



Appeal Decision

Site visit made on 8 September 2020

by J P Longmuir BA (Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th December 2020

Appeal Ref: APP/T0355/W/20/3251767

Sytner BMW, Lyndhurst Road, Ascot, SL5 9ED

- 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 Sytner BMW against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/02287, dated 14 August 2019, was refused by notice dated 13 November 2019.
 - The application sought planning permission for redevelopment of existing premises to provide vehicle after sales building with workshops, part store and offices together with car wash, jetwash, parking and ancillary used car sales without complying with a condition attached to planning permission Ref 06/02492, dated 22 January 2007.
 - The condition in dispute is No 14 which states that: The use hereby permitted shall only remain open for the serving of customers between 0800-1830 hrs Mondays to Fridays; 0900-1700hrs on Saturdays and at no time on Sundays and Public Holidays/Bank Holidays. The operation of the use shall only be between the hours of 0700-1830 hrs Mondays to Fridays, 0800-1700hrs on Saturdays (0800-1300hrs for the workshop operation) and at no time on Sundays, Bank or Public Holidays.
 - The reason given for the condition is: to protect the amenities of the neighbourhood and to accord with the Local Plan Policy NAP3.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the existing condition is reasonable and necessary in terms of the noise implications for the residents of Lyndhurst Road and Bouldish Farm Road, or whether the working time of the workshop should be increased particularly with the proposed acoustic fence.

Reasons

3. Lyndhurst Road is to the west of the site, with an open boundary, and on the opposite side of the road are residential properties which extend into the adjoining Stanmore Close. On the southern boundary are the rear gardens of the houses of Bouldish Farm Road, demarcated by a timber fence and trees.
4. The appeal site includes a main building, where most of the service/repair works take place in various dedicated bays with a variety of tools and equipment. Vehicles are driven into the building at an entrance door on the

eastern side and exit at the other side. On the north edge of the site there is a group of outbuildings used as a car wash, jet wash and body work repairs. There is also substantial car parking around all sides of the site except the north.

5. The proposal seeks to extend the operating hours from 13:00 to 17:00hrs on Saturday and allow Sunday working between 10:00 to 16:00. A noise assessment has been undertaken by the appellant which shows noise levels from the site are 15dB above the background levels at the Lyndhurst Road boundary and 10dB above that for Bouldish Farm Road.
6. The proposal also includes a condition to provide a new acoustic 2.4m high fence, on the site boundaries, which has been included in the noise assessment. At the Bouldish Farm Road boundary, noise from the site would then be +1 dB above ambient levels on Saturday afternoon and at ambient level on Sunday. For the Lyndhurst Road boundary, it would then be +5dB on Saturday and +4dB on Sunday. The relevant standard (BS4142:2014) states that 5dB is an indication of an adverse impact.
7. In any event the noise assessment is based on assumptions including what machines are operating, and inevitably there will be variations accordingly to the combination of activities as well as influences from the external environment. Consequently, there is a risk that at times noise levels could be higher.
8. I therefore conclude that from the Lyndhurst Road boundary, the emanating noise above background levels, even with the proposed fence, would be a discernible nuisance on a Saturday afternoon and Sunday for the Lyndhurst Road residents. The increased hours of working would impair the basic living conditions of these residents when they are most likely to be at home and in need of quiet time.
9. The noise report modelled the output with the eastern workshop door shut, which would lessen the levels on Saturday and Sunday at the Lyndhurst Road boundary. However, the closure of this door has not been made as a formal amendment to the proposal and indeed would need to be the subject of re-consultation, so it would not be appropriate to reach a conclusion on its significance.
10. Whilst there are powers outside the planning system on noise nuisance, in this specific case the original condition was imposed to make the use acceptable bearing in mind the adjacent residential properties. Therefore, the onus is on the planning system to continue to control the noise as it permitted the use.
11. The proposed acoustic fence will help reduce noise at all times and not just for the additional times sought in the appeal proposal. However, the benefit during the week, would be not overly significant as more residents would be at work and the critical time for quiet relaxation at home is Saturday afternoon and Sunday.
12. Policy NAP3 of the Royal Borough of Windsor and Maidenhead Local Plan (LP) states that proposals which are likely to emit unacceptable levels of noise beyond the site boundaries will not be permitted. As I have found above the proposal would emit unacceptable noise at times which are particularly important to quality living conditions. Reference is made to policy NAP2 of the

LP which sets parameters for the location of new housing. The dwellings have UPVC windows which would offer protection inside the property. However, the outdoor spaces and gardens are vulnerable to the noise and the policy does state housing is only acceptable if appropriate levels of sound insulation are incorporated. The residents' outdoor space would not be afforded any specific protection at these levels and in any event the noise assessment is based on assumptions and could at times be higher. Accordingly, the proposal would conflict with this policy. Paragraph 127 of the National Planning Policy Framework requires development to function well and the proposal would therefore conflict in terms of living conditions. Policy EP 4 of the Emerging Borough Local Plan seeks an average noise level of 55dB(A) during daytime however the Council advise the examination into the plan has been adjourned. Accordingly, I give this policy very limited weight and, in any event, the +5dB(A) above ambient levels would be an adverse impact at otherwise quiet times.

13. The increased working time would help the success of the business and promote prospects for employment as well as providing an improved service to the community by offering more capacity and more extensive times for works. However, this would not outweigh the noise impact on the residents of Lyndhurst Road.
14. The original condition preventing Saturday afternoon and Sunday working is therefore still necessary and reasonable to protect the basic living conditions of the Lyndhurst Road residents. Accordingly, the condition meets the tests in paragraph 55 of the Framework and on the basis of the submission the operating hours should not be extended.

Conclusion

15. I therefore conclude that the appeal should be dismissed.

John Longmuir

INSPECTOR