



Appeal Decision

Site Visit made on 20 January 2021

by S Thomas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2021

Appeal Ref: APP/F0114/W/20/3262459

Former Ministry of Defence Ensleigh, Granville Road, Lansdown, Bath, BA1 9AX

- 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 Vistry Homes Ltd (trading as Linden Homes) against the decision of Bath and North East Somerset Council.
- The application Ref 20/00603/EVAR, dated 10 February 2020, was refused by notice dated 4 May 2020.
- The application sought planning permission for a variation of condition 18 attached to permission ref. 16/05360/EVAR. The proposed wording of the condition was amended during the application process to read as follows: The retail store (Use Class A1) shall be open to customers only between the hours of 7.00am-22.00pm Monday to Sunday. No deliveries shall be taken at or dispatched and no delivery vehicles shall park within the application site outside these hours Monday to Saturday and outside of the hours of 8.00am-8.00pm on Sundays with the exception of newspaper deliveries which shall occur after 5am.
- The retail store (Use Class A1) shall be open to customers without complying with condition 18 attached to planning permission Ref 16/05360/EVAR, dated 17 March 2017.
- The condition in dispute is No 18 which states that: The retail store (Use Class A1) shall be open to customers only between the hours of 7.00am-22.00pm Monday to Saturday and 8.00am-8.00pm on Sundays. No deliveries shall be taken at or dispatched and no delivery vehicles shall park within the application site outside these hours.
- The reason given for the condition is: To protect the amenity of the locality, especially for people living nearby.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner above is taken from the appeal form and not the application form. This reflects the amended description of development that was agreed by the main parties during the application process. I have assessed the appeal on this basis.
3. A variation to Planning permission 14/01853/EFUL was granted by the Council in 2017 under Planning permission 16/05360/EVAR. This approved development included a neighbourhood retail store of up to 267 sqm GIA (Use Class A1). Condition 18 of this permission restricts the hours of opening for the retail store and that of deliveries to the store. The justification for the condition was to protect the amenity of the locality, especially for people living nearby.

The appellant now wishes to vary the wording of Condition 18 to extend the opening hours of the store on Sundays and also to allow for earlier newspaper deliveries.

Main Issue

4. The main issue is whether the condition is necessary, relevant to planning and to the development, enforceable, precise and reasonable, having regard to local and national policy.

Reasons

5. The retail store is located at the entrance of the development which is accessed off Lansdown Road. The retail store occupies the ground floor of the building with 4 residential apartments above. Given its location, the retail store including its signage together with an advertisement at the site entrance makes the store very visible for drivers using this road.
6. I note that Paragraph 92 of the National Planning Policy Framework (the Framework) refers to the importance of planning positively for the provision of local shops to enhance the sustainability of communities and residential environments. Whilst the retail store serves the surrounding residential properties, it was clear from my visit that the retail store attracts considerable trade from passing motorists along Lansdown Road.
7. Given the residential uses above the store, occupiers will be particularly sensitive to increased noise and disturbance. Currently, these properties will already experience noise and disturbance during the existing opening hours from customers, traffic and deliveries. In this regard I observed a lorry unloading on the estate road and the noise associated with the refrigeration unit within this was loud. It seems to me that the reduced opening times on Sunday provides residents with peace and quiet outside of store opening hours. This is particularly the case on early Sunday morning when residents should reasonably expect to not be disturbed.
8. Not only will the extended opening times attract occupiers from the estate but given the visibility of the store from passing motorists, the extended opening hours will result in an increase in traffic movements into the site during these hours. This is very likely to cause noise and disturbance to local residents which would be harmful to their living conditions. Whilst I note the appellant's suggestion that noise of customers would be managed by store staff this is not enforceable. I have considered the comments from the Council's Environmental Health Officer, however, this does not persuade me the proposal would be acceptable.
9. Although Sunday maybe the strongest trading day, occupiers of the estate will adjust their shopping habits to suit the operating hours of the store. Whilst I note the appellant's comments regarding the financial constraints of the current opening hours and am sympathetic to these points, there is no detailed evidence before me that the current opening hours means the operation is unviable. Further, whilst I note the store relies on passing trade, they have access to this trade for a significant portion of each day.
10. Even though newspaper deliveries would be undertaken by one van, nevertheless the proposal would allow deliveries anytime after 5am. This is a time of the morning where the effect of additional noise and disturbance on

residents would be heightened. Whilst I note the appellant's view that staff would aim to ensure noise is kept to a minimum, noise associated with the van engine and opening of the rear of the building to deliver the newspapers would give rise to disturbance. Deliveries of newspapers can currently be made from the opening hours of the store. I do not consider the preference to have newspapers ready immediately for the opening of the store is fundamental to its viability. The harm to neighbouring occupiers from the earlier delivery time outweighs any benefits associated with this.

11. Whilst on one hand the Framework recognises the importance of local shops, Paragraph 127 of the Framework also states the need to create places with a high standard of amenity for existing users. Therefore, there needs to be a balance between the needs of the business alongside the need to protect amenity of existing occupiers. In this regard, I consider the existing condition is both necessary and reasonable. The proposed amendment of Condition 18 would unacceptably harm the living conditions of existing occupiers.
12. For the above reasons, I conclude the condition is necessary, relevant to planning and to the development, enforceable, precise, and reasonable, having regard to local and national policy. Varying the condition as proposed would harm the living conditions of neighbouring occupiers with particular regard to noise. Accordingly, the proposal would be in conflict with Policy D6 of the Bath and North East Somerset Placemaking Plan (2017). Amongst other things, this policy requires that development must provide for appropriate levels of amenity and must not cause significant harm to the amenities of existing occupiers of residential premises by reason of increased noise or disturbance.

Other Matters

13. Although there may be other retail stores in the area with opening times as proposed, the full details are not before me. Similarly, I note newspaper deliveries may occur to these at earlier morning times. Whilst this may be the case, the circumstances of the appeal site, the attraction of passing vehicular trade and the proximity to residential uses leads me to conclude it would not be acceptable for this site. In any event, I have assessed the appeal on its own merits based on the circumstances of the site.

Conclusion

14. For the above reasons, the appeal does not succeed.

S Thomas

INSPECTOR