



Appeal Decision

Site visit made on 7 June 2022

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 14 June 2022

Appeal Ref: APP/K5030/W/22/3293113

Unit 3, 120 Fenchurch Street, London EC3M 5AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (TCPA) against a refusal to grant approval to details required by a condition of a planning permission.
 - The appeal is made by Sainsbury's Supermarkets Limited against the decision of the City of London Council.
 - The application Ref 21/00489/MDC, dated 8 June 2021, sought approval of details pursuant to condition No 40 of planning permission Ref 14/00237/FULMAJ, granted on 8 February 2016.
 - The application was refused by notice dated 25 November 2021.
 - The permission, granted under section 73 of the TCPA, was for a minor material amendment to planning permission 11/00854/FULEIA, dated 30 March 2012 and for a mixed-use building of 15 storeys, plus mezzanine, etc., to introduce a second entrance lobby, etc.
 - The details for which approval is sought are in a Servicing Management Plan demonstrating the arrangements for the control of the arrival and departure of vehicles servicing the premises.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal relates to Unit 3 on the ground floor of a recently completed fifteen storey office-led, mixed-use development at 120 Fenchurch Street. The appellant seeks to relocate its convenience store operation from nearby Nos 40-45 to this new retail unit on the opposite side of the street.
3. The development at No 120 is subject to a condition requiring accordance with an approved Servicing Management Plan (SMP). The appeal arises from the Council's refusal of an amended SMP allowing a Sainsbury's convenience store at Unit 3 to be serviced directly from Fenchurch Street, rather than internally via the building's communal ground floor servicing area.
4. The main issue in this appeal is whether the amended SMP would be satisfactory with regard to the safe and efficient operation of the surrounding highway network and the living conditions of neighbouring occupiers, with particular regard to any night time noise and disturbance.

Reasons

5. Planning permission was originally granted for the building at No 120 on 30 March 2012¹. Condition 40, to which this appeal relates, applies to a subsequent consent for minor material amendments which now comprises the parent permission for the development as a whole².
6. Condition 40 requires that, over the building's lifetime, its facilities operate in accordance with an approved SMP or any amendment to that allowed. The reason is to ensure no adverse impact on the free flow of traffic in surrounding streets, in accordance with development plan policy. Following the adoption of the City of London Local Plan (LP) in January 2015, the operative development plan policy in respect of this condition is DM16.5 (4). This addresses servicing standards for developments. It requires on site servicing areas be provided to allow all goods and refuse collection vehicles likely to service the development at the same time to be conveniently loaded and unloaded.
7. Condition 40 had earlier been discharged by virtue of a SMP approved in 2016³. The amendments to this⁴, and the subject of this appeal, relate to Sainsbury's proposed occupation of Unit 3 and application of the same on-street delivery arrangements taking place at their operation at Nos 40-45. There are orders in place in the section of Fenchurch Street where the existing and proposed stores are located, which prevent loading between 0700-1900 on Monday to Friday. To avoid these restrictions, the existing Sainsbury's store is serviced between 2300-0300 and the revised SMP proposes the same at Unit 3, including a single main depot delivery between 0000-0200.
8. The current SMP requires that most of the accommodation at No 120 is serviced off-street and through an enclosed ground floor loading and waste collection bay accessed off Billiter Street, via Leadenhall Street. This is apart from ground floor retail units 5 and 6, which may be serviced directly from adjacent Fenchurch Avenue. Otherwise, the internal delivery and waste collection bay at No 120 was found to be adequate to service the needs of the rest of the building. The internal servicing bay provides space for up to three vehicles of a maximum 7.5t box van size, with the SMP requiring arrivals to adhere to a pre-booked time slot.
9. The appellant finds the current SMP arrangements for deliveries to be unloaded within the service yard and stored internally before onward transfer to the relevant unit as unsuitable for servicing a convenience store. This is through this creating a break within the 'cold-chain' for fresh and frozen foods. Furthermore, the internal yard would not accommodate the larger vehicles used by the supermarket, which are of the size needed to accommodate separate shipping compartments for frozen, fresh and ambient produce.

¹ Council reference 11/00854/FULEIA allowing a mixed-use building of 15 storeys, plus mezzanine, lower ground, two basements and a publicly accessible roof garden, to provide Class B1 office use and Class A retail uses including a restaurant at 14th floor level, together with associated public space and landscaping, motorcycle, car and bicycle parking, servicing and plant accommodation (62,643sq.m).

² Planning permission Ref 14/00237/FULMAJ for minor material amendment to planning permission 11/00854/FULEIA dated 30 March 2012 to introduce a second entrance lobby, security scanning for visitors to the roof garden, changes from retail to office use, reduction in the size of the basements change to the internal configuration of floors 10 to 14 and modification to the top of the building, granted on 8 February 2016.

³ Council reference 16/00581/MDC – SMP by JMP Consultants May 2016.

⁴ Sainsbury's Supermarkets Ltd Convenience Store 120 Fenchurch Street, London Servicing Management Plan – Mayer Brown May 2021.

10. Whilst involving more delivery vehicle trips, the appellant has not demonstrated that smaller vans would be unsuitable to supply these separate kinds of produce. Alternatively, it has not been explained why a larger three compartment delivery vehicle needs to be unloaded on Fenchurch Street, rather than on Billiter Road and adjacent to the service yard entrance. Billiter Road is closed off to motorised through traffic to Fenchurch Street, so deliveries at the building's main servicing entrance would cause comparatively much less disruption to the flow of traffic. From this delivery point, the appellant has not provided any reason why shipments might not then be carted immediately through the servicing bay to the rear of Unit 3, without incurring a 'cold chain' break. The carrying distances involved appear little different to deliveries made to the front of the store from Fenchurch Street. I note that the Council had previously refused a revised SMP to allow front servicing for a proposed Pret sandwich shop at Unit 1. In that case, the Council had found it reasonable to service Unit 1 internally, involving a greater distance for carrying perishable items than at Unit 3, which backs directly onto the servicing bay.
11. Policy T7 of the 2021 London Plan seeks that developments facilitate safe, clean and efficient deliveries and servicing. It requires that provision of adequate space for servicing, storage and deliveries be made off-street, with on-street loading bays only used where this is not possible. In this case, the appellant has failed to demonstrate that it would not be reasonably practical to service a Sainsbury's store via the internal area designed for this specific purpose.
12. It might be convenient for the appellant to service Unit 3 from Fenchurch Street. However, such an arrangement would conflict with London Plan Policy T7, insofar as this promotes the off-street servicing of developments so as to reduce the pressure on city streets. Such pressure would clearly arise from allowing on-street delivery arrangements to proliferate and thus reduce safe and uninterrupted movement for other highway users.
13. Although the revised SMP proposes night time deliveries, when there would be significantly less traffic using Fenchurch Street, this would perpetuate the passage, stopping, unloading and departure of goods vehicles during night time hours, when any nearby residential occupiers would be most susceptible to the adverse impacts of the resultant noise and disturbance. The amended SMP would also require a further application to the Council to relax the requirements of condition 42 of the parent permission. This precludes the servicing of No 120 between 2300-0700 hours on weekdays and Saturdays to protect the living conditions of nearby residential occupiers, in accordance with development plan policy.
14. The proposal relates to just a single retail unit and would replace operations already occurring at nearby 40-45 Fenchurch Street. The amended SMP would, in itself, have little impact over the safe and efficient operation of the surrounding highway network or the living conditions of neighbouring occupiers. The harm arises from the conflict with development plan policy that resists on-street servicing and the cumulative adverse implications of allowing exceptions to this. These implications would be particularly acute in the City of London, where there is an exceptionally high density of development and a commensurate need for firm operational management. The harm found would not be outweighed by the economic benefits of a Sainsbury's convenience store

occupying Unit 3, particularly as it has not been adequately demonstrated that the extant SMP would preclude this.

Conclusion

15. The revised SMP would conflict with LP Policy DM16.5 (4) and London Plan Policy T7, which seek that developments provide off-street servicing to preserve a safe and efficient operation of the City's highway network. The proposal would perpetuate the night time servicing of a convenience store that fails to avoid unnecessary noise and disturbance harming the living conditions of nearby residents. For the reasons given, the appeal is dismissed.

Jonathan Price

INSPECTOR