is taken from the application form, omitting wording that is not an act of development.
4. The application was submitted retrospectively and I have proceeded to determine the appeal on that basis. However, there is a significant discrepancy between the Site Location Plan (Ref:21048-LP) and the 'As Was' and 'As Built' Floor Plan & Elevations (Ref:21048-01-A and Ref: 21048-02-A respectively) in relation to the land edged red. The Site Location Plan shows a rectangular area, whereas the other two plans show a smaller area that excludes part of the building denoted as a Mosque on the plans. The plans therefore lack consistency in respect of the replacement roof in that they indicate works over land edged blue on the plans, which is not part of the appeal proposal. It is clear from the appellant's written submission that the development relates to plans which omit the existing mosque. For the avoidance of doubt, I have determined the appeal on the basis of the submitted 'As Built' Floor Plan & Elevation (Ref: 21048-02-A).
5. Since none of the submitted plans include a red edge around all of the replacement roof shown on 'As Built' Roof Plan (Ref: 21048-04), for the avoidance of doubt, my consideration and formal decision relates only to that

part of the roof included in the red edge indicated on the 'As Built' Floor Plan & Elevation (Ref: 21048-02-A) referred to above.

6. Whilst the appellant considers the activities taking place at the site have done so for over ten years, planning permission has been sought. The lawfulness of any existing use is not a matter to be determined by this appeal.

Main Issues

7. The main issues are the effect of the development on:

- The living conditions of nearby residents, with particular regard to noise and disturbance; and,
- Highway safety, with particular regard to on-street parking, servicing and manoeuvring.

Reasons

Living conditions

8. The area within which the appeal building is located is predominantly residential and characterised by streets of red brick terraced properties. The appeal site forms part of a building, historically known as Jubilee Mill, which spans Holly Street and Logwood Street. The former mill building is single storey and has been subdivided. The unit subject to this appeal sits within part of the building that fronts Holly Street and includes a large metal roller shutter door used for vehicular access into the unit. Pedestrian access is also via a door from Holly Street. High level windows run along part of the building fronting Holly Street, just below a corrugated aluminium sheet roof.
9. From the evidence before me, the planning history of the building is unclear. However, there is agreement between the parties that the appeal unit is used to store vehicles awaiting repair following a road traffic accident. The Council suggests that some evidence of salvage/vehicle breaking was found during a Council site inspection. That is not the use described in the application, nor what I saw at my site visit, albeit a snapshot in time. The unit was largely filled to capacity with vehicles, including cars, vans and a quad bike.
10. The appellant submitted a Technical Note, Dynamic Transport Planning Ref:3702422 (March 22) to support the application. It states that no permanent staff are based at the site as only one person is required when a vehicle delivery or collection takes place. Furthermore, the nature of the use appears to rely on recovery vehicles for the delivery and collection of un-roadworthy vehicles to and from the site. To denote the frequency of such occurrences, I have been provided with a vehicle movement table by the appellant for the period from the end of February to mid-August 2022. Even though this indicates an average of less than one visit a week, no information has been provided to show the day of the week, the time of day or length of these visits.
11. Furthermore, recovery vehicles delivering or collecting vehicles are required to stop on Holly Street and undertake a reversing manoeuvre to enter the building. There are no parking restrictions on Holly Street, which slopes relatively steeply towards Cedar Street. Having regard to the limited width and potential for parked cars along both sides, including directly in front of the

vehicular access to the appeal site, it is clear that there is currently no control to ensure access to the appeal site is readily available. Therefore, these factors lead to the manoeuvring, loading and unloading of vehicles taking place in the street. Even if there were few vehicles stored in the appeal unit, its configuration and lack of private outside space is still likely to result in the loading and unloading of vehicles taking place on the street.

12. Such activity involves engines running, doors slamming and conversations in close proximity to nearby residential properties that directly abut the pavement. While the occurrence of deliveries and collections may be infrequent, they lead to a level of activity that is more intensive than that which could reasonably be expected along a residential street or from the use taking place within the building. Furthermore, the noise is likely to be different to passing noise from comings and goings in the street. I am also aware that the use has already led to complaints to the Council regarding noise.
13. No noise assessment has been presented giving background noise levels or noise generated by the use at the appeal site. I also do not have any detailed evidence of the existing sound proofing properties of the building.
14. Even if conditions were imposed restricting opening/operating times, in the absence of appropriate information at this stage, I cannot be sure what levels of noise are experienced by surrounding residents or whether appropriate mitigation could be secured. Moreover, I do not have clear information before me relating to the times of day or duration of the activities undertaken at the site. In addition, no mechanism has been put to me to be able to control the level of use.
15. Consequently, I cannot be sure that the living conditions for nearby residents are not harmed, with particular regard to noise and disturbance. The scheme therefore conflicts with Policy 8 of the Blackburn with Darwen Local Plan Part 2 (2015) (LP) which seeks, in part, to ensure development contributes positively to the overall physical, social, environmental and economic character of the area whilst securing a satisfactory level of amenity and safety for surrounding uses with reference to noise.

Highways

16. Holly Street is one way and is not subject to parking controls. Although I have been provided with a swept path analysis by the appellant to demonstrate that recovery vehicles can reverse into and out of the appeal site, this manoeuvre relies on no vehicles being parked in front of or adjacent to the access, which cannot be guaranteed. The information before me suggests that nearby residents have been asked to move parked cars in order that the site can be accessed.
17. I saw at my site visit that parking along Holly Street was almost at capacity. Nevertheless, while I appreciate this is only a snapshot in time and the appellant suggests only one member of staff is present at the site, there is capacity for some staff parking to be provided within the building and limited on-street parking is also likely to be available on Holly Street or surrounding roads. However, the narrow one-way nature of this street and Cedar Street results in a constrained width for larger vehicles to manoeuvre and access the site. Moreover, the amount of vehicle storage in the building would mean that under current conditions a significant number of vehicles would need to be

- moved out of the building to enable vehicles at the rear of the building to be removed which would further impact on the congestion found along the street
18. As suggested above, this leads to vehicles obstructing Holly Street to unload or collect vehicles stored at the appeal site and impedes vehicles from travelling along the street. While obstruction of Holly Street may be infrequent, and even if there is a low accident record in the area, such instances hinder residents, emergency and refuse vehicles, thereby impacting on the safe and efficient operation of the highway.
19. The appellant has made reference to the former use of the building as a mill and indicates that this would have generated a greater volume of vehicular activity and larger vehicles than is currently experienced. Be that as it may, the building has not been in active use as an industrial mill for a considerable period of time and does not benefit from an extant permission, having regard to the implemented permission for use as a Mosque¹. While I acknowledge this use generates traffic, such traffic is unlikely to require reversing movements into or out of the building. Moreover, vehicles associated with use of the Mosque would be likely to result in an increase in on-street parking in the area, thereby exacerbating the impact of the appeal development on the highway, as set out above.
20. Whilst I find the availability of parking for staff to be acceptable, the use of the building for the storage of motor vehicles conflicts with Policy 10 of the LP which seeks to ensure that, amongst other things, the safe, efficient and convenient movement of all highway users is not prejudiced. This policy also requires that appropriate provision is made for vehicular access and off street servicing. Accordingly, for the reasons given, the use of the unit for the storage of motor vehicles has a significant adverse effect on highway safety, with particular regard to servicing and manoeuvring.
21. In addition, The National Planning Policy Framework (Framework) states at paragraph 111 that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. For the reasons outlined above, the proposal has an unacceptable impact on highway safety.

Other Matters

22. A corrugated aluminium roof has been constructed on the appeal building. From my observations, this did not appear out of keeping or incongruous in its surroundings and I note the Council have no objections to this element of the scheme. As the plans are inconsistent with one another and refer to a replacement roof which is over the appeal site and land beyond it I am not able to deal with this matter as clearly severable from the use of the appeal site, such that it would have enabled me to issue a split decision under the provisions of s79(1)(b) of the Town and Country Planning Act 1990.
23. The Council, in their reason for refusal, also referred to the negative effect of the development upon the character of the surrounding area. Policy 8 of the LP seeks development that contributes positively to the overall physical, social, environmental and economic character of the area. While I find the use would

¹ Local Planning Authority Ref. 10/01/0744

harm the living conditions of surrounding residents for the reasons given above, and the appeal site is tightly constrained by residential development, I do not consider the overall physical character of the area is adversely affected.

24. The Framework requires that plans and decisions should apply a presumption in favour of sustainable development². The site is in an accessible location and whilst the development may provide some economic benefit, I have not been presented with any information in this regard. Nonetheless, I find the use of the building for the storage of motor vehicles has an unacceptably harmful effect on the living conditions of neighbouring residents; and is harmful to highway safety. As a result, it is contrary to the development plan and to the Framework, as described above. I consider that such an adverse impact would significantly and demonstrably outweigh the benefit of this scheme, as assessed against the Framework as a whole. Accordingly, the presumption in favour of sustainable development does not apply.
25. I have had regard to the representations made by interested parties. These do not, however, raise any additional matters in relation to the main issues that would lead me to reach a different overall conclusion; or they raise matters that are properly outside the scope of this appeal, which is concerned with the planning merits of the proposal.

Conclusion

26. The use of the unit for the storage of motor vehicles conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the harm and associated development plan conflict.
27. Accordingly, the appeal is dismissed.

A Veevers

INSPECTOR

² Paragraph 11