



Appeal Decision

Site visit made on 25 February 2019

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 March 2019

Appeal Ref: APP/Z4718/W/18/3204829 10 Oxford Road, Dewsbury, WF13 4JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Mr A Vania against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/62/91139/E, dated 6 March 2017, was refused by notice dated 22 December 2017.
 - The development proposed is described as erection of place of worship and associated car park and landscape works.
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Decision

1. The appeal is allowed and planning permission granted for the erection of place of worship and associated car park and landscape works at 10 Oxford Road, Dewsbury, WF13 4JT in accordance with the terms of the application, Ref 2017/62/91139/E, dated 6 March 2017, and the plans submitted with it, subject to the conditions set out in the schedule attached to this Decision.

Procedural Matters

2. The description of the application was revised during the course of the application in order to reflect changes to the proposal including the removal of the education block from the development. I have, therefore, taken the description of the application from the decision notice which reflects these changes. I have omitted reference to 'conservation area', however, as this is not part of the description of development.
3. Following an independent examination of the Kirklees Local Plan (LP) it was adopted on 27 February 2019, during the appeal. The Council consider that the proposal should now be considered against Policies PLP24 and PLP35 of the adopted LP. I have sought the views of parties and their comments have been taken into account in my reasoning below.

Main Issue

4. The main issue in this case is the effect of the proposal on the character and appearance of the Northfields Conservation Area and the area generally.

Reasons

5. The appeal site is situated on the corner of Nowell Street and West Park Street and comprises of vacant land to the rear of the existing mosque building. West Park Street rises from east to west resulting in the appeal site being around

- two metres lower than the gardens of Numbers 7 and 9 West Park Street (No 7 and No 9). There is hardstanding at the southern part of the site which is currently used for car parking in association with the existing mosque at 10 Oxford Road. The existing mosque lies outside but on the southern boundary of the appeal site and is a two-storey flat roofed building. Nowell Street is an unmade/unadopted road linking West Park Street and Oxford Road.
6. The site is situated within the Northfields Conservation Area which is comprised of large detached, semi-detached and terraced Victorian stone houses. The character of the Conservation Area is derived from the consistent layout of streets with large, stone properties set behind front gardens bounded by low stone walls with either hedges or fences on top. The predominant use of stone and slate together with the regular pattern of fenestration, bay windows to the ground floor and the regular use of features such as gabled dormers, arched door heads and stone window sills and lintels add to the cohesive nature and character of the area. Some properties on West Park Street have octagonal towers. Street trees together with hedges and front gardens contribute to the verdant character of the area. The building to the west of the site is a three-storey modern apartment block.
 7. The site is currently vacant, untidy and has been subject to some fly-tipping and as a result detracts from the character and appearance of the Conservation Area. However, there is a mature sycamore situated on the eastern boundary of the site which makes a positive contribution to the character and appearance of the Conservation Area.
 8. The proposed mosque would be three-storey, of natural coursed stone construction with a slate roof. The building would occupy a similar footprint to that of the pair of semi-detached dwellings neighbouring the site. The building would be set back from the road, consistent with that of the adjacent property, No 7. Although three-storey, the height would be lower than No 7 due to the difference in site levels. The proposal would also retain the open character to the rear of the site, albeit for car parking. As a result, the scale and footprint of the proposed building would be broadly consistent with that of adjacent properties.
 9. The fenestration pattern of the elevation facing onto West Park Street would reflect that of the adjacent properties. The façade would also include features consistent with those in the Conservation Area including bay windows, stone lintels and sills. Consequently, I consider that the façade is consistent with the predominant character of West Park Street.
 10. Concerns have been raised that the proposed octagonal element on the east elevation and rear of the building would be out of scale and character with Victorian buildings in the area. However, I note that the design of this element reflects the octagonal features on properties opposite, some of which are also flat roofed. Whilst on a larger scale than those features, the octagonal element would, nevertheless, be consistent in scale with the main building. Furthermore, the overall footprint of the proposal would be consistent with the adjacent pair of semi-detached properties. In my view, the octagonal element would create an attractive design feature in its own right. Consequently, I consider that the proposed building would not harm the character and appearance of the Conservation area or the area generally.

11. The proposal would result in the loss of the mature sycamore tree which it is estimated would have a life expectancy of around 20-40 years. The tree is situated on the eastern boundary of the site, set some distance back from West Park Street. Its removal is required in order to retain a consistent building line along West Park Street. The loss of the tree would have a detrimental effect on the character and appearance of the Conservation Area in the short term.
12. Paragraph 134 of the National Planning Policy Framework 2019 (the Framework) confirms that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimal viable use.
13. The loss of the tree would have a harmful effect on the character and appearance of the Conservation Area in the short term; however, this harm must be weighed against the benefits of the proposal in terms of tidying up a vacant, derelict site which is currently an eyesore. Furthermore, it is proposed to provide replacement planting including a new tree to the north eastern corner of the site. Whilst the replacement tree would take time to establish it would mitigate for the loss of the existing tree in the longer term. Moreover, the proposal would provide a place of worship with significant benefit for the local community. Whilst the harm is less than substantial, overall, I consider that the public benefits of the proposal would outweigh any short-term harm arising from the loss of the tree.
14. In conclusion, overall and in the longer term, the proposal would preserve the character and appearance of the Northfields Conservation Area and the area generally. The proposal would, therefore, accord with Policies PLP24 and PLP35 of the Kirklees Local Plan (2019) which together seek to achieve good design which preserves or enhances the significance of designated heritage assets.
15. Furthermore, the proposal would accord with paragraph 124 of the Framework which states that good design is a key aspect of sustainable development. The proposal also complies with paragraph 134 of the Framework for the reasons set out above.

Other matters

Transport

16. A number of local residents are concerned with the effect of the proposal in terms of increased traffic and parking and the safety of the proposed access. The appeal site is situated within an established residential area. Access to the site would be provided by Nowell Street, an unadopted road which links West Park Street and Oxford Road. It is proposed to upgrade Nowell Street to adoptable standards from Oxford Road to the proposed site access. The existing point of closure will remain and Nowell Street would not become a through road as a result of the proposal.
17. I noted on my site visit that parking is restricted on Oxford Road by permit parking zones and double yellow lines on the northern part of the highway. There are no parking restrictions on West Park Street in the vicinity of the appeal site. The proposal would provide 22 off-street parking spaces. The mosque and Madrassa would not be in operation at the same time and the

Council has accepted that the proposed parking spaces would, therefore, be sufficient to serve the proposal.

18. A Transport Statement was prepared in support of the application. Surveys were undertaken in term time between 1300 and 1500 on Friday 8 September 2017 and included turning counts at the junctions of Oxford Road/Nowell Street and West Park/Unnamed Road; car parking accumulation surveys for sections of Oxford Road, Nowell Street and West Park Street; and counts of pedestrians entering and exiting the mosque via Nowell Street and the unnamed road. This time was chosen as it is the busiest prayer time of the week.
19. The turning counts set out at Appendix BGH4 of the TS confirmed that the two-way hourly traffic flows between 13.00 and 14.00 on West Park Street and Oxford Street were 75 and 201 respectively. There were 10 two-way trips into and out of the northern section of Nowell Street and 26 two-way trips into and out of the southern section of Nowell Street. The TS concludes that these flows are low and that the network is operating well within capacity.
20. A parking accumulation survey was undertaken on Nowell Street and the adjacent sections of Oxford Road and West Park Street. The data for Oxford Road was excluded from the parking calculations as one side of the road is for permit holders only and one side has double yellow lines.
21. The total capacity of the surveyed area is estimated to be 47 parking spaces. The number of vehicles parked at the peak of the survey was 17 vehicles, which equates to 36% of the capacity.
22. The pedestrian survey shows that during the 15 minutes before prayer starts (13:45-14:00) there were a total of 38 pedestrian arrivals to the mosque. In the 15-minute period after prayer there were 40 departures from the mosque. The survey showed that 77% of trips were undertaken on foot and 23% of trips by car.
23. In response to traffic surveys carried out by residents, and in order to verify the appellant's highways evidence, the Highways Development Management (HDM) section of the Council has carried out additional survey work and observations at a variety of times in terms of peak two-way pedestrian and vehicle movements associated with the mosque at a variety of times. HDM conclude that the amount of vehicular and pedestrian movement is not excessive. From everything which I have seen in submissions and on my site visit I have no reason to disagree.
24. HDM also observed average on-street parking on West Park Street and the use of the existing mosque car park (15 spaces) the results of which generally agree with the TA findings. The result show that the car park is well used up to its current capacity and that there is available on-street parking space on West Park Street, albeit over-subscribed around its junction with Nowell Street. Based on the evidence above, even if vehicles had to park on the surrounding streets there would be sufficient capacity to accommodate any overspill.
25. Concerns have also been raised regarding the safety of the Nowell Street/Oxford Road junction. Visibility to the left of the junction is in excess of 2.4m x 43m and, therefore, meets the Manual for Streets guidance for the 30mph speed limit on Oxford Road.

26. Taking into account the downhill gradient towards Nowell Street, the visibility splay to the right of the junction should be 2.4m by 47.5m. In practice, however, the existing visibility is 2.4m by 26.5m. However, the existing visibility could be improved by the removal of the hedge which would provide an element of 'see through' along Oxford Road. Considering that the junction is used at present; that no increase in the use of the mosque is proposed; and the good safety record, there is no evidence to indicate that the junction would operate in a manner which would be detrimental to highway safety.
27. A condition is proposed to restrict the use of the Mosque to no more than 100 worshippers at a time which would limit traffic movements associated with the mosque and ensure that parking does not exceed capacity. Furthermore, a condition to secure the cutting and maintenance of the hedge would improve the safety of the junction.
28. On the basis of the evidence, and subject to conditions, I consider that the proposal would not have a detrimental effect on highway safety.

Living conditions

29. The proposed mosque would occupy a similar position to the dwelling that was previously approved in 2014¹. It would be stepped down from No 7 which has windows in the gable end elevation. The proposal would be around 3.5m from the gable end which is comparable to the spacing between other properties in the street. Given that no windows are proposed in the elevation of the building and that the windows in the gable end of No 7 are unlikely to serve habitable accommodation or be the sole window serving a habitable room, I consider that the proposal would not have an adverse effect on the living conditions of the occupiers of No 7.
30. There are windows proposed in the Nowell Street elevation which would face onto windows in the side elevation of the apartment block opposite. Consequently, there is a need to include a condition requiring that those windows are obscured in order to protect the privacy of occupiers.
31. There is also the potential for noise to surrounding occupiers by virtue of the call to prayer and the arrival and exit of worshippers; however, conditions requiring the restriction of operational times and also restricting the volume and frequency of use of the Azan are proposed. With the suggested conditions, I do not consider that the proposal would have an adverse effect on the living conditions of surrounding occupiers.

Ecology

32. Although the proposal would result in the loss of a mature tree, it is proposed to provide a replacement tree and a landscaping scheme is proposed which would provide the opportunity to enhance the ecological interest of the site. An Ecological Design Strategy is required by condition which requires details of bat and bird boxes to be included in the new structure.
33. Attention is drawn to covenants which it is considered would restrict the use of the land; however, covenants are a private legal matter.

¹ Council's planning application reference 2011/92932

Conditions

34. In addition to the standard time condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans in the interests of certainty.
35. Conditions requiring the submission of a full landscape scheme and details of all external facing materials are required in the interests of character and appearance.
36. A condition requiring the windows in the east elevation to be obscure glazed is required in order to protect the privacy of the occupiers of the adjacent apartment block.
37. In the event that unexpected contamination is found a condition requiring the submission of a remediation strategy in order to ensure that the site is safe for future occupiers.
38. Conditions restricting the times and volume of the Azan and also restricting activities, other than prayer outside the hours of 0800 to 2200 are required in order to protect the living conditions of surrounding residents. A condition requiring a Construction Management Plan is required for the same reason.
39. Conditions requiring that the hedge fronting 10 Oxford Road is removed; the use of the site is limited to 100 worshippers at any one time; submission of a Travel Plan; and requiring a scheme for the construction of Nowell Street to adoptable standards are all necessary in the interests of highway safety.
40. Concerns have been raised as to whether the condition restricting the use of the site to 100 worshippers is enforceable. However, the Travel Plan which is required by condition would include details of an attendee register and monitoring/reporting regime. On this basis, I am satisfied that the condition is enforceable.
41. A condition requiring a scheme detailing facilities for the charging of electric vehicles and other low-emission vehicles in order to ensure that provision is made for more sustainable modes of transport.
42. Paragraph 118 of the National Planning Policy Framework encourages opportunities to achieve net environmental gains such as developments that would enable new habitat creation. Consequently, a condition is necessary which requires an ecological design strategy is in the interests of biodiversity.

Planning Balance

43. With the suggested conditions, I have concluded that the proposal would not have a harmful effect on highway safety or living conditions. I have concluded that the loss of the mature sycamore would harm the character and appearance of the Conservation Area in the short term; however, the replacement tree would mitigate for the loss of the existing tree in the longer term. Furthermore, this harm must be weighed against the benefits of the proposal in terms of tidying up of a vacant, derelict site. Moreover, I have concluded that the proposed building would preserve and enhance the character and appearance of the Conservation Area and the area generally.
44. The proposal would provide a place of worship with significant benefit for the local community and tidy up a vacant, untidy site. Overall, I consider that the

public benefits of the proposal would outweigh any short-term harm arising from the loss of the tree.

Conclusion

45. For the reasons stated and taking all other considerations into account, I consider that the appeal should be allowed subject to the conditions set out in the attached schedule.

Caroline Mulloy

Inspector

Schedule

Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 16012-D01-C; floor plans 16012-D03-D; site elevations 16012-D06-D; Mosque elevations 16012-D04-D; Site plan 16012-D02-C; floor plans including prayer spaces 16012-D03-D.
3. No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping to include replacement trees and wildlife attracting species. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting seasons following the occupation of the building or the completion of the development, whichever is sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The landscaping shall be carried out in accordance with the approved scheme and retained thereafter.
4. The building hereby permitted shall not be occupied until the windows in the east elevation have been fitted with obscured glazing (minimum grade 4) and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Once installed the obscured glazing shall be retained thereafter.
5. In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all groundworks in the affected area (except for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Groundworks in the affected area shall not recommence until either (a) a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority or (b) the Local Planning Authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy.

Following completion of any measures identified in the approved Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. Unless otherwise approved in writing by the Local Planning Authority, no part of the site shall be brought into use until such time as the site has been remediated in accordance with the approved Remediation Strategy and a Validation Report in respect of those works has been approved in writing by the Local Planning Authority.

6. Calls from the Azan shall only be made between the hours of 0800 and 2000 hours. The Azan should not be audible at any property more than 4 times

each day. Each Azan should not exceed 4 minutes in length. The sound level of the Azan should not be more than 70 dB (A) (Fast) within 3 metres from any elevation of any dwelling or 50 metres from the loudspeaker, whichever is the closer.

If this sound level cannot be achieved, a compressor should be fitted to the amplifier circuit to that the level of 70 dB(A) cannot be exceeded, even if the microphone volume is increased.

- 7 The use of the site shall be limited to 100 worshippers on the site at any one time.
- 8 The development shall not commence until the hedge fronting 10 Oxford Road has been removed and the area thereafter maintained clear of any planting and/or structure.
- 9 No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The statement shall provide for:
 - The timing and routing of construction traffic.
 - The parking of vehicles of site operatives and visitors;
 - Loading and unloading of plant and materials;
 - Storage of plant and materials used in constructing the development;
 - Delivery, demolition and construction working hours;The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 10 The development shall not be brought into use until a Travel Plan that includes an attendance register and monitoring regime has been submitted to, and approved in writing by the local planning authority. The development shall operate in accordance with the approved Travel Plan.
- 11 The development shall not commence until a scheme detailing the construction specification for Nowell Street up to an adoptable standard has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.
- 12 Prior to their use details of all the external facing materials shall be submitted to and approved in writing by the Local Planning Authority. This shall include details of the decorative mesh feature. The development shall be carried out in accordance with the approved details.
- 13 No activities, other than prayer, shall take place on the premises outside the hours of 0800 and 2200 unless otherwise agreed in writing by the Local Planning Authority.
- 14 Before building works commence a scheme detailing the facilities that will be provided for charging electric vehicles and other ultra-low emission vehicles shall be submitted to and approved in writing by the Local Planning Authority. Buildings and parking spaces that are to be provided with charging points shall not be brought into use until the charging points are installed and operational. Charging points installed shall be retained thereafter.

- 15 No development shall take place until an ecological design strategy (EDS) has been submitted to and agreed in writing by the LPA. The EDS shall include details of the following:
- Purpose and conservation objectives for the proposed ecological works, in relation to site potential and constraints.
 - Location (shown on appropriate scale plans) of specific make and model, or design, of bat and/or bird boxes to be installed integral to the new structure.
 - Planting schedule and planting plan showing the inclusion of native species of plant to be included within/at the boundary of the application area, and how this achieves the stated purpose.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.