
Appeal Decision

Site visit made on 8 May 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 19th May 2017

Appeal Ref: APP/V0510/W/17/3168683

Sainsbury's Store, Lisle Lane, Ely, Cambridgeshire CB7 4AS

- 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 Sainsbury's Supermarkets Limited against the decision of East Cambridgeshire District Council.
 - The application Ref 16/00967/VAR, dated 29 July 2016, was refused by notice dated 7 October 2016.
 - The application sought planning permission for new small format 3 pump petrol station with single manned kiosk into existing store car park with alterations without complying with a condition attached to planning permission Ref 16/00771/VAR, dated 1 August 2016.
 - The condition in dispute is No 5 which states that: The delivery times permitted shall take place only between the hours: 07:00-23:00 each day Monday to Saturdays and 10:00-17:00 Sundays or Bank Holidays.
 - The reasons given for the condition is: To safeguard the residential amenity of neighbouring occupiers, in accordance with policy EN2 of the East Cambridgeshire Local Plan 2015.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was made to vary condition 5 of the original planning permission for the small formal 3 pump petrol station which was approved by the Council on 19 February 2016 under reference 15/01088/FUL. Permission 16/00771/VAR was subsequently granted on 1 August 2016 to vary condition 1 regarding the design of the petrol station involving a smaller canopy and remotely manned kiosk, which was the scheme implemented. Based on the Council's decision notice and the appeal form the more recent permission is that referenced in the above heading.

Background and Main Issue

3. The proposal relates to a petrol filling station (PFS) that has been recently installed within the car park of the Sainsbury's food store situated off Lisle Lane in Ely. The appeal is over the Council's refusal to vary the permission to remove condition 5 which requires that fuel deliveries take place only between 07:00-23:00 each day Monday to Saturdays and 10:00-17:00 Sundays or Bank Holidays. On the basis of the reasons given by the Council for this condition
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the main issue is whether it is necessary and reasonable in order to protect the living conditions of surrounding residential occupiers, with particular regard to noise and disturbance.

Reasons

4. The proposal relates to a large, quite recently opened Sainsbury's food store which occupies a site at the junction of Cresswells Lane onto Lisle Lane. The entrance to the shoppers' car park is off Cresswells Lane just to the rear of the store. A substantial part of the car park is beneath the main store building and there is further open car parking either side of the customer entrance beyond this. The PFS has been installed just to the south-east of this entrance and is located alongside Cresswells Lane. This road continues to serve a sewage treatment works and ends at a cul-de-sac where there is a ramped entrance up to the higher-level store deliveries area.
5. There is housing alongside Lisle Lane opposite the store and commercial development immediately beyond and to its north-east. On the other side of Cresswells Lane to the store building is a Royal Mail delivery centre and opposite the part of the car park occupied by the PFS, running perpendicularly towards it, is Willow Grove; a residential cul-de-sac accessed via Willow Walk to the south-west. Although the Willow Grove properties do not directly abut onto Cresswells Lane, and there is an intervening strip of trees and vegetation, the occupiers at the end of this road live the closest to the PFS and would be the most affected by this proposal.
6. Unlike the vehicles making deliveries to the store, which would pass along Cresswells Lane to reach the ramp leading into the store's delivery area on its north-east side, the fuel tankers serving the PFS enter the site from the car park entrance. However, the frequency of these fuel deliveries is low at up to two night time deliveries per week which the appellant expects would be made in the periods either before or after the PFS opens for customers. Therefore, although the application sought the removal of the PFS delivery time restriction, the appellant would be content if this were amended to permit deliveries between 0500 and midnight.
7. Paragraph 123 of the National Planning Policy Framework (the Framework) states that planning decisions should aim to avoid noise giving rise to significant adverse impacts on health and quality of life as a result of new development. The Council notes that the nearest dwellings in Willow Grove are approximately 40m away from the PFS and that, whilst the noise assessment shows Government guidelines would be met and fuel deliveries will be infrequent, complaints had been received over fuel deliveries made in the period 0500 – 0700. Deliveries to the main store appear not to be restricted and the Council's case is that the extending of the hours for deliveries to the PFS would exacerbate the existing noise impacts as they affect neighbouring residential occupiers in Willow Grove and along Lisle Lane.
8. The appellant's noise assessment has predicted that deliveries to the PFS during day or night periods would not exceed background noise levels. Consequently, it is contended that this proposal would have a low impact when considering the existing ambient noise levels that nearby residents are exposed to whereby the sound of the deliveries would fall well below that representing a 'significantly detrimental impact' or 'unacceptable impact'.

9. Like the Council, I accept the technical evidence that noise levels from PFS deliveries do not give rise to significant adverse impacts on health and quality of life. The deliveries to the store, whilst having been investigated by the Council and having been found not to be at the level that would constitute a statutory nuisance, clearly already have some impact on the living conditions of nearby residents due to the noise and disturbance. Whilst infrequent and, from a technical assessment having a low impact in respect of noise generated, I am nonetheless persuaded by the Council's concern that fuel deliveries outside the conditioned hours would exacerbate the level of disturbance already caused by the food store.
10. Whilst this proposal would not conflict with Paragraph 123 in resulting in significant adverse impacts on health and quality of life, the Framework has a more general core principle that planning decisions should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. By exacerbating the existing effects arising from the operation of the food store I find some conflict with aims of Policy ENV 2 of the East Cambridgeshire Local Plan April 2015 (ECLP) that all new development proposals ensure there is no significantly detrimental effect on the residential amenity of nearby occupiers.
11. The second bullet point in paragraph 123 of the Framework refers to the aim to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from new development, including through the use of conditions. ECLP Policy ENV 9 requires all development proposals to minimise all forms of noise pollution. I noted from my visit that the PFS opening times align with those of the main store. Condition 5 already provides some flexibility to deliver fuel before and after the PFS is open to customers.
12. The evidence is that fuel deliveries, outside the hours permitted by condition 5, result in some disturbance to nearby residential occupiers. Consequently I consider that both paragraph 123 of the Framework and ECLP Policy ENV 9 support the retention of condition 5 in order to mitigate and reduce the overall noise effects of the store development and maintain good living conditions for surrounding residential neighbours.
13. As such condition 5 would meet the tests set out in paragraph 206 of the Framework in being necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects. Furthermore, Condition 5 would work in tandem with condition 6 of the PFS consent which requires that the specific noise level emitted from the site does not exceed 43dB(LAeq, 1 hour).

Conclusion

14. Condition 5 provides the flexibility to deliver fuel to the PFS outside opening times so that it might operate efficiently and provide a service to customers visiting the Sainsbury's store. Allowing deliveries to take place earlier and later than allowed through this condition would give rise to some additional noise and disturbance to nearby residents during unsocial hours and when the main store is closed.
15. Unlike the deliveries to the store, which are made to internal bays within the further parts of the building, fuel deliveries would be made in the open and in an area closer to the nearest residential neighbours. Condition 5 provides for

a reasonable degree of mitigation over the effects of the PFS, and of the food store generally, on the living conditions of the occupiers of neighbouring dwellings, with regard to noise and disturbance not taking place during unsocial hours. Consequently, condition 5 remains both reasonable and necessary and therefore I conclude that this appeal should be dismissed.

Jonathan Price

INSPECTOR