



Appeal Decision

Hearing Held on 25 October 2023

Site visit made on 25 October 2023

S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Appeal Ref: APP/N5090/W/23/3321620

43 Glengall Road, Barnet, Edgeware HA8 8SZ

- 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 Mr Shlomi Rokach (Zichron Reuven Aharon Ltd t/a Eitz Hachaim) against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/4612/FUL, dated 13 September 2022, was refused by notice dated 13 December 2022.
 - The development proposed is change of use from C3 (Residential) to F.1(f) (Synagogue).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from C3 (Residential) to F.1(f) (Synagogue) at 43 Glengall Road, Barnet, Edgeware HA8 8SZ, in accordance with the terms of the application, Ref 22/4612/FUL, dated 13 September 2022, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The description of development in the heading above is taken from the appeal form and decision notice, as it is more precise than the description in the application form, and it accords with the appellant's proposed use.
3. The planning application was not submitted retrospectively, but the main parties have confirmed that the synagogue use has since been implemented. I found this to be the case during the site visit. I have dealt with the appeal accordingly, and on the merits of the appeal scheme.
4. Prior to the Hearing, in order to address the Council's third reason for refusal, the appellant submitted additional information, comprising a *Transport and Parking Note* by I-Transport LLP, Ref NM/LC/ITL 19426-001A TN, dated 29 September 2023 (the Transport Report).
5. The Council has confirmed that, in light of the conclusions of the Transport Report, it is satisfied that its parking and highway safety concerns could be satisfactorily addressed by means of a planning condition requiring the submission of an activity/events management plan. As such, the council is not pursuing the third reason for refusal.
6. On the basis of the information before me, including my site visit, I have no reason to doubt the findings of the Transport Report in respect of the

accessibility of the site by means of transport other than the car, the likely mode of travel of users of the appeal scheme, and the on-street parking capacity surveys of roads within the vicinity of the appeal site. I have dealt with the appeal accordingly.

Main Issues

7. Having regard to the above, the main issues are whether the appeal site is a suitable location for a Class F.1(f) synagogue use, having regard to:
 - The impact of the proposal on the Council's supply of housing;
 - The impact of the proposal upon the character of the area; and
 - The impact of the proposal upon the living conditions of neighbouring occupiers, having particular regard to noise and activity impacts.
8. In my assessment and decision taking I must exercise the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 (the EA10). This means having due regard to the three aims of the EA10 to eliminate discrimination, advance equality of opportunity and foster good relations (s149(1)). Religion or belief is the protected characteristic of particular relevance to this appeal.
9. Therefore, having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not, will involve examining the obligation to remove or minimise disadvantages suffered by the appellant and the Orthodox Jewish Community, to advance equality of opportunity between them and those who do not share their protected characteristic, and to take steps to meet their different needs (s149(3)).
10. In terms of the Human Rights Act 1998, throughout I have kept in mind the qualified rights of article 8, the right to respect for the home, private and family life and article 9, the right to freedom of thought, conscience and religion.

Reasons

Supply of housing

11. The appeal scheme results in the loss of a detached dwelling with a private garden. Although the property would require some internal improvements, such as replacing the existing spiral metal staircase, I find that it would be capable of providing a satisfactory one or two bedroomed dwelling.
12. The Council has confirmed that there has been a significant trend within the Borough of providing flatted developments, including through the conversion of modest family-sized dwellings into flats. As such, the Council intends to address this through emerging development plan policies, which will seek to protect family-appropriate dwellings, of which the Council considers the appeal site to be, in order to ensure an appropriate mix of accommodation types.
13. Albeit that third parties have referred me to recent residential developments within the locality of the appeal site which include houses with gardens, I have no reason to disagree with the above. In this respect, I have noted that emerging Policy HOU03 of the *Barnet Draft Local Plan (Reg 19) 2021 – 2036*

- (November 2021) (the Draft Local Plan) aims to retain family sized housing as part of residential conversion schemes.
14. The *London Plan* (2021) (the LP) is the most recently adopted development plan covering the Council's area. Although not mentioned in the first reason for refusal, LP Policy H8 is relevant to the appeal scheme. It was referred to in the Officer Report, acknowledged in the appellant's statement of case and discussed at the Hearing. As such, there would be no prejudice to either of the main parties as a result of my consideration of this policy as part of the determination of the appeal.
 15. Policy H8 is clear that the loss of existing housing should be replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace. This is an unqualified statement with no provisos, and does not specify any particular size of housing to be retained. As such, the appeal scheme is in conflict with this policy, as it would result in the permanent loss of a dwelling with no replacement housing.
 16. Policy DM07 of *Barnet's Local Plan (Development Management Policies)* (2012) (the DMP) seeks to resist the loss of housing in the Borough, unless the proposal is for a 'local facility', defined as a children's nursery, educational or health use, where it is not detrimental to residential amenity, a clear local need can be demonstrated, and demand cannot be adequately met elsewhere or where the site is no longer environmentally suitable and viable for residential use.
 17. As a place of worship incorporating religious instruction, the appeal scheme falls outside the Policy DM07 list of 'local facilities'. Moreover, there is no substantive evidence before me that the appeal site is no longer environmentally suitable and viable for residential use. As such, there is also conflict with Policy DM07.
 18. The Council's first reason for refusal also refers to Draft Local Plan emerging Policy HOU05, which continues the approach to replacement local facilities of Policy DM07. At the Hearing, the Council confirmed that following the Local Plan Examination, the Inspectors' interim findings by letter to the Council dated 17 August 2023, recommended changes to this policy, including the relevant criteria 1.a) thereof. Since the Council's proposed changes are currently unresolved, I place limited weight on this emerging policy at present.
 19. Whilst seeking to protect existing housing, Policy DM07 recognises that there may be specific circumstances where the loss of residential use may be acceptable, where a clear local need can be demonstrated for the provision of local facilities. In this respect, Policy DM07 makes references to DMP Policy DM13 and Policy CS10 of *Barnet's Local Plan (Core Strategy)* (2012) (the Core Strategy).
 20. These policies encourage the provision of inclusive and integrated community facilities and uses, including places of worship, recognising that there is a need for a range of community and religious facilities in Barnet to support the requirements of different groups, including religious groups, in the Borough. Whilst Policy DM13 states that such uses should preferably be in town centres or local centres, where they are accessible by public transport, walking and cycling, this is not prescriptive.

21. The appeal scheme use is that of a Chareidi Orthodox Jewish Beis Hamedrash, for worship and study. Accordingly, there are specific religious requirements in respect of the location of the development, which must be within easy walking distance of its users, who are restricted from using car or public transport on Saturdays and Jewish Festivals. This means that this specific type of community facility is constrained in respect of its location, such that a residential area away from the town and local centres may be the most appropriate locality for the use. Moreover, the appellant has provided evidence of other established similar places of worship within residential areas of London with low PTAL ratings.
22. Furthermore, the evidence before me is that the appeal site is used by the Eitz Hachaim community, established in 2020 and comprising approximately 35 local families, which is part of the Federation of Synagogues. The appellant has confirmed that none of the community live more than 1km from the site, and that the majority live within 500m. It was also confirmed, at the Hearing, that, following the initial occupation of temporary premises, an alternative permanent site for the synagogue that would not result in the loss of a residential property, had proved difficult to find within the required geographical area due to its predominantly residential character and lack of availability of suitable non-residential sites. I have no cogent reason to doubt this, based upon my observations of the site locality during my site visit.
23. Third party support for the appeal scheme from users of the synagogue, both through attendance at the Hearing and written representation made in response to the planning application and appeal, attest to positive community benefits arising from the development. These include religious, social and mental health well-being.
24. Taking the above need, benefits and locational factors into account, I find that the proposal would accord with the objectives of Core Strategy Policy CS10 and DMP Policy DM13, in relation to the development and growth of community facilities in alignment with local need. The weight attached to the above needs to be balanced against the resulting loss of housing.
25. I have found that the proposal would cause some limited harm to the council's supply of housing in conflict with LP Policy H8 and DMP Policy DM07. However, the Council has confirmed that it has a 5.4 year identified supply of housing land. Moreover, the loss of housing would be minimal, comprising a single dwelling. The evidence before me is that there is a significant need for the appeal scheme among the local Orthodox Jewish community, and that there are no suitable and available alternative sites elsewhere.
26. With the above in mind, I therefore find that, in this instance, on balance, the harm arising from the loss of residential accommodation is outweighed by the resulting community benefits to, and advancement of equality of opportunity for, the local Orthodox Jewish community. This conclusion is based upon the particular circumstances of the appeal site and proposal, including the specific religious requirements of the appellant.
27. For the above reasons, I therefore conclude that, subject to conditions to protect the living conditions of neighbouring residential occupiers, the appeal site is a suitable location for a Class F.1(f) synagogue use, having regard to the impact of the proposal on the Council's supply of housing.

28. This accords with the social objective of sustainable development of the *National Planning Policy Framework 2023* (the Framework) which supports strong, vibrant and healthy communities. This includes, inter alia, accessible services that reflect current and future needs and support communities' health, social and cultural well-being (Paragraph 8). Moreover, it supports the provision of social, recreational and cultural facilities and services the community needs, by, amongst other things, planning positively for the provision and use of community facilities such as meeting places and places of worship to enhance the sustainability of communities and residential environments (Paragraph 93.)
29. The Council's first reason for refusal also refers to Core Strategy Policies CS NPPF and CS 1, and DMP Policy DM01. I do not find these policies to be directly relevant to this main issue. The Core Strategy policies, respectively, relate to a general presumption in favour of sustainable development in accordance with the Framework, and the Council's place-shaping strategy in respect of the spatial focus for housing and economic growth. DMP Policy DM01 is mainly concerned with protecting Barnet's character and amenity, and is relevant to the consideration of the second main issue below.

Character

30. The appeal site lies on the corner of Glengall Road and Kenilworth Road, within a suburban built-up area known as the Broadfields Estate. The appeal site is surrounded by rows of residential properties on both sides and on the opposite side of each road. These mainly comprise detached and semi-detached houses and bungalows, with some three-storey flatted development further north in Kenilworth Road and Bushfield Crescent and some pockets of terraced housing.
31. Whilst the predominant use of the area is that of housing, there are also community facilities interspersed within the residential area. This is a typical feature of housing estates where local services and facilities exist to serve the immediate needs of the residents.
32. DMP Policy DM01 states that loss of houses in roads characterised by houses will not normally be appropriate. In this instance, there is a local centre comprising a parade of commercial properties on both sides of Glengall Road, located approximately 120m to the west of the appeal site. These include a mix of shops and a range of other businesses serving the local community, including a Tesco Express, adjacent to which there is a primary school on the same side of the road as the appeal site.
33. Having regard to the proximity of the appeal site to the aforesaid community facilities and services, and noting that external changes to the building and the appeal site are minor, I do not consider that the use of the appeal property as a synagogue would be in direct conflict with criterion i. of Policy DM01. This is because the proposal would retain the existing mixed use of character of Glengall Road, whilst maintaining the outwardly residential appearance of the appeal site.
34. Moreover, the evidence before me is that religious requirements, such as being unable to attend by car or public transport on certain days, mean that a location within a comfortable walking distance of the homes of its members is a requirement of the proposed use. As such, whilst there would be a significant increase in comings and goings and people present on the appeal site

compared to its use as a single dwelling, most attendees would be local residents who would walk to the synagogue. Accordingly, acknowledging that the people who occupy an area are part and parcel of its character, and that the proposal would not generate a notable increase in on-street car parking within the site vicinity, I do not find the proposed intensification of use of the site, in itself, to be harmful to the character of the area.

35. The greatest increase in activity would be limited to that in association with the morning and evening times of worship, with significantly lower numbers of attendees during the private study periods during the remainder of the day. Moreover, the roads within the vicinity of the appeal site are wide and spacious, incorporating generously sized grass verges and footways, whereby increased pedestrian activity is capable of being assimilated into the street scene without appearing unduly visually prominent.
36. For the above reasons, I therefore conclude that the appeal site is a suitable location for a Class F.1(f) synagogue use, having regard to the impact of the proposal upon the character of the area. As such, the appeal scheme accords with DMP Policy DM01, in so much as this policy seeks to ensure that new development is based on an understanding of local characteristics and that it preserves or enhances local character.
37. This accords with Policies of the Framework which seek to achieve well-designed places as set out in Chapter 12.

Living conditions

38. The appeal site is surrounded by residential properties, the living conditions of which have the potential to be adversely affected by noise and disturbance impacts associated with the comings and goings and activities in connection with its use as a place of public worship and religious instruction. The use would be intensive, comprising 7 days a week opening, with daily morning and evening services and availability for use for study purposes during the time in between. A seating plan produced by the appellant at the Hearing, confirms that the building can accommodate up to 80 members at any one time.
39. The two adjacent properties which abut the site are particularly vulnerable to noise and disturbance impacts. 41 Glengall Road shares a driveway with the appeal site and has principal windows directly facing the drive, and 97a Kenilworth Road has a number of principal windows facing the rear garden of the appeal site and a rear garden which abuts the site.
40. I have taken account of the particular circumstances of the appeal scheme, whereby pedestrian access by local residents is the main form of transport by visiting members of the community, thereby precluding potential noise and disturbance and parking inconvenience impacts associated with car travel to the site, particularly before and after daily services and in connection with religious events.
41. Moreover, the moving of the main pedestrian access to the front of the building also mitigates against noise and disturbance impacts to No.41 to the side of the open shared driveway.
42. I have noted that the appeal scheme has been in operation for approximately 13 months. This, in itself, does not justify allowing the appeal which I have considered on the merits of the appeal scheme before me. However, in

consideration of this main issue, I have noted that the Council has confirmed that during this period of operation, it has received no complaints from local residents, which would include local residents who are not members of the local Orthodox Jewish community. I find that this weighs in favour of the scheme.

43. In addition, the aforesaid written representations and verbal representations during the Hearing by local members of the Eitz Hachaim community in respect of mental health and social benefits experienced through their attendance at the synagogue amounts to cogent evidence in support of the appeal scheme, having regard to the matter of its impact on residential living conditions.
44. My judgement on this second main issue is based upon the specific circumstances of the appeal scheme. Whilst there is no cogent evidence that the synagogue use of the premises to date has materially harmed neighbouring living conditions, conditions are nonetheless necessary to ensure the intensity of future use is controlled in a manner that is reasonable having regard to its proximity to neighbouring housing.
45. Other types of religious institutions or any other uses within Class F.1 could operate differently, and potentially more intensively, in terms of noise and activity, having regard to the use of the building and its outside garden areas, and in terms of potential car traffic generation. As such, a condition is necessary to restrict the use of the property to that of a synagogue with associated study facilities only, to prevent future permitted changes of use within the same use class that could result in harm to neighbouring living conditions.
46. Conditions are also necessary to require soundproofing of the building, since it was not originally designed for a community use, restrict the maximum number of attendees at any one time to that of 80 persons, in line with that which the appellant has confirmed can comfortably be accommodated in association with the synagogue use, and limit the hours of use to those which are currently operating.
47. For the above reasons, I therefore conclude that, subject to planning conditions, the appeal site is a suitable location for a Class F.1(f) synagogue use, having regard to the impact of the proposal upon the living conditions of neighbouring occupiers, having particular regard to noise and activity impacts. As such, the appeal scheme accords with DMP Policies DM01 and DM13, in so much as these policies seek to ensure that new community or educational uses protect the amenity of residential properties.
48. This is generally consistent with the Policies of the Framework which seek to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users (Paragraph 130).

Conditions

49. In the event that the appeal was allowed, the Council has suggested a number of conditions. It was confirmed, at the Hearing, that ongoing discussion had taken place between the main parties in respect of conditions, but that no signed statement of common ground had been produced.
50. The Council's suggested conditions provided the basis of the discussion at the Hearing, and I have considered them in the light of the tests set out in Paragraph 56 of the Framework and the National Planning Practice Guidance

(PPG). I have imposed them where I consider them to be necessary and reasonable, incorporating amendments and deleting and/or amalgamating conditions for the sake of clarity and precision and to take account that the appeal scheme has already been implemented.

51. Given the retrospective nature of the development, there is no requirement for a condition setting a timescale for the commencement of the approved development. It is necessary to define the plans for certainty (1).
52. As set out in the aforesaid consideration of the third main issue, in the interests of protecting the living conditions of nearby residential occupants, conditions are necessary to restrict the use to that of a synagogue and ancillary activities only (2), control the number of persons occupying the premises at any one time (3), restrict the hours of use (4) and ensure the installation of appropriate sound-proofing measures (5).
53. I have considered the Council's suggested requirement for a Local-level Travel Plan, to be secured by means of a S106 legal agreement. I have had regard to DMP Policy DM17, the Council's adopted *Local Plan Supplementary Planning Document: Planning Obligations* (April 2013) and guidance in the Framework. The appellant's Transport Report has confirmed that the majority of users of the synagogue live locally and walk to the site. As such, the appeal scheme does not generate a significant number of road vehicular traffic trips, and a sustainable mode of travel to the site would occur.
54. The restrictions imposed by the aforesaid planning conditions (2), (3) and (4), together with a condition to require the implementation of an approved activity/events management plan to address potentially different travel impacts during discrete festivals/events, including the date of the Jewish Pentacost, when longer than normal opening hours were confirmed as being required by the appellant (6), would control the use of the site and the intensity of operation to ensure that this remains the case.
55. As such, based upon the specific occupation of the site as a synagogue in the manner proposed by the appellant, a travel plan would not be necessary to make the scheme acceptable. This accords with advice in the Framework that states that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
56. I saw during my site visit, that there is no dedicated on-site cycle parking facilities. Although travel to the site by cycle would not be permitted on the Sabbath and Jewish holidays, it would be an acceptable means of transport on the other days. Therefore, in the absence of a required Travel Plan and in the interests of promoting sustainable travel in the Borough and deterring cycle theft, and noting that the Council has adopted standards in respect of this matter, a condition to require the provision of covered and secure on-site cycle parking is justified (7).
57. The purpose of conditions 5, 6 and 7 is to require the appellant to comply with a strict timetable for dealing with the matters of sound-proofing, activity/event management plan and cycle storage, which need to be addressed in order to make the development acceptable. The conditions are drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission, it is not possible to use a negatively worded condition precedent to secure the subsequent

approval and implementation of the outstanding detailed matters, because the development has already taken place. The purpose and effect of the conditions is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.

58. I am not persuaded by the Council's proposal to include a bin storage condition, since there is no substantive evidence before me that the proposal would generate a need for additional waste storage facilities over and above those of the domestic bins that are currently present on the site, and the Officer Report confirms that refuse storage and collection arrangements are likely to remain unchanged.

Conclusion

59. For the reasons given above, I conclude that the appeal should succeed, and planning permission be granted subject to conditions.

S Leonard

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 8SZ/EX/001, 8SZ/EX/002, 8SZ/EX/003, 8SZ/EX/004, 8SZ/EX/005, 8SZ/EX/006, 8SZ/PRO/001, 8SZ/PRO/002, 8SZ/PRO/003, 8SZ/PRO/004, 8SZ/PRO/005, 8SZ/PRO/006, OS Site Plan by Getmapping Id:291176_1250 and Streetmap Location Plan.
- 2) The premises shall be used for a synagogue and its ancillary activities only and for no other purpose (including any other purpose within Class F.1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, with or without modification).
- 3) No more than a maximum of 80 persons shall be present on site in connection with the synagogue use and its ancillary activities at any one time.
- 4) The use hereby permitted shall only take place between the hours of 0700 and 2200 on any day, except on the occasion of the Jewish Pentacost, when this restriction shall not apply.
- 5) Unless within one month of the date of this decision a scheme for sound-proofing of the building is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within one month of the local planning authority's approval, the use of the site as a Class F.1(f) (Synagogue) shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved sound-proofing in this condition, that provision shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 6) Unless within one month of the date of this decision an events/activity management plan is submitted in writing to the local planning authority for approval, and unless the approved plan is implemented within one month of the local planning authority's approval, the use of the site as a Class F.1(f) (Synagogue) shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved events/activity plan in this condition, that plan shall thereafter be complied with.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 7) Unless within one month of the date of this decision a scheme for secure cycle storage is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within one month of the local planning authority's approval, the use of the site as a Class F.1(f) (Synagogue) shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved cycle storage in this condition, that provision shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

*****End of Conditions*****

APPEARANCES:

For the appellant:

- Mr Alvin Ormonde – PPMS
- Mr Shlomi Rokach - Appellant

For the Local Planning Authority:

- Mr Ashley Niman – Senior Planning Officer

- Ms Zakera Matin – Senior Planning Officer
- Mr Francis Torto – Senior Development Control Engineer

Others

- Cllr Lachhya Gurung
- Cllr Shuey Gordon
- Mr Leonard Sampson
- Mr Shuki Diskind
- Mrs Ora Diskind
- Mr Gavriel Rokach
- Rabbi Y M Guttentag
- Mr Dov Horwitz
- Mr Saul Levy
- Mr Andrii Buriak
- Mr Sruli Ellinson
- Mr Samuel Kestenbiom
- Mr Aaron Schauder
- Mr Eli Babinowitz
- Mr Pini Grosskopf
- Mr Eli Grossberger
- Mr Simon Galinsky
- Mr Jonny Wilks
- Mr Shloimo Krausz
- Mr Moishe Royde
- Mr David Rokach
- Mr Zvi Steinhart
- Mr David Felman
- Mr Noi Elekiel
- Mr David Schleider
- Mr Yaakov Lebovics
- Mr Ari Weiniger
- Mr Dovi Greenman
- Mr Isaac Davis

- Mrs Rivki Rokach
- Mr Uri Debson
- Mr Joseph Schleider
- Mr Yanky Heimann