

## Appeal Decisions

Site visit made on 9 January 2017

**by Robert Parker BSc (Hons) Dip TP MRTPI**

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

**Decision date: 7 March 2017**

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### **Appeal A Ref: APP/K3605/W/16/3155447**

**Land at Lamb and Star, Hampton Court Way, Thames Ditton, Surrey KT7 0JW**

- 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 Andy Thompson of The Co-operative Group Food Limited against the decision of Elmbridge Borough Council.
  - The application Ref 2015/4435, dated 1 December 2015, was refused by notice dated 4 February 2016.
  - The application sought planning permission for single storey side extension (99.7sqm), installation of new ATM unit and alterations to boundary wall following demolition of existing conservatory without complying with a condition attached to planning permission Ref 2014/2729, dated 7 January 2015.
  - The condition in dispute is No 9 which states that: The development hereby approved shall not be first opened for trading unless and until a scheme specifying arrangements for deliveries to and removals from the site, to include details of: (a) the types of vehicles to be used and hours of their operation; (b) the design of delivery areas within the development site; (c) the dimensions and layout of lorry parking area(s) and turning space(s); and (d) clarification that at no time will delivery vehicles wait or are laid up in Alma Road has been submitted to and approved in writing by the local planning authority. Thereafter the approved details shall be implemented.
  - The reason given for the condition is: In order to ensure that the development should not prejudice highway safety nor cause inconvenience to other highway users.
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### **Appeal B Ref: APP/K3605/W/16/3155446**

**38 The Broadway, Thames Ditton, Surrey KT7 0JW**

- 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 Andy Thompson of The Co-operative Group Food Limited against the decision of Elmbridge Borough Council.
  - The application Ref 2016/0416, dated 5 February 2016, was refused by notice dated 5 May 2016.
  - The application sought planning permission for single storey side extension (99.7sqm), installation of new ATM unit and alterations to boundary wall following demolition of existing conservatory without complying with a condition attached to planning permission Ref 2014/2729, dated 7 January 2015.
  - The condition in dispute is No 5 which states that: The use hereby permitted shall not be open to customers outside the following times Monday to Saturday 07:00 – 22:00 hours and Sundays and Bank Holidays 09:00 – 19:00 hours.
  - The reason given for the condition is: To safeguard the amenities of the locality in accordance with the National Planning Policy Framework.
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## Preliminary Matters

1. The site addresses on the planning application forms differ from one another. Notwithstanding this discrepancy, I am satisfied that both cases relate to the same site which is The Ewe, Hampton Court Way, Thames Ditton, Surrey KT7 0JW. This is the address used on the original decision notice and it is therefore the one I shall use in my formal decision.
2. Given that the appeals relate to different conditions on the same planning permission I have dealt with them both in a single decision letter.

## Decisions

3. **Appeal A** and **Appeal B** are **allowed** and planning permission is granted for single storey side extension (99.7sqm), installation of new ATM unit and alterations to boundary wall following demolition of existing conservatory at The Ewe, Hampton Court Way, Thames Ditton, Surrey KT7 0JW in accordance with the applications Ref 2015/4435 and 2016/0416 dated 1 December 2015 and 5 February 2016 respectively without compliance with condition numbers 5 and 9 previously imposed on planning permission Ref 2014/2729 dated 7 January 2015 but subject to the conditions set out in the attached schedule.

## Main Issue

4. The main issue is the effect of the proposed alterations in opening hours and delivery times on the living conditions of local residents, with particular reference to noise and disturbance.

## Reasons

### *Appeal A (delivery hours)*

5. Condition no 9 requires the submission of a scheme specifying arrangements for deliveries to and removals from the site. This condition has been discharged by the Council. Amongst other things, the approved Service Management Plan restricted deliveries from Co-operative direct suppliers to between 1700 and 1900 hours on Sundays and between 2000 and 2200 hours Monday to Friday inclusive. No Saturday deliveries were agreed<sup>1</sup>.
6. In submitting the application under Section 73 of the Act the appellant sought approval for deliveries of fresh and frozen goods between 0700 and 1000 hours and ambient goods between 1700 and 2000 across 7 days. The amendment was requested for logistical reasons and to maintain stock levels within the store. I understand that it would result in one additional lorry movement per day.
7. Since the appeal was lodged planning permission has been granted<sup>2</sup> to vary condition no 9 to permit deliveries from Co-operative direct suppliers between 0700 and 1000 hours and between 1700 and 2000 hours Monday to Friday, and between 0900 and 1200 hours on Saturdays and Sundays. The latest permission is conditional upon the erection of an acoustic barrier fence along the western site boundary. This is a material consideration which I have taken into account.

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<sup>1</sup> Different arrangements were agreed for deliveries of bread, newspapers/magazines and sandwiches from non-Co-operative direct suppliers. These arrangements would be unchanged under the appeal proposal.

<sup>2</sup> Council Ref 2016/2603

8. The officer report for the appealed scheme indicates that the Council's concerns are solely in relation to early morning delivery on Sundays and Bank Holidays. No reference is made to the other delivery hours being sought and therefore I have taken this to mean that the local planning authority is satisfied that these hours would be acceptable. Given the most recent decision, which does not make any distinction for Bank Holidays, I deduce that the outstanding dispute must relate to the period between 0700 and 0900 hours on Sundays.
9. Notwithstanding the original condition being justified on the grounds of highway safety, the Council is concerned that the proposed alterations to delivery hours would lead to increased noise and general disturbance in the area, which would be harmful to the amenity of neighbouring residents.
10. The local planning authority considered the application in the absence of any technical evidence. However, a noise impact assessment ('*Assessment A*') has been produced to inform my consideration of the appeal. This was carried out by a firm of acoustic consultants and its methodology takes account of BS4142:2014<sup>3</sup>, the Noise Policy Statement for England (NPSE) and advice contained in the Planning Practice Guidance (PPG). In light of this, I have attached the conclusions of *Assessment A* significant weight.
11. The document considers the noise impacts of vehicle movements and the manoeuvring of cage trolleys upon the closest residential properties. The analysis uses the results of a background noise survey at the site and measurements of noise levels from a comparable delivery at another store. A correction rating has been applied to predicted noise levels to take account of the impulsive characteristics of the sound. In my opinion this methodology is robust.
12. The difference between background noise level and the rating noise level at the nearest residential properties between 0700 and 1000 on Sunday mornings is predicted to be +3dB in worst case scenario. BS4142 states that a difference of +10dB is an indication of a significant adverse impact, with +5dB being suggestive of an adverse impact. The predicted noise levels fall short of those figures and on this basis I consider that it highly unlikely that there would be an unacceptable adverse effect on the living conditions of local residents.
13. According to *Assessment A*, the greatest impact would occur on Sunday evenings, falling between the Lowest Observable Adverse Effect Level (LOAEL) and Significant Observed Adverse Effect Level (SOAEL) categories, as defined in the NPSE and the PPG. The noise exposure hierarchy set out in the latter explains that such effects can be noticeable and intrusive, resulting in small changes of behaviour and/or attitude. It recommends that in such circumstances the appropriate action is to mitigate the adverse effects and reduce them to a minimum.
14. In this particular case the calculations have already assumed that the existing boundary fence will be replaced with an acoustic barrier fence along the western site boundary. This fence has already been agreed by the Council in principle as part of its latest permission. However, there is also a commitment from the appellant to adhere to a Store Noise Management Plan which would be aimed at ensuring that deliveries are made with the least possible noise. Both measures could be secured by planning condition.

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<sup>3</sup> Methods for rating and assessing industrial and commercial sound

15. In this way the proposal would meet the requirement of Policy DM5 of the Elmbridge Development Management Plan (2015) (EDMP) to incorporate appropriate attenuation measures to mitigate the effect of noise on existing residents. It would also comply with paragraph 123 of the National Planning Policy Framework (the Framework). In line with the aims of the NPSE, this seeks to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development and ensure that other adverse noise impacts are mitigated and reduced to a minimum, including through the use of conditions.

*Appeal B (opening hours)*

16. Condition no 5 states that the use, which I take to mean the use of the premises as a retail store, shall not be open to customers outside of the hours of 0700 to 2200 Monday to Saturday and 0900 to 1900 on Sundays and Bank Holidays. The proposal is to extend these trading hours to 0700 – 2300 throughout the week, including Bank Holidays.
17. The appellant supplied a Noise Impact Assessment ('*Assessment B*') as part of the planning application. The Council's Environmental Health Officer noted the conclusions of this report but raised concerns on the grounds that noise from customers at times of the day when background noise levels are lower may still have an adverse impact on nearby residents, particularly during the summer months when windows are likely to be open. No substantive evidence has been presented to support this objection.
18. I appreciate that customer noise is difficult to quantify. However, in the absence of any technical evidence from the Council then *Assessment B* is a reasonable starting point for my assessment. The report considers the effect of vehicle movements and the opening and closing of car doors. I agree that these are the most common sources of noise and the ones most likely to affect local residents on a regular basis.
19. *Assessment B* has been undertaken by a specialist acoustic consultant and, despite comments from objectors to the contrary, I consider that the methodology used is robust. Predicted activity levels have been informed by actual store transaction figures and the assumption that 50 percent of the trade arrives by car is not unreasonable in the circumstances of this case.
20. The report has regard to the requirements of the British Standard and relevant guidance set out the PPG and therefore I have attached its conclusions considerable weight. The report concludes that during the extended trading periods the BS4142 sound level would be lower than the background noise level, even applying a rating correction for the impulsivity of car doors slamming. This suggests to me that the overall noise impact would be low.
21. Notwithstanding this, there is an acceptance within *Assessment B* that noise associated with use of the car park during the proposed extended trading hours would be audible externally to the nearest residential properties from time to time. This would place the noise impact in the region between LOAEL and SOAEL. However, the impact would be further mitigated by the erection of the acoustic barrier fence along the western site boundary, as discussed above.

22. I have taken full account of the concerns raised by third parties regarding the proposed opening hours and also the potential for further extensions, including 24 hour trading. However, I must consider the appeal on its merits having regard to the information before me. *Assessment B* is compelling and there is no evidence from the Council to persuade me that its findings are inaccurate.
23. Accordingly, I find that the proposal would not result in material adverse impacts on the living conditions of local residents. There would be no conflict with Policy DM5 of the EDMP or the Framework, the requirements of which I have set out above.

### **Other Matters**

24. The Council has cited Policies CS8 and CS17 of the Elmbridge Core Strategy 2011 and the Elmbridge Design and Character Supplementary Planning Document. However, these policies and guidance are not directly relevant to the main issue in either case.
25. There is no suggestion that the proposals would harm the character or appearance of the Weston Green Conservation Area. I have no reason to take a different view. I have noted the concerns of the Weston Green Conservation Area Advisory Committee in relation to pedestrian safety, but do not consider that additional signage is necessary to make the appeal proposals acceptable. As such, a condition requiring its erection would not be reasonable.

### **Conditions**

26. The Council has requested a condition in respect of hours of opening in the event that I am minded to allow the appeal in relation to condition 5. This condition is necessary in the interests of safeguarding the living conditions of local residents. For the same reason a condition is required to specify the new delivery hours and to secure the erection of an acoustic barrier fence along the western site boundary. A condition securing compliance with the submitted Store Noise Management Plan is also justified to assist with mitigating the noise impacts of extended delivery hours.
27. No other conditions have been put forward by the parties. However, the guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged.
28. Of the conditions imposed on the original permission those relating to the time limit for commencement, materials and the method of construction statement no longer serve a useful planning purpose now that the extension has been completed. However, for the avoidance of doubt I have attached a condition to define the plans to which the permission relates.
29. Conditions are also necessary in the interests of highway safety to require the retention of the parking and turning areas, cycle parking and the loading and unloading area. I have also re-attached the condition in relation to security bars, to protect the character and appearance of the area.
30. There is disagreement over whether pre-commencement conditions relating to landscaping and refuse storage were ever discharged. As I am not in a position to confirm this one way or the other it is necessary to reimpose conditions relating to these matters. In the event that one or both conditions have in fact

been discharged, this is a matter which can be addressed by the parties. Given that development has clearly already commenced, I have made appropriate adjustments to the trigger and implementation clauses.

**Conclusion**

31. For the reasons given above I conclude that the appeals should succeed.

*Robert Parker*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1805/SL-27 Rev C, 1805/SL-30 Rev F and 1805/SL-31 Rev E
- 2) The use hereby permitted shall not be open to customers outside the following times: Monday to Sunday 0700-2300 hours.
- 3) There shall be no deliveries to the site, except in accordance with the following details:
  - a) Co-operative Direct suppliers – fresh, frozen, ambient goods – 10 metre rigid heavy goods vehicle – 0700-1000 and 1700-2000 hours Monday to Sunday
  - b) Non Co-operative Direct suppliers:
    - Bread – 10m rigid heavy goods vehicle – 0700-0830 Monday to Saturday and 0900-1100 Sunday
    - Newspapers – small Transit – 0700-0830 Monday to Saturday and 0900-1100 Sunday
    - Sandwiches – large Transit – 0700-0830 Monday to Saturday

At no time shall delivery vehicles associated with the development wait or lay up in Alma Road.
- 4) Prior to any deliveries taking place from Co-operative direct suppliers before 0900 hours on a Saturday or Sunday, a 2 metre high acoustic barrier fence with a surface density of at least 10 kg/m<sup>2</sup> shall be erected along the western site boundary in accordance with the details shown on 24 Acoustics Plan Number: 6099-4 Figure 2 Rev A. The fence shall be retained thereafter.
- 5) Store deliveries shall be carried out in accordance with the Thames Ditton Store Noise Management Plan as detailed in Appendix E of the Noise Impact Assessment prepared by 24 Acoustics dated 11<sup>th</sup> July 2016 Ref: R6099-4 Rev 1.
- 6) The security bars indicated on the approved plans shall be painted white and thereafter maintained in perpetuity.
- 7) The parking and turning areas, cycle parking and loading/unloading area shown on the approved plans shall be provided and retained for their designated purpose in perpetuity.
- 8) Within 3 months of the date of this decision there shall be submitted to the local planning authority for its written approval a scheme of hard and soft landscaping works. This scheme shall include indications of all hard surfaces, walls, fences, access features, the existing trees and hedges to be retained, together with the new planting to be carried out.
- 9) The approved landscaping scheme shall be implemented within the first planting season following its written approval by the local planning authority, or in accordance with an alternative timetable to be agreed in writing. Any trees or plants which, within a period of five years of their planting, die, are removed, or become seriously damaged or diseased, shall be replaced as soon as practicable with others of similar size and

species, unless the local planning authority gives written consent to any variation.

- 10) Within 3 months of the date of this decision there shall be submitted to the local planning authority for its written approval full details of provisions for the storage and collection of waste. The approved arrangements shall be implemented within 1 month of their approval and thereafter retained in perpetuity so that no odour is detectable at or beyond the boundary of the nearest premises.