
Appeal Decision

Site visit made on 29 June 2022

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2022

Appeal Ref: APP/Y3615/W/21/3284305

Retail Unit, Parklands, Railton Road, Queen Elizabeth Park, Guildford GU2 9JX

- 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 Tesco Stores against the decision of Guildford Borough Council.
 - The application Ref 20/P/01756, dated 14 October 2020, was refused by notice dated 8 April 2021.
 - The application sought planning permission for a Local centre comprising: Children's nursery, A1 food store, D2 Health & Fitness Centre, mixed use building(to now include the provision for the whole building to be used for the purpose of a doctors surgery within Use Class D1), B1 employment & associated car parking, together with alterations to access arrangements (including the deletion of the Bus only route) from outline planning permission 01/P/0881 without complying with a condition attached to planning permission Ref 02/P/01632, dated 29 November 2002.
 - The condition in dispute is No 37 which states that: *The hours of operation of units within the commercial core application hereby approved are as follows: -
Health and Fitness Centre – 7.00am-11.00pm seven days a week
Children's' Nursery 7.00am-7.00pm seven days a week
A1 Retail Unit 7.00am-10.00pm Mondays to Saturdays and 10.00am-6.00pm Sundays*
 - The reason given for the condition is: *To ensure that the residential amenities of nearby properties are protected.*
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Decision

1. The appeal is allowed and planning permission is granted for Children's nursery, A1 food store, D2 Health & Fitness Centre, mixed use building(to now include the provision for the whole building to be used for the purpose of a doctors surgery within Use Class D1), B1 employment & associated car parking, together with alterations to access arrangements (including the deletion of the Bus only route) from outline planning permission 01/P/0881 at Retail Unit, Parklands, Railton Road, Queen Elizabeth Park, Guildford GU2 9JX in accordance with the application Ref 20/P/01756 dated 14 October 2020, without compliance with condition number 37 previously imposed on planning permission Ref 02/P/01632 dated 29 November 2002 and subject to the following schedule of conditions.

Procedural Matters

2. The Council's decision refers to a superseded version of the National Planning Policy Framework (the Framework), which was revised in July 2021. However, the sections pertinent to this appeal have not materially altered and I will therefore reference the revised version in my decision.

3. The appellant has submitted a Noise Assessment by Sharps Redmore (NA) and a Technical Note by Transport Planning Associates (TN) in support of their appeal. I am satisfied documents are accurate and informed by appropriate professional consideration using adequate parameters. The Council and interested parties have had opportunity to comment on this document. They, therefore, form part of the case before me.
4. It is noted that since this appeal has been submitted the Council have approved an extension to the open hours of the retail unit, which differ to those set out within this appeal. Nevertheless, this decision is made on the merits of the appeal in front of me.

Background and Main Issue

5. The appellant has taken over the A1 retail unit (food store) element of the local centre. They seek to extend the operating hours for the food store from those originally imposed to between 6.00am and 11pm, 7 days a week. As part of this change, the appellant also seeks to retain the already approved amendment to condition 37 for the Health and Fitness Centre operating hours which were varied to between 6.30am and 11pm, 7 days a week (application reference 05/P/00793). The inclusion of this is not contested by any party.
6. In relation to the Council's second reason for refusal, an agreement is before me which replicates the obligations associated with the original grant of permission. I note that the Planning Practice Guidance explains that in considering an application or appeal under section 73 of the Town and Country Planning Act (1990) (the Act), the focus will be on the disputed condition. With that in mind, there is nothing before me to indicate that any of the obligations would fail to comply with the requirements of the Framework or the Community Infrastructure Levy Regulations 2010 (as amended), and there is no dispute between the parties regarding the acceptability of the agreement, having both signed it.
7. Therefore, the main issue is the effect that varying the operating hours of the food store would have on the living conditions of nearby residents in relation to noise and related disturbance.

Reasons

8. The food store is within the established and well used local centre. It is centrally located with its entrance facing the office element of the scheme and its parking and service area between it and the health centre. On the opposite side of the unit is a veterinary surgery. Beyond that a formal sitting area, a large community building and then Railton Road with the nearest residential properties beyond.
9. On visiting the site, I am satisfied that the local centre layout and location of the main entrance and service access, away from the nearby dwellings, would prevent disturbance from internal noise related to the food store operation. However, the operating of such a use is not limited to internal noise, and disturbance can be created by users and staff leaving and entering the food store on foot and by vehicle.
10. The NA states that the proposed extension of hours would not have significant impact on noise disturbance for the occupants of the nearby dwellings excepting the proposed hours of between 6am to 7am on Mondays to

Saturdays. It goes onto conclude that the 6am to 7am extension would likely have a moderate impact. Due to the location, operating hours of other surrounded uses and my observations on site I would agree with the NA's conclusions and note there is no evidence contrary to these findings. Therefore, I conclude that the proposed 6am to 7am extension would have a harmful impact on the living conditions of said occupants.

11. The appellant is cognisant of this potential harm and has not provided any mitigating measures to overcome it. Nevertheless, they have conceded that operating hours between 7am to 11pm would be acceptable. The Council and interested parties, having had opportunity to comment, have not objected.
12. I am therefore satisfied that varying the condition to reflect operating hours for the food store to between 7am to 11pm, 7 days a week would not harm the living conditions of nearby residents in relation to noise and related disturbance. This would comply with Policy G1(3) of the Guildford Local Plan 2003 and paragraph 130 of the Framework.

Other matters

13. Interested parties have referred to potential issues relating to light pollution, litter, and anti-social behaviour. However, the evidence before me does not show a link between these issues and the operation of the food store. With reference to issues relating to conditions attached to other nearby buildings and parking as well as the lack of need for extended opening hours have also been made. There is little detailed evidence supporting these issues, therefore I can only afford them very limited weight. Consequently, they do not outweigh my findings on the main issue.

Conditions and Conclusion

14. I will grant a new planning permission with the amended condition, asset out in the main issue, but retaining those non-disputed conditions from the previous permission that appear still to be relevant. I have updated most of these conditions in align with the Council's suggestions, which have not been disputed by the appellant, save for minor amendments relating to consistency and clarity.
15. As per the requirements of the original conditions, I have allowed for further amendments to external lighting schemes if necessary, and ensured the retention of the landscaping scheme, and road layout and visibility zones.
16. I have also removed conditions relating to the arboricultural method statement, drainage details and certain materials. These were only required for construction or installation prior to first occupation (which has occurred) and did not include retention clauses.
17. For the reasons given above, I conclude that the appeal should be allowed.

RJ Redford

INSPECTOR

Schedule of Conditions

- 1) No external materials shall be used on site except those approved through the discharge of condition 2 of planning application 02/P/01632.
- 2) The boundary treatment details approved through the discharge of condition 3 of planning application 02/P/01632 and implemented prior to first occupation of the buildings, shall be maintained in perpetuity.
- 3) No additional external lighting shall be installed on the site or affixed to any buildings on the site, except that approved through the discharge of condition 4 of planning application 02/P/01632, unless the Local Planning Authority has first approved in writing details of the position, height, design, and intensity.
- 4) The scheme of landscaping approved through the discharge of condition 7 of planning application 02/P/01632 and implemented prior to first occupation of the buildings, shall be retained.
- 5) The internal road layout, traffic calming features, pedestrian, and cycle crossing, banned right turn junction, vehicular accesses and the related visibility zones as approved through the discharge of conditions 11 and 12 of planning application 02/P/01632 and implemented prior to first occupation of the buildings, shall be permanently maintained, and the visibility zones shall be kept permanently clear of any obstruction and shall not be included in any plot or other subdivision of the site.
- 6) Parking provision shall be laid out in accordance with drawing No: 101 Revision H of planning application 02/P/01632 and the following schedule: -

Car Parking Spaces	
Offices	112
Food store	48
Health and Fitness Centre	120
Mixed Use Building	24

These parking areas shall be used and retained exclusively for their designated use.

- 7) The flue details approved through the discharge of condition 24 of planning application 02/P/01632 and installed prior to commencement of use, shall be retained, and maintained for the duration of its use.
- 8) The ventilation and filtration equipment details approved through the discharge of condition 25 of planning application 02/P/01632, and installed prior to commencement of use, shall be retained, and maintained for the duration of its use.
- 9) This permission grants Planning Approval for not more than the gross floor areas of the range of commercial and community uses as set out on page 1 of the applicants' supporting statement (received 26/07/02) as amended by plans received 12/11/02, submitted in relation to planning application 02/P/01632.
- 10) The hours of operation of units within the commercial core application hereby approved are as follows: -

Health and Fitness Centre	- 6.30am to 11pm	7 days a week
Children's Nursery	- 7am to 7pm	7 days a week
A1 Retail Unit	- 7am to 11pm	7 days a week