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## Appeal Decision

Site visit made on 13 September 2016

**by Paul Singleton BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 21 September 2016**

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**Appeal Ref: APP/C2741/W/16/3153765**

**Groves Chapel, Union Terrace, York YO31 7WS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Clarence Union Developments against the decision of City of York Council.
  - The application Ref 15/02833/FULM, dated 11 December 2015, was approved on 20 June 2016 and planning permission was granted subject to conditions.
  - The development permitted is change of use of existing building with internal and external alterations to form convenience store at ground, 2 flats at first floor and erection of 4 storey extension to rear to accommodate 14 no. flats with associated car and cycle parking.
  - The condition in dispute is No 6 which states that: "*No deliveries shall be taken at or dispatched from the retail store (except for the delivery of newspapers) outside the hours of: Monday to Saturday 07:00 to 18:00; Sundays and Bank Holidays 08:00 to 16:00.*"
  - The reason given for the condition is: "*To protect the amenity of occupants of the new and nearby properties from noise.*"
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### Decision

1. The appeal is allowed and the planning permission Ref 15/02833/FULM for change of use of existing building with internal and external alterations to form convenience store at ground, 2 flats at first floor and erection of 4 storey extension to rear to accommodate 14 no. flats with associated car and cycle parking at Groves Chapel, Union Terrace, York YO31 7WS, granted on 20 June 2016 by City of York Council, is varied by deleting condition 6 and substituting for it the following condition:

- 6) No deliveries shall be taken at or dispatched from the retail store (except for the delivery of newspapers) outside the hours of:

Monday to Saturday 07:00 to 20.30; and

Sundays and Bank Holidays 08:00 to 16:00.

### Background and Main Issue

2. The appellant does not argue that the times at which deliveries can be made to the proposed convenience store should be unrestricted but seeks a variation to condition No 6 to allow for deliveries on Mondays to Saturdays between the hours of 07:00 to 23:00. No change is sought in relation to delivery hours on Sundays and Bank Holidays. Accordingly, the main issue is the effect that
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varying the condition would have on the living conditions of the occupiers of the proposed apartments and of nearby residential properties in Union Terrace with regard to noise and disturbance.

### **Procedural Matters**

3. The Council has refused an application under section 73 of the Town and Country Planning Act 1990 for a variation of condition 6 that was made in parallel with the lodging of this appeal. Although I have seen the officer report on that application and the Council's decision notice that is not a matter which is before me and I have not given significant weight to that decision in my determination of the appeal.
4. I have also been sent information by one of the third party consultees regarding another appeal (Ref:APP/C2741/W/15/3135274) relating to a proposed convenience store in the Osbaldwick area of York which is intended to be operated by the same retail operator. I do not know the details of that proposal and, on the basis of the limited information that I have been provided, I do not consider that the issues raised by the Inspector in that case are relevant to my determination of the current appeal.

### **Reasons**

5. All servicing of the proposed store would be undertaken by means of vehicles stopping in a dedicated, on-street loading bay on the north side of the northern section of Union Terrace. The scheme plans provide for delivery vehicles to enter Union Terrace at its northern end, make their deliveries and then leave by travelling down Union Terrace to its junction with Clarence Street (the B1363) adjacent to the disabled user's car park. Although this arrangement is intended to enable vehicles to enter and leave the loading bay in forward gear some reversing is likely to be required to enable the delivery vehicle to get into the correct position within the loading bay, particularly if a vehicle is parked in the adjacent parking bay. However, given that delivery vehicles would be fitted with non-beeping reversing alarms, I do not consider that this would add significantly to the noise caused by the servicing operations.
6. As set out in the appellant's noise assessment the main sources of noise are likely to be the unloading and loading of trolleys out of and into the vehicle, the wheeling of trolleys along the footway between the vehicle and the service entrance to the store, the operation of the vehicle's tail lift, and the opening and closing of the vehicle's rear door. There would be some engine noise from vehicles as they arrive and leave the store and travel down Union Terrace but such movements would be limited in number (up to 7 per day) and would be of short duration. As set out in the appellant's evidence, drivers of vehicles parked in the loading bay would be able to see down Union Terrace and could delay their departure if they see a vehicle coming in the opposite direction. This forward visibility, together with the creation of a turning area using the access to the parking area to the proposed apartments, would minimise the risk of a service vehicle being blocked by another large vehicle waiting in the road and should remove the need for other large vehicles to reverse out of the road to the southern exit. Potential noise and disturbance associated with these current occurrences would, therefore, be reduced as a result of the proposed development.

7. The appellant intends to introduce a dropped kerb to reduce the noise of trolleys being moved on to and off of the pavement but, given the uneven, stone flagged surface of the pavement, some rattling of the trolleys would no doubt be caused as they are moved to and from the vehicle. Although the parked delivery vehicle would provide screening between this source of noise and the nearest residential properties on the opposite side of the street, those houses would not be screened from the noise of activities taking place at the rear of the vehicle (i.e. the loading and unloading of trolleys, the operation of the tail lift and the opening and closing of the door to the vehicle) and these would, potentially, be the noisiest parts of the servicing activities. Neither, in my judgement, would the other nearby residential properties at numbers 93–96 Union Terrace be screened from noise associated with the movement of trolleys into and out of the service entrance to the store. However, as the noise assessment has assumed that all unloading activities would be unshielded, this limited screening effect has been taken into account in that assessment.
8. Criticism is made by the Council and in some third party representations that the noise survey was carried out at three positions in the northern section of Union Terrace and that no measurements were taken further to the south where background levels are thought to be lower because traffic noise from the B1363 is partially screened by the buildings between Clarence Street and Union Terrace. However, the levels recorded at monitoring position 3 which, being at the rear of the existing car park, is shielded from the main road by the boundary wall to the car park and by the building mass of Groves Chapel and its rear extension, were only about 1 dB lower than those at Position 2 (allowing for corrections to account for the façade reflections of noise that would have applied at positions 1 and 2). This would suggest that background levels in the lower part of Union Terrace are not likely to be greatly different from those measured in the survey.
9. Also relevant to this issue is that the likely effect of noise from the servicing activities has been assessed at the nearest windows/façades of the residential properties at numbers 101–105 Union Terrace which stand opposite the proposed loading bay; the background levels recorded at noise monitoring position 2 are likely to reflect background noise levels at the front of these properties. Whereas those dwellings are some 8–10 metres from the proposed loading bay, the façades of numbers 93–96 would be more than twice that distance from the servicing activities, with their front windows standing at an angle to the source of noise from those activities rather than facing directly towards that source. Hence, I have no reason to conclude that the occupiers of numbers 93–96 would be likely to experience any greater noise levels from the servicing operations than those which have been assessed at the nearest noise sensitive properties.
10. The future occupants of some of the proposed apartments would be even closer to the source of noise from the servicing activities but these would be constructed with appropriate levels of insulation to protect them from traffic noise on the B1363. I anticipate that this insulation would also significantly limit any adverse effects of noise from the servicing operations. However, many of the existing properties on Union Terrace have traditional sash windows in keeping with their age and character and the occupiers of those houses are less likely either to have, or be able easily to fit, double glazing or other noise insulation to the same standard. Residents of these properties might,

therefore, be more susceptible to noise disturbance from the loading operations.

11. Also of relevance is that, in assessing the effect of noise associated with deliveries, the noise assessment has adopted a figure of 50dB  $L_{A90}$  as the background level against which the predicted noise of the servicing operations should be assessed. I accept that this figure is representative of the recorded background levels during the working day but the detailed tables of noise measurements recorded at position 2 (Appendix III to the assessment report) show that background levels reduce during the evening. Although levels of 50dB  $L_{A90}$  (5 minute) or above were frequently recorded in the period up to 20.30 hours very few measurements at that level were recorded after that time with only level of 50 recorded in the period between 20.30 and 20.59. In the period from 21.00 to 21.59 the recorded levels ranged from 46 to 50, with only one level of 50 recorded early in the hour, and in the period between 22.00 and 22.59 they ranged from 44 to 47.
12. The noise assessment report concludes that the predicted rating level associated with the loading and unloading activities, of 54dB, would be +4dB above the 50dB  $L_{A90}$  background level adopted in the assessment. This level of increase might normally be considered to be acceptable in the daytime and early evening subject to the context. However, when assessed against the background levels that were more frequently recorded later in the evening the rating level would represent a potentially much larger increase. That increase would range between +5 and +9 in the period from 20.30 to 20.59 hours; between +5 and +7 in the period from 21.00 to 21.59 hours; and from +7 to +10 in the period from 22.00 to 22.59 hours. Such increases indicate the potential for significant adverse effects in terms of the level of noise and disturbance experienced by the occupiers of nearby residential properties, given their level of sensitivity to such effects, and would not be acceptable.
13. Having regard to these considerations I find that the noise assessment evidence does not demonstrate the need for a 'cut off' time of 18.00 hours for the last deliveries to be made to the proposed convenience store. However, neither does that evidence support the extension of permitted servicing hours which is sought by the appellant.
14. The appellant's noise assessment also relies, in part, on the servicing activities that currently take place in Union Terrace to argue that the noise from the proposed servicing operations would not be out of character with the current noise climate. It is on this basis that the noise consultant concludes that the +4dB change in noise levels at the nearest residential properties would not be significant (paragraph 6.1.3 of the noise assessment report). However, the available evidence is that deliveries to the rear of the two social clubs that front onto Clarence Street take place on one or two occasions per week and only during daytime. The number and frequency of these service vehicle visits is much less than would be generated by the appeal proposal and there is no evidence to suggest that this current pattern of deliveries is likely to change. For these reasons I do not accept that the existing noise character is such that the introduction of late evening servicing activity would not have any noticeable or harmful effects.
15. The later evening would be the period when residents might reasonably expect a reduced level of noise as they relax in their living rooms or are trying to get

children off to sleep and, on the basis of the evidence before me, I am unable to conclude that servicing activities at this time would not have an unacceptable effect on the living conditions of the occupiers of existing nearby dwellings. Although some relaxation of the existing condition would be appropriate, extending the permitted hours to 23.00 would not be justified and, having regard to the pattern of background levels recorded in the noise survey, I find that an extension of delivery hours to 20.30 hours would be an appropriate variation.

16. In reaching this conclusion I have had regard to the appellant's justification for extended servicing hours which is largely founded on the proposed operator's need for flexibility as to the timing of service vehicle visits to the store. The key issue of concern is that there would be a need for a delivery towards the end of the day to replenish stocks ready for the following morning and that the vehicle making this delivery is also likely to call at other stores in the York area as part of a multi-store trip. The appellant also argues that the 18.00 hours cut off would mean that the service vehicle making the last delivery would need to travel during the evening peak on the local highway network and to make that delivery at a very busy trading time within the store.
17. I accept the need for some flexibility and that servicing hours conditions should not be unduly onerous for operators of such stores. However, I note that Appendix 6 to the appellant's statement shows that nearly all of the proposed operator's stores within York are not subject to delivery hours restrictions and that, even where an evening restriction has been imposed, deliveries are permitted up until 22.00 hours. There would, therefore, be more than sufficient flexibility for the distribution depot or transport manager to schedule a multi-store trip in which the vehicle calls at the appeal store first and then goes on to make deliveries at one or more other stores before the end of their permitted servicing hours.
18. I do not know the details of the stores listed in Appendix 6 and am unable to draw any conclusions as to whether or not they have access and servicing arrangements which are comparable to those which exist at the appeal site. However, the need for vehicles to leave the appeal store by means of what is predominantly a residential street presents a less than ideal servicing arrangement both for the operator and for local residents. It is, therefore, appropriate that a degree of flexibility should be required from the store operator to ensure that the two uses can co-exist in an acceptable manner. I consider that the variation of condition 6 that I propose would allow an appropriate level of co-existence to be achieved.

### **Other Matters**

19. A number of local residents have raised concerns about the traffic effects of the proposal but I have no evidence to suggest that the Council's conclusions as to the acceptability of the proposal on these grounds are unsound. Insofar as those matters are relevant to the issue of noise and disturbance to local residents, I have already commented that the provision of a turning area at the current 90° bend in Union Terrace would improve matters by reducing the number of vehicle conflicts within the road and removing the need for larger vehicles to reverse out of the road.
20. There is no dispute between the parties that the former chapel is badly in need of restoration and that the proposal for a mixed residential and commercial use

would successfully achieve both that restoration and the future beneficial use of the Grade II listed building. That outcome would be an important benefit of the scheme which needs to be taken into account in the determination of the appeal.

21. The appellant states that, without an extension to the delivery hours, there is genuine possibility that the nominated operator will not take up occupation of the proposed convenience store and that this could place the delivery of the scheme in jeopardy. However, the appellant's evidence strongly suggests that the operator's preference for an extension to 23.00 hours is just that (i.e. a preference which would give the operator maximum flexibility as to when the store is serviced) rather than an operational need. Neither is there any evidence to demonstrate, if the proposed operator is unable or unwilling to work within the extend hours that I propose, that another operator would not be willing to take up the opportunity that the store presents. Also, although the appellant seeks to dismiss the other reported interests in the use of the building as unlikely to generate the market value of the property, I have seen no evidence to demonstrate that the proposed conversion is the only viable option for the restoration and future safeguarding of the listed building.
22. Accordingly, although it is desirable that the scheme should go ahead in order to secure the early restoration of the listed building, that consideration does not outweigh the harm that would be caused to the living conditions of the occupiers of nearby residential properties if the servicing hours were to be extended to 23.00 as requested by the appellant.

### **Conclusions**

23. For the reasons set out above I conclude that the appeal should be allowed and the condition 6 should be deleted and replaced by a new condition as set out in the formal decision above.

*Paul Singleton*

INSPECTOR