
Appeal Decision

Site visit made on 12 December 2016

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 6th January 2017

Appeal Ref: APP/R0660/W/16/3157081

Vine Inn, Rope Lane, Shavington CW2 5DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by New River Retail Property Unit Trust No. 4 against the decision of Cheshire East Council.
 - The application Ref 16/1690N, dated 7 April 2016, was refused by notice dated 13 June 2016.
 - The application sought planning permission for the erection of a Class A1 Convenience Store including ATM with dedicated external servicing, refuse and plant area, associated car parking and landscaping without complying with a condition attached to planning permission Ref 14/5472N, dated 25 March 2016.
 - The condition in dispute is No 9 which states that: "Deliveries to the store shall be restricted to between the hours of 0800 hours and 2100 hours."
 - The reason given for the condition is: "In the interests of residential amenity in accordance with Policy BE.1 of the Borough of Crewe and Nantwich Replacement Local Plan 2011."
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of a Class A1 Convenience Store including ATM with dedicated external servicing, refuse and plant area, associated car parking and landscaping at the Vine Inn, Rope Lane, Shavington CW2 5DT in accordance with the application Ref 16/1690N dated 7 April 2016, without compliance with condition number 9 previously imposed on planning permission Ref 14/5472N dated 25 March 2016 and subject to the new conditions set out in Annex A.

Application for costs

2. An application for costs was made by New River Retail Property Unit Trust No. 4 against Cheshire East Council. This application is the subject of a separate Decision.

Background and Main Issue

3. Permission was granted in March 2016 for the erection of a convenience store on the site. This was subject to a number of conditions one of which restricted deliveries to the store to between the hours of 0800 and 2100 hours. The appeal seeks permission to vary this condition to allow deliveries between 0700 and 2100 hours Monday to Saturday and 0800 and 2100 hours on Sundays and Public Holidays.
-

4. The main issue in the appeal is the effect that varying the delivery times would have on the living conditions of nearby residents with regard to noise and disturbance.

Reasons

5. The appeal site is located on Rope Lane, adjacent to its junction with The Vineyard. To the north of the site lies a public house but apart from this the site is located in a residential area. Rope Lane is a relatively busy road that serves as a bus route, and I observed that traffic is the main source of ambient noise in the area.
6. The proposed store would be situated facing Rope Lane with the car parking and delivery area at the rear adjacent to the boundaries with the rear gardens of properties on The Vineyard. Concerns have been raised by a number of the nearby residents regarding the potential noise and disturbance that would result from the extension to the delivery hours, and I appreciate the desire of residents to enjoy a good night's sleep free from noise and disturbance.
7. I note that the store itself will be able to open from 0700 hours, even though deliveries cannot be made before 0800 hours. As such, there will already be a certain level of noise created from the coming and going of customers and staff.
8. A noise assessment report was submitted by the appellant in support of the proposed change to the delivery hours. This indicates that, even assuming the lowest levels of background noise recorded, the noise at the nearest dwellings would only be slightly greater than it would be during the hours already approved. Furthermore, if the average background noise levels are used, the noise and disturbance that would result from the additional hour for deliveries would result in negligible changes in noise levels for the surrounding residential properties.
9. The Council have not disputed the methodology of this report. Moreover, despite claiming the revised delivery hours would result in a significant adverse impact in terms of noise and disturbance to local residents, they have not produced any evidence to substantiate this claim, or to counter the findings of this report. I consider that the approach and methodology used in the study are appropriate, and have been rigorously applied. Consequently I have no reason to doubt the conclusions of the assessment.
10. In addition, I note the Co-op who have an agreement for the lease, currently operate a store nearby within the village. This has a delivery yard immediately adjacent to residential properties. I understand that this does not have any restrictions on delivery times, but I have not been made aware that the Council has had any complaints regarding noise and disturbance from the operation of, or deliveries to, this store despite its close proximity to residential properties. Moreover, as this store would be replaced by the new one, there would not be any increase in the number of delivery vehicles in the wider area.
11. Therefore, I conclude that the proposed change in delivery hours would be unlikely to cause significant harm to the living conditions of nearby residents. As a result there would be no conflict with Policy BE.1 of the Crewe and Nantwich Replacement Local Plan 2011 (adopted February 2005) which

requires that new development does not prejudice the amenity of future or existing occupiers.

Other Matters

12. Concerns have been raised regarding the loss of the car park on which the store is to be built, and the impact of the store on highway safety. However, these are matters that would have been considered when granting the original permission, and are not matters that are before me at this appeal, although I note that the highway engineer has no objection to the proposed change in delivery times. In addition, there is no persuasive evidence to suggest that the alteration to the delivery times would lead to a loss of property values.
13. The original application was accompanied by a S106 agreement which secured the payment of £70,000 for the construction of a pedestrian crossing on Rope Lane. To this end a signed Unilateral Undertaking was submitted with the appeal documentation for the same purpose. To address a number of concerns of the Council regarding the wording of this, a signed S106 Deed of Variation has also been submitted. However, I have been provided with no policy justification for this contribution, so am unable to ascertain if the Unilateral Undertaking meets the requirements of the Community Infrastructure Regulations 2010 or the Framework. As such I give these elements of the Unilateral Undertaking no weight in my decision making.

Conclusion and Conditions

14. For the reasons set out above, I conclude that the appeal should be allowed. I have therefore granted a new permission for the Class A1 Convenience Store, with a new condition, in line with that suggested by the appellant, in place of the disputed one which reflects the delivery hours sought. In addition, I have included the condition suggested by the appellant requiring the submission of a delivery management plan.
15. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. However, as the PPG also makes clear that a planning permission granted under this section cannot extend the time limit within which a development must be started, I have altered the first condition so that the permission I am granting runs from the date of the original permission.

Alison Partington

INSPECTOR

Annex A

Conditions

- 1) The development hereby permitted shall begin not later than three years from the 25 March 2016.
- 2) The development hereby approved shall be carried out in total accordance with the approved plans numbered T-300 Rev A, T77-302 Rev C, T77-303 Rev A, T77-0305 Rev B, and T77-0307 Rev A.
- 3) The materials to be used shall be in strict accordance with those specified in the application unless different materials are first agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) The parking provision shall be in accordance with the approved layout plan (T77-0302 Rev C), and shall be completed and available for use prior to the store opening for business.
- 5) Details of the method, timing and duration of any pile driving operations connected with the construction of the development hereby approved shall be approved in writing by the Local Planning Authority prior to such works taking place, and shall be implemented in accordance with the approved details.
- 6) Prior to any floor floating operations being undertaken, the applicant shall submit a method statement detailing the method and timing of floor floating, to be approved in writing by the Local Planning Authority. The floor floating work shall be undertaken in accordance with the approved method statement. The method statement shall include the following details:
 1. Details of the method of floor floating;
 2. Days / hours of work;
 3. Duration of the floor floating operations (expected starting date and completion date);
 4. Prior notification to the occupiers of potentially affected properties; and
 5. Details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint.
- 7) Prior to its installation, details of all external lighting and CCTV equipment shall be submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) The opening hours of the business hereby approved shall be restricted to 0700 hours to 2300 hours.
- 9) Deliveries to the store shall be restricted to between the hours of 0700 hours and 2100 hours Monday to Saturday, and 0800 hours and 2100 hours on Sundays and Public Holidays.
- 10) Prior to the first occupation of the development hereby permitted a scheme for the acoustic enclosure of any fans, compressors or other equipment with the potential to create noise to be installed in that unit shall be submitted to, and approved in writing by, the local planning

authority. Each part of the approved scheme shall be implemented in full prior to the first occupation of the unit to which it relates.

- 11) No development hereby approved shall commence until full details of the proposed foul and surface water drainage from the site, together with sustainable drainage measures (SUDS), have been submitted to, and approved in writing by, the local planning authority. The approved details shall thereafter be implemented in full before the building is first occupied or brought into use.
- 12) The landscaping of the site shall be completed in accordance with the details shown on plan number T77-0302 Rev C.
- 13) (a) Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837 :2012 Trees in Relation to Design, Demolition and Construction (Recommendations), which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to, and approved in writing by, the Local Planning Authority. No development or other operations shall take place except in complete accordance with the approved protection scheme.
(b) No operations shall be undertaken on site in connection with the development hereby approved (including demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
(c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
(d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
- 14) The pedestrian crossing shall be provided in accordance with the details set down in the Unilateral Undertaking.
- 15) Prior to the first occupation of the development hereby permitted a delivery management plan shall be submitted to, and approved in writing by, the local planning authority. Thereafter, deliveries to the development shall be made in accordance with the approved plan.