
Appeal Decision

Site visit made on 23 November 2023

by C Hall BSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12.12.2023

Appeal Ref: APP/P2114/W/23/3322389

Sainsbury's, Foxes Road, Newport, Isle of Wight PO30 5ZB

- 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 the Isle of Wight Council.
 - The application Ref. 22/01995/RVC, dated 3 November 2022, was refused by notice dated 6 February 2023.
 - The application sought planning permission for the removal of condition no. 25 on 21/02016/RVC to allow 24hour deliveries on a permanent basis.
 - The condition in dispute is No 25 which states that: For a period of 12 months, from the date of the decision notice on 21/02016/RVC the hours of delivery or dispatches from the premises shall be permitted for a 24-hour period. After this period, the hours will revert back to the originally approved hours. No deliveries shall take place outside the hours of 05.30 to 23.30 Mondays to Saturdays or outside the hours of 08.00 to 23.00 on Sundays or Bank Holidays.
 - The reason given for the condition is: To allow ongoing flexible delivery to the store, but to ensure the ongoing monitoring of noise and amenity concerns in relation to the aims of Policy DM2 (Design Quality for New Developments) of the Island Plan Core Strategy.
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Decision

1. The appeal is allowed and planning permission is granted for the removal of condition no.25 on 21/02016/RVC to allow 24hour deliveries on a permanent basis at Sainsbury's, Foxes Road, Newport, Isle of Wight PO30 5ZB in accordance with the application Ref. 22/01995/RVC, dated 3 November 2022, without compliance with condition number 25 previously imposed on planning permission Ref. 21/02016/RVC, dated 28 January 2022 and subject to the conditions in the attached schedule.

Preliminary Matter

2. My attention has been drawn to a previous appeal at the site (reference APP/P2114/A/13/2195583). I shall have regard to this background when considering the merits of this proposal.

Main Issues

3. This appeal seeks the removal of a planning condition so that deliveries can take place at any time. The main issue is whether its removal would have an adverse impact upon the living conditions of the occupants of neighbouring properties with regard to noise and disturbance.

Reasons

4. The Development Plan includes the Island Plan Isle of Wight Core Strategy March 2012 (CS). Policy DM2 states that, amongst other things, the Council will support proposals that protect, conserve and enhance the existing environment whilst allowing change to take place.
5. Having regard to the above, the National Planning Policy Framework (the Framework) also advises that the planning system should prevent both new and existing development from contributing to or being put at unacceptable risk from, amongst other things, noise pollution. The Framework also states that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development. Planning decisions should also aim to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through use of conditions.
6. The appeal site comprises a supermarket on the peripherals of Newport Town Centre. The delivery bay and loading dock for the store are accessed via a set of industrial doors from Foxes Road in the south west corner of the site. Opposite the site on Foxes Road are residential properties, comprising individual terraced houses and a block of retirement flats.
7. At my site visit during the late afternoon I observed that the highway passing the site is a busy route with vehicle and pedestrian flows in both directions. Consequently, the prevailing noise environment that exists for residential properties along Foxes Road is heavily influenced by traffic noise, which was evident along the frontage of houses on the opposite side to the appeal site. It is reasonable to infer that there would be significant levels of traffic noise for much of the day, including early mornings and late into evenings.
8. A Noise Assessment (NA) dated September 2021 has been submitted, which states that noise monitoring of the current night-time deliveries has been undertaken to determine the noise levels at locations that are representative of the closest residential receptors. This has been the subject of responses from the Council's Environmental Health Department (EH) at both application and appeal stage. In reply to the concerns raised the appellant has, amongst other material, submitted a technical note within its final comments on the appeal.
9. There is clearly disagreement between the experts as to the weight to be placed on the contents of the NA. I am of the view that it would therefore be appropriate to examine alternative evidence to establish whether such information would assist with my reasoning.
10. To my mind, and in contrast to the previous appeal over 10 years ago, there now exist a number of other significant material considerations that were not before that Inspector. My attention is initially drawn to events since the start of the pandemic, whereby the supermarket operated 24 hour deliveries for a period of 18 months under Covid relaxation measures. Following this, the temporary permission to allow 24 hour deliveries was approved under Council ref. 21/02016/RVC, which ran from January 2022 to January 2023.
11. The 2013 appeal decision included reference to the possible use of a 'trial run'. At the time my colleague was satisfied that such a measure would not be appropriate. However, a 'trial run' has clearly taken place given the circumstances that have occurred at the site since 2020.

12. I note in particular the EH response dated 4 November 2021 to application 21/02016/RVC, which advised that there were no records of any noise complaints associated with overnight deliveries during the pandemic. An absence of complaints in this respect is also echoed in the EH reply to application 22/01995/RVC.
13. I appreciate the assertion from EH that the lack of complaints does not necessarily equate to there not being a problem. For example, local residents may have tolerated 24 hour deliveries in the knowledge that the situation was only temporary. This notwithstanding, objections have been submitted at application and appeal stage for the proposal before me.
14. The issues raised by local residents can be broadly summarised as: lorries waiting with engines idling; noise pollution particularly at night; a lack of communication from the supermarket; light pollution at night from the store and car park; antisocial behaviour within the car park; and the condition of Foxes Road. All but one of the representations originate from occupants of the terrace of dwellings that lie in close proximity the store car park, with none from the retirement flats opposite the delivery doors and loading bay.
15. I acknowledge the strength of objection from interested parties with regard to the potential impact in respect of night-time noise and disturbance; I do not underestimate the concerns of those living near the appeal site. However, it seems to me that the matters raised do not broadly relate to passing overnight deliveries to the loading area *per se*, rather other ongoing problems elsewhere at the supermarket, which are primarily associated with the car park and lorries waiting on Foxes Road outside the properties at 22-40 Mill Street.
16. Turning to the EH appeal statement and the visit of 3 October 2023, I am advised that "subjective notes included a relatively quiet background noise with distant and occasional local traffic noise, the delivery vehicle approaching and parking on the road outside, ringing of doorbell, doors opening, starting of vehicle, driving in, unloading including bangs/crashes, door opening, vehicle starting and exiting site."
17. I have not been provided with any noise measurements in this respect, and no conclusions from the visit are made, other than EH "considers it for the applicant to demonstrate community engagement with nearby residents and we note this has not been done." The appellant asserts that a Service Yard Management Plan (SYMP) would ensure that community engagement with nearby residents will be undertaken.
18. One of the EH recommendations were I to allow the appeal is to limit operations to one overnight delivery only between the hours of 23:30 and 05:30, and to give consideration to a restriction on Sundays so as to prevent night-time/early morning disturbance. I see no reason why the one overnight transfer could not be adequately managed through the implementation of a comprehensive SYMP. This would pertain to all deliveries to the store, and to my mind if managed properly would be a considerable benefit where currently no robust controls exist.
19. The appellant states that there is a slot booked on the 3am ferry, and I would expect the transit of the lorry to the store to be precisely monitored, thus ensuring that there is no waiting on Mill Street in particular. The EH statement also refers to a gap in the service doors and this is acknowledged by the

appellant; I am informed that additional seals can be fitted to close the gap and thus improve the building envelope performance.

20. Drawing the strings together; the recent history for the site which included 24 hour deliveries; the lack of objections from local residents to those operations; restricting the deliveries; the implementation of a SYMP; and alterations to the service doors lead me to conclude that the proposal is acceptable. I sympathise with the strength of local feeling, however there are no overriding planning reasons for the appeal to be dismissed based on the evidence and policy provisions before me.
21. Consequently, I conclude that removal of the planning condition so that deliveries can take place at any time would not have an adverse impact upon the living conditions of the occupants of neighbouring properties with regard to noise and disturbance. There would be no conflict with Policy DM2 of the CS.

Conditions

22. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. I have considered the conditions attached to the original planning permission in this vein and in light of paragraph 55 of the Framework.
23. I have imposed a condition specifying the relevant drawings as this provides certainty. Conditions were previously also imposed relating to the amount of floorspace available, drainage provision, landscaping, hours of opening for the premises and first floor parking deck, and restrictions on the delivery bay area. I acknowledge the need for these conditions in the interests of the overall control of operations at the site, surface water run-off, external appearance, and the amenities of local residents.
24. The introduction of a SYMP would, amongst other things, require details of the insulation of gaps around the doors to limit noise emissions; provide contact information for personnel so local residents can advise of any issues; call for public engagement to ensure that all interested parties are involved in its implementation; and require ongoing monitoring of agreed procedures so the SYMP can be updated or amended where necessary. Such measures would be in the interests of the living conditions of the occupants of neighbouring properties.
25. I have considered carefully the restriction of hours on Sundays and Bank Holidays, however I am of the view that the SYMP would ensure that such control is not necessary. I have therefore imposed a condition limiting deliveries to one per night from 23:00 to 05:30, as per the EH statement, in the interests of the living conditions of the occupants of neighbouring properties. Restricting access to the service yard for vehicles associated with home deliveries to certain hours is necessary for similar reasons.

Conclusion

26. Having regard to the above and all other issues, the appeal is allowed.

C Hall

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: HQ.09.8458-PL05 B, CHQ.09.8458-PL07 B, CHQ.09.8458-PL09, 579C-01 G, 579C-03 A, SSLHUNNY.2/02, CHQ.09.8458-PL06 C, CHQ.09.8458-PL08 C, CHQ.09.8458-PL10 B, CHQ.09.8458-PL12 A, 579C-02 C, 579C-04
- 2) The existing building and the extension hereby permitted shall have a net sales floor space of not more than 4,589 sq metres. Not more than 30% of that floor space shall be used for the sale of durable goods, defined as books, clothing and footwear, electrical items, audio visual equipment, soft furnishings and textiles, hardware and recreational goods unless the Local Planning Authority gives its written consent to any variation.
- 3) The approved scheme of drainage, incorporating sustainable drainage principles and an assessment of the hydrogeological context of development, as per the details approved on planning application P/01553/10, shall be retained in perpetuity.
- 4) Landscaping shall remain in accordance with the details approved under planning application P/01533/10.
- 5) The premises shall not be open for business outside the following times:

0800 to 2200 Mondays to Saturdays
1000 to 1600 Sundays and on Bank or Public Holidays

No variation to the hours shall be permitted other than with the prior written consent of the Local Planning Authority.
- 6) The first-floor car parking deck hereby approved shall be closed to customers between 20.00hrs and 07.00hrs.
- 7) No tonal reversing beepers to be used on vehicles manoeuvring in the delivery bay between 23.00hrs and 07.00hrs (white noise/broadband reversing alarms can be used at all times).
- 8) Doors to the delivery bay to remain shut except for allowing access and egress for delivery vehicles.
- 9) Prior to the implementation of this permission, a Service Yard Management Plan (SYMP) shall be submitted to and agreed in writing by the Local Planning Authority. The SYMP shall include, but is not limited to:

- a) details of the insulation of gaps around the loading bay doors;
- b) provision of contact information for relevant personnel;
- c) details of public engagement; and
- d) monitoring and review mechanisms.

The agreed SYMP shall be implemented and adhered to thereafter.

- 10) No more than one delivery shall be permitted between 23.00hrs and 05.30hrs on any day.
- 11) Vehicles associated with home deliveries shall not be permitted to access / egress the service yard between 23.00hrs and 07.00hrs on any day.