



Appeal Decisions

Inquiry Held on 5, 6, 7 and 8 March 2024

Site visits made on 27 February, 8 March & 3 April 2024.

by R J Perrins MA

an Inspector appointed by the Secretary of State

Decision date: 26 July 2024

Appeal A Ref: APP/N5090/C/22/3314518

Talmud Torah Tiferes Shlomo Boys School, Danescroft Avenue, London NW4 2NB.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by The Gitter Foundation Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 16 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the property to a mixed use as a school and as a social and community events/celebrations space.
 - The requirements of the notice are to cease the use of the property as a school and its use as a social and community events/celebration space.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/N5090/C/22/3301850

Talmud Torah Tiferes Shlomo Boys School, Danescroft Avenue, London NW4 2NB.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by The Gitter Foundation Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 1 December 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the property to a mixed use as a school, place of worship, and as a social and community events/celebrations space.
 - The requirements of the notice are to cease the use of the property as a school and its use as a place of worship and as a social and community events/celebrations space.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A Ref: APP/N5090/C/22/3314518

1. The appeal is dismissed, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Appeal B Ref: APP/N5090/C/22/3301850

2. The appeal is dismissed, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Preliminary Matters

3. The Inquiry sat for four days, and I visited the site and neighbouring property on the morning of the 4th day. I also visited the site, on my own, prior to and following the Inquiry in the early morning before and during school drop off. Also, in the early evening after the school was closed.
4. All of the evidence was heard by sworn affirmation.
5. A Statement of Common Ground (SCG) has been submitted addressing the site, planning history, planning policy framework, agreed issues and suggested planning conditions.
6. The appellants submitted a Unilateral Undertaking that would restrict the hours of use of the premises, if the enforcement notices were quashed or a deemed planning application approved.

The enforcement notices.

7. There is no dispute that the notices are essentially the same, save for the second notice (Appeal B) which includes, in the mixed use, the use as a 'place of worship'. Whilst there is common ground between the parties regarding the worship element, the first notice was not withdrawn and nor was the appeal on ground (b) in respect of it.
8. At the Inquiry, the Council accepted that the public worship element was such that it should have been included within the first notice (Appeal A). Albeit the Council caveats that with the submission that the revised position was drawn from the evidence heard at the Inquiry, and the simplest solution would be for me to amend the notice to reflect the allegation in the second notice. The appellants maintain that the notice should be quashed following determination of their ground (b) appeal (Appeal A) which focusses on the worship element.
9. I have wide ranging powers to amend or correct a notice to ensure that it is clear and (for example) that the allegation is correct. From all that I have read and heard, it is clear to me that the first notice requires amending in any event, and I would be able to do that without prejudice occurring.
10. In addition, it was agreed at the Inquiry that the requirements to cease the use of the property 'as a school' (Appeal A) and as 'as a school and its place of worship' (Appeal B) were excessive given the Council do not object to the continuation of either at the premises. Again, from all that I have seen and heard; no prejudice would occur were I to amend the notices in such a manner.
11. Nevertheless, I will need to consider the ground (b) appeal, as it still subsists, and will address any amendment to the allegation for Appeal A through my deliberations on the ground (b) appeal.

The enforcement notices' plan.

12. The plans attached to the enforcement notices show two areas edged in black: one around the school site, and the other indicating the area of a Tree Preservation Order (TPO). It was agreed, in the interests of clarity, that I would amend the notices to exclude the TPO line and an agreed amended plan has been submitted to enable me to do that. Again, to do so would not lead to any prejudice.

Background

13. The site is located within a primary residential area. To the south and west the site adjoins Danescroft Avenue. That leads to the cul-de-sac Danescroft Gardens which adjoins the rear of the site to the east. Evidence before the Inquiry shows that the site was used by the Hendon Reform Synagogue (HRS) for many years. Records show that the Kingsley Fisher Hall was opened in 1958 and planning history includes, amongst other things, an extension comprising a synagogue and classroom block, extension and use of three classrooms for playgroups.
14. It is clear therefore that the site has been active for many years. In 2017 the HRS community vacated the premises, and the appellants acquired the site shortly afterwards. That purchase was to enable relocation of the Talmud Torah Tiferes Shlomo School (TTTSS), a fee paying Orthodox Jewish School operated by Charitable Trust. Approximately 300 boys now attend between the ages of 3 and 15.
15. In 2018 following some refurbishment works, events were held in the Kingsley Fisher Hall. Further works, including sound insulation, were carried out in 2021 and events continued. Weekly services are currently held at the synagogue on the Sabbath as well as services to mark Jewish festivals throughout the year and to celebrate special events.

Appeal A – the appeal on ground (b)

16. An appeal on ground (b) is made on the basis that the matters stated in the notice as constituting the breach of planning control have not occurred, as a matter of fact. In this case that relates solely to the omission of public worship from the description of the alleged use in the enforcement notice. There is no dispute that the activities set out in the remainder of the alleged use are not occurring.
17. As set out above, the Council accepted that the worship element should have been included within the allegation. Given the evidence before me, concerning the regular prayer sessions, employment of a Rabbi and other matters, including those set out in Mr Bondi's oral evidence, I see no reason to disagree.
18. Although, it seems to me that the Council's argument, that the position changed during the Inquiry, is somewhat negated by the fact they chose to issue the second notice with the worship element included. To that end I recognise the notice was served in response to submissions by the appellants, and as a "belt and braces" approach, but that could have been followed with withdrawal of the first notice. The Council chose not to do that.
19. In that regard I recognise the reluctance to withdraw the notice, or to agree to it being quashed, was borne out of concern for a potential claim under section

186 of the Act. Whilst such a claim is outside of the deliberations of this appeal, I recognise the notice was amended in light of the appellants' earlier submissions that the allegation was incorrect. In response to that, the Council sought the appellants' agreement to a change in the allegation, but none was forthcoming. That proactive approach, to get things right, should not be penalised.

20. I also see no reason to disagree with the Council in that the evidence of public worship, prior to the Inquiry, was limited and that the verbal submissions at the Inquiry, by Mr Bondi, added weight to tip the balance in favour of the appellants. Thus, as a matter of fact and degree, the allegation is incorrect. I consider that no injustice would be caused to the appellants if I were to correct the notice to refer to the worship element.
21. I recognise this will lead to two notices embracing the same matters. However, in such circumstances, given the corrections would bring the notice in line with second notice, there is no need to quash it. That is unlike the situation where two enforcement notices exist in the alternative, when it would be correct to quash one of the notices to prevent the potential for 'double jeopardy'. In this case there is nothing before me to suggest that duplicate notices would compromise either party save for potential confusion. Although, given the site history, and this decision addressing the point, the risk of that would be minimal.
22. Accordingly, the appeal on ground (b) succeeds, and I shall correct the notice to refer to the actual breach.
23. I shall therefore consider the remaining grounds of appeal for both appeals together given the alleged breaches are the same. Again, to do so would not lead to any prejudice.

Appeals A & B - the appeals on ground (c)

24. An appeal on ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. The onus is upon the appellants to demonstrate that a material change of use has not occurred. The basic approach is that there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.
25. To that end the appellants submit that there is no material difference between the previous use as a synagogue and the current use by the school. Both involved use for education, public worship and community events and/or celebrations. The appellants also point to the evidence of the Council's enforcement witness who concluded, before the first enforcement notice was served, that there had not been a material change of use.
26. Alongside that they consider the historic use for education and events was not ancillary to the synagogue use. The nursery, adult education classes and Sunday school occurred in their own right. In addition, the evidence points to a vast range of disparate events being held during the HRS era none of which can be described as 'ordinarily incidental' to public worship.
27. The appellants also consider that the use enforced against is not of a different character to that which existed during the HRS era. The evidence demonstrates regular worship times of several hundred visitors. The education use was for 5

days a week and the fact that the school has increased in size is not sufficient to find a material change of use has occurred. With regards to events the burden of proof has been discharged by Rosalinde Bloom and others.

28. In simple terms, the composite before and after pictures are essentially comparable. There has been fluidity in relation to which parts of the site have been used and for what purposes. Some intensification of the education element, and to a limited extent to the number of events, and the public worship element has been reduced. Overall, the character of the use remains recognisably a mix of public worship, education and events.
29. The Council maintain that the synagogue was used for public worship and religious instruction. Incidental to that, teaching or instruction took place and certain community events or celebrations were hosted. There is no dispute that the synagogue was used for activities such as art and Zumba classes, meetings of societies, music rehearsals and choral recitals, Bar and Bat Mitzvah parties, weddings, aufrufs, baby blessings and quiz evenings. However, that was not out of the ordinary for a community-based synagogue, same as that which might be found at a church.
30. That level of use is reflected by the evidence of local residents who only had cause to complain once the site had been bought by the appellants. At that point the introduction of a separate commercial element of use, outside of the scope of any ancillary use rights, was introduced. Prior to that the activities going on were nothing out of the ordinary for a community-based facility such as a synagogue.
31. At this point, it is appropriate to address the submissions of the Rule 6 party; that there is no planning consent for the current use and the use is in fact *sui generis* and that large events cannot fall into the same Use Class as more common smaller events. Whilst the latter point is not without merit, there is no need for me to deliberate over what Use Class any events use might fall into. Whether or not the current use has planning permission is clearly a consideration given the enforcement action that has been taken. Furthermore, an enforcement notice, alleging a material change of use, need not recite the previous use.
32. Turning then to the evidence, Rosalind Bloom worked for the HRS from 1999 to 2017 as Synagogue Administrator coordinating social, educational and religious events and activities including letting Kingsley Fisher Hall. Her evidence points to there being private parties and weddings for up to 200 people with live music and caterers. Alongside that there is no dispute that a wide range of groups, as set out above, used the hall for one off and regular weekly events. That includes the Salvation Army using the hall for band practice on Sunday mornings along with regular users, be that choirs, drama groups or various Jewish charities and organisations. The accounts of those activities are supported by reports lodged with Companies House.
33. Those events have been carried on by the HRS at their current site in Edgware. Between 1999 and 2017 the HRS attracted worshippers on weekly basis with services on Friday evening and Saturday morning, with very large gatherings for the main Jewish Festival days. Danescroft Nursery also operated from the site.

34. However, the number and scale of such events is not clear. Whilst I found Rosalinde Bloom to be a credible witness, there is little by way of documentary evidence to corroborate her recollection of numbers of events and sizes. No records of how much would have been charged, and an acceptance that the events currently carried out by HRS at the Edgware site were mostly small when those events are said to be a continuation of that which occurred at the Danescroft Avenue site.
35. I say that recognising accounts from HRS between 2011 and 2017 account for income of between £10,000 and £17,000 each year for hire of the hall. However, without the relevant detail to support what that income resulted in, in terms of number of events and sizes, the accounts carry little weight in supporting the appellants' case.
36. The book "Memories of a Congregation", historic adverts and newspaper articles, also do little to support the use for regular large events either as it is not clear how many events it demonstrates or how many were held in the hall as opposed to those religious events which would have been held in the Synagogue sanctuary. I have also considered two representations from neighbours in support of the current activities who suggest that there has been no or little change in the level of activities. However, that must be balanced against the large number of local residents who have argued otherwise.
37. Turning to that evidence, the evidence of Rabbi Meyer was informative; recollections of car parking, freezer space, and level of noise, showed a level of detail over a significant period which was not without merit. That reflected the evidence of Rabbi Pollak, Professor Seidler, Mrs Bloch and Mrs Benmayer all of whom are longstanding residents. They had no recollection of large events being held with any regularity.
38. Bringing all of this together it seems to me, as a matter of fact and degree, that the use by HRS was primarily as a synagogue and for education. Alongside that the other activities set out in paragraph 29 carried on. I see no reason to disagree with the Council in that would not have been out of the ordinary for a community-based facility such as a synagogue or church. Indeed, there is some merit in the argument that such activities were ancillary to the HRS and the use for public worship and religious instruction.
39. Although, regardless of that argument I must consider if the alleged breach of planning control has resulted in a different character. To that end, this is a finely balanced case. There is no dispute that various activities have continued for many years. However, it is clear from the evidence of local residents that the more recent events have been unlike that experienced previously. The Rule 6 party detailing some 40 events between June 2021 and July 2022 is unchallenged.
40. In addition, the refurbishment work that was carried out to the hall was of high quality. I saw during my site visit that the toilet provision, hallway and lighting were comparable to what one would expect in any quality commercial events venue. They are not what one would expect from say, a church hall, rented out for lower key events, and as an extra source of income. Further, the appellants have set out that the income from using the site as an event venue was essential to the finances of the school. Although no detail has been submitted.

41. Nevertheless, if the funds generated by the events were to be relied on by the school for its operation and function, that would be distinct from what could reasonably, on the evidence, be considered as the low-key use of the hall when it was the HRS. I say that as there is nothing before me to suggest that the HRS relied upon the income from those events to subsist, or that save for a relatively small number of cases, the events were associated with the community or of relatively low scale. In addition, when compared to the overall annual income generated by HRS, which ran into many hundreds of thousands of pounds each year, it is reasonable to assume that hiring of the hall was not essential to the operation of the HRS.
42. It seems to me therefore, and as a matter of fact and degree, that the refurbishment and subsequent events were more akin to a commercial events venue operating in its own right. Pursued for commercial gain, rather than something carried out and offered as part of the use by HRS. That has resulted in larger, more frequent events being held, and a subsequent material change to the character of the use.
43. Finally, I recognise in cross-examination Mr Amoako-Adofo agreed that it would be reasonable to come to the view that the appellants had continued the same use as the HRS. In addition, I accept that correspondence with the Council in 2021 intimated that the school's activities in holding the events did not constitute a breach of planning control. However, it was clear to me that Mr Amoako-Adofo may not have understood all the questions being put to him. Moreover, it is for me to make my own mind up, on the balance of probability, on all of the evidence before me. That includes evidence that would not have been before the Council in 2021.
44. For all of these reasons, and having considered all matters, I find that the appellants' evidence is not sufficiently precise or unambiguous. Therefore, as a matter of fact and degree, the material change of use has occurred and the appeals on ground (c) fail.

The appeals on ground (d)

45. This ground of appeal reads "that at the date the notice was issued no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters". Again, the burden lies with the appellants on the balance of probabilities.
46. The case put forward relies on the argument that the use of the property as a school, a place of worship and social and community events/celebrations has subsisted without interruption for decades. Given my findings under the ground (c) appeals, that the use has changed since the appellants bought the property and the alleged breach is a material change of use, the appeals on ground (d) inevitably fail.
47. I have under the ground (d) appeal been referred to the high court judgments *Kensington & Chelsea RBC v SSE* [1981] JPL 50 and *Hertfordshire CC v SSCLG* [2012] EWCA Civ 1473 but find nothing to bring me to a different view. The Unilateral Undertaking, which indicates a willingness on behalf of the appellants to restrict the hours, does not therefore take effect in respect of the legal grounds.

The appeals on ground (a)

The Mansi principle

48. It is settled case law (*Mansi v Elstree RDC* [1964] 16 P&CR 153387) that the requirements of an enforcement notice must not purport to stop a landowner from doing something they are entitled to do without planning permission, by relying on existing lawful use rights, including right of reversion under s57(4). The appellants suggest that I should define what the existing lawful use rights are such that it can be considered as a 'fall-back' position in the context of the ground (a) appeal. Further, so the appellant can identify the established lawful use.
49. I disagree, the principle that the requirements must not purport to prevent the appellants from doing something they are entitled to do without planning permission is not disputed. However, this principle need not be extended to cover incidental uses. Whether any activity falls outside the scope of an incidental use is a question of fact and degree in each case. I consider the question of what level of events goes beyond the lawful use is a matter which is best resolved through further discussions with the Council if needed.
50. With regard to the 'fall-back' position, which I will return to, my deliberations will consider that to be the use of the premises as a school and place of worship and any incidental uses as discussed in the ground (c) appeal.

Main Issues

51. As set out above, with regards to the enforcement notices, the requirements to cease the use of the premises as a school and place of worship will be deleted. Those uses may therefore continue regardless of the outcome of the ground (a) appeal. S173(11) of the Act provides that (a) where an enforcement notice in respect of any breach of planning control could have required any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of s73A in respect, the carrying out of the activities.
52. The deemed planning application under ground (a) does though still come from the matters alleged. Namely, *a material change of use of the property to a mixed use as a school, place of worship, and as a social and community events/celebrations space*. However, given the main parties agreed position in respect of the school and place of worship elements of the mixed use, my deliberations focus on the effect of the use for the social and community events/celebration space. I see no reason to disagree with the main parties' positions on that given the history of the site which includes planning permission for classroom block and use of classrooms for a nursery.
53. The main issues are therefore the effect of the mixed use on the living conditions of occupiers of neighbouring properties by way of noise and disturbance and the effect upon highway safety.

Reasons

Living Conditions

54. The site is surrounded on all sides by residential development; a mix of dwellinghouses and flats. There is some inevitability therefore that the use of the premises will have an effect on the living conditions of those living nearby. Although, the historic activities associated with the use as a synagogue and school are to be expected when buying a property in close proximity. As set out above, activities associated with HRS would have been experienced by residents for many years and some disturbance should be expected.
55. Nevertheless, there is no dispute that since the current school opened and the hall was refurbished the building has been used for various large-scale events. I see no reason to disagree with the view that the events fall into two categories; those related to the Sabbath and on Jewish festivals; and events that do not relate to either. It is useful to distinguish between the two given the religious restrictions that the appellants observe for those related to the sabbath and festivals.
56. Namely, at those times there would be no amplified music, no guest vehicle movements, no lorries no loading/unloading during the hours between sundown on Friday night and darkness on Saturday night. Timings may change if a festival occurs elsewhere in the week. Given those restrictions, I accept that it is likely any disturbance would be much reduced during the time where religious restrictions are in place. However, there is nothing to prevent loading and unloading on say a Thursday night, Friday morning, Saturday night and Sunday morning and for refrigeration units and the like to be left on over the Sabbath. Such events are not therefore without any potential harmful effects.
57. Turning to other events, I accept that some larger events were held in the past and we heard from Rabbi Meyer that he held an event for 300 guests without complaint. Another witness also confirmed several hundred guests attending another large event. Alongside that a former resident also describes regular events with live music often until late into the night. However, there is simply no detail as to what that frequency amounted to or when, and they did not appear at the Inquiry to corroborate their statement.
58. Against that background is the frequency of events since the appellants refurbished the hall. I am in no doubt that some of those events have included loud music, large numbers of people, catering vehicles with refrigeration units and access to and from the premises at all hours. The record of events put forward by the Rule 6 party demonstrates 40 events over a 12-month period with, on occasion, finishing times past 0300hrs and guest numbers over 500. Those records are undisputed.
59. That is corroborated by the Council's records of noise complaints which resulted in an abatement notice being served and noise attenuation measures being installed. To that end I accept the evidence of the appellants' acoustics witness that the mitigation measures including sound insulation, window improvements, access improvements and noise limiter would have had a positive effect in reducing the noise coming from within the premises.
60. However, the appellants' noise witness accepted that disturbance from those leaving the premises could include those with raised voices due to being

exposed to high internal noise levels. Alongside that, in practical terms, it is often difficult to ensure lobby doors and other openings remain shut particularly during hot weather. I recognise there are a number of air conditioning units which should reduce the need for that but in this case, there is no clarity as to whether those units benefit from, or require, planning permission so I cannot be certain they would be retained.

61. It seems to me therefore, that harmful disturbance is still likely to be experienced, particularly late at night, even with the attenuation measures in place. I am also mindful that no noise measurements or observations were taken from within any nearby properties and measurements did not take into account the noise from vehicles associated with an event. In addition, the event that acoustic witness attended was a prize giving which would have been different in character to other late-night events.
62. Thus, from all that I have seen and heard, including the video evidence presented at the Inquiry, I am in no doubt the use would have had a detrimental effect on the living conditions of those living nearby leading to unacceptable harm. That was summed up by one witness who referred to 'life being back to normal' in the street since events had ceased. The use would have been at odds with the predominantly quiet residential character, which I observed during my evening site visit, of the surrounding roads.
63. That is at odds with Policies DM01 and DM04 of Barnet's Local Plan (Development Management Policies) (BLP) which require, amongst other things, that development that is likely to generate unacceptable noise levels close to noise sensitive uses will not normally be permitted and that local character should be preserved or enhanced. It's also contrary to Policy CS5 of Barnets Local Plan (Core Strategy) which seeks to protect and enhance local context and distinctive local character. In turn it is also contrary to Policies D13 and D14 of the London Plan which seek developments that manage and mitigate noise.
64. Nevertheless, I recognise some of those harmful effects might be reduced by way of planning conditions to which I will return.

Highway Safety

65. The National Planning Policy Framework (the Framework) sets out 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. Policy DM17 of the BLP seeks to ensure safety of all road users and that development should not unacceptably increase conflicting movements on the road network or increase the risk to vulnerable users.
66. There are no formal parking restrictions along Danescroft Avenue. That is reflected with similar stretches of unrestricted kerbside parking in residential roads nearby. Whilst only snapshots in time, I could see from my early morning and daytime visits that parking availability in the locality fluctuates as recognised by the appellants' highways witness. It seemed to me that parking was inevitably more pressurised during school drop off times than at other times I visited the site. Although, I accept some parking was still available within walking distance of the school.

67. During my morning observation, at school drop off time, I could see stewards were in place and generally children were being dropped off using the voluntary one-way system through local roads and the front of school. However, there were occasions where vehicles with children attempted to turn the “wrong way” against the flow of traffic into Holmdale Gardens and were waved away by school marshalls. This happened on a number of occasions and would point to either some adults not understanding the one-way system or that marshalls may not always be in place (as suggested by the Rule 6 party). I also saw boys being dropped off in Danescroft Avenue with vehicles turning in the avenue rather than using the relatively short queue of vehicles using the one-way system in front of the school.
68. Whilst as set out above, the school use would continue, my observations could be applied to an event where the same sort of traffic system and marshalling might be part of an event and/or travel plan. That is to say, even with those procedures in place, people would still endeavour to take what they think is the quickest or most convenient route for them to get as close to the school/venue as possible. That is no surprise given such things are not enforceable; the roads are not officially one-way and there is nothing to prevent three point turns or parking in the surrounding roads.
69. The appellants’ traffic survey indicates, amongst other things, that the maximum parking stress in the study area was 88% at 0630 hours when it’s reasonable to assume most residents would be at home. It is also clear that during the day spare parking spaces were clearly less and a traffic survey was not carried out during an event.
70. Against that background it is evident that some roadside parking spaces would be available to those visiting the site for an event. I see no reason to disagree with the view that those driving would naturally want to park as close as possible. In addition, I accept that some users would live close by and may walk or choose public transport. Others may share car trips.
71. However, I do not accept the highway witnesses view that 200 guests would equate to 33 cars requiring parking spaces. I say that given the witness relied on a number of assumptions from previous events and from the evidence of Mr Bondi. That evidence suggests approximately 50 cars which would go beyond the capacity found in the study area on 30 January 2024. Furthermore, while I found Mr Bondi to be a reasoned witness, there is nothing before me to corroborate the numbers he put forward and they inevitably carry little weight.
72. Against that background I heard from a number of local residents who pointed to vehicles being parked illegally, driveways being blocked, a paramedic being unable to attend a call, and ‘gridlock’ all occurring during events. In addition to that, during my site visit I saw many cars dropping at the school had more than four or five children in. In some cases, there appeared to be more children than seats available. It is therefore reasonable to assume an event for a comparable number of people would generate more traffic than school drop-off times, given it is unlikely car sharing would reflect that seen on school days.
73. Drawing all of this together, I am in no doubt that the events would have led to an increase in traffic and parking demand. That would be beyond that which I experienced during school drop off. Whilst I recognise parking stress, or having to walk further once parked, is not uncommon in London, that does not justify harm to highway safety. The amount of parking associated with the large

regular events recorded over the 12-month period would have inevitably caused inconvenience and disturbance to local residents.

74. Further, there is no evidence such as a highway survey carried out during an event to suggest that would not be the case and I find the number of representations and sworn witness evidence compelling. In particular, the fact that an emergency responder was unable to attend an emergency. For these reasons, I find the events have resulted in unacceptable harm to highway safety with a cumulative severe impact on the highway network.
75. That is at odds with the Framework and aforementioned planning policies.

Fallback position

76. I am mindful of the fallback position which the appellants suggest would see an increase in the use as a nursery, which in turn would see an increase in traffic along with an increase in the use of Kingsley Fisher Hall. However, I am not convinced such a position would ensue. I say that as there are no accounts before me setting out what finances the events brought in, or whether the demand for and income from nursery places would exceed the income currently received from those attending the school. In addition, there was no dispute that the school is at capacity and there is nothing before me to suggest there would be an increase in nursery places without compromising the number of school pupils.
77. With regards to the use of the hall, part of it is now being used for classes and again it is not clear where those classes would go were the hall reclaimed for an increase in use for events. Or how that would work financially. Moreover, I have found that the use for the events, embraced by the notice, went far beyond any such use when HRS was in situ. Given the lack of any robust detail about the number, size and regularity of those HRS events, there is insufficient detail to understand how any incidental events use would contribute to the running of the school in any event. In that light the fallback position carries minimal weight.

Planning Conditions.

78. The appellants suggest that conditions relating to restrictions on the school use or the worship use cannot be considered given the enforcement notices no longer require them to cease. I disagree, the effect of success on ground (a) would be a new, standalone planning permission for the mixed use. As such conditions embracing any part or all the uses within that mixed use can be considered.
79. To that end the parties have submitted a number of conditions in the SCG which would result in a school travel plan, a noise management plan, an events management plan, a restriction on the number of events to 52/annum, restriction on hours of use. Along with restrictions on noise, amplified music and door openings. The Unilateral Undertaking on success of ground (a) would also address opening hours.
80. The Rule 6 party also submitted a number of further conditions for my consideration. In essence they reflected the agreed conditions but were more onerous and included restrictions on the use of the school, numbers of pupils, times of public worship, number of attendees at any event and vehicle access.

81. Taking the Rule 6 party conditions first, they would no doubt have an effect on the mixed use. However, restricting the number of pupils, when the site is already at capacity, public worship times and number of attendees, would be unreasonable given there is no dispute that the premises have operated as a school and place of worship for many years with no demonstrable harm. More onerous conditions for events would certainly decrease the harm I have found by a substantial amount. However, they would substantially alter what was being granted planning permission to such an extent as to make the events use nothing like the use that is embraced by the deemed planning application and would also be unreasonable.
82. I recognise the remaining conditions put forward by the parties would alleviate some of the harm I have identified. However, I am not convinced that highway issues could be resolved through marshalling, or a travel or events plan as people will continue to seek out the closest parking. In addition, the appellants would simply be unable to control the to and fro of event attendees, their discourse late at night, and the banging of car doors.
83. In addition, for the reasons set out above I'm not convinced noise management conditions would be successful. I say that against the background of the appellants' admission that their own standards of neighbourliness have not been achieved and recognition from the planning agent that other matters may have occurred at the site that require planning permission.
84. For these reasons, I do not consider planning conditions would overcome the harms I have found.

Other matters and planning balance

85. The best interests of the children are a primary consideration. In this case their best interests are to continue to be schooled in a religion based educational establishment of their parents' choice. In that regard I recognise that the events use generated income that I am told was used to support the running of the school. However, without any detailed finances, there is nothing to suggest that not having an events income stream to rely on would lead to closure of the school or that other income sources would not be available. There is nothing before me to suggest those best interests would be harmed.
86. The rights found in Article 8 and Article 2 of the First Protocol of the Human Rights Act 1988 would not therefore be affected, nor would any protected characteristic to which I must have regard under the Public Sector Equality Duty contained in section 149 of the Equality Act 2010. The benefits of the school as set out including jobs, special educational needs and school places would continue in accordance with the Framework which recognises the importance of sufficient school places. These matters therefore carry no weight in favour of the mixed use given they will carry on in any event.
87. I return again to the *Mansi principle*. In my view, upholding the enforcement notices, with the amended requirements, would not fetter the appellants carrying out activities' incidental to the use of the premises as a place of worship and school. What is clear is that the school could not return to using the premises for what was an events venue run as a commercial concern. Finally, I have also considered a number of high court judgments (referred to by name only) but find nothing to lead me to a different view.

88. Overall, I have found the mixed use has resulted in unacceptable harm to the living conditions of those living nearby and highway safety contrary to the Framework and the development plan as a whole. That harm is not outweighed by any other considerations in favour of the mixed use.

Conclusion on ground (a) appeals

89. For the reasons given above and having considered all matters raised I conclude the appeals should fail.

The appeals on ground (f)

90. The ground (f) appeals were predicated on the school use and public worship use being required to finish and not being able to recommence any lawful use including events on the Sabbath and Festivals. As I have explained my decision does not prevent any lawful use and the level of the event use is a matter which is best resolved through further discussions with the Council if needed.

91. I need take no further action therefore on the ground (f) appeals.

The appeals on ground (g).

92. The school is not being required to close therefore I need take no further action on the ground (g) appeals either. The appeals concerned the time required to relocate the school should it have been required to close.

Formal Decisions

Appeal A - APP/N5090/C/22/3314518

93. It is directed that the enforcement notice is corrected and varied by; the substitution of the plan annexed to this decision for the plan attached to the enforcement notice and labelled Plan A; and by the insertion of a comma and the words 'place of worship' after the word 'school' in section 3 of the notice and by the deletion of the words 'a school and its use' in section 5 of the notice.

94. Subject to the corrections and variations Appeal A is dismissed and the enforcement notice is upheld as corrected and varied and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B - APP/N5090/C/22/3301850

95. It is directed that the enforcement notice is corrected and varied by; the substitution of the plan annexed to this decision for the plan attached to the enforcement notice and labelled Plan A; and by the deletion of the words 'a school and its use as a place of worship and' in section 5 of the notice.

96. Subject to the corrections and variations Appeal B is dismissed and the enforcement notice is upheld as corrected and varied and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R J Perrins

Inspector

APPEARANCES

FOR THE APPELLANT:

Andrew Tabachnik KC	Instructed by Eli Pick
He called	
Rosalinde Bloom	Manager
Henry Bondi	Director TTTS
Christopher Vaughan	Highways Consultant
Michael Symmonds	Noise Consultant
Eli Pick	Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Meyric Lewis KC	Instructed by HB Public Law
He called	
Sam Amoako-Adofo	Senior Planning Enforcement Officer
Ralph Haynes	Group Manager Environmental Health

FOR THE RULE 6 PARTY:

James Kon	Instructed by Danescroft Neighbourhood Ltd (DNL)
He called	
Rabbi David Meyer OBE	Local resident
Ruvi Bloom	Director DNL
Joe Henry	Planning Consultant

INTERESTED PARTIES

Esther Bloom	Local Resident
Elisabeth Smith	Local Resident
Benjamin Schischa	Local Resident
Professor Seidler	Local Resident
Raphael Noe	Local Resident
Margaret Benmayer	Local Resident
Dalia Meshulam	Local Resident
Rabbi Michael Pollak	Local Resident
Solomon Unsdorfer	Local Resident
Arlette Lauffer	Local Resident
Sonia Bloch	Local Resident

DOCUMENTS

- 1 Copy of Policy Development Management Policies
- 2 Email from Sam Amoako-Adofo dated 17 January 2022
- 3 Rule 6 Party suggested conditions
- 4 Unilateral Undertaking dated 5 March 2024

Plan A

This is the plan referred to in my decision dated:26 July 2024

by RJ Perrins MA

Land at: Talmud Torah Tiferes Shlomo Boys School, Danescroft Avenue, London NW4 2NB

References: APP/N5090/C/22/3314518 and APP/N5090/C/22/3301850

Scale: Not to Scale

