



Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 11 July 2013

Subject: 11/04402/FU – Variation of Condition number 14 of application No. 30/213/97/FU (hours of opening) at 166 Shadwell Lane, Leeds, LS17 8AD.

APPLICANT

Trustees of the KSI Muslim
Community Centre

DATE VALID

18th October 2011

TARGET DATE

13th December 2011

Electoral Wards Affected:

Alwoodley

Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION: REFUSE permission for the following reason(s):

The extended hours proposed would be likely to result in disturbance for occupiers of the neighbouring residential properties by reasons of noise generated at unsociable hours through general activities in the car park, on Shadwell Lane itself and through the starting and revving of car engines and the opening and closing of car doors, these being amenities that occupiers of these dwellings can reasonably expect to continue to enjoy. As such the proposal is contrary to policies SA1 and GP5 of the Leeds UDPR

1.0 INTRODUCTION

1.1 This application is brought to Plans Panel due to the planning history of the site which has led also to a number of complaints from local residents. The site relates to a community facility and the permitted hours of use condition which has been breached. The current condition in question states:

“The hours of opening of the premises shall be restricted to between 0900 hours and 2200 hours Monday to Friday, and 1000 hours and 2000 hours on Saturdays and Sundays”

2.0 PROPOSAL

- 2.1 The current proposal was originally submitted in order to alter those restricted opening times to the following:

Except on those days referred to in condition xx below, the hours of use for the premises shall be restricted to 09:00 to 24:00 hours Monday to Saturday, and to 22:30 hours on Sundays.

xx) When necessary to use the premises later than 24:00 Monday to Saturday and 23:30 hours on a Sunday no less than 28 days notice in writing will be provided to the Council of the approximate day on which the extended opening hours will be required, and the time of end of use of the premises on that day. Final confirmation in writing of the day of extended opening will be provided no less than 7 days before the relevant day.

- 2.2 However due to the apparent disturbance that the activity causes and following detailed consideration of the acceptability of such a worded condition and problems associated with monitoring and enforceability of such a condition it has been suggested to the applicant that the following hours of opening restriction be applied initially for a temporary 12 month period to allow monitoring of the impact of such hours.:

Open till 23:00 on Thursday's (as this currently appears to be the day that they require this opening time until)
22:30 all other week days (Monday, Tuesday, Wednesday, Friday)
And until 22:00 on Saturday's and Sunday's

- 2.3 The agent on behalf of the applicant has rejected this alternative as not being suitable for their clients' needs.

3.0 SITE AND SURROUNDINGS:

- 3.1 The property is a large detached property which fills almost the full width of the plot upon which it sits. Car parking and amenity space is provided to rear of the building. The parking area shares a boundary with neighbouring residences. 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 than minor modifications to that approval.

- 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.
- 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 and following investigations an application was submitted in 2011 that sought to vary the hours of operation. That application is the subject of this report.
- 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. It is understood that at the time of writing this proposal had not been commenced.
- 4.5 There is currently an Enforcement Case investigating the further alleged breaches of the hours of opening condition. This case is still pending consideration subject to the outcome of this application.

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 Given the sensitive nature of this use and the alleged impact on the amenities of occupiers of neighbouring residential properties, negotiations have been held with the operators of the community centre in order to reach a compromise on the variation of the hours of opening/operation of the property. The suggested compromise was that the condition be varied to allow the following:
- 5.2 Open till 23:00 on Thursday's (as this currently appears to be the day that they require this opening time until) 22:30 all other week days (Monday, Tuesday, Wednesday, Friday) and until 22:00 on Saturday's and Sunday's.
- 5.3 The response of the applicant's agent was:

“The noise report does not indicate that there are any problems with noise from the centre; indeed, the monitoring took place during Ramadan when the use of the centre is at its greatest. It would therefore seem reasonable to assume that noise levels at other times of the year would be lower. We do not accept that a further extension of hours would cause a noise nuisance given the lack of evidence to support such a view.

Nevertheless I think that a temporary permission is probably a good suggestion and it would allow further monitoring to be carried out. My clients would have no objection to this approach in principle. However, whilst the hours proposed would be adequate for most occasions, as I explained in my letter of 24 July 2012 to Adam Ward, there are certain special days of the year and some days in Ramadan where prayers occur later in the evening because of late sunsets. An extension of hours to 23:00 on all days of the week would solve the problem of the 82 days a year when there are special prayers, although, in fact, on most dates the centre would close much earlier than this. The only issue, if a condition were to be imposed on that basis would be those days in Ramadan and the 6 special days a year referred to in the second paragraph of my letter. There is no evidence that the opening of the centre beyond 11:30 pm to midnight or indeed beyond midnight for the special days would cause a noise nuisance. “

- 5.4 This response needs to be assessed as part of the material considerations of this proposal.
- 5.5 The noise report referred to is the results of a sound monitoring exercise undertaken by Leeds Council in order to assess if the noise levels suffered by the neighbouring properties was sufficient to be concluded that they warrant a refusal of planning permission. As referred to by the agents, the conclusions of that monitoring were that the noises associated with any disturbance suffered by nearby residents was not as a result of activities of users at 166 Shadwell Lane.
- 5.6 It has been confirmed by the officer who took the readings that the readings were taken over a time period that a 'special event' was known to be taking place, in this case the latter part of Ramadan in 2012, that the analysis and conclusions were done to a 'statutory nuisance' level and that the community centre were only aware that monitoring was due to take place and were not aware specifically of any dates that monitoring was undertaken on.

6.0 PUBLIC/LOCAL RESPONSE:

- 6.1 The proposal has been advertised by way of a site notice and by letters to 23 individual properties in the near vicinity. Time for comment was 25th November 2011 in relation to the site notice and 23 November 2011 in relation to the letters sent to individual properties.
- 6.2 As a result of this public consultation exercise, the following objections and observations 8 letters from 2 concerned residents have been received and 2 letters from local Ward Councillors have been received one containing the signatures of all three Ward Members and one an individual objection to the proposals has been received:
- Currently the occupiers of 166 Shadwell Lane break the current hours of operation on a regular basis and even beyond the hours applied for.
 - How will they keep to the new hours if they so break the current hours by such a margin
 - This is an attempt to overcome the threat of Enforcement
 - Noise – From various sources, including cars, children playing outside, people talking outside.
 - Bright security lights turning on during the late evening early hours of the morning
 - Car parking causing problem on Highway
- 6.3 One directly affected resident in particular has provided on numerous occasions copies of schedules of activities and breaches that have taken place during the processing time of the application for planning permission. This information has largely been targeted at the Compliance team in support of the complaint submitted to them, but has been shared with case officers for the planning application for completeness of information.

7.0 CONSULTATIONS RESPONSES:

Non Statutory Consultees:

- 7.1 Highways: Concern at earlier opening times due to traffic flows in the morning rush-hour being higher on the road network. Therefore the opening times in the morning are restricted to 1000hrs in the recommended re-worded condition.
- 7.2 Neighbourhoods and Housing Noise and Environmental Protection: Concludes that the proposed variation in condition is likely to give rise to unacceptable levels of noise and sleep disturbance to occupiers of nearby residential properties and recommends that the application is refused. (This, it should be noted was their consultation response prior to sound monitoring taking place in 2012).
- 7.3 In recent discussions with environmental health officers it has been clarified that the monitoring report published by them in 2012 based on readings taken over a 10 day/night period does not constitute a statutory nuisance for the purposes of the pursuance of taking action under the Environmental Protection Act. The conclusions of the report indicate that whilst voice activity could be heard periodically it was in breaks in the background traffic noise and was no louder than that background noise.

8.0 PLANNING POLICIES:

- 8.1 The development plan is the adopted Leeds Unitary Development Plan (Review 2006).
- 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 As the Council have resolved to move the Publication Draft Core Strategy to the next stage of independent examination some weight can now be attached to the document and its contents recognising that the weight to be attached may be limited by outstanding representations which have been made which will be considered at the future examination.
- 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.

8.5 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 impact of the extended opening hours on the living and residential amenities of occupiers of nearby residential properties.
- 2) Highway safety.

10.0 APPRAISAL

Impact on Living Conditions of Neighbours

- 10.1 The suggested opening hours by the applicants are considered to be too long in terms of the potential impact that they will have on the amenities of occupiers of nearby residential properties and in particular the occupier of the neighbour immediately adjoining the application site. From the history of complaints received by the Compliance Team it is clear that some form of disturbance is taking place on a regular basis.
- 10.2 The organisation has members of all ages in its congregation and many of the visitors appear to attend the property using their motor vehicles. Indeed, unless the attendees can walk to the site, which no doubt some do, some sort of motor vehicle would be required for many of the services held as they often run beyond the time of the last public transport service. Therefore either a privately motor car would be required or reliance on a Taxi service.
- 10.3 It is alleged that when the premises has run beyond the agreed opening times at present that, this has caused significant disturbance to occupiers of the neighbouring properties. It is understood that the starting and revving of car engines, the opening and closing of car doors along with the general tumult that often accompanies people leaving events such as those held in centres like the application site.
- 10.4 This was supported initially by the Environmental Health officer who has indicated the following:

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.

- 10.5 This advice was received on 10th November 2011 and would form the basis of the Councils reason for refusal. However a sound monitoring report was undertaken by officers who concluded that during the time of that monitoring, there was no significant noise emanating from the activities of 166 Shadwell Lane that would lead to such a conclusion. The sound monitoring was undertaken in a nearby house over the period 1st August 2012 to 11th August 2012 the results of this monitoring report indicated:

“The recordings that were analysed in depth were characterised by passing road traffic. Few recordings exhibited the noise complained of which was voices from people in the outside space of the community centre.”

- 10.6 It is the role of the planning authority to assess possible disturbance from sources which do not constitute a ‘statutory nuisance’. The bar for a source of disturbance to become a nuisance is high and sources of noise that regularly disturb people may not meet that level, leaving the ‘victim’ frustrated and annoyed with the continuing disturbance. It is clear from the report and its analysis that whilst the level of noise emanating from the activities undertaken at the community centre do not constitute a statutory nuisance, that the changes in the source of the noise may. It is possible that the change in tone, timbre, pitch and regularity of the noise source is a disturbing factor in itself thus disturbing the complainant(s) near to the site. A strict scientific interpretation of noise due to its sound pressure wave (decibel level) is not sophisticated enough to represent the impact that the noise may have on those people who, for whatever reason, are more sensitive to noise change. It seems clear that this is the case here. Whatever the reason/cause, the complainant is clearly being disturbed when the relative constant level in noise generated by lulls in traffic noise and the predominant source of sound within their bedroom switches from road traffic noise to that of people chatting and moving about within the application site’s boundaries.
- 10.7 Further discussions with Environmental Health colleagues have also clarified that the readings were taken after a period of complaints had been received by the Environmental Health officer and the centre’s management had been alerted to these complaints.
- 10.8 In addition to this, there is a need to consider the needs of the organisation and their often changing requirements. A peculiarity of the Islamic tradition is that their festivals are not fixed according to a solar calendar but a lunar one and Ramadan is therefore a moving entity in the calendar. The applicant’s agent has attempted to address this by suggesting an elaborate condition/section 106 arrangement whereby notice is given to the Council up to 4 weeks before the date of the late night event and then within 7 days of the event formal confirmation of the actual date is provided.
- 10.9 It is not clear what this “prior notification” procedure would achieve except to give the Council, resources permitting, the ability to monitor and ‘count’ the number of late

night events that take place. Should full planning permission be granted on this basis that the condition could not be complied with, and then a Breach of Condition Notice could be served with an option to prosecute should the breach continue, or if a Section 106 Agreement was in place action through the Courts could be invoked which is likely to be costly to both parties. It is considered that such a complex system of "prior notification" would be difficult to implement police and enforce and not result in the resolution to the problem for the residential neighbours of minimising the impact of the late night activity.

- 10.10 Also, it is considered that such a procedure is cumbersome, and at best would not comply with the tests laid out in Circular 11/95 in particular not being, enforceable; precise; and reasonable in all other respects.
- 10.11 Whilst the needs of the organisation are of importance, a balance needs to be struck between those needs and the impact that their activities have on the amenities of occupiers of nearby properties. To this end a suggested relaxation which limits the late night element of activities at the property has been put to the applicant. It has also been suggested that this be restricted to a temporary permission for a period of 12 months from the date of the grant of the planning permission in order that it can be reviewed and, if necessary adjusted. Allowing a twelve months relaxation will allow the full calendar of events run by the community centre to be assessed and then a view can be held upon re-application as to whether the situation should become permanent or if other hours of operation are necessary. Given the conclusions of the sound monitoring report, this has been rejected as a compromise by the applicant's agent.

Highway Safety

- 10.12 Concern has been expressed at the proposed opening times when extended in the morning. It is feared that additional traffic flows to and from the property in the earlier hours of the morning will conflict with peak travel times and result in a danger to users of the highway. It is therefore recommended to keep the current opening times at 1000hours

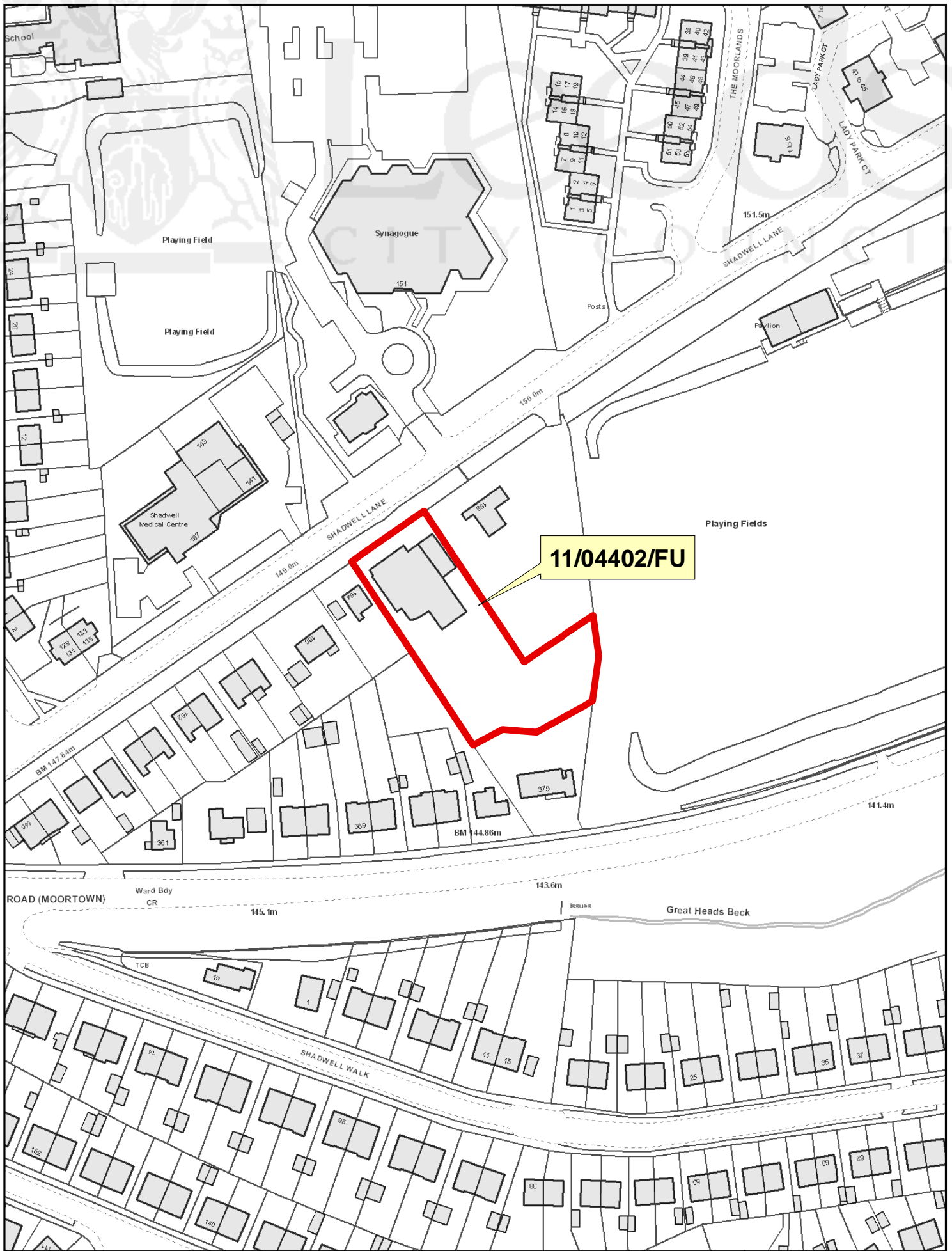
11.0 CONCLUSION

- 11.1 A key consideration in this case is balancing the needs of the applicant, against the impact that the proposal is likely to have on the residential amenities of occupiers of nearby properties. It is considered that the proposal will have an unacceptable impact on the amenities of local residents by reason of disturbance generated by users of the facility at unsociable hours and that this is not outweighed by the benefits that arise from the proposal. In the absence a satisfactory negotiated solution the planning application is recommended for refusal.

Background Papers:

Application files: 30/213/97 and 11/04402/FU

Certificate of ownership: Signed as applicant



NORTH AND EAST PLANS PANEL