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## Appeal Decision

Site visit made on 14 September 2021

**by R Satheesan BSc PGCert MSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 September 2021**

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**Appeal Ref: APP/Z5060/C/21/3269759**

**Wm Morrison Supermarkets Plc, Wood Lane, Dagenham RM10 7RA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Wm Morrison Supermarkets Plc against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
  - The enforcement notice was issued on 26 January 2021
  - The breach of planning control as alleged in the notice is without planning permission, the unauthorised installation of a detached freezer unit in the service yard, shown edged red on the site plan. (see appendix 1).
  - The requirements of the notice are:
    - Remove the detached freezer unit from the land.
    - Remove all subsequent waste material from the property.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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### Decision

1. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### Procedural Matters

2. During the course of this appeal, the London Plan, 2016, and policies contained within it, has been replaced with the London Plan 2021 (London Plan), which was adopted on 2 March 2021. This must now be given full weight in the decision making process. Both parties have been given the opportunity to comment on the new London Plan, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded London Plan 2016.
3. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). I have invited the main parties to comment on the Framework and have taken account of any responses from them in my determination of the appeal.

## **Ground (a) appeal and the Deemed Planning Application**

### **Main Issue**

4. The main issue is the effect of the development on the living conditions of neighbouring occupiers on Trefgarne Road and Marston Avenue, with particular regard to noise and disturbance.

### **Reasons**

5. The appeal relates to a freezer unit positioned within the servicing yard of a supermarket. The site lies adjacent to Wood Lane, the A124, and the rear gardens of residential properties on Trefgarne Road and Marston Avenue. Whilst the supermarket site is located within a Neighbourhood Centre (NC1 The Merry Fiddlers), I understand that the servicing yard itself is located outside of the boundary. The appellant also states that the site is within an area of prevailing late night uses, that Wood Lane is a busy road in constant use and that there is a bus stop, which serves buses until the late evening, next to the service yard. It is therefore argued that existing background noise levels are high, and a higher level of noise should be acceptable in this location.
6. However, I observed during my site visit when walking along Marston Avenue and Trefgarne Road, away from Wood Lane, that background noise levels drop considerably. As such, both Marston Avenue and Trefgarne Road have a fairly quiet, residential character, where noise levels are likely to be relatively low and there is a susceptibility for the living conditions of neighbouring occupiers to be affected by the introduction of new plant/machinery. I also observed that a number of residential properties which adjoin the servicing yard have modest sized rear gardens and therefore the habitable/bedroom windows of these properties are located in close proximity to this freezer unit.
7. No noise report has been submitted with this appeal and therefore it has not been satisfactorily demonstrated that the noise emitted from the freezer unit is lower than or equal to the existing background sound level. There is also no evidence to suggest that the freezer unit is only in operation at certain times of the day when background noise levels are likely to be higher. Furthermore, I witnessed that the freezer unit produced a constant humming sound, and I note an objection has been raised from a neighbouring occupier complaining that the freezer can be heard when using the garden and when in bed at night. This suggests that it is in use during the day and at night, when neighbouring occupiers should reasonably expect a quieter living environment. I consider that the noise from the freezer unit at night, when background noise levels are typically lower, are likely to be more intrusive and consequentially more harmful. In addition, noise from the freezer unit is expected to be particularly harmful during summer months when neighbouring occupiers are likely to have windows open for ventilation, and more likely to be using their gardens for alfresco dining and for play space/relaxation.
8. In the absence of any noise report, I conclude that the development fails to provide acceptable living conditions for the neighbouring occupiers on Trefgarne Road and Marston Avenue, with particular regard to noise and disturbance. Accordingly, the development conflicts with policies BP8 and BR13 of the London Borough of Barking and Dagenham Borough Wide Development Policies Development Plan Document, 2011 (DPD), and Policy D14 of the London Plan. Amongst other things, these require that all developments are

expected to ensure existing and proposed occupiers are not exposed to unacceptable levels of pollution, including noise, that planning permission will only be granted if there will be no exposure to noise above an acceptable level, and that development proposals should manage noise by avoiding significant adverse noise impacts on health and quality of life.

9. The Council have also referred to policies DMD1 and DMSI 3 of the London Borough of Barking and Dagenham Draft Local Plan. However, as these policies have yet to be adopted, and there is no evidence before me which allows me to make any judgement regarding the extent of unresolved objections, I cannot give them full weight at this time save to acknowledge that they appear not to significantly alter the policies referred to in the extant DPD.
10. Finally, the development is contrary to paragraph 130 of the Framework which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.

#### *Other Matters*

11. I appreciated that the freezer is not readily visible from any public vantage point. However, the lack of harm in respect of character and appearance does not justify the harm I have identified, nor does the lack of communication from the Council during the course of the previous application.

#### **Conclusion on Ground (a) and the Deemed Planning Application**

12. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

#### **The appeal on Ground (g)**

13. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 3 to 6 months, in order to provide the appellant with additional time to remove the freezer, especially in light of the current situation with the Covid-19 pandemic. The appellant explains that the freezer unit is required to assist with home deliveries and the requirement of the Enforcement Notice to remove the freezer within a period of 3 months will place unreasonable demands on the business and impact on its ability to serve those in greatest need of food supplies.
14. I have identified under the ground (a) appeal that the development results in harm to the living conditions of neighbouring occupiers, with regard to noise and disturbance, and therefore the 6 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements. The time for completing the requirements should be what is reasonably considered necessary to complete the requirements, and since the appeal was lodged and statements received, we are now in a different situation with the pandemic, with the easing of social distancing restrictions and the country is no longer in a 'lockdown'. Therefore, I consider that the 3 months given, would be reasonable and proportionate time to comply with the notice.
15. However, should the situation with the pandemic change, I note that the Council have powers under s173A(1)(b) to extend any period for compliance, a

matter entirely at their discretion, without prejudicing their right to take further action.

16. On this basis, the appeal on ground (g) fails.

**Conclusion**

17. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*R Satheesan*

INSPECTOR