
Appeal Decision

Site visit made on 18 July 2017

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 2 August 2017

Appeal Ref: APP/C5690/W/17/3173822
9 Staplehurst Road, London SE13 5ND

- 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 Ltd against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/16/098037, dated 22 August 2016, was refused by a notice dated 17 October 2016.
 - The application sought planning permission for a minor material amendment to allow variation of Conditions (3) and (7) of the appeal reference APP/C5690/A/14/2228582 dated 28 January 2015 for widening the use of the ground floor of Unit A (Use Class A3) and Unit B (Use Class B1) to include retail use (Use Class A1) at ground floor level and creation of 2 no. self-contained flats at first floor level above Unit A, to allow the opening hours of the commercial unit to be extended to 7.00am to 23.00pm and to allow the commercial unit to achieve BREEAM 'Very Good' instead of BREEAM 'Excellent' without complying with a condition attached to planning permission Ref, DC/15/92714, dated 9 October 2015.
 - The condition in dispute is No 6 which states that: No deliveries shall be taken at or dispatched from the site other than between the hours of 07:00 and 20:00 hours on Mondays to Fridays and 08:00 to 13:00 hours on Saturdays and no deliveries shall take place at any time on Sundays or Public Holidays.
 - The reason given for the condition is: in the interests of the amenities of surrounding residents.
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Decision

1. The appeal is dismissed.

Background and main issue

2. A food retail unit is trading at the appeal site. The appellant wishes to extend the hours within which deliveries can be taken at or dispatched from the site from those originally imposed, to between 07:00 to 20:00 Monday to Saturdays and 10:00 to 16:00 hours on Sundays and Bank Holidays. The main issue is the effect that these proposed delivery times would have on the living conditions of neighbouring residents, with particular regard to noise and disturbance.

Reasons

3. The appeal site is located in a small shopping parade fronting onto Staplehurst Road. The shopping parade is situated within Hither Green Local Hub as

identified in the Lewisham Local Development Framework, Core Strategy, Development Plan Document, 2011. Spatial Policy 4 of the CS states that Local Hubs will be managed to enhance their identity and distinctiveness and that mixed use development will be supported with an aim to protect and support the functioning of the local shopping parade.

4. Despite the appeal site's location within the main shopping parade and on the approach to Hither Green Station, the surrounding area is predominantly residential. Indeed, there are flats above the appeal premises and residential development on Chiltonian Mews, which adjoins the site. It is clear to me that the occupiers of these homes play just as an important role in supporting the local shops and economy, as the those facilities do in providing a range of goods and services to meet the day to day needs of local residents. Consequently, it is important that the living conditions of neighbouring occupiers are safeguarded.
5. Under the approved Delivery Servicing Plan¹ (DSP) for the appeal premises, deliveries and servicing is undertaken from Fernbrook Road, some forty metres from the appeal site, and where service vehicles are able to park in accordance with on-street restrictions. The Sainsbury depot delivery takes place approximately twice a day and roll cages are lowered onto the pavement from where they are handballed into the store.
6. The application was accompanied by a Delivery Noise Impact Assessment² (DNIA). The BS4142³ assessment undertaken as part of the DNIA indicates that the noise impact of deliveries, both during the existing permitted hours and those proposed in this appeal, constitutes a significant adverse impact on the most affected residential windows of neighbouring properties which are identified in Appendix C of the DNIA. It further concluded that the existing incident noise level outside nearby windows also exceeds recommended levels for desirable internal noise levels by WHO⁴ and BS8233⁵, and to meet those recommended levels, it is necessary for nearby residents to keep their windows closed to ensure acceptable ambient noise levels are maintained.
7. The impact of delivery noise needs to be considered in the context of the site which is located near to a train station and close to other commercial activities. However, in view of the Local Hub being a mixed use area, there are residential properties located adjacent to the store and close to where servicing and deliveries take place. Hither Green does not have the same character as a town or city centre, and whilst background noise levels may well be greater than those found in a residential estate, it is not unreasonable for residents to expect less noise and disturbance on a weekend. Neighbouring residential properties on Chiltonian Mews have balconies with opening 'french' doors, and whilst these are more likely to be closed during weekdays when people are generally at work, at the weekends residents are often at home and should be able to enjoy this external space without undue disturbance.
8. Daytime deliveries are already considered to be acceptable under the extant permission. However, Condition 6 imposed restrictions on when those

¹ Delivery Servicing Plan, Prepared by Vectos, March 2017.

² Delivery Noise Impact Assessment, Sainsbury's Local, 9 Staplehurst Road, Noise Solutions Ltd, Project Ref: RF85635, Revision 00, Dated 15 August 2016.

³ BS 4142:2014 Methods for rating and assessing industrial and commercial sound.

⁴ Guidelines for Community Noise, 1999 World Health Organisation (WHO).

⁵ BS 8233:2014 Guidance on Sound Insulation and Noise Reduction for Dwellings.

deliveries can plan take, in order to protect the amenities of neighbouring residents. Despite a DSP having now been approved, which includes some noise mitigation measures for delivery drivers during servicing, there would be a residual and harmful impact associated with the roll cages.

9. I have taken into consideration the assessment of background noise levels⁶, and I understand that the proposed delivery hours will not have an additional impact in terms of the noise generated. However, the impact would be at a time when neighbouring residents are more likely to be at home and should not, to my mind, have to experience disturbance from deliveries, albeit I recognise that those additional deliveries would be limited in number and not during the night time.
10. The Noise Policy Statement for England⁷ (NPSE) states that significant adverse impacts on health and quality of life should be avoided, and adverse impacts should be mitigated and minimised. It is clear that the delivery times imposed by Condition 6, recognised the need to mitigate and minimise the amount of noise and disturbance to neighbouring residents at the weekends and during public holidays, whilst also taking account of the need to effectively service a retail store. I have taken into account the operator's desire to provide a high quality shopping experience for its customers and its stated operational requirements. However, the appellant was aware of the restrictions on delivery times when they undertook to operate from the premises, and I have not been provided with any substantive evidence that would persuade me that those restrictions should not continue to be imposed. The DNIA confirms that deliveries to the store have a significant adverse impact on neighbouring residents and it clear from third party representations that there is a continuing need to mitigate those effects necessary to protect the living conditions of neighbouring residents. The social and economic benefits derived from the extended delivery hours would not therefore outweigh the harm I have identified to the living conditions of neighbouring residents.
11. I conclude that it is reasonable and necessary to continue to impose the restrictions on the use set out in Condition 6 of planning permission Ref, DC/15/92714, for the reason set out in this permission. To allow the appeal proposal to operate with extended delivery hours would be harmful to the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. The proposal would conflict with the development plan and in particular with Core Strategy Objective 10 and Spatial Policy 4 of Lewisham's Adopted Core Strategy, 2011 which seeks to protect Lewisham's distinctive local character and ensure that new development is sensitive and appropriate to their context, and DM Policy 26 of Lewisham's Development Management Local Plan, 2014 which requires conditions to be attached to planning permission to ensure effective noise insulation or other mitigation measures are undertaken. I also find conflict with paragraphs 17 and 123 of the National Planning Policy Framework which seek to provide a good standard of amenity for all existing and future occupiers of land and buildings, and mitigate and reduce to a minimum adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.

⁶ Table 6, Delivery Noise Impact Assessment.

⁷ Noise Policy Statement for England, March 2010, defra.

Conclusion

12. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Elizabeth Pleasant

INSPECTOR