

	<h2 style="text-align: center;">FGG Area Planning Committee</h2> <h3 style="text-align: center;">15 April 2019</h3>
Title	Deferral from the Finchley and Golders Green Area Planning Committee: Menorah Primary School, 1 – 3 The Drive, NW11 9SP
Report of	Head of Planning
Wards	Golders Green
Status	Public
Enclosures	Appendix A – Report considered by Finchley and Golders Green Area Planning Committee for application reference 18/0216/S73
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Summary

At the previous meeting of the Finchley and Golders Green Area Planning Committee on 8 January 2019, the Area Planning Committee voted to overturn Officer's recommendation and approve the application on a temporary basis for one year.

The FGG Area Planning Committee is therefore requested to consider the proposed conditions.

Recommendations

1. That the Planning Committee consider and approve the application subject to the conditions specified in this report.

1. WHY THIS REPORT IS NEEDED

- 1.1 As the Area Planning Committee voted to overturn Officer's recommendation and approve the application on a temporary basis for one year, this report contains a list of the conditions that Officers consider relevant to the application.
- 1.2 The attached report was considered by the Finchley and Golders Green Area Planning Committee on 8 January 2019.

2. REASONS FOR RECOMMENDATIONS

- 2.1 As set out above, the application was initially recommended for refusal by Officers. However, at the meeting, the committee voted to overturn Officer's recommendation and approve the application on a temporary basis of one year, subject to conditions.
- 2.2 The application is made under section 73 of the Town and Country Planning Act 1990 to vary conditions associated with the original planning permission (application reference C01178/A). As per Planning Practice Guidance, to assist with clarity decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged (or removed).
- 2.3 Officer's consider that appropriate conditions are:

- 1
 - a) That the use of the premises shall be limited to those activities which are directly associated with the functioning of the school as such, between 08:30 am and 10:30 pm on Mondays to Fridays and 09:30 am and 12:30 pm on Sundays, in addition to two Sunday afternoons per calendar year, as approved under permission reference C01178R, dated 12 June 1995.

b) With the exception of the above, the premises shall be only used for Sabbath events/activities as approved in the Noise Management Plan, the subject of Condition 3 of this permission, between the commencement of the Sabbath until 10.30 p.m. on Fridays and 8:30 am and the end of the Sabbath (i.e. nightfall) or 10.30pm, whichever occurs earlier, on Saturdays.

The Sabbath use shall cease on the one year anniversary of the date of the approval of the Noise Management Plan under Condition 3 of this permission.

Reason: To protect the amenities of adjoining occupiers in accordance with Policy DM01 and DM04 of the Development Management Policies DPD (adopted September 2012), the Sustainable Design and Construction SPD (updated October 2016) and Policy 7.15 of the London Plan (2015).

- 2 This development (hereby approved under reference 18/0216/S73) must be begun within three years from the date of this permission.

Reason: To comply with Section 51 of the Planning and Compulsory Purchase Act 2004.

- 3 No music or sound amplification shall be permitted on the premises on Fridays after 15:30 pm or Saturdays, Sundays or Bank Holidays at any time.

Reason: To ensure that the proposed development does not prejudice the amenities of occupiers of neighbouring properties in accordance with Policy DM04 of the Development Management Policies DPD (adopted September 2012), the Sustainable Design and Construction SPD (updated October 2016) and Policy 7.15 of the London Plan (2015).

- 3 Before the Sabbath use hereby permitted first commences, a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority.

The Noise Management Plan, to minimise disturbance to local residents resulting from the hereby permitted Sabbath use on Fridays and Saturdays, shall include details of the following:

- i. Hours of use;
- ii. The type and nature of events/activities and maximum attendance numbers;
- iii. The management of deliveries and collections to and from the building (including waste), including hours of deliveries, routes, parking provision and number of delivery vehicles;
- iv. The control and use of outside areas and measures to minimise noise and disturbance from guests arriving and leaving;
- v. The control of noise break out from within the building, including any upgrades to the building and measures to minimise the opening of windows and doors;
- vi. Access and egress to and from the buildings by users including arrangements for taxi and coach/mini-bus parking;
- vii. The name(s) and contact details of an on-site supervisor responsible for the behaviour of users and for liaison with local residents;
- viii. Procedure for recording of complaints and response to those complaints;
- ix. Any other matters that are reasonably required by the local planning authority.

The approved Noise Management Plan shall be followed and/or implemented at all times the building is in use for Sabbath events on

Fridays and Saturdays. The complaints log shall be made available to the local authority on request.

Reason: To ensure that the proposed development does not prejudice the amenities of occupiers of neighbouring properties in accordance with Policy DM04 of the Development Management Policies DPD (adopted September 2012), the Sustainable Design and Construction SPD (updated October 2016) and Policy 7.15 of the London Plan (2015).

INFORMATIVE(S):

- 1 In accordance with paragraphs 38-57 of the NPPF, the Local Planning Authority (LPA) takes a positive and proactive approach to development proposals, focused on solutions. The LPA has produced planning policies and written guidance to assist applicants when submitting applications. These are all available on the Council's website. The LPA has negotiated with the applicant/agent where necessary during the application process to ensure that the proposed development is in accordance with the Development Plan.
- 2 It is noted that attendance numbers at the school may have increased. If this is the case, consent from the local planning authority would be required.
- 3 In the interest of clarity, the 'Sabbath use' is defined as those activities/events as set out in the documents submitted in support of planning application reference 18/0216/S73.
- 4 In the interest of clarity, the commencement of the Sabbath is taken to be those defined as 'Light Candles' as set out in the applicants accompanying time schedule.

3. RECEIVED COMMENTS

- 3.1 On the 04 February 2019 a resident raised objection to the times stated in the accompanying document and that they did not represent sunset. The agent stated that the schedule showed 'Plag Haminchah' times. Religious code enables Sabbath to start after this time, but not before it.
- 3.2 Officer's have received a letter from the Rabbi of the synagogue which runs the school. The Rabbi's letter (dated 11 March 2019) provides a table setting out the earliest start times and finish times for Sabbath throughout the year, including adjustments to show British Summer Time and supporting definitions/explanatory notes. On this basis the times are considered acceptable.

4. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

4.1 As set out in the substantive report.

5. POST DECISION IMPLEMENTATION

5.1 As set out in the substantive report.

6. IMPLICATIONS OF DECISION

6.1 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

6.2 As set out in the substantive report.

6.3 Legal and Constitutional References

6.3.1 N/A

6.4 Risk Management

6.5 As set out in the substantive report.

6.6 Equalities and Diversity

6.7 As set out in the substantive report.

6.8 Consultation and Engagement

6.9 As set out in the substantive report.

7. BACKGROUND PAPERS

7.1 None.

Appendix A – Committee Report

Location **Menorah Primary School 1 - 3 The Drive London NW11 9SP**

Reference: **18/0216/S73** Received: 11th January 2018

Accepted: 11th January 2018

Ward: Golders Green Expiry 8th March 2018

Applicant: Menorah Primary School

Proposal: Variation of condition 3 (limited activities) and condition 4 (day/time restriction) pursuant to planning permission C01178A dated 7/12/1967 for "re-erection of the existing Menorah Primary School on extended site". Variation to allow religious and social events on Jewish Sabbath days from the commencement of the Sabbath on Friday afternoon until 10.30 p.m. on Friday, and from 8.30am until the end of the Jewish Sabbath (i.e. nightfall) or 10.30pm, whichever occurs earlier, on Saturday. [ADDITION OF NOISE IMPACT ASSESSMENT AND AMENDED DESCRIPTION]

Recommendation: Refuse

AND the Committee grants delegated authority to the Service Director – Planning and Building Control or Head of Strategic Planning to make any minor alterations, additions or deletions to the recommended conditions/obligations or reasons for refusal as set out in this report and addendum provided this authority shall be exercised after consultation with the Chairman (or in his absence the Vice- Chairman) of the Committee (who may request that such alterations, additions or deletions be first approved by the Committee)

- 1 The proposed variation to conditions 3 and 4 of planning permission reference C01178A would, by reason of the increased comings and goings and intensification of use, result in an increase in noise and disturbance, to the detriment of the residential amenities of occupiers of the neighbouring properties.

The application is therefore found unacceptable and contrary to Policy DM04 of Barnet's Development Management Policies Document DPD (2012), London Plan Policy 7.15 and the guidance set out in Barnet's Sustainable Design and Construction SPD (2016).

Informative(s):

- 1 The plans and documents accompanying this application are:

Planning Statement by E.M. Pick Planning
Document entitled 'Proposed Noise Management Plan'
Noise Impact Assessment Report reference 13879-NIA-01-RevA by clements acoustics dated 02 August 2018
Shaded Plan showing areas proposed for use
Copy of Shabbat times
Site Location Plan
Email from E M Pick Planning dated 29 October 2018
Email from Kenny Macleod of clement acoustics dated 30 October 2018
Block plan
Application form

Officer's Assessment

This application is recommended for refusal.

Whilst assessing this application, the local planning authority offered the applicant the opportunity to explore the option for a temporary planning permission.

This would allow the local authority to assess the effect of the development on the area on a trial basis. The applicant however has rejected an option of a temporary permission, and wished for the application to be assessed based on what was sought.

On the 09 February 2018 Councillor Thompstone called the application into committee if Planning Officers were recommending refusal. The planning reason for the referral was: "The potential impact of this further use on the parking within the area means the parking and traffic consideration bears greater scrutiny."

The application was deferred from November 2018 committee as it was considered by members that the description was incorrect. The description has been amended (with the agreement of the agent) and neighbours have been re-consulted.

The Environmental Health Officer has commented: "I have read the updated information as proposed. There are no changes to our advice on this matter." Their objections in the main report therefore remain.

1. Site Description

The application site is currently occupied by Menorah Primary School, a primary school located in the ward of Golders Green.

The site is not located within a designated conservation area and there are no statutory or locally listed buildings on site. There are no Tree Preservation Orders on the site.

The school building is located on the junction of The Drive and Woodstock Avenue. The playground is located on the junction of The Drive and Montpelier Rise.

The main entrance to the school building is on The Drive (to the east). There are also entrances to the playground along the eastern boundary on The Drive.

The school building directly abuts residential properties to the west (on Woodstock Avenue and Montpelier Rise).

The site abuts the public highway on the northern, eastern and southern boundaries. Opposite are residential properties on Woodstock Avenue and The Drive.

Some off-street parking is provided, which is accessed from The Drive. Although parking spaces are not demarcated, at the time of the Planning Officer's site visit, three cars were parked.

The boundaries are formed by a mixture of close boarded timber fencing and/or wire fencing.

2. Site History

In summary, the school was granted planning permission under planning application reference C01178A, dated 07 December 1967.

Under planning application reference C01178L, dated 01 November 1978, the school was granted consent for the 'Continued use of premises for Sunday classes between 9.30 a.m. and 12.30 p.m.' There were no temporary restrictions placed on this consent i.e. it is a permanent permission.

Under planning reference C01178R, dated 12 June 1995, the school was granted consent for the 'Use of premises on two Sunday afternoons per calendar year'. This was for school fetes on two Sundays per calendar year. There were no temporary restrictions placed on this consent i.e. it is a permanent permission.

Permissions were granted on a temporary basis for the use of the premises for religious classes on Sunday morning under application reference C01178G (dated 18 December 1974, for a limited period only expiring 25 December 1975) and application reference C01178J (dated 22 September 1976, for a limited period only expiring 29 September 1977).

Planning application reference C01178U, dated 10 December 1997 granted temporary consent to enable activities to take place until 11:00 pm (as opposed to 10:30 pm as the original consent of C01178A stated). The consent expired on 10 June 1999 after which date the original condition took effect (i.e. 10:30 pm). It was limited to ten occasions per term and not at all on any Saturday, Sunday and Bank Holidays. It was restricted to extra-curricular activities only.

Planning application reference C01178AC/03, dated 25 September 2003, refused planning permission for the variation of conditions 3 and 4 of planning permission reference C01178A, dated 07/12/1967, to enable activities to take place until 11:00 pm. This would have allowed extra-curricular activities to take place until 11:00 pm, potentially on any day of the week.

The reason for refusal read:

"The proposed variation would, by reason of increased comings and goings and intensification of usage, result in an increase in noise and disturbance to the detriment of the amenities of neighbouring occupiers and the residential character, contrary to policies T1.1, L5.2 and E6.1 of the Barnet Adopted Unitary Development Plan (Adopted 1991) and D2, L24, L27, CS1, CS5 and Env12 of the Revised Deposit Draft Unitary Development Plan (March 2001)."

3. Proposal

The applicant seeks consent for the variation of condition 3 (Limited activities) and condition 4 (Day/time restriction) pursuant to planning permission reference C01178A dated 7/12/1967 for the "re-erection of the existing Menorah Primary School on extended site".

The variation would allow religious and social events on Jewish Sabbath days from the commencement of the Sabbath on Friday afternoon until 10.30 p.m. on Friday,

and from 8.30am until the end of the Jewish Sabbath (i.e. nightfall) or 10.30pm, whichever occurs earlier, on Saturday.

4. Public Consultation

A site notice was erected 18 January 2018.

Consultation letters were sent to 109 neighbouring properties.

72 responses have been received, comprising 53 letters of objection, 15 letters of support and 3 letters of comment.

The objections received can be summarised as follows:

- The school is in close proximity to residential dwellings. Allowing social events etc at times when local residents should be able to enjoy some peace and quiet would be a gross injustice and cause considerable noise and disturbance. This is why when considered approximately 10 years ago the council reached the same decision, and it remains true today.
- Noise will arise from, amongst other things: people coming and going, a large amount of people singing, clapping etc, children playing in the playground, the fact the hall was built that windows and doors are directly onto the playground and close to windows of No. 2 Montpelier Rise.
- The School is already being used on Sundays on a regular basis, in contradiction of Condition 4, causing noise, traffic, parking problems, and disturbance on the weekend day of Sunday. To add the other weekend day, Saturday, as well would be reprehensible and appalling, showing no consideration for the entitlements of the neighbours who already have to endure many inconveniences and nuisances during the week from the school.
- Not all of the community are of this faith and should also be considered.
- Noise already arises from the use of the School on a Sunday and it's only the children having normal day at school.
- 150 people is a misrepresentation when there is an estimated Jewish population of 20,000 within 15 minutes' walk of the site
- There are plenty of other spacious venues with ample parking where events can be hosted with minimal impact to the neighbours.
- The council has rejected such applications from the school in the past. Nothing has changed.
- Saturday is the one day in the week when the school is quiet, we want to continue enjoying peaceful Saturdays and after school hours.
- The school is clearly in violation of current planning dated 2005 which allows for a maximum of 410 pupils (C01178AD/05) [based on Ofsted Reports]. It may be prudent for the School to relocate rather than further prejudice the neighbourhood. Noise and traffic will increase as school expands.
- The events would be permitted till 10.30pm which is several hours after the Sabbath ends during winter, meaning increased traffic and parking issues when events finish.
- There are several facilities that could accommodate such events so there is no need for the school to be turned into a source of additional noise and disturbance.
- Parking problems, traffic, road rage and aggression is stressful for residents
- London Borough of Barnet did not consult residents

- The proposed use after 5.00pm on Saturdays is: (a) irrelevant for Sabbaths in the winter and (b) unnecessary for Sabbath activities in the summer - functions at this times would be rare. The intention appears to be to use the premises on Saturday evenings in the winter. I object to this on the grounds of the huge pressure on parking that this would imply, and because of the noise that would no doubt be generated from the hall and associated with large number of people coming to and leaving the hall. This is a residential area not designed for this sort of activity. Usage up to 5.00pm would not give me a problem
- Usage up to 5.00 pm acceptable
- The benefit of allowing this application would not outweigh the detrimental impact on residents living nearby
- The nature of Orthodox Jewish events is for people to pop in for a few minutes, throughout an event. Thus, there would be in and out traffic causing sustained noise the whole evening. Saturday evenings in the winter functions will be able to include Music. The beginning of the road is considered the best parking place for attendees at the school this result in increased noise from hooting and shouting loudly from their cars, as happens on parent's evenings etc.
- There are orthodox Jewish halls with the same capacity in the area
- Have previously put in support for this however need to add that the permission should run till 6pm only
- Concern it could be extended further if permitted
- The time extension until 10:30 pm will provide a period of time after the sabbath to hold more events which would create noise and traffic
- Numbers of attendees unrealistic
- Unlikely that those third party users who will rent the hall for events will adhere to conditions/restrictions.
- Nothing is stopping people from coming before the Sabbath and parking their cars and leaving them there until after the Sabbath which will leave local residents without parking which is already compromised by the school.
- We have already experienced when planning was violated and the school was used on the Sabbath day and we could not sleep all afternoon from noise coming out of the hall (singing, banging etc.) This was under controlled conditions being used by the school, not by third party
- Disagreements with the finding of the noise assessment - does not include the gathering of people outside and questioning of the timings of the recordings undertaken, noise measurements should be taken from neighbouring residential properties
- The school is a voluntary aided school receiving grants from the government and council. This is a commercial enterprise.
- Sabbath is the only time when I can actually rest undisturbed.
- There is no promise that Hall is rented to non Sabbath observers therefore loud music and large quantities of people are high probability
- Concerns of pollution and rubbish
- Increased risk of crime
- Devalue property prices
- Those who have submitted comments of support live further away from the School
- Under no circumstances should permission ever be granted (even temporarily) for the use of the playground as a means of entry into the school hall. This would contradict the applicants statement that the windows and doors would be kept closed, as anyone entering the premises would then have no choice but to open the doors to

gain entry. This would be in addition to the area then being open to further use which is unacceptable.

The letters of support received can be summarised as follows:

- The predominant number of those in support stated that it would be a benefit to the local community, many of whom are associated with the school, and that given the times requested are during the Jewish Sabbath period, this would avoid any issues of traffic outside or (loud) music being played, which is disallowed on the Sabbath.
- It's a pleasure to hear children playing outside rather than looking at electronic screens. The information provided intends to keep noise levels to a minimum. We hear loud amplified music from rooms/houses/cars along this street at all times of the day and night which I find very disturbing. Parents/carers together with a security personnel will keep the noise of the children down. The noise assessment provided was taken on school days in the summer when noise levels would have been at their highest.

The representations received can be summarised as follows:

- Most who provided general comment raised concerns with noise and parking
- While there may be a need for more facilities for various social events I do not believe that there is a requirement for them to last that late. I would suggest that the social events be allowed but only till say 13:00 hours.
- The opening until 10:30 pm has been allowed for a long time and does not seem to cause trouble. The agreement to allow extended opening hours must include a rider stating that people should leave quickly and quietly after 10:30 pm to show consideration for local residents
- Please clarify the meaning of "Sabbath days". Does it mean only on Saturdays or also special Jewish days when the school is normally closed?
- Many dinners/receptions go on beyond 10:30pm. I suggest it should be between the hours of 8:30 am - 11:30pm. 11:30 pm would not impact detrimentally on local residents
- The 'Proposed Noise Management Plan' is not part of the actual application.
- No comparable halls are located in residential areas- they are located on main roads or just a few metres away from it on a side road
- While we respect the views of those residents who feel that there is a need for more function Halls, this certainly needs to be balanced against the adverse affect and considerable disturbance this will cause to many neighbouring residents if it is located at the Menorah Primary School which is surrounded on all sides by a very dense residential population.
- We think that the figure of 150 mentioned in the Planning Statement is a significant underestimation with the number of participants likely to be, on many occasions, at least double that figure and more.
- Could only support the application if it is strictly limited to the hours of Sabbath with an additional period at its conclusion of one hour to enable caterers to clear the hall and on the condition that the school do not submit any further planning application to vary the conditions

Since reconsultation, the objections received are as follows:

- Numerous valid objections were made by the last time and nothing has changed in this new application. The properties in the immediate area are subjected to another round of having to inform the Council of our strong objections. These comprise: highways and parking issues; noise; the school is not a place of entertainment or of religious and social events, nor a synagogue or place of worship. No need for such a venue when there are ones in the area.
- Under no circumstances should permission ever be granted (even temporarily) for the use of the playground as a means of entry into the school hall. This would contradict the applicants statement that the windows and doors would be kept closed, as anyone entering the premises would then have no choice but to open the doors to gain entry. This would be in addition to the area then being open to further use which is unacceptable.
- More concerns related to parking and finding parking
- In addition to the previous comments which have not been dealt with, the new proposal is still unenforceable as most neighbours would not use the phone on the Sabbath so they will not be able to complain if the noise is excessive.
- The end time for functions does not help the immediate neighbours as they will still suffer from the noise of catering clear up and building cleaning after the function ends and attendees fraternising in the street after closing. This will create a noise problem 7 days a week for all neighbours as the school is in operation 6 days a week already. It is a school that we moved next to many years ago not a function hall which is now being sought.
- Nothing has changed in application. Please confirm that you have added to the report/recommendations that under no circumstances should permission ever be granted (even temporarily) for the use of the playground as a means of entry into the school hall. This would contradict the applicants statement that the windows and doors would be kept closed, as anyone entering the premises would then have no choice but to open the doors to gain entry. This would be in addition to the area then being open to further use which is unacceptable.

5. Planning Considerations

5.1 Policy Context

National Planning Policy Framework and National Planning Practice Guidance

The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another.

The National Planning Policy Framework (NPPF) was published on 24th July 2018. This is a key part of the Governments reforms to make the planning system less complex and more accessible, and to promote sustainable growth.

The NPPF states that 'good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.... being clear about design expectations, and how these will be tested, is essential for achieving this'. The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would 'significantly and demonstrably' outweigh the benefits.

The Mayor's London Plan 2016

The London Development Plan is the overall strategic plan for London, and it sets out a fully integrated economic, environmental, transport and social framework for the development of the capital to 2050. It forms part of the development plan for Greater London and is recognised in the NPPF as part of the development plan.

The London Plan provides a unified framework for strategies that are designed to ensure that all Londoners benefit from sustainable improvements to their quality of life.

The London Plan is currently under review. Whilst capable of being a material consideration, at this early stage very limited weight should be attached to the Draft London Plan. Although this weight will increase as the Draft London Plan progresses to examination stage and beyond, applications should continue to be determined in accordance with the adopted London Plan

Barnet's Local Plan (2012)

Barnet's Local Plan is made up of a suite of documents including the Core Strategy and Development Management Policies Development Plan Documents. Both were adopted in September 2012.

- Relevant Core Strategy Policies: CS NPPF, CS1, CS5
- Relevant Development Management Policies: DM01, DM04

Policy DM01 states that all development should represent high quality design and should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining occupiers. Policy DM02 states that where appropriate, development will be expected to demonstrate compliance to minimum amenity standards and make a positive contribution to the Borough. Policy DM04 states that proposals to locate development that is likely to generate unacceptable noise levels close to noise sensitive uses will not normally be permitted. Proposals to locate noise sensitive development in areas with existing high levels of noise will not normally be permitted. Mitigation of noise impacts through design, layout, and insulation will be expected where appropriate.

Supplementary Planning Documents

Sustainable Design and Construction SPD (adopted October 2016)

5.2 Main issues for consideration

The main issues for consideration in this case are:

- Whether the proposed variation constitutes a minor material amendment
- Whether harm would be caused to the living conditions and amenities of neighbouring residents

5.3 Assessment of proposals

The Planning Practice Guidance states that an application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied.

There is no statutory definition of a 'minor material amendment' but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.

Planning permission was granted under application reference C01178A, dated 07 December 1967, for the rebuilding of the school, subject to conditions.

Condition 3 of this consent stated: "That the use of the premises shall be limited to those activities which are directly associated with the functioning of the school as such."

Condition 4 of this consent stated: "That no activities shall take place on any Saturday, Sunday or Bank Holiday or any other day except between the hours of 08:30 am and 10:30 pm."

The reasons for the conditions were to protect the amenities of adjoining occupiers (condition 3) and to ensure that the amenities of residential locality are not prejudiced by noise at times normally available for recreation or rest (condition 4).

Since the original consent, the school has been permitted to use the premises on Sundays between the hours of 9.30 a.m. and 12.30 p.m. for Sunday classes. It has also been permitted two Sunday afternoons per calendar year to hold fetes.

This application currently under consideration proposes the variation of conditions 3 and 4 of the planning permission reference C01178A, dated 07/12/1967, to allow religious and social events on Jewish Sabbath days from the commencement of the Sabbath on Friday afternoon until 10.30 p.m. on Friday, and from 8.30am until the end of the Jewish Sabbath (i.e. nightfall) or 10.30pm, whichever occurs earlier, on Saturday.

The Sabbath is commonly defined as a day of religious observance and abstinence from work, kept by those of Jewish faith, from Friday evening (sunset) to Saturday evening (sunset).

The agent representing the applicant has clarified that events would finish by the end of Sabbath on Saturdays i.e. in the winter earlier, and the summer later.

The Planning Statement submitted states that the parts of the school proposed for this purpose would be the school hall, the kitchen and the sanitary facilities. This is shown on the shaded plan submitted by the applicant.

It states that the entrance would be through the school playground, leading into the hall.

The Planning Statement states that no music or amplification would be played. The document also states that the use of vehicles on the Sabbath is forbidden, and therefore it is anticipated that visitors would be pedestrians only.

The applicant has also submitted a 'Proposed Noise Management Plan' and 'Noise Impact Assessment' by Clement Acoustics (Report 13879-NIA-01-RevA) dated 02 August 2018.

The documents state that up to 150 people could attend. The accompanying documents state that expected events could include a 'kiddush', which may be followed by a family meal to celebrate a Bar Mitzvah / Bas Mitzvah; a birth, 'Aufruf' (the Sabbath before a wedding) or 'Sheva Brochos' (the Sabbath after a wedding).

An Environmental Health officer has assessed the application and accompanying documents. They have concluded that the application cannot be supported by the local planning authority.

Their comments on the Acoustic Report by Clement Acoustics are as follows:

1. BS4142:2014 is useful as an indicative guide but cannot be used to assess noise levels from "people" in a planning situation. Section 1.3 f of BS 4142 states that, amongst other things, the standard is not intended to be applied to the rating and assessment of sound from people.
2. The report bases the reduction of noise on the distance to one metre to the nearest façade whereas the rear garden of No. 2 Montpelier Rose will be affected continually throughout the day on Saturday from noise impact due to it being very close to the hall. This will directly impact on the neighbouring residents' use of their garden and so have a negative impact on their amenity throughout summer months when they may want to use their garden. As is seen from the background noise readings, the ambient background noise level is quite quiet.
3. There are no scale diagrams of the openable doors/ windows in the side of the hall facing the garden which would give a good indication of the noise outbreak; nor is there any assessment of any barriers between the garden and school hall. If there are openable windows and doors then it would be likely with the large numbers congregating in the room that they would want to fully open the windows and doors during the hot months at the same time as the neighbours wish to open their windows and the noise reduction of 15dBA (from a "partially open" window would not apply); thus increasing the noise impact. It is hard to enforce keeping windows and doors partially open as is assumed within the report. This is not considered within the report.
4. If there is any singing then this would result in higher noise levels and impact. This is not considered.
5. The sounds of people talking, as well as coming and going, in a residential road at 10:30 pm is not considered in the report.
6. The noise monitoring position should be explained - it is closer to the main traffic on road by 20m compared to the garden at the neighbouring residential. The background noise in this corner surrounded by hard acoustic surfaces may be noisier too. I would have advised on placing the meter closer to 2 Montpelier or explained by methodology.

The applicants acoustic consultant has responded accordingly:

- "1. BS4142 is as robust as we can be. Otherwise, we'd be looking at WHO/BS8233, which is less robust

2. We do not deny that some noise of talking may be heard from neighbouring gardens. However, this is an established urban area with no proposed activities taking place during unsocial hours.

We have undertaken a further assessment to the closest residential gardens, which are approximately 10m from the facade of the school hall. This results in an external noise level of 43dB(A), in line with the criteria specified in BS8233 for external amenity areas, even when the school hall windows are assumed to be partially open.

3. The possibility of open windows has been assessed in the report. However, mechanical ventilation already exists and will be used. Opening windows prevents the effective use of air conditioning, so there is no concern, even in hot weather. The calculated levels shown in our assessment are therefore very worst case, and in reality noise breakout levels will be significantly lower.

4. We are advised that there will not be any prayer sessions, so no singing or music will occur.

5. We have pointed out that no cars will be used, owing to religious constraints. We have considered that people may be talking when leaving at 10.30pm, but we have concluded that this would be low impact.

It is noted that entry points to the building are more screened and / or distant from sensitive receptors. Additionally, entry points are on the front facade, which is already busy with vehicular traffic and pedestrians."

The agent confirmed in an email dated 29 October 2018, that:

"The Sabbath starts at sundown on Friday and finishes at nightfall on Saturday. Calendar times have previously been submitted to you. In mid summer, the Sabbath does not finish till 10.30pm. However, in mid winter, the Sabbath finishes with darkness setting in at 5.00pm. What we are proposing is that the proposed use would finish earlier on winter days before the termination of the Sabbath, because it is on the Sabbath that no cars are used."

In response to all of the above the Environmental Health officer has stated that for the British standards and European guidelines: BS4142:2014 and BS:8233:2014 and WHO guidelines on noise, none of these are truly able to represent the noise impact from people.

The additional impact of opening the school to large numbers of people on Saturdays removes the only day for rest and respite for the neighbouring residents. Standards often average out noise impacts over time periods thus removing the impact of single events such as raised voices which are most likely to cause disturbance. This is particularly given the hours of use that have been requested (8:30 am to 10:30pm). Deliveries before and after the event will also have a noise impact. This has not been assessed by the applicant.

To have a trial period with a restricted number of events in one year is more appropriate as this will give the local authority, and neighbouring residents, the opportunity to establish whether the events are, in fact, a nuisance or not.

"Discouraging" children and adults from going outside and preventing windows from being opened, as proposed by the applicant, is unenforceable from a planning perspective. It is also unreasonable to expect this in the warmer months. Furthermore, the doors will have to be open for entrance/exit of users. No evidence has been provided to demonstrate that the mechanical ventilation in the hall would be adequate, especially in the summer months.

Even if events finish at the end of Sabbath on Saturdays as the agent has stated, the summer months where the Sabbath finishes later is the time of year where neighbours are more likely to have their windows and doors open and will be using their gardens. This is where harm from noise would arise most.

In conclusion, the proposed variation would increase noise and disturbance on Friday evenings and Saturdays which would detrimentally harm the living conditions of surrounding residents. It is considered that the proposed variations are of a scale and nature that results in a development which is substantially different from the one which has been approved.

The application is therefore recommended for refusal, in accordance with Policy DM04 of Barnet's Development Management Policies Document (2012); London Plan Policy 7.15 and the guidance set out in Section 2.14 of Barnet's Sustainable Design and Construction SPD (2016) about noise quality.

Policy DM04 states that proposals to locate development that is likely to generate unacceptable noise levels close to noise sensitive uses (such as residential) will not normally be permitted.

London Plan Policy 7.15 states that development proposals should seek to manage noise by avoiding significant adverse noise impacts on health and quality of life as a result of new development.

The local planning authority are satisfied that conditions 3 and 4 applied to the original consent in 1967 (reference C01178A) meet the 6 tests for conditions set out in Paragraph 206 the National Planning Policy Framework (2018). They should therefore should remain imposed.

5.4 Response to Public Consultation

The majority of objections related to noise and disturbance, and concerns with impact on the highways and parking.

The objections regarding noise and disturbance have been noted and addressed in the main report.

The objections regarding highways have been carefully considered. The applicant has stated that the school would be used in the hours of sabbath, whereby use of the car is forbidden. This is accepted by the local authority.

The proposal currently under consideration is different from the application previously refused (reference C01178AC/03, dated 25 September 2003). The previous application proposed to allow extra-curricular activities to take place until 11:00 pm, potentially on any day of the week. The current application under consideration

proposes to allow extra-curricular activities to take place on Friday evenings and Saturdays.

If the conditions for the hours of use of the school on a Sunday are not being complied with as residents state, then they are advised to contact the Planning Enforcement department to investigate on 020 8359 3000 or on email: planning.enforcement@barnet.gov.uk

Objectors have queried that there is a period of time in the winter months, between the end of Sabbath and 10:30pm, which could potentially allow the use of cars, as well as music. The agent has clarified in writing that: "The Sabbath starts at sundown on Friday and finishes at nightfall on Saturday. Calendar times have previously been submitted to you. In mid summer, the Sabbath does not finish till 10.30pm. However, in mid winter, the Sabbath finishes with darkness setting in at 5.00pm. What we are proposing is that the proposed use would finish earlier on winter days before the termination of the Sabbath, because it is on the Sabbath that no cars are used." Notwithstanding this, Officers are of the position that the proposal remains unacceptable, as explained in the main report.

If the conditions for the number of students at the school are not being complied with as residents state, then they are advised to contact the Planning Enforcement department to investigate on 020 8359 3000 or on email: planning.enforcement@barnet.gov.uk

Objectors have raised concern that they have not been consulted. Under this particular application, the local planning authority have advertised the application on the website, have erected a site notice and have sent notification letters to those properties which directly abut the site. Statutory publicity requirements have therefore been met.

Objectors have raised concern that the 'Proposed noise management plan' is not part of the application and is not 'legally binding' and thus not enforceable. The 'Proposed noise management plan' does form part of the application and in the event of an approval would have to be complied with.

Objectors have raised concern with the methodology of the submitted noise report. The noise report would have been done to get a base or background reading to establish what the lowest level of noise was in the surrounding; therefore, the quieter the better for the local residents as it would better reflect the quieter days and evenings. The Environmental Health department always ask for the quietest times to be done so as to give a worst case scenario.

Any further applications at the school would be assessed on their own merits.

It is not considered the proposal would increase crime or risk of crime.

Impact on property prices is not a material planning consideration.

It is not considered the increase in pollution would constitute a reason for refusal in this particular instance.

Rubbish and refuse could be adequately addressed through conditions in the event of an approval.

Comments of support:

The comments of support are noted.

General comment:

Those who submitted a general comment (neither objection or support) suggested amendments to the hours of use. The application has been assessed on the hours proposed by the applicant.

The definition of 'Sabbath' has been addressed in the main report.

In the event of an approval, the 'Proposed Noise Management Plan' would be included within the conditions of the consent. The implications of this is, if the hours of use were not abided by, it would be a planning enforcement matter.

The local authority could not prevent or stop the applicant from submitting any further planning applications.

Residents have queried the number of people in attendance at these events. The application has been based on the information provided by the applicant.

6. Equality and Diversity Issues- Equalities Act 2010 and other material considerations

The Equality Act 2010 (the Act) came into force in April 2011. The general duty on public bodies is set out in Section 149 of the Act. The duty requires the Council to pay regard to the need to eliminate discrimination and promote equality with regard to those with protected characteristics such as race, disability, and gender including gender reassignment, religion or belief, sex, pregnancy or maternity and foster good relations between different groups when discharging its functions.

Equality duties require Authorities to demonstrate that any decision it makes is reached in a fair, transparent and accountable way, considering the needs and the rights of different members of the community. This is achieved through assessing the impact that changes to policies, procedures and practices could have on different equality groups. It is an opportunity to ensure better decisions are made based on robust evidence.

Section 149 of the Act states that:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to-
 - (a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to-

- (a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different to the needs of persons who do not share it;
- (c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(3) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular steps to take account of disabled persons' disabilities.

(4) Having due regard to the need to foster good relations between persons who share relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to-

- (a) Tackle prejudice, and
- (b) Promote understanding

(5) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(6) The relevant protected characteristics are-

- Age;
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

In determining this planning application the Local Planning Authority must have due regard to the equalities impacts of the proposed development on those persons protected under the Equality Act 2010. This Act requires the Local Planning Authority to demonstrate that any decision it makes is reached in a fair, transparent or accountable way considering the needs and rights of different members of the community.

The proposal, if approved, would provide a place to hold social and religious events for those under a protected characteristic. This is the potential equality impact of the proposal.

Any equalities impacts have also to be analysed in the context of the overall planning merits of the scheme and the benefits it will confer on those of a protected characteristic.

No justification or evidence has been provided by the applicant of why the needs of persons who share a relevant protected characteristic cannot be met at an alternative site.

In this particular instance, Officers consider that the benefits to the applicant and users (within a protected characteristic) would not outweigh the harm to the residential amenities of the neighbouring occupiers as a result of the proposal.

Whilst assessing this application, the local planning authority offered the applicant the opportunity to explore the option for a temporary planning permission. The applicant however has rejected an option of a temporary permission, and wished for the application to be assessed based on what was sought, which officers conclude is harmful to neighbouring residents.

7. Conclusion

Having taken all material considerations into account, it is considered that the proposed variation is of a scale and nature which results in a development that is substantially different from the one that was originally approved. Furthermore, the proposed variation would result in an increase in noise and disturbance on Friday evenings and Saturdays which would detrimentally harm the living conditions of surrounding residents.