

## Brethren's Gospel Trusts in London



### Draft New London Plan 2017

#### Comments on the consultation draft

#### **Introduction and Background**

- a. Brethren's Gospel Trusts (BGT) represent Charitable Gospel Hall Trusts and Education Trusts associated with long established Plymouth Brethren Christian Church assemblies in several London Boroughs, some of whom are currently seeking sites for new or replacement Gospel Halls and/or private schools. In some cases Gospel Hall Trusts are seeking to dispose of surplus premises and are engaged with Borough planning authorities to explore alternative uses or redevelopment opportunities.
- b. BGT objectives are to focus on:
  - the role of the voluntary sector in general and faith communities in particular in supporting the quality of life in London, in tackling social exclusion and inequalities, including crime and the fear of crime;
  - the need for a clear marker for Local Plan preparation in London of the need to promote truly sustainable communities and to encourage diversity and equality in planning;
  - the need to ensure provision at the London Plan level for the voluntary sector including faith communities and their need for space to operate and specifically to ensure the recognition of Places of Worship as part of the infrastructure for sustainable communities throughout London.
- c. BGT have previously participated at the EIPs for earlier London Plans and alterations and continues to engage with the planning system at national and local levels. We are therefore grateful for the opportunity to comment on the draft London Plan 2017.
- d. The Plymouth Brethren Christian Church also provides a strong outreach through the Rapid Relief Team (RRT) in support of emergency services and other local

community needs. RRT has provided support for the emergency and other services in London for several major incidents including the Borough Market incident; the Grenfell Tower disaster and in support of the Christmas Day event for the homeless at Euston Station.

## Comments on the New London Plan 2017

### New London Comments

#### Plan text

- 0.0.4 SUPPORT - This sets out a factual summary of the principle purposes of the Greater London Authority as enshrined in statute and includes *promoting social development in Greater London*.
- 0.0.5 SUPPORT – We welcome the restatement of the key issues which the Mayor has had regard to in developing this strategy, including:
- The principle that there should be equality of opportunity for all people;
  - Reducing health inequality and promoting Londoners' health;
  - Achieving sustainable development in the United Kingdom.
- 0.0.6 SUPPORT – We welcome the recognition of the need for the new London Plan to be consistent with national policies, without seeking to repeat national policy and the statutory obligations to prevent crime and disorder under the Crime and Disorder Act 1998 and the public-sector equality duty, as set out in Section 149 of the Equality Act 2010, which includes *inter alia* religion and belief.
- 1.1.4 SUPPORT – We strongly support the recognition of the need for social infrastructure that meets London's diverse needs as part of the comprehensive requirements for strong and inclusive communities throughout London.
- Policy GG1 SUPPORT – We welcome the clear statement of purpose for those involved in planning and development in order to deliver strong and inclusive communities, including:
- The generation of economic and other opportunities without which the London economy will fail to support its residents and employees (A);
  - The need to strengthen communities, increasing active participation and social integration, including addressing social isolation (B);
  - Planning for places that provide opportunities for face-to-face contact and social interaction during the daytime, evening and night time (D);
  - Recognise the needs of all Londoners, including older people, disabled people and people with young children (F).

- Policy GG2 COMMENT – Whilst we recognise the need to make the best use of land through prioritising the development of Opportunity Areas and transport nodes as well as town centre sites, the Plan should also recognise the needs of families for suitable housing with gardens and access to open space rather than over reliance on high rise estates. Furthermore, although many infrastructure assets are suited to multiple uses, this is not always appropriate for places of worship which are often dedicated for the single purpose. The prospect of sharing premises with other faith groups is often neither practical nor consistent with their theological beliefs – see *'Faith Groups and the Planning System'*:<sup>1</sup>
- Policy GG3 SUPPORT – We welcome the positive recognition of the diverse health determinants including social and community networks and the need for this to be recognised by local authorities. Reduction of existing health inequalities is an urgent objective and prioritising health in all London's planning decisions is to be welcomed. This reflects the advice of Chapter 8 of the NPPF. The policy should explicitly include the special needs of the ageing population and disabled people.
- Policy GG6 SUPPORT – We welcome the objective of London becoming a more efficient and resilient city and particularly the need for an integrated approach to the delivery of strategic and local infrastructure by ensuring that public, private, community and voluntary sectors plan and work together. This is an important message for the Boroughs to ensure greater co-ordination between the public and private sectors including community and voluntary organisations who require 'space to operate' in both spatial and organisational senses.
- Policy S1 COMMENT –We welcome and support the requirement for Boroughs to undertake a needs assessment of social infrastructure to meet the needs of the diverse communities. However, this must recognise the different geographies of various faith communities, whether local or dispersed. This recognition will require 'joined-up thinking' for the Boroughs, where strategic as well as local social infrastructure is needed. It must be recognised that faith and community groups often provide the social capital which is crucial in achieving truly sustainable communities. Co-location of different forms of social infrastructure and the rationalisation or sharing of facilities should not become a rigid dogma in plan-making. The Secretary of State has previously recognised that the planning system has no authority to dictate the most appropriate forms of

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<sup>1</sup> Faith Groups and the Planning System : AHRC Faith and Place network: October 2015 (paragraph 6). See Appendix 1.

congregational worship. We acknowledge the need to retain redundant social infrastructure for alternative similar uses before alternative developments are considered, but a flexible approach will be required to enable best use of such assets within London.

Paragraph 5.1.1            SUPPORT – We strongly support the explicit inclusion of **faith** within the definition of **social infrastructure**.

Paragraph 5.1.2            COMMENT – The longevity revolution and the ageing population should be recognised due to their special needs for social integration within strong and inclusive communities. This may result in innovative new forms of social infrastructure as well as housing.

Paragraph 5.1.3            SUPPORT – We strongly support the recognition of the complexities of planning for social infrastructure in London and the need for a collaborative approach. NPPF paragraph 171 urges local planning authorities to understand and take account of the needs of the local population for facilities which underpin health and well-being, including places of worship. We therefore welcome similar sentiments in the New London Plan.

Paragraph 5.1.4            COMMENT – We recognise the potential effects on a community through the loss of social infrastructure. However, the Brethren communities in London have widely relocated into other areas making a number of halls redundant. In several cases these have been purchased by other faith organisations and continue in a valuable community use. In other cases new uses for such site have been found including at least one instance of redevelopment to meet local educational needs. A flexible approach must be maintained. ACV designation is recognised in a recent Tribunal decision to be wholly inappropriate for redundant faith premises<sup>2</sup>.

Paragraph 5.1.5            SUPPORT – We recognise the need to retain redundant social infrastructure for alternative similar uses before alternative developments are considered, but a flexible approach will be required to enable best use of such assets within London.

Paragraph 5.1.6            SUPPORT – For the above reasons, we welcome this paragraph to reflect the positive and flexible approach to the retention or redundancy of social infrastructure.

Paragraph 5.1.8            COMMENT – Whilst we recognise the need for greater efficiencies in land use **shared use and co-location of facilities** is not a universal panacea and must not become a rigid dogma. This has been promoted for a wide range of social infrastructure but it is widely recognised that for faith organisations this may not be

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<sup>2</sup> General Conference of the New Church v Bristol City Council (Localism Act 2011) [2015] UKFTT CR 2014 0013 (GRC) – see Appendix 2

appropriate. As set out above, the prospect of sharing premises with other faith groups is often neither practical nor consistent with their theological beliefs – see *'Faith Groups and the Planning System'*: AHRC Faith and Place network: October 2015 (paragraph 6).

Paragraph  
5.1.9

COMMENT – We recognise that this is very true and has resulted in some ongoing conflict and enforcement activities in some of the Boroughs where unauthorised uses have occurred. Several other faith groups have been long searching for premises to suit their needs competing with employment and other land uses which may command a higher land value of a perceived sustainability advantage. Again a flexible approach is required particularly where an existing place of worship is no longer required by its original occupants and other traditions or faiths and/or wider community functions may be accommodated.

John A Devine

John Shephard

28th February 2018

### **Appendices**

1. Faith Groups and the Planning System: AHRC Faith and Place Network: October 2015
2. First-Tier Tribunal General Regulatory Chamber decision reference CR/2014/0013 – The General Conference of the New Church – dated 12<sup>th</sup> February 2015

# Faith Groups and the Planning System

*Policy Briefing*

AHRC Faith and Place network | October 2015  
[faithandplacenetwork.org](http://faithandplacenetwork.org)





**Figure 1 – Religious growth in England and Wales, 2001–2011**



**Table 1 – Religious population change in England and Wales, 2001–2011 (2001 & 2011 Censuses)**

Religion	2001	2011	Change	% Change
Christian <sup>a</sup>	37,338,486	33,243,175	-4,095,311	-11.0
Buddhist	144,453	247,743	103,290	71.5
Hindu	552,421	816,633	264,212	47.8
Jewish	259,932	263,346	3,414	1.3
Muslim	1,546,626	2,706,066	1,159,440	75.0
Sikh	329,355	423,158	93,803	28.5
Other religion	150,722	240,530	89,808	59.6
No religion	7,709,267	14,097,229	6,387,962	82.9
Not stated	4,010,658	4,038,032	27,374	0.7
<b>Totals</b>	<b>52,041,920</b>	<b>56,075,912</b>	<b>4,033,992</b>	<b>7.8</b>

<sup>a</sup> The Christian population declined overall by approx. 4 million. However, this masks significant areas of growth for Christians of particular ethnic heritages. For example, while the White Christian population fell from 35,967,798 to 30,819,184 (-14.3%), other ethnic groups among the Christian population grew substantially, including Caribbean Christians, who grew from 415,912 to 441,544 (6.2%) and African Christians, who grew from 330,369 to 691,482 (109.3%).

“ Planning policies and decisions should plan positively for the provision and use of shared space, community facilities ... and other local services to enhance the sustainability of communities and residential environments ”

## Briefing in Brief

### Understanding One Another

- Guidance for planners on how faith groups use space and guidance for faith groups on how to engage with the planning system.
- University planning schools to address how faith groups use space.
- Local planning authorities to engage with both interfaith organisations and specific religious traditions.
- Directory of faith groups and, where there is high demand, directory of D1 use class premises to be maintained.
- Sharing premises within and between religious traditions may sometimes be a suitable measure, but has significant practical and theological limitations.
- Faith groups to be active participants and to be actively encouraged to participate in the development of the local plan.

### Faith Groups and Community

- Local planning authorities to recognise the different geographies of faith communities, whether local or dispersed; their benefit for an area; and their implications for strategic social infrastructure.

### Equality and Diversity

- Local planning authorities to examine planning application data to assess whether rates of planning refusal are higher for some faith groups and to address any potential inequalities if there are discrepancies.

### Sharing Creative Practice

- A dossier of creative practice case studies to be developed for distribution amongst local planning authorities, recognising the diversity within and between religious traditions.
- Need for sustaining creative practice over time given changing roles within local planning authorities.

### The Planning Framework

- Local planning authorities to protect space for social infrastructure, including places of worship.
- Section 106 agreements and the community infrastructure levy are legitimate means for supporting places of worship provision.
- Proactive approach to social infrastructure provision in new developments.



# Introduction

This briefing document outlines a series of recommendations, resulting from the discussions of the Faith and Place Network (FPN). The FPN, which met and deliberated over the period September 2014 to October 2015, was configured with the support of a network grant from the Arts and Humanities Research Council (AHRC). The network has a diverse membership including faith group representatives, local authority planners, representatives of the RTPI and other policy professionals, civil society organisations and academics.

The FPN was formed due to awareness of changing religious demographics and the challenges this presents both for faith communities in search of premises and for planners with responsibility for regulating the use and development of land. Faith communities often find it difficult to gain planning permission for suitable premises and this is particularly the case for migrant and post-migrant faith groups. The formation of the network was also prompted by a growing body of research and reports on these issues which have informed the network deliberations (see Indicative Sources).

Some faith groups have grown over the past decades and are often concentrated in urban areas (ONS 2012, Brierley 2014, see Table 1 and Figure 1). This puts pressure on the availability of suitable places of worship, sometimes causing tensions between faith groups, local planning authorities and local communities. According to the key section of the National Planning Policy Framework (NPPF), in order to deliver 'the social, recreational and cultural facilities and services the community needs', local planning authorities should:

...plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and **places of worship**) and other local services to enhance the sustainability of communities and residential environments (our emphasis) (NPPF, 2012, §8.70).

Authorities should also guard against 'the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs' (§8.70). It is the sustainability of communities and their places of worship, however configured, that is the focus of the FPN and this briefing. The recommendations below are primarily aimed at local planning authorities and faith groups, although it is recognised that they will have implications for a number of other parties, including architects, media, local / national politicians and civil society organisations.

We have grouped the recommendations around five core themes, corresponding to the main lines of discussion at the network events. These include: 'understanding one another', 'faith groups and community', 'equality and diversity', 'sharing creative practice' and 'the planning framework'.



# Policy Recommendations

## Understanding One Another

The FPN has identified a need for greater understanding and dialogue between local planning authorities and faith groups. This understanding may be enhanced through the following specific recommendations:

1. Local planning authorities need to develop greater understanding of how faith groups use space, which includes recognition of the differences between and within faith groups themselves. To facilitate this, specific guidance on how faith groups use space needs to be made available, for example, through supplementary planning documents that reflect the contemporary religious landscape. Generating such guidance may benefit from collaboration with the relevant professional bodies and faith groups.
2. Given the continuing significance of religion within British society (68% identifying with a religion; ONS, 2012), university planning schools should consider including teaching on understanding how faith groups use space within accredited planning courses.
3. In order to communicate with a significant proportion of faith groups, we recommend that local planning authorities use multiple strategies for faith group engagement. Interfaith groups often provide a powerful platform from which to engage with diverse faith groups. There are, however, many faith groups that have little involvement in such forums, and as such, there also needs to be engagement with bodies representing specific religious traditions.
4. Where there is high demand for suitable places of worship, local planning authorities should consider maintaining a directory of available premises for rent or purchase by faith groups, within the appropriate use class. Similarly, local planning authorities should invest in keeping up to date directories of faith groups and their places of worship in their local areas, to enable communication and mutual dialogue with regards to planning procedures and requirements. Such directories will require appropriate resourcing.
5. Faith groups also need to have greater understanding of the planning system. This might be facilitated by guides produced by local planning authorities, in collaboration with faith groups and other civil society organisations. These guides should clarify the practicalities of the planning system and also outline how planning policies can be applied to accommodate the needs of faith groups. Such collaboration, as recommended by the RTPI over 30 years ago, should not be a one-way process (1983: 62-3).
6. Sharing premises within or between religious traditions may be a suitable measure if there is local pressure on space. This has been successful in some cases and such experiences of sharing may be of benefit to other faith communities through creative practice case studies. However, for many faith groups, sharing premises will be neither practical nor consistent with their theological beliefs. Sharing of space is often only a partial and/or temporary solution, which needs to be borne in mind when conducting needs assessment.
7. Faith groups need to be active participants in the development of the local plan. Local plans are a key element of the planning process, containing important policies on long-term local development and land use. Local planning authorities should actively encourage faith groups to become involved in the public consultation process at an early stage of local plan development.

## Faith Groups and Community

The definition of community is one that needs clarity. Faith groups, particularly if recent migrants, often gather to worship from across a dispersed area which may extend beyond local authority boundaries. Dispersed communities can be of benefit to each other in matters of health, welfare, law and order and hence of benefit to the wider area and to public authorities. This is likely to be the case even if the benefit is spread across more than one local jurisdiction and is thus not immediately apparent at the local scale. Therefore:

8. We recommend that local planning authorities recognise the different geographies of faith communities, whether local or dispersed, and the value that both types of faith community can have for an area (e.g. Furbey et al, 2006; SKIN Rotterdam, 2009). This recognition requires joined-up thinking for local planning authorities, particularly in the case of London and emerging city regions, where strategic as well as local social infrastructure is called for.



## Case Study 1 – Being Built Together

A story of new black majority churches in Southwark

CIP Estate		
Unit	Church/Service	Notes
Unit 1	Holy Emmanuel C	
Unit 2A	Christ's Gospel church	
Unit 2B	Esses Church Mount of Grace	
Unit 2C	CLF Art Cafe	
Unit 3	Church of King of Kings	Holy Pentecostal C
Unit 4	CLF Art Cafe	Liberty Traders
Unit 5	Salvation Parish Church	
Unit 8	Mount Sinai Gospel C & S Church	MUNCO Lt
Unit 9A	New Life Gospel Church	The Last Refug
Unit 9C	The Last Refuge	
Unit 9F & 6	Star of Mary Evangelical Centre	on Gallery
Unit 91	Station of Fire & Miracles Church	
	Shallem International Ministry	Cherubim & Seraphim Church No.
	Art Gallery	Hannah Barry G
	Artist Studios	

The *Being Built Together* project had a strong focus on the engagement between new black majority churches (nBMCs) and the local planning authority in south London (Rogers, 2013). The following key points emerged:

- Most churches were African majority, Pentecostal and served dispersed communities across London.
- As of June 2013, there were an estimated 240+ nBMCs in the borough, with nearly half of these in one postcode.
- This is probably the highest concentration of African Christianity in the world outside of Africa. Other London boroughs also have high numbers of nBMCs and have seen rapid growth of nBMCs over recent decades.
- Available premises in the appropriate use class for places of worship were very scarce. Rates of planning permission refusal were a cause for concern.

Southwark council invested time and resources into addressing these critical 'faith and place' issues in the borough, through funding research, conducting public consultations and producing a guide for faith premises. The *Being Built Together* report made a number of recommendations to aid an ongoing improvement in council and faith group engagement, which should also have significance beyond the borough.

## Case Study 2 – A Creative Case Study

A story of faith community and planning policy development



The Birmingham Central Mosque is the oldest purpose-built mosque in Birmingham, standing adjacent to a stretch of the inner ring road in Highgate, south of the city centre. Planned initially in 1956, the building was completed in 1975. In the meantime, much of the surrounding area, comprising terraces of back-to-back housing, had been redeveloped as part of post-war slum clearance. Its extensive and complex history of construction dramatizes changing urban planning priorities in Birmingham, a city which has in many respects come to stand as an exemplar of 'good planning practice' around the needs of the city's faith communities.

In the late 1980s, the mosque became a test case for broadcasting the call to prayer (*azan*) from the minaret. Initially prevented through planning conditions, the mosque opposed these restrictions to enable a trial period, at the end of which calls were allowed to be broadcast for the daytime and evening prayers. Early phases of construction were also subject to conditions to ensure the building blended in with the surrounding landscape of shops, high-rise flats block and low-density public housing. More recently, however, the building has been celebrated as iconic, landmark statement of Birmingham's urban diversity, coinciding with the development of more responsive planning policies on places of worship (Gale, 2004).

## Equality and Diversity

The Equality Act 2010 imposes an 'Equality Duty' on public sector institutions and their employees to ensure equal treatment of people in society with 'protected characteristics', which include 'religion' and 'belief'. Specifically, this duty requires that policies and services provided by the public sector have 'due regard' to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between people who share a protected characteristic and those who do not. This 'Equality Duty' applies to local planning authorities no less than other public sector institutions. The RTPI Code of Professional Conduct also promotes equality of opportunity for those in protected categories, including religion (2011: §1d, §3). Accordingly:

- We recommend that as part of their obligation to undertake an equality impact assessment, local planning authorities examine planning application data to assess whether rates of planning refusal are higher for some faith groups, as well as for other groups with 'protected characteristics' as defined by the Equalities Act 2010. If there are discrepancies in the refusal rates, local planning authorities should take action to address any potential inequalities in the planning process.

## Sharing Creative Practice

The FPN identified a need for greater communication and constructive dialogue within and between local planning authorities, in order to raise awareness of the needs of faith groups. Moreover, there is a tendency for some faith groups to be represented negatively in local and national debates, which is known to have impacts on public responses to planning applications from certain faith groups in particular. To counter this, the FPN noted a need for more positive representations of some faith groups, in terms of their contributions to local community development, welfare provision and social support. As such, we recommend that:

- With the support and direction of planning and religious organisations, a dossier of creative practice case studies should be developed for wide distribution among local planning authorities. These case studies should set out detailed scenarios where planning policies have been applied both positively and flexibly to accommodate the needs of faith groups.

- Creative case studies prepared as part of this dossier should reflect the diversity of faith groups, including the internal diversity of traditions within faiths. The aim of these case studies will be to encourage recognition of how people of different faiths make use of space, and could include examples of faith groups working together to share space. Case studies should aim to show case the ways in which faith groups contribute positively to and shape local and dispersed communities.
- Creative practice in relation to faith groups needs sustaining over time given changing roles within a local planning authority. For example, this may take the form of internal guidance to ensure the transferability of accumulated expertise.

## The Planning Framework

As well as addressing how planning in its current form might be applied more flexibly, the FPN noted a number of areas of planning law and policy that might be reviewed, with a view to easing the difficulties faced by faith groups when dealing with the planning system. Where not detrimental to the wider public interest, we recommend the following:

- Given the scarcity of non-residential premises (i.e. D1 use class) in many of our towns and cities, local planning authorities should prioritise protecting space for social infrastructure, including places of worship. This should also be a consideration in any future review of use classes.
- Local planning authorities should recognise the legitimacy of places of worship being included within section 106 agreements for new developments. The community infrastructure levy may also be used to support the provision of places of worship.
- Local planning authorities should assess the social infrastructure needs arising from new developments, including provision for places of worship. Such an approach will further enable local planning authorities to move towards a proactive mode of needs provision. For example, this might be achieved through a minimum space allocation per population beyond a certain trigger point, as has been seen in creative practice case studies (e.g. Cambridgeshire Horizons, 2008), and as is the case in other types of land use.



I commend the work of the Faith and Place network to our faith communities and to local planning authorities and encourage them to engage seriously with the Network's recommendations.

– *Most Reverend and Right Honourable Justin Welby, Archbishop of Canterbury*  
(for full statement, see [faithandplacenetw.org](http://faithandplacenetw.org))

This is a timely and impressive piece of work by the Faith and Place Network. It will remove some of the mutual suspicion that exists between planners and faith leaders, allowing them to better understand the constraints and opportunities inherent in the planning process.

– *Dr R David Muir, Co-chair, National Church Leaders' Forum: A Black Christian Voice*

The policy briefing is a must read for planners and faith groups. It provides clear and practical recommendations that will enable planners and faith communities to navigate more effectively around the planning process for faith buildings.

– *Mustafa Field MBE, Director, Faiths Forum for London*



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## Faith and Place Network members

The AHRC Faith and Place network is led by Dr Andrew Rogers (University of Roehampton) and Dr Richard Gale (Cardiff University). It is funded by the Arts and Humanities Research Council. For a full list of people and organisations that have contributed to this network, please see the list on our website: <http://faithandplacenetw.org/networkmembers/>



**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
COMMUNITY RIGHT TO BID**

**Tribunal Reference:** CR/2014/0013  
**Appellant:** The General Conference of the New Church  
**Respondent:** Bristol City Council  
**Judge:** Peter Lane

**DECISION NOTICE**

1. The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. The effect of listing is that, generally speaking, an owner intending to sell the asset must give notice to the local authority. A community interest group then has six weeks in which to ask to be treated as a potential bidder. If it does so, the sale cannot take place for six months. The theory is that this period, known as “the moratorium”, will allow the community group to come up with an alternative proposal; although, at the end of the moratorium, it is entirely up to the owner whether a sale goes through, to whom and for how much. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.

2. The property in question in the present proceedings is a building and small area of surrounding land. The building comprises a church of the Bristol Society of the New Church, who used it for religious purposes from its construction in 1899 until its closure in November 2013. The church is owned by the General Conference of the New Church, an incorporated body, formed for the Religion of the Receivers of the Doctrines of the New Church, as contained in the Theological Writings of the Honourable Emanuel Swedenborg. The church is on the corner of Claremont Road and Cranbrook Road. The adjoining land is approximately quarter of an acre and contains a number of large trees.

3. The church was nominated as an asset of community value by an unincorporated association entitled “Protect Redland and Bishopston from Over-Development” (“PROD”). Listing took place on 3 April 2014. The General Conference requested a review by the city council of that listing. The result of that review, on 3 July 2014, was to maintain listing. The General Conference appealed against that decision to the First-tier Tribunal, pursuant to regulation 11 of the Assets of Community Value (England) Regulations 2012 (SI 2012/2421).

**Appellant: The General Conference of the New Church****Date of decision: 12 February 2015**

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4. The General Conference requested a hearing of the appeal. In its response of 20 August 2014 the city council indicated that, for its part, it would be content for the matter to be considered on the papers. The city council did not appear at the hearing, which took place on 23 January 2013 at Bristol Magistrates Court. In its response, the city council stated that it would “abide by the decision of the Tribunal”. In an email to the Tribunal of 3 November 2014, PROD indicated that no one from its membership had expressed an interest in contributing to the Tribunal. PROD did not seek to be made a party to the appeal.

5. At the hearing, the General Conference was represented by Peter Wadsley of Counsel, instructed by Harris and Harris Solicitors. Ms (Jennifer) Zoe Brooks, Trustee, Director and Company Secretary of the General Conference, gave evidence. Mrs Siusaidh Hall, Secretary of PROD, also attended and spoke.

6. Ms Brooks explained that the General Conference was enrolled in chancery in 1822 and incorporated as a company in 1872. Although the General Conference owns the church, responsibility for maintaining and running it is in the hands of the Bristol Society. It was the Bristol Society that decided the church should close in October 2013. By that time, the congregation consisted of only three regular members, only one of whom lived in the area served by the church. Four other members attended less regularly. It was also used as a church by the Holy Celtic Church.

7. A number of other activities also took place in the church. Bristol City Council uses the church from time to time as a polling station. A group of Brownies used it weekly until February 2013, when they moved to other premises. Dance classes were held occasionally until May 2013. Two meditation groups, which used the church infrequently, ceased to do so in November 2011 and October 2012 respectively. Apart from the religious use of the church, the only group making use of it at the time of closure was “Music with Mummy and Jolly Babies”, which used it twice-weekly. It appears that this group has, since closure, found an alternative venue.

8. Ms Brooks also gave evidence regarding the costs of running and maintaining the church and of the income received from uses other than by the Bristol Society. In the period 2008-2013 inclusive, costs of maintenance totalled £80,000; insurance £12,000; and gas and electricity £12-18,000. The total income over those six years was only £3-4.5,000.

9. I find these figures paint a stark picture of the difficulties facing the congregation, leading to the decision that the church had to be closed.

10. I accept Ms Brooks’ evidence that no local or community bodies have ever shown any interest in the church as a place of worship and that, prior to the premises being put up to sale (with a guide price of £600,000) no individuals or groups ever offered any support for the church or for any of the non-religious activities carried on there.

11. PROD is concerned about what it sees as the threat of over-development in Redland and Bishopston. As can be seen from the written materials, and as Mrs Hall made plain in her remarks at the hearing, PROD is particularly concerned at the



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possibility of any purchaser building on all or part of the grounds. Mrs Hall told me that PROD's hope is that the ground could be retained in some form as a "green oasis", since people like looking at it. As well as bats roosting in the church structure, slow worms and a sparrow colony were to be found in the grounds and the trees (which were, she said, subject to Tree Preservation Orders).

12. Section 88(1) and (2) of the Localism Act 2011 read as follows:-

“88 Land of community value

- (1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the authority—
  - (a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and
  - (b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.
- (2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority—
  - (a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and
  - (b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.”

13. Mr Wadsley submitted that the use of a building as a place of religion, such as a church, does not fall within the scope of the uses that further “the social wellbeing or interests of the local community”. He pointed to section 88(6) of the 2011 Act, which provides that “social interests” include, in particular, each of the following –

- “(a) cultural interests;
- (b) recreational interests;
- (c) sporting interests”

14. Mr Wadsley said that, had it been the legislature's intention to include religious interests within the scope of section 88, one would expect to find express reference to them in section 88(6). Although the definition of “social interests” in that subsection is not exhaustive, the absence of any reference to religious interests is significant. In this regard, Mr Wadsley drew my attention to the Equality Act 2010, where section 4 (protected characteristics) specifically includes “religion or belief”, thereafter specifically

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defined in section 10 (religion or belief), thereby highlighting, in his view, the discrete nature of religion. Religious interests, Mr Wadsley said, could not be properly said to be “cultural interests” or “recreational interests”. Further evidence of the particular nature and character of religion was to be found in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

15. In its review, the city council’s solicitor considered “that religious worship is for the social wellbeing and social interests of the community”, although she conceded that she might be wrong about that. Given that the city council has not chosen to take any further part in these proceedings, their views on this issue have not been developed in argument. I am, therefore, cautious about making any definitive finding. On the basis of Mr Wadsley’s submissions, I nevertheless consider that the expression “social wellbeing and social interests of the community” in section 88 does not encompass religious observances in a church, mosque or synagogue etc, and that such a building will not in practice fall within section 88 unless there is some other non-ancillary use being made of it, which does further social wellbeing/social interests of the local community.

16. The city council, in its review, considered that the other activities which had taken place in the church in recent years, namely “brownies, meditation, elections, dance, singing [and] mothers and babies meetings” were “non-ancillary” and furthered the social wellbeing or interests of the local community.

17. Mr Wadsley did not challenge the latter conclusion but he vigorously contended that those uses were, in fact, ancillary to the church’s use as a place of religious worship.

18. The expression “ancillary use”, which occurs in several places in section 88, is undefined. I agree with Mr Wadsley that, in the circumstances, it may be helpful (to put it no higher) to look at how the concept of primary and ancillary uses is dealt with in planning law. In volume 2 of the Planning Encyclopaedia (Planning R.184: April 2014) one finds at P55.39 that:-

“ In many cases it is possible to identify a single primary use for a site overall, such as “private dwelling”, “retail shop”, “hotel”, or “farm”. That description may in any given case describe the sum of a number of “incidental” or “ancillary” uses of quite different character.

19. At P55.42, we find:-

“ Much analysis in this area relies upon subjective judgements as to the type and scale of activity which may ordinarily be regarded as ancillary to a particular primary use. It is a test of functional relationship rather than extent.”

20. Mr Wadsley submitted that churches are places of assembly and, as such, can also be useful as a meeting place for others who may not share the religious purpose for which the church was created. In this way, meetings for the other groups that used part of the church (the evidence is that they were not allowed to use certain areas) were in the category of meetings or assemblies. There was, accordingly, a functional link between those meetings and the principal or main use.

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21. In the alternative, Mr Wadsley drew attention to paragraph 7.6 of the Explanatory Memorandum to the 2012 Regulations, which speaks of the “main purpose of the building or land”. Mr Wadsley submitted that, on this approach, the answer one arrived at was the same: namely, that the main purpose of the church was as a church and the other uses were subsidiary to that.

22. As the Tribunal stated in Dorset CC v Purbeck DC (CR/2013/004), in determining for the purpose of section 88 whether a use is ancillary, “there is no certain guidance or touchstone”. In some cases, the position “on the ground” may be such that a single primary use is such that other uses fall properly to be regarded as ancillary to that primary use, whether or not one uses the test of functional relationship. In other cases, there may be a number of discrete uses, where none is properly to be regarded as ancillary, even though one particular use may be more significant than the others (whether in terms of intensity or otherwise). Neither planning law nor explanatory memoranda provide definitive answers; the context is all.

23. In the present case, the original and sole purpose was as a church. That remained the position, even when other non-religious groups were permitted to make use of the church. On the facts, I find that the primary use was as a church. Again, on the facts, I find that the evidence discloses that the other uses did not have a more than ancillary character. They were disparate, largely *ad hoc* and even before closure had dwindled to the point where only one group was using the church on a regular basis. In short, immediately before its closure, the reality was that (despite the decline in congregations) the church was still a church; not a community or social centre. The other uses were ancillary.

24. The result is that I find section 88(2)(a) is not satisfied. There has not been in the recent past (indeed, ever) “an actual use of the building or of the land that was not an ancillary use [which] furthered the social wellbeing or interests of the local community”.

25. But even if I am wrong about that, I find as a fact on the evidence before me that the requirement of section 88(2)(b) is not satisfied. It is not “realistic” to think that there is a time in the next five years when there could be non-ancillary use of the building or of the land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community”.

26. The present appeal does not turn on whether the city council committed legal or factual errors in its review. The appeal is a re-hearing on all matters. Nevertheless, I agree with Mr Wadsley that the council’s decision in the review may well have been different had it not misstated the statutory test in section 88(2)(b). The review document rightly recorded, in my view, that “given the information which has been provided it is realistic to think that the land and building might not be used for community purposes in the future”. However, it then went on to state that “given the extremely long history of community use it would be premature to find that it is wholly unrealistic to think that the land and building might not be used for community purposes in the next five years”. As can be seen from section 88(2), the test is not whether such future use is “wholly unrealistic”. The test is whether it is realistic to think that there could be a relevant non-ancillary use in the next five years.

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27. Even if the other uses could be said not to be ancillary, the evidence adduced by the General Conference, which I accept, demonstrates that the running and maintenance costs could never begin to be met by these sorts of activities. The church has been on the market for some time and no one has expressed an interest to the General Conference in purchasing it with a view to using the site for section 88(2)(b) purposes.

28. PROD have suggested some “possible future community uses” such as a community centre; hire of rooms for a variety of community uses; hire or use by invitation for a summer fete; bat watches, nature sessions; provision of a children’s play area; and use of the grounds as a park. They suggest the building could be used for religious and secular uses, with a possible use by local schools and local small businesses; finally, use as a polling station.

29. Although the legislation does not require a formal business plan, or the like, from those contending that the site should be listed under section 87, any proposals need to be “realistic”. On all the facts of this case, PROD’s list fails to meet this requirement. It is entirely speculative, so far as it envisages new forms of use. There is a dearth of evidence to suggest that anyone – whether a community group, commercial organisation or public body - has evinced any interest in pursuing such a scheme for the church and its land, let alone shown how this might realistically be achieved, given the evidence of running costs and the likely value of the property on the market. So far as PROD’s list involves continuation of uses that have existed in the past, Ms Brooks’ evidence demonstrates how these cannot be regarded as realistic pointers to the next five years.

30. Use as a polling station was, clearly, only very occasional and cannot properly be said to be the kind of activity that would call for listing as an asset of community value. In any event, there is no suggestion that the city council has any continued need to use the church as a polling station for elections, following its closure, or that any income derived from this would be significant.

31. Even if I am wrong in my finding at paragraph 15 above, there is no evidence to suggest that there is a time, in the next five years, when the church could be re-opened as a place of religious worship. Mrs Hall spoke of PROD being approached by a Christian group who wanted to acquire the church but who concluded that the asking price was “prohibitive”. There is, however, no evidence that any approach has been made in this regard to the General Conference or to the Bristol Society. The conclusion of the Christian group underscores the unrealistic nature of the church being reopened for religious activities.

32. PROD’s motivation for seeking listing emerges from the minutes of its meeting of 1 February 2014, which record that “a suggestion was made that we should make a community right to buy. Although at the moment £600,000 minimum makes this prohibitive any publicity of an attempt will be a problem for developers”. This was reinforced by what Mrs Hall had to say at the hearing. PROD’s concerns about over-development, protection of *fauna* and safeguarding of the mature trees on the site are all matters that fall to be addressed in the context of the law relating to development control. They fall outside the ambit of the legislation with which we are concerned.



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33. For these reasons, this appeal succeeds.

**Peter Lane**

**Chamber President**

**Dated 12 February 2015**