



Appeal Decision

Site Visit made on 11 May

by Mr Stuart Willis MSc, BA (Hons), PGCE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021

Appeal Ref: APP/J1860/W/21/3268391

184 Worcester Road, Malvern, WR14 1AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Ian Walsh of Lidl Great Britain Limited against the decision of Malvern Hills District Council.
- The application Ref 20/01114/FUL, dated 22 July 2020, was refused by notice dated 13 November 2020.
- The development proposed is replacement of the condenser unit - part of the plant equipment serving the Lidl foodstore.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue of the appeal is the effect of the proposed development on the living conditions of occupiers of nearby properties, with particular regard to noise and disturbance.

Reasons

3. During my site visit, which I appreciate is only a snapshot in time, I saw that Worcester Road was relatively busy with regular traffic and pedestrian movements, some associated with the site and other commercial uses nearby. Within the appeal site car park there were also regular comings and goings. Consequently, vehicle and pedestrian movements were frequent and clearly audible within the car park and along Worcester Road.
4. While still in a built-up area, Victoria Park Road is a residential street where I observed much less traffic movements. The rear of the properties along Victoria Park Road were considerably quieter than Worcester Road. There were seating areas and other outdoor spaces in the rear gardens located near the boundary with the appeal site indicating these areas are well used by their occupants.
5. The Acoustic Consultancy Report¹ (ACR) provided by the appellant carried out monitoring to determine the background and ambient noise levels of the area. The ACR found that the rating noise level of the proposed plant would be lower than the measured background noise levels during the day or night at either receptor position.
6. Notwithstanding this, the location of the monitoring equipment was within the car park of the store rather than to the rear of the building where the proposed

¹ Environmental Noise Survey Results and Fixed Plant Noise Impact Assessment Rev A

- plant would be located. Moreover, the findings for the effect of the proposed plant in the ACR were on the basis of the noise levels that would be experienced at the facades of the nearest residential properties rather than their gardens.
7. The proposed plant would be located much closer to the rear gardens of the adjacent properties along Victoria Park Road than the existing equipment. The ACR did not consider the noise effects that would be experienced in the gardens of the properties along Victoria Park Road and monitoring was only for a 2-hour period on one day in a single location. The times when the ACR monitoring was carried out were not when the garden areas would be typically used such as weekends and early evening.
 8. Therefore, I am unable to quantify what is typical during these time periods or within the adjacent rear gardens. Furthermore, the report on behalf of neighbouring residents², that was over a longer period, recorded lower background noise levels than those in the ACR. It also found that background noise levels within the rear garden of a property on Victoria Park Road were lower than at a dwelling.
 9. The existing fans were said to be operating intermittently during the evening and less frequently in the night-time reading during the ACR monitoring. However, the proposed ones would operate on demand, potentially 24hrs a day, 7 days a week. It is not clear how often they would operate and therefore it could be more frequent than the existing plant.
 10. The proposed plant would be different to that previously erected and subsequently removed in a similar location. Nonetheless, the proposed plant would be located much closer to the rear gardens of the adjacent properties along Victoria Park Road than the existing equipment.
 11. I am not persuaded that the ACR provides a fully representative picture of existing background noise at the location of the proposed equipment or the adjacent properties and their gardens. In addition, from the evidence before me, the noise that would be experienced in the gardens of the properties of Victoria Park Road would likely be greater than at the dwellings themselves. The ACR does not offer sufficient clarity and robustness to enable me to conclude that appropriate living conditions of neighbouring occupiers would be retained.
 12. Consequently, the scheme fails to demonstrate that the proposal would not cause unacceptable harm to the living conditions of neighbouring occupiers with regard to noise and disturbance. From the evidence before me it is likely that the proposal would cause such harm given its proximity to the adjacent gardens. The proposal would be contrary to Policies SWDP 31 and SWDP 21 of the South Worcestershire Development Plan, where they in part, require schemes to address neighbouring amenity and avoid significant adverse impacts from pollution.
 13. It would also be contrary to the National Planning Policy Framework where it seeks to achieve a high standard of amenity for existing users and avoid noise giving rise to significant adverse impacts on the quality of life.

² Ventra Acoustics Noise Impact Assessment

Other Matters

14. The proposed development would support the operation of refrigeration equipment within the store and allow it to provide an improved offering. The existing equipment may be beyond its lifespan and it is suggested that the current location causes difficulties for deliveries and air circulation. Nevertheless, a further planning application to erect this equipment in the location of the existing chillers has been submitted. It has not been clearly demonstrated that alternative locations would significantly affect the operation of the store and car park and that the proposed location is the only feasible option.
15. The appeal site is located in the Malvern Link Conservation Area (CA). The proposed siting on the rear of the building would result in the plant being largely screened from within the site and in views from Worcester Road properties. However, it would be, at least in part, seen from dwellings in Victoria Park Road. In addition, the existing plant is in a functional service area and is not overly prominent or incongruous in its current location. Therefore, the proposed development would preserve, but not enhance the character and appearance of the CA.

Conclusion

16. The proposal conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
17. For the above reason, I conclude that the appeal should be dismissed.

Stuart Willis

INSPECTOR