



Appeal Decision

Site visit made on 25 February 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 3 April 2020

Appeal Ref: APP/Q3060/W/19/3241959

Morrisons Supermarket, Green Lane, Nottingham NG11 9LQ

- 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 Wm Morrison Supermarkets plc against the decision of City of Nottingham Council.
 - The application Ref 19/01230/PVAR3 (PP-07895417), dated 30 May 2019, was refused by notice dated 30 September 2019.
 - The application sought planning permission for 'continued use of supermarket with deliveries between 0600 and 2000 Monday to Saturday and 0600 to 1900 Sundays and Bank Holidays' without complying with a condition attached to planning permission Ref 12/02311/PVAR3 (PP-02113333), dated 31 October 2012.
 - The condition in dispute is No 1 which states that: Servicing the premises, including the removal of waste and use of the service yard, shall be restricted between the hours of 0600 and 2000 Mondays to Saturdays, and 0600 to 1900 on Sundays and Bank Holidays.
 - The reason given for the condition is: To protect the amenities of the occupants of the development and nearby property in accordance with Policy BE3 and NE9 of the Nottingham Local Plan.
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Decision

1. The appeal is allowed and planning permission is granted for continued use of supermarket with deliveries between 0600 and 2000 Monday to Saturday and 0600 to 1900 Sundays and Bank Holidays, at Morrisons Supermarket, Green Lane, Nottingham NG11 9LQ in accordance with application Ref 19/01230/PVAR3 (PP-07895417), dated 30 May 2019 without compliance with condition No 1 previously imposed on planning permission Ref 12/02311/PVAR3 (PP-02113333), dated 31 October 2012, and subject to the conditions set out in the schedule attached.

Procedural Matters

2. Nottingham City Council formally adopted its Land and Planning Policies Development Plan Document Local Plan Part 2 (LPP) on 13 January 2020 after the Council's decision notice was issued. This replaced the Nottingham Local Plan 2005 (NLP). In addition, the Council adopted its Greater Nottingham-Broxtowe Borough, Gedling Borough, Nottingham City Aligned Core Strategies Part 1 Local Plan (ACS) in 2014 after the previous planning permission was granted. The ACS complemented the NLP and now complements the LPP. I have therefore determined the appeal having regard to the relevant policies within the LPP and the ACS. Both main parties have had the opportunity to

comment on the implications of this for the appeal. I am satisfied that no interested party has been prejudiced by this approach.

3. The appellant seeks to vary condition 1 of planning permission Ref: 12/02311/PVAR3, which reads '*servicing the premises, including the removal of waste and use of the service yard, shall be restricted between the hours of 0600 and 2000 Mondays to Saturdays, and 0600 to 1900 on Sundays and Bank Holidays.*' This was justified with reference to Policies BE3 and NE9 of the NLP which sought to protect the amenities of the occupants of the development and nearby property.
4. The application form states that the variation requested is so that condition 1 reads, '*servicing of the premises, including the removal of waste and use of the service yard, shall be allowed between the hours of 0600 and 2300 Mondays to Sundays*'. Furthermore, the description of the proposal stated by the Council in its decision notice reads, '*Details submitted to vary condition number 1 of planning permission reference 12/02311/PVAR3 to enable deliveries and removal of waste to occur between 0600 and 2300 Mondays to Sundays*'.
5. However, evidence submitted by the appellant states that the application which is the subject of the appeal solely concerns the change in delivery hours and that there are no plans to change the current waste servicing arrangements at the store, and that the appellant seeks to vary condition 1 so that it reads, '*There shall be no deliveries to the superstore and no unloading/loading shall take place within the service area between the hours of 2300 and 0600*'. In addition, the Council states in its delegated report that the proposal is '*to vary condition 1 to allow deliveries to take place between 0600 and 2300 hours, every day*', and the appraisal of the proposal only refers to deliveries and does not refer to the removal of waste. Therefore, and for the avoidance of doubt, I have determined the appeal on the basis that the request to modify condition 1 only relates to the variation of the hours for deliveries to the store.

Main Issue

6. In the context of the above, the main issue is the effect of the proposed variation of hours for deliveries on the living conditions of occupiers of nearby residential properties, with regard to noise and disturbance.

Reasons

7. The appeal site comprises the existing Morrisons supermarket which fronts onto Green Lane within Clifton town centre. The service yard, where deliveries are received, is located to the rear of the store off Donington Road. The yard is enclosed by a combination of the brick walls of the supermarket, a brick wall with a timber fence above and steel fencing with landscaping. Access into the yard is through a large steel gate.
8. Residential properties are located nearby to the service yard on Donington Road, Stanesby Rise and Wayne Close. In the surrounding area there is a mix of typical town centre retail and commercial uses.
9. I have had regard to the National Planning Policy Framework (the Framework) and Planning Practice Guidance (the PPG) in relation to the issue of noise and the Noise Policy Statement for England 2010 (NPSE). The PPG confirms that whilst noise can override other planning considerations, it is important to look

at noise in the context of the wider characteristics of a development proposal, its likely users and its surroundings, as these can have an important effect on whether noise is likely to pose a concern¹. Furthermore, neither the NPSE nor the Framework (which reflects the NPSE) expects noise to be considered in isolation, separately from the economic, social and other environmental dimensions of proposed development. The PPG also states that there is a need to take account of the acoustic environment and in doing so consider: whether or not a significant adverse effect is occurring or likely to occur; whether or not an adverse effect is occurring or likely to occur; and whether or not a good standard of amenity can be achieved².

10. The proposed variation of hours for deliveries would add an extra three hours to the delivery period in the evening on Mondays to Saturdays and an extra four hours to the delivery period in the evening on Sundays and Bank Holidays. Whilst this would extend the window of activity within the service yard throughout the week, it would not encroach into the acoustically most sensitive period of the day between 2300-0700. In addition, it would potentially improve the efficiency of the delivery process, take pressure off the early morning delivery slots and thus reduce excessive noise at the very sensitive time between the hours of 0600-0700.
11. I acknowledge that specific noises associated with delivery operations such as lorry doors opening/closing, the unloading of cages and the movement of goods in the delivery area would be sporadic and unpredictable. Moreover, I recognise that, notwithstanding the town centre location of the appeal site, it is likely that this noise would be more perceptible and distinguishable above the background noise levels in this relatively quieter period of the day.
12. However, the appellant has provided an Environmental Noise Assessment³ (ENA) which considers the noise effect of the proposed extended hours for deliveries on the closest residential properties of 10 Donington Road and 31 Stanesby Rise, and concludes that the predicted delivery activity noise during the proposed extended period would avoid a significant adverse impact.
13. There is no evidence before me which would cause me to question the methodology or doubt the conclusions of the ENA. Furthermore, whilst I appreciate that the Council's concern relates to general noise and disturbance rather than a statutory noise nuisance, stating this as the reason why no objection was raised by its Environmental Health Officer, it has not challenged the findings of the ENA, nor has it provided any substantive evidence of its own regarding its concerns in relation to noise and disturbance.
14. In addition to the above, the appellant already operates a Quiet Delivery System (QDS) approved as part of application Ref: 12/02311/PVAR3, which sets out a number of control measures to prevent noise associated with deliveries from disturbing neighbouring residents. I am satisfied that the continued implementation of the QDS will go some way to ensuring that the living conditions of occupiers of neighbouring properties are not unacceptably compromised.

¹ PPG Paragraph: 002 Reference ID: 30-002-20190722.

² PPG Paragraph: 003 Reference ID: 30-003-20190722.

³ Environmental Noise Assessment of a proposal to extend store delivery hours. Sharps Redmore. Dated 22 May 2019. Project No 1918774.

15. I am aware that the ENA does not measure the noise effect of the proposed extended hours for deliveries on the properties of 1 - 4 Wayne Close. However, these properties are further away from the service yard than 10 Donington Road and 31 Stanesby Rise and have screening attenuation of a building and brick wall/fence between them and the service yard. Moreover, taking into account the fact that it has been concluded that there would be no significant adverse impact on 31 Stanesby Rise, it would be reasonable to assume that there would be a similar, if not less, impact in terms of noise and disturbance on the properties of 1 - 4 Wayne Close.
16. To conclude on this issue, on the basis of the evidence before me, the proposed variation of hours for deliveries would not have a significantly harmful effect on the living conditions of occupiers of nearby residential properties, with regard to noise and disturbance. As such, it would not conflict with Policy DE1 of the LPP which, amongst other things, seeks to ensure a satisfactory level of amenity for occupiers of neighbouring properties in relation to issues including noise. It would also comply with Policy 10 of the ACS which, amongst other things, aims to ensure that all new development should be designed to create an attractive, safe, inclusive and healthy environment.
17. It would also accord with Paragraphs 127 and 180 of the Framework which, together, aim to create places which promote health and well-being, with a high standard of amenity for existing and future users, and avoid noise giving rise to significant adverse impacts on health and the quality of life.

Other Matters

18. I have had regard to representations made by third parties concerning the removal of waste from the staff car park. When on site I observed that bins were present in this location. Given the close proximity of the staff car park to the rear windows and private outdoor amenity space of the adjacent properties on Wayne Close, I acknowledge that an extension of the hours for the removal of waste would potentially have a harmful effect on the living conditions of occupiers of these properties with regard to noise and disturbance.
19. However, I have determined the appeal on the basis that it is only to modify the hours of deliveries to the service yard of the store and have retained the existing hours permitted for the removal of waste. Any current or future breaches of these hours for the removal of waste either from within or outside the service yard is a matter between the appellant and the Council and not one for me to consider as part of this appeal.
20. I note the points raised in relation to the exploration of mitigation measures such as acoustic sound barriers. However, there is no evidence before me which confirms any additional mitigation in addition to the existing QDS is required.
21. None of the other matters raised outweigh my conclusion on the main issue.

Conditions

22. The appellant and the Council have suggested wording for the modified condition that they consider would be appropriate were I minded to allow the appeal. I have considered it in light of the advice set out in both the Framework and the PPG. As the modification relates solely to the variation of the delivery hours, and the appellant is willing to accept a condition incorporating the

retention of the current waste servicing arrangements at the store, I have separated these elements of the servicing of the premises and used similar wording to the existing condition.

23. To assist with clarity, 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 discharged⁴. As the conditions from the original planning permission are either regulatory/ongoing or standard conditions, they are still relevant and therefore I have imposed all of them on this permission. I have considered them in light of the advice set out in both the Framework and the PPG. Where necessary, and in the interests of precision, I have altered them to better reflect the relevant guidance.

Conclusion

24. For the reasons given above, I conclude that the appeal should be allowed. A new planning permission is granted subject to the schedule of conditions listed.

F Cullen

INSPECTOR

Schedule of Conditions

- 1) Servicing of the premises:
 - i) Deliveries to the store, unloading/loading and use of the service yard shall be restricted to the hours between 0600 and 2300 daily.
 - ii) The removal of waste shall be restricted to the hours between 0600 and 2000 Mondays to Saturdays, and between 0600 and 1900 on Sundays and Bank Holidays.
- 2) Servicing of the premises shall be carried out in full accordance with the submitted 'Quiet Delivery (Noise Management) System' and its mitigation measures, written by Belair Research Limited and received on 16 August 2012.
- 3) The open areas of the site shall not be used for any form of storage of goods, merchandise, plant or materials of any description.
- 4) The 2m x 70m visibility splay at the junction of Donington Road and the service road shall be kept free of obstruction above the height of 600mm from ground level.
- 5) The space shown on the submitted plan for loading/off loading and parking of vehicles shall be kept free of obstruction at all times for those purposes.
- 6) Unless modified by the conditions listed above, the development shall be carried out in complete accordance with the details described in the forms, drawings and other documents comprising the application as validated by the council on 02 August 2012.

End of Schedule of Conditions

⁴ PPG Paragraph: 015 Reference ID: 17a-015-20140306.