



Appeal Decision

Inquiry held on 5 and 6 May 2011

Site visit made on 6 May 2011

by J M Trask BSc (Hons) CEng MICE

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

Decision date: 31 May 2011

Appeal Ref: APP/R5510/A/10/2139254

St John's School, Potter Street Hill, Northwood, Middlesex HA6 3QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr Nigel Stone of St John's School Northwood Ltd against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 10795/APP/2009/1560, dated 16 July 2009, was refused by notice dated 13 May 2010.
 - The application sought planning permission for the erection of an additional classroom and assembly area with library for pre-prep school, together with first aid room and staff toilet, without complying with a condition attached to planning permission Ref 10795/APP/2001/1600, dated 21 November 2001.
 - The condition in dispute is No 4 which states that: "The total number of pupils at the school shall not exceed 350 and the total number of staff shall not exceed 40 full time equivalent."
 - The reason given for the condition is: "To prevent the generation of additional traffic giving rise to problems of safety and congestion in Potter Street Hill."
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Applications for costs

1. At the Inquiry applications for costs were made by the appellant against the Council and by the Council against the appellant. These applications are the subjects of separate Decisions.

Preliminary Matters

2. The development has taken place without compliance with condition 4 imposed on the 2001 planning permission. The building, which is the subject of that permission is in use and, at present, there are about 405 pupils and 65 full-time equivalent staff at the school; that is 55 and 25 respectively more than currently permitted. The Council and appellant have agreed that the description of development should be modified to include a reference to retention of the development. However, s73 confers a general power to grant planning permission with retrospective effect rather than the power to permit retention of development. Thus the original description of development better describes the proposal and the appeal is dealt with on this basis.

Decision

3. The appeal is dismissed.

Main Issues

4. Although triggered by a condition having been breached, consideration of s73 cases is not limited to the appropriateness of that condition or whether it was properly imposed in the first place. Instead, the planning merits of allowing the development to continue in its current form, i.e. without condition 4, are to be considered having regard to the development plan and all other material considerations existing at the time of this decision. Accordingly the main issues in this case are:
 - i) whether the development is inappropriate development for the purposes of Planning Policy Guidance (PPG) 2: Green Belts;
 - ii) the effect of the development on the openness of the Green Belt and character and appearance of the area; and
 - iii) the effect of the development on highway and pedestrian safety and the free flow of traffic.

Reasons

Whether the development is inappropriate development for the purposes of Planning Policy Guidance (PPG) 2: Green Belts

5. Most of the appeal site lies within the Metropolitan Green Belt. PPG2 expresses a general presumption against inappropriate development in the Green Belt. The Council and the appellant are agreed that, whatever conclusion is reached in this decision, the building would remain and I have no reason to take a different view. Thus there would be no new development in terms of the building. The effects on the Green Belt of the activities and intensification of use arising from the increase in staff and pupil numbers, as a result of non-compliance with Condition 4, are de minimus in the context of the use of the site. Therefore the continuance of the development in its current form does not constitute inappropriate development.

The effect of the development on the openness of the Green Belt and character and appearance of the area

6. The building would remain and its visual and physical manifestation would be neutral so, in itself, it would have no further effect on the openness of the Green Belt or the character and appearance of the area.
7. The current number of pupils and staff results in queues developing along Potter Street Hill at school starting and finishing times. The surveys undertaken show the length of the file of traffic can be up to 20 vehicles. At the time of my unaccompanied visit before the Inquiry and accompanied visit during the Inquiry, I saw queues of at least that length and there is evidence of longer tailbacks. The queues of traffic are made worse when vehicles are parked on the side of the road. However, these traffic conditions are transitory and only occur in term time and so have a minimal effect on openness and visual amenity.
8. To help mitigate the effects of the non-compliance with condition 4, the school has built a new footpath within the school grounds that runs parallel to Potter Street Hill. This is lit but the lighting is at low level and is not unduly obtrusive. I conclude the continuance of the development in its current form would result in no appreciable harm to the openness of the Green Belt or the character and

appearance of the area and there would be no conflict with the objectives of Policy OL4 of the London Borough of Hillingdon Unitary Development Plan (UDP).

The effect of the proposal on highway and pedestrian safety and the free flow of traffic

9. It is common ground between the Council and the appellant that there is sufficient parking on site for the number of staff presently employed, and that the sole area of contention between them is the impact of the non compliance with condition 4 on the traffic and parking on Potter Street Hill. Having had regard to the evidence before me, I agree with this conclusion. Also, while not part of the Council's reasons for refusal, it is apparent that the free flow of traffic is a consideration in this appeal as it is intrinsically linked to highway and pedestrian safety in this case.
10. Potter Street Hill is generally about 5m wide, but less than this in places, and there are no parking controls. There are "Slow" signs on the road and, while there is generally a footpath along one side of the road, there is a substantial length that does not have a footpath. The traffic surveys and my observations confirm that, even with the introduction of a temporary drop-off zone in the playground, long queues of traffic develop immediately before school start time, albeit they are for a short period. It is not disputed that there are also tailbacks of vehicles in the afternoon as pupils leave school.
11. The traffic survey data (collected over 3 days in the summer term and 3 days in the autumn term), shows a maximum queue length of 20 cars, although it was less in the autumn term. However, evidence (supported by photographs in Documents 2 and 8) was presented at the Inquiry confirming that queues could extend beyond that indicated in the surveys, particularly at times of bad weather. While doubt has been cast on the circumstances surrounding the taking of the photographs produced in evidence, which I shall deal with later, I also carried out 2 visits to the site. On my unaccompanied visit to Potter Street Hill, I saw that while most parents and carers dropping off pupils behaved responsibly, there was an instance of tailgating that resulted in a near gridlock situation and there were intermittent queues all the way down the hill to the roundabout.
12. The queues of traffic on Potter Street Hill mean that the road is effectively reduced to single file for part of its length in peak periods. At times the queues extend to the part of the road where it is particularly narrow and there is no footpath. At this point there is insufficient space for 2 cars and a pedestrian to pass safely, unless drivers are particularly thoughtful. The tailbacks also introduce the potential for vehicle conflict and the possibility of vehicles mounting the footpath, or being so close to the footpath that wing mirrors could impact with pedestrians. These are potential hazards for car drivers and passengers, cyclists and pedestrians.
13. While there have been no recent personal injury accidents along Potter Street Hill, a petition signed by local residents has confirmed that there has been a noticeable increase in traffic and congestion, dangerous incidents and an occasion when the progress of an ambulance was hindered. At the Inquiry, several instances of near misses and minor collisions were highlighted and it is apparent that, where possible, local residents have adjusted their behaviour to avoid using the road at peak times.

14. However, no history of formal complaints has been demonstrated, although a local resident and parent of pupils at the school indicated that the severity of the problem had increased in the last few months. There are allegations of unnecessary on street parking, exacerbating the road conditions. Nevertheless, there are no parking controls and the possibility and effect of on street parking must be taken into account. The headmaster has written to parents at length about journeys to and from school (Slide 25 of Document 2) and encouraged everybody to behave with common sense and consideration, and it is clear that heeding this advice would improve the free flow of traffic. Although the Council's highway engineer did not raise any objection to the proposed non-compliance with condition 4, providing the current number of staff and pupils was not exceeded, if the Council did have serious reservations about the effect of on street parking, parking controls could be introduced.
15. Concerns have also been raised in relation to HGVs and emergency vehicles but I would expect car drivers to modify their behaviour on the rare occasions these are present in the area. Although most of those affected by the delays in traffic are associated with the school and expect some congestion, others who live or work in the area are also affected; in particular the residents of, and visitors to, the properties closest to the entrance to the school. Also, the slow progress of vehicles and inconsiderate actions of some road users causes disputes between parties and tensions in the community which can lead to a detriment in highway and pedestrian safety.
16. The Council's and appellant's transport witnesses disagree on how much of the queuing is attributable to the non-compliance with condition 4. But what is clear, is that there is a complex relationship between demand, drop-off, parking capacity and queuing and it is obvious that the increased demand has made a contribution to the current unsatisfactory circumstances. The detrimental road conditions occur for a short period of time and only on days when the school is operating at near capacity, but the severity of the effect of the queues must also be taken into account. The consequences of the additional traffic could be grave, for example if there was a serious accident, and while responsible actions by road users during the short peak times would minimise the likelihood of harm; clearly that cannot be guaranteed.
17. The school has a School Travel Plan which has been developed in association with the London Borough of Hillingdon and has identified measures that could improve the situation. An additional drop-off zone near the bottom of the hill is proposed in The School Travel Plan Review 2010 and this could accommodate the extra vehicles generated by non-compliance with condition 4 of the original permission, with a consequential reduction in queuing. However, it is not clear that the additional drop-off zone can be secured and this lack of security of implementation leads to a conclusion that this issue cannot be addressed through imposition of a planning condition.
18. Therefore, although the queues are infrequent, and the number of local residents affected is limited, the consequential harm would be of such magnitude that the scheme must be considered detrimental to highway and pedestrian safety and the free flow of traffic. Thus the development conflicts with the provisions of the development plan, in particular UDP Policy AM7 which aims to safeguard highway and pedestrian safety and the capacity for free flow of traffic.

Other Matters

19. A completed Unilateral Undertaking has been submitted by the appellant to limit staff and pupil numbers to those at present on the site. The Council has confirmed it is satisfied with the undertaking and I am content it meets the tests in Circular 05/2005. However, as described above, it would not overcome the main concerns in this appeal.
20. The school has high academic standards and received a glowing report after the Standard Inspection in early 2010. The reduction in the number of pupils would diminish the variety and quality of education provided at the school and in extra-curricular activities. It would also put pressure on other educational establishments as the pupils would have to be educated elsewhere. There are currently no spaces available in other preparatory schools in the area and few places at local primary schools. The Hillingdon Education and Children's Service does not wish to see any downsizing of local schools as this could further increase demand for local maintained places. However, many pupils come from outside the borough and any effect would be widespread and therefore of limited consequence. It is possible that relocation of some pupils would improve sustainability, as pupils may be able to walk to other schools rather than use cars, but there is no objective evidence to support this hypothesis.
21. Another effect of such a reduction in pupils would be the loss of income for the school without a concomitant decrease in expenditure. There would be a reduction in the ability to provide Bursary Funding, charitable giving would diminish and maintenance would suffer. The Chairman of Governors of the school has advised that the Trustees and Governors would have to consider whether it was appropriate to run the school on such a basis. Also, several jobs would be lost which would be unfortunate and undesirable in the current economic climate.
22. There are petitions supporting the continuance of current circumstances; that is the higher number of staff and pupils. The petitions were prepared for a later, similar application, but are equally relevant to this appeal. However, the petitions have been signed by boys attending the school and residents who live in areas largely unaffected by the traffic generated by the school. Furthermore, there are petitions signed by local residents that object to the scheme.
23. Other matters have been raised, including instances of other recent applications for planning permission and the removal of some trees. Although some of these matters may indicate a pressure for space resulting from the numbers of pupils and staff currently at the school, they are of limited direct relevance to this appeal.

Overall conclusion

24. Allowing the development to continue in its current form would let the detrimental road conditions persist, with the consequential harmful effects on highway and pedestrian safety and the free flow of traffic. This would conflict with the provisions of the development plan. I have had regard to all other matters raised but, while some carry substantial weight, they are not sufficient to outweigh the considerations which have led me to my conclusion. For the reasons given above I conclude that the appeal should be dismissed.

J M Trask

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Stracey, Solicitor for the Council of the London Borough of Hillingdon	Instructed by the Council of the London Borough of Hillingdon
He called	
Mr Volley	Planning Appeals Manager, London Borough of Hillingdon
MSc DIPTP MRTPI	
Mr Weeks	Transport consultant
BSc CEng FACE	

FOR THE APPELLANT:

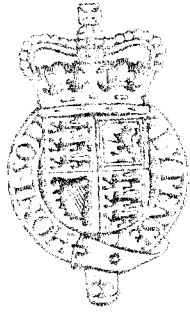
Mr Andrew Fraser-Urquhart, of Counsel	Instructed by Vincent and Goring (appellant's agents)
He called	
Mr Armstrong	Chairman of Governors, St John's School
MA	
Mr Stone	Bursar at St John's School
Mr Hamshaw	Transport consultant
MSc BA MCIT MILT	
MCIHT	
Mr Friend	Planning consultant
BSc(Hons) MTP MRTPI	

INTERESTED PERSONS:

Mr Shah	Local resident
B Pharm(Hons) MSc MRPharmS	
C Dip AF MBA	
Mr Ball	Committee Member Gateshill (Northwood) Residents Association
Mr Raspin	Local resident
Mrs Howells	Local resident and parent of pupils

DOCUMENTS

- 1 Signed page of STP annual review
- 2 Mr Raspin's evidence
- 3 Pinner Hill Estate Conservation Area Designation and Policy Statement
- 4 Petition objecting to proposal under planning application ref: 10795/APP/2011/91
- 5 Petition supporting the proposal under planning application ref: 10795/APP/2011/91
- 6 E-mails dated 6 May 2011
- 7 Photograph of photographer in vegetation
- 8 Annotated version of Document 2
- 9 Certified copy of Unilateral Undertaking



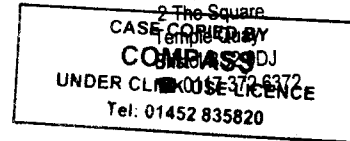
Appeal Decision

Site visit made on 16 August 2005

by Mrs G R Stewart BSc DipTP MRTPI

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
Room 4/09 Kite Wing
Temple Quay House



Date **23 AUG 2005**

Appeal Ref: APP/U5360/A/05/1178425
6-8 Chardmore Road, London N16 6AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Talmud Torah Education (TTE) Ltd against London Borough of Hackney Council.
- The application ref: 2004/2715 is dated 20 December 2004.
- The development proposed is "change of use for school".

Summary of Decision: the appeal is dismissed

Procedural Matters

1. At the time of my visit, the ground floor of No. 6 Chardmore Road was in use largely as classrooms, with some ancillary uses. To that extent, I shall treat the appeal as one arising from an application made, in part, under Section 73A of the Town and Country Planning Act 1990 seeking planning permission retrospectively for a change of use.

Main Issues

2. From the representations and site visit, I have decided that the main issue is the effect of the proposed change of use on the residential amenities of neighbouring occupiers.

Development Plan and other Planning Policies

3. The Hackney Unitary Development Plan (UDP) was adopted in 1995, and is the statutory Development Plan for the area. The parties to the appeal have drawn my attention to a very large number of UDP policies, and I summarise below those most pertinent, in my view, to the appeal decision.
4. Both main parties to the appeal make reference to Policies ST1, ST43, CS6 and HO8. Policy ST1 encapsulates the central issue of the appeal in that it states that the Council will welcome new development where it is most appropriate and of most benefit to local needs, provided it does not have an unacceptable detrimental impact on local amenity or the environment. Policy ST43 makes clear that the Council "will seek to facilitate the provision of social and community facilities.....through.....the provision of alternative and additional suitable sites and premises where appropriate". Policy CS6 is specific to the provision of educational facilities which are "appropriate to local needs and requirements, subject to other policies in [the] plan". Policy HO8 militates against a loss of residential floorspace except in certain circumstances one of which (D) is that "the site is in the right location for an essential community facility that can only be provided by use of a residential building".

5. In support of the appeal, my attention has been drawn to Policy ST19 which seeks to ensure that the special needs of (inter alia) ethnic, cultural and religious groups are taken into account in the implementation of the plan. Policy CS7 refers specifically to the needs of the orthodox Jewish community, and the supporting text “promises sympathetic consideration to proposals for adapting residential and similar properties” for community services.
6. In addition to the policies summarised in paragraph 4 above, the Council has highlighted the overall sustainability objective of the UDP (Policy ST5), and Policy ST28 serves the same objective by seeking development which is appropriately located in relation to the transport infrastructure. The Council’s development control criteria are set out in Policy EQ1, but it is not clear from the Council’s submissions which, if any of the criteria are regarded as particularly relevant in this case. However the submission of Policy EQ40, which relates to noise nuisance points to concern relating to Policy EQ1(H) which seeks to protect the amenities of neighbouring occupiers from, for instance, noise. I note, too, Policy CS10 which applies to the provision of all community services and seeks to ensure that they are “satisfactory” in terms of (inter alia) the distribution of services serving the same group; the distribution of ‘client groups’; and impact on surrounding residents. Policy TR6 requires consideration of the traffic issues arising from development proposals, and the availability of public transport. The Council will resist developments that would result in unacceptable traffic impacts on other road users.
7. Other policies have been cited by the main parties to the appeal as well as those representing third parties, and I have had regard to all of those mentioned. Since the UDP was adopted, central government planning policy guidance has been published which attaches greater weight than hitherto to the need to promote sustainable patterns of development. This guidance, particularly Planning Policy Statement 1 (PPS1) “Delivering Sustainable Development” and Planning Policy Guidance 13 (PPG13) “Transport”, forms the policy context for the appeal.

Reasons

8. There is a degree of ambiguity about the need for the appeal proposal, but the agent’s letter dated 30 June 2005 makes it clear that it would operate as part of the existing school currently occupying 111-115 Cazenove Road and 2-4 Chardmore Road. The grounds of appeal suggest that the premises are primarily needed to meet a growing local need for school places, although the letter dated 30 June also states that it would alleviate overcrowding in the existing buildings. However all of these matters are unquantified. I conclude that there could be a significant increase in the total number of children attending the enlarged school, and I take from the planning application, the fact that 100 pupils and 10 staff would occupy the buildings on the appeal site. Since there is no basis for concluding otherwise, I take it that, at some point in time, the use of the appeal buildings could increase the school roll by up to 100 pupils.
9. The application is silent as to the proposed use of the gardens at 6-8 Chardmore Road, but as they are included in the application site, I must assume the intention is to use them for school purposes, whether or not they are physically incorporated into the large adjoining playground.

10. From letters submitted at the time of the planning application, it appears that there is a large measure of support in the local community for the enlargement of the existing school. The UDP acknowledges the growth in the demand for orthodox Jewish school places which was then expected in the 10 years from 1995, and the anecdotal evidence of the appellants is that the pattern of growth continues and that there is an unmet demand for additional school places. Policies in the UDP are very supportive of the needs of minority groups for community and educational facilities. Other UDP policies, including Policy HO8, militate against the loss of residential floorspace but even here, an exception may be made for “an essential community facility that can only be provided by use of a residential building”. However the caveat is that the site should be “in the right location”. The locational criteria in Policy CS10 are relevant in this context. In the sense that the site is adjacent to the existing school, and that it would serve pupils from a catchment area extending no more than 2 miles from the school, the first two criteria in Policy CS10 appear to be met. However, the impact of a proposed use on neighbouring residents is also relevant and I must weigh in the balance, the effect of the proposed change of use on neighbouring occupiers.
11. I saw, during the site visit, that the school playground encompasses what was once the rear garden of 117 Cazenove Road, so that it wraps around two sides of 38 Filey Avenue, and that its corner is adjacent to the rear corner of the garden at 40 Filey Avenue. Evidence submitted by third parties as to the intensive use of the existing playground is undisputed. I consider it most likely that the noise from the use of the playground and possibly also from within the buildings is experienced in residential curtilages further along Filey Avenue than these two immediately adjacent properties. I consider that the increased use of the existing playground by the pupils to be accommodated in the appeal buildings, together with the extension of the school use alongside 38 Filey Avenue and closer to the exclusively residential area of Filey Avenue, would lead to a reduction in the existing level of residential amenity enjoyed by neighbouring occupiers. To that extent, the appeal site is not suitably located for an extension to the existing school and the proposal fails to qualify under Policy HO8(D) as an exception to the policy to resist the loss of residential floorspace. Nor does it satisfy the requirements of Policy CS10(C).
12. I conclude that the appeal proposal conflicts with Policies EQ1(H) and EQ40, both of which seek to minimise the adverse effects of potential noise nuisance on neighbouring occupiers. I have noted the proposed hours of use incorporated in the planning application, but this is not sufficient, in my opinion, to adequately limit noise levels arising from a proposal in such close proximity to residential accommodation.
13. There are several schools within the immediate neighbourhood and the traffic generating effects of the appellants site cannot be distinguished from those of other schools nearby. I have noted the argument that the creation of the Windus Road Home Zone has shifted certain effects into the area around the appeal site. In common with other schools in the locality, the appellant school has two mini-buses to meet special transport needs, and it is stated by the agent that these all park in Filey Road.
14. There is no evidence about the means of transport to school used by existing pupils, which might be extrapolated to give some indication of the likely effect of the appeal proposal on traffic movements to the appeal site. In the absence of this evidence or indeed any other evidence on the matter, I must draw my own conclusions. Given a

catchment area extending up to 2 miles from the site, and the small number transported by mini-bus, it seems likely that a sizeable proportion of pupils would arrive by car, and that those additional traffic movements would add to the congestion which is already acknowledged to exist. An increase in the number of private car trips would not serve the sustainability objectives of the UDP, or those of national planning guidance, especially PPG13. The failure of the appellants to address the way in which the appeal proposal might impinge on local traffic movements, or to seek means of minimising the increase in such movements weighs heavily against the appeal proposal. I consider that the appeal proposal conflicts with Policy TR6 in that it is likely to give rise to additional congestion on the local highway network. The existence of the "Safer Route to School" outside the site does not mitigate the adverse effects on congestion and parking that the appeal proposal is likely, in my view, to have.

Conclusion

15. I have taken into account all of the matters raised in the representations from all parties. The UDP aims to facilitate the provision of educational facilities for local client groups, but balances this with the need to maintain the supply of residential accommodation and protect the residential amenities of neighbouring residents. I have concluded that the appeal proposal would cause an unacceptable loss of residential amenity to those living nearest to the site through an increase in noise and disturbance. Furthermore, the proposed change of use would be likely to give rise to an increase in congestion and on-street parking in the locality to the detriment of highway safety. I therefore intend to dismiss the appeal.

Formal Decision

16. For the reasons given above, I dismiss the appeal.



INSPECTOR