



DECISION MADE BY THE DIRECTOR OF SUSTAINABLE COMMUNITIES

Application No	:	22/00936/CLOPUD Certificate of Lawful Proposed Use Dev
Location	:	Marconi Athletic And Social Club Tydemans Great Baddow Chelmsford Essex CM2 9FH
Proposal	:	<p>The use of the Community Facility (Hamptons Sport and Leisure) to be used for a range of community uses. This includes (but not exclusively limited to):</p> <ul style="list-style-type: none"> - The provision of indoor sport, recreation and fitness - The provision of health and medical services to visiting members of the public - A creche, day nursery or day centre to visiting members of the public - For the provision of education - For the display of art works - For public reading - For a public hall or exhibition hall - For, or in connection with, public worship or religious instruction - A hall or meeting place for the principal use of the local community - An area or place for outdoor sport or recreation <p>And Confirmation that the internal alterations comprising the laying of carpets, creation of shoe racks, installation of a sound system, alterations to ablution facilities and alterations to facilitate the creation of ritual ablution facilities does not involve development under S.55 (2)(a) of the Town and Country Planning Act (1990) as amended as they are internal works connected to the lawful use of the building.</p>
Applicant	:	Hampton Sport and Leisure Ltd
Agent	:	Mr Robert Harrison
Date Valid	:	18th May 2022
Development Type	:	CLEUD/CLOPUD (D26)
Drawing No(s)	:	6004-1202-Rev.J; 6004-1201-Rev.M; Site Location Plan;
Target Date	:	12th July 2022

Consult Expiry	:	
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Description of the site

The Hamptons is a sport and leisure complex located in Tydemans, off Beehive Lane. It comprises a mixed-use community building which includes squash courts and changing facilities, a car park and adjacent outdoor tennis courts. The surrounding area is predominantly residential.

Details of the proposal

This application is made by Hamptons Sports and Leisure Ltd (Hamptons). It is in two main elements: i) the use and ii) internal works to the premises. It seeks to confirm:

- i) That a range of community facilities and indoor sport, recreation and fitness to also include public worship and religious instruction and the provision of health and medical services to visiting members of the public, would not constitute a change of use requiring planning permission and,
- ii) Internal alterations to include ablution facilities and facilities for the ritual washing of bodies in connection with funerals would not comprise development requiring planning permission.

The application describes both the existing and proposed use to be a "Community Use" and asserts that no material change of use would arise because the use of the site for an element of public worship/religious instruction use would fall within the definition of community use of the building. A supporting letter accompanying the application states that Hamptons is permitted to be used for a mix of 'community uses'. This includes (but is not exclusively limited to) a list of ten bullet points. These are:

- The provision of indoor sport, recreation and fitness
- The provision of health and medical services to visiting members of the public
- A creche, day nursery or day centre to visiting members of the public
- For the provision of education
- For the display of art works
- For public reading
- For a public hall or exhibition hall
- For, or in connection with, public worship or religious instruction
- A hall or meeting place for the principal use of the local community, and,
- An area for outdoor sport or recreation.

and,

Confirmation that the internal alterations comprising the laying of carpets, creation of shoe racks, installation of a sound system, alteration to the ablution facilities and alterations to facilitate the creation of ritual ablution facilities does not involve development under s.55(2)(a) of the Town and Country Planning Act 1990 (as amended) as they are internal works connected to the lawful use of the building.

The letter focuses on the proposed use of four parts of the building. Three on the ground floor for religious worship, celebrations and associated purposes and one on the first floor for medical purposes. These are edged in colour on submitted floor plans of the building. These are:

- a) Use of an elongated room of the ground floor (edged in blue) for daily prayers. They take place approximately five times a day and last 10-15 minutes per session.

b) Use of the main hall and adjacent ancillary areas on the ground floor (edged orange) for *occasional* religious celebrations (i.e., births, deaths, marriages and religious holidays) for a maximum of 15-20 separate days per year.

c) Use of a small room on the ground floor for ritual body washing in connection with funerals (edged in green).

d) Use of the yellow edged area at first floor level for a pop- up medical clinic. Other uses would take place when the clinic was not in use.

Further information has been requested and received from the planning agent acting for Hamptons. This is contained in emails dated 02 August and 06 September.

In the email of 02 August further information is provided on Muslim funeral practices, it is confirmed that ritual body washing would only take place in connection with funerals held at Hamptons and, confirmation that funerals would take place within the "blue area" and that it is highly unlikely that the main hall would be used.

The email of 06 September responds to a question of whether the medical facility would be used for religious related circumcision. The letter advises:

- 1) The planned use of the medical facility is for the wider/general community.
- 2) We do not anticipate a regular stream of males for religious or non-religious reasons requiring circumcision. If, however on the odd occasion this was requested and a surgeon with suitable qualifications could perform the operation then this might occur subject to availability.

Applicant's evidence

In summary, the applicant's evidence comprises:

- Completed CLOPUD application form
- Site location plan
- Ground and first floor plans
- Supporting letter dated 10 May 2022

In addition to the evidence submitted as part of the application the applicant's agent Arrow Planning has in response to requests for clarification from the Council sent emails dated 02 August and 06 September (see above).

Site history

Before examining the two grounds for which the certificate is sought it is helpful to summarise the history of the building. This was set out in detail in the report for recent application 21/01429/CLEUD. For completeness the history of the site has been repeated below.

The Hamptons is a sports and leisure complex is located on land formerly occupied by the Marconi Athletic Social Club, although the main part of the former MASC club building was located on land which has now been residentially developed.

The current development was completed and came into operation in 2012 after planning permission was granted in 2006 (04/02419/FUL) for the '*Development of a community facility building, tennis court and associated car park.*' The application site for the community building was a very small area of the former

Marconi site with the remainder of the former site being used as a housing development (04/02419/OUT). None of the original Marconi Social Club building was proposed to be retained as part of the full planning application.

In 2009 (08/01872/FUL) an amendment to planning permission 04/02149/FUL was granted to BAE Systems property and Environmental Services. The amendment made a number of changes to suit the club's current requirements. A further material amendment application (11/01812/MAT) was granted permission in 2012. This application added further external plant areas to the development.

A new planning application (11/01814/FUL) was also granted in 2012 for the variation of conditions 6 and 15 of permission 08/01872/FUL to amend the design and location of the refuse facility and car parking arrangements.

The effect of the planning permissions as listed above is that the building constructed in 2012, and currently on the site, has authorised use as a community facility and the adjoining land as an ancillary car park and tennis courts.

There were no planning conditions attached to any of the above permissions which constrained the scope of the community facility use.

The community facility provides a range of uses including leisure, recreation, sports activities, classes, and meetings. The ownership of the building changed in February 2017 and the building was renamed as Hamptons Sport and Leisure as it is known to this day. In recent years the management of the building has passed to the Chelmsford Muslim Society. The building has continued to operate as previously, apart from a cessation of the bar, but with the addition of the use of parts of the building for worship and related activity.

A list of relevant applications is set out below:

04/02419/FUL- Approved 11/10/2006

Development of a community facility building, tennis court and associated car park (full), residential development (outline).

04/02419/OUT/FUL- Approved 10/5/2006

Residential development (outline), development of a community facility building, tennis court and associated car park (full)

08/01872/FUL- Approved 10/3/2009

Redevelopment of the existing MASC community building together with 6 no. tennis courts, car park and associated landscaping. Amendment to planning permission 04/02419/FUL.

11/01812/MAT- Approved 17/2/2012

Material amendment to permission reference 08/01872/FUL (redevelopment of the existing MASC community building together with 6 no. tennis courts, car park and associated landscaping) for the addition of external plant areas.

11/01814/FUL- Approved 17/2/2012

Variation of conditions 6 and 15 of planning permission 08/01872/FUL to amend the design/location of refuse facility and car parking arrangements.

21/01429/CLEUD- Refused 29th October 2021

The use of the Community Facility (Hamptons Sport and Leisure) to be used for a range of primary uses falling within use Classes E, F1 and F2 of the 1987 Use Classes Order (as amended). This includes (but not exclusively limited to):

- The provision of indoor sport, recreation and fitness,*
- The provision of health and medical services to visiting members of the public,*
- A creche, day nursery or day centre to visiting members of the public,*
- For the provision of education,*
- For the display of works of art,*
- For public reading,*
- A public hall or exhibition hall,*
- For, or in connection with, public worship or religious instruction,*
- A hall or meeting place for the principal use of the local community, and,*
- An area or place for outdoor sport or recreation.*

The above CLEUD application was in essence, seeking to demonstrate that worship use of the premises was lawful in its own right. This was not accepted by the Council. The Council's assessment of this case to date and as reflected in the report that accompanied the decision on the CLEUD has been that the religious worship and instruction has been carried out at a limited level that can be accommodated within the general community use of the premises.

Discussion

As was the case with the previous CLEUD application the Council has again sought the advice of independent Counsel in its consideration of the current application.

As indicated in the previous section of this report, it is common ground between the Council and the applicant that a limited level of religious use at the premises, which has been carried on, is lawful and within the scope of the planning permission for community use. There is no issue with the lawfulness of the range of uses now listed by the applicant in the ten bullet points set out in the application and listed earlier in this report (Details of proposal section) subject to the detailing of the religious use.

The two grounds for the application are discussed in turn below.

Confirmation that the internal alterations listed in the application do not involve development

Section 55 (2) of the Town and Country Planning Act (1990) states that *'the following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land-*

- (a) The carrying out for the maintenance, improvement or other alteration of any building of works which*
 - i. Affect only the interior of the building, or*
 - ii. Do not materially affect the external appearance of the building.*

The internal works proposed are all required in connection with the religious aspect of the community facility. They are minor in form and affect only the interior of the building.

The internal fittings/alterations referred to in the application and set out in the Detail of proposal section of this report do fall in themselves within the terms of s.55(2)(a)(i) of the 1990 Act. They are not operational development.

It should be noted however that internal works and fittings can be indicators of a change of use to a building or alterations to the mix of uses that can be material in planning terms.

Lawful use of the building is a community facility

The application describes in detail aspects of the proposed use. These are addressed in turn below.

- a) Use of the blue edged area on the ground floor for daily prayers

The use of this area is already taking place. The application indicates use of this area five times a day, for 10 – 15 minutes per session. As such, this will involve no more than two hours per day. The carpet, shoe racks and stereo installation facilitate this use. The applicant's agent advises that other uses can take place within this area when it is not in use. Given the nature of the use, the limited times of use and the relatively small part of the building involved this element of the use could be considered to fall within the lawful community use.

It is however, also proposed to use this area for funerals and to facilitate that use to include fittings/facilities to enable funerals in accordance with Islamic tradition (see also c) below). It does appear from the application that the use for prayer and funerals that there is a significant commitment of this area for religious purposes (see discussion under c) below).

- b) Use of the main hall and adjacent ancillary areas (orange edged) for occasional religious celebrations (i.e., birth, deaths, marriages and religious holidays for all faiths).

This is estimated to amount to 15 – 20 separate days per year and the space would be available for other community functions and indoor sports at other times. It is understood that the reference to deaths refers to memorials/celebrations of lives rather than to funerals with the deceased present.

As this element of the use is limited to no more than 20 days per year, use for religious celebrations is considered to fall within the lawful community use.

- c) The small room edged green on the ground floor "is proposed to be used for body washing in connection with any funerals that take place".

The applicant advises that "This would involve the body being taken into the room to be washed. A short ceremony would take place then it would be removed". This it is advised by the applicant's agent "...is part of the funeral process. The body is brought to the building just prior to the ceremony. It is washed in accordance with the traditions of the Muslim faith, the funeral service then takes place. The body would be removed at the end of the ceremony. The body would generally be in the building in the order of a couple of hours as it would then need to leave to be buried. I can confirm that the body washing would take place on the same day as the funeral and there would not be any overnight storage. Body washing is effectively an incidental part of the funeral process." (Email from applicant's agent dated 02 August 2022)

Ritual body washing as described, a part of a Muslim funeral, appears inconsistent/incongruous with the permitted community use as the term is reasonably understood. The preparation of bodies before a funeral service and burial is not a use that would be anticipated to take place in the context of a community use, no matter how wide ranging that may be, or whether it is part of a funeral ritual. The inclusion of ritual body washing would, as it is understood, provide the premises with everything required for a fully functioning mosque or something close to it.

Funerals and ritual body washing does seem to shift the balance of use of the premises to a mixed 'community use and mosque'. This shift in character is considered to be material and if funerals and ritual body washing are proposed to take place then a grant of planning permission would be necessary.

d) Use of the yellow edged area on the first floor as a pop-up medical clinic.

This element of the use concerns one room only. The procedures proposed would be minor in nature, such as wart removal and blood tests. When not being used for medical purposes, the room would be available for other uses. This use for medical purposes would be considered to be acceptable within the context of the lawful community use.

However, in addition to the use of ground floor rooms for religious purposes the applicant has indicated to the Council by email that while they do not anticipate a regular stream of males requiring religious or non-religious circumcision, if "...on the odd occasion it was requested and a surgeon with suitable qualifications could perform the operation than this might occur subject to availability". (This clarifies for the Council the reference to 'minor surgeries such as...skin tags...' in the list of procedures mentioned on pages 2 and 3 the Arrow Planning supporting letter of 10 May 2022.)

This email does indicate that it is, at least, in mind by the applicants that the 'Pop-up' medical clinic could offer male circumcision which is an aspect of Islamic religious practice. This is often a procedure with a religious, not medical justification. While a very occasional circumcision for religious reasons (e.g., 1-3 times a year) taking place may well not be material it could be that if a certificate is issued to agree that the practice falls within the lawful community use there could be a strong demand for the practice within the nearby Islamic community. The acceptance that circumcision may take place is an additional relevant factor in assessing whether the range of uses set out in the application would fall within the permitted mixed community use.

Summary

The internal fittings/alterations referred to in the application and set out in the Detail of proposal section of this report do fall in themselves within the terms of s.55(2)(a)(i) of the 1990 Act. They are not operational development.

The use of area a) for daily prayers for limited times during the day is in itself, considered to be not so significant that a change of use would occur. However overall, the proposal would result in an area of the building a) fitted out for prayers to take place five times a day and to be used for funerals following the ritual washing of the diseased in a nearby specific room (area c)). The overall the use of these parts of the building a) for funerals along with the room c) for ritual body washing adds to the concern of the Council about an incremental increase in the use of the premises for religious related activities. It is considered that these funeral elements tip the balance from a level of religious worship use that can be accommodated within the lawful community use of the premises, to a mixed use as a community centre and mosque. As such a material change of use would have occurred as in effect, a mosque, or something close to it, would have been created within the complex.

The use of the area d) as a pop-up medical clinic for a range of minor medical procedures is considered not to be significant in the context of the overall use of the premises. The applicant has however acknowledged that circumcisions, with a religious justification, may take place within the clinic. This religious element of the use adds to the balance of uses moving away from the lawful community use. It is the Council's view that the circumcision of males as required for religious rather than medical reasons would fall outside the lawful community use.

As described in the application, the use of the main hall and adjacent ancillary areas for religious celebrations for no more than 20 days in any calendar year would not be significant in the context of the hall's availability for secular hires/use for the remainder of the year. This is on the understanding that this use would not include funerals. This element of the application is therefore not so significant that a change of use would have occurred.

Community Infrastructure Levy (CIL)

This application is not CIL liable.

RECOMMENDATION

A Certificate of Lawfulness be REFUSED for the following reasons:-

Reason 1

In the opinion of the Council the proposed uses described in the application would not all fall within the term 'community use'. While it is accepted that a limited element of religious worship can be included it is considered that the holding of funerals (i.e., where the deceased's body is on the premises), or the ritual body washing of deceased persons cannot. Furthermore, the applicant has indicated that the proposed pop-up clinic may be used to carry out circumcisions of males (albeit on an anticipated occasional basis) and insofar as such circumcisions are carried out for religious reasons (e.g., circumcison of males as required in accordance with tenets of the Islamic faith) it is the Council's view that such activities would likewise fall outside the 'community use'.

As a matter of fact, and degree, the Council is of the view that the carrying out of such activities would alter the mix of uses taking place and that a material change of use would arise.

Background Papers

Case File
