



Appeal Decision

Site visit made on 7 January 2020

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2020

Appeal Ref: APP/Z5630/W/19/3238094

Waitrose Foodstore, 15A Claremont Road, Surbiton KT6 4QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Waitrose Ltd. against the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 19/00720/FUL is dated 24 January 2019.
 - The application sought planning permission to provide a new supermarket together with 2 storey car park accessed off The Crescent, involving junction alterations with The Crescent and Claremont Road and service area access off St. James Road without complying with a condition attached to planning permission Ref 97/7107/JH, dated 5 May 1998.
 - The condition in dispute is No6 which states that: Vehicle deliveries to the supermarket hereby permitted shall not take place before 7.00 am and after 10.00 pm on any day.
 - The reason given for the condition is: To safeguard the amenities of the occupiers of nearby residential properties.
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Decision

1. The appeal is dismissed and planning permission is refused to vary condition no.6 of planning permission Ref 97/7107/JH, dated 5 May 1998.

Preliminary Matter and Background

2. The appeal relates to a planning application that was not determined by the Council within the prescribed period. The Council have subsequently issued a statement for the purposes of this appeal highlighting that it would have refused the application to vary condition 6 on grounds of the effects of night time deliveries on the living conditions of nearby residents. I have had regard to this statement in framing the main issue.
3. The original planning permission¹ for the supermarket has been implemented. The appellant wishes to service the supermarket by including up to 3 night time deliveries on any day on a permanent basis. Such deliveries are restricted under condition 6 of the original permission between the hours of 22.00 to 07.00 hrs on consecutive days. The site currently benefits from a temporary permission² for 3 night time deliveries between those hours until 29 June 2023.

¹ 97/7107/JH

² 18/16236/FUL

Main Issues

4. The main issue is the effect of the proposed development on the living conditions of nearby residents with particular regard to noise and disturbance.

Reasons

5. Servicing of the supermarket is carried out via an entrance on St James Road, a road of mixed commercial and residential development lying close to the local railway station. The service yard entrance lies opposite two large semi-detached villas subdivided into residential flats and adjacent to St James Court, a development providing residential flats on three floors above commercial premises.
6. The close proximity of the service entrance to the residential properties and the size of the vehicles making night time deliveries means that there is significant potential for noise and disturbance to local residents. The service entrance is secured by a large roller-shutter with an internal service area lying beyond. The vehicles using the entrance are unrestricted in their size.
7. Whilst the loading area is contained within the building there are a number of potential sources of noise arising from the use of the entrance – most notably that arising from large vehicles accelerating, breaking, engine noise, refrigerator unit noise and that arising from the entrance door. During daytime hours these will substantially be absorbed within background noise and activity. However, notwithstanding that there are evening facilities within the row of the commercial units on the ground floor of St James Court and at the adjacent social club, background noise and activity during the restricted hours will generally reduce through the night until the early start of the next working day.
8. This includes hours when the majority of residents will expect to enjoy undisturbed sleep. A noise survey was carried out by the appellant in 2015 in support of proposals for the night time deliveries on a temporary basis. The findings of the report are generally accepted by the Council's Environmental Health Officer.
9. The report identifies that in the event that bedroom windows of nearby residential properties are open during the night time then the desirable internal noise levels as proposed by the World Health Organisation would be exceeded in terms of background noise irrespective of deliveries. It subsequently concludes that the effect of deliveries would not be significant as it is most likely that windows would remain closed for that reason. Notwithstanding the conclusion in respect of background night time noise levels, or that residents living within inner urban areas might expect to experience generally higher levels of noise than other locations, I find it an unrealistic expectation that windows would remain shut, particularly during warmer months.
10. Furthermore, the noise monitoring undertaken for the purpose of the report only measured noises emanating from the appeal site and failed to include the noise arising from the use of the steel shutter on the main service entrance or that arising from the attendant vehicles within the highway.
11. The effect of the siting of the service yard entrance is to concentrate large heavy goods vehicles to a location within a primarily quiet residential street. This results in unusually large vehicles manoeuvring in close proximity to the facades of nearby residential buildings; closer than the 10 metre measurement

distance in the report. The noises associated with vehicle braking and accelerating in conjunction with the opening and closing of the entrance gate, will subsequently give rise to greater impacts on neighbouring living conditions than those identified within the report.

12. Under the terms of the extant temporary planning permission, up to three deliveries can currently take place between 22.00 to 07.00 hrs the following day. This is subject to a requirement to abide by a Quiet Delivery Procedures – Delivery Management Plan (DMP), as agreed with the Council. This includes a range of measures that seek to minimise effects of the deliveries on residents.
13. Evidence submitted by nearby residents claims that this procedure has not always been adhered to resulting in vehicles waiting in the roadway where they are a matter of metres from bedroom windows. Subsequently, there is disagreement between parties as to the level of complaints made either to the Council or direct to the appellant.
14. Review of the DMP has sought to prevent any on-street waiting. Accordingly, this may limit the effects described in terms of vehicles waiting. However, notwithstanding the evidence of third parties, the operation of the shutter up to four times for each visit and the acceleration and braking of large vehicles concentrated about the single access point will inevitably give rise to noise events distinct to, and above, the background level.
15. Even if vehicles could be facilitated without delay at the service entrance, those noise peaks have the potential to disrupt sleep patterns due to the close proximity of bedroom windows. Across three visits, this might be 18 distinct noise events or more. The resultant likelihood of disturbed sleep patterns would not be conducive to healthy living aims and it would not be reasonable to expect such regular disturbance in a relatively quiet and predominantly residential street during early hours.
16. Despite the extant permission running into 2023, whereupon some residents may become accustomed to certain noise disruption, I conclude that the permanent introduction of up to 3 night time deliveries, particularly during early hours, would be unwelcome for the majority of close residents and result in a significant adverse impact on their living conditions.
17. For the above reasons, I conclude that deliveries during the hours of 22.00 to 07.00 hrs on a permanent basis would conflict with Policy DM10 of the Royal Borough of Kensington upon Thames LDF Core Strategy (2012) and Policy 7.15 of the London Plan (2016) as the most relevant local plan policies in relation to the protection of local standards of living conditions. Additionally, the development would conflict with the National Planning Policy Framework as it seeks to promote health and wellbeing and a high standard of amenity for existing residents.
18. In support of the development, the appellant has drawn my attention to the necessity for the night time deliveries to enable the retailer to respond to market demands and remain competitive, particularly in respect of the display and early sale of fresh produce. The appellant argues that operation within the original restrictions causes potential obstruction on the retail floor and may prejudice the future viability of the business.

19. However, noting that daily delivery restrictions only persist for part of the day such that perishable goods are unlikely to undergo significant deterioration during the restricted period, and that, in the absence of restrictions on staff hours, shelf stocking during opening hours could be limited, I am not convinced that the satisfactory management of fresh produce could not be suitably exercised within the originally approved delivery window. Furthermore, I have not been provided with evidence in respect of any potential threat to viability and therefore these matters attract limited weight in favour of the development.
20. I am also directed to the response of the highway authority who raise no objection and highlight that deliveries outside peak times can limit the effect of delivery vehicle impacts on the free flow of traffic. I am provided with little evidence to suggest that the arrangement under the terms of the original permission caused concerns regarding local congestion or highway safety. Accordingly, this attracts limited weight in favour of the development.
21. The absence of direct complaints to the store following the grant of the temporary consent, the low response rate of the Council's consultation exercises, absence of enforcement action, or lack of objection by statutory and non-statutory consultees are not matters in favour of the development, a proposal I have assessed on its own merits and on the basis of the evidence before me.
22. Whilst I acknowledge the proposal might support economic growth, I do not consider that this would outweigh the harm I have identified to the living conditions of nearby residents.

Conclusion

23. For the above reasons, I conclude the appeal should be dismissed.

R Hitchcock

INSPECTOR