



Appeal Decision

Site visit made on 11 September 2019

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2019

Appeal Ref: APP/R5510/W/19/3228689

Tesco Extra, Glencoe Road, Hayes UB4 9SQ

- 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 Tesco Stores Ltd against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 36999/APP/2018/3016, dated 14 August 2018, was refused by notice dated 15 November 2018.
 - The application sought planning permission for the retention of the District Shopping Centre at Willow Lane/Glencoe Road/Jolly's Lane, Hayes, without complying with conditions attached to planning permission Ref 36999T/93/879, allowed at appeal Ref: T/APP/R5510/A/94/236865/P2 dated 10 January 1995.
 - The conditions in dispute are Nos 2 and 3 of appeal decision. Condition 2 states that: *On Sundays and bank holidays access to the customer car park shall be taken from the internal circulation roundabout only and the security barriers on the service road shall be kept closed.* Condition 3 states that: *On Sundays and bank holidays there shall be no service deliveries to the superstore save for newspaper deliveries.*
 - The reasons given for the conditions, taken from the appeal decision, are: To protect the occupants of the properties adjoining the site from undue noise disturbance.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Outline planning permission was originally granted for a district shopping centre in May 1990¹. On that decision, there are no conditions that relate to the use of the service road or that relate to deliveries. However, condition 12 of that permission does relate to the overall opening hours of the retail floorspace that was approved. An application to remove condition 12 was subsequently refused by the Council. However, the proposal was successful at appeal² with all other conditions remaining unaltered and 5 additional conditions being added. Of those, it is conditions 2 and 3 that this appeal seeks to remove.
3. The conditions were imposed because, in the view of the Inspector, the houses located in Telford Way, Kennet Drive and Sharpness Close *'would be disturbed on Sundays and bank holidays by noise from vehicles using the service road, in particular heavy goods vehicles visiting the service yard adjoining the superstore.'* The Inspector went on to say that *'I consider that this disturbance*

¹ 36999E/89/1214

² T/APP/R5510/A/94/236865/P2

would be of such significance that, if it were not prevented, it would be necessary to refuse permission.'

4. As a consequence, the following conclusion was reached: *'It was considered at the inquiry whether a condition could be imposed to prevent the use of the service road on Sundays and bank holidays. I am satisfied that such a condition would be practical, by the simple measure of lowering the existing barrier, and would be reasonable and enforceable. In my opinion this obstacle to the granting of permission would thereby be removed.'*
5. Based on the above therefore, the main issue is the effect of the proposal on the living conditions of the occupants of nearby properties, having particular regard to noise and disturbance.

Reasons

6. The appeal site is a district shopping centre that is primarily occupied by a large Tesco foodstore. The main entrance to the store is located on its west facing elevation, however, the delivery yard is located towards the eastern boundary of the site and is served by an access road which runs along the site boundary. Beyond the eastern boundary, as well as to the south east of the appeal site is a large residential estate in which a large number of houses immediately back on to the site and the service yard access road. Consequently, these houses are located close to an area of the site that generates noise.
7. The appeal has been accompanied with a significant amount of technical detail in relation to noise to demonstrate the effect of the proposal. To gain background noise levels, a noise survey was conducted between the hours of 0700 to 2100 on a Sunday and a Bank Holiday Monday, these being the relevant days to which the condition applies. When assessed against the World Health Organisation (WHO) guidelines, the evidence shows that the hourly noise levels would, at all times other than at 0700 hours on the Bank Holiday Monday morning, be categorised between 'moderate annoyance' and 'serious annoyance'. These levels were taken at a time where deliveries are currently not permitted, but despite this, in my view, they are demonstrative of an environment that is already somewhat noisy.
8. The appellant confirms that noise from deliveries would come from activity within the service yard itself and from vehicles entering and leaving the site. However, to demonstrate the noise levels that might be generated should the condition be removed, evidence is compiled from different components of deliveries measured from other Tesco superstores. This is instead of measuring the actual delivery activities from this specific store despite that data being readily available.
9. It is suggested that the figures provided have been used extensively in the assessment of noise at similar stores and I have no reason to dispute that point. However, I am not aware of the specifics of the stores in question and regardless of that, the key consideration in this appeal is the noise levels generated by this particular store. Indeed, as stated by the Council's Environmental Protection Unit Officer in response to the planning application: *'The acoustic assessment is based on predictions and as the effects of noise and activities within the compound have not actually been assessed the information cannot be relied upon as accurate'*.

10. In terms of the perceptible increase in noise, the results of the predictions are shown to comply with national advice. I am also satisfied with the overall methodology of the report and its general compliance with the relevant British Standard. However, in my view, it is the application of the methodology that brings with it concern. This is because delivery activity is ongoing and has not been assessed. In addition, local residents have clearly articulated concern in relation to the level of noise generated by the store and its associated deliveries, and the significance of the respite provided by Sundays and Bank Holidays. Moreover, in my view, the background noise levels, collected on days when no deliveries took place, suggest that the surrounding environment has the potential to generate harmful levels of noise. Consequently, in the absence of meaningful data from the site itself, I cannot be certain that the proposal would not result in a significant adverse effect on the living conditions of the occupants of neighbouring properties.
11. I acknowledge that the current restriction on delivery times could bring with it certain operational difficulties. I also note that removing the condition could have the potential to reduce delivery numbers at other times throughout the week. However, there is no mechanism to secure this through the appeal and consequently, I afford this matter very limited weight. I also note the proposed mitigation measures set out within a suggested management plan. Despite the Council's concerns in relation to this, I am satisfied that its provisions could be enforceable. However, due to the lack of evidence in relation to the existing activities, it is unclear whether the suggested mitigation would have the necessary effect. I therefore give the management plan limited weight.
12. The store has a degree of social value in the services and goods that it provides for local customers and this weighs in favour of the appeal. However, for the reasons identified above, based on the evidence before me, I cannot be certain that removing the conditions would not result in a serious adverse effect on the neighbouring residents.
13. Consequently, having regard to noise and disturbance, I conclude that the proposal would have a detrimental effect on the living conditions of neighbouring properties. Accordingly, it would fail to comply with Policies OE1 and OE3 of the Hillingdon Local Plan: Part 1 (November 2012), the Noise Supplementary Planning Document (2006) and emerging Policy DMT1 of the London Borough of Hillingdon, Local Plan Part 2; Development Management Policies: October 2015. Taken together these seek development that would not be detrimental to the amenities of surrounding properties because of noise impacts.

Conclusion

14. For the reasons identified above, I am satisfied that the existing conditions continue to fulfil an important planning function. They remain necessary and reasonable and are fully compliant with all of the tests established within the National Planning Policy Framework. They should therefore remain in place and as a consequence, the appeal is dismissed.

Martin Chandler

INSPECTOR