



Appeal Decision

Site visit made on 25 August 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th September 2020

Appeal Ref: APP/W2465/W/20/3254060

29 Lutterworth Road, Leicester LE2 8PH

- 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 Mr Marc Mead, Enterprise Rent-A-Car against the decision of Leicester City Council.
 - The application Ref: 20191534, dated 3 September 2018, was approved on 11 December 2019 and planning permission was granted subject to conditions.
 - The development permitted is a variation of condition 4 (hours of work) attached to planning permission 20030774 (change of use from car sales to car rental) to allow for office hours of 0600-2200, opening hours of business to the public of 0800-1800.
 - The conditions in dispute are Nos 3 and 4 which state that:
 - 3. The use shall not be carried out outside the hours of 0600-2200 Mondays to Fridays, and 0900-1700 Saturdays, nor at any time on Sundays or officially recognised public holidays.*
 - 4. None of the following shall take place outside the hours of 0800-1800 hours Mondays to Fridays, and 0900-1700 hours Saturdays, nor at any time on Sundays or officially recognised public holidays: 1. cleaning, maintenance, moving or operation of any vehicle on the site; 2. operation of any machinery on the site; or 3. access for customers to the site. Outside of these hours the site shall only be used by staff for administrative work within the office.*
 - The reason given for both conditions is: *In the interests of the amenities of nearby occupiers, and in accordance with policy PS10 of the City of Leicester Local Plan.*
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Decision

1. The appeal is allowed and the planning permission ref: 20191534 for a variation of condition 4 (hours of work) attached to planning permission 20030774 (change of use from car sales to car rental) to allow for office hours of 0600-2200, opening hours of business to the public of 0800-1800 at 29 Lutterworth Road, Leicester LE2 8PH granted on 11 December 2019 by Leicester City Council, is varied by deleting conditions 3 and 4 and substituting for them the following conditions:
 - 1) The use shall not be carried out outside the hours of 0600-2200 Mondays to Fridays, and 0800-1800 Saturdays, nor at any time on Sundays or on Bank or Public Holidays.
 - 2) None of the following shall take place outside the hours of 0800-1800 hours Mondays to Saturdays, nor at any time on Sundays or on Bank or Public Holidays:
 1. cleaning and maintenance of any vehicle on the site;
 2. operation of any machinery on the site; or

3. access for customers to the site.

Outside of these hours the site shall only be used by staff for parking/collection of their vehicles for commuting purposes and administrative work within the office.

- 3) The moving of any vehicle on the site, other than those used by staff for commuting purposes, shall not take place outside the hours of 0700-2200 hours Mondays to Fridays, and 0800-1800 hours Saturdays, nor at any time on Sundays or on Bank or Public Holidays.

Procedural Matters

2. The name of the appellant on the appeal form is stated as "Mr Steven Sherburn". I am, however satisfied that the appellant has the authorisation for the appeal to proceed as the company name is the same. As an appeal can only ordinarily proceed in the name of the applicant, it is the applicant's name which is included in the banner heading details above.
3. The appellant submitted a Noise Assessment with the appeal. As the Council and interested parties have had the opportunity to comment on it during the course of the appeal, I have considered it in my decision.

Background and Main Issue

4. The appeal concerns a car rental premises. The appellant applied to the Council to vary the hours and the activities which can be carried out within specified times of use, as was set out in the original planning permission¹. This was due to changing business requirements.
5. The Council approved the application. However, this was not in accordance with what the appellant requested. Accordingly, the appellant has sought to vary conditions 3 and 4 through the submission of this appeal. The wording of these conditions is set out in the banner heading details above.
6. The appellant wishes for condition 3 to be varied to allow longer working hours on a Saturday and to be able to move or operate vehicles outside of the restrictions of condition 4, but within the limitations set by a further condition. The Council are, though, concerned that this would result in undue noise and disturbance to the living conditions of the occupiers of the nearest neighbouring properties. The site abuts residential properties on Marsden Lane, Lutterworth Road and Logan Avenue.
7. As a consequence, the main issue is the effect of the proposal on the living conditions of the occupiers of the nearest residential properties on Marsden Lane, Lutterworth Road and Logan Avenue by way of noise and disturbance.

Reasons

8. The site is located on the corner of Marsden Lane with Lutterworth Road, and access is taken close to this junction. The layout of the site is not untypical for such a use. It contains a main office and customer reception building, an attached maintenance building, and areas for the parking of cars and vans.
9. The closest residential property to where a number of these activities take place is 3 Marsden Lane (No 3). A close boarded fence and the side elevation

¹ Council ref: 20030774

of the maintenance building lie along, or close, to a shared boundary. Cars are parked adjacent to this boundary and this part of the site is also where cleaning and jet washing takes place. The nearest part of No 3 to the site is a single storey annex building which lies close to the boundary, with a parking space to the front. The associated dwelling is set back from the boundary by the annex and a narrow rear access path.

10. The nearest properties on Lutterworth Road, which is a busy thoroughfare, are located either closest to where there are vans parked on the site or on the opposite side of the junction with Marsden Lane. The nearest properties on Logan Avenue to the rear of the site are well set back with a building associated with the use closest to the common boundary.
11. With the proximity of the residential properties to the site, in particular No 3, there would be the potential for the proposal to cause additional noise because the effect of the appellant's proposed variations of the conditions would be to increase the hours of activities over and above those which are permitted. Accordingly, the appellant carried out a noise survey and this has informed the Noise Assessment that has been submitted with the appeal. The Noise Assessment has regard to the guidance and criteria in British Standard 4142 (BS4142) and finds there would be a low impact. Given the proximity of the site to the busy Lutterworth Road and the associated background noise from traffic, this would not be unexpected.
12. The Planning Practice Guidance: Noise (PPG) also recognises that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. Therefore, it is also important to consider the effect of the characteristics of the noise. The PPG sets out that a contributory factor includes non-continuous sources of noise. This is of relevance because the primary source of the noise would relate to vehicle movements, such as engine noise and car doors opening and closing. It would also occur at a time when noise levels would be expected to be quieter than during the day and when local residents may be most likely to be at home. The Noise Assessment does have regard to these types of noise sources and applies an acoustic feature correction to the BS4142 calculation before coming to its conclusions over a low impact.
13. The potential for the occupiers of the nearby properties to experience noise and disturbance also has to be considered in the context of the nature of the vehicular movements that would be taking place. The appellant has stated that 1 vehicle would be manoeuvring at any time, which would take place for no more than 30 seconds each. At worst, it is said that up to 8 manoeuvres would take place per hour with up to 4 minutes of activity. With the confines of the site, this would not seem to be unreasonable. Such movements also do not appear excessive when it is considered that some vehicular movements would be generated along Marsden Lane itself as it accesses a residential area, and notwithstanding there would also be substantially greater movements on Lutterworth Road.
14. The activities themselves would also be of a limited nature. No customers would be permitted on site in the evenings and nor would cleaning and maintenance take place. Part of the justification for the extended hours is to permit such activities to take place elsewhere and for the vehicles to be dropped off and picked up at customer's homes, rather than at the site. In

these respects, some of the additional noise and disturbance that would be generated would take place elsewhere.

15. An interested party has drawn to my attention that the Noise Assessment has erroneously stated that the annex to No 3 is a garage and considers that a suggested exclusion area has been measured from the wrong building. The operation of an exclusion area would no doubt further mitigate the effects of the proposal. A management plan is already the subject of a separate planning condition. This would be the appropriate means of dealing with such an area, together with the other controls that are suggested in the appellant's submissions. Whilst I also note there is some dispute over the integrity of the boundary fence with No 3 and its acoustic screening qualities, it did seem to be largely intact at the time of my visit.
16. Moreover, as is clear from the submissions, different interpretations of the conditions that the Council imposed can be readily applied, particularly in relation to what staff can and cannot do within the specified hours. As such, elements of the conditions are not precise, reasonable and enforceable, with regard to the tests for planning conditions that are set out in paragraph 55 of the National Planning Policy Framework (Framework). As a consequence, there is a need for greater clarity in the conditions to properly protect the living conditions of the local residents. This should also give greater reassurance to the local residents over the controls which relate to the hours and activities, on implementation of the proposal.
17. The proposed extended hours of use would only vary from the approved hours to a limited degree, for an additional hour at each end of the Saturday hours of use. More restricted hours would apply to the cleaning and maintenance of vehicles, the operation of machinery and access for customers, so that these activities could only take place between 8am to 6pm Mondays to Saturdays, and not at all on Sundays or Public or Bank Holidays.
18. The moving of any vehicle on the site, other than those used by staff for commuting purposes, would have a broader window of use, between the hours of 7am to 10pm Mondays to Fridays, 8am to 6pm Saturdays, and not at all on Sundays or Public or Bank Holidays. As I have set out above, with the anticipated number of vehicular movements, this would not cause undue noise and disturbance concerns. In addition, there would be further noise controls applied through the existing management plan condition.
19. With the application of these conditions, the living conditions of nearby residents would be adequately safeguarded. Significant adverse impacts on health and quality of life would be avoided, with reference to the Framework and the Noise Policy Statement for England (2010).
20. I conclude that the proposal would not have an unacceptable effect on the living conditions of the occupiers of the nearest residential properties on Marsden Lane, Lutterworth Road and Logan Avenue by way of noise and disturbance. Hence, conditions 3 and 4 are not reasonable and necessary, and their removal would comply with the tests for planning conditions that are set out in the Framework and the related advice in the PPG concerning the application of these tests, subject to the imposition of the conditions that restrict the hours and activities.

21. The proposal would also comply with Saved Policy PS10 of the City of Leicester Local Plan (2006) which sets out the factors concerning the amenity of existing or proposed residents that will be taken into account, including noise.

Other Matters

22. As the hours that customers would be on site would only be extended to a limited degree, it would not place undue parking stress on the surrounding area. The vehicles that would be travelling to and from the site would largely be rental vehicles, and so there would be some expectation that they could be accommodated within the site. The increased hours that staff would be on site would also not cause undue parking issues, due to the low number involved. I am also not persuaded that light spill would give rise to untoward concerns, with the limited functions that it would relate to.
23. Interested parties have also raised whether or not the site is now suitable for the use. I have dealt largely with matters that relate to noise and disturbance in my decision, as this is relevant to the conditions that are the subject of this appeal. Otherwise, this is not a matter for my consideration. The same applies concerning the record of adherence to the existing conditions, as this would be a matter for the Council.

Conditions

24. I have imposed conditions that restrict the hours that the use can be carried out and provide limitations on the activities with regard to the hours with which they can be carried out. This is in the interests of protecting the living conditions of the occupiers of the nearest residential properties. Where I have altered the wording of the conditions that have been put forward, I have done so in the interest of precision without changing their overall intention.
25. These conditions replace conditions 3 and 4 on the planning permission that is the subject of this appeal. The other conditions on this permission remain unaltered and should be read alongside my decision.

Conclusion

26. The proposal would not have an unacceptable effect on the living conditions of the occupiers of the nearest residential properties on Marsden Lane, Lutterworth Road and Logan Avenue by way of noise and disturbance. I have considered all matters that have been raised but none would demonstrate that conditions 3 and 4 are reasonable and necessary. Accordingly, I conclude that the appeal should be allowed and conditions 3 and 4 should be removed, subject to the imposition of the conditions that restrict the hours and activities.

Darren Hendley

INSPECTOR