



Appeal Decision

Site visit made on 28 October 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2020

Appeal Ref: APP/A0665/W/19/3226796

Site of former Mercedes Benz Showroom, Cousens Way, Bache, Chester CH1 4DU

- 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 George Brown on behalf of Aldi Stores UK Limited against the decision of Cheshire West & Chester Council.
 - The application Ref 18/03750/S73, dated 26 September 2018, was refused by notice dated 9 January 2019.
 - The application sought planning permission for Demolition of existing buildings and erection of foodstore (Use Class A1), access, car parking, servicing and landscaping without complying with a condition attached to planning permission Ref 16/05265/FUL, dated 11 December 2017.
 - The condition in dispute is No 28 which states that: *The approved foodstore and its car park shall be open to customers between the following hours only: 08:00 to 22:00 Monday to Saturday, and 10:00 to 18:00 on Sundays and Public Holidays.*
 - The reason given for the condition is: *In the interests of residential amenity, in accordance with Policy SOC5 of the Cheshire West and Chester Local Plan (Part 1).*
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and erection of foodstore (Use Class A1), access, car parking, servicing and landscaping at the site of the former Mercedes Benz Showroom, Cousens Way, Bache, Chester CH1 4DU in accordance with application Ref 18/03750/S73 dated 26 September 2018, without complying with condition number 28 previously imposed on planning permission Ref 16/05265/FUL, dated 11 December 2017, but subject to the conditions in the attached schedule.

Procedural Matters

2. The Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies was adopted by the Council on 18 July 2019, therefore I allowed the parties the opportunity to make observations on the adoption of the Local Plan.
3. The Council has no further observations. The appellant company (the appellant) also has no further observations but notes that the significant test set out within Policy DM30 is that the development must not give rise to significant adverse impacts on health and quality of life, from noise.

4. In the application form, the appellant set out the suggested rewording of the condition as starting with 'The unit hereby approved shall only be open to customers between the following hours only....'. In the appellant's statement, it is confirmed that he wishes condition 28 to read:

'The approved foodstore ~~and its car park~~ shall be open to customers between the following hours only: 08:00 to 22:00 Monday to Saturday; ~~and~~ 10:00 to 18:00 on Sundays ~~and Public Holidays~~ ; *and 08:00 – 20:00 on Public Holidays.*'

I therefore consider the appeal on the basis of the variation as sought in the appellant's statement.

Background and Main Issue

5. The current planning consent restricts opening hours to 1000 – 1800 hours on Sundays and Public Holidays. During Mondays to Saturdays the permitted opening hours are between 0800 – 2200 hours¹. The stated reason for the refusal of the proposal is to prevent noise and disturbance that would give rise to adverse impacts on living conditions on Public Holidays. From the evidence put forward by the Council the main concern is the effect of increased traffic coming and going from the store during the additional opening hours on the living conditions of the occupiers of houses in Parkgate Court. However, I have received comments from a resident in Gawer Park, who objects to the proposed increase in opening hours for similar reasons.
6. The condition in dispute refers to the opening times of the store and its car park – condition no 28. The appellant seeks to vary the opening hours to allow the store extend the opening hours on Public Holidays, and remove the inclusion of the car park within the restricted hours. The Council does not contest the proposed removal of reference to the car park in either the planning officer report or statement of case. However, the reference to the car park is retained in the suggested planning condition and therefore I will deal with that aspect later in my decision.
7. The main issue is therefore is whether the proposed variation in the store opening hours is reasonable having regard to the effect on the living conditions of residents at Parkgate Court and Gawer Park in relation to noise and disturbance.

Reasons

8. At the time of my visit the store was open and it appeared development works were complete. The appeal property (the store) is located adjacent to a roundabout where the A5480 road (Countess Way) and the A540 road (Parkgate Road) meet. Access to the store is from Countess Way via a short section of Gawer Park and then Cousens Way, an access road which serves both the store and a public house.
9. To the south of the store is a residential development including a cul de sac, Parkgate Court. The nearest houses in Parkgate Court are approximately 14m from the access road and store car park. There is some intervening planting along the line of a drain between the houses and the access road, and a substantial timber fence has been erected along the boundary of the site with

¹ The store does not presently remain open to customers between the hours 2000 – 2200 in line with the appellant company's approach nationally.

the drain. Where the access road meets Countess Way at Gawer Park there is a block of flats.

10. Cousens Way provides both the entrance and exit to the store and public house. There is also an entrance only access from Parkgate Road leading directly into the store car park via a bridge over a stream.
11. The appeal is accompanied by a number of technical assessments of the impacts of the proposal. Noise reports prepared at the time of the original application have been submitted, together with a technical note by the same consultancy on traffic noise and the increase which would be likely to occur under the extended bank holiday opening hours. The first technical note² found that the increase in noise levels at the nearest residential properties that would arise would be very low.
12. The second technical note³ provided further information in support of the numbers of vehicles used in the first assessment and the predictions of the hourly flows during both normal working days and Bank Holidays, based on ANPR data from 3 existing stores run by the appellant over a one year period. The note considered what the increase in noise level would be if the number of vehicles were to double, as a baseline. Under this scenario the increase in noise would be small, less than 1dB. A further assessment was then made having regard to the parking data from the other stores. Essentially, this shows that for most days, the level of noise experienced by properties in Parkgate Court during the early morning and later evening opening periods would be slightly less during weeks with public holidays, the exceptions being Tuesday when there would be a slight increase.
13. The figures which have been provided are not wholly convincing since the extended opening hours could result in some additional traffic movements within Cousens Way, which even though not leading to significant effects in terms of noise, would still disturb what would otherwise be a state of very low activity. The ANPR data that is available from the 3 other stores is informative in demonstrating the typical pattern of arrivals and departures of customers during public holiday trading days and normal working days. The pattern that emerges is one where vehicle movements are significantly lower during the first two hours of trading and after 5pm on public holidays compared with normal working days, and on some public holidays peak above normal working days during the midday period.
14. Based on these assessments, I am satisfied that the proposed change in trading hours would not lead to significant increases in the noise levels at residential properties compared with a normal working day, and in most cases the level of noise would overall remain less. Clearly that is not the only consideration since what is being proposed during the relevant hours is an increase in the number of customer vehicles from very few, if any, to in the region of an estimated 60 – 70 additional vehicles per day⁴, especially during the early morning where very few vehicle movements associated with the public house would be expected.

² Spectrum Acoustic Technical Document RK2636/16192 date 19 December 2019

³ Spectrum Acoustic Addendum to Technical Document RK2636/16192 dated 11 April 2019

⁴ The estimated increase given in Technical Document RK2636/16192 is 68

15. I have considered the Council's argument that the ANPR data for other stores may not be representative of the shopping patterns of customers using the appeal store, however I have no substantive evidence to support that view. The main parties disagree over whether the 3 stores which have been referred to, which do not have the same opening hours restrictions as the appeal site, are relevant. I accept that the situation at the appeal site is rather different than at the other stores, in that Cousens Way is accessed via what is otherwise a residential estate road. However, there are also some similarities, and in the case of the appeal site access is also possible via the Parkgate Road entrance, which would reduce the impact on arrivals during the disputed hours. There are also traffic movements associated with the public house during the evening, whether or not the store is open.
16. The appellant uses the term 'negligible' to describe the effects of the likely increases in relation to both noise and the increase in total number of trading hours. In relation to noise, the term is used in a technical sense. With regard to trading hours, it is less appropriate, as it does not reflect the importance that might be attached to the lack of comings and goings during the periods for which the increased trading hours is sought. However based on the very limited reaction from residents to the proposal, I am not persuaded that this is a strong consideration in this instance.
17. The proposal includes the deletion of reference to the car park from the condition. If the car park is required to close at the same time as the store, strictly speaking it would not be possible for customers shopping right up to closing time to get through the check outs and exit the car park prior to its closing. There is no evidence before me that the short time period during which customer vehicles take to leave the site following closing time would be likely to give rise to any problems. The condition at present would be difficult, if not impossible, to enforce.
18. Bringing the above points together, in terms of noise, the proposed increase in opening hours would not give rise to impacts on local residents that would justify withholding consent. In terms of other disturbance, whilst the additional traffic movements of customers visiting the store would be significant the shopping patterns at other stores indicate that these movements would be low during the 0800 – 1000 period and moderate between 1800 – 2000.
19. For the reasons given I conclude that the variation in the condition sought in the appeal would not lead to levels of activity, noise and disturbance, that would cause significant harm to the living conditions of residents at Parkgate Court and Gawer Park. The proposal would therefore comply with adopted Policy SOC5 of the Cheshire West and Chester Local Plan Part One Strategic Policies (2015) and Policy DM30 of the adopted Cheshire West and Chester Local Plan Part Two Land Allocations and Detailed Policies (2019) and the National Planning Policy Framework which seek to ensure that new development does not harm health and wellbeing of persons, including as a result of noise.

Conditions

20. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. I have some information before me about the status of the other conditions imposed on the original planning permission, and there has been some discussion between the appellant and the Council regarding which conditions remain relevant. However, for the avoidance of any doubt I impose all conditions that may remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
21. In response to the appeal, I attach new condition No 24, as a replacement for former condition No 28, in relation to the times during which the store and car park may be used. This provides for the extended opening hours during the early morning and evening on public holidays, the restricted hours applying only to the store and not the car park. The limitations on store opening hours provided for in the condition are required in the interests of protecting the living conditions of local residents.

Conclusion

22. For the reasons given, I conclude that the appeal should be allowed.

Tim Wheeler

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans: location plan (ref. 1959NES-99D); proposed site layout plan (ref. 1959NES- 101L); proposed GA plan (ref. 1959NES-102F); proposed elevations (ref. 1959NES-103H); proposed roof plan (ref. 1959NES-104D); proposed boundary treatment plan (ref. 1959NES- 106F); proposed demolition plan (ref. 1959NES-107C); proposed landscape plan (ref. V1959 L01F); highways plan 1 (ref. 343-01/GA-04 I); highways plan 2 (ref. 343-01/GA-08 A); and highways plan 3 (ref. 343-01/GA-09).
2. The foodstore hereby approved shall have a gross external floorspace no greater than 1,887 square metres and a net sales area no greater than 1,254 square metres. 80% of the net sales area shall be dedicated to the sale of convenience goods and the remaining 20% for comparison goods sales.
3. The approved hard landscape works shall be carried out before the use of the foodstore commences. The soft landscape works shall be implemented in accordance with the approved landscape plan and implementation programme.
4. If within a period of 5 years from the date of initial planting, any trees or shrubs planted in accordance with the approved landscaping works are removed, die, become diseased or seriously damaged then replacement trees or shrubs shall be planted in the next planting season with others of similar size and species, unless the local planning authority gives its written approval to any variation.
5. All trees identified as being retained on the approved landscaping plan shall be so retained and shall be protected using appropriate tree protection measures.
6. The approved shopfront art work shall be installed before the use of the foodstore commences.
7. The approved highway works shall be carried out in strict conformity with the agreed details and completed prior to first occupation of the development.
8. The foodstore shall operate in full accordance with the approved Service and Delivery Management Plan. No servicing or deliveries shall be carried out except in full accordance with the approved Plan.
9. Car and cycle parking shall be provided on site in accordance with the approved site layout plan (ref. 1959NES-101L) and shall thereafter be retained and made available for use.
10. Within six months of the use of the foodstore commencing a Full Travel Plan for the site shall be submitted to and approved in writing by the local planning authority. The approved Travel Plan shall be implemented within one month of its written approval.
11. Development shall proceed in accordance with the approved Construction Management Plan which includes full details of the phasing of the construction traffic, including temporary highway vehicle and pedestrian routings, times and days of large vehicle movements to/from the site, suitable off-highway parking for all construction related vehicles, and vehicle cleansing/wheel washing

facilities. The approved details shall be implemented throughout the construction period.

12. The finished floor levels of the foodstore shall be set no lower than 7.3 m above ordnance datum (AOD).

13. The development shall incorporate flood resilient construction methods.

14. Development shall proceed in accordance with the approved method statement for the long-term management and control of Japanese knotweed (*Fallopia japonica*), giant hogweed (*Heracleum mantegazzianum*) and Himalayan balsam (*Impatiens glandulifera*) along Finchetts Gutter and Bache Brook within and adjacent to the site.

15. The approved fencing erected along the perimeter of the development adjacent to Finchetts Gutter and Bache Brook shall be kept in place throughout the demolition and construction period.

16. No development (excluding demolition) shall commence except in strict accordance with the approved foul water, surface water and land drainage scheme, and approved scheme for the sustainable drainage system to serve the site. Thereafter the scheme shall be implemented in full accordance with the approved details prior to the occupation of the development.

17. No development shall commence except in strict accordance with the approved remediation strategy. Any changes to the approved strategy shall require the express written consent of the local planning authority. The scheme shall be implemented as approved.

18. No occupation of the development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. The long-term monitoring and maintenance plan shall be implemented as set out in the approved verification plan.

19. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until a remediation strategy detailing how this unsuspected contamination shall be dealt has been submitted to and approved in writing by the local planning authority. The remediation strategy shall be implemented as approved.

20. Piling or any other foundation designs using penetrative methods shall not take place on site unless the local planning authority has been notified of, and has agreed in writing, the techniques proposed. The development shall be carried out in accordance with the approved details.

21. No development, including demolition and/or construction works and the receipt of construction/demolition deliveries, shall take place outside 08.00 hours to 18.00 hours Mondays to Fridays, 08.00 hours to 13.00 hours on Saturdays, or at any time on Sundays or Public Holidays. Any variation to these hours shall be submitted to and agreed in writing by the local planning authority prior to any agreed change being implemented.

22. No construction shall take place except in complete accordance with the approved Dust Control scheme.

23. The approved Construction Management Plan details shall be implemented throughout the construction period.

24. The approved foodstore shall be open to customers between the following hours only: 08:00 to 22:00 Monday to Saturday, and 10:00 to 18:00 on Sundays and 08:00 to 20:00 on Public Holidays.

25. No deliveries shall be taken at or despatched from the site outside the hours of 07:00 to 22:00 Monday to Saturday and 09:00 to 18:00 on Sundays and Public Holidays.

26. No external lighting shall be erected other than in accordance with the approved details.

27. The operational development shall not give rise to noise levels in excess of a level 5dB below measured background levels, when measured in accordance with BS 4142:2014 'Method For Rating and Assessing Industrial and Commercial Sound' at the facade of adjacent residences.

28. A close-boarded timber fence at a minimum of 2.5m high shall be erected in the locations and to the specification shown in Drawing Number 1959NES-106, Rev. F prior to the first deliveries of stock to the store. The fence shall thereafter be retained and maintained in order to ensure its continuing effectiveness.

End of Schedule