



Appeal Decision

Site visit made on 21 May 2020

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th July 2020

Appeal Ref: APP/E2001/W/20/3244799

Old Goole Co-Operative and Post Office, Swinefleet Road, Goole DN14 5UY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Co-operative Group Food Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref 19/02394/VAR, dated 18 June 2019, was approved on 7 November 2019 and planning permission was granted subject to conditions.
 - The development permitted is Variation of Condition 4 (delivery hours & plant and machinery) on planning permission 2/89/1166 to change delivery hours from 08:00-20:00 Monday to Friday; 08:00-14:00 on Saturdays; to 08:00-20:00 Monday to Friday; 08:00-18:00 on Saturdays and 10:00-14:00 on Sundays and Bank Holidays and removal of reference to plant and machinery.
 - The condition in dispute is No 2 which states that: No deliveries or servicing of the premises shall take place except during the following hours: 08:00 - 20:00 Monday to Friday; 08:00 - 18:00 Saturdays.
 - The reason given for the condition is: This condition is imposed in the interests of residential amenity, in accordance with policy ENV1 of the East Riding Local Plan Strategy Document.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal seeks the variation of the hours' condition (no. 2) to include deliveries or servicing of the premises between 10:00 and 14:00 hours on Sundays and Bank Holidays which it currently prohibits.

Main Issue

3. The main issue is whether the condition is reasonable and necessary in the interests of the living conditions of the occupiers of no. 13 Heber Terrace, having particular regard to matters of privacy and noise.

Reasons

4. The Co-Operative store and Post Office building is situated at the junction of Percy Street and Swinefleet Road (A161) within the built-up area of Old Goole and is surrounded on three sides by residential dwellings. A side delivery area and access walkway are directly adjacent to the shared boundary with neighbouring property no. 13 Heber Terrace, a two-storey end-of-terrace dwelling with a single storey rear extension and large back garden. There are two windows on the side elevation of no. 13 which directly face the delivery area and access walkway, neither of which appear to be obscure glazed.

5. At the time of my visit there were no deliveries taking place and the area of hardstanding was quite full with several customers parking their vehicles there whilst doing their shopping. The levels of traffic on the A161 at this time were not significant and I also did not notice any discernible noise from the nearby docks. Consequently, and given the fact that the area is predominately residential and from what I heard whilst on my site visit, I consider the area to be relatively quiet when no deliveries are being made with the only noise being local traffic and customers' vehicles.
6. Whilst I acknowledge that there would be potential noise from the docks when they are in use, this is no doubt something to which local residents have become accustomed. Therefore, taking these factors into account, it would be reasonable to think that the area would be even quieter on a Sunday. This is because, according to Council Members, the docks are not routinely in use on a Sunday. In addition, there are no goods deliveries to the store that day, and the number of customers using the store are likely to be less than on a weekday. Furthermore, a Sunday or Bank Holiday is traditionally a day for residents to relax and enjoy the leisure that can be afforded to them by for example sitting outside in their back garden when the weather permits.
7. The delivery area and walkway to the front and side of the appeal property is very close to the shared boundary with no. 13 Heber Terrace. It is also at a level slightly higher than the immediately adjacent boundary fence and also the garden fence of no. 13 at the other side of the delivery vehicular access. As a result, the store staff using the side door and walkway when delivering goods are able to see into the back garden and kitchen of no. 13. Consequently, from what I have observed, and from the evidence before me, it is clear that when goods are delivered to the appeal property, material harm is caused to the living conditions of the occupiers of no. 13 with regard to overlooking and loss of privacy.
8. The disputed condition (no. 2) currently allows for deliveries or the servicing of the premises between 08:00 – 20:00 hours on weekdays and 08:00 – 18:00 hours on Saturdays whilst prohibiting these activities on Sundays and Bank Holidays, which and being mindful of paragraph 80 of the National Planning Policy Framework (the Framework), I consider to be more than sufficient to allow for the adequate stocking of shelves in a store the size of the appeal property. I have no convincing evidence that an additional four-hour window for deliveries on Sundays and Bank Holidays would be essential for the continued operation of the store or indeed to prevent stock shortages.
9. I acknowledge the appellant's point that the proposed deliveries on Sundays/Bank Holidays would be within the store's permitted opening hours and would neither be early in the morning or late at night. However, the adjoining neighbours have commented that deliveries create noise from the cages and from people involved with the delivery staff talking and shouting. Given the quieter ambient noise levels on a Sunday, this would be even more noticeable than on other days of the week. I also acknowledge that the Co-Op store and Post Office provide an essential, and accessible service for the local community in accordance with paragraphs 91 and 92 of the Framework, and that it is important that its shelves are well-stocked. However, given that the store is open seven days a week, it is unlikely that most of its customers would wait to do their essential shopping first thing on a Monday morning.
10. As it currently stands, when deliveries are made to the store, overlooking of the rear of no. 13 Heber Terrace occurs even if these deliveries are infrequent. I note the appellant's point that should the variation of condition no. 2 be allowed, a fence would be erected that would likely mitigate this overlooking in compliance

with condition no. 3. I also acknowledge that should the appeal scheme be refused that the appellants would not implement the already permitted extended delivery hours on a Saturday meaning that the fencing would not be erected, that the current harm caused by overlooking would continue, and that the proposal would therefore represent an improvement on the current situation in this regard.

11. However, condition no. 3 does not specify what type of fencing this should be. Consequently, it is not clear to me whether this fencing would also provide an acoustic barrier to reduce any additional noise that would potentially be caused by the proposed extra deliveries. Therefore, whilst I acknowledge that no objections were received from the Council's Public Protection Team, I cannot be sure that any additional noise that would potentially be generated on quieter days such as Sundays and Bank Holidays would be sufficiently reduced by the fencing thereby mitigating any unacceptable harm that may be caused. As a result, even though the fencing would likely mitigate the harm caused by overlooking I am not certain that it would also mitigate any unacceptable harm potentially caused by the proposed extra deliveries in relation to noise and disturbance.
12. Accordingly, the evidence before me does not offer sufficient clarity and robustness to enable me to conclude that the living conditions of neighbouring occupiers would not be unacceptably harmed by any noise and disturbance caused by these extra deliveries. I therefore conclude that the proposed variation of condition no. 2 would conflict with Policy ENV1 of the adopted East Riding Local Plan (April 2016) which supports development that has regard to the amenity of existing properties, amongst other considerations.

Conclusion

13. For the reasons given above I conclude that the appeal should be dismissed.

C Coyne

INSPECTOR