



Appeal Decision

Hearing held on 18 June 2024

Site visit made on 18 June 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th June 2024

Appeal Ref: APP/U5360/W/24/3338241

130 Clapton Common, London E5 9AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Jacob Schreiber, Mosdos Hatorah Pnei Menachem against the Council of the London Borough of Hackney.
 - The application Ref is 2023/2340.
 - The development proposed is change of use from a dwelling (Use Class C3) to a Synagogue (Use Class F1(f)).
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from a dwelling (Use Class C3) to a Synagogue (Use Class F1(f)) at 130 Clapton Common, London E5 9AG in accordance with the terms of the application, Ref 2023/2340 subject to the conditions in the attached schedule.

Preliminary Matter

2. At the Hearing, I was advised that Regulation 19 publication stage consultation on the emerging Stamford Hill Area Action Plan ('the AAP') was ongoing. The Council expects to submit the AAP for examination in autumn 2024 with adoption anticipated in early 2025. I appreciate that the consultation version of the AAP is endorsed by the Council, but it is unclear at this stage whether or not there will be objections to it and I can have little confidence that policies in the emerging plan will be adopted in their current form. Having regard to advice within the National Planning Policy Framework ('the Framework'), I therefore consider that only limited weight can be given to the policies within the emerging AAP in my decision. That said, it does provide useful background and context to the main issue in this case.

Main Issue

3. The main issue is whether or not the proposed change of use would be acceptable having regard to the development plan and policies relevant to (i) the provision of family housing, and (ii) the provision of places of worship.

Reasons

4. The appeal site includes a four-bedroom dwelling within Stamford Hill. The emerging AAP highlights that Stamford Hill is home to the UK's largest Orthodox Jewish community, the Charedi community, and that the combination of a high birth rate and a desire to remain in a relatively tightly defined

geographic area leads to pressure for development. Of particular relevance in this case, it identifies significant overcrowding and a need for more large homes suitable for large families. It also notes a higher demand for social infrastructure and that community facilities such as places of worship form an essential requirement for the local community.

5. The proposed change of use of the appeal building to a synagogue would result in the loss of the existing large dwelling. Policy GG4 of the London Plan 2021 ('the LP') seeks to ensure that more homes are delivered. Within the Stamford Hill area, strategic principles for development set out at Policy PP4 of the Hackney Local Plan 2033, adopted 2020 ('the LP33') also include providing new and extended homes with a range of dwelling types, sizes and tenures and a particular focus on housing for large families. However, neither of these policies include specific requirements protecting existing housing. While the proposal would not further the objectives noted above, I therefore find no direct conflict with the terms of Policies GG4 of the LP or PP4 of the LP33. The Council also accepted at the Hearing that Policy H14 of the LP33 which sets out a preferred dwelling size mix would not be directly applicable where a development is not proposing dwellings, as is the case here.
6. Nevertheless, the loss of the dwelling would conflict with the requirement within Policy H8 of the LP that loss of existing housing should be replaced by new housing at existing or higher densities.
7. Policy LP24 of the LP33 also seeks to prevent loss of housing. At part A., it sets out that conversion or change of use of land or buildings involving loss of residential floorspace will be resisted and only permitted where one of a list of specified conditions are met. These conditions include:
 - i. where the land or buildings are no longer suitable for residential use and it is considered inappropriate to re-provide residential accommodation; and
 - vi. where the proposal is for an essential community use or infrastructure for which there is a demonstrable need and it can only be provided by the loss of existing residential floorspace.
8. In relation to condition i., there is a recent development known as Tower Court to the east of the appeal site. The Council indicates that effects of this development on the appeal property were assessed and found to be acceptable when planning permission was granted. I have not been provided with that assessment and so I do not know the detail or range of considerations that were taken into account, but I saw that Kingfisher Court which is the closest building to the boundary is a six-storey block, and Peregrine Court beyond extends up to twelve-storeys at the rear. These buildings span much of the depth of the appeal site and include numerous windows facing towards it. There are also some balconies to Peregrine Court. Based on my observations, these allow for views directly down onto the garden of the appeal building and having regard to the height, proximity and number of viewpoints, I consider there to be significant and intrusive overlooking and a distinct lack of privacy throughout its garden.
9. I am in no doubt that this would detract from living conditions of occupiers of the site and I consider that the lack of privacy to the garden means that the dwelling would no longer be well-suited to occupation by families. That said,

the appellant has not argued that the dwelling would be otherwise unsuitable for residential use and I have no firm detail to substantiate comments made at the Hearing that it would be unaffordable. Notwithstanding the lack of privacy to the garden and my concerns about the dwelling's suitability for families, I am not therefore persuaded that it would be wholly unsuitable for residential use.

10. In relation to condition vi., the AAP identifies that community facilities such as places of worship are an essential requirement for the local community in Stamford Hill. The appellant explains that the proposed synagogue would serve the Pnei Menachem community, a young group who currently have no synagogue of their own and therefore rely on sharing facilities with other groups. These groups have their own identity as well as customs which may not reflect those specific to the Pnei Menachem community. Furthermore, capacity at existing facilities is already limited, and a lack of capacity means that the Pnei Menachem community is unable to come together for prayer at the same time and place. I consider the information before me to indicate a current pressing need for both the specific synagogue proposed and for synagogues more generally in the Stamford Hill area.
11. The Council accepts that the proposal is for an essential community use or infrastructure for which there is a demonstrable need. However, it considers that there is insufficient evidence to show that the use can only be provided by the loss of existing residential floorspace. It further refers to Policy AAP5 of the emerging AAP. Part C) of this policy outlines criteria for conversion or change of use of residential use to places of worship, including that it has been demonstrated that suitable alternative sites as identified at B1 to B3 are not available. The sites identified at B1 to B3 comprise existing social or community facilities no longer required in their current use; new purpose built premises within the town centre or areas or streets already characterised by a mixture of uses; and conversions of existing non residential buildings.
12. In considering potentially suitable sites, the appellant explains that there is a need for the synagogue to be within walking distance of the community that would attend. This is because the use of any mechanical transport is prohibited on the Sabbath and I heard that accessibility is particularly important to enable children and those with mobility difficulties to attend. The evidence before me also indicates that members of the Pnei Menachem community live within a relatively tightly defined geographic area. In combination, these factors would act to significantly constrain potentially suitable locations for the development to a fairly small catchment area.
13. The appellant and interested parties advise that no surplus community facilities, purpose-built premises or non-residential buildings suitable for the proposed use had become available over a fairly prolonged period during which the community had been looking. Concerns were also raised in respect of design challenges in providing a synagogue as part of mixed use development on site allocations proposed in the emerging AAP, seven of which are specifically identified to include community space, and the affordability and availability of these sites. Many of the proposed allocations are also outside or at the edge of the broad distribution of the community and so would result in long walks for some members to be able to access the site. In any event, the AAP indicates that most allocated sites are likely to come forward in the medium or long term, and I have not been provided with information to show

firm progress made in bringing forward detailed proposals on any of the allocations such that delivery is likely in the short term. Accordingly, there seems little realistic prospect at this point of community space becoming available on the allocated sites within a reasonable timescale to meet the existing pressing need.

14. There is no formal assessment before me detailing alternative sites as identified at B1 to B3 of Policy AAP5 of the emerging AAP that have been considered and the reasons that they were discounted. However, neither has the Council identified any suitable sites, and I note that office and industrial floorspace is subject to separate protection by the LP33, albeit with provision for release where certain criteria are met. Moreover, I afford only limited weight to the specific provisions of Policy AAP5 at the current time given that I can have little certainty the Policy will be adopted in this form.
15. The appeal site is in a reasonably central location in relation to members of the Pnei Menachem community, the majority of which would be within half a mile. The development would therefore be particularly well-located to address the community's need for the synagogue. Alternative options to meet this need would be significantly constrained by the characteristics of the need and based on all of the information before me, there seems in my judgement to be little current prospect of this need being met other than through the loss of residential floorspace. I therefore find in the circumstances that the proposal would accord generally with Part A. condition vi. of LP33 Policy LP24.
16. The appellant explains that the synagogue would be more than just a place of worship, providing also a place of learning and sanctuary and a focal point for community life. It would also help to ease pressure on other facilities that are currently shared by the Pnei Menachem, increasing capacity for the wider community. In these respects, the proposal would accord with principles of Policy PP4 of the LP33 seeking to support development of cultural and religious facilities, and provision of new opportunities for adult learning and to ensure that people have access to community facilities to meet their day-to-day needs. The Council also accepted at the Hearing that the development would comply with Policy S1 of the LP which sets out that proposals providing high quality, inclusive social infrastructure that addresses a local or strategic need should be supported, and the Framework insofar as it supports provision of community facilities such as places of worship to enhance the sustainability of communities and residential environments.
17. Drawing matters together, the proposal would result in loss of the appeal dwelling in conflict with Policy H8 of the LP. I further appreciate that there is a significant need for family housing in the Stamford Hill Area and I do not dispute that protecting existing stock is an important part of helping to meet this need. However, I have not found direct conflict with Policy GG4 of the LP or Policies LP14 or PP4 of the LP33 and I consider the appeal dwelling is no longer well-suited to family occupation. Moreover, there is also a clear need for provision of places of worship in Stamford Hill. The specific provisions of Policy AAP5 of the emerging AAP attract only limited weight at this time and I have found that there is little realistic prospect in this case of the need for a place of worship being met other than through the loss of residential floorspace so that there would be general accordance with Part A. condition vi. of LP33 Policy LP24.

18. Taking into account all of the above, I consider the provision of the community facility for use as a place of worship to attract significant weight which would on balance outweigh the loss of the dwelling which is in this case no longer particularly well-suited as family housing. On this basis, I find that the harm caused by the loss of the dwelling and the resulting conflict with the development plan would be outweighed by other considerations. Accordingly, the proposed change of use would be acceptable.

Planning Obligation

19. Prior to the Hearing, the appellant provided a unilateral undertaking containing planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) and Section 16 of the Greater London Council (General Powers) Act 1974 (as amended). A completed agreement dated 18 June 2024 ('the UU') was submitted shortly after the Hearing closed.
20. Obligations requiring a Travel Plan and a Travel Plan Monitoring fee would support and encourage use of active modes of transport and public transport in accordance with objectives within the development plan and would be necessary given the limited provision for vehicle parking at the site. Further obligations relating to restrictions on holding of parking permits are necessary to address the requirements of Policy LP45 of the LP33.
21. The UU also includes a requirement for payment of a monitoring fee. The CIL Regulations make provision for local planning authorities to charge monitoring fees, and the fee in this case would be in line with levels specified by the S106 Planning Contributions Supplementary Planning Document 2020.
22. From the information before me, I consider that all of the obligations would be required to address the impacts of the development and I agree with the main parties that they would in each case be necessary to make the development acceptable in planning terms, directly related to the development proposed and fairly and reasonably related in scale and kind to it. Accordingly, I find that each of the obligations in the UU would comply with the tests at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 which are reflected in the Framework and can be given weight. I have therefore taken them into account.

Other Matters

23. The proposal includes provision of a lift within the building. The appellant clarified that this would be a platform lift requiring no external changes to the building, and the Council did not dispute the appellant's comments at the Hearing that the width of access routes to it would be subject to control under Building Regulations requirements. On that basis, there would be suitably inclusive design providing access for all as required under LP33 Policy LP8.
24. The appeal site adjoins a Grade II listed building (Folly Tower in Back Garden of Number 130) and it is close to the Grade II listed New Synagogue and Attached School. I have therefore considered the proposal in accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires special regard to the desirability of preserving listed buildings and their setting.
25. The Folly Tower is a 19th century round tower in a vaguely gothic style. It formerly sat within the grounds of Craven Lodge, but this building has been

demolished and the Folly is now surrounded by development, retaining very little of its original setting. The listing description notes that it has curiosity value and insofar as it relates to this appeal, I consider the special interest and significance of the building to derive largely from its historic and aesthetic value, albeit that appreciation of the latter is somewhat restricted by ivy growth. The appeal site is part of the immediate setting to the Folly Tower, but contributes little to its significance as a listed building. With no external changes proposed to the appeal building, views of the listed building would not be adversely affected and I find that its significance would be preserved.

26. New Synagogue and Attached School is an Edwardian Baroque style building incorporating elements of an earlier synagogue from another site. From the information before me, the special interest and significance of the listed building derives in large part from its architectural interest together with the historic and communal interest of the building and its use. The building can be appreciated principally in views from Egerton Road and Rookwood Road. While the appeal site would form part of the wider backdrop to the listed building in these views, the intervening Tower Court development restricts intervisibility so that the contribution the site makes to the significance of the listed building as part of its setting is limited. Noting that there would be no external changes to the appeal building, I find that the proposal would not affect the setting of New Synagogue and Attached School and the significance of the listed building would be preserved.
27. The appeal site is outside of but close to the Clapton Common Conservation Area ('the CA'). However, it is set apart from the boundary by the Tower Court development, and I agree with the main parties that the proposal would not affect the setting of the CA.

Conditions

28. I have considered suggested conditions in light of the discussion and amendments proposed at the Hearing, and against the tests set out in the Framework. Where necessary, I have made minor amendments to the suggested conditions to ensure compliance with these tests or for clarity, brevity or consistency.
29. In addition to the standard time limit (1), I have attached a condition specifying the relevant plans (2) for the avoidance of doubt and in the interests of certainty. Conditions relating to provision of car (3) and cycle (4) parking are necessary in the interests of highway safety and supporting active travel, while conditions relating to provision of sound insulation (5), adherence to the submitted Operational Management Plan (6), use of tannoy (7) and hours of use (8) are necessary in the interests of neighbouring living conditions.
30. A condition was proposed at one point during the Hearing to require further detail in respect of access to the lift but the main parties subsequently agreed this would be unnecessary in light of control under Building Regulations. I have not therefore imposed it. Nor have I imposed additional conditions suggested by highways and environmental health consultees which I agree with the Council would not be reasonable or necessary given the scale and nature of the proposal.

Conclusion

31. As part of my assessment, I have had due regard to the Public Sector Equality Duty ('the PSED') set out under Section 149 of the Equality Act 2010 and aims to eliminate discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations between persons who share a protected characteristic and persons who do not. Protected characteristics include religion or belief, age and disability. I have found that the proposal which is intended to meet the needs of the Pnei Menachem community for a suitable place of worship would be acceptable, and it would help to further these aims. Similarly, there would be no interference with the appellant and wider Pnei Menachem community's qualified rights under Articles 8 and 9 of the Human Rights Act 1998 for respect for the home, private and family life; and freedom of thought, conscience and religion.
32. For the reasons given above, I conclude that there are material considerations which would outweigh conflict with the development plan and the appeal should be allowed.

J Bowyer

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Unless otherwise amended under the conditions below, the development hereby permitted shall be carried out and completed in accordance with the following approved drawings: 2348_OS, 2348_11B, 2348_12B, 2348_20A and 2348_SK07.
- 3) Prior to first occupation of the development hereby permitted, a Parking Design and Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Parking Design and Management Plan shall indicate how car parking will be designed and managed, with reference to Transport for London guidance on parking management and parking design. Disabled person's parking bays should be shown on the Parking Design and Management Plan and should be located less than 50 metres from the site entrances. The development shall not be occupied until the approved parking measures have been implemented. Thereafter, parking shall be retained and managed in accordance with the approved plan.
- 4) Prior to first occupation of the development hereby permitted, a cycle parking plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include details of layout, foundation, stand type and spacing. The development shall not be occupied until the approved cycle parking has been provided. Thereafter, cycle parking shall be retained, maintained and managed in accordance with the approved plan.
- 5) Prior to first occupation of the development hereby permitted, details of sound insulation of the building envelope and other mitigation measures, as

appropriate, shall be submitted to and approved in writing by the Local Planning Authority. The details shall demonstrate that noise from uses and activities will be contained within the building/ development site and shall not exceed the criteria of BS8233:2014 at neighbouring noise sensitive/ habitable rooms and private external amenity spaces. The development shall not be occupied until the sound insulation works have been implemented in accordance with the approved details. Thereafter, sound insulation shall be retained permanently in accordance with the approved details.

- 6) The development hereby permitted shall be operated in accordance with the Operational Management Plan dated 1 September 2023 prepared by John Stebbing Architects.
- 7) No tannoys or public address systems shall be used, unless details have first been submitted to and approved in writing by the Local Planning Authority. Approved details shall be implemented prior to use and thereafter be permanently retained.
- 8) The use of the synagogue hereby permitted shall only take place between the hours of 0700 to midnight on any day.

APPEARANCES

FOR THE APPELLANT:

Stephen Hinsley
Barney Walker
Jacob Schreiber

Stephen Hinsley Planning Ltd
John Stebbing Architects

FOR THE LOCAL PLANNING AUTHORITY:

Catherine Nicol
Danny Huber
Kwame Nuako

Hackney Borough Council
Hackney Borough Council
Hackney Borough Council, Strategic Planning

INTERESTED PARTIES:

E Rottenberg
A Goldman
B Rottenberg
I Schaechter

DOCUMENTS SUBMITTED AT AND AFTER THE HEARING

- HD1 Policies LP27 and LP28 of the LP33, submitted by the appellant.
- HD2 Email containing additional proposed condition in respect of lift access, submitted by the Council.
- HD3 Unilateral Undertaking dated 18 June 2024, submitted by the appellant.