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## **PLANS PANEL South & West**

**Date: 16 June 2017**

**Subject: Report on the decision of the Planning Inspectorate to allow permission for the erection of a mixed use development comprising sports hall, teaching and community facility with associated offices and ancillary facilities and the change of use of office building for temporary community use during building works at 49 Barkly Road, Leeds, LS11 7EN (known as the Ice Pak site).**

**Application Reference: 14/06007/FU**

**Appeal Reference: APP/N4720/W/15/3138176**

**Public Inquiry held 28 – 30 March 2017.**

**Site visit undertaken 30 March 2017.**

**Decision Issued: 12 June 2017.**

### **Background and Main Issues**

This was an appeal against non-determination and consequently the application was reported to Plans Panel on 18<sup>th</sup> February 2016 where the decision was made to fight the appeal on the grounds of residential amenity impact due to noise, concerns about overspill parking, the control of harmful impacts through conditions, and the vagueness of the nature of the use.

The Inquiry was attended by the two main parties, the Council and the Appellants, as well as a number of Interested Persons including representatives from St Anthony's Primary School, Beeston Community Forum, Save Our Beeston and local residents.

Following consideration of all the issues the Inspector determined that the main issues for the appeal were as follows:

1. Whether the scale and range of facilities had been considered in conjunction with the level of need within the local community, with regard to Policy P9 of the Core Strategy.
2. Effect of the proposal with regard to traffic generation and highway safety and the level of off-street parking.
3. The effect of the proposal on the living conditions of neighbouring residents with particular regard to noise and disturbance and whether such impacts can be controlled through conditions.

### **Issue 1 – Scale and Range of Facilities**

The Council's concerns stemmed from a lack of information submitted by the applicants as to the exact nature of the uses and the level of use. This lack of information led to concerns that the use would be available to a large geographical area, with potential for large-scale

functions. The appellant maintained that the use was for a local, multi-faith facility, and that plans to hold annual faith-based events had been moved to John Charles Sports Centre so would not be held on site.

The Inspector considered that the appellants had undertaken an assessment of local community needs including a review of population census data as well as undertaking community consultation events which included engagement with local sports clubs. He considered that policy P9 does not require all local community members to use a community facility and that the premises would be available to all sections of the community, as well as bringing health and social benefits to the area.

Much consideration was based around the potential use of the building for Friday prayers which was likely to be the time of peak use of the building. The Inspector however was satisfied that the level of need in the local area, both from residents, and from Muslims working in the area, would be acceptable and had been fully considered by the appellants.

## **Issue 2 – Effect on Traffic Generation**

The Council's concern was not with the ability of the highway network to absorb traffic generation but was related to potential increase in on-street parking. The Council considered that, due to the lack of information, the building could potentially be used by up to 1,123 people, resulting in a clearly inadequate level of on-site parking (160 spaces). The Inspector however considered this to be a purely theoretical exercise and that no analysis of the likely trip generation based on the proposed mix of uses had been undertaken by the Council.

The appellant's highway analysis estimated that maximum patronage would be 258 people, likely to be on a Sunday when all rooms were in use. Outside of that the level of use was estimated to be much lower. The Inspector considered therefore that the level of parking on-site was sufficient.

The impact on parking during Friday prayers was discussed, the appellant put forward a figure of 250 people during this time which the Council had no evidence to disprove. From this maximum figure, plus staff, it was estimated that 308 was the maximum attendance likely to be generated by the uses. The Council accepted that at this level the amount of parking was adequate. The Inspector however felt that this did not take account of the potential for different parts of the building to be used concurrently, and that the maximum anticipated figures provided by the appellant were somewhat arbitrary, and that there was a real possibility that the building could be occupied by significantly more people.

The appellant put forward a number of conditions that would limit the number of people in the building at any one time, and for a scheme for recording the number of people. The Council did not agree that such conditions were reasonable, or enforceable, and this was also pointed out by Rule 6 Parties. The Inspector however took a different view and felt that such conditions were necessary, would meet the tests of paragraph 205 of the NPPF and that by requiring a scheme for recording to be submitted the Council would be able to satisfy itself as to the level of detail and the usefulness of any scheme put forward. The suggested conditions were therefore deemed to be practical and enforceable.

## **Issue 3 – Effect on Residential Amenity**

The main issues around residential amenity stemmed from noise, noise from traffic movements, from patrons, from the call to prayer and from any plant or equipment that was needed. Prior to the appeal the appellants had submitted a noise survey and the Council commissioned a review of this. It was therefore agreed by both parties that noise issues

could be mitigated against through the use of conditions. The Inspector agreed with this approach.

## **Other Matters**

The Inspector also considered issues such as the impact on air quality, as put forward by Save Our Beeston, the visual improvements to the site, construction issues, contamination, and the impact of excavations etc. He did not find that these matters could not be adequately dealt with through conditions or other Legislation.

## **Conclusion of the Inspector**

The Inspector found no conflict with policies in the Development Plan, and that the proposal would bring social, economic and environmental benefits to the area. The identified harm in terms of potential for traffic generation and noise issues were not considered to outweigh the benefits, and that therefore the proposal did represent sustainable development and consequently permission was granted subject to conditions.

## **Conditions**

In total 25 conditions were applied which included the following in particular:

- Building not to be occupied by more than 308 people at any one time and an electronic register to be kept recording the number of occupants.
- A scheme for recording the numbers of people in the building to be submitted for approval.
- Use limited to hours of 0800 to 2200 (seven days a week).
- Community Use Agreement to be submitted and approved.
- Construction Method Statement.
- Requirement for sound insulation.
- No amplified music to be played on site, or amplified calls to prayer.

There were a number of other conditions that cover issues such as setting out of parking, access requirements, contamination, landscaping etc. Many conditions reflect the need for the appellants to utilise one of the buildings on site for temporary provision of uses whilst the rest of the buildings on site are converted.

## **Costs Application**

The appellants sought a partial award of costs, on the grounds of unreasonable behaviour causing the Appellants to expend money to cover the issue of noise. The Council decided to oppose the appeal on grounds that included the scheme having an adverse impact on residents by virtue of noise. In the councils Statement of Case it was noted that evidence would be provided by a noise consultant. The Council did not seek a noise assessment from the appellant, nor did Environmental Health officers raise objections to the scheme. The appellants therefore felt that the Council alleged harm would arise but did not substantiate the allegation causing the appellants to commission a noise expert to prepare a proof of evidence. The Council responded to this by stating that there was a potential for harm arising, and that the reason a noise report had not been requested was due to fundamental concerns regarding other matters. Furthermore third parties were intending to raise noise as an issue at the appeal and consequently the appellant would have had to address the matter regardless.

Whilst the Inspector was critical of the lack of a request for a noise survey by the Council, he did also find that the Council was reasonable to seek further information in regard to the level

of use. He also found that the Council was not unreasonable to raise concerns over suggested conditions that would deal with issues of the level of use, and this would clearly relate to potential for noise and disturbance. It was therefore reasonable for the Council to raise noise as an issue at the time the appeal was submitted and that the appellants were not unduly required to provide noise information. He also found that the Council responded promptly once noise information had been submitted which resulted in noise matters being agreed, between the two main parties, prior to the Inquiry.

Consequently the Inspector was satisfied that the Council did act reasonably in raising noise as an issue, and that there were no grounds for an award of costs.