
Appeal Decision

Site visit made on 17 January 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 9th February 2017

Appeal Ref: APP/X0360/W/16/3159579

Mallards, Basingstoke Road, Spencers Wood RG7 1AD

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 Mr A Odedra against the decision of Wokingham Borough Council. The application Ref 161522, dated 2 June 2016, was refused by notice dated 13 September 2016.

The application sought planning permission for proposed part single, part two storey extensions and alterations to the roof of existing dwelling and post office to form extended post office and retail area at ground floor level, with three bedroom flat at first floor level without complying with conditions attached to planning permission

Ref F/2014/1372, dated 31 October 2014.

The condition in dispute are Nos 11 and 13 which state that:

- 11) No customer shall be permitted to be on the premises outside the following times:
07:00 – 21:00 Mondays to Saturdays and 10:00 – 18:00 Sundays and public holidays.
- 13) No deliveries shall be taken in or dispatched from the site outside the hours of 07:00 and 18:00 Monday to Saturdays nor at any time on Sundays, Bank or Public Holidays.

The reason given for conditions 11 and 13 is: To safeguard residential amenities.

Decision

1. The appeal is allowed and planning permission is granted for part single, part two storey extensions and alterations to the roof of the existing dwelling and post office to form extended post office and retail area at ground floor level, with a three bedroom flat at first floor level at Mallards, Basingstoke Road, Spencers Wood RG7 1AD in accordance with application Ref 161522 without compliance with condition number 11 previously imposed on planning permission Ref F/2014/1372, dated 31 October 2014, but subject to the conditions set out in the attached schedule.

Background and Main Issue

2. Mallards (the premises) has been extended under planning permission F/2014/1372 (the permission) to, amongst other things, incorporate an extended retail area. The appellant has sought to vary the terms of conditions 11 (customer opening times) and 13 (delivery times) of the permission to extend the times when the shop and post office may be open to customers and deliveries can be made to the site. The application, as amended, sought to vary condition 11 by changing the opening times from 0700 to 2100 hours on Mondays to Saturdays and 1000 to 1800 hours on
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Sundays and bank and public holidays (public holidays) to 0600 to 2230 hours on Mondays to Saturdays and 0800 to 2100 hours on Sundays and public holidays.

3. With respect to delivery times the variation to condition 13 sought would alter the hours from 0700 to 1800 hours on Mondays to Saturdays only to between 0700 and 1600 hours on Mondays to Saturdays and 0900 to 1300 hours on Sundays and public holidays.
4. The main issue is whether conditions 11 and 13 are reasonable and necessary having regard to the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance.

Reasons

5. The premises are located within a predominantly residential section of Basingstoke Road and they are bounded on either side by two houses, 2 Folijon Cottages (No 2) and Dorneycroft. The only other commercial premises within the immediate vicinity of the site are the vehicle repair workshop, with small petrol filling station (which does not have a forecourt shop) virtually opposite, the bakery a few doors down the street to the north and the small industrial estate also a little to the north on the opposite side of the street.
6. I consider there is potential for the occupiers of the two immediately neighbouring houses to experience noise disturbance as a consequence of the comings and goings of customers to the premises and the making of deliveries in the early morning and later evening periods throughout the week and on Sundays. In order to safeguard the living conditions of the occupiers of the immediately neighbouring houses conditions limiting the times when the premises are open to the customers and can receive deliveries are necessary.
7. It is, however, necessary to consider whether the originally imposed conditions are reasonable, having regard to the need to balance the safeguarding of the living conditions of the immediately neighbouring residents with enabling a local shop to trade in a manner that can serve the wider village community. In the case of the latter point I note that the premises would appear to be popular, given the representations made in support of extending the opening and delivery times.

Condition 11 - Opening Hours

8. Basingstoke Road serves as the main route between Three Mile Cross, Spencers Wood and Swallowfield and has the potential to be used by commuters in the morning period and thus be relatively busy then, while being less intensively used in the later evening and night time periods. It is therefore unsurprising that no complaints have been received by the appellant about the premises being open until 2100 hours. The premises are located within a village and, with the possible exception of the petrol filling station opposite, there are no retail premises in very close proximity that trade beyond 2100 hours. In the evening period background noise levels are generally lower and I therefore consider that the comings and goings of customers after 2100 hours on Mondays to Saturdays, particularly if associated with vehicles making use of the premises' forecourt parking area,

would have the potential to cause unacceptable noise disturbance for the occupiers of No 2 and Dorneycroft, given how close those houses are to the premises.

9. I therefore conclude that it would be unreasonable to allow the premises to trade up until 2230 hours on Mondays through to Saturdays. In reaching that conclusion I am mindful of the opening times of the other shops referred to by the appellant. However, I have not been provided with any of the planning application details for those premises and I therefore do not know how comparable their planning histories might be with the premises. However, from what I saw as part of my site visit, the Co-Op in Shinfield appeared to be in a busier location, given its position within the centre of the village. The Budgens store at the northern end of Basingstoke Road trades in association with a petrol filling station, while the Londis shop, opposite Budgens, on the appellant's own evidence does not open beyond 1930 hours. I therefore consider that these other shops are not comparable with the premises. I am in any event required to consider the appeal on its own merits and that is what I have done.
10. With respect to evening trading on Sundays and public holidays, a closing time of 1800 hours for a local shop is quite early. Having regard to the size of the premises and the level of customer visits they would be likely to generate, I consider that allowing the premises to be open until 2100 hours on Sundays and public holidays would not result in harm being caused to the living conditions of the occupiers of No 2 and Dorneycroft.
11. Given the potential for Basingstoke Road to be busy from quite early on in the morning period, and allowing for the size of the premises, I consider any customer comings and goings between 0600 and 0700 hours on Mondays to Saturdays would be likely to be at levels that would not be disruptive to the sleep for the occupiers of No 2 and Dorneycroft, taking account of the proximity of those properties' front bedrooms. I also consider that any illumination of the premises in the early morning period would not be intrusive and thus disruptive for sleep. Any noise that might be discernible would be at a time when residents would be more likely to be waking up and thus less disturbing compared to noise arising in the later evening period when many people are going to bed to sleep. I therefore find that it would be reasonable for the premises to be open to customers from 0600 hours onwards on Mondays to Saturdays. As far as Sunday and public holiday mornings are concerned, I consider that the number of customers that would be likely to visit the premises between 0800 and 1000 hours would be at levels that would not be harmful to the living conditions for the occupiers of No 2 and Dorneycroft.
12. For the reasons given above I conclude that extending the premises' opening hours to 2230 on Mondays to Saturdays would be harmful to the living conditions for the occupiers of No 2 and Dorneycroft through the generation of increased noise and disturbance. Accordingly that variation to condition 11 would conflict with Policy CP3 of the 'Wokingham Borough Local Development Framework Adopted Core Strategy Development Plan Document' of 2010 (the Core Strategy) and Policy TB20 of the 'Wokingham Borough Development Plan Adopted Managing Development Delivery Local Plan' of 2014 (the Local Plan) because the additional activity in the evening period would give rise to noise and disturbance that would be harmful to the living conditions of the occupiers

of neighbouring dwellings. There would also be conflict with the fourth core planning principle, identified in paragraph 17 of the National Planning Policy Framework (the Framework), in that a good standard of amenity (living conditions) would be unavailable to all existing and future occupants of buildings.

13. However, I conclude that varying condition 11 to allow the premises to be open between 0600 and 2100 hours on Mondays to Saturdays and 0800 and 2100 hours on Sundays and public holidays would not be harmful to the living conditions of the immediately neighbouring residents. Accordingly varying condition 11 in those respects would not conflict with Policy CP3 of the Core Strategy, Policy TB20 of the Local Plan and the Framework.

Condition 13 – Delivery Hours

14. The photographs submitted by residents show that the premises are serviced by a mixture of vans and rigid body and articulated lorries, with there being instances when more than one supplier has been making deliveries at the same time. Idling lorries, especially if they have on-board refrigeration plant, have the potential to generate significantly more noise than the comings and goings of customers' cars. The movement of delivery cages in an outdoor environment also has the potential to generate noise. I am therefore concerned that permitting deliveries on Sundays and public holidays has the potential to cause unacceptable noise and disturbance for the occupiers of No 2 and Dorneycroft at times when those residents could reasonably expect not to be disturbed.
15. I appreciate that the appellant wishes to ensure that the premises are well stocked on every trading day. To achieve that the appellant has indicated that in return for deliveries being allowed on Sundays and public holidays he would be prepared to accept that deliveries on Mondays to Saturdays should cease by 1600 hours. However, the delivery schedule included in the appellant's intended delivery management plan (DMP) shows a schedule for 'current and continued' deliveries and identifies no current delivery activity beyond 1600 hours on any day. There is also no evidence indicating that the ability to receive deliveries until 1800 hours has been causing any noise or disturbance for the occupiers of neighbouring properties.
16. On the basis of the available evidence, it is unclear to me why sufficient fresh produce could not be delivered in advance to meet the demand generated on Sundays and public holidays. I, however, recognise that the situation with respect to newspapers is different and, with deliveries being precluded on Sundays and public holidays, newspapers published for those days are unavailable to customers. That said there is no evidence before me quantifying how significant the absence of newspaper sales on Sundays and public holidays are for the operation of these premises.
17. I also have reservations as to whether the DMP would be effective. That is because while those managing the premises have control over what happens at them, with third party multiple suppliers seeking to meet their own schedules, I consider it unlikely the suppliers could be required to keep to the DMP's requirements. The example of One Stop making a delivery in error on 27 December 2016 serves to reinforce my concern about the premises' management, no matter how well intentioned, having the ability to control the actions of the suppliers. I therefore consider that were a DMP to be made the

subject of a planning condition its provisions would be unenforceable. Accordingly the imposition of such a condition would be contrary to the policy relating to the imposition of conditions contained within the Framework (paragraph 206) and the Planning Practice Guidance (the PPG) published by the Government.

18. For the reasons given above I conclude that varying the delivery hours to include Sundays and public holidays would be harmful to the living conditions for the occupiers of No 2 and Dorneycroft, as a consequence of the generation of increased noise and disturbance. The variation of condition 13 sought would therefore conflict with Policy CP3 of the Core Strategy, Policy TB20 of the Local Plan and the Framework's fourth core planning principle because of the unacceptable noise and disturbance that would be experienced by the occupiers of neighbouring dwellings.

Other Matters

19. While concerns have been raised about delivery lorries obstructing access to neighbouring properties and the flow of traffic on Basingstoke Road, those are matters which I am of the opinion are not relevant to the consideration of the variations to the premises' opening and delivery times. Accordingly I find it unnecessary for me to comment further on those matters.

Conclusions

20. For the reasons given above I conclude that condition 11 should only in part be varied so as to safeguard the living conditions of the immediately neighbouring residents. The partial variation of condition 11 will enable the premises to be open to customers from 0600 hours onwards on Mondays to Saturdays and 0800 hours on Sundays and public holidays, with the closing time on Sundays and public holidays being extended to 2100 hours.
21. I, however, conclude that to safeguard the living conditions of the occupiers of the immediately neighbouring properties condition 11 should not be varied to allow trading beyond 2100 hours on any day and that condition 13 should not be varied to permit deliveries on Sundays or public holidays.
22. As condition 11 is to be partially varied, in line with the PPG's guidance on applications made under Section 73 of the Act, for the purposes of clarity it is necessary for me to re-impose any conditions that have not been discharged. In this regard the Council has commented that all of the conditions imposed on the original planning permission should be re-imposed. While the development has been commenced, in the absence of confirmation from the Council about which conditions may have already been discharged, other than condition 11, which is to be varied, I have re-imposed all of the original conditions, with the exception of condition 1. I have not re-imposed condition 1 because the development has been commenced prior to the expiry of the three year period. In the event that some of the other conditions have in fact been discharged that is a matter that can be addressed by the appellant and the Council.

Grahame Gould

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) This permission is in respect of the submitted application plans and drawings numbered 'Location Plan', 'Block Plan', '38/car/1' and '38/car/001' received by the local planning authority on 23rd June 2014. The development shall be carried out in accordance with the approved details.
- 2) Except where stated otherwise on the approved drawings, the materials to be used in the construction of the external surfaces of the extension hereby permitted shall be of similar appearance to those used in the existing building, unless otherwise agreed in writing by the local planning authority.
- 3) Before development commences, details of the shop front shall be submitted to and approved in writing by the local planning authority. The shop front shall be of timber construction and built in accordance with the details submitted.
- 4) Before development commences, an external lighting scheme shall be approved in writing by the local planning authority. The scheme shall ensure any external lighting does not cause a statutory nuisance to neighbouring residential properties. The scheme shall be carried out in accordance with the approved details and so-retained thereafter.
- 5) Prior to the commencement of the development hereby permitted details of secure and covered bicycle storage/parking facilities for the occupants of and visitors to the development shall be submitted to and approved in writing by the local planning authority. The cycle storage/ parking shall be implemented in accordance with such details as may be approved before occupation of the development hereby permitted, and shall be permanently retained in the approved form for the parking of bicycles and used for no other purpose.
- 6) No other development of the site as hereby approved shall take place until the access has been constructed in accordance with the approved plans.
- 7) No development shall commence until provision has been made to accommodate all site operatives, visitors and construction vehicles loading, off-loading, parking and turning within the site during the construction period, in accordance with details to be submitted to and agreed in writing by the local planning authority. The provision shall be maintained as so approved and used for no other purposes until completion of the development or otherwise as provided for in the approved details.
- 8) No part of any building(s) hereby permitted shall be occupied or used until the vehicle parking and turning space has been provided in accordance with the approved plans. The vehicle parking and turning space shall be retained and maintained in accordance with the approved details and the parking space shall remain available for the parking of vehicles at all times and the turning space shall not be used for any other purpose other than vehicle turning.
- 9) No building shall be occupied until the vehicular access has been surfaced with a permeable and bonded material across the entire width of the access for a distance of 7 metres measured from the carriageway edge.
- 10) No customer shall be permitted to be on the premises outside the following times: 0600 to 2100 hours on Mondays to Saturdays and 0800 to 2100 hours on Sundays and bank and public holidays.

- 11) No work relating to the development hereby approved, including works of demolition or preparation prior to building operations, shall take place other than between the hours of 0830 and 1800 hours Monday to Friday and 0800 to 1300 hours Saturdays and at no time on Sundays and bank and public holidays.
- 12) No deliveries shall be taken in or dispatched from the site outside the hours of 0700 and 1800 hours on Monday to Saturdays nor at any time on Sundays and bank and public holidays.
- 13) All plant machinery and equipment installed or operated in connection with the carrying out of this permission shall be so enclosed and/or attenuated that noise therefrom does not exceed at any time a level of 5dB(A) below the existing background level (or 10dB(A) if there is a particular tonal quality) when measured at a point one metre external to the nearest residential or noise sensitive property.
- 14) The mitigation measures contained within the recommendations section, 4, in the submitted Bat Survey and Great Crested Newt Habitat Assessment (John Wenman, February 2014) shall be implemented in accordance with the approved plan unless otherwise approved in writing by the local planning authority.
- 15) Those windows shown on the approved drawings as having obscured glazing in part or full shall be so-fitted and shall be permanently so-retained, and shall remain fixed closed at all times.