
Appeal Decision

Site visit made on 24 January 2017

by David Cliff BA Hons MSc MRTPI

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

Decision date: 6th March 2017

Appeal Ref: APP/A3655/W/16/3160616

1-7 Vanners Parade, High Road, Byfleet, West Byfleet KT14 7RA

- 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 The Co-operative Group against the decision of Woking Borough Council.
 - The application Ref PLAN/2016/0763, dated 4 July 2016, was refused by notice dated 31 August 2016.
 - The application sought planning permission for alterations to existing building to extend the ground floor to the rear by 202 sqm for retail purposes to form two units and associated ancillary alterations including revised access to first floor residential units and amended refuse storage area without complying with a condition attached to planning permission Ref PLAN/2010/0952, dated 16 December 2010.
 - The condition in dispute is No 8 which states that: The premises hereby approved shall not be open to customers and have no deliveries between the hours of 10pm and 8am unless otherwise agreed in writing.
 - The reason given for the condition is: In order to protect the residential amenities of the neighbouring properties.
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Decision

1. The appeal is allowed and planning permission is granted for alterations to existing building to extend the ground floor to the rear by 202 sqm for retail purposes to form two units and associated ancillary alterations including revised access to first floor residential units and amended refuse storage area in accordance with the terms of the application Ref PLAN/2016/0763, dated 4 July 2016, and subject to the conditions set out in the attached schedule.

Background

2. The planning application form states that the application seeks to replace condition 8 with a new condition seeking to extend the opening hours of the retail use to between 7am and 11pm along with the removal of the restrictions on times of deliveries subject to the prior approval by the local planning authority of a Delivery Management Plan.
 3. However, the planning appeal form notes that the description has changed with the agreement of the local planning authority to alter both the opening and delivery times to 7am to 11pm and that deliveries shall be made in accordance with a delivery management plan to be approved by the local planning authority. I note that the Council also publicised the application in accordance
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with this description and it does not appear that this was queried by the applicant at the time.

4. I have sought further comments from the main parties on this matter. Whilst the appellant wishes to revert back to the details as provided with the original application, I am conscious that this is not what was publicised both following the receipt of the original application and the additional publicity carried out following the appeal. I have therefore proceeded to determine the application on the basis of the revised wording of the replacement condition which accords with the publicity carried out. To do otherwise would in my view prejudice the interests of third parties as it would materially alter the matters at hand. I return to this matter in my reasoning below.
5. Since its determination of the application, the Council has adopted the Development Management Policies Development Plan Document. The Council has subsequently confirmed that there have been no changes to the wording of this policy from the draft version referred to in its reason for refusal. I am satisfied that no party has been prejudiced by this change in policy circumstances.

Main Issue

6. The main issue is the effect of the alterations to opening times and delivery arrangements upon the living conditions of the occupiers of neighbouring residential properties.

Reasons

7. The appeal site is located within a local centre, in close proximity to several residential properties. Residential properties are located both above the retail premises (7 flats) and in adjacent properties including at 4 Brewery Lane adjacent to the service yard entrance.
8. In terms of opening hours, it is unlikely that, for most of the year, a significant number of customers would use the store between the hours of 7am and 8am in the morning. Given the location and limited size of the store, many who do so would be likely to access the store on foot. Whilst I expect that there would be a small increase in traffic associated with the extended opening hours, I do not consider that any resulting noise or disturbance would be significant. Furthermore, although staff would arrive in the period before the opening hours, given the limited size of the store I do not expect any resulting vehicle movements or other noise or disturbance to be significant. However, on Sundays and Bank Holidays, I am conscious that background noise levels may be quieter although no details are provided in the appellant's noise assessment of noise at these times. Therefore, I consider opening times of 8.00am should be retained on these days.
9. In terms of evening opening hours, given the closeness of neighbouring properties, including those located immediately above the store, I consider that there is potential for increased activity causing disturbance around the store should its opening hours be extended to 11pm. Whilst the appellant argues that the period between 7am to 11pm represents day time hours in noise terms, I am conscious that some residents may retire to bed before 11pm. It also appears that most other commercial premises in the vicinity of the site would not be open at this time. Notwithstanding the details provided in the

appellant's noise assessment, I consider that sleep or rest could be unacceptably disturbed by individual noise events such as car doors slamming, car radios and customer voices. Whilst the parking spaces may be able to be used by non-store users, such use would be likely to be limited in the late evening.

10. I therefore consider that the extended opening hours in the evening would result in the likelihood of increased disturbance to neighbouring properties to the detriment of their living conditions. I also note that the current 10.00pm closing time is consistent with the approval granted at appeal at 15 High Street, Knaphill¹ with residential properties also located in close proximity in that case.
11. I therefore find that the extended opening hours in the morning would be acceptable but that the extended opening hours in the evening would be harmful to the living conditions of neighbouring residents.
12. An extension to the allowed delivery times has, in my view, the potential to result in more significant effects in terms of the resulting noise and disturbance. This is particularly so in this instance given the close proximity of residential properties including those above and immediately adjacent to the store. The appellant's noise assessment does not consider noise in respect of extended delivery times.
13. The noise and disturbance resulting from deliveries would vary depending on the type of vehicle used to make a delivery. For example, a van delivering newspapers would be likely to result in only limited disturbance, whilst a larger lorry would result in more disturbances, not only from engine and reversing noise but also from activity in connection with unloading a lorry or van and transferring products to the store. Although there are residential parking spaces at the rear of the premises, their use would be likely to result in less noise than a large lorry making a delivery to the store.
14. On this basis, I do not consider that extended delivery hours between 0700 and 0800 need be a problem for individual deliveries by smaller vehicles such as those delivering newspapers, but deliveries from larger vehicles are likely to result in unacceptable noise and disturbance during such extended hours. However, from the information provided, given that background noise levels would be expected to be generally lower before 0700 and after 2200, along with the proximity of neighbouring properties, I do not consider it appropriate for deliveries to take place outside these hours. The Council's prior approval of a delivery management plan which would need to include details of the size and frequency of vehicles and the types of products that are delivered at certain times (most particularly between the extended delivery times of 0700 and 0800).
15. Notwithstanding the matters set out under my *Preliminary Matters* regarding the details of the new condition sought, the appellant has confirmed that it is seeking to have all deliveries carried out in accordance with an approved Delivery Management Plan rather than within any restricted hours defined by a condition. However, given the proximity of the store to residential properties and the potential for significant disturbance, in my view it is necessary for the permitted delivery hours to be included in the condition. Leaving the matter of

¹ APP/A3655/A/11/2167625

delivery hours as entirely for subsequent agreement with the Council, would create the possibility of confusion and uncertainty for residents as to what the actual permitted delivery hours would be.

16. In my determination of this appeal, I have taken into account Paragraph 123 of the National Planning Policy Framework ('the Framework') which, in addition to the first aim of avoiding noise from giving rise to significant adverse impacts, secondly aims 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.
17. On this basis, I therefore consider that the development would not result in any significant impacts upon the living conditions of neighbouring residential properties subject to the replacement opening and delivery hours condition set out in the schedule below. It would accord with the relevant amenity aims of policies CS21 of the Woking Core Strategy, DM7 of the Development Management Policies Development Plan Document and the National Planning Policy Framework.

Other matters

18. The Highway Authority has not raised objections to the proposal and I do not consider that the increase in traffic movement arising would be so significant to result in any unacceptable effects upon highway safety and local highway conditions.

Conditions

19. I have deleted the original condition 8 and replaced it with a new opening/delivery times condition (7) as set out in the schedule of conditions below. As there is not an existing requirement for a delivery management plan, I have only required this to be submitted and approved prior to the implementation of the extended delivery times (i.e. between 0700 and 0800). This will ensure that the Council is able to determine which types of deliveries are acceptable between these hours in particular, including the size of vehicle, frequency and type of products being delivered.
20. 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 already have 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 may remain relevant. In the event that all or some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

21. For the reasons given above, having regard to all other matters raised, I conclude that the appeal should be allowed, with a new opening and delivery condition.

David Cliff

INSPECTOR

Schedule of Conditions

1. The materials to be used in the construction of the external surfaces of the extension hereby approved shall match those used in the existing building.
2. Prior to the commencement of the development hereby approved, full details of hard landscaping works shall be submitted to and be approved in writing by the local planning authority. These details shall include proposed finished floor levels, means of enclosure, car parking layouts, hard surfacing materials, minor structures, proposed and existing functional services above and below ground and existing features to be retained. The works shall be carried out as approved and completed during the first planting season following the substantial completion of the development hereby permitted.
3. Prior to the commencement of the use hereby approved adequate arrangements shall be made for the storage and disposal of refuse from the premises. Details of such arrangements shall be submitted to and approved in writing by the local planning authority. Such details as may be agreed shall be implemented in full before first occupation and retained in perpetuity.
4. Prior to the commencement of the use hereby approved details shall be provided to indicate the number, position and design of the litter bins or receptacles to the front of the premises and approved in writing by the local planning authority. Such details as may be agreed shall be implemented in full before first occupation and retained in perpetuity.
5. Prior to the commencement of the development hereby approved details of the measures to be undertaken to acoustically insulate and ventilate the building for the containment of internally generated noise shall be submitted to and approved in writing by the local planning authority.
6. Prior to the installation of any fixed plant and equipment associated with air moving equipment, compressors, generators or plant or similar equipment to be installed in connection with the development hereby approved details, including acoustic specifications shall be submitted to and approved in writing by the local planning authority.
7. The premises hereby approved shall only be open to customers between the following hours: 0700 to 2200 on Mondays to Saturdays and 0800 to 2200 on Sundays and Bank Holidays. Deliveries shall be taken at the site only between the hours of 0700 and 2200. Deliveries shall also be made in accordance with a Delivery Management Plan the details of which shall be submitted to and approved in writing by the local planning authority prior to any deliveries being carried out between 0700 and 0800.
8. Prior to the commencement of the development hereby approved details of the flood proofing and the finished floor levels of the development shall be submitted to and approved in writing by the local planning authority.
9. Prior to the commencement of the development hereby approved:
 - i) A scheme to deal with contamination of the site shall be submitted to and approved in writing by the local planning authority.
 - ii) The above scheme shall include:-

- a) A contaminated land desk study and suggested site assessment methodology;
 - b) A site investigation report based upon (a);
 - c) A remediation plan based upon (a) and (b);
 - d) A 'discovery strategy' dealing with unforeseen contamination discovered during construction; and
 - e) A 'validation strategy' validating the works undertaken as a result of (c) and (d).
- iii) Unless otherwise agreed in writing by the local planning authority, development shall not commence until the measures approved in the scheme have been fully implemented and completed.
10. Prior to the commencement of the development hereby approved details of predicted energy use of the development and the generation of on-site renewable energy shall be submitted to and approved in writing by the local planning authority. These details will demonstrate how energy efficiency is being addressed, including benchmark data, and show the on-site measures to be taken to produce a minimum of 10% of the total energy requirements of the new development by means of renewable energy sources. Such details as may be approved shall be implemented prior to the first occupation of the development and retained in perpetuity.
11. Prior to the commencement of the development hereby approved details shall be submitted for the erection of a privacy screen on the flat roof of the extension hereby approved adjacent to Flat 1. Such details as may be agreed shall be implemented in full before first occupation and retained in perpetuity.