



Appeal Decision

Site visit made on 21 July 2020

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th August 2020

Appeal Ref: APP/W3005/W/20/3252577

11-13 Chiltern Mills, Station Road, Sutton in Ashfield NG17 5FF

- 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 Philip MacLauchlan (Toolstation Ltd) against the decision of Ashfield District Council.
 - The application Ref V/2019/0731, dated 15 November 2019, was refused by notice dated 9 January 2020.
 - The application sought planning permission for change of use from A1-Retail to B8 Storage and Distribution without complying with conditions attached to planning permission Ref V/2019/0337, dated 25 July 2019.
 - The conditions in dispute are Nos 3 and 5 which state that: '*No deliveries shall be taken at or despatched from the application site outside the hours of 7am to 7pm, nor at any time on Sundays or bank holidays*' and '*No ancillary retail sales shall take place outside the following hours: Monday to Saturday 7am - 7pm; and Sunday 9am - 4pm*'
 - The reasons given for the conditions are: '*To safeguard the amenities of residents living in dwelling located in the vicinity of the application site*' and '*To safeguard the amenities of residents living in the vicinity of the application site*'.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from A1-Retail to B8 storage and distribution at 11-13 Chiltern Mills, Station Road, Sutton in Ashfield NG17 5FF in accordance with the application, Ref V/2019/0731, dated 25 July 2019 and subject to the following conditions:
 - 1) No deliveries shall be taken at or despatched from the site outside the hours of 07:00 to 23:00, nor at any time on Sundays or bank holidays.
 - 2) No ancillary sales shall take place outside the following hours:
Monday to Saturday 07:00 – 20:00
Sunday 09:00 – 17:00.
 - 3) The front and rear car parking areas shall be kept available for the parking and manoeuvring of vehicles and kept free from any outside storage at all times.

Application for costs

2. An application for costs was made by Mr Philip MacLauchlan (Toolstation Ltd) against Ashfield District Council. This application is the subject of a separate Decision.

Background

3. The proposal is to extend the trading hours from those originally imposed¹, to between 0700 and 2000 hours Monday to Saturday, and 0900 and 1700 hours on Sunday. The proposed hours represent an additional hour of trade each day.
4. It is also proposed to extend the delivery hours from those originally imposed, to between 0700 and 2300 Monday to Saturday, equating to an additional four-hour window available for deliveries each day, except Sunday.
5. The Planning Practice Guidance (PPG) makes it clear that the Local Planning Authority (and, therefore, the Inspector) shall consider only the question of the conditions subject to which planning permission should be granted. It is not a complete re-consideration of the original application.

Main Issue

6. Having regard to the above, the main issue is the effect that varying the conditions would have on the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance.

Reasons

7. The appeal site comprises a storage and distribution unit. It adjoins a hot-food takeaway and lies directly opposite a larger commercial retail park. The site lies adjacent to detached residential properties and there are properties generally to the rear of the site located off Portland Street. The site's position off Station Road, which is characterised by relatively high levels of traffic and a mix of uses, gives the area an eminently urban character where residential and commercial uses coexist.
8. The Council contends that relaxation of the conditions would lead to additional comings and goings over a prolonged period and into the evening/night which, due to the proximity of residential properties and the noise attributed to extended opening and delivery hours, would result in unacceptable noise and disturbance for occupiers of neighbouring properties.
9. The appellant has submitted a Noise Assessment Report (NAR)² which is based on a noise survey undertaken at a point close to the boundary of the nearest dwelling (No 5 Station Road). The NAR measured existing noise levels in the area covering a period of three full days and nights, with the predicted noise impact from the proposal to extend the opening hours for customers being based on trade activities at similar units³. The NAR concluded that the additional trading hour proposed each day would not noticeably increase the noise levels over and above the prevailing background noise at the time of the survey.

¹ Ashfield District Council planning permission reference – V/2019/0337

² The NAR was carried out prior to the appeal site's current operation by Toolstation

³ Other units operated by the appellant, Toolstation

10. The PPG advises that, *'at the lowest extreme, when noise is not perceived to be present, there is by definition no effect. As the noise exposure increases, it will cross the 'no observed effect' level. However, the noise has no adverse effect so long as the exposure does not cause any change in behaviour, attitude or other physiological responses of those affected by it. The noise may slightly affect the acoustic character of an area but not to the extent there is a change in quality of life. If the noise exposure is at this level no specific measures are required to manage the acoustic environment'*⁴.
11. The NAR concluded that the noise arising from the extension of trading hours would be so minimal that it would be at the lowest extreme, thus by definition it would have no effect. Having reviewed the NAR, the Council maintain their objection to the proposal, but do not offer any technical rebuttal of the NAR's findings, thus I have no reason to question the veracity of the NAR, or its overall findings that the additional daily trading hour would not increase noise exposure to an unacceptable levels.
12. I appreciate that the increase in noise arising from the extended delivery hours would have the potential to be more disruptive, not least because the proposal would allow deliveries to take place for a more prolonged period during the late evening/early night, at a time when residents would be more likely to be at home relaxing or possibly sleeping. However, access to the appeal site from Station Road is shared with the adjoining hot-food takeaway which is open daily from 11am to midnight, with extended hours on a Friday and Saturday night. Consequently, background noise levels are already affected by traffic and activities generated by the fast food outlet.
13. The NAR measured the noise generated from a delivery undertaken at a separate Toolstation unit. There is nothing in the evidence before me to doubt that the NAR noise survey undertaken would be representative of a typical delivery at the appeal site. The predicted increase in noise arising from extended deliveries at the appeal site would indicate a minor adverse impact, but it would be indistinguishable from ambient noise levels, including the activities associated with the neighbouring takeaway use. As a result, the PPG guides that noise that would be present but not obtrusive, as is the case here, by definition would have no observed adverse effect and, consequently, no specific mitigation measures would be required.
14. Overall, the extended trading and delivery hours proposed would largely coincide with activities associated with the adjacent takeaway. Despite the close proximity of a number of properties, the NAR provides technical evidence to support the assertion that the proposal would not have an unacceptable impact on the living conditions of the nearest adjacent properties, or those residing in properties on Portland Street, in terms of noise and disturbance from extended trading and delivery hours. There is limited evidence from the Council to dispute these findings.
15. Therefore, I find that the proposal to vary the conditions would be in accordance with Saved Policy ST1 of the Ashfield Local Plan Review 2002 and paragraph 127 of the National Planning Policy Framework (the Framework) which require, amongst other matters, that development does not adversely affect the amenity of the environment and ensures a high standard of amenity for existing users.

⁴ PPG - Paragraph: 005 Reference ID: 30-005-20190722

Conditions

16. The PPG makes it clear that permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. As the original permission has already been implemented, it is not necessary to impose a '3 year' time limit condition. However, it is necessary to impose restrictions on trading hours and delivery times, as set out in this decision. I have also re-imposed the original condition in order to ensure car parking areas are kept free of vehicles and storage, in the interests of highway safety and character and appearance. Such conditions meet the tests set out in paragraph 55 of the Framework.

Conclusion

17. I conclude that the proposal would not have a significant adverse impact on the living conditions of nearby residents. For the reasons given above, the appeal is allowed.

Matthew Woodward

INSPECTOR