



Appeal Decision

Site visit made on 27 October 2022

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2022

Appeal Ref: APP/W4705/W/22/3305749

Jewsons, Royd Ings Avenue, Keighley, Bradford BD21 4BZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the act) against a grant of planning permission subject to conditions.
 - The appeal is made by Jewsons against the decision of City of Bradford Metropolitan District Council.
 - The application Ref 22/01258/VOC, dated 18 March 2022, was approved on 8 July 2022 and planning permission was granted subject to conditions.
 - The development permitted is Variation of condition 14 (hours of opening) of planning permission 06/02132/FUL to increase hours of operation/trading hours to 7:00am to 6:00pm Mondays to Fridays, 7:00am to 4:00pm on Saturdays, 08:00 to 4:00pm on Bank or Public Holidays - the premises shall not be used on Sundays.
 - The conditions in dispute are Nos 1 and 2 which states that:
 - 1. *The premises shall not be used outside the hours of:*
7.00am to 6.00pm Mondays to Fridays
7.00am to 1.00pm on Saturdays and
8.00am to 4.00pm on Bank or Public Holidays except for Christmas Day and Good Friday
The premises shall not be used on Sundays; and
 - 2. *The changes to the hours of operation permitted by the condition above shall not come into effect until the applicant has carried out improvements to the site landscaping in accordance with a Maintenance Plan to be submitted to and approved in writing by the Local Planning Authority.*
 - The reasons given for the conditions are:
 - 1. *In the interests of the amenities of neighbouring residents and to accord with Policy DS5 of the Core Strategy Development Plan Document; and*
 - 2. *In the interests of visual amenity and to accord with Policy DS2 of the Bradford Core Strategy Development Plan Document.*
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Decision

1. The appeal is allowed and the planning permission Ref: 22/01258/VOC for variation of condition 14 (hours of opening) of planning permission 06/02132/FUL to increase hours of operation/trading hours to 7:00am to 6:00pm Mondays to Fridays, 7:00am to 4:00pm on Saturdays, 08:00 to 4:00pm on Bank or Public Holidays - the premises shall not be used on Sundays at Jewsons, Royd Ings Avenue, Bradford, BD21 4BZ granted on 8 July 2022 by City of Bradford Metropolitan District Council, is varied by deleting conditions 1 and 2 and substituting them for the following conditions:
 - 1) The premises shall not be used outside the hours of:
 - 7.00am to 6.00pm Mondays to Fridays
 - 7.00am to 1.00pm on Saturdays and
 - 8.00am to 4.00pm on Bank or Public HolidaysThe premises shall not be used on Sundays

- 2) The changes to the hours of operation permitted by the condition above shall not come into effect until a Maintenance Plan for the landscaping at the site has been submitted to, and approved in writing by, the Local Planning Authority. The landscaping shall be thereafter maintained in accordance with the approved Maintenance Plan whilst the use subsists.

Background

2. The appeal site was granted consent (the 2006 permission) for the demolition of existing canopies and lean-to buildings and the change of use of a car dealership to a builders merchant. The 2006 permission included restrictions on the hours that the premises could be used. From the 2006 permission, the appellant seeks an increase, by an hour until 6pm Monday to Friday, by three hours until 4pm on a Saturday and from 8.00am to 4.00pm on Bank/Public Holidays. The Council granted the additional hour. However, it limited its approval of the opening hours on Bank/Public Holidays by excluding Christmas Day and Good Friday. Moreover, it did not approve any increase on Saturdays.
3. The 2006 permission also included conditions relating to landscaping. This included a condition requiring, amongst other things, that schedules of landscape maintenance, for a period of 5 years and the life of the use, be submitted to and approved by the Local Planning Authority. The effect of the permission, which is the subject of this appeal, was to replace the landscaping conditions from the 2006 permission with a new landscaping condition requiring further details to be submitted, agreed, and implemented prior to the increased hours commencing.

Main Issues

4. Accordingly, the main issues are:
 - Whether the disputed condition 1 is reasonable and necessary to ensure that the development does not unacceptably harm the living conditions of occupiers of neighbouring properties with particular reference to noise and disturbance.
 - Whether the disputed condition 2 is reasonable and necessary to ensure that the development does not harm the visual amenity of the area.

Reasons

Hours – condition 1

5. The appeal site lies on the corner of Bradford Road and Royd Ings Avenue in a mixed area, containing commercial premises and residential properties. Toward its southern boundary lies a short terrace of two storey properties, which have their rear elevations facing toward the site. Properties at the eastern end of the terrace are particularly close to the appeal site. The front of the terrace houses faces onto Bradford Road.
6. The residential properties are in a busy area positioned between the road, builders' merchant and retail park, and the noise climate does reflect this. The Noise Assessment (NA) submitted as part of the application has referred to the World Health Organisation's (WHO's) guidelines for acceptable noise environments. This suggests that serious annoyance would be caused if noise

levels experienced outside a dwelling exceed 55db(A) during the daytime, with a moderate annoyance experienced at 50db(A). The results within the NA suggest that the existing background and ambient noise levels are already high, and having regard to the WHO's guidelines, are likely to be at a level that would cause a moderate annoyance to the residents of the terrace.

7. Background and ambient noise levels from when the premises were open and closed were consistent within the recordings. However, the results also show regular activity, with sound recordings of louder occurrences from the builders' merchants, such as forklift truck movements when the premises were open. The noise recordings were a snapshot in time on a single mid-week day. However, the recordings do align with my observations on site, where delivery vans loading and unloading, forklift movements and raised voices from individuals within the appeal site, could all be clearly heard above the background noise when stood along Bradford Road.
8. I do not have any firm details before me of the noise environment during the weekends. However, in my view, people are generally more tolerant of noise generated during the working week, than at weekends. The spikes in noise from the busy Bradford Road are fleeting in nature, passing quickly, and have variety in their sounds. In contrast, the regularity, level and consistent tone from the reversing forklift truck, and other consistently identifiable sounds of activity from within the yard, above the background and ambient noise levels are, in my view, likely to be less easy to ignore, more annoying and ultimately, disturbing to residents at the weekend.
9. The Sunday closure provides some relief to nearby residents. However, the appellant seeks a not inconsiderable increase in the hours of use on a Saturday afternoon. Neither the Council's Environmental Health nor Planning Officer objected to these increased hours. However, notwithstanding this and the conclusions of the NA, given my findings on the activity within the yard, it is reasonable and necessary for controls on the hours of use on a Saturday, as well as the Sunday closure, to provide a regular meaningful weekly break for nearby residents.
10. It is put to me that the restricted hours of operation are out of step with modern trading patterns. Whilst I accept that this may be true of retail units, there is no evidence before me that this is the case for Builders Merchants. Moreover, the appellant has referred me to the retail units near the appeal site. However, they do not have the same physical relationship of having an external storage yard, with all its comings and goings bordering the residential properties. As such, the circumstances of those units, and the relationship to the neighbouring properties along Bradford Road, can be distinguished from the appeal site.
11. It is unclear from the information before me why the hours of use on Bank/Public Holidays have differentiated between Christmas Day and Good Friday and other days. The appellant indicates that this was due to them being religious days. However, I have no firm details from the Council. Moreover, other religious days have not been excluded. In my view, it is reasonable to treat all Bank/Public Holidays consistently for the purposes of the hours of use.
12. To conclude, I find that a condition limiting the hours of use from 7am to 1pm on a Saturday is reasonable and necessary in the interests of the living conditions of the occupiers of neighbouring properties with particular reference

to noise and disturbance. However, it is reasonable and necessary that all bank/public holidays are treated consistently. As such, I have deleted the hours condition and replaced it with one specifying the new hours to reflect my findings. On this basis, I find that there would be no conflict with Policy DS5 of the Council's Core Strategy Development Plan Document (CS). This says, amongst other things, that development proposals should make a positive contribution to peoples lives through high quality, inclusive design. In particular they should not harm the amenity of existing residents.

Landscaping – condition 2

13. The existing mix of low-level planting and trees provides a soft edge to the site and appeared appropriate for its setting. I'm told that the existing planting has been poorly maintained. However, I have no substantive evidence of that. The presence of brambles did not over dominate, or detract, from the street or the visual amenity of the area. Moreover, there is no firm evidence before me that the landscaping has attracted vermin.
14. The appellant sought to vary the hours of use, rather than its landscaping. However, decision notices for the grant of planning permission under section 73 of the act provides the power to not attach conditions, which were previously imposed, or to attach modified versions of them. The landscaping conditions from the 2006 permission required the landscaping to be maintained in accordance with an agreed maintenance schedule. Even though I am satisfied that the existing landscaping is appropriate, it remains a reasonable requirement still to ensure that it continues to contribute to the amenity of the area for the duration of the use.
15. If the Council's condition 2 was simply deleted, the Council would have no powers to ensure that the landscaping would be thereafter maintained, as was reasonably required as part of the 2006 permission. In this regard, it is reasonable and necessary for an alternative condition to be substituted that would require the landscaping to be maintained for the duration of the use. Given that neither party has provided firm evidence that such a maintenance plan was ever previously submitted and approved, it is reasonable and necessary to have this agreed now. Moreover, the Council's timeframe for this, linking it to the new hours of use, is precise and enforceable.
16. I have modified the condition to reflect my observations and require a maintenance plan to be submitted, approved and implemented thereafter. On this basis, I am satisfied that the modified condition is reasonable and necessary to ensure that the development does not harm the visual amenity of the area. Its modification would accord with the requirements of Policy DS2 of the Council's CS. This says, amongst other things, that planning decisions including plans and development proposals should take advantage of existing features, integrate development into the wider landscape and create new quality spaces.

Conclusion

17. For the reasons given above, I conclude that the appeal should succeed, and that the planning permission should be varied by deleting conditions nos. 1 and 2 and substituting them with the conditions set out above.

Mr R Walker

INSPECTOR