



Appeal Decision

Site visit made on 3 February 2020

by **Matthew Jones BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 March 2020

Appeal Ref: APP/W1145/W/19/3236697

Wm Morrison Supermarkets plc, Kingsley Road, Bideford EX39 2LG

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Wm Morrison Supermarkets plc against the decision of Torridge District Council.
 - The application Ref 1/0098/2019/FUL, dated 25 January 2019, was refused by notice dated 16 April 2019.
 - The application sought planning permission for extension to warehouse, new ramp and amendment to service yard fence without complying with a condition attached to planning permission Ref 1/0486/2006/FUL, dated 9 June 2006.
 - The condition in dispute is No 2 which states that: *'No deliveries to the site shall be made between the hours of 10.00pm and 07:00am the following morning. For the purposes of this condition the parking of vehicles awaiting unloading shall constitute a delivery'*.
 - The reason given for the condition is: *'To safeguard the amenities of the occupiers of the adjacent dwellings'*.
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Decision

1. The appeal is dismissed.

Background

2. The appeal site comprises the Wm Morrison supermarket in Bideford, its car park, secure service yard and petrol filling station (PFS). The warehouse has been extended and the service yard upgraded pursuant to planning permission Ref 1/0486/2006/FUL granted in 2006. The delivery of goods to the yard, and the waiting of vehicles to deliver the goods, is precluded between 10.00pm and 07:00am by condition no 2 of that permission. The reason given is to protect the living conditions of neighbouring occupants. The appeal seeks to vary this condition to allow deliveries to the site from 06:00 hours onwards.

Main Issue

3. The main issue is therefore the effect of varying the condition on the living conditions of neighbouring occupants, with reference to noise.

Reasons

4. The PFS and the service yard are located at the southern end of the site. Within the yard there are two docking positions for vehicles to unload goods into the warehouse, one sealed and the other open. The service yard is adjacent to the site's 2m east boundary fence, which, along with some greenery, separates it from the rear gardens of the terrace of dwellings on Park Avenue. The rear

- elevations of the Park Avenue houses are around 30m away from the service yard and are the nearest noise sensitive receptors (NSRs).
5. The area around these houses is urbanised, with several commercial enterprises and roads which are in use between the hours of 06:00 and 07:00 (the Disputed Hour). In particular, the nearby PFS opens at 06:00. However, when I visited the site during the Disputed Hour I observed much of the noise generated at this time to be somewhat distant and peripheral to the NSRs. Whilst use of the PFS generates louder and closer noise, including the occasional recycling lorry, business is limited at this time of the morning and the PFS is set back away from Park Avenue, which reduces its effect. Given these circumstances, I found the area around the service yard and the rear of the NSRs to have an overall degree of quietness during the Disputed Hour, with noise picking up more significantly thereafter.
 6. The appellant has produced a noise survey¹, the data of which is not contested by the Council. There is disagreement, however, as to which British Standard should be used to assess the likely impact of the noise of deliveries on the occupants of Park Avenue. The appellant considers it appropriate to use BS8233:2014² together with the ProPG³, which are based on World Health Organisation guidance, whilst the Council favours BS4142:2014⁴. It seems to me that there are pros and cons to either approach in this case.
 7. If the appellant's preferred standards are to be used, a Sleep Disturbance Threshold (SDT) of 60dBA would be set, which, for the benefit of that approach, would be the Lowest Observed Adverse Effect Level (LOAEL). Without mitigation, the unloading of goods via the open dock would generate noise events around a maximum of 75dBA, decisively above the LOAEL.
 8. It is proposed to reduce this noise through the imposition of a Delivery Noise Management Plan (DNMP) pursuant to the 'Morrisons Quiet Delivery System'. It is estimated that this may reduce noise by 10dBA, plus an additional 3dBA through use of the sealed dock. How the 10dBA figure has been calculated has not been substantively explained. However, even if it were to be accepted, and exclusive use of the sealed dock ensured, the resultant maximum noise level of 62dBA would still exceed the SDT and would have an adverse impact.
 9. In any event, the effectiveness of the DNMP would be largely reliant on the diligence and conduct of individuals. During my visit I observed a delivery. As the vehicle was reversing into the yard with its rear doors open, cages began to roll freely within it, before striking the trailer side, producing significant, impulsive noise effects. This incident reinforces my concern that the DNMP would be vulnerable to failure through spontaneous human activity or error. Given my concerns, I am not persuaded that it could be practically relied upon or enforced through a condition. As such, even by the appellant's preferred standards, the unloading of deliveries would have an adverse impact upon the occupants of Park Avenue during the Disputed Hour. Without a reliable DNMP, I am unable to rule out that the adverse impact would be significant.
 10. The appellant contends that extending the delivery window could lead to a reduction in activity and associated noise levels during the day, particularly as

¹ Within the 'Acoustic Assessment for Extended Delivery Hours' by Acoustic Control Engineers and Consultants (2019)

² BS8233:2014 Guidance on sound insulation and noise reduction for buildings

³ Professional Practice Guidance on Planning and Noise – New Residential Development

⁴ S4142:2014 – Methods for rating and assessing Industrial and Commercial Sound

there can be a rush of deliveries immediately after 07:00 because of the current restriction. However, I understand that 07:00 onwards is generally accepted to be daytime and is less sensitive to noise than the Disputed Hour. This matter would not therefore justify the harm I have identified. It has also been put to me that the store could theoretically operate for 24 hours a day. However, the potential noise effects of it doing so have not been set out, nor am I aware that such operating hours are in the offing.

11. I therefore conclude that varying the condition would have an unacceptable effect on the living conditions of the neighbouring occupants, with reference to noise. It would conflict with the residential amenity aims of Policies DM01 and DM02 of the North Devon and Torridge District Local Plan 2011-2031 (adopted 2018) and the National Planning Policy Framework (the Framework).

Planning Balance

12. The Noise Policy Statement for England (2010) and the Planning Practice Guidance are clear that noise should not be considered in isolation, separately from the economic, social and other environmental dimensions of a proposed development.
13. I appreciate that the existing restriction presents difficulty in merchandising goods in time for the supermarket's opening and more generally. The varied delivery hours would enable the supermarket greater ability to provide its optimal retail offer to customers, which is particularly under pressure during the busy summer months. I find this to be a moderate benefit. A staggered delivery arrangement may also have very limited economic and environmental benefits by reducing congestion within the highway network and creating a small reduction to the carbon footprint of vehicles delivering to the site. Better stocked shelves may lead to a very small reduction in vehicular movements to facilities further afield, and less clutter in the aisles during opening times may improve the safety of the shopping environment.
14. However, in my view the varied delivery hours would significantly compromise the living conditions of the occupants of Park Avenue. I consider this harm to be of such significant extent that it would outweigh the benefits outlined above.
15. I therefore find that varying the condition in order to extend the delivery hours as proposed would conflict with the development plan when read as a whole. There are no other considerations, including the Framework, that outweigh this conflict.

Conclusion

16. For the reason outlined above, and taking all matter raised into account, I conclude that the appeal should be dismissed.

Matthew Jones

INSPECTOR