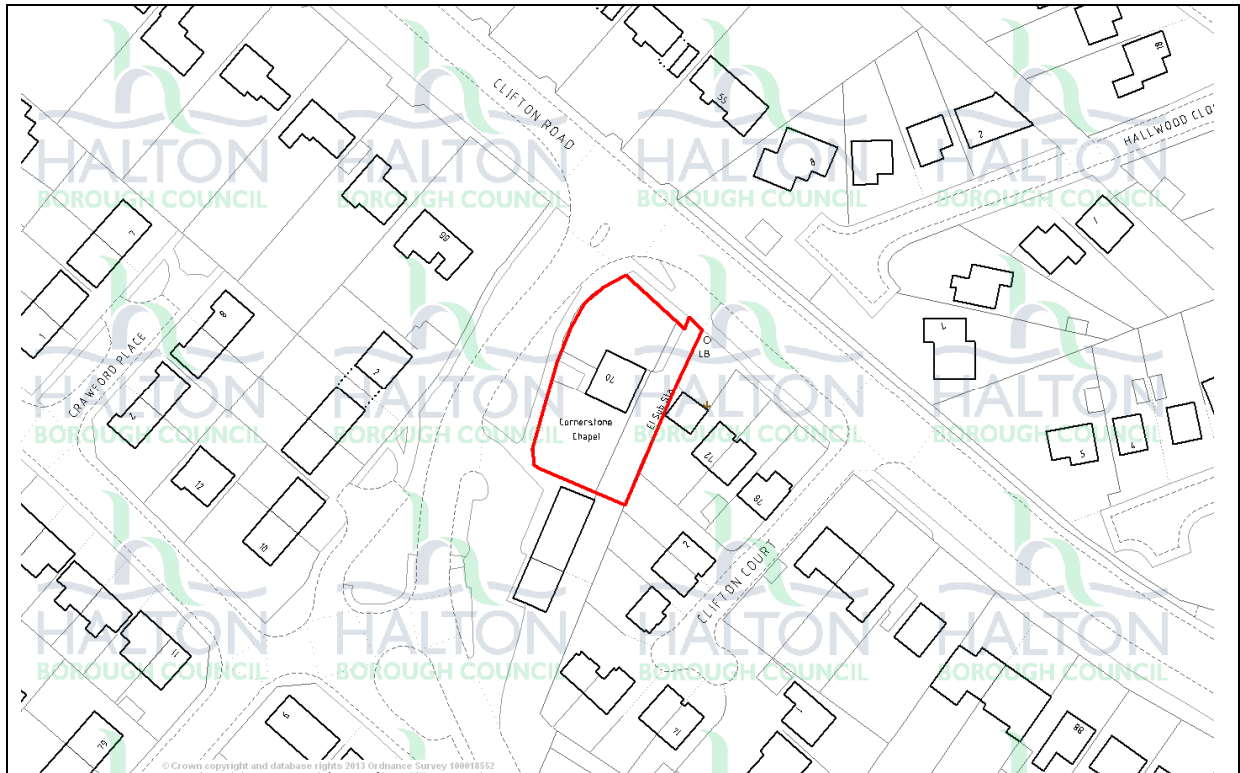


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| APPLICATION NO: | 12/00479/S73 |
| LOCATION: | Hope Community Church 70 Clifton Road Runcorn |
| SUMMARY PROPOSAL: | Application under S73 of the Town and Country Planning Act 1990 for the use of the site as a Community Centre and Church without complying with condition (12) subject to which planning permission ref. 09/00492/FUL was granted, to enable the continued use of the site for the provision of education to vulnerable people below the age of 20 years who suffer from autism, aspergers syndrome or other mental or physical impairment liable to cause them to be excluded from normal education |
| WARD: | Heath |
| PARISH: | |
| CASE OFFICER: | Rob Cooper |
| AGENT(S) / APPLICANT(S): | |
| DEVELOPMENT PLAN ALLOCATION: | |
| Halton Unitary Development Plan (2005) | Policy H8 'Non Residential Development in Primarily Residential Areas' |
| DEPARTURE | No |
| REPRESENTATIONS: | 40 |
| | |
| RECOMMENDATION: | Approve in part |
| SITE MAP | |



APPLICATION SITE

The Site and Surroundings

The application site is the existing Hope Corner Church also now known as Hope Academy, located on the corner of Clifton Road and Ascot Avenue, Runcorn. The site was formally Cornerstone Chapel.

Planning History

Planning permission 09/00492/FUL granted in January 2010 for a 'Proposed two storey community centre/church'.

Advertisement consent 09/00483/ADV granted in January 2010 for signage in relation the above approval.

Application 12/00478/ELD for a lawful development certificate for use of the application site for the provision of education to vulnerable people below the age of 20 years who suffer from autism, aspergers syndrome, or other mental or physical impairment liable to cause them to be excluded from normal education.

THE APPLICATION

The applicant has applied under section 73 of the Town and Country Planning Act 1990 to discharge the wording of planning condition 12 and has suggested an alternative condition as follows:

(a) The premises shall be used for the purposes of a community centre (including the provision of education for vulnerable people below the age of 20 years who suffer from autism, aspergers syndrome, or other mental or physical impairment liable to cause them to be excluded from normal education) and a church and for no other purpose (including any other purpose in Class D1 of Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

“(b) The number of persons to whom education as referred to in paragraph (a) of this condition may be provided shall not exceed any maximum number specified by OFSTED (or anybody replacing OFSTED) on any one day .”

POLICY CONTEXT

The nature of the application is such that the normal use of the planning context which applies to applications for development have only background relevance in this case.

National Planning Policy Framework

The National Planning Policy Framework (NPPF) was published in March 2012 to set out the Government’s planning policies for England and how these should be applied.

Paragraph 196 states that the planning system is plan led. Applications for planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise, as per the requirements of legislation, but that the NPPF is a material consideration in planning decisions. Paragraph 197 states that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.

Paragraph 14 states that this presumption in favour of sustainable development means that development proposals that accord with the development plan should be approved, unless material considerations indicate otherwise. Where a development plan is absent, silent or relevant policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF; or specific policies within the NPPF indicate that development should be restricted.

Paragraph 72 states that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education.

North West of England Plan - Regional Spatial Strategy to 2021

Policy DP2 ‘Promote Sustainable Communities’

Policy L1 'Health, Sport, Recreation, Culture and Education Services Provision'
Policy RT2 'Managing Travel Demand'

Halton Unitary Development Plan (UDP) (2005)

Policy BE1 'General Requirements for Development'
Policy BE2 'Design'
Policy H8 'Non-Residential Development in Primarily Residential Areas'

Halton Core Strategy (2012)

Policy CS2 'Presumption in Favour of Sustainable Development'

Communities and Local Government, Policy statement – planning for schools development (15 August 2011)

The statements sets out the Governments position in relation to the establishment of new state funded schools including Academies and Free Schools, and is a material consideration in determining planning application. There should be a presumption in favour of the development of state-funded schools, as expressed in the National Planning Policy Framework.

This statement applies to both change of use development and operational development necessary to the operational needs of the school. This application is for neither a change of use or for operational development.

Member should also be aware that on 25 January 2013 the Government announced plans for a new permitted development rights to allow for the temporary change of use of buildings to a new state-funded school from any other use class along with minor associated physical development. This will be for a single year. These are expected to be adopted by the Government later this year.

CONSULTATIONS

The application has been advertised by way of site notice, and letter sent to neighbouring properties. Internally the Highways Engineer, Education and Open Spaces have been consulted as have ward Councillors.

Health and Safety Executive (PADHI+) – Advise that there are sufficient reasons, on safety grounds, for advising against the granting of planning permission.
Health and Safety Executive – Advice that there are sufficient reasons, on safety grounds, for advising against the granting of planning permission

REPRESENTATIONS

40 objections have been received from local residents, as have objection from three Councillors. Many of representations combine comments on application 12/00478/ELD., they are more relevant to that application as it is a planning application. These issues include; the need for the school when there are existing facilities in the Borough, there is no need for this facility, traffic, parking issues, litter,

landscaping, antisocial behaviour, the scale and appearance of the building, need for an up dated travel plan, greater number of pupils, impact on amenity of residential area, safety and security, encroachment onto public right of way, value of property, They originally applied for a community centre and church, the applicant wishes to use the site for education when a condition precludes this use, the site is already taking students.

Background

Hope Corner is a Christian Church based charity which has specialised in youth work within Halton since 1994. For many years the organisation operated out of its site at 139 Church Street in Runcorn Old Town. The Church provides Sunday and mid-week services, provides a variety of youth activity evenings including sports, dance and music.

Over the past decade the organisation has developed a project called Progressive Social Inclusion (PSI), which directly engages young people who have experienced a variety of social problems and social exclusion resulting in the loss of education. It is understood that this work has been linked to the Halton's Pupil Referral Unit 'KS4 Gateway' at the Bridge School in Astmoor.

According to the applicant's website Hope Corner have held contracts with the Pupil Referral Unit for the provision of alternative education for the last 8 years.

the charity acquired the former Cornerstone Chapel site on Clifton Road, and obtained planning permission (09/00492/FUL Issued on 19/01/2010) to construct "a two storey community centre/church".

Building began in 2011 and was completed in 2012. They have now registered with OFSTED as an independent special needs school, and have received funding approval from OFSTED to use the building for up to 20 pupils.

The 2010 planning permission was subject to a number of conditions, the current application relates to condition 12 this states:

'The premises shall be used for the purposes of a community centre and church and for no other purpose (including any other purpose in Class D1 of Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason:- In order that the Local Planning Authority may control any future changes of use and to clarify the extent of this planning permission, and to comply with Policy BE1 of the Halton Unitary Development Plan.'

The application effectively seeks to delete condition 12 as attached to the 2010 planning permission and substitute a new condition 12 as follows:

(a) The premises shall be used for the purposes of a community centre (including the provision of education for vulnerable people below the age of 20

years who suffer from autism, aspergers syndrome, or other mental or physical impairment liable to cause them to be excluded from normal education) and a church and for no other purpose (including any other purpose in Class D1 of Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

“(b) The number of persons to whom education as referred to in paragraph (a) of this condition may be provided shall not exceed any maximum number specified by OFSTED (or anybody replacing OFSTED) on any one day .”

Section 73 of the 1990 Act provides that the Local Planning Authority shall consider only the questions subject to which planning permission should be granted. If the LPA decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, the LPA must grant planning permission accordingly. If the LPA decides that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, the LPA must refuse the application.

The Local Planning Authorities view is that the current level and proposed level of education use is outside of the lawful use described within the planning permission granted in respect of the 2009 application. The applicants dispute this point of view and have made two applications which they consider would satisfy the Local Planning Authority as to the legitimacy of the current and proposed use. The first application is for a certificate of Lawful development (dealt with elsewhere on the agenda). The second application is this application.

Assessment

The issues for the LPA to address are 1) what would be the effect of deleting condition 12 of the 2010 permission 2) the effect of substituting a new condition 12 as proposed by the applicant.

Condition 12 states that the premises shall be used as a community centre and church and for no other purpose. The condition gives examples of what other purposes might be by referring to Class D1 of the 1987 use classes order. If condition 12 were removed altogether it could be argued that there could be a change of use without planning permission to any other use within class D1. It is by no means clear this could happen because the existing lawful use is not that of a church or community centre but a church and community centre. There are technical arguments which suggest that the Use Classes Order would not apply in this case. However, it is not necessary to pursue this question as condition 12 clearly states that the premises shall not be used other than as a community centre and church.

The applicants have argued that within the concept of the community centre use is included “the provision of education”. They argue that the educational provision which they have put in place is no more than would be expected at a community

centre. If the applicant were correct on this there would be no need to make the section 73 application other than for purposes as they might be perceived as clarity.

The question is whether the stated provision is or is not permitted within a community centre.

Educational provision included within the concept of community centre

Stemming from the ordinary meaning of the words 'community centre' it would be expected that a number of activities would be carried on. These might include youth activities, sports, dance classes, arts and crafts, music etc.

In the 2009 planning application the applicants clearly shared this view. In that application the applicants stated:

'We provide specialist and grass roots youth work as well as creative activities for all ages. Our projects directly engage young people who have experienced serious social exclusion and/or who emotionally/physically damage, resulting in the loss of 'education'. 50% of these are 'looked after' children (in care) and 20%-30% are from vulnerable home situations. Our project covering this work is called PSI (Progressive Social Inclusion). This has been developed by us over the last 6 years. This work is linked to the KS4 Gateway in Halton'

The paragraph above is the only time the word 'education' is actually used throughout the whole planning submission. However it does not specifically state that 'education' is a proposed future use of the site. Rather, the use of the word of education in this context refers to loss of education elsewhere.

The applicant then went on to state:

'We also run three different youth activity evenings per week for young people from all over Halton. Activities include sport, mountain biking, rock climbing, music, dance, craft and the provision of a youth bar and internet café. Through the 'Hope Music' Project families are encouraged to learn musical instruments together.'

Clearly, all of the above activities are within what would normally be understood as activities associated with a community centre.

Had the applicant limited itself to the provision of the above activities this 'educational' provision would not involve a change of use, and would not contravene condition 12.

Nature of the Educational provision actually provided

The applicants have clearly established a school. They claim in their current application that there has been an intensification of the educational provision above that set out in their 2009 application, but that this does not involve a 'change of use'. They assert two other things, 1) the education provision currently provided is within

the ordinary meaning of a community centre; and 2) that the provision of education currently provided is within the meaning of use classes order category D1 (c).

Both of these assertions cannot be made at the same time, assertion 1) is that there has been no change of use. Assertion 2) is that there has been a change of use but to a use with the same the same class (D1). It should be noted that the condition in any event is not limited to referencing use class D1. It actually prohibits the use for purposes other than a community centre and church. The reference to D1 in the condition merely gives examples of prohibited other purposes.

The Councils conclusion that there has been a change of use of the premises to include a school can be justified with reference to the applicants own website. This includes their admissions policy and prospectus which outline their Academy's purpose, their educational vision and outline for the school.

The prospectus itself states:

'Hope Corner Academy is identified as an Independent SEN School with a Religious Character'.

The admissions statement states that:

'Hope Corner Academy is an Independent Special Educational Needs School. Pupil referrals for Hope Corner Academy come primarily from SEN assessment teams, although referrals can also be made from other agencies and parents. Our full-time provision will be based upon 25 hours a week for Key Stage 4 (Year 10 and 11) Pupils'.

Paragraph 4.4 of the Admissions and Referrals Statement also states that:

'Through the admissions process will be able to offer up to 20 pupil places in our purpose built centre'.

The conclusion that the current level of educational provision is outside of the scope of the description of development in the 2010 permission would apply whether or not condition 12 were removed. However condition 12 provides other protections. The prohibition of "other uses" prevents an argument that there might be a change of use which is not a material change of use and therefore does not require planning permission.

What be the effect of substituting condition 12 for the proposed condition 12

It is clear that the applicant considers that the proposed amendment to condition 12 would merely be declaratory of the current lawful nature of the educational permission. In other words in their view the proposed condition is improved to set out that which is lawful already.

It should be clear from the previous section that the applicant is alleging that the current educational provision is included within a community centre use when it is not.

The misunderstanding on behalf of the applicant is possibly based on the argument it put forward regarding intensification of use. Normally a change of use will not require planning permission unless it is a material change of use.

However, a planning condition can control changes of use whether or not they are material (i.e. whether or not they would require a separate planning permission in their own right).

The concept of 'the provision of education' needs to be explained further. The local planning authority accepts that a community centre use includes the provision of 'some' educational provision. Educational provision beyond a given level would take educational provision outside the concept of a community centre. At this point there would be a change of use from community centre to something else. This change of use may or may not amount to a material change of use. It follows that there is a spectrum whereby different levels of education provision sometimes do not involve a change of use, sometimes involve a change of use and sometimes involve a 'material' change of use.

Bringing this back to the question in issue, if the level of educational provision does not involve a change of use it would not breach condition 12.

Further considerations

The applicant could have approached this issue in different ways. It could for example, as previously advised, applied for a new planning permission expressly stating an educational use within the description of development. It has chosen not to do this. Another way of approaching the issue has been partly addressed by the applicant but in a mistaken way. It could have argued that the existing level of educational provision goes beyond a community centre use and constitutes a change of use but that the change was not material. Such a position would be agreed to.

This would then lead to an alternative proposal for amending condition 12 as set out as follows:

The premises shall be used for the purposes of a community centre and a church and for no other purpose (including any other purpose in Class D1 of Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification EXCEPT THAT this condition shall not apply to the provision of education (limited to 20 learners per day) for vulnerable people below the age of 20 years who suffer from autism, aspergers syndrome, or other mental or physical impairment liable to cause them to be excluded from normal education) .

REASON: In order that the Local Planning Authority may control any future changes of use and to clarify the extent of this planning permission, and to comply with Policy BE1 of the Halton Unitary Development Plan. The stated exception to the condition is to reflect information supplied to the lpa which confirms that although such provision of education would constitute a change of use it would not reach a

threshold amounting to a material change of use but that a greater level of provision would exceed such threshold.

The revised wording would keep the main thrust of condition 12 in place together with the reason for the existence of condition 12. Given that under government guidance a planning application for the use of the premises as an academy would have to be recommended for approval. The proposed revised condition would put on record that any further expansion of the provision of education would amount to a material change of use and trigger the requirement for application for a new planning permission.

Comments on representations received still need to be considered.

Residential Amenity

Concerns have been raised by local residents in relation to the impact on the amenity of the surrounding residential area, they have also raised concerns in relation to litter and antisocial behaviour, and the safety and security of the pupils at the site. The level of provision of education that has been specified does not justify any of these concerns. Nevertheless any increased level of education would have to be assessed.

Residents have raised issues in relation to the scale and appearance of the existing building and property values. These are not material planning considerations with respect to this application.

Residents have also objected on the grounds that they originally applied for a community centre and church and that a condition precludes this use, and that the site is already taking students. This matter is addressed is addressed within this report.

Residents have also queried the need for the school when there are existing facilities in the Borough. There is no requirements in planning policy to carry out a needs assessment for such facilities.

Access and Highways

Objections have been raised by local residents concerned about increased traffic and parking, and the need for an updated travel plan. The applicant has provided a design and access statement and an updated travel plan with the application. Together these documents describe how pupils and staff will travel to and park at the site. The documents also provide details on the number of proposed pupils which they state is a maximum of 20.

The Highways Engineer has been consulted on the application. Whilst the proposed educational use is considered to create a minor intensification of use this is not considered to be detrimental to the highways network. However further details are required with regards to how parking is managed during times when pupils would be dropped off and picked up at the site. The information to date is not considered to fully address this matter this can be addressed by an additional condition.

Encroachment onto public right of way to the rear of the site has also been raised, this does not relate to this current application.

Health and Safety

The Health and Safety Executive (PADHI+) has stated that there are sufficient reasons, on safety grounds, for advising against the granting of planning permission. This is because the site falls within the middle of the INEOS hazardous zone as identified on the Health and Safety Executives maps.

However, in October 2009 Halton Borough Council adopted The Planning for Risk Supplementary Planning Document. The proposal would comply with this document and the application cannot be refused on these grounds.

If Members were minded to approve the application, it would need to be referred to the HSE, to request whether or not they wish the application to be called in by the Secretary of State.

Consequential matters

The recommendation is to delete the current condition 12 and not accept the alternative condition put forward by the applicant, but to substitute the revised condition described within this report.

This will result in the issue of a new planning permission. The continued relevance of other conditions attached to the 2010 permission therefore has to be considered. The 2010 permission contained 12 conditions. Most of the 2010 permission conditions are no longer relevant since the completion of the construction of the premises and delegated powers are requested to determine which conditions need to be carried forward together with appropriate revised wording.

CONCLUSIONS AND RECCOMENDATIONS

From the information provided the applicant is clearly establishing a school at the site for the provision of formal, full time education. Currently the site has planning permission for a 'community centre/church' and not a school or educational facility. The educational facility as presently operated constitutes a change of use but not a material change of use. Furthermore, condition 12 of planning permission 09/00492/FUL removes the lawful rights for the premises to be used for any other purpose, including any other purpose within the D1 use class without a new planning permission. Unless condition 12 is amended as proposed the current use is in contravention of condition 12.

So why should condition 12 be amended? An enforcement notice could not be issued alleging a material change of use. A breach of condition enforcement notice could technically be issued but there would be no prospect of the notice being upheld on appeal. The reason for this is that an academy use would be supported by central government policy should an application be made. Planning permission for such a use would doubtless be granted at an enforcement notice appeal.

Furthermore the revised condition as proposed still retains some control over the further expansion of the educational use by limiting the provision to up to 20 learners per day of the specified categories.

SUSTAINABILITY STATEMENT

As required by:

- Paragraph 186 – 187 of the National Planning Policy Framework;
- The Town and Country Planning (Development Management Procedure) (England) (Amendment No.2) Order 2012; and
- The Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2012.
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This statement confirms that the local planning authority has worked proactively with the applicant to secure developments that improve the economic, social and environmental conditions of Halton.