



Appeal Decision

Site visit made on 28 March 2023

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 May 2023

Appeal Ref: APP/J4423/W/22/3313517

10 Carley Drive, Sheffield S20 8NQ

- 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 Mr Ben West of Abbey Glen Ltd against the decision of Sheffield City Council.
 - The application Ref 22/01032/FUL, dated 11 March 2022, was refused by notice dated 13 October 2022.
 - The application sought planning permission for the erection of unit for Class B1 (Business) use with ancillary offices and provision of car parking accommodation (Amended as per plans received on 12 February 2003), without complying with a condition attached to planning permission Ref 02/03682/FUL, dated 23 April 2002.
 - The condition in dispute is No. 3 which states that: Deliveries to the proposed business unit shall take place only between 0800 hours and 1600 hours, Mondays to Fridays, and 0800 hours and 1300 hours on Saturdays, with no deliveries on Sundays or Bank Holidays.
 - The reason given for the condition is: In the interests of the amenities of occupiers of adjoining property.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of unit for Class B1 (Business) use with ancillary offices and provision of car parking accommodation (Amended as per plans received on 12 February 2003), without complying with a condition attached to planning permission Ref 02/03682/FUL, dated 23 April 2002, but subject to the conditions set out in the Schedule at the end of this decision.

Preliminary Matters

2. Although this appeal is technically allowed, the effect of the decision is more restrictive than that originally requested by the appellant. Condition 3, being the condition in dispute, is amended to:

Deliveries to the premises, which by definition includes all associated external loading and unloading activity, shall take place only between 0800 hours and 1800 hours on Mondays to Fridays, between 0800 hours and 1300 hours on Saturdays, and shall not be undertaken at any time on Sundays or on Bank or Public Holidays.

3. The appellant has confirmed that the definition of 'deliveries' includes both the vehicle arriving or departing, and the loading and unloading of vehicles and associated goods movements externally.

4. I note that several matters in relation to the appeal site's operations have been or are being investigated by the Council. For the avoidance of doubt, I have not taken any such matters into account in coming to my decision, where they fall outside of the parameters of the appeal proposal.

Background and Main Issue

5. The appeal property was constructed under a 2002 planning permission subject to condition 3 which restricts the delivery hours. The appeal proposes to vary condition 3, with the amendment originally proposed as:

To allow deliveries between 0700 hours and 2000 hours Monday to Friday, and between 0800 hours and 1500 hours on Saturdays and Sundays and 0800-1600 Bank Holidays.

6. The appellant subsequently agreed to amended proposed hours during the application determination period. The proposed condition on which the Council based its decision is:

Delivery hours between 0800 hours and 1800 hours Mondays to Fridays and between 0800 hours and 1300 hours on Saturdays, no deliveries on Sundays and between 1000 hours and 1600 hours on Public Holidays (with no deliveries on Christmas Day, Boxing Day and New Years Day).

7. This would allow for an additional 2 hours of deliveries Monday to Friday between 1600 and 1800, and an additional 6 hours between 1000 and 1600 on the majority of public holidays. I have assessed the appeal on this basis. However, an approval of a Section 73 application effectively creates a new planning permission, with the extant approval remaining intact. I do therefore have the discretion to amend any condition on the original permission, including any further amendments to the proposed condition 3.
8. The main issue is the effect of the delivery times proposed within condition 3 on the living conditions of occupiers of neighbouring properties, with regard to noise and disturbance.

Reasons

9. The appeal site comprises a large floorplate commercial building accessed off Carley Drive, incorporating parking and servicing areas to 3 sides. It has been occupied for a number of years by Abbey Glen, a business supplying rental linen to the hospitality industry. The main area for deliveries and servicing is to the south of the building, in an open yard which also incorporates a smaller outbuilding. Access into the main building is through two sets of roller doors off this yard. Lorries then park in a designated area within the site's eastern frontage. There is also a roller door in the north elevation, and staff parking on the remaining hardstanding.
10. Carley Drive also serves several other predominantly commercial uses as part of a small industrial estate, within a Business Area as designated by the Sheffield Unitary Development Plan (UDP) (1998). The closest residential properties are to the west, beyond a narrow strip of trees. To the south is a wider tree band plus some grass, with housing beyond.
11. The business operates mainly Mondays to Fridays, with most deliveries leaving 0800 - 0930, and returning 1500 - 1700. Weekend working is limited to

emergencies. Extended delivery hours are required because the existing condition is highly restrictive to Abbey Glen's operations and viability, causing difficulties with meeting some contractual requirements. Examples include that their main customer requires Monday to Friday servicing but is located too far to allow for same day return unloading, traffic issues can cause delays even on shorter journeys, and public holidays are the busiest days for service industry customers. This leads to lorries being on site unable to process their contents. The appellant further identifies the impact of this on employees, including the need for the business to survive and guarantee jobs for a workforce of more than 150 people, and because pay to some staff is significantly reduced if shifts are cut short due to deliveries not returning in time.

12. I also note the evidence from various third parties in support for the business in general, for the appellant's previous and ongoing attempts to mitigate noise disturbance, and for the specific appeal proposal.
13. The main delivery area is close to residential gardens and windows. Notwithstanding that during my site visit I did not see or hear a delivery taking place, I visited during a quiet part of the day where I experienced only a low level of background noise. This included relatively distant traffic noise, which I would expect to increase and be more proximate during morning and evening peak flows. I found the noise environment to be rather peaceful, particularly evident on Waterfield Mews and Challoner Way compared to Waterthorpe Rise. I expect that all day on public holidays, the background noise conditions would be very similar to those which I experienced.
14. Noise likely to be associated with the site's deliveries without any mitigation includes lorry movements, engines revving and idling, tail lift operation, movement of goods on and off the lorries, reversing alarms, opening and closing of doors and shutters, trollies being moved around the yard, and workers' voices.
15. The appellant's Noise Survey¹ ('the Survey') had its methodology and conclusions approved by the Council's Environmental Protection Service (EPS). The Survey identifies there are approximately 24 trollies per vehicle, and that loading or unloading takes approximately 15 minutes per vehicle.
16. The EPS has determined that site operations are not causing a statutory noise nuisance to adjacent residents. The appellant considers that there should not be some level of activity which is not defined as a statutory nuisance but can still form a reason for planning refusal. However, I take a different view. The statutory test is a legal test with a very high bar of proof due to potential criminal offence consequences. Furthermore, the EPS outlined² that even if the noise at the appeal site had been found to be a statutory nuisance in law, the mitigation measures already undertaken would satisfy the test of 'Best Practicable Means' due to further works being neither practicable nor financially viable for Abbey Glen. This was a contributing factor in why the case was not progressed any further from a statutory nuisance perspective under the Environmental Protection Act.
17. The parameters for my consideration of extended delivery hours are different. It is clear that the area is a noise sensitive environment in which the potential

¹ Assessment of Noise Impact from Extension of Delivery Hours, Hepworth Acoustics, December 2020

² Email from EPS to appellant and interested parties, 22 March 2022

for, and effect of, any additional noise and disturbance as a result of longer delivery times must be carefully considered. Indeed, the Council explains that this was the reason for imposing the condition on the original permission, and that the area was purposefully only approved for a use limiting any industrial use to that without detriment to neighbouring residential amenity.

18. Furthermore, while I accept the appellant's argument that the EPS approved the Survey, it only recorded noise equivalent for properties on Waterthorpe Rise in December 2020. While it may have been reasonable at that time to not identify the noise environment for Waterfield Mews properties, they are closer to the delivery yard, and objections to the delivery hours proposal have now been received from some of those residents.
19. I also note that 1 trial delivery, which was likely undertaken in a careful manner, would not be representative of numerous concurrent deliveries. Notwithstanding the inclusion of the 3dB acoustic feature penalties for the intermittency and impulsive character of delivery noise, I also accept the Council's position that the disturbance from sporadic clanging and crashing is less easy to quantify than general industrial noise. Using average metrics does potentially underestimate the impact on residents due to smoothing effects.
20. The Survey identifies weekend daytime background sound levels as lower than weekday evenings. While this correlates with the data provided, the Survey extrapolates the Saturday and Sunday data into a single average weekend figure. However, the summary tables and the Appendix 2 graph data show Sundays have a lower noise environment than Saturdays. It is important to separate these days because of the proposed public holiday deliveries, which I expect would have very similar noise environments to Sundays.
21. The Survey concludes that the proposed extension of delivery hours would result in a BS4142 'low impact' classification, and subject to a recommendation for a Noise Management Plan (NPS), would not result in any unacceptable harm to residential amenity. The appellant identifies that further noise surveys have been undertaken, although I have not been presented with any detail.
22. I am mindful that some of the assertions in third party objections to the proposal do not relate solely to delivery noise. I have only taken into account those which are material, which for clarity, excludes the Council's investigations as to more general noise, and deliveries which may occur outside of the currently permitted times. However, it is also clear based on the number of resident objections and their points raised, that disturbance to living conditions resulting from delivery noise is occurring. The Council has not commissioned its own noise survey, but benefits from its EPS technical expertise. I do not find it reasonable that adjacent residents should have to provide technical evidence in support of disturbance experienced, as I accept the cumulative weight of the comments made as substantive.
23. On the basis of the above aspects in totality, I find the Survey does not definitively prove that extended delivery hours would not cause disturbance to the living conditions of neighbouring residents.
24. The appellant's NPS is dated April 2021, was approved by the Council's EPS, and the appellant identifies that it has been implemented. Alongside other aspects its requirements include the location for unloading, turning off reverse warning alarms, no slamming of doors, low volume voices and no radio,

engines switched off for stationary vehicles, and that care is taken to unload vehicles as quietly as possible. It also identifies training, and a complaints procedure. The appellant states that CCTV footage can be viewed for any breach allegation.

25. I do note that if minded to allow this appeal in any form, I could formalise the NMP by incorporating it within a new condition on the new permission. However, again the fact that residents state they experience significant disturbance from delivery noise indicates that these measures are not fully complied with or are insufficient. I therefore cannot rely on the NMP to fully outweigh any potential impact of extended delivery hours.
26. I place significant weight on the appellant's reasons and local economic benefits for the proposed additional delivery hours, and also place significant weight on the need of residents for peaceful enjoyment of living conditions. It is inevitably a finely balanced judgement in this instance.
27. With regard to the additional 2 hours proposed for Monday to Friday, as supported by the Survey this would be masked to a large extent by the associated rise in background traffic noise at this time. I find this time range to be within that of normal daytime business working hours, and also not a period where an especially quiet noise environment would be expected or required for residents' general activities during this time. 2 hours is also a relatively small proportional increase, but it would have a significantly beneficial impact for Abbey Glen and the local economy in order to allow for same day vehicle returns and full shift patterns. On balance, I therefore find that these increased hours would be reasonable.
28. However, public holidays are days when quiet enjoyment of gardens and homes are normally expected. Additional delivery noise for up to 6 hours on the quietest days, which are days with no previous deliveries, would therefore be likely to be audibly obtrusive, unaccustomed, and result in a harmful impact upon living conditions. This harmful impact would also arise as a cumulative effect alongside the additional hours over Mondays to Fridays. I find that on balance the need for residents' acceptable living conditions outweighs the business benefits for public holiday deliveries.
29. In conclusion, the effect of the proposed delivery times for condition 3 would be harmful to the living conditions of occupiers of neighbouring properties, with regard to noise and disturbance. This would conflict with the Sheffield UDP Policies IB9 and GE24, which seek to protect residents from suffering from unacceptable living conditions, including from development which would create noise levels which would cause a nuisance. It would also conflict with Paragraphs 130 and 185 of the National Planning Policy Framework (2021) regarding the need to ensure that developments function well, and to create places which have a high standard of amenity for existing and future users, and to mitigate and reduce to a minimum, potential adverse impacts resulting from noise to avoid noise significant adverse impacts on quality of life.
30. However, an amendment to the proposed condition 3 to only allow the requested additional delivery times on Mondays to Fridays, but to exclude any deliveries on any public holidays, would satisfactorily address this harm. The proposal as amended would thus comply with the development plan and the Framework.

Other Matters

31. The Council's approach to decision making and the differences between its Committee decision and officer recommendation, is not a determinative matter in this instance.

Conditions

32. I have imposed the following amended condition 3:

Deliveries to the premises, which by definition includes all associated external loading and unloading activity, shall take place only between 0800 hours and 1800 hours on Mondays to Fridays, between 0800 hours and 1300 hours on Saturdays, and shall not be undertaken at any time on Sundays or on Bank or Public Holidays.

33. I have also imposed a new condition in order to formalise the Noise Management Plan within 2 months, for the reason of reducing the impact of noise from the extended delivery hours.
34. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. With input from the main parties, I have imposed all those that I consider remain relevant for the reasons as originally included on the permission, with modifications to reflect that the scheme has commenced and has been occupied for many years, and to reflect the PPG tests for conditions.

Conclusion

35. The appeal is allowed, and I grant a new planning permission without the disputed condition, but with a new condition setting the delivery times and one requiring a Noise Management Plan, and retaining those non-disputed conditions from the previous permission that appear still to be relevant, subject to slight amendment.

L Hughes

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) No additional externally mounted plant or equipment shall be installed at the site unless and until full details of such plant and equipment (including appearance, environmental emissions and any necessary mitigation) has first been submitted to and approved in writing by the Local Planning Authority. Thereafter the plant and equipment and any required mitigation measures shall only be installed in full accordance with the approved details and shall be maintained in accordance with these details.
- 2) The canteen window on the elevation of the production building facing west shall be glazed with obscure glass to the satisfaction of the Local Planning Authority and shall not at any time be glazed with clear glass without the prior written agreement of the Local Planning Authority.
- 3) Deliveries to the premises, which by definition includes all associated external loading and unloading activity, shall take place only between 0800 hours and 1800 hours on Mondays to Fridays, between 0800 hours and 1300 hours on Saturdays, and shall not be undertaken at any time on Sundays or on Bank or Public Holidays.
- 4) Within 2 months of the date of this decision, a Noise Management Plan for deliveries shall have been submitted for the written approval of the Local Planning Authority. Once approved, all relevant activities and measures shall then be carried out in accordance with the Noise Management Plan, in perpetuity, unless otherwise first agreed in writing by the Local Planning Authority.
- 5) The site shall be developed with separate systems of drainage for foul and surface water on and off site.
- 6) Surface water from vehicle parking and hardstanding areas shall be passed through an interceptor of adequate capacity prior to discharge to the public sewer. Roof drainage should not be passed through any interceptor.
- 7) No external lighting or CCTV cameras shall be installed within the site or on the building without the prior written approval of the Local Planning Authority.
- 8) There shall be no external storage within the site unless otherwise authorised in writing by the Local Planning Authority.

END OF SCHEDULE