



Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 23 January 2014

Subject: 13/05428/FU: Variation of condition number 4 to approval 30/213/97/FU (Hour of Opening) at 166 Shadwell Lane, Leeds, LS17 8AD

APPLICANT

Trustees of the KSI Muslim
Community Centre

DATE VALID

24 November 2013

TARGET DATE

20 January 2014

Electoral Wards Affected:

Alwoodley

Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity



Community Cohesion



Narrowing the Gap



RECOMMENDATION: GRANT PERMISSION subject to the following conditions:

1. The use of the premises as a community centre, except for the recognised festivals of Ramadhan, Amaal and Muhurram shall only be between the following hours on any day 09:30 – 23:00

For the festivals of Ramadhan, Muhurram and Amaal the community centre may be open from 08:00 hours and 00:30 hours and the premises vacated within 30 minutes of the conclusion of events related to those festivals

At the commencement of each New Year, according to the Islamic calendar, trustees to the KSI Muslim community or any person or persons fulfilling such a role, of the centre shall give written notice to the Chief Planning Officer of the approximate dates of Ramadhan, Muhurram and Amaal prayer events for that year

For the avoidance of doubt the hours of use restrictions imposed by this condition shall only apply to the community centre use and not to the flat granted permission under reference 30/213/97/FU which can be occupied unrestricted in terms of hours of use for residential purposes and uses incidental to the use of the flat as a residential unit within the site.

2. Within 2 months of the date of this permission, there shall be submitted to and approved in writing by the Local Planning Authority, a detailed management plan which shall set out the measures which will be put in place to minimise late night noise and disturbance to neighbouring properties. Such details shall include but not be restricted to such matters as signage, patrols, and controlled departures. Any such approved plan shall be implemented within one month of the date of written approval by the Local Planning Authority and thereafter maintained unless any alternative details of that plan are otherwise agreed in writing by the Local Planning Authority.

Other conditions to be brought forward from the original permission that are still relevant are:

3. The use hereby permitted shall be carried on only by the Khoja Shia Ithansheri Muslim Community of Metropolitan Leeds.
4. The proposed first floor 4 bedroom managers flat shall remain ancillary to the Community Centre and shall not be used as a separate dwelling
5. No lighting fitment shall be installed in the car parking area without the prior approval, in writing, of the Local Planning Authority and any lighting fitment shall be installed on the site in such a way that the source of light is not directly visible from nearby residential properties nor is it a hazard to users of Shadwell Lane.
6. The east elevation corridor window to the proposed first floor managers flat shall be fitted with obscure glass and retained thereafter as such
There shall be no external play area provided within the site
7. No marriage ceremonies shall take place from the premises at any time.
8. No tannoy system shall be operated on the site

1.0 INTRODUCTION:

- 1.1 This application is being reported to Plans Panel as it was previously considered by plans panel for a variation of condition which at that time was considered unacceptable as the suggested condition was not considered to meet the requirements laid out in Circular 11/95 in that the condition was not considered to be reasonable and enforceable.
- 1.2 The application has been submitted following the submission of two appeals to the Planning Inspectorate against the refusal of the earlier planning permission reference 11/04402/FU and to an enforcement notice that was subsequently served on the community management team following that decision for the breaches of the hours of operation as imposed in the original permission reference 30/213/97/FU. The appeal timetable has been deferred by the Planning Inspectorate pending the outcome of this application for planning permission.
- 1.3 The original condition on approval 30/213/97/FU, number 14 restricts the hours of opening to the following:

“The hours of opening of the premises shall be restricted to between 0900 hours and 2200 hours Monday to Friday, and 10:00 hours and 2000 hours on Saturdays and Sundays”.

Other conditions relating to occupation of the premises by the KSI community only, no marriage ceremonies and occupation of the residential flat as an ancillary occupation to the community centre were also imposed at that time.

1.4 For ease of reference the following summary is provided:

Current Hours of Operation:	Applied for Hours of Operation:	Recommended Hours of Operation
Monday to Friday: 09:00 - 2200 Saturdays and Sundays 10:00 - 2000	On Any Day: 09:30-23:00 During Ramadhan, Muhurram and Amaal and Special Events which commemorate the Birth and Deaths of the Prophets Family and the Births and/deaths of community Members: 08:00-00:30 Submission of management plan relating to special festivals only	On any Day: 09:30-23:00 During Ramadhan, Muhurram and Amaal: 08:00-00:30 Submission of a management Plan to be approved, implemented and maintained relating to all activities taking place within the community centre and not just those which extend into unsociable hours, (special festivals)

2.0 PROPOSAL:

2.1 The proposal relates specifically to the variation of Condition no. 14 of application 30/213/97/FU (Hours of opening) to a more flexible regime which takes into account the lunar cycle of the Islamic Calendar and the shifting times required for religious observances as follows:

“The use of the premises as a community centre, except for the festivals and special events referred to below, shall only be between the following hours on any day 09:30-23:00 hours.

During the festivals of Ramadhan and Muhurram and special events (which commemorate and celebrate the anniversaries of the birth and death of the prophets family and commemorations of births and/or deaths of community members) the community centre may open at 08:00 hours and shall be vacated by all attendees by no later than 00:30.

For special prayers of Amaal the community centre shall be vacated within 30 minutes of conclusions of prayers.

At the commencement of each new year, according to the Islamic calendar, the management committee of the centre shall give (sic) written notification to the Chief Planning Officer, or any such alternative Officer of the Council fulfilling such a role, of the approximate dates of festivals, special events and Amaal prayer events for that year.

For the avoidance of doubt the hours of use restrictions imposed by this condition shall only apply to the community centre use and not to the flat granted permission under reference 30/213/97/FU which can be occupied unrestricted in terms of hours of use for residential purposes and uses incidental to the use of the flat as a residential unit within the site.

Additional Condition 14 A

Within 2 months of the date of this permission, the management committee shall submit to the Local Planning Authority a detailed management plan which shall set out the measures which will be put in place to minimise late night

noise and disturbance to neighbouring properties during the extended opening hours of Ramadhan, Muhurram Amaal and special events. Once approved in writing by the Local Planning Authority the management plan shall be implemented by the Trustees of the community centre during these events, unless any alternative details of that plan are otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of amenity

2.2 The Community are seeking this variation as their operations which are largely dictated by the Islamic Calendar does not comply with the currently imposed condition and they therefore find themselves in breach of the restricted hours of operation imposed under the original approval. They are seeking to reach some compromise which will relax where necessary the hours of operation but keep the restrictions at other times which are reasonable and necessary in the interests of neighbours amenity.

3.0 SITE AND SURROUNDINGS:

3.1 The site relates to a large detached property which fills almost the full width of the plot within which it sits. It is currently in use as an Islamic community centre for Islamic educational and religious purposes, activities which take place include regular prayer meetings, lectures, education and ancillary activities. It also contains a flat where the incumbent resident Imam and his family live. Car parking and amenity space is provided to rear of the building. The parking area shares a boundary with neighbouring residential properties which front onto Shadwell Lane to the South West and the Ring Road, Shadwell to the South East. To the North East sharing a common boundary with the application site is a Jewish community centre. The site is located in an area which is wholly residential on the South side of Shadwell Lane up to this property. The uses then give way to a variety of community orientated uses. On the opposite side of Shadwell Lane and to the North and North West are a medical centre and synagogue respectively. To the South and fronting the Moortown Ring Road are further residential properties.

3.2 Shadwell Road contains a number of other community and religious based properties and these are generally purpose built buildings in large plots where there exists significant space around the buildings and the sites boundaries.

4.0 RELEVANT PLANNING HISTORY:

4.1 Since the approved application in 2001 of the above mentioned application 30/213/97/FU there has been no relevant planning application history relating to hours of operation. Other developments have included minor modifications to that approval in relation to the building works and the recent refusal under reference 11/04402/FU which was determined on 12 July 2013.

4.2 In 2008 a Breach of Condition Notice was served on relevant people responsible for the management of the community centre for the breach of the hours of operation condition which at the time appeared to have the desired effect as no further complaints of breaches were received for a time.

4.3 It was in 2010 that further complaints were received from local residents as to further alleged breaches of the hours of opening condition which led to the submission of the application reference 11/04402/FU

- 4.4 Also during 2011 an application was received and approved for a conservatory with external access ramp and glazed link to rear which was granted approval on 11 February 2010. This proposal has been commenced, but as yet not completed.
- 4.5 Following the refusal of planning application 11/04402/FU on 13 June 2013 a further enforcement notice was served which required:

“To comply with condition 14

Not to permit the premises to be open for use except between the hours of 0900hours to 2200 hours Monday to Fridays and 1000 and 2000 hours on Saturdays and Sundays.

The time for compliance was one week from the date that the notice took effect and the date that the notice took effect was 29 August 2013, unless an appeal was made against it.

- 4.6 In order to safeguard their interests, given the serving of the most recent enforcement notice the KSI Community have lodged two appeals against the decisions of the Council. One against the refusal of planning permission for the change of hours of operation (application reference 11/04402/FU) and one against the requirements of the enforcement notice as served. Pending the negotiations which are expanded upon below and the determination of this application the Inspectorate has agreed to hold these appeals in abeyance until February 2014. If an agreed compromise can be reached under this application, those appeals will be withdrawn by the KSI Community otherwise they will be determined in due course by the Planning Inspectorate.

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 Following the refusal of planning permission in relation to application 11/04402/FU, officers were invited to meet representatives of the community centre in order that their requirements as a community could be better understood and a suitably worded condition could be drafted that would be acceptable to all parties. It was recognised that such a condition would need to be flexible enough for the shifting nature of the Islamic calendar and restrictive enough to minimise the impact of the activities of the community on the amenities of occupiers of surrounding neighbouring properties. Any substituted condition would also need to be enforceable in the case of any future breaches of planning control. These premise' formed the foundation of the meeting held.
- 5.2 A presentation was made to officers, by the community representatives who explained that they constitute a small Islamic Sect which migrated from Africa to Leeds in 1973 and established the Khoja Shia Ithna-Asheri Muslim Community of Leeds. Prior to that their community was based in Africa following a migration from Western India (the Gujerat), during the 1930's to 1940's. The sect is Shia in nature having been formed during the 19th Century during the period of Agha Khan 1. They then expanded on the Islamic calendar and that it is based on the lunar cycle, therefore the regular festivals shift year to year so that a festival such as Ramadan will slowly shift through the western calendar year on year. They explained that this will over time have implications for the timing of their events as over the year sun set times vary and it is this which dictates when they hold their various religious activities such as the commencement and cessation of prayer times and times of fasting.
- 5.3 It was explained that because of this when these festivals fall within the winter months, sunset is earlier in the day and therefore the need to be assembled at the

community centre later in the day and into the late evening does not exist. However, when these festivals fall at the height of summer, the need to be assembled for the end of fasting and the giving of prayers falls later in the evening, even pushing towards the early hours of the morning.

- 5.4 The community representatives also explained that Ramadhan, Muhurram and Amaal are their major festival events throughout the year.
- 5.5 In return officers explained to the community representatives that notwithstanding their activities it was the role of the Local Planning Authority to seek to control, inter-alia, where necessary any activities that might cause disturbance generally but in particular to occupiers of nearby residential properties and also matters of highway safety.
- 5.6 A discussion was then held around detailed hours of operation and the possibility, as suggested by officers, of the implementation of a management plan which could also be conditioned as part of any future application to make sure that activities on the site following meetings were controlled in a more neighbour friendly way.
- 5.7 In the intervening time officers have been liaising with the applicant's agent to fine tune the possible conditions to be imposed and the latest suggestion from the applicants is the one found in paragraph 2.0 of this report.

6.0 PUBLIC/LOCAL RESPONSE:

- 6.1 The application has been advertised by means of individual letters sent to neighbouring properties; this includes 24 individual addresses on Shadwell Lane and Moortown Ring Road. A site notice has also been posted in the vicinity and the time for expiry for these various forms of publicity expires on 27th December 2013.
- 6.2 Ward Members have also been informed of the proposal. No comments have been received from Ward Members.
- 6.3 At the time of writing, 9 letters of representation 4 of which are from one property, have been received from occupiers of nearby residential properties. Issues raised in those representations relate to the following:

Allowing longer hours would be antagonistic
Longer hours would impact on the amenities of the area
Longer hours would impact on highway safety
Fairness to the local residents must be an overriding consideration
Next stage will be the conversion of the property to a Mosque
Latest application is a delaying tactic
Activity within the site is a breach of a clause on the deeds relating to causing nuisance to neighbouring properties
This community centre should be treated the same as the others in the vicinity.
The grant of planning permission originally breached residents human rights
Any building which has people using it until 4:00 am is unreasonable and not fit for purpose.
The KSI Community continue to show "no respect" to the occupiers of the neighbouring properties.
That they fail to keep to the existing time restriction means they won't keep to any "relaxed" time restriction and to allow such a relaxation would be 'insanity'.
Members of the community have shown hostility towards residents
Concern raised for future occupiers of a nursing home nearby.

7.0 CONSULTATIONS RESPONSES:

7.1 Neighbourhoods and Housing: Objection received which is based on the same objection submitted for the previously refused application which is summarised as follows:

“It is this Department’s concern (being mindful of the fact that residential properties lies adjacent to the application premises), the proposed hours of use of the premises until midnight and beyond midnight on special festivals and ceremonies, this will result in the premises being used more intensively. This will generate more vehicles and visitors on site and will have significant adverse impact on the adjoining residential properties in terms of sleep disturbance caused by arrival and departure of vehicles , revving engines, banging and slamming doors, car stereos and possibly car alarms and human voices.

Hence in conclusion the proposed variation of condition is likely to give rise to unacceptable levels of noise and sleep disturbance to occupiers of nearby residential properties. It is, therefore recommended that this application be refused”

7.2 Highways: An objection to the relaxed opening hours in the morning has been received on the grounds that it will conflict with the peak traffic flow in the morning.

8.0 PLANNING POLICIES:

8.1 The development plan comprises the adopted Leeds Unitary Development Plan (Review 2006) (UDP) and the Natural Resources and Waste DPD along with relevant supplementary planning guidance and documents. The Local Development Framework will eventually replace the UDP but at the moment this is still undergoing production with the Core Strategy still being at the draft stage.

8.2 The Publication Draft of the Core Strategy was issued for public consultation on 28th February 2012 and the consultation period closed on 12th April 2012. The Core Strategy sets out strategic level policies and vision to guide the delivery of development investment decisions and the overall future of the district. On 14th November 2012 Full Council resolved to approve the Publication Draft Core Strategy and the sustainability report for the purpose of submission to the Secretary of State for independent examination pursuant to Section 20 of the Planning and Compulsory Purchase Act 2004. Full Council also resolved on 14th November 2012 that a further period for representation be provided on pre-submission changes and any further representations received be submitted to the Secretary of State at the time the Publication Draft Core Strategy is submitted for independent examination.

8.3 The independent examination was undertaken by the Secretary of State in the Autumn of 2013, and whilst there were findings through that procedure that found some of the policies were not sound, these findings do not relate to any policies that would have a bearing on this proposal. It is expected that the Core Strategy, once modified in accordance with the recommendations made by the Secretary of State’s Inspector, will be adopted in the Spring of 2014.

8.4 UDP Policies:

SA1 seeks to ensure the highest possible quality of the environment throughout the district through protecting existing good environments and seeking to enhance areas of poor environment.

GP5 - Seeks to resolve issues relating to planning at the application stage.

TP2 – Seeks, inter alia, to ensure that development proposals are adequately served by public and alternative means of transport to reduce reliance on the private motor car.

8.5 National Planning Policy Framework

This document sets out the Government's overarching planning policies on the delivery of sustainable development through the planning system and strongly promotes good design. It is considered that there are no specific statements within the NPPF that directly relate to the issue of this proposal.

8.6 Other Advice from Central Government:

The advice on conditions found in circular 11/95 Conditions, is of direct relevance to this case in respect of the 6 tests for the imposition of conditions on planning permissions; these are;

- i. necessary;
- ii. relevant to planning;
- iii. relevant to the development to be permitted;
- iv. enforceable;
- v. precise; and
- vi. reasonable in all other respects.

9.0 MAIN ISSUES

9.1 The main issues in respect of this proposal are:

- 1) The principle of the relaxation of the hours of operation condition
- 2) The impact of the extended opening hours on the living and residential amenities of occupiers of nearby residential properties. Including implications where necessary of the duty of the Council to have regard to equality under section 149 of the Equality Act 2010
- 3) Highway safety.
- 4) Other issues raised by neighbours

10.0 APPRAISAL

The principle of the relaxation of the hours of operation condition

10.1 Members will recall from the previous report relating to a revised condition relating to hours of opening that Environmental Health had undertaken noise monitoring during Ramadhan 2012 and the conclusions appear to suggest that the disturbance suffered by a local neighbour was as a result of noise from a source other than the community centre. This monitoring was undertaken with the knowledge of the community centre although specifics on days and times of the monitoring were not known to them.

10.2 The survey was carried out to a "Statutory Nuisance" level which is a much higher test than "disturbance" and on the basis of that report environmental health officers were prepared to support the refusal of planning permission to extend the hours of operation of the community centre. (It should be noted that the report does not clarify if any of the vehicular noise recorded is as a result of generalised road traffic or specifically from vehicles connected with the community centre). This is still the stance of those officers as expounded above. That said, officers consider that such a defence on the basis of the findings of the survey, notably that the source of noise disturbance appeared to emanate from sources other than the community centre itself, would be difficult to defend at appeal, in that the road traffic noise was from the public highway rather than from the private car parking area of the community centre.

It would be argued that as the only noise monitoring that has been undertaken is that by qualified officers of the council has shown that it is nearby noise from the highway that coincides with the disturbance of the occupier of the neighbouring property that the allegations of disturbance from activities at the centre cannot be easily justified. It is considered that this leaves the Council in a weak position in this regard. The report which identifies that the source of noise as “road traffic noise” and that “noise from voices was quiet and infrequent so as to be considered insignificant” supports this stance. On this basis it is considered that under the Equality Act 2010, to justify a refusal of planning permission on these grounds would be seen as acting contrary to the requirements Equality Act as presently the restriction imposed on “similar” community centres are more relaxed than those presently endured by the KSIM community, (see following paragraph).

- 10.3 Other community type centres exist in the near vicinity that also have sensitive relationships to existing residential properties and they operate into the late evening. The synagogue on the opposite side of the road has a restriction till midnight imposed on it and the community centre next door to the application site at number 168 Shadwell Lane has no hours of operation condition imposed upon it (although it does not share a common boundary with residential properties either). This appears to be significant in terms of the weight to be placed on the current decision in terms of equality of opportunity. The relationship of the various centres to sensitive neighbouring land uses is very similar albeit the sizes of the synagogue site and the application site are significantly different with the Synagogue site been much larger, and therefore regard has to be had to this in the decision making process.
- 10.4 Clearly the restricted hours imposed on the original planning approval do not meet the needs of the KSI community and whilst the needs of the community itself are not preeminent over the expectations of other sections of the community they are material both in planning terms and in equality of opportunity terms.
- 10.5 When considering the proposal it needs to be borne in mind that the development under consideration is a one relating to a lawful activity which has, in principle, been endorsed by The Council in this location through the original grant of planning permission. It also needs to be borne in mind that whilst there is an existing condition imposed on the original planning permission in an attempt to control the hours of operation of the centre, the wording of this condition is not as precise as it might be and covers the whole of the premises and all of the activities that take place within it. Given this is the case, by the “letter” of the condition, even occupation of the residential element of the community centre is restricted which is clearly undesirable and un-intentional. There is therefore already an advantage in amending the condition from its present wording to something more precise which will hopefully meet the requirements of the community and achieve the goals of the Planning Authority.
- 10.6 It is therefore considered that in principle the revision of the condition restricting hours of operation is acceptable subject to certain safeguards which are discussed further in the report.

The impact of the extended opening hours on the living and residential amenities of occupiers of nearby residential properties.

- 10.7 The key element in this proposal is the impact that the usage of the premises has on the amenities of occupiers of nearby and adjoining residential properties. These amenities of course are to be protected and the activities undertaken at the community centre undertaken in such a way that they minimise the impact on those amenities. A large part of achieving that aim will be to have in place an enforceable

restrictive condition which allows certain and predictable relaxations to the operations of the community centre whilst restricting the hours at other times throughout the year. Having studied the suggested condition in detail Officers have some concerns over the suggested wording and so by breaking down the parts of the condition as presently suggested by the applicants the following comments and recommendations are made should plans panel be mindful to grant planning approval:

“The use of the premises as a community centre, except for the festivals and special events referred to below shall only be between the following hours on any day 09:30 – 23:00”

- 10.8 The part of the condition will allow the generalised use of the centre for extended opening hours up to 11pm.
- 10.9 The site is located in a mixed use area which to its South and West gives way to wholly residential accommodation. It appears that most of the disturbance that is ‘suffered’ by occupiers of the neighbouring properties is as a result of the activities within the car park and on the highway following the closure of the community centre. Therefore the use of the community centre until 11pm should not in and of itself cause material disturbance to occupiers of those properties. Also the impact of activities outside of the building itself is sought to be controlled by a different part of the condition as discussed below. It should also be noted that this will be an hour less than the nearby synagogue (United Hebrew Congregation), which is restricted till 00:00 (midnight) and that condition relates only to social activities.
- 10.10 One area of concern that the wording of this part of the condition does raise however is the inclusion of “special events referred to below”. The discussions with the applicants focused mainly on the established religious festivals which are predictable, these being Ramadhan, Amaal and Muhurram. As will be seen in the discussion below there is a reference to wider less predictable events in the suggested condition which is considered unacceptable and removes a large element of the preciseness required to make the revised condition acceptable.
- 10.11 It is therefore recommended that this part of the revised condition reads:
- “The use of the premises as a community centre, except for the recognised festivals of Ramadhan, Amaal and Muhurram shall only be between the hours of 09:30 – 23:00 on any day”.**
- 10.12 The condition then seeks to deal with special events by suggesting the following:
- “During the festivals of Ramadhan and Muhurram and special events (which commemorate and celebrate the anniversaries of the birth and death of the prophets family and commemorations of births and/or deaths of community members) the community centre may open at 08:00 hours and shall be vacated no later than 00:30.
For the special prayers of Amaal the community centre shall be vacated within 30 minutes of conclusions of prayers.”*
- 10.13 The festivals themselves in the case of Ramadhan and Muhurram last for 30 days. Amaal consists of individual days that mostly fall within the other festivals with only two days of Amaal falling outside of the two 30 day festivals of Ramadhan and Muhurram. The concerns relating to this part of the re-worded condition relate specifically to the widening out of the restriction to celebrations/commemorations which are not so predictable and very much open ended. The restriction, it is

considered should only allow a relaxation of operating hours to those festivals that are predictable such as Ramadhan, Muhurram and Amaal.

10.14 Communities such as this are dynamic overtime growing and shrinking depending upon their proselyting activities and natural birth and death rates. It is however accepted that the KSI community is a relatively small sect within the Islamic tradition. (Its membership has maintained approximately 56 families across the region during its time in West Yorkshire), Whilst it is acceptable to celebrate/commemorate events such as births, deaths and marriages, it is not considered appropriate that the wording of this condition should seek to encompass all of these events as eventually the condition would potentially apply to the extended hours of operation over 365 days of the year. This is therefore considered unreasonable and unenforceable as a detailed account of members of the community would need to be maintained by the Local Planning Authority to make such a restriction meaningful. This is clearly inappropriate.

10.15 In addition the separation of the festival of Amaal and the birth and death of the prophet's family is unnecessary as they relate to the same thing. It is therefore considered that this part of the condition which will allow a relaxation to extend the operating hours of the community centre should read thus:

“For the festivals of Ramadhan, Muhurram and Amaal the community centre may be open from 08:00 hours and 00:30 hours and the premises vacated within 30 minutes of the conclusion of events related to those festivals”.

10.16 This element of the condition will also be subject to the suggested additional condition 14a discussed below.

10.19 The next part of the condition seeks to deal with tracking the moving festivals through the calendar and is suggested to be worded by the applicants as:

“At the commencement of each new year, according to the Islamic calendar, the management committee of the centre shall given(sic) written notice to the Chief Planning Officer, or any such alternative officer of the Council fulfilling such a role, of the approximate dates of festivals, special events and Amaal prayer events for that year.”

10.17 Given the discussion above relating to the “special events” which is considered too wide ranging and imprecise it is suggested that this part of the condition be re-worded to say:

“At the commencement of each New Year, according to the Islamic calendar, the management committee, or any person or persons fulfilling such a roll, of the centre shall give written notice to the Chief Planning Officer or any such alternative officer of the Council fulfilling such a role, of the dates of Ramadhan, Muhurram and Amaal prayer events for that year.”

10.18 The date of notification to the Chief Planning Officer cannot be pinned down to a specific date in the Gregorian calendar as the New Year according to the Islamic Tradition shifts according to the lunar cycle also. However, notwithstanding this it is still predictable based on that Lunar cycle so should this condition not be adhered too, the relevant dates can be ascertained by officers and the notification of the festivals for the forthcoming Islamic year can be requested.

10.19 The removal of the “special events” phrase will remove the “open-endedness” of the original draft and introduce a degree of precision lacking as a result of its inclusion as

will the reference to approximate as the lunar cycle will be identified within one or two dates of the prediction anyway depending upon the sighting of the moon at the relevant time of year.

10.20 Under planning, the holding of one or two “special event” type activities would probably not constitute a breach of the terms of the condition and so for very special and unforeseeable occasions special events that might technically breach the wording of the condition could still take place. This is not unlike a school holding an evening event when their normal hours of operation mean that activities on the site cease much earlier in the day and many other such examples. However it still leaves the option for the Council to assess the regularity and intensity of these special events as a matter of fact and degree to pursue action against the KSI Community trustees if it is found expedient to do so at any particular time. Having the generic phrase “special event” included in the wording of the condition would remove this ability as every event that occurred outside the terms of the condition could then be defined as a “special event”. It is considered that the condition whilst requiring a degree of complexity is made as clear and simple as possible in the exceptions that it will allow.

10.21 The final part of the condition is suggested to read:

“For the avoidance of doubt the hours of use restrictions imposed by this condition shall only apply to the community centre use and not to the flat granted permission under reference 30/213/97/FU which can be occupied unrestricted in terms of hours of use for residential purposes and uses incidental to the use of the flat as a residential unit within the site.”

10.22 This is considered acceptable in that it clarifies the limitations of the condition and removes any ambiguity that the currently imposed condition might cause due to its over-simplistic wording. The inclusion of this clarifying statement will simplify any action should it need to be taken through compliance in that it makes clear that the residential element to the development is capable of being occupied as any other residential unit of accommodation is, 24 hours a day 7 days a week 365 days a year.

10.23 During the negotiations with the community representatives it was discussed that a management plan might be useful in helping the Local Planning Authority come to a positive conclusion on any revision of the condition originally imposed. This is because as referred to earlier, it appears that any disturbance that is caused to occupiers of adjoining residential properties is not necessarily as a result of the actual activities that take place within the building itself but rather from the uncontrolled activities that take place within the curtilage of the property and on the public highway following the festivals.

10.24 Members will already have seen that the first part of the condition, above, seeks to help control this by making sure that after the activities have formally ceased and the premises vacated within 30 minutes. This has two opposing impacts, firstly it is hoped that it will encourage attendees to leave the property as a whole quicker than might otherwise be the case and therefore within a more reasonable time period than an uncontrolled evacuation of the building might lead too, but it does have the potential of then ‘forcing’ potentially unsociable activities outside the building into the very location where they are more likely to cause disturbance to occupiers of surrounding properties.

10.25 In order to offer a degree of control over this it was suggested that a management plan be submitted and subject to the revised condition in order that the Local Planning

Authority can control this potential source of disturbance. Presently the wording of this part of the condition is suggested as follows:

“Additional Condition 14 A

Within 2 months of the date of this permission, the management committee shall submit to the Local Planning Authority a detailed management plan which shall set out the measures which will be put in place to minimise late night noise and disturbance to neighbouring properties during the extended opening hours of Ramadhan, Muhurram Amaal and special events. Once approved in writing by the Local Planning Authority the management plan shall be implemented by the Trustees of the community centre during these events, unless any alternative details of that plan are otherwise agreed in writing by the Local Planning Authority.”

- 10.26 The aim of this management plan from the applicant's point of view is to not only be seen to be good neighbours but to act that out so that their activities minimise disturbance to occupiers of neighbouring properties. It is therefore the view of officers that this part of the condition should not just be restricted to the regular festivals and special events which are the exception to the standard opening hours should this planning permission be successful, but that this management plan needs to incorporate the entirety of the activities held in this premises (excluding the residential element). The requirements for a management plan should show how through controlled departure, patrols, signage etc., the Community will put in place a scheme that will minimise noise and disturbance even during the regular meetings where the calendar means that they are likely to end during more unsociable hours than otherwise might be the case. To this end the following revisions are recommended:

Within 2 months of the date of this permission, there shall be submitted to and approved in writing by the Local Planning Authority, a detailed management plan which shall set out the measures which will be put in place to minimise late night noise and disturbance to neighbouring properties. Such details shall include but not be restricted to such matters as signage, patrols, and controlled departures. Any such approved plan shall be implemented within one month of the date of written approval by the Local Planning Authority and thereafter maintained unless any alternative details of that plan are otherwise agreed in writing by the Local Planning Authority.

Highway Safety.

- 10.27 The concerns expressed from a highway safety perspective relates to the increase in potential activity to and from the site particularly during the early morning rush hours due to the extension of opening times in the morning. Whilst this is acknowledged, the site does benefit from a reasonably generous off street car park and it is highly unlikely that there will be significant additional vehicles that lead to on street car parking as a result. Therefore the issue of highway safety relates to the potential intensification of use of the access and egress between the hours of 08:30 – 09:00 and 10:00 (09:00 being the current permitted opening time weekdays and 10:00 being the permitted opening time at weekends), during normal usage and 08:00 – 10:00 and 09:00 during special festivals. Whilst any intensification of use is to be considered carefully, the scale of the community centre is not such that huge volumes of traffic are likely as a result of this increase in hours of operation and in the main it would be expected that the vast majority of vehicular movements would be into the site rather than egressing from it during peak traffic times, as people would be attending the premises earlier to leave later in the morning. It is not considered therefore that the impact on issues of highway safety would be sufficient to justify a refusal of planning

permission. Also the KSI community is a relatively small Islamic sect that has remained at its current levels of 'membership' during its lifetime in this property. The original planning permission under application 30/213/97/Fu also includes a condition that restricts the use of this property to that of the KSI community, rendering the permission a 'personal' one and thus should the KSI community ever vacate this property any other use by a religious organisation would either need a fresh application for planning permission or the removal of that condition from the original approval.

Other issues raised by neighbours

- 10.28 Many of the issues raised by the local residents as a result of the neighbour consultation exercise have been addressed in the body of the report as they relate to matters of amenity. Other issues raised by neighbours are not material planning considerations upon which a planning decision can be based. Issues of 'fairness' are influenced by the needs and desires of any particular community and in this case the needs of the applicant have been assessed by officers and recommendations made. Members will note from the contents of this report that the recommended amendments to the wording of the condition originally submitted by the applicants will not allow them the "free reign" that members of the public are concerned about nor will it be so restrictive as to not recognise the community's needs, (a factor also to be considered as a result of the Equality Act 2010).
- 10.29 The issues relating to the clause on the property deeds is a civil issue which can be taken up by those who are party to those clauses. They neither negate nor influence the issues that are material to planning cases and are a further vehicle that neighbours have open to them to pursue should they so wish in attempts to influence the activities of the KSI community.
- 10.30 The change of use to a Mosque is something of a moot point, in that as a community centre the activities that are undertaken in the building are not only of an educational slant but also religious too. Regular prayer meetings are held in the property and are a part of the community's activities that have been undertaken within the building since its initial occupation.
- 10.31 Fairness to the local residents must be an overriding consideration is not how the planning system works, as members will be aware it is the function of the planning system that it strives to balance the various needs of varying communities that live "cheek by jowl" in reaching a compromise on development proposals. As stated earlier in this report the principle of the KSI using this building as a community centre has been previously endorsed by the Council and as the results of that decision initially do not meet their needs resulting in a regular breach of planning control, because it that decision did not appear to take full consideration of the needs of the community at that time, a compromise needs to be reached.
- 10.32 Latest application is a delaying tactic; This may or may not be the case however an application has been submitted to the Council for determination and the Council is duty bound to determine that application.
- 10.33 This community centre should be treated the same as the others in the vicinity; This is true to a degree, but the Council would not be fulfilling its duty fully as a planning authority if it did not make decisions based on the needs of the community who are occupying the premises. It is still possible that members are of a mind to refuse the proposal by concluding that the needs of local residents outweigh the needs of the

KSI community but the compromise offered in this report still needs to be fully considered by plans panel before coming to that conclusion.

- 10.34 The grant of planning permission originally breached residents' human rights; it is difficult to expand on this objection in that the British planning system has been tested against the Human Rights legislation a found to be in compliance with it through various test cases.
- 10.35 Various comments relating to the alleged antagonistic behaviour of various members of the community are noted but are not a material planning consideration.

11.0 CONCLUSION

- 11.1 The present situation in regards of the permitted hours of operation at the KSI community centre are clearly unworkable for them and do not meet the needs of the community nor the aspirations of the Council in having clear, precise and enforceable conditions imposed on the planning approval. The premises has been endorsed by The Council as one which in principle is acceptable as an Islamic community centre through the original grant of Planning Permission and various other conditions are in force which contribute to the protection of the amenities of occupiers of surrounding residential properties such as the use of the premises by the KSI community alone. Therefore some acceptable compromise needs to be reached regarding the hours of operation for the religious and educational activities given the moveable nature of the main festivals of the KSI Islamic Community. The considerations and recommendations in this report are considered to be an acceptable compromise between the competing aspect of the needs of the occupiers of this site and the occupiers of the surrounding residential properties.

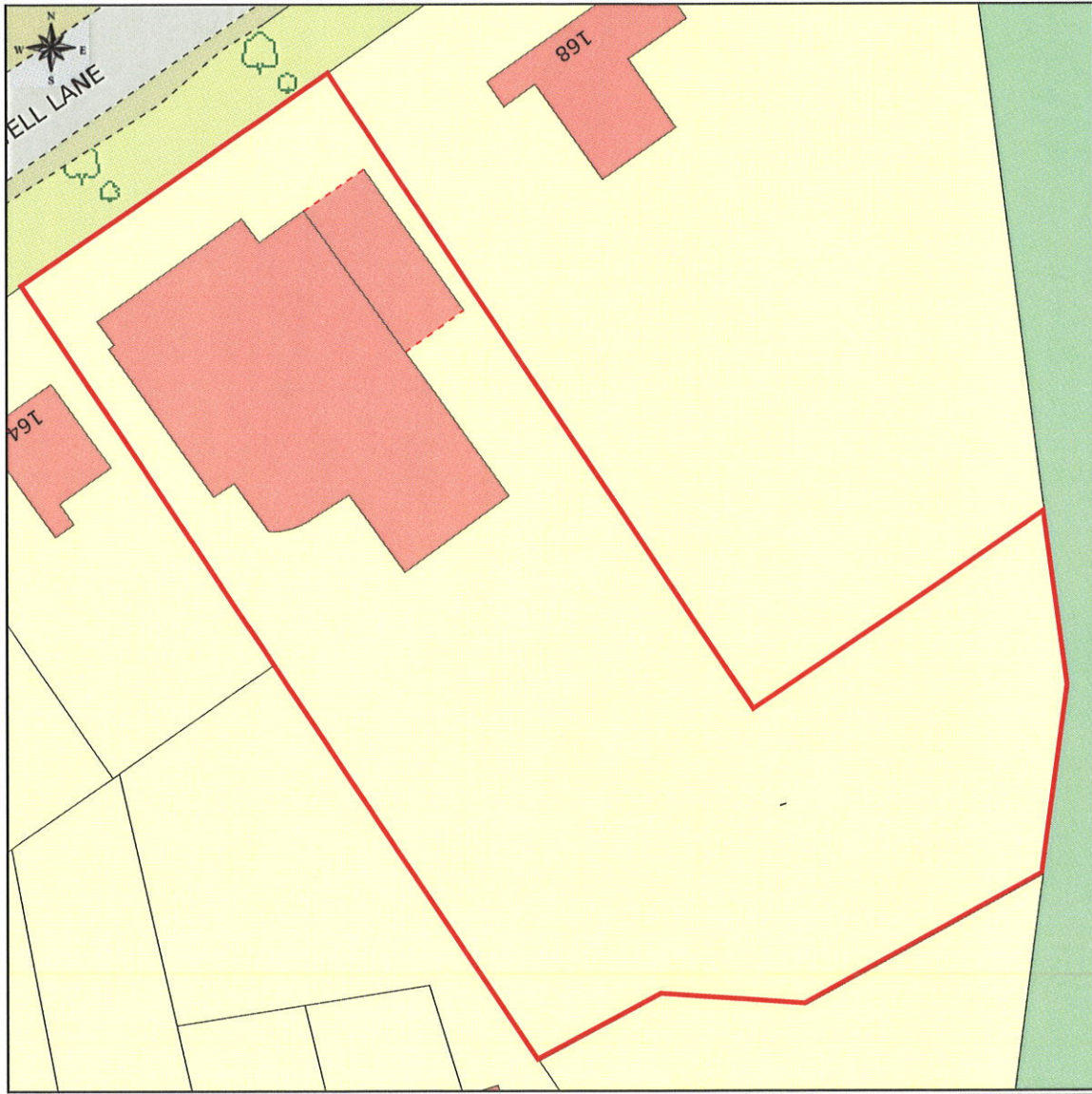
Background Papers:

11/00226/NCP – Compliance Case

11/04402/FU – Planning Refusal

30/213/97 – Grant of original planning permission

Ownership certificate signed on behalf of applicant as owner of application site.



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