



Planning Committee

9 September 2021

Planning Appeals

LOCATION	173 Loughborough Road West Bridgford Nottinghamshire NG2 7JS		
APPLICATION REFERENCE	20/01817/FUL		
APPEAL REFERENCE	APP/P3040/W/20/3262617		
PROPOSAL	Change of Use from Dental Surgery (Use Class D1) to A Place of Worship (Use Class D1)		
APPEAL DECISION	Appeal Allowed	DATE	10th May 2021

PLANNING OFFICERS OBSERVATIONS

A planning application was submitted for the change of use of the premises from a dental surgery (use class D1) to a place of worship (use class D1). Whilst the use of the premises as a dental surgery and a place of worship fall within the same use class, the planning permission for the use of the premises as a dental surgery was the subject of a condition limiting the authorised use to that for which planning permission was sought and no other purpose within class D1.

The application for the use of the premises as a place of worship attracted significant interest from local residents, both opposing and supporting the proposal. During the consideration of the application, concerns were expressed about the potential for the activity to cause noise and disturbance, particularly late at night and into the early hours of the morning. Officers considered that the use of the premises would only be acceptable if the hours of operation were controlled by condition and an agreement was reached with the applicant's agent that any permission that may be forthcoming would be subject to an appropriate condition in this respect. The application was due to be considered by the Planning Committee and a report was published with a recommendation to grant planning permission subject to appropriate conditions. However, several days before the meeting, the Borough Council received notification that an appeal against the non-determination of the application had been lodged with the Planning Inspectorate. The matter was still considered by the Planning Committee in order to provide an indication of what the Council's decision would have been if it had maintained jurisdiction over the determination of the application. The Planning Committee resolved that planning permission would have been refused on grounds that the proposal provided inadequate parking and that the proposed operating hours were unsociable and therefore would cause noise and disturbance to residents early in the morning and late at night.

In determining the appeal, the Inspector identified the main issues as:

- The effect of the proposal on the living conditions of the occupants of nearby properties with particular regard to noise and disturbance.
- The effect of the proposal on the safe and efficient operation of the highway network in the vicinity of the appeal site.

In terms of the living conditions of the occupants of nearby properties, the Inspector noted that the proposal did not involve any external physical alterations to the building. He also noted that the proposed car parking layout included the retention of 6 existing spaces accessed off Chaworth road and 8 spaces accessed off Loughborough Road. The appellant had indicated that up to 14 worshippers only would use the facility at any one time. Weekday prayer services would occur up to 5 times per day for periods of approximately 15 to 30 minutes during sunrise, lunchtime, late afternoon, evening and sunset. On Fridays there would be a 45 minutes prayer between 13.45 hours and 14.00 hours. Evening prayer during Ramadan would take place for 90 minutes and on two other occasions during the year (Eid) 90 minutes prayer would be undertaken.

The Inspector noted that the building was of relatively modern construction and that there was no evidence to suggest that the proposed use in which prayer would occur within the confines of the building would cause unacceptable levels of external noise to be generated. He did acknowledge that use of the car park and the associated coming and goings of vehicles, particularly late at night and early morning, has the potential to generate noise and disturbance. However, in considering this aspect of the proposal he was mindful that this part of Loughborough Road is well trafficked and serves a 24 hour superstore and it was therefore reasonable to assume that there is already some background vehicle noise occurring at unsociable hours. He also considered that the size of the premises would limit the number of persons it can accommodate.

The Inspector took into account the condition recommended by the Council to control the operating hours of the premises, however, he did not consider that such a condition was necessary. Furthermore, he considered that it would be unusual and unreasonable to place a restriction on the time period when worship could occur. He concluded that the proposal would not unacceptably harm the living conditions of the occupants of nearby properties in respect of noise and disturbance.

The inspector also considered the impact of the use of the premises on highway safety. He noted that the appeal site is reasonably accessible by means other than the car, the proposal provides for 14 car parking spaces located within the site. He also noted that Nottinghamshire County Council, in its capacity as highway authority, considered that the proposal would not result in severe impacts to the safe operation of the highway network. Notwithstanding the sustainable location of the site from an accessibility perspective, he found the proposed parking arrangements to be adequate for the use proposed, particularly having regard to the limited size of the building, and that there was no substantive evidence to demonstrate that the proposed use would cause an unacceptable impact on highway safety. He concluded that the proposal would not result in any unacceptable effects on the safe and efficient operation of the highway network in the vicinity of the appeal site.

The Inspector allowed the appeal subject to a number of conditions, including a requirement for a Noise Management Plan, details of flood resilience measures, parking provision and a requirement for a travel plan and travel plan monitoring. He did not impose a condition limiting the hours of use of the premises.

Application for an Award of Costs

The appellant made an application for an award of costs against the Council on the grounds that it acted unreasonably by seeking to impose a condition identified on the Officer's recommendation report to approve planning permission with a restriction relating to the hours of use; and that a Council Ward Member refused to remove their objection to the proposal against an alleged background of statutory consultees removing their objection.

With regard to the suggested condition restricting operating hours, the Inspector considered that the Officer's report identified that the reason for the suggested condition was to safeguard the amenities of neighbouring/nearby properties. Given the nature of the intended use, with prayers occurring at sunrise and sunset, and the proximity of adjacent residential properties, he did not find that the Council's approach to consider a restriction on the hours of use to be unreasonable. Whilst he found differently to the Council on this matter, he commented that it does not mean the concerns had no basis.

Notwithstanding the Council's decision on the planning application, had it been in a position to formally determine it, the disputed condition was a recommendation that was not accepted by Members of Planning Committee. The Inspector considered that the Officer had reasonable concerns regarding the effect of the intended use on living conditions to justify the suggested condition and that Members of Planning Committee were quite entitled to take it into account and come to a different view in their consideration of the application. He concluded that these actions did not constitute unreasonable behaviour.

On the matter regarding the position of the Ward Councillor, the Inspector commented that a local Ward Councillor is quite entitled to exercise judgement and maintain objections where they have a legitimate basis. The fact that a Councillor may have a different view to Officers, statutory consultees and the appellant does not in itself constitute unreasonable behaviour.

The application for an award of costs was refused.