



Appeal Decisions

Site visit made on 21 March 2023

by **S Harrington MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 May 2023

Appeal A Ref: APP/N1160/W/22/3308607

15 Pomphlett Road, City of Plymouth, Plymouth PL9 7BH

- 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 c/o WM Morrison Supermarkets Ltd against the decision of Plymouth City Council.
 - The application Ref 22/00524/S73, dated 23 March 2022, was refused by notice dated 23 June 2022.
 - The application sought planning permission Erection of canopy and fencing in existing customer car park without complying with a condition attached to planning permission Ref 18/00408/S73, dated 6 June 2018.
 - The condition in dispute is No 5 which states that: The approved fenced area shall not have any loading or despatching outside of the following times: 07.00 hours to 20.00 hours Monday to Saturday and 08.00 to 20.00 hours on Sundays and Bank Holidays.
 - The reason given for the condition is: To protect the residential and general amenity of the area from any harmfully polluting effects and avoid conflict with Policy CS22 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007, and Policy DEV2 of the emerging Plymouth and South West Devon Joint Local Plan (2014-2034) and Paragraph 123 of the National Planning Policy Framework 2012.
-

Appeal B Ref: APP/N1160/W/22/3308611

15 Pomphlett Road, City of Plymouth, Plymouth PL9 7BH

- 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 c/o WM Morrison Supermarkets Ltd against the decision of Plymouth City Council.
 - The application Ref 22/00503/S73, dated 23 March 2022, was refused by notice dated 20 July 2022.
 - The application sought planning permission for extensions to retail unit comprising sales area, coffee shop, warehousing and new substation without complying with a condition attached to planning permission 00/01329, dated 31 January 2001.
 - The condition in dispute is No 5 which states that: No deliveries shall be made to the extended retail unit after 22.00 hours and before 06.00 hours Mondays to Saturdays and after 20.00 hours and before 09.00 hours Sundays.
 - The reason given for the condition is: To protect the residential and general amenity of the area from any harmfully polluting effects, including noise and disturbance likely to be caused by deliveries to the premises, and avoid conflict with Policy aev49 of the adopted City of Plymouth Local Plan First Alteration 1996.
-

Appeal C Ref: APP/N1160/W/22/3308616

15 Pomphlett Road, City of Plymouth, Plymouth PL9 7BH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by c/o WM Morrison Supermarkets Ltd against the decision of Plymouth City Council.
 - The application Ref 22/00525/FUL, dated 25 March 2022, was approved on 17 June 2022 and planning permission was granted subject to conditions.
 - The development permitted is erection of an enclosed loading shelter.
 - The condition in dispute is No 4 which states that: The approved fenced area shall not have any loading or despatching outside of the following times: 07.00 hours to 20.00 hours Monday to Saturday and 08.00 to 20.00 hours on Sundays and Bank Holidays.
 - The reason given for the condition is: To protect the residential and general amenity of the area from noise emanating from the business and avoid conflict with Policies DEV1 (Protecting health and amenity) and DEV2 (Air, water, soil, noise, land and light) of the Plymouth and Southwest Devon Joint Local Plan 2014-2034 and the National Planning Policy Framework 2021.
-

Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Appeal C

3. The appeal is dismissed.

Preliminary Matters

4. The description provided on the decision notice of 22/00503/S73 within Appeal A states 'Variation of Condition 5 (Hours of Operation) of application 18/00408/S73. As this is not an act of development, I have used the description of the original development in the banner above which I have taken from the planning history section of the Council's Officer Report.
5. The reference of the planning permission that the application the subject of Appeal B relates is noted on the decision notice of the application the subject of the appeal as '00/01329/FUL'. However, the original planning permission decision notice states a reference of '00/01329'. To ensure consistency with the original planning permission I have used the latter reference in the banner above.
6. For consistency, the appellant's name in the banner headings above are taken from how it appears within the planning application forms.

Background and Main Issue

7. As set out above there are three appeals on this site. They differ in the planning permissions to which they relate however all seek to align allowable delivery times. I have considered each proposal on their individual merits. However, to avoid duplication I have dealt with the schemes together.

8. Appeals A & B relate to applications which sought development of land without complying with conditions subject to which a previous planning permission was granted, namely those related to delivery times and hours of operation and share the same reason for refusal. Appeal C relates to a disputed condition imposed on a planning permission restricting loading or despatching times.
9. Taking account of the reasons for refusals and the reason for condition, the main issue in these appeals is whether the conditions are reasonable or necessary in the interests of the living conditions of nearby residents, with particular regard to noise and general disturbance.

Reasons

10. The appeal site is an enclosed loading area (enclosed area) associated with, and to the southwest of a supermarket, which features a carpark and a petrol filling station. The supermarket is located within a former quarry, with quarry faces to the south and east, and residential properties along Pleasure Hill Close and Pomphlett Road beyond.
11. Although the supermarket has a service yard to the rear of the store, accessed via Billacombe Road, in order to achieve the appellant's desired delivery arrangements, the appellant has sought to allow store deliveries to the enclosed area from 2200 to 0600 Monday to Sundays and Bank Holidays. While permitting night-time deliveries to the enclosed area, delivery time restrictions to the service yard to the rear of the supermarket would remain.
12. I have had regard to the National Planning Policy Framework (the Framework), Planning Practice Guidance (the PPG) and the Noise Policy Statement for England 2010 (NPSE) in relation to the issue of noise. The PPG confirms that whilst noise can override other planning considerations, it is important to look at noise in the context of the wider characteristics of a development proposal, its likely users, and its surroundings, as these can have an important effect on whether noise is likely to pose a concern.
13. The PPG also states that there is a need to take account of the acoustic environment and in doing so consider whether or not a significant adverse effect is occurring or likely to occur, and whether or not a good standard of amenity can be achieved.
14. An Environmental Noise Assessment (ENA) accompanied the applications which sought to provide an assessment of delivery activity noise levels. A baseline noise survey was conducted at a single monitoring location, adjacent to No. 44 Pleasure Hill Close. However, an additional receptor, being No. 29 Pomphlett Road is included within the appellants appeal statement. Given the spatial relationship between nearby residential properties and the appeal site, I find that the locations chosen, including that during the appeal process are appropriate.
15. The ENA states that noise levels of the different components of delivery activity were measured at similar supermarkets and the maximum levels recorded to provide realistic worst-case noise levels. Predicted delivery activity noise levels, taking into account the screening provided by the adjacent quarry face are stated as ambient 33dB, and peak 29-50dB.
16. However, it is not clear as to if the predicted activity noise levels measured at other stores in order to calculate the 'realistic worst-case noise' incorporated

any mitigation measures, such as those recommended in the delivery noise mitigation plan (DNMP) outlined within the ENA, or the effect any such measures may have had on noise levels.

17. The ENA utilises three methods to assess noise and its effect, being by reference to the World Health Organisation (WHO) "Guidelines for Community Noise"; changes in noise level; and methods described within BS4142:2014+A1:2019 (BS4142). The ENA indicates a night-time 'low to significant adverse' impact assessed against BS4142 guidance, with 'low' impact when assessed against WHO values for daytime and night time at No. 44 Pleasure Hill Close. When assessed at No. 29 Pomphlett Road, the BS 4142 assessment is reduced to 'low to adverse' with the WHO assessment remaining 'low'.
18. There is disagreement between the main parties as to the assessment of 'context' as required by BS4142. I accept that due to the proposed times of night time deliveries, it is likely that occupants of surrounding dwellings will be indoors, and it is put to me that within this context, the overall assessment should be moderated to low impact, and night sleep disturbance criteria, such as that within the WHO guidance should be the principal assessment method.
19. The WHO guidance assessment focuses on absolute levels of noise considered to be the critical factor in relation to sleep disturbance criteria, setting out peak night-time noise levels. Even if lower noise levels were used as noted within the WHO (Night Noise Guidelines for Europe), predicted delivery event noise levels fall below these lower parameters. Therefore, the ENA indicates the proposals would not result in sleep disturbance, even taking into account open windows at nearby properties, noting the appellant's comments regarding planning conditions relating to Nos. 36 – 44 Pleasure Hill Close and recommended internal noise levels.
20. The appellant's BS4142 assessment notes in terms of context that as well as noise levels being within the WHO guideline levels, some deliveries can currently still take place during some night time hours. It notes that the existing planning permission restricts deliveries to between 0500 and 2400 hours, and that predicted delivery event noise levels are similar to the existing night time ambient noise climate. I accept that deliveries can take place during some night time hours, but this relates to a differing area to the rear of the superstore with differing relationship to nearby dwellings, which I understand has been the subject of historic noise complaints to the Council.
21. The WHO guidance values are appropriate to 'critical health benefits'. Even if it is the case that noise associated with the proposals would not result in sleep disturbance and therefore critical to health, Policy DEV1 of the Plymouth and South West Devon Joint Local Plan (2014-2034) (LP) seeks to protect living conditions as well as safeguarding health of local communities. While I acknowledge that occupants are more likely to be asleep during night time hours, this may not always be the case, and there is a reasonable expectation for occupants of neighbouring properties to expect peace and quiet, in the more sensitive night time hours.
22. The appellant has drawn my attention to BS 8233:2014, as referenced in the above noted article. However, although I am aware that this Standard does not provide guidance on assessing the effect of changes in the external noise levels to occupants of an existing building, I have not been provided with any further

details of the Standard, or the direct relevance to the appeal proposals, aside from this Standard containing internal guideline noise values based largely on the values within the WHO guidance.

23. I also note the contents of the article provided to me within a publication of the Institute of Acoustics monthly publication. However, for the reasons given previously, I do not agree that the context should necessarily result in the overall assessment being moderated to a low impact, or that the WHO assessment should be afforded more weight as the principal assessment method.
24. The BS4142 assessment indicates that an adverse/significant adverse impact only occurs on a Sunday night when typically background noise levels may be lower than during the week. However, this does not reduce the importance of the potential impact on living conditions of the nearest neighbouring residential properties during this time, which the ENA indicates is markedly quieter than at other nights of the week. Furthermore, it is not clear within the evidence as to if the 'baseline source noise levels' set out within the ENA taken at other stores included similar delivery activity noise reduction measures as suggested as part of this proposal. If such measures, or indeed differing measures were in place when sample measurements were taken, this could potentially affect the comparison of the predicted delivery rating level and background noise climate.
25. Nevertheless, even if the DNMP would reduce delivery-related noise impacts further from that predicted, there is no demonstrable evidence before me to confirm what extent reductions would be forthcoming from successful delivery of the DNMP, and if this would reduce the identified significant adverse impact. In addition, a number of measures within the DNMP would be reliant upon the actions of a number of parties and I am not convinced that it is capable of being effectively monitored or enforced in practice.
26. It is also put to me that the Council could have sought to only permit night time use of the proposed enclosed loading bay Monday through to Saturday, outside of the identified time of concern within the BS4142 assessment. Even if this is the case, this is not the basis of the proposals before me and nevertheless, my concerns remain in relation to the enforceability, and therefore effectiveness of the DNMP.
27. Consequently, I conclude that the disputed conditions are reasonable and necessary in the interests of the living conditions of nearby residents, with particular regard to noise and general disturbance and meet the appropriate tests as referenced within the PPG. There would be conflict with LP policies DEV1 and DEV2 which, amongst other things, seek to safeguard and avoid unacceptable impacts on the living conditions of local communities in relation to issues including noise. This is consistent with the Framework which aims to create places which promote health and well-being, and avoid noise giving rise to significant adverse impacts on health and the quality of life.

Other Matters

28. The issue of noise needs to be considered in conjunction with the three dimensions of sustainable development within the Framework. The Appellant has identified a number of benefits arising from change in delivery times and location of deliveries to the stores including reducing peaks in delivery activity on weekday mornings and reduced congestion on the roads at peak times,

thereby improving air quality. Furthermore, it is put to me that deliveries would be reduced to the rear service yard, thereby improving the living conditions for residents near this service yard.

29. I have not been provided with substantive evidence to demonstrate that the existing delivery arrangements have given rise to significant traffic congestion problems. I acknowledge that there may be some environmental benefits arising from more efficient delivery activity. There may also be some benefit to residents near the existing service yard, particularly given the comments from the main parties relating to historic noise complaints. However, such benefits are limited in scope and scale and I do not find that they outweigh the aforementioned harm identified above and conflict with the development plan, read as a whole.
30. The appellant has drawn my attention to an appeal decision that the appellant states includes noise assessment findings which are directly comparable to the appeals the subject of this decision and it is put to me that this indicates an inconsistent approach to consideration of noise assessments by the Council. Even if this is the case, the full details of the other case, including any submitted noise assessments, are not before me. This limits the equivalence of the other case to the current proposals in my assessment of these appeals. Moreover, the current appeal proposals have their own circumstances and I have assessed them on their own merits.

Conclusion

31. For the reasons given above, I find that the proposals would conflict with the development plan, read as a whole. No material considerations, individually or cumulatively, indicate that a decision should be taken otherwise than in accordance with it. Therefore, appeals A, B & C are dismissed.

S Harrington

INSPECTOR