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## Appeal Decision

Site visit made on 2 November 2022

**by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

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

**Decision date: 25 November 2022**

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**Appeal Ref: APP/B5480/W/22/3291396**

**8 Stafford Industrial Estate, Hillman Close, Hornchurch RM11 2SJ**

- 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 Screwfix Direct Limited against the decision of the Council of the London Borough of Havering.
  - The application Ref P1599.21, dated 11 August 2021, was refused by notice dated 10 November 2021.
  - The application sought planning permission for change of use to allow B1(b)(c), B2 & B8 activity without complying with a condition attached to planning permission Ref P0547.13, dated 19 July 2013.
  - The condition in dispute is No 4 which states that: The premises shall not be used for the purposes hereby permitted other than between the hours of 8am and 9pm on Mondays to Fridays, 9am to 7pm on Saturdays, and 10am to 4pm on Sundays, Bank and Public holidays, without the prior consent in writing of the Local Planning Authority.
  - The reason given for the condition is: To minimise the impact of the development on the surrounding area in the interests of amenity, and that the development accords with the Development Control Policies Development Plan Document Policy DC61.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. In its reason for the disputed condition and the reason for refusal in respect of the variation of the condition, the Council refers to the Core Strategy and Development Control Policies Development Plan Document. This document has since been superseded by the Havering Local Plan 2021 (the Local Plan). The Council has confirmed which policies from the Local Plan it considers to be relevant to the appeal. The appellant has been afforded the opportunity to comment on these policies. I have therefore assessed the proposal against the adopted development plan.

### Main Issue

3. The main issue is whether the condition is reasonable and necessary with regards to the living conditions of nearby residents in respect of noise and disturbance.

## Reasons

4. The appeal site is part of an estate containing a mixture of storage, industrial and commercial units. The appeal proposal relates to the operation of one of these units as a trade counter aimed at local builders and related services. The appellant emphasises that their business is not a typical builders merchant, and does not include the external storage of goods or heavy materials, or the use of plant or machinery, and would not involve machine or tool hire.
5. There are residential properties which border this commercial estate, including dwellings on Stafford Avenue which back onto the appeal site, albeit with relatively long gardens and separated from the site by an access road.
6. The disputed condition relates to the hours of operation of a number of units within the estate. Solely in relation to the appeal site, it is proposed to vary the condition so that the proposed hours of operation would be extended by an hour earlier on Monday to Fridays, with week day business hours on Bank Holidays, two hours earlier on Saturdays, and an additional hour earlier on Sundays. Week night and Saturday opening hours would be reduced by an hour in the evenings.
7. In effect, the proposal would extend the operation of the business into earlier in the day, with a significant extension on Bank Holidays, when nearby residents could expect a reasonable degree of peace and quiet. I am also mindful that the background noise levels at the times proposed would be relatively low.
8. The appellants have provided a Noise Impact Assessment (NIA) as well as further correspondence from their acoustics consultant. The NIA refers to guidance within the Design Manual for Roads and Bridges in respect of the magnitude of noise impacts, as well as the Noise Policy Statement for England (NPSE) and the National Planning Policy Framework. The NIA concludes that there would be no negative impact on the amenity of the closest noise sensitive receivers should the unit operate on the basis of the proposed variation in hours.
9. However, the Council considers that the NIA does not reflect the nature of noise generated by the site, such as slamming doors and vehicle reversing alarms.
10. In respect of the slamming of doors, I consider that the 'bangs' from the doors of vehicles would be audible to nearby residents, even allowing for the separation distance from the appeal site. Due to the impactful nature of this noise and its unpredictability, the noise from car doors at the extended times proposed would have a significant effect on the living conditions of nearby residents. For instance this may lead to residents closing windows during the proposed extended hours of operation, and even then the intrusive noise from car doors may still be apparent.
11. The appellant contends that the slamming of car doors/boots has been assessed within the NIA. However, it has not been demonstrated that the impulsive and impactful characteristics of this noise source have been appropriately considered.
12. The appellant contends that the types of customer vehicles visiting the unit would not have reversing alarms. However, due to the nature of the business,

a significant proportion of customers would use commercial vehicles such as transit vans. The use of reversing alarms is not limited to HGV's, and I consider that there is a significant possibility that some commercial vehicles which visit the site would use reversing alarms. The tonal and intermittent nature of such reversing alarms would be particularly intrusive, and I consider that this would be clearly audible in nearby residential properties to the detriment of the living conditions of residents.

13. There would also be noise associated with the manoeuvring of vehicles within the car park, as well as the starting of vehicles and pulling away onto the access road. I am not persuaded that the NIA adequately assesses this within the context of road traffic noise and vehicular pass-bys.
14. On the basis of these noise sources, I consider that this would lead to intrusive levels of noise and disturbance at times when nearby residents could expect an appropriate degree of peace and quiet. Due to the timing of the extended hours of operation proposed, this would be likely to lead to premature awakening and difficulty in getting back to sleep. Within the terms of the NPSE this would represent a Significant Observed Adverse Effect Level, which should be avoided.
15. The Council also refers to a number of other noise sources. Given the predicted number of visits and the transitory nature of pedestrian movements from vehicles to the unit, I do not consider that noise from customers talking would be of a degree that would lead to material harm to nearby residents. This would also be the case in respect of large items picked up from the unit, as based on the evidence before me these incidents would be very limited in number.
16. The appellant has confirmed that deliveries by HGV's to the site would only take place during the existing hours of operation, and this could be controlled by condition. The appellant also indicates that trolleys are only used within the building rather than for transferring goods to customers' vehicles. However, consideration of these matters does not negate my conclusions in respect of the harm arising from other aspects of the operation of the site at the extended times proposed.
17. The Council has not produced any empirical evidence to support their case, and both the Council's concerns and those of residents are set out in general terms. However, based on what I have observed and read, those concerns are well-founded. Indeed, it is the appellant's evidence regarding noise which I have found not to be sufficiently robust.
18. I therefore conclude that the disputed condition is reasonable and necessary to protect the living conditions of nearby residents in respect of noise and disturbance. The appeal proposal would therefore conflict with policies 7 and 34 of the Local Plan which seek to ensure that development does not unduly impact upon amenity in respect of unacceptable levels of noise and disturbance.
19. The appellant submits that policy 7 relates to new residential development only, although I note that the relevant section of that policy simply refers to 'developments'. However, even if I was to agree with the appellant on the relevance of this policy, this would not lead me to a different conclusion on the harm arising from the proposal.

## **Other Matters**

20. Policy 19 of the Local Plan seeks to promote business growth. The appellant's business would provide a number of full-time and part-time jobs at the site, although it has not been demonstrated that these rely on the proposed extended hours of operation. Although the proposal may generate a degree of extra employment, this would be to a limited degree compared to the jobs provided at the site within the limitations of the extant conditions.
21. The Council expresses concern that the proposal could set a precedent for other units on this estate to propose an increase in their hours of operation. I consider that this is not a generalised fear of precedent, but a realistic and specific concern as there are a number of units which are subject to restrictions on their hours of use similar to the appeal site. Whilst I am mindful that each proposal should be determined on its individual merits, allowing this appeal would make it more difficult to resist further applications for similar proposals, and I consider that their cumulative effect would exacerbate the harm I have identified.
22. The Council has referred to the potential to grant permission for the variation of the condition for a period of 1 year. However, there is no reasonable degree of certainty that this would demonstrate that the business can operate on the basis of the extended hours of operation without significant harm to residents. I therefore consider that it would not be appropriate to grant permission for a temporary period.

## **Conclusion**

23. The proposal would lead to significant harm to the living conditions of nearby residents in respect of noise and disturbance and would conflict with the development plan. There are no material considerations of such weight that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

*David Cross*

INSPECTOR