

Appeal Decision

Site visit made on 4 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/W5780/Z/17/3169062

Lidl Store, 250-260 Fencepiece Road, Ilford, Essex IG6 2SU

- 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 Axel Bret (Lidl UK) against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 5348/16, dated 14 November 2016, was refused by notice dated 17 January 2017.
 - The application sought planning permission to demolish the existing building and erection of new Class A1 use food store with associated parking and landscaping without complying with a condition attached to planning permission Ref 1091/12, dated 31 January 2013.
 - The condition in dispute is No 6 which states that: No goods shall be delivered to, nor despatched from the site outside the following times: 08:00 – 22:00 hours Mondays to Fridays, 08:00 – 13:00 hours Saturdays, nor at any time on Sundays, Bank or Public Holidays.
 - The reason given for the conditions is: In order to prevent the use causing an undue disturbance to occupants of neighbouring property at unreasonable hours of the day, and to accord with Policy SP3 of the Council's Core Strategy Development Plan Document and Policy BD1 of the Council's Borough Wide Primary Policies Development Plan Document.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the condition is necessary and reasonable in order to protect the living conditions of surrounding residential occupiers.

Reasons

3. An earlier application to vary the condition governing delivery times to this food store was dismissed on appeal on 29 January 2015¹. That earlier proposal had sought to extend deliveries on a Saturday to the same period of the day allowed on weekdays and beyond the current time limit of 1300. It had also sought that deliveries be allowed on Sundays and Bank Holidays between 1000 – 1700 which are prevented entirely under the current condition.

¹ APP/W5780/A/14/2219519

4. The Inspector had concluded that the likely noise and disturbance that deliveries would involve, combined with the proximity to residential properties, would be likely to give rise to disturbance at times when residents could reasonably be expected to enjoy a degree of peace and quiet.
5. This proposal seeks to extend the period for deliveries on a Saturday from 0800 as on weekdays but only up to 1800 rather than 2200. Deliveries are sought to be allowed on Sundays and Bank Holidays but within a more limited time period than in the previous application of between 1200 – 1600.
6. The food store fronts onto Fencepiece Road but is surrounded by closely located housing on the other three sides. The delivery bay at the rear of the store is bound by an acoustic fence but abuts the short rear garden space to dwellings on Bernard Close which have windows to main habitable rooms facing it. In approving this food store sited closely adjacent to dwellings the Council clearly considered it necessary in the interests of the preserving reasonable living conditions for neighbouring occupiers to restrict delivery times. The representations made to this application clearly indicate that many of these residents experience significant degree of noise and disturbance from the store as currently operated.
7. Weight can be given to the business case made in respect of the logistics necessary to maintain an adequate stock of fresh produce to compete with other retailers. However, I am not persuaded that this would outweigh the need to protect the reasonable living conditions of neighbouring occupiers given the characteristics of this site close to residential development.
8. Although the proposal would reduce the period of deliveries from that sought in the previous appeal application there would remain the potential for deliveries to arrive during Saturday afternoons and during the middle period of the day on Sundays and Bank Holidays. These would remain periods of the weekend and holidays when neighbours would be mostly likely away from their work and expecting the peaceful enjoyment of their homes and, more particularly in summer months, their gardens.
9. Although the store expects only up to four deliveries per day during these weekend times this would provide a degree of noise, disturbance and general activity that would cause material harm to the living conditions of neighbours in respect of disturbing the peaceful enjoyment of their homes. Fresh produce can still be delivered at 8am on a Monday and perishable items can be supplied on a Saturday morning to meet Sunday and Bank Holiday demand.
10. Whilst the conditioned delivery hours might not provide for an optimally more continual supply of fresh produce this is the trade-off necessary to operate on a site constrained by its close proximity to residential development. Therefore condition 6 would meet the tests set in paragraph 206 of the National Planning Policy Framework (the Framework), and explained in more detail in the national Planning Practice Guidance, of being both reasonable and necessary to avoid undue disturbance to occupants of neighbouring dwellings at unreasonable hours.
11. Policy 4.7 of the London Plan requires planning decisions for retail development to apply the principle of the scale being related to size, role and function of a town centre and its catchment and where located on the edge of centres be well integrated with it. This policy is not entirely relevant to this proposal but

in the sense that the scale of retail development should integrate with its location provides no support in favour of altering the condition in question.

12. Strategic Policy 4 of the Council's Core Strategy² and Policy R2 of the Borough Wide Primary Policies³ (BWPP) are similarly of limited relevance to this appeal other than supporting conditions to control hours of operation where there might be an adverse effect on nearby centres. However, neither policy provides any material degree of support to this appeal. The varied condition sought would clearly conflict with the aims of BWPP Policy BD1 which requires that all development be compatible with the amenity of the area it is located and demonstrates that there is no significant adverse impact on surrounding uses in terms of noise pollution. This policy is consistent with the core principle of the Framework that planning decisions should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.
13. Whilst the delivery times sought are within the opening times of the store, the larger vehicles involved in bringing and transferring stock into the loading area to the rear of the store would cause significantly greater noise and disturbance to the adjacent residential occupiers than that resulting from the activity of shoppers and their cars. The harm caused to the peaceful enjoyment of weekend and bank holiday periods these neighbours would not support this proposal being granted for a temporary one year trial period.

Conclusion

14. For the reasons set out above, and having taken into consideration all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Price

INSPECTOR

² London Borough of Redbridge Core Strategy – adopted March 2008

³ London Borough of Redbridge Borough Wide Primary Policies Development Plan Document – May 2008