



Appeal Decision

Site visit made on 8 November 2022

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2022

Appeal Ref: APP/K3605/W/21/3280400

Sainsburys Store, 53 New Zealand Avenue, Walton-on-Thames KT12 1AD

- 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 Sainsbury's Supermarkets Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2020/0839, dated 1 April 2020, was refused by notice dated 11 February 2021.
 - The application sought planning permission for *Removal of Condition 1 (Temporary Time Limit) AND Variation of Condition 2 (Delivery Times) of planning permission 2015/3317 (Variation of condition to amend permitted delivery times) to allow vehicular movements in and out and within the site and all loading and unloading of vehicles and trailers to take place only between the hours of 07:00-21:00 Monday to Saturday and 09:00-15:00 Sundays and public holidays* without complying with a condition attached to planning permission Ref 2017/0468, dated 26 April 2017.
 - The condition in dispute is No 1 which states that: *Delivery times shall be limited to the following hours: 0700-2100 Monday to Saturday 1000-1500 Sundays and public holidays other than those deliveries subject to the extended delivery hours.*
 - The reason given for the condition is: *To avoid adverse impacts on health and quality of life from noise in accordance with DM5 of the Development Management Plan 2015 and paragraph 123 of the National Planning Policy Framework and the Noise Policy Statement for England.*
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Decision

1. The appeal is allowed and planning permission is granted for Removal of Condition 1 (Temporary Time Limit) AND Variation of Condition 2 (Delivery Times) of planning permission 2015/3317 (Variation of condition to amend permitted delivery times) to allow vehicular movements in and out and within the site and all loading and unloading of vehicles and trailers to take place only between the hours of 07:00-21:00 Monday to Saturday and 09:00-15:00 Sundays and public holidays at Sainsburys Store, 53 New Zealand Avenue, Walton-on-Thames KT12 1AD in accordance with the application 2020/0839, dated 3 April 2020, without compliance with conditions number 1 and 2 previously imposed on planning permission Ref 2017/0468, dated 26 April 2017 and subject to the following conditions:
 - 1) Deliveries, all vehicle movements into or out of, or within the service delivery yard and all loading and unloading of vehicles and trailers shall be limited to the following hours: 0530-2400 Monday to Saturday 0700-1700 Sundays and public holidays.
 - 2) The development only be implemented in strict accordance with the Service Yard Management Plan dated December 2020 by WYG.

- 3) The development hereby permitted shall be carried out only until 12 months from the date of the grant of this permission. At the end of 12 months from the date of the grant of this permission the development hereby permitted shall cease.

Preliminary Matters

2. Planning permission was originally granted for redevelopment to provide a three storey building comprising ground and first floor retail and restaurant and cafe uses (Classes A1 and A3), second floor library (Class D1) and health and fitness (Class D2) together with associated servicing areas, plant and bin stores following demolition of existing buildings (LPA ref 2005/1923). Part of this development is now in use as a Sainsburys Supermarket. This permission was granted with a condition (12) which restricted delivery times to 0800-1900 Monday-Friday, 0800-1800 Saturday and 1000-1300 Sunday.
3. Subsequently there have been a number of applications to vary and remove the conditions relating to delivery hours. Of relevance to this appeal, permission was granted under LPA ref 2015/3317 for vehicular movements in and out and within the site and all loading and unloading of vehicles and trailers to take place only between the hours of 07:00-22:00 Monday to Saturday and 09:00-15:00 Sundays and public holidays. Delivery times were controlled by condition (condition 2). Additional conditions requiring submission of a noise action management plan for all vehicle movements into, out of and within the service yard and loading and unloading of vehicles during the extended delivery times (condition 3), and a condition allowing a temporary 1 year consent (condition 1) were also attached.
4. The most recent permission (LPA ref 2017/0468) removed the condition for temporary consent. It granted permission for deliveries between 0700-2100 Monday- Saturday and 1000-1500 Sundays and public holidays (Condition 1). The condition which required that vehicle movements into, out of and within the service yard and loading and unloading of vehicles between 1900-2100 Monday – Friday, 0700-0800 and 1800-2100 Saturday and 0900-1000 and 1300-1500 Sundays were also required to be in accordance with a noise management action plan was also reapplied (Condition 2). The current appeal now seeks to extend these hours further.
5. The hours for which permission was sought were amended during the application process. Therefore, the description of development is taken from the decision notice which accurately describes the development proposed.
6. During the coronavirus pandemic the government took steps to facilitate flexibility within the delivery supply chain including that local planning authorities should not seek to undertake planning enforcement action which would result in unnecessarily restricting deliveries. This Sainsburys store operated during this time without restrictions relating to hours of delivery being enforced. However, these measures have now ended.

Main Issue

7. The main issue is the effect that varying the delivery times would have on living conditions.

Reasons

8. A noise assessment has been submitted. This sets a target of 30dB average noise level and 45dB maximum noise level for bedrooms. These levels are informed by the British Standard (BS8233) to correspond with the level at which the 'Lowest Observed Adverse Effect Level' would be achieved, which is the level before which noise becomes intrusive.
9. The noise assessment finds that when undertaking deliveries during the hours sought, the average night time noise level would be around 28dB with windows open and 16dB with the windows closed for the most affected residential property. The maximum noise level would be 40dB with the windows open and 28dB with the windows closed at the property most affected by this type of noise. This noise is from deliveries only.
10. Noise levels in the noise assessment were calculated using a refrigerated, articulated HGV delivering consumables, which is a worst case scenario and includes noise from unloading. These are within 2dB of levels measured during an unloading event at the site. Consequently, they are sufficiently robust. As such, the submitted evidence satisfies me that single noise events noticeably exceeding these levels would be unlikely.
11. A Service Yard Management Plan (SYMP) is also submitted which secures measures to keep noise from delivery to a minimum and this is appropriately detailed. This would further reduce the likelihood of noise levels exceeding the predicted levels.
12. As detailed above, deliveries were undertaken outside the hours set by the condition during the pandemic and neighbours have reported being woken and disturbed by noise from deliveries at night times including a complaint to the pollution team. However, these deliveries were operating without any restrictions being enforced. By contrast the proposal would not include any deliveries between 2400-0530, and those that did take place would be required to operate in accordance with the SYMP. As such the effects of the current proposal would not be as intrusive as deliveries that occurred during the pandemic.
13. However, whilst deliveries have taken place outside of the hours required by condition, I have no measurements of the noise that did occur. Furthermore, there is some evidence that disturbance has taken place during late night deliveries (albeit that these were operating under different conditions). As such, taking into account that could occur as a result of noise disturbance, it is reasonable in this instance to make this consent temporary for one year to allow a trial run to assess the effect of the development on the area.
14. Therefore, the proposed development would have an acceptable effect on living conditions. As such it would be in accordance with Policies DM2, DM5 and DM7 of the Elmbridge Local Plan Development Management Plan (2015). Together these require development that may result in noise pollution to incorporate measures to mitigate the effect on residents, that accesses should have an

acceptable noise impact and to protect the amenity of adjoining occupiers, amongst other things.

Conditions

15. I have had regard to the planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents.
16. Conditions to control the hours of deliveries including associated loading and unloading, and restricting this to a temporary one year consent are necessary for the reasons set out above.
17. Application 2017/0468 included a condition requiring submission of a Noise Action Management Plan, which would apply to deliveries late and early in the day. The reason for this condition was to avoid adverse impacts on health and quality of life from noise. This is very similar to purposes of the document referred to in this application as the SYMP. Consequently, a condition requiring a Noise Action Management Plan would no longer be necessary. However, a condition requiring compliance with the SYMP would be necessary for the reasons set out above.

Conclusion

18. For the reasons set out above, and subject to the conditions listed, this appeal is allowed.

H Miles

INSPECTOR