



Appeal Decision

Site visit made on 13 December 2022

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal Ref: APP/X1545/W/22/3294629

**Unit 10, Red Lyons Business Centre, Burnham Road, Latchingdon,
Essex CM3 6JH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Mr J Sinclair against Maldon District Council.
 - The application Ref 21/00745/VAR is dated 12 July 2021.
 - The application sought planning permission for 'change of use of unit 10 from a restricted B8 use (householder storage) to B1' without complying with a condition attached to planning permission Ref FUL/MAL/14/00418, dated 8 October 2014.
 - The condition in dispute is No.2 which states that:
The use hereby permitted shall only be undertaken between 08:00 and 18:00 hours on weekdays and between 09:00 hours and 13:00 hours on Saturdays and not at any time on Sundays and Public Holidays.
 - The reason given for the condition is:
In order to ensure the appropriate use of the site in accordance with policy BE1 of the adopted Maldon District Replacement Local Plan and policy D1 of the Maldon District Submission Local Development Plan.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted on 8 October 2014 for change of use of Unit 10 from a restricted B8 use (household storage) to B1. Condition 2 of that permission restricted the use to be undertaken only between 08:00 and 18:00 on weekdays and 09:00 and 13:00 on Saturdays, and not at any time on Sundays and Public Holidays. The reason for the condition refers to development plan policies and the Council report that it was imposed to protect the amenity of adjoining residents.
3. The appellant applied to the Council to vary condition 2 to change the permitted working hours to 06:00 to 20:00 Monday to Saturday. It is this application which is the subject of this appeal.
4. The main issue is the effect that amending the condition would have on the living conditions of the occupants of nearby residential properties, with regard to noise disturbance.

Reasons

5. The appeal site lies among a cluster of development which extends from the southern side of Burnham Road, to the rear of Red Lyons House. While it is not a designated employment site, the main parties refer to the area as a business park or centre, comprising a mix of uses. Unit 10, to which the appeal relates, is set towards the southern end of the business centre, adjacent to the main access road which runs through it. The site is outside any settlement boundary and open farmland extends along the northern side of Burnham Road.
6. Red Lyons House directly adjoins the business centre and its plot includes a detached garage with rooms above set partially within the roofspace, served by north and west facing windows. Other residential properties exist further to the east along Burnham Road. Given the proximity of the site to the nearest properties, the proposed extended operating hours have the potential to cause noise disturbance to the occupants of those properties.
7. A noise report was submitted as part of the planning application to assess the effects of the extended operating hours. The Council identified a number of shortfalls with that report, including concerns for the monitoring location which was close to the highway and the access gate. As such it did not reflect the noise generated from the appeal site. In addition, I note that the report focuses primarily on the early morning effects, rather than those which might occur in the evening. In the absence of evidence to the contrary, I concur that the report is insufficient to demonstrate the effects of the extended operating hours on the nearest properties.
8. While there are a number of single storey buildings separating the appeal site from Red Lyons House, and while the first floor windows above its garage do not face directly over the appeal site, there is insufficient evidence to suggest that these factors together result in an acceptable impact.
9. The Council's Environmental Health department have reported noise complaints relating to Unit 10, which demonstrate that the use has caused noise disturbance to some degree. In light of those complaints the Environmental Health department recommended a condition be imposed to secure a noise report which would detail noise levels for the combined noise emissions from all sources at the site as well as the wider area at the times of the extended hours, specifying levels which should not be exceeded.
10. While the Environmental Health officer recommended the condition be pre-commencement, the acceptability of the appeal heavily depends on the outcome of that report. There is insufficient evidence to demonstrate that the proposal would be capable of adhering to the requirements of the condition or whether mitigation measures would be required, and if so, what those measures would entail. Consequently, I am not satisfied that the proposal could be made acceptable through the use of such a condition and the condition would not meet the test of reasonableness, as required by the Planning Practice Guidance and National Planning Policy Framework (the Framework).
11. The Council accept that some other units within the business centre have received planning permission for extended operating hours, and some of these are positioned closer to Red Lyons House. Based on the evidence before me and the findings of my site visit, the uses of those units are different to Unit 10

and include flooring and cleaning companies as well as a scaffolding yard set to the southwestern boundary of the business centre. These premises vary in the nature of their operations and so could give rise to different levels of noise and activity compared to the appeal site. While those permissions did not have conditions relating to noise reports, neither is there evidence before me regarding the type of information which accompanied those planning applications, nor if those sites had also given rise to noise complaints. It is likely that those nearby uses, along with a nearby skip yard highlighted by the appellant, would cumulatively generate a degree of noise and activity during their operating hours. However, there is insufficient evidence to demonstrate that the effects are comparable to the appeal scheme nor the effects of these cumulative uses on the prevailing background noise levels during the extended hours.

12. There are other conditions imposed on the 2014 planning permission¹, which would provide some safeguards against noise disturbance, including a restriction on machinery and equipment outside the building. However, and while I appreciate it was only a snapshot in time, I observed at the time of my site visit that the premises can operate with its main doors open, allowing noise to emanate. It has not been demonstrated that those other conditions together would provide adequate protection from potential noise disturbance during the extended hours.
13. Mitigation is discussed in the form of an automatic gate to the main entrance to the business centre to reduce the need for vehicles to stop outside the gate. The evidence suggests this has already been secured by a separate planning permission and this would be of some benefit in reducing noise levels generated from the use of the site, particularly in the morning as evidenced by the noise report. While this may be the case, there is not sufficient evidence to demonstrate that this alone would mitigate the effects of the extended hours of Unit 10.
14. Overall, given the evidence of noise complaints relating to the premises and the proximity to the nearest residential properties, the evidence fails to demonstrate that the proposal would not cause harm to the living conditions of those nearby occupants. As such it is likely that the proposal would cause harm to the living conditions of those occupants and, in turn, would conflict with policies D1 and D2 of the Maldon District Approved Local Development Plan 2017 which, among other things, require development to protect amenity and minimise noise pollution.
15. The proposal would also conflict with the Framework insofar as it relates to living conditions and where, in paragraph 185, it seeks to avoid noise giving rise to significant adverse impacts on health and quality of life.

Other Matters

16. The appellant refers to permitted development rights under Schedule 2, Part 7, Class H of the Town and Country Planning (General Permitted Development) Order 2015 as amended. This provision relates to the erection, extension or alteration of an industrial building or warehouse and I do not have evidence that the proposal would otherwise meet the criteria it sets out. As such, I afford this little weight as a legitimate fall back position for the appellant. In any

¹ 14/00418/FUL

event, the conditions set out in that schedule stipulate operating hours less than those now proposed.

17. The extension to the operating hours would allow greater flexibility in the way the premises operates and for its customers and employees, which would be of economic benefit as well as some public benefit. While these are acknowledged as benefits of the proposal I have little evidence to support the assertions that there are not comparable services in the surrounding area or that the viability of the business would depend on the extended hours. Overall these benefits would not outweigh the harm identified.
18. I note the appellant's concerns for the Council's treatment of the planning application. However, its Committee members were not bound to accept the recommendations of its officers and, in any event, this would not alter my conclusion on the main issue set out above. There is also dispute regarding the lawful use of the site, however this is not for me to establish as part of this appeal.

Conclusion

19. With the above in mind, there are no material considerations that are worthy of sufficient weight that would indicate a decision other than in accordance with the development plan. The appeal is therefore dismissed.

C Shearing

INSPECTOR