

**Report to** Planning applications committee

**Item**

12 September 2019

**Report of** Head of planning services

**Subject** Application no 19/01073/VC - 286 Dereham Road,  
Norwich, NR2 3UU

**4(d)**

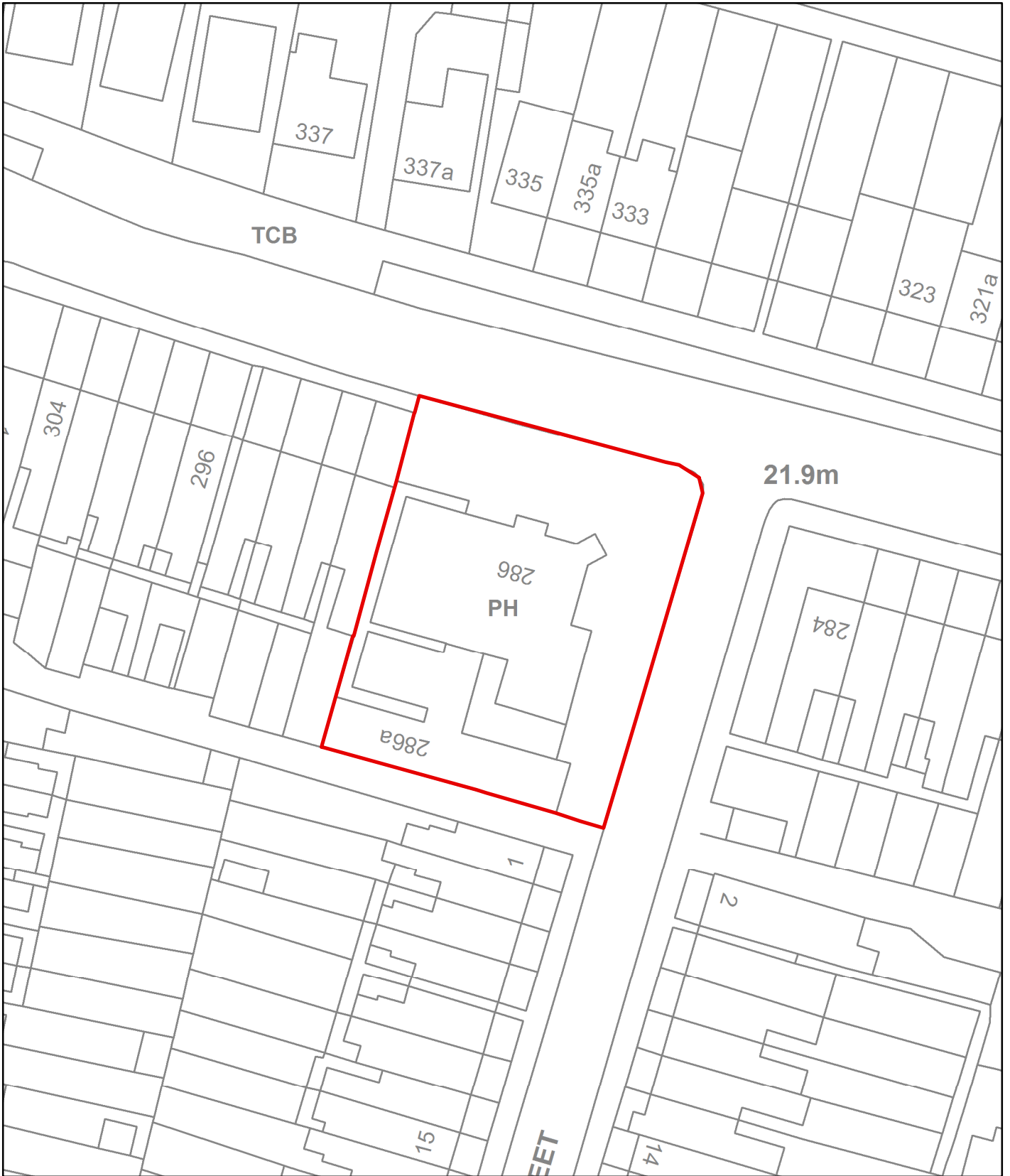
**Reason  
for referral** Called in by an elected member

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<b>Ward:</b>	Nelson
<b>Case officer</b>	Maria Hammond - <a href="mailto:mariahammond@norwich.gov.uk">mariahammond@norwich.gov.uk</a>

<b>Development proposal</b>		
Removal of Condition 3 of previous permission 18/01402/VC.		
<b>Representations</b>		
Object	Comment	Support
3	0	5

<b>Main issues</b>	<b>Key considerations</b>
1	Principle of extending hours
2	Amenity
3	Transport
<b>Expiry date</b>	24 September 2019
<b>Recommendation</b>	Refuse



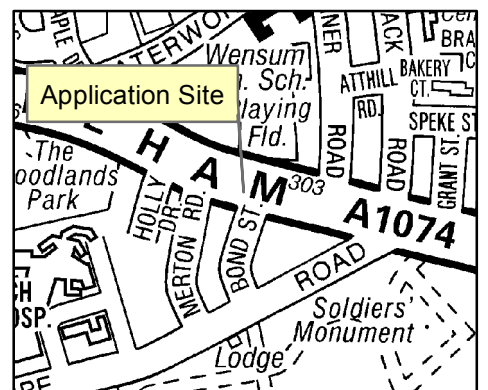
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Planning Application No 19/01073/F  
 Site Address 286 Dereham Road

Scale 1:500



**NORWICH**  
 City Council  
 PLANNING SERVICES



## The site and surroundings

1. The site consists of the former Queen Charlotte pub at the corner of Dereham Road and Bond Street to the west of the city. It is a detached two storey, locally listed building with single storey extensions and outbuildings at the rear.
2. In 2011, following closure of the pub, permission was granted for use as a community centre. In January 2019, an application to vary the planning condition which allows use as a community centre to include use as a place of worship also was approved following consideration by this Committee (18/01402/VC). The premises is occupied and used by the Norwich and Norfolk Muslim Association (NNMA).
3. Approximately 20 off street parking spaces exist along the Dereham Road and Bond Street frontages with cycle stands also provided. On street parking along the surrounding streets is not permit controlled and the area is otherwise residential, characterised by Victorian and later terraces.
4. Internally the building offers two large rooms of approximately 80 square metres each; one on each floor. Other smaller rooms and outbuildings provide ancillary spaces and uses.

## Constraints

5. The building is locally listed and not in a defined centre.

## Relevant planning history

6.

Ref	Proposal	Decision	Date
11/00071/U	Change of use from public house (Use Class A4) to general use for community and charitable use (Use Class D1) with minor internal alterations.	APPR	14/04/2011
11/01464/F	Render replacement works.	APPR	26/10/2011
11/01471/F	Erection of single storey extension within rear courtyard to house additional toilet facilities.	APPR	12/10/2011
12/00006/F	Extensions and alteration to the building including:  1) Extension of outbuilding to create office;  2) Extension of main building to create permanent retail area;	APPR	11/04/2012

Ref	Proposal	Decision	Date
	3) Retrospective application for replacement windows on rear elevation of main building with UPVc windows; and  4) Retrospective application for reinstatement of original front window of main building with UPVc window.		
12/01257/U	Change of use of part of outbuilding to provide a retail area for sales of light refreshments to existing community centre.	APPR	21/08/2012
12/02254/D	Details of condition 4 - amplified sound equipment, condition 6 - travel information and condition 9 - external lighting and security measures of planning permission 12/01257/U 'Change of use of part of outbuilding to provide a retail area for sales of light refreshments to existing community centre'.	APPR	31/01/2013
16/00426/VC	Variation of condition 4 of previous permission 11/00071/U, to increase permitted opening hours to allow later opening up to 3 hours after sunset for a temporary period each year during Ramadan up until 2022.	APPR	12/05/2016
16/00896/D	Details of Condition 9: Management Plan of previous permission 16/00426/VC.	APPR	30/06/2016
18/01402/VC	Variation of the wording of condition 3 of permission 11/00071/U to allow use of the premises as a place of worship.	APPR	15/01/2019

## The proposal

7. The application proposes to remove condition 3 of permission 18/01402/VC. This permission manages the hours which the premises can be open and states:

“The use of the premises which form the subject of this permission and which are outlined in red on the location plan ref NS-3077-50 (received 14 January 2011 in respect of application 11/00071/U) shall not take place between the hours of 2300 and 0700 hours on any day, except during the Ramadan period when the use shall cease not later than 3 hours after sunset, or 23:00 whichever is the later.

#### Reason for condition:

To ensure the use of the premises as a community centre and place of worship does not result in detriment to local amenities and the living conditions of local residents, in accordance with Policy DM2 of the adopted Development Management Policies Local Plan 2014”.

8. A condition allowing use from 0700 hours to 2300 hours was applied to the original permission allowing use as a community centre (11/00071/U). This was then varied to allow later opening during Ramadan in 2016 (16/00426/VC). It was re-applied to the permission which allows use as a community centre and place of worship for consistency (18/01402/VC).
9. The proposed removal of this condition would remove any time restrictions on the use of the premises and effectively allow 24 hour a day use.
10. The application has been submitted to explore the possibility of removing of the condition in response to conversations with officers following complaints that the premises was being used prior to 7am for morning prayers in breach of the existing condition. A noise impact assessment, management plan and travel information plan have been submitted in support of the application.
11. It is a feature of Islam that there are five daily prayers and the time of these follows the path of the sun, from sunrise to sunset. A copy of the prayer timetable for 2019 has been submitted identifying that the earliest prayers in congregation occur at 3am and the latest at 11pm. This occurs in the summer when days are longest and in the winter all prayer times fall within the existing permitted 0700 to 2300 hours.
12. No other conditions are proposed to be varied or removed.

## Representations

13. Adjacent and neighbouring properties have been notified in writing. 8 letters of representation have been received citing the issues as summarised in the table below. All representations are available to view in full at <http://planning.norwich.gov.uk/online-applications/> by entering the application number.

Issues raised	Response
Some people are more sensitive to noise than others and the noise from this building has woken me and my family (in the early hours) many times already.	See main issue 2
There is no consideration when parking or when leaving and getting into cars. Doors are being slammed, people are shouting across the road to each other, time of day or night is irrelevant. Not showing respect for the neighbourhood.	See main issue 2

Issues raised	Response
The car engines running do not help asthmatics.	See main issue 2
It's a busy road already and does not need the extra noise at unsociable hours of the morning.	See main issue 2
Just because they had someone monitor their noise for a week at 3am and they were not as loud as the cars going past still proves they made noise at 3 am which is wrong to be doing.	See main issue 2
What is going to be happening about them breaking planning permission rules and being there so early before 7am?	See paragraph 55
The noise from cars of attendees to the premises has shown to be minimal and causes no disruption according to the noise detectors, hence permission should be granted for this mosque to open for all prayer timings including early morning prayers.	See main issue 2
I couldn't live much nearer and have no noise problems from the Centre and, indeed, the traffic on Dereham Road creates most of the noise disturbance in this area.	See main issue 2
The Centre's leaders work hard to maintain good relations with the community and hold regular events for local people. They have also installed a defibrillator, and have trained local people to use it, as well as installed a charity clothes bank outside the building. They are good neighbours.	See main issue 2
The proposed change will make little difference to the Centre's existing minimal impact on the local area and I fully support it.	See main issue 2
I believe that those with a religious commitment should be able to practice their belief within reason and feel the need for the premises to be in use is justified and appropriate.	See main issue 1
Disturbance levels are not beyond what is to be expected living so close to a major city, the need for the use of the premise during unsociable hours is justified and there are	See main issue 2

Issues raised	Response
other solutions to parking and noise that do not interfere with the community's need to worship.	
I object to anything concerning 286 Dereham Road until Norwich City Council solve the issue of illegal parking and rat runners through access only Merton Road along with loud voices and car doors slamming late at night during religious festivals.	See main issues 2 and 3
The current use of the building does not create any additional disturbance and I cannot see that to allow prayer to take place between the hours of 2300 and 0700 would cause any additional disturbance.	See main issue 2

## Consultation responses

14. Consultation responses are summarised below the full responses are available to view at <http://planning.norwich.gov.uk/online-applications/> by entering the application number.

### Environmental protection

15. The environmental protection team notes the information submitted by the applicant and after careful consideration feels it is necessary to object to the proposed removal of Condition 3 (of previous permission 18/01402/VC) on the basis of noise disturbance.
16. The removal of this condition would increase traffic movements in the area during night time hours. Sources of noise disturbance are likely include; engine noise, people entering/leaving vehicles (i.e. car doors slamming) and people talking outside the premises.
17. This area is highly residential and the removal of this condition to allow access to 286 Dereham Road at any time is likely to have a detrimental impact on the use and enjoyment of surrounding residential dwellings during night time hours.
18. There are concerns over future expansion of activities on site and/or increased use of the venue which could exacerbate the potential for noise disturbance from attendees of the site. I cannot find any reasonable or enforceable conditions which would allow control over this use to reduce noise disturbance.
19. Due to the limited number of parking spaces at 286 Dereham Road, if a more intense use of the site takes place, it is likely that during busy times, attendees of the venue will need to park directly outside residential houses, again increasing noise disturbance in the vicinity.

20. I appreciate the details submitted in the transport plan. However, buses do not service this area during the early hours of the morning (with the first starting at approximately 06:30) and therefore will be unable to alleviate the need for parking, or reduce the associated noise, at these times.

### **Highways (local)**

21. No objection on highway grounds.
22. Prayer times throughout the day and night will mean car trips occurring around those times. There is spare on-street parking in the locality, and parking can be found on a first come first served basis.
23. The travel information plan can assist with considerate parking and use of car sharing, bus travel and walking/cycling.

## **Assessment of planning considerations**

### **Relevant development plan policies**

24. **Joint Core Strategy for Broadland, Norwich and South Norfolk adopted March 2011 amendments adopted Jan. 2014 (JCS)**
- JCS6 Access and transportation
  - JCS7 Supporting communities
25. **Norwich Development Management Policies Local Plan adopted Dec. 2014 (DM Plan)**
- DM1 Achieving and delivering sustainable development
  - DM2 Ensuring satisfactory living and working conditions
  - DM22 Planning for and safeguarding community facilities
  - DM28 Encouraging sustainable travel
  - DM31 Car parking and servicing

### **Other material considerations**

26. **Relevant sections of the National Planning Policy Framework February 2019 (NPPF):**
- NPPF9 Promoting sustainable transport
  - NPPF10 Meeting the challenge of climate change, flooding and coastal change
  - NPPF15 Conserving and enhancing the natural environment

### **Case Assessment**

27. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Relevant development plan policies are detailed above. Material considerations include policies in the National Planning Framework (NPPF), the Councils standing duties, other policy documents and guidance detailed above and any other matters referred to specifically in the assessment below. The following paragraphs provide an assessment of the main planning issues in this case against relevant policies and material considerations.



## **Main issue 1: Principle of development**

28. Key policies and NPPF paragraphs – JCS7, DM22, NPPF paragraphs 92
29. The premises has permission to be used as a community centre and place of worship. This application does not propose any change to how it is used, only the times in which it is used. The submitted management plan does, however, make it clear that it is only prayers which would take place outside the existing permitted hours of 0700 to 2300 and the community centre use would continue to operate only within those hours.
30. Permission for use as a community centre and place of worship applies to any community group, religion or faith. In this case the premises is used by the Norwich and Norfolk Muslim Association and it is recognised that it is a particular feature of Islam that prayers take place five times a day following the path of the sun. When permission was granted for use as a community centre and subsequently extended to include use as a place of worship it was considered necessary, on the advice of Environmental Protection officers, to limit this to 0700 to 2300 hours in the interests of protecting the amenity of this residential area. Therefore, whilst extending the time the premises is used for prayers is acceptable in principle, the impact on amenity is the key issue to be considered.

## **Main issue 2: Amenity**

31. Key policies and NPPF paragraphs – DM2, DM11, NPPF paragraph 180.
32. The site, which it should be acknowledged was formerly a pub, is in a residential area. The nearest neighbouring property on Dereham Road is within approximately one metre of the building and its parking spaces. To the rear, only an access way connecting Bond Street and Merton Road separates the site from the nearest dwelling. The nearest dwellings are therefore sensitive to activity on the site but access to and from the premises, including from on street parking, can affect a wider area.
33. A noise impact assessment has been submitted to assess the noise associated with the use of the premises and the impacts this has. It identifies that there are four sources of noise: worship, community use, external activity and vehicle movements.
34. As prayers are all held internally using an approved amplification system (which the assessors did not observe any audible speech from outside the building) and as the community centre use is proposed to continue to take place only between 0700 and 2300 hours, it is the use of external areas and vehicle movements which have potential to result in additional amenity impacts as a result of the proposal.
35. Noise levels were measured in an attended survey from 0235 to 0345 one morning in June when prayer took place around 0300. During this period it was recorded that 13 cars arrived between 0245 and 0305 and 14 cars departed between 0310 and 0330, whilst 32 vehicles passed on Dereham Road. Analysis of the sound levels measured found that these were dominated by traffic on Dereham Road, as opposed to vehicle movements related to the application site. An unattended survey over a week long period was also undertaken which found variation in noise levels, including around morning and evening prayer times, were caused by variations in

traffic numbers on Dereham Road and noise from vehicle movements associated with the application site was audible, but did not affect the overall measurement.

36. The assessment concludes that the only audible noise from the site was from vehicles and their occupants and that whilst this is audible at surrounding dwellings, it is not significant compared to noise from traffic on Dereham Road and the assessment states there is no significant noise impact associated with the proposal to extend the operating hours.
37. In terms of managing noise that could have an adverse impact on neighbouring residents, the assessment notes that there are existing planning conditions requiring approval of the internal amplification system, prohibiting any external amplified sound and requiring windows and for doors to be closed during use of amplified sound inside and these are proposed to be retained. To manage noise from use of the external areas and from vehicle movements (the only audible source of noise related to early morning and late evening prayers), a management plan and travel information have been prepared.
38. The management plan sets out a code of conduct for the standard of behaviour expected at the centre to ensure minimal noise disturbance to neighbouring properties and volunteers would observe activity to ensure this is adhered to. This code of conduct includes: not congregating outside the centre, being considerate with vehicle noise including when shutting doors, ensuring windows are kept closed and only using bins in daytime hours.
39. A travel information plan has also been submitted to encourage walking, cycling, use of public transport and car sharing in the interests of sustainability, but also to manage noise associated with vehicle movements. The content of this plan is considered further below, however it identifies that the bus service closest to the centre begins at 0630 and ends at 2320. Therefore visitors to the centre outside these times are more likely to travel by private car.
40. On the basis of the noise impact assessment and the mitigation measures in the management and travel plans, it is considered that the proposal to remove any time restriction to the use of the premises is unlikely to have unacceptable impacts on the amenity of neighbouring occupiers at the existing level of use.
41. The assessment notes that the numbers of worshippers attending prayers at the times of the surveys was typical – 15 to 20 people – and that they would not expect an increase in attendees to cause a significant rise in noise levels due to the low noise levels associated with vehicle movements and the number of parking spaces on site. However, this is not considered to take full account of an increase in attendance to the full capacity of the premises.
42. As the centre has two large rooms of approximately 80 square metres each and other smaller spaces, it is considered the total capacity is likely to be 100-150 worshippers. This volume of people accessing the site, primarily by private car, is likely to have a much more significant impact than the current level of 15-20 people. As there are approximately 20 parking spaces, the existing relatively low level of use can be accommodated on the site. Once these spaces are full, worshippers accessing the site would need to make use of unrestricted parking on nearby streets. The on-street parking immediately outside dwellings along Dereham Road, Bond Street and other neighbouring streets is therefore likely to be well-used and

result in vehicles travelling along these roads searching for an available space. The noise impact assessment does not take any account of this dispersal of vehicle movements across a wider area surrounding the site and it is considered that this is likely to have a more significant impact, especially as the more dominant noise impact from traffic passing on Dereham Road will diminish with distance from it along the side streets.

43. Therefore, whilst the existing level of use is not considered to be unacceptable, it needs to be considered whether there is any means of satisfactorily managing the additional impacts from increasing attendance.
44. One option would be to limit the number of people who can attend. In accordance with paragraph 55 of the NPPF, planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In this case, a condition restricting the number of people allowed within the premises would not be considered to pass the test of enforceability and as the existing use 0700 to 2300 is not restricted, it would also be unreasonable to impose a restriction outside these times and impractical to enforce the transition between times. Similarly, it is not considered reasonable or enforceable to restrict which parts of the building which can be used outside the existing permitted times.
45. Another option would be a temporary permission as these are often used where a trial period is necessary to assess the effect of a development. In the case of this site, it is considered that any increase in attendance is likely to take place incrementally over a long period of time. Allowing a trial period for, say, two or three years, is therefore unlikely to allow assessment of the full effects of the site operating at capacity and as it is rarely justifiable to grant a second temporary permission, this is not considered an appropriate solution.
46. It should also be considered that the proposal is to remove the existing condition altogether, rather than to vary it. This is because during Ramadan activities take place after sunset and when this falls in the summer months, there would only be a short period between one day's activities ending and the first prayer the next day. Leaving a short period, for example 0000 to 0300 hours, when the centre could not be used would be impractical to monitor and enforce. Similarly, if 24 hour use is not considered appropriate, extending the existing hours to earlier than 0700 and/or later than 2300 may mitigate the amenity impacts to some extent but would not facilitate full use of the centre for prayers all year round. Removing the condition or retaining it as it is (by refusing the application) are therefore considered to be the two viable options.
47. The assessment of this application relates to the nature of the use in relation to the Islamic faith. The extant permission for use as a community centre and place of worship could be used by any religion whose practices may differ in their times and nature. It may therefore be appropriate to restrict any permission to use by the Norwich and Norfolk Muslim Association only. This would not, however, mitigate or manage the adverse impacts, it would simply allow the impacts of use by a different group to be assessed through a permission to vary or remove that condition.
48. In assessing the proposal, regard must be had to the fact that this application has received representations both objecting to and in support of the proposal. The objections concern the amenity and traffic impacts. It is noted that as well as

objectors reporting existing noise disruption, representations in support report a minimal impact and do not consider the proposal would result in any additional impact. This demonstrates the existing level of use results in impacts which are not so significant as to be perceived as adverse by all neighbouring occupiers. It should also be noted that the complaints which led to the submission of the application were from one source.

49. The representations in support also comment on the need for the facility and the justification this provides for the proposal. The site has permission for use as a community centre and place of worship (a combined use, not one or the other) and the application to use it for worship as well as community activities was made on the basis that the extant time restriction would be retained. It was therefore considered viable to only use it for prayers between 0700 and 2300 and acknowledged that this would not cover all prayer times throughout the year. Whilst it is appreciated that the proposal would support the community to practice their faith and pray in congregation at the centre throughout the year, the centre is in a residential area and the impacts this would have on neighbouring occupiers are not justified. During the winter months, when days are shortest, the first and last prayer times fall within the existing 0700 and 2300 allowing all five prayers to take place within the existing permitted hours.
50. One representation has raised health concerns as a result of car engines running. It is not considered this site in itself or this particular proposal would result in any significant health impact, however it is noted that the proposed management plan seeks to prevent leaving engines idling.
51. As considered above, there is not considered to be any appropriate means of conditioning the use to satisfactorily mitigate the adverse amenity impacts of a more intense use. Therefore, whilst the current level of use is not considered to result in unacceptable amenity impacts, there is no means of maintaining it at this level in perpetuity and any increase in attendance is considered likely to result in noise disturbance to the surrounding residential area which would unacceptably impact on the amenity of the area and living conditions of neighbouring occupants. This is contrary to Policy DM2, the reason for applying the existing time restrictions and also paragraph 180 of the NPPF which states planning decisions should ensure new development is appropriate for its location and avoids noise which gives rise to significant adverse impacts on health and quality of life.

### **Main issue 3: Transport**

52. Key policies and NPPF paragraphs – JCS6, DM28, DM30, DM31, NPPF section 9
53. There is no highways objection to the proposal. The area has capacity to accommodate the existing use within its permitted times and the proposal would only extend that period of use. The travel information plan promotes sustainable travel and is broadly appropriate for the existing daytime use.
54. However, despite the provision of the travel information plan, trips to the site outside the existing permitted times are most likely to be by private car and it is the noise associated with these movements which is unacceptable, not the volume of traffic.

## **Other matters**

55. Should the committee support the recommendation to refuse the application and further incidents of use outside the permitted times be reported, officers would investigate these and, if evidence is found, it would be considered expedient to serve a breach of condition notice.
56. If the NNMA wish to find a base from which they could operate without time restrictions, officers can provide pre-application advice on alternatives. Locations within defined centres or non-residential areas may be more appropriate in amenity terms.

## **Equalities and diversity issues**

57. As noted above, the existing permission allows use as a community centre and place of worship by any religion, or even a range of religions. Whilst the existing condition limiting use from 0700 to 2300 does prevent all five daily Islamic prayers being carried out here year round, this is necessary in planning terms to protect the amenity of the surrounding area and retaining this condition does not prejudice the continued use of the centre by the current occupiers or other groups.
58. The proposal has been assessed with regard to the Equality Act 2010, which identifies religion as a protected characteristic, and Article 9 of the Human Rights Act 1998 which protects the freedom of thought, conscience and religion.

## **Local finance considerations**

59. Under Section 70(2) of the Town and Country Planning Act 1990 the council is required when determining planning applications to have regard to any local finance considerations, so far as material to the application. Local finance considerations are defined as a government grant or the Community Infrastructure Levy.
60. Whether or not a local finance consideration is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. It would not be appropriate to make a decision on the potential for the development to raise money for a local authority.
61. In this case local finance considerations are not considered to be material to the case.

## **Conclusion**

62. The application proposes removing an existing condition which limits the time the community centre and place of worship can be used. This would effectively allow 24 hour a day use and is intended to accommodate early morning and late evening prayer times.
63. This use has already occurred at a relatively low level and a noise impact assessment has demonstrated that, in relation to the noise from passing traffic on Dereham Road, it does not have a significant adverse impact on neighbouring occupiers. It would not, therefore, be unacceptable for this level of use to be allowed to continue.

64. The centre is not, however, operating at capacity and is in fact far below this. Having considered the mechanisms available to maintain and not exceed the existing level of use, it is not considered that there is any means which would comply with the provisions of the NPPF regarding the use of planning conditions that could be used to satisfactorily mitigate the adverse impacts of a greater number of worshippers attending.
65. The benefits of the centre to the community and the ability to attend all five daily prayers here throughout the year are acknowledged. It is, however, located in a residential area where any 24 hour a day non-residential use is unlikely to be appropriate and it is not considered that the benefits of the proposal or any other material consideration outweigh the harm the noise disturbance would cause to the amenity of the local area.
66. The development is in contrary to the requirements of the National Planning Policy Framework and the Development Plan, and it has been concluded that there are no material considerations that indicate it should be determined otherwise.

## **Recommendation**

To refuse application no. 19/01073/VC - 286 Dereham Road, Norwich, NR2 3UU, for the following reasons:

1. The proposed removal of condition would allow 24 hour a day use of the community centre and place of worship in a residential area. The centre has capacity for approximately 100-150 people and the noise impacts resulting from movement of people and vehicles generated by this level of use at unsociable hours would have unacceptable impacts on the amenity and living conditions of occupiers of neighbouring dwellings in the area immediately surrounding the site and in the wider area where on-street parking is likely to occur. The proposal is therefore contrary to Policy DM2 of the adopted Development Management Policies Local Plan (2014) and paragraph 180 of the National Planning Policy Framework (2019).

## **Article 31(1)(cc) statement**

The local planning authority in making its recommendation has had due regard to paragraph 38 of the National Planning Policy Framework as well as the development plan, national planning policy and other material considerations. The proposal in question is not considered to be acceptable for the reasons outlined above. The local planning authority has advised the applicant of other parts of the city where such use may be acceptable.