

HARROW COUNCIL

SUPPLEMENTAL ADDENDUM

PLANNING COMMITTEE

DATE: 15th March 2023

3/01



JMW Solicitors LLP

Kings House
36-37 King Street
London EC2V 8BB

DX: 42624 Cheapside
T: 0203 675 7575
W: jmw.co.uk

Our Ref: BAR/
15 March 2023
Harrow Council
FAO: Muhammad Saleem
Planning and Building Control
Civic 1, Station Road
Harrow, HA1 2XY
Dear Sir

“Change of use from dwelling house (Class C3) to charity use with private events by invitation and ancillary accommodation (Sui Generis)” – (reference: P/1838/22) at 227 Whitchurch Lane, Edgware, HA8 6QT (“the Site”) – (collectively “the Application”)

We are instructed by, and advising, the applicant for the above (“our client”) and understand that the Application will be determined by the Planning Committee established by the London Borough of Harrow (“the LPA”) on 15 March 2023.

We have seen the case officer’s report (“OR”) to the Committee that requests it to:

1. Agree the reasons for refusal as set out in that report; and
2. Refuse planning permission.

The OR includes the following putative reasons for refusal:

1. The proposed change of use would result in the loss of a single family dwelling house (Use Class C3) which would result in a reduction of the borough’s housing stock. The proposal is therefore contrary to Policy H8 of the London Plan (2021).

2. Notwithstanding the above, insufficient information has been provided to demonstrate that the proposed development would be located within the community it intends to serve and would not result in an adverse impact to the neighbouring residential amenities through unacceptable levels of general disturbance. The proposal is therefore contrary to Policies D3.D(9), D13 and D14 of the London Plan (2021), and Policies DM1 and DM46 of the Harrow Development Management Policies Local Plan (2013).

For the reasons set out in this letter, we are of the view that the:

- Application should receive planning permission; and
- the OR is inaccurate in its analysis and conclusions and therefore unhelpful and misleading.

In accordance with an emailed letter sent by our client, its architects, Cohanim Architecture, along with their Planning Consultant, Mr Jeremy Butterworth on 5 September 2022, we are of the opinion that the foundation of the planning determination is undermined by the Council’s misleading development description (see page 2 of the emailed letter).

Our client through the Application has provided an opportunity to the LPA to control the intended development through a planning permission. If our client was minded to, it could use the Site as a Class C3 dwelling house with ancillary charity use, which is legally permissible and possible as planning law dictates that any primary use includes a right to undertake an ancillary use.

In our view, the Site could legitimately have a predominant residential use and ancillary charity use in a similar manner to the adjoining house at 225 Whitchurch Lane which provides “...a commercial use in some capacity” (see paragraphs 1.4 and 1.5 of the OR). If necessary and in order to satisfy the concerns of Planning Enforcement officers, it could apply for a Certificate of Lawfulness for the intended use at the Site at the appropriate time.

If it was minded to approve the Application, the Council could impose a condition on a planning permission for the Application making it clear that only the relevant areas on the plan indicating residential use (i.e., first floor, loft level and garden) must remain in that use and not be able to be used for any ancillary charity use purposes that would be located on the remaining areas of a plan. That would preserve the dwelling house as well as remove the breach of Policy H8 of the London Plan as perceived by the Planning officer.

Given the nature of the proposed development, Policy H8 is not breached. It would be if the whole of the Site was given over to charity use, but as mentioned during the Application process and in related documentation that is not the case.

The LPA could also condition the planning permission to limit the type, amount and size of gatherings in order to control any potential noise nuisance (such as it might be) and therefore impact on amenity (see page 2 of the emailed letter, where it is made clear that any charitable activity gathering would not be in excess of a typical social gathering at a

residential dwelling). Even with the ancillary charity use at the Site, the residential character of it would not change.

Paragraph 5.1 of the OR states that:

“Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that:

“If regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.”

Due to the fact that i) the relevant policies within the Plan (comprising the London and LPA Local Plans) have not been properly applied and/or included in the consideration of the Application that has led to a recommendation for refusal and ii) the failure to adequately assess the relevant material considerations (e.g. those policies within the NPPF, such as paragraphs 38 and 55) that could be relied upon for any perceived non-compliance with the relevant parts of the Plan, we

suggest that the statutory duty within section 38(6) would not be fulfilled in the event that the Application is refused.

Paragraph 1.4 of the OR states that:

“Whitchurch Lane itself is predominantly residential. However, it should be noted that there is a neighbourhood parade approximately 60m to the west of the site, Canons Park Underground Station 20m to the west of the site and some converted properties providing a commercial use in some capacity (no.225 and 254 Whitchurch Lane).”

As the area surrounding the Site is not wholly and purely residential, this fact somewhat undermines the arguments surrounding the negative impact on amenity for residents in the vicinity of the Site (notwithstanding that we do not accept there is an impact).

Paragraph 1.4 of the OR states that:

“The attached neighbour is no. 225 Whitchurch Lane adjoins the eastern site boundary. This property is a single family dwellinghouse and features single storey rear and side extensions. The side extension is in use as an acupuncture and Chinese medicine clinic. A Certificate of Lawfulness was issued for it to operate between the hours of 6pm – 8pm Monday to Friday for 15 hours a week.”

We would argue that this ancillary operation to the dwelling house use adjoining the Site is potentially more harmful than that proposed by our client. As that operation does not seem to be an issue for the Council (as it granted a Certificate of Lawfulness), we do not understand why the client's Application is perceived the problem that it is claimed to be leading to a recommendation of refusal. In addition, and not apparently considered in the OR, the property directly opposite the Site is used as a veterinary surgery with ancillary parking and signage.

The first putative reason for refusal relies on a policy (H8) that has not been properly understood within the OR as it is in our view not relevant to the Application.

London Plan (2021) Policy H8 – Loss of existing housing and estate redevelopment

A Loss of existing housing should be replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace.

Only Part A of Policy H8 could be relevant and we would argue that relevance is severely limited. Parts B to E are clearly not relevant to the Application.

Paragraph 4.8.1 comprising explanatory commentary to support the application and interpretation of Policy H8 states:

*“It is important that existing homes of all tenures are well-maintained and are of good quality as these will continue to house the majority of Londoners. However, the **redevelopment and intensification** of London's existing housing has played, and will continue to play, an important role in the evolution of London. The benefits of development proposals that involve the demolition and replacement of existing homes should be balanced against any potential harm.”*

For the reasons included in this letter and that of our client sent on 5 September 2022, the housing at the Site is not being lost. It will be retained but will include an ancillary use that it could maintain in any event, notwithstanding the Application.

Quite clearly other parts of the London Plan not included in the OR should be considered in the determination of the Application.

London Plan (2021) Policy GG1 – Building strong and inclusive communities

Good growth is inclusive growth. To build on the city’s tradition of openness, diversity and equality, and help deliver strong and inclusive communities, those involved in planning and development must:

C provide access to good quality community spaces, services, amenities and infrastructure that accommodate, encourage and strengthen communities, increasing active participation and social integration, and addressing social isolation.

We would suggest that the Application should be approved in order to promote Policy GG1 which would also allow access to good quality community space which would in turn encourage and strengthen communities in the area surrounding the Site.

London Plan (2021) Policy S1 – Developing London’s social infrastructure

C Development proposals that provide high quality, inclusive social infrastructure that addresses a local or strategic need and supports service delivery strategies should be supported.

In our view and that of our client, the Application will provide inclusive social infrastructure that will address a local need.

The above policies in the London Plan support the grant of planning permission for the Application. They also counterbalance any perceived non-compliance with other local plan policies.

Paragraph 5.1.10 comprising explanatory commentary to support the application and interpretation of Policy S1 reveals the relevance of the policy to the Application as it states:

“It is important to consider the way that social infrastructure integrates with other facilities and the way people who live or work in the area want to access it. Shared use and co-

1 Defined at paragraph 5.1.1 of the London Plan to include “...a range of services and facilities that meet local and strategic needs and contribute to towards a good quality of life. It includes health provision, education, community, play, youth, early years, recreation, sports, faith, criminal justice and emergency facilities. There are a wide variety of providers delivering these services, from large state-funded organisations, public and private institutions and specialist providers, to

charitable trusts, the voluntary sector, community and faith groups, and individuals”. location of facilities should be encouraged, to align service provision, use land more efficiently and facilitate opportunities for different groups of people to come together, encouraging further inclusion and community participation. Shared use and co-location will help facilities and service providers work in a more coherent and joined-up way, and share maintenance and management costs. It could reduce the need to travel thereby improving accessibility. Examples of this include schools opening their facilities out of hours for use by the community, the co-location of health and sports facilities, or the co-location of facilities with housing to ensure effective usage.”

Paragraph 5.1.11 comprising explanatory commentary to support the application and interpretation of Policy S1 further reveals the relevance of the policy to the Application as it states:

“Voluntary and community groups often find it difficult to find premises suitable for their needs. Unused or underused facilities should be brought into use, where possible, to help address these needs. The additional use or reuse of places of worship should be considered for providing accommodation for other traditions or faiths and/or wider community functions.”

We would argue that the Site and the Application provides an opportunity for an underused facility to be brought into a much needed use for a community function that will benefit a significant element of the local community. While the LPA state that there are existing facilities in the area, and thus a lack of need for the Application, the examples provided are of a wholly different scale to the Application. For example, Avanti School offers facilities for hire, but with a capacity for hundreds, with services in English rather than the minimal numbers supported by the Site where various language services could be offered, including Gujarati. The need for small venue space and services in different languages is not currently met in the area.

The second reason for refusal

London Plan (2021) Policy D3 – Optimising site capacity through the design led approach

D Development proposals should:

Experience

9) help prevent or mitigate the impacts of noise and poor air quality

For the reasons set out in this letter and those within the documents supporting the Application, we argue that there is no clear evidence that any potential noise impacts from the charity use have been clearly shown to be in excess of what could be expected from gatherings that might occur at the Site as a result of its existing C3 single dwelling residential use.

Separately and if necessary, the LPA could condition noise mitigation measures within a planning permission for the Application. The Planning Statement confirms that there will be no use of loudspeakers, no singing or chanting and minimal unstructured gathering in the garden. This is aimed at controlling any perceived potential noise increase from the Site's current use. This could be included as a condition of a planning permission.

London Plan (2021) Policy D13 – Agent of Change

We do not understand how this principle is relevant if there will not be a noise nuisance over and above what already exists at the Site.

London Plan (2021) Policy D14 – Noise

We do not understand how this policy is relevant if there will not be a noise nuisance over and above what already exists at the Site.

Harrow Development Management Policies Local Plan (2013) DM1 – Achieving a High Standard of Development

We do not understand how this policy is relevant. The only tenuous connection between the Application and this policy may relate to privacy and amenity considerations. As we do not believe that the Application will lead to a different impact to what is already existing on the Site or negative impact on amenity, this policy cannot be relevant to the determination of the Application.

Harrow Development Management Policies Local Plan (2013) DM46 – New Community, Sport and Education Facilities

B Proposals for the provision of new community, sport and educational facilities will be supported where:

a. they are located within the community that they are intended to serve;

b. subject to (a) they are safe and located in an area of good public transport accessibility or in town centres; and

c. there would be no adverse impact on residential amenity (see Policy DM1) or highway safety.

As Paragraph 6.2.7 onwards of the OR states, most of this policy is promoted by the Application.

However, a conclusion is drawn that the Application does not clearly demonstrate that the Site's proposed use will be located within the community it is intended to serve. This is a bizarre conclusion when considering the number of Hindus within the locality of the Site. The emailed letter of 5 September 2022 from the applicant, its architect and Planning Consultant makes it clear that there is a significant population within the LPA's administrative area and its surrounds that would comprise a community that would benefit from the Site's proposed charity use. Consequently, the Application promotes this policy. We trust that for the reasons set out in this letter and those contained in detail within the Application documents, the LPA Planning Committee will be minded to exercise its legal right to disagree with its officer's recommendation and grant planning permission for the Application.

If the Application is unsuccessful, our client will explore all of its available options, including but not limited to, an appeal to The Planning Inspectorate and in the event that an appeal is made, it will consider making an application for its costs due to the unreasonable behaviour of the LPA which has led it to waste costs in making the appeal.

In the event of any queries, please contact Bernard Ralph of this firm at bernard.ralph@jmw.co.uk.
Yours sincerely
JMW SOLICITORS LLP

AGENDA ITEM 10 – REPRESENTATIONS ON PLANNING APPLICATIONS

NONE NOTIFIED