



Appeal Decision

Site visit made on 10 January 2024

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th January 2024

Appeal Ref: APP/G5180/W/23/3325440

51 High Street, St Mary Cray, Orpington, Kent BR5 3NJ

- 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 Sword of the Spirit Ministries against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/19/03624/FULL2, dated 3 September 2019, was refused by notice dated 27 March 2023.
 - The development proposed is change of use from launderette (sui generis) to place of worship (use class D1) (retrospective).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the header above is taken from the application form. It is slightly different from that on the Council's decision notice but there is no record of any revision being agreed.
3. The description refers to use class D1. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020. These amend the Town and Country Planning (Use Classes) Order 1987 so as to revoke Class D1. However, the Regulations provide that where a planning application was submitted prior to the commencement of the material period, the application must be determined by reference to those use classes which were in effect when the application was submitted. The planning application was submitted before 1 September 2020 and so I have determined the appeal with reference to the now revoked Use Class D1.
4. The appeal property was previously a launderette. On my visit, I saw the ground floor of the building laid out broadly as indicated on the appeal plans so it could be used as a church. As such, the development has already occurred.
5. A revised National Planning Policy Framework (the Framework) was published on 19 December 2023. The relevant provisions of the Framework have not materially changed and so it is unnecessary in the interests of fairness to seek comments on the revisions from the Council or the appellant.

Main Issue

6. The main issue is the effect of the development on the living conditions of occupiers of nearby residences having regard to noise.

Reasons

7. The development subject of this appeal relates solely to the ground floor of the appeal property. Above the church is a residence. The property lies in a row of buildings most of which have commercial outlets at ground floor and residences above. Attached to one side of 51 High Street is the entrance to another church, which is above a pharmacy at ground floor. On the opposite side of the road is a hotel. The end of High Street near to the appeal property is closed off to vehicular traffic and so it is in effect a cul de sac. I expect the local businesses attract visitors and parking on the road outside the site but with no through traffic the street seems fairly quiet. There is little to indicate that background noise unacceptably affects the living conditions at local residences.
8. The appellant's design, access and planning statement says the main activities to be conducted on the premises would be worshipping, praying and singing. Such activities normally last no longer than 3 hours and are spread over a number of days each month. All activities would be inside the building. The church would have a congregation of between 30 and 40 people, although turnout will vary between different days.
9. Policy 21 of the London Borough of Bromley Local Plan 2019 (LP) is supportive of new community uses in parades provided they do not adversely affect the amenities of adjoining occupiers. LP policy 119 requires a noise assessment with applications for proposals likely to generate noise. Under this policy, schemes for changes of use that would increase internal noise should incorporate measures to minimise the transfer of noise between different parts of the building. The policy sets out an expected level of airborne sound insulation in separating partitions between residential and non-residential noise generating uses.
10. In line with LP policy 119, an acoustic consultancy report¹ (ACR) has been provided. A subsequent re-appraisal finds the original report to be valid. The ACR includes no evidence to demonstrate the noise generated from the appeal property when it was a launderette. As such, there is insufficient information to conclude whether the appeal development has resulted in an increase in noise disturbance to nearby residences compared to the previous use. However, the appellant's evidence indicates the launderette use is no longer sustainable. Therefore, it would seem unlikely the premises would be re-used as such, even in the event of this appeal being dismissed.
11. The ACR describes noise surveys carried out whilst a service was taking place at the church as well as at a time when it was not being used. Noise measurements were taken directly outside the appeal property and in the living room above. The report concludes that noise levels measured in the flat do not comply with internal living space noise levels recommended in BS8233:2014. While it is not explicitly stated in the ACR, it seems from the commentary that noise generated from the church service could be heard in the flat above. No comment is made on whether it would also be heard at other residences. Therefore, the evidence appears to indicate that services at the church could cause noise disruption, at least to the flat above. With this in mind, it is important to understand whether noise levels could be mitigated to ensure no unacceptable disturbance is caused to local residents.

¹ Sound Analysis Acoustic Consultancy Report 4351-STR=ATN-1 dated March 2020.

12. The ACR recognises that the effects recorded in the living room above the church will be due to airborne noise either passing through the intervening floor or through the façade windows. In the ACR it is stated that it is not possible to determine which is the major contributing path. At the same time, it says it is likely the main noise to the flat is through the windows and being created by transmission through the building's façade. In support of this view, it is pointed out that a suspended ceiling has been installed within the church.
13. On my visit, I saw the suspended ceiling in place. The appellant also advises that wood/cotton insulation has been provided on internal walls. However, the submissions fail to show whether such measures meet the sound insulation requirements as set out in LP policy 119. There is a lack of clear explanation or analysis in the ACR to show the installed measures meaningfully prevent noise from the church passing through the building's structure to the flat above.
14. The appellant states that they have followed advice from the Council's environment team by installing a dropped ceiling with noise insulation as well as a lobby area by the front door of the property. However, there is no written confirmation that demonstrates this claim. The evidence before me clearly indicates the Council's environmental health pollution officer is unconvinced the development would avoid unacceptable noise effects on nearby residences. Such concerns attract significant weight in my considerations.
15. To address noise transmission through the façade, the ACR proposes the installation of a dry wall or secondary glazing to the front windows of the appeal property and a sound resistant door. There is no evidence before me to the contrary on the sound insulation qualities of these measures. Accordingly, I would envisage noise from the church through the front of the appeal property could be reduced so as to avoid unacceptable effects to nearby residences. However, acceptability in these regards does not address nor override my concerns on the direct transmission of noise through the building's structure.
16. The appellant's design, access and planning statement says the church would be open on the 1st, 2nd and 3rd days of every month, on Sundays between 10.00am and midday and from 7.00pm to 9.00pm on Wednesdays. It would seem that music will only be played between 11.00am and midday on Sundays. The appellant says music will be limited to acceptable noise levels.
17. However, it is unclear from the ACR whether it is just played music that can be heard in the flat above during services. I would envisage that other activities such as group singing or amplified speaking may also have an effect. Consequently, I am uncertain whether a planning condition that restricts the times of services and amplified music as indicated would be sufficient to avoid unsatisfactory noise disruption to the occupiers of the flat above. This is particularly the case as no times are specified when the church is open to the public on the 1st, 2nd and 3rd days of every month.
18. Also, I have considered whether planning conditions would be appropriate that require the submission and approval of sound insulation details, internal noise control measures and an operational noise management plan. These conditions would only be purposeful if it is certain they would adequately safeguard the living conditions in the flat above the church and other dwellings. The ACR has not properly ascertained whether noise transmission through the ceiling causes problems and if so, whether this could be appropriately mitigated. Therefore, I am uncertain whether planning conditions as referred to would be reasonable.

19. The appellant claims the appeal development has similar characteristics to the church in the adjacent building. However, there is little information to illustrate the neighbouring property causes noise that can be heard outside the building and at nearby residences. The main part of this church is over a pharmacy and so its relationship with nearby dwellings is different to the appeal property that has a residence directly above. As such, the presence of the church next door fails to demonstrate the appeal development causes no noise nuisance.
20. For the above reasons, I conclude insufficient information has been provided to show the development would have acceptable noise effects on the living conditions of occupiers of nearby residences. Therefore, it would be contrary to LP policies 21, 37 and 119 and the requirement to ensure development does not adversely affect amenities of nearby residences.

Other Considerations

21. The property is in the St Mary Cray Conservation Area (CA), which includes the historic and architecturally interesting High Street buildings. The development has had no effect on the external appearance of the appeal property or its surroundings. Also, the church is compatible with the variety of uses in nearby premises and so it preserves the character and appearance of the CA. This is a neutral factor in my assessment.
22. The development accords with the provisions of the Framework that encourage the re-use of vacant buildings and that promote social interaction. It is a community facility that I am sure is appreciated by its users. These factors weigh in favour of allowing the appeal.
23. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. This sets out the need to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not share it. This includes those with a particular religion or belief. A decision to dismiss the appeal could prevent the congregation of the church from meeting, praying and worshipping together. In these respects, my decision could fail to advance equality of opportunity.
24. However, the overriding factor is the potential for noise from the development to be harmful to the living conditions at nearby residences. To allow the development when associated noise could undermine the amenity of nearby dwellings would not foster good relations between the congregation and residents. As such, the adverse impacts of dismissing the appeal on the interests of the church's users would be a proportionate response to the PSED.

Conclusion

25. For the reasons given above, the development would conflict with LP policies when considered as a whole. The benefits of the development are not of such weight to justify granting planning permission contrary to the LP. Therefore, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR