
Appeal Decision

Site visit made on 17 February 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2020

Appeal Ref: APP/H1705/W/19/3240720

Morrisons, Worting Road, Basingstoke RG21 8BJ

- 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 Basingstoke & Deane Borough Council.
 - The application Ref 19/01166/ROC, dated 26 April 2019, was refused by notice dated 25 July 2019.
 - The application sought planning permission for redevelopment of site to provide retail store, petrol filling station, carparking and associated highway works without complying with a condition attached to planning permission Ref BDB/36906, dated 22 December 1994.
 - The condition in dispute is No.13 (b) which states that: The use and operation of the premises hereby permitted shall be carried on in accordance with the following:
 - b) No deliveries shall be permitted to the superstore between the hours of 2200 and 0630.
 - The reason given for the condition is: In the interests of the amenities of occupiers of nearby residential properties.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal site is occupied by a Morrisons superstore, store car park and a petrol filling station. The supermarket delivery yard is at the rear of the building, accessed via a service road adjacent to the building. On the other side of the service road are commercial properties which lie between the site and Worting Road. The delivery yard is bounded by acoustic fencing and treed land which rises up towards the site boundary with Deep Lane. The opposite sides of Deep Lane and Worting Road comprise residential properties which face the appeal site.
3. Condition 13 (b), which restricts deliveries to the superstore to between the hours of 0630 and 2200, was imposed on the original planning permission in the interests of the living conditions of the occupiers of nearby residential properties. A number of applications to remove or vary this condition have been refused due to concerns in respect of harm to the living conditions of neighbours arising from noise and general disturbance.

4. These concerns were shared by the Inspector in dismissing an appeal in 2013 in respect of a proposal to extend the delivery period to between 0500 and 2200 hours.¹
5. The application the subject of the current appeal seeks to vary condition 13 b) to allow deliveries to take place between 0500 and 2300 hours Monday to Saturday and between 0630 and 2300 hours on Sundays. The same proposal was refused by the Council in December 2015.
6. The main issue remains that of the effect of the proposal on the living conditions of nearby residents, with particular regard to noise and general disturbance.

Reasons

7. The Noise Policy Statement for England 2010 (NPSE) aims, within the context of sustainable development, to ensure the effective management and control of noise, to avoid significant adverse impacts on health and quality of life. This is consistent with Paragraph 180 of the National Planning Policy Framework (the Framework). The NPSE confirms that noise exposure can cause annoyance and sleep disturbance, both of which impact on quality of life, and may give rise to adverse health effects.
8. The Appellant refers to advice in the national Planning Practice Guidance (PPG) that noise should be looked at in the context of the wider characteristics of a development proposal, its likely users and its surroundings, and asserts that, although the sound from delivery arriving at or departing from the site may be audible outside the most noise-sensitive dwellings, residents would not be disturbed as it would be generally indistinguishable from that produced by other road traffic.
9. Potential noise impacts associated with the delivery process include short duration irregular sound events, such as lorry movements, revving engines, air brakes, re Fridgeration units, reversing beepers, shutting of lorry doors, the opening and closing of the store doors and the service yard gates, and the movement of pallet trucks, cages and dollies. Such short-term intermittent incidences of noise would be set apart from the general background noise associated with traffic within the site vicinity, and arguably have a greater potential to disrupt sleep patterns than more regular, constant sources of background noise.
10. The proximity to, and juxtaposition of the neighbouring residential properties in Deep Lane and Worting Road, in relation to the store delivery yard and service access road, are such that the proposed extended delivery hours have the potential to create harmful noise and disturbance at a time that would impact on the sleep patterns of these residents. As such, the onus is upon the Appellant to provide demonstrable evidence that the proposal would not have a materially harmful impact on the living conditions of the neighbouring residents.
11. The Appellant has carried out an updated Acoustic Assessment (AA) since the previous appeal and most recently refused planning application. This concludes that store deliveries are currently successfully being carried out between 0630

¹ APP/H1705/A/12/2184857

- and 0700 hours, one of the most noise sensitive parts of the morning, using the supermarket's standard unloading arrangements.
12. The Appellant proposes to implement a Quiet Delivery System' (QDS) during the most noise-sensitive times. The AA concludes that this would reduce the maximum and average delivery sound levels by around 13 dBA and 5 dBA respectively. On the basis of the AA, the Appellant asserts that current delivery hours could be extended to allow deliveries at any time of the night without disturbing neighbouring residents, even if they are sleeping with open bedroom windows, so that the proposed extended delivery hours would not harm the living conditions of the neighbouring residents.
 13. The Appellant's Acoustic Assessment is largely based on the desired ambient internal noise levels for sleeping in residential accommodation proposed by the World Health Organisation (WHO), and incorporated into BS8233:2014, on the basis that the proposed extended delivery hours are during the period when people are likely to be sleeping. The Council's view is that BS4142:2014 is a more appropriate assessment method in this case, since it relates to industrial and commercial noise, and involves relating sound levels to the measured background sound level. Neither methodology is specifically required by the relevant development plan policies, and I find that both are useful tools informing professional planning judgement in this instance given the nature of the appeal scheme and the main issue.
 14. However, I am concerned that, with the proposed extended delivery hours, the aforementioned delivery-related noises would take place within the context of lower ambient background noise levels, and also during times when local residents are less likely to be awake, getting up, or travelling to work at the start of the day, and more likely to be asleep at the end of the day.
 15. The Appellant's case relies heavily on the effective implementation of the QDS. I acknowledge that the proposed procedures could be capable of reducing delivery-related noise impacts. However, the system has not yet been introduced at the appeal site, and there is no demonstrable evidence before me to confirm that it would reduce the delivery noise levels to the extent reported in the AA.
 16. Also, I find that the successful implementation of the QDS would be reliant upon the individual actions of a number of employees, and I am not convinced that it is capable of being effectively enforced in practice. Therefore, I find that such a scheme cannot be relied upon to justify the proposed extension to the store delivery hours.
 17. The Appellant states that the QDS has been successfully implemented at other Morrisons stores. The Council refers to an example of another supermarket where noise complaints were received after the implementation of a QDS. I have not been provided with specific details of these sites and their relevant planning histories by either of the main parties. In any case, I must determine the appeal on the merits of the appeal proposal, having regard to the specific circumstances of the appeal site.
 18. I find that the relatively low number of complaints to the Council from local residents since the store has been in operation tends to demonstrate the effectiveness of the current delivery hour restrictions. Also, the complaints that have been made in respect of noise emanating from the delivery yard outside

the permitted delivery times demonstrate the potential for extended deliveries into the night to adversely impact on neighbouring living conditions.

19. Having regard to the above, I find that insufficient evidence has been presented to demonstrate that the proposal would not be harmful to the occupiers of nearby dwellings in terms of additional night-time noise and disturbance.
20. For the above reasons, I conclude that the condition restricting deliveries to the supermarket to between the hours of 0630 and 2200 is necessary and reasonable, and that the proposal would be likely to cause excessive and unreasonable harm to the living conditions of the occupiers of nearby residential properties in respect of noise and general disturbance. The proposal would therefore conflict with Policies EM10 and EM12 of the Basingstoke and Deane Local Plan 2011 – 2029 (2016). These policies, amongst other things, require new development to provide a high quality of amenity for occupants of neighbouring properties and avoid noise pollution which is detrimental to quality of life. This is consistent with the Framework, as it seeks to promote health and wellbeing and a high standard of amenity for existing residents.

Other Matters

21. The issue of noise needs to be considered in conjunction with the three dimensions of sustainable development within the Framework. The Appellant has identified a number of social, economic and environmental benefits arising from the staggering of deliveries that the proposal would facilitate. These include the more efficient operation of the business, improved customer satisfaction in respect of produce availability early in the day, with customers less likely to shop elsewhere, more efficient working practices, reduced traffic congestion during peak periods, and reduced fuel consumption and improved carbon footprint due to shorter delivery journey times outside peak traffic hours.
22. I have not been provided with evidence to demonstrate that the existing delivery arrangements are a potential threat to the store viability, or that they have given rise to traffic congestion problems. I acknowledge that there could be some environmental benefits arising from shorter delivery journey times. However, whilst I acknowledge that the proposal might support economic growth and introduce some social and environmental benefits, given the relatively small increase in overall delivery hours proposed, and the lack of measurable evidence of such benefits, I do not consider that they outweigh the aforementioned harm in respect of neighbouring living conditions.

Conclusion

23. For the reasons set out above, I conclude that the appeal should be dismissed and the condition retained in its present form.

S Leonard

INSPECTOR