
Appeal Decision

Site visit made on 5 December 2016

by R C Kirby BA(Hons) DipTP MRTPI

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

Decision date: 12 January 2017

Appeal Ref: APP/W1715/W/16/3156599

**Chestnut Avenue Retail Park, Chestnut Avenue, Chandlers Ford, Hampshire
SO53 3YB**

- 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 B&Q Properties Ltd against the decision of Eastleigh Borough Council.
 - The application Ref F/15/77194, dated 11 September 2015, was approved on 22 June 2016 and planning permission was granted subject to conditions.
 - The development permitted is subdivision of Unit 1 to create 2 No A1 retail units (discount food and discount non-food goods), refurbishment of existing building including partial recladding, new entrance door and canopies; revised parking layout and associated works; and new pedestrian and cycle path from Chestnut Avenue.
 - The condition in dispute is No 15 which states that: *No deliveries or goods vehicle movements except between the hours of 0800 and 1900 hours Mon-Sat.*
 - The reason given for the condition is: *To protect the amenity of nearby occupiers.*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted for the above development by the Council and included a number of conditions and matters covered by a unilateral undertaking. It included a delivery hours condition which the appellant considers is unduly restrictive and unnecessary. The appellant seeks to vary the condition to allow deliveries to take place each day of the week, such that they could take place between the hours of 0800 and 2200 Monday to Saturday and between 0800 and 1700 on Sundays and Bank/Public Holidays. This is a reduced number of hours to that initially requested when the planning application was first submitted, and subsequently amended during its course.
3. The main issue in this case is therefore whether the disputed condition is reasonable and necessary to protect the living conditions of nearby occupiers.

Reasons

4. The appeal site is located within an urban area characterised by a mix of uses, including retail and residential. To the east of the site are residential properties in Suffolk Drive which have rear gardens adjoining the rear of the site and service yard. The appellant's Noise Assessment¹ has identified that the closest

¹ WYG Noise Assessment September 2015

residential properties in Suffolk Drive are 14 metres from the loading area serving the 4 retail units on the site. The Council has calculated that the nearest residential property in this road is approximately 9 metres from the rear of the retail building and within 3 metres of the appeal site boundary. I have no reason to doubt either party's measurements; however it seems that the Council's calculation is based on a property in Suffolk Drive which does not adjoin the service area to the buildings.

5. Amongst other matters, saved Policy 59.BE of the Eastleigh Borough Local Plan Review (2001-2011) (LPR) requires development proposals to take full and proper account of the context of the site, including the character and appearance of the locality or neighbourhood. It requires proposals to be an appropriate use for the locality and avoid unduly interfering, disturbing or conflicting with adjoining or nearby uses.
6. Although the policies of the emerging Revised Pre-Submission Eastleigh Borough Local Plan 2011-2029 (LP) represent the most recent statement of the Council's development strategy for the Borough, it is common ground that limited weight can be attached to them. Notwithstanding this, Policy DM1 of the LP requires development proposals, amongst other matters, to have an acceptable impact on residential amenity. This policy broadly accords with the National Planning Policy Framework's (the Framework) core planning principle which seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.
7. The Framework at paragraph 109 advises that the planning system should prevent both new and existing development from contributing to, or being put at unacceptable risk from, amongst other things, noise pollution. Paragraph 123 advises that planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development. Paragraph 123 also advises that planning decisions should also aim to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.
8. The Planning Practice Guidance (PPG) states that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation, including the source and absolute level of the noise, together with the time of day it occurs.
9. The PPG advises that some types and level of noise will cause a greater adverse effect at night than if they occurred during the day – this is because people tend to be more sensitive to noise at night as they are trying to sleep. The adverse effect can also be greater simply because there is less background noise at night; for non-continuous sources of noise, the number of noise events, and the frequency and pattern of occurrence of the noise; and the spectral content of the noise and the general character of the noise. The PPG also advises that, in determining noise impact, decision-takers should consider whether or not a significant adverse effect or an adverse effect is occurring or likely to occur and whether or not a good standard of amenity can be achieved.
10. The appellant has indicated that there would be 3 deliveries per day associated with the proposed food store (Unit 1B), and one delivery per day would be

associated with the non-food retail store (Unit 1A). This would be similar to the number of deliveries associated with the DIY store on the site.

11. The appellant's Noise Assessment included worst-case calculations, based on measurements of non-refrigerated, articulated heavy goods vehicles delivering goods and materials. In addition to noise from the unloading process, the levels used in the assessment included noise from the vehicle pulling up to the unloading bay, manoeuvring into position and then pulling away once unloading/loading was complete, together with other sources such as trolleys and reversing alarms. The calculations were based on a maximum of one event per hour.
12. The assessment identified that a delivery vehicle docking and unloading would result in a LAeq(60 mins) of 69.8 dB at 3 metre distance. The delivery vehicle arriving and exiting along the service road would have a LAeq(60 mins) of 46.7 dB at 3 metre distance. Noise monitoring surveys were undertaken during the day and night to identify background noise levels and a delivery background comparison assessment was made on each day of the week between the hours of 0700 and 2300 from the receptor points, which included properties in Suffolk Drive adjoining the service yard.
13. The appellant's assessment concluded that noise levels from the service yard were predicted to be below the BS 8233:2014² criteria at nearby sensitive receptor locations with windows open or closed. Predicted noise levels at all receptors were found to not exceed the background noise level. The noise levels from servicing and deliveries were predicted to be within the Lowest Observed Adverse Effect Level set out in the PPG's Noise Exposure Hierarchy. As such the appellant asserts that the increase in delivery hours would have a low impact and would not have a 'significant adverse impact' on health or quality of life.
14. A further assessment was submitted with the appeal which compared the predicted average noise levels from deliveries with the measured baseline daytime LA90 at the nearest noise sensitive receptors. Again, this assessment found that the noise levels from deliveries were predicted to be at, or below background noise levels during the proposed delivery hours.
15. Whilst I note that the appellant considers that the best noise descriptor associated with the noise source in question is the LAeq(T) as it provides an average noise level (over a period of time), I share the Council's concern that this method does not make allowances for the irregular and impulsive noise from deliveries. It does not therefore accurately reflect the impact of noise from deliveries to the site on sensitive receptors, including, in this case occupiers of adjoining properties in Suffolk Drive.
16. A person's reaction to noise is likely to be instant, particularly if the noise source is non-continuous, as would be the case with deliveries to the appeal site. Where that noise source is for a prolonged period of time, as would be the case with deliveries to the site (the appellant indicates within the Noise Assessment that they would take 45 minutes, which includes 7 minutes of the vehicle arriving, manoeuvring and leaving), this is likely to cause disturbance to nearby occupier's enjoyment of their property. Whilst such noise sources would be unlikely to have a significant adverse impact on living conditions

² Guidance on Sound Insulation and Noise Reduction for Buildings

during the day and in the early evening, they would be likely to be intrusive and cause disturbance to a level that would be unacceptable late in the evening and early on a Sunday morning when occupiers, including children, may well be asleep, or relaxing at home.

17. Noise associated with deliveries to the site late at night and early on a Sunday morning, including engine noise, closing of vehicle doors, audible reverse beepers and crates being taken off vehicles would be likely to be audible from adjoining properties, whose rear elevations and windows are in close proximity to the service yard. This non continuous noise source would be likely to be noticeable above the background noise levels, which includes traffic noise on the adjoining roads and the nearby M3, at a level that would be likely to cause disturbance, including to sleeping patterns. It is likely to result in a source of annoyance particularly late in the evening and early on a Sunday morning where local residents expect, not unreasonably, a relatively quiet environment within which to relax.
18. Whilst I appreciate that it is likely that there would only be one delivery an hour given the capacity of the service yard, it is likely that there would be more than 4 deliveries a day, particularly given the servicing requirements of the adjoining 2 units. This could result in disturbance for longer periods, particularly if those deliveries were made early on a Sunday morning or late into the evening, thereby adding to my concern.
19. Having regard to the PPG's Noise Exposure Hierarchy, I consider that the noise source from deliveries in the early morning on a Sunday and late in the evening is likely to be noticeable and disruptive. On the basis of the evidence before me I cannot be satisfied that the extended opening hours would result in a level of noise from this operation that would fall within the acceptable levels set out in BS 8233:2014. The disturbance caused by deliveries during such times would be likely to have a significant adverse effect upon the quality of life of adjoining occupiers.
20. The appellant submits that no representations were submitted by neighbouring occupiers in respect of the planning application. Whilst this may be the case, it is likely that the restrictive delivery times on the site (between 0830 and 1730 Monday-Friday) has been successful in preventing noise disturbance when nearby occupiers expect a degree of peace and quiet without disturbances. Similarly, the lack of complaints to the Council about noise from the appeal site is likely to be a result of this control.
21. I note the appellant's concern that the delivery hour's restriction would prevent deliveries to the new food store being taken only when the store opens to the public and that between a Saturday evening and a Monday morning there would be no deliveries. The store would therefore be unlikely to stock fresh food during this time. The appellant asserts that this would make the new food store, in particular, unviable, although this is not substantiated.
22. There may well be the opportunity to extend the delivery time to the site; however the proposal before me is not acceptable for the reasons given. An extended period for deliveries would be a matter in the first instance for the Council to consider, by way of a revised planning application. The introduction of a Service Yard Management Plan and the operation of the Quiet Deliveries Scheme as included in the appellant's evidence do not persuade me that the impacts of the extended delivery times could be suitably mitigated. Indeed, I

have concerns that the switching off of the roof mounted chillers before entering Eastleigh would not be enforceable, or reasonable, particularly given that the vehicle may well be delivering to other stores in the area.

Conclusion

23. In light of the foregoing, I find that the extended delivery times would be likely to interfere with neighbouring occupiers' enjoyment of their homes and cause significant disturbance and nuisance, as a result of noise associated with deliveries, particular late in the evenings and early on a Sunday morning. A good standard of amenity would not be secured for all existing and future occupiers of land and buildings. As such there would be conflict with LPR Policy 59.BE, emerging LP Policy DM1, the Framework and the PPG.
24. I therefore conclude that on the evidence before me that it is reasonable and necessary to control hours of delivery as set out in condition No 15 of planning permission F/15/77194. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

R C Kirby

INSPECTOR