



Appeal Decisions

Site visit made on 28 November 2023

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 January 2024

Appeal A Ref: APP/W5780/W/23/3323964

89-95 Aldersbrook Road, Wanstead E12 5DG

- 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 Halliard Property Co Limited against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 0688/23, dated 7 March 2023, was refused by notice dated 3 May 2023.
 - The application sought planning permission for: Demolish existing rear extensions. Single storey rear infill extension. Internal alterations to reconfigure existing ground floor units. Change of use of ground floor from a Takeaway and a Taxi Office to Retail (to contain two retail units). Alterations to shopfront including installation of ATM and bollards to front. New access ramp and enclosed storage areas to rear. (Summary) without complying with a condition attached to planning permission Ref 2687/22, dated 13 December 2022.
 - The condition in dispute is No 4 which states that: The shop hereby permitted shall not be open for the admission of customers to the premises outside the following times: Monday to Friday, Saturday: 07:00 - 23:00 Sunday and Bank Holidays: 11:00 - 17:00.
 - The reason given for the condition is: In order to prevent the use causing an undue disturbance to occupants of neighbouring property at unreasonable hours of the day, and to accord with Policies LP9 and LP26 of the Council's Local Plan.
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Appeal B Ref: APP/W5780/W/23/3323965

89-95 Aldersbrook Road, Wanstead E12 5DG

- 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.
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- The conditions in dispute are Nos 5 and 6 which state that: No goods shall be delivered to, nor despatched from the site outside the following times: Monday to Friday, Saturday: 08:00 - 17:00 nor at any time on Sundays, Bank or Public Holidays. The vehicles that can be used for servicing shall be restricted the maximum size 7.5T.

- The reasons given for the conditions are: In order to prevent the use causing an undue disturbance to occupants of neighbouring property at unreasonable hours of the day, and to accord with Policies LP10, LP14 and LP26 of the Council's Local Plan. In order to prevent large delivery vehicles blocking the highway and to comply with Policy LP23 of the Local Plan.
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted to demolish existing rear extensions. Single storey rear infill extension. Internal alterations to reconfigure existing ground floor units. Change of use of ground floor from a Takeaway and a Taxi Office to Retail (to contain two retail units). Alterations to shopfront including installation of ATM and bollards to front. New access ramp and enclosed storage areas to rear. (Summary) at 89-95 Aldersbrook Road, Wanstead, E12 5DG in accordance with application Ref 0688/23 dated 7 March 2023 without compliance with condition number 4 previously imposed on planning permission Ref 2687/22, dated 13 December 2022 and subject to the conditions in the attached schedule.

Appeal B

2. The appeal is allowed and planning permission is granted to demolish existing rear extensions. Single storey rear infill extension. Internal alterations to reconfigure existing ground floor units. Change of use of ground floor from a Takeaway and a Taxi Office to Retail (to contain two retail units). Alterations to shopfront including installation of ATM and bollards to front. New access ramp and enclosed storage areas to rear. (Summary) at 89-95 Aldersbrook Road, Wanstead, E12 5DG in accordance with application Ref 0687/23 dated 7 March 2023 without compliance with condition numbers 5 and 6 previously imposed on planning permission Ref 2687/22, dated 13 December 2022 and subject to the conditions in the attached schedule.

Applications for costs

3. An application for costs was made by Halliard Property Co Limited against the Council of the London Borough of Redbridge in respect of appeals A and B. This application is the subject of a separate decision.

Preliminary Matters

4. On submission of appeal A the appellant has provided an updated noise assessment¹ and on submission of appeal B the appellant has provided a highways technical note². The updated noise assessment was available when the appeal was submitted, and the Council have had the opportunity to consult and have provided their views. The updated noise assessment has provided clarity and minor changes to the proposed scheme. Accordingly, no one would be prejudiced were my decision to have had regard to the updated noise assessment and I have therefore done so.
5. For ease of reference, I refer to the different cases as Appeals A and B in this decision letter as set out in the headers. I have dealt with each appeal on its

¹ Delivery and Opening Hours Noise Impact Assessment Version 1.2 9 June 2023

² Technical Note 3 Rev A – Response to Highway Comments 9 June 2023

individual merits but to avoid duplication I have considered the proposals together in this document. Although there are two appeals, I have used singular terms in places for ease of reading.

Main Issues

6. In respect of appeal A, whether varying the opening hours would cause an undue disturbance to occupants of neighbouring property at unreasonable hours of the day.
7. In respect of appeal B, whether varying the delivery hours would cause an undue disturbance to occupants of neighbouring property at unreasonable hours of the day and whether the condition restricting the weight of service vehicles is reasonable and necessary in order to prevent large delivery vehicles blocking the highway.

Reasons

Conditions 4 and 5

8. The appeal site is a parade of ground floor shops with two additional storeys above which are in use for a hotel/hostel. There are several different retail uses which are proposed to be amalgamated into two larger units which will be limited to class E use. The appellant is seeking to alter the requirements of conditions 4 and 5.
9. In relation to condition 4, the appellant seeks to amend the opening hours to allow the admission of customers between the hours of 07:00-23:00 on any day. In relation to condition 5, the appellant seeks to allow goods to be delivered to and despatched from the site between the hours of 07:00-17:00 Monday to Friday, 08:00-17:00 Saturdays and 09:00-16:00 Sundays, Bank and Public Holidays.
10. The ground floor units are predominantly unrestricted in terms of their current opening hours other than one unit which consists of a café/takeaway whereby the opening hours for customers are limited to 11:00-23:00 Mondays to Sunday. There are no restrictions in relation to delivery and despatch of goods from the retail units.
11. The Council's concerns mostly consist of the effect of amalgamation of the retail units as well missing information in the original noise assessment submitted. In this regard it would not be demonstrated that the change in opening and delivery hours would not cause undue disturbance to the occupants of neighbouring property.
12. The appellant has submitted an amended noise assessment as part of this appeal in order to address the Council's concerns. It finds that the site, due to its location near a main road has generally high levels of background noise. In this regard, the proposed use and associated deliveries would not generate noise that would frequently exceed these existing background noise levels.
13. I therefore conclude that the proposed change of opening and delivery hours would not cause an undue disturbance to occupants of neighbouring property at unreasonable hours of the day. I find no conflict with Policies LP10 and LP26 of the Redbridge Local Plan 2015-2030 March 2018 (LP). Amongst other things,

these seek to resist development that results in the adverse impacts on the amenities of nearby occupiers.

Condition 6

14. The appellant is seeking to remove condition 6, which restricts the size of servicing vehicles to a maximum size of 7.5T. There are currently no restrictions on the size of servicing vehicles for the existing retail units.
15. The Council's concerns relate to the number and size of deliveries that could be made to the site as a proposed convenience store. The result would be large vehicles waiting for extended period of time, reducing the available width of the carriageway to a level below what is recommended for two buses to pass each other.
16. The appellant has provided an highways technical note as part of this appeal, in an attempt to address some of the Council's concerns. The technical note outlines that the proposal would result in a reduction of light goods vehicles and a similar number of ordinary goods vehicle movements. It also demonstrated that when a service vehicle is stationary within the loading location, there would be sufficient room left within the carriageway for two buses to pass each other.
17. I note that the Council's considered that a width of 6.6m is recommended but having regard to the technical note, it is not clear why this additional width is required in order to allow for sufficient space and the Council have not sought to provide any evidence in relation to this.
18. I therefore find that the condition restricting the size of service vehicles would not be necessary in order to prevent large delivery vehicles blocking the highway. I find no conflict with policies LP22, LP23 and LP26 of the LP and Policies T2 and T7 of the London Plan. Amongst other things, these seek to ensure development encourages sustainable modes of transport, provide parking for service vehicles, improve movement through places, reduce dominance of vehicles on London's streets and facilitate safe and efficient deliveries and servicing.

Other Matters

19. It is important to note that the appellant has advanced a fallback position. The existing retail units are already comprised Class E uses with the exception of one sui generis use which is a hot food takeaway. However, Schedule 2, Part 3, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) allows the change of use of a hot food takeaway to a use falling within Class E. The appellant then proposes to amalgamate the units with internal alterations only to create a large unit without the need for planning permission.
20. While the change of use of the hot food takeaway would require written notification to the Council, the appellants calculations provided as part of the appeal shows an intention to carry out this fallback position. I therefore accept that there is a greater than theoretical possibility that the fallback would be implemented should the appeal be dismissed. It is therefore a material consideration in the assessment of the proposal.

21. However, for significant weight to be afforded to the fallback position there needs not only to be a real possibility of it being carried out, but it would also need to be equally or more harmful than the appeal scheme.
22. The fallback position would result in a large retail unit of a similar size to the proposal, with no restrictions on the size of service vehicles. I note the Council also raise concern over the potential for a convenience store operator to occupy the unit. While there appears to be no restriction on this through the application, other than the conditions, the fallback would also not control the potential future occupier.
23. The potential, therefore, for a similar sized unit to take place which would be largely unrestricted by conditions, including size of service vehicles would be a more harmful scheme than the appeal proposal. Particularly as there is a condition requiring a delivery and service management plan which would require details of the servicing of the retail units including means of vision for serving and delivery vehicles. This will require further details of how retail units will be serviced and allow the Council to consider these aspects in further detail and have more control.

Conditions in respect of appeals A and B

24. The Planning Practice Guidance (the 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. The Council has provided a list of conditions they suggest in the event that the appeal is allowed, and I note that these largely reflect the conditions imposed on the original planning permission.
25. I have considered the conditions on the earlier permission and in the absence of any evidence to the contrary, I find it necessary to impose the same conditions. However, where necessary, and in the interests of clarity and precision, I have slightly altered them to more closely reflect the advice in the National Planning Policy Framework and the PPG.
26. Condition 1 is the standard condition which relates to the commencement of development and condition 2 specifies the approved plans for the avoidance of doubt. Condition 3 is necessary in order to protect the living conditions of neighbouring occupiers.
27. While two separate appeals are before me, they both relate to conditions on the same application reference 2687/22. I am therefore mindful that as I am allowing both appeals that the removed and varied conditions need to be imposed on both appeal decisions. Therefore, for the reasons set out in this decision, conditions 4 and 5 have been varied and a condition restricting the size of servicing vehicles has been removed.
28. Condition 6 is necessary in order to reduce the risk of surface flooding and condition 7 is necessary in the interests of highway safety and to protect the living conditions of neighbouring occupiers.

Conclusions

Appeals A and B

29. For the reasons set out above I conclude that the appeals are allowed.

D Wilson

INSPECTOR

Appeal A: Schedule of conditions

1. The development hereby permitted shall be begun no later than 13 December 2025.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 200049-3DR-XX-00-DR-A-08050 A, 200049-3DR-XX-00-DR-A-08051, 200049-3DR-XX-00-DR-A-08052 A, 200049-3DR-XX-02-DR-A-08053 C, 200049-3DR-XX-01-DR-A-08055 A, 200049-3DR-XX-02-DR-A-08057 A, 200049-3DR-XX-R1-DR-A-08059 A, 200049-3DR-XX-XX-DR-A-08150, 200049-3DR-XX-XX-DR-A-08152 A, 200049-3DR-XX-XXDR- A-08160 A, 200049-3DR-XX-XX-DR-A-08250 A, 200049-3DR-XX-XX-DR-A-08251 A, 200049-3DR-XX-XX-DR-A-08153 A, 200049-3DR-XX-XX-DR-A-08151 B, 200049-3DR-XX-01-DR-A-08056 A, 200049-3DR-XX-02-DR-A-08058 A, 200049-3DR-XX-00-DR-A-08054 B, 200049-3DR-XX-R1-DR-A-08060 A, Design and Access Statement, Heritage Technical Note, Transport Statement, Delivery and Opening Hours Noise Impact Assessment Version 1.2 9 June 2023 and Technical Note 3 Rev A – Response to Highway Comments 9 June 2023.
3. The premises shall only be used as retail (shop) and for no other purpose or use (including any other purpose or use within Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987), or in any provision equivalent to that Class in any Statutory Instrument revoking, re-enacting or amending that Order).
4. The shop hereby permitted shall not be open for the admission of customers to the premises outside the hours of 07.00-23.00 on any day.
5. No goods shall be delivered to, nor despatched from the site outside the following times:

Monday to Friday: 07:00 - 17:00

Saturday: 08:00 – 17:00

Sundays, Bank or Public Holidays: 09:00 – 16:00
6. Prior to its installation, details of a rainwater butt to be incorporated within the scheme shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be constructed in accordance with the approved details and retained for the lifetime of the development.
7. Prior to commencement of development, a Delivery and Service Management Plan (DSMP) in accordance with Transport for London best practice guidance shall be submitted to and approved in writing by the Local Planning Authority. The DSMP shall describe the means by which servicing of the retail units are to be provided including means of provision for servicing and delivery vehicles. Any measures described in the DSMP shall be implemented within the time period identified and maintained thereafter in accordance with the approved details.

Appeal B: Schedule of conditions

1. The development hereby permitted shall be begun no later than 13 December 2025.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 200049-3DR-XX-00-DR-A-08050 A, 200049-3DR-XX-00-DR-A-08051, 200049-3DR-XX-00-DR-A-08052 A, 200049-3DR-XX-02-DR-A-08053 C, 200049-3DR-XX- 01-DR-A-08055 A, 200049-3DR-XX-02-DR-A-08057 A, 200049-3DR-XX-R1-DR-A-08059 A, 200049-3DR-XX-XX-DR-A-08150, 200049-3DR-XX-XX-DR-A-08152 A, 200049-3DR-XX-XXDR- A-08160 A, 200049-3DR-XX-XX-DR-A-08250 A, 200049-3DR-XX-XX-DR-A-08251 A, 200049-3DR-XX-XX-DR-A-08153 A, 200049-3DR-XX-XX-DR-A-08151 B, 200049-3DR-XX-01-DR-A-08056 A, 200049-3DR-XX-02-DR-A-08058 A, 200049-3DR-XX-00-DR-A-08054 B, 200049-3DR-XX-R1-DR-A-08060 A, Design and Access Statement, Heritage Technical Note, Transport Statement, Delivery and Opening Hours Noise Impact Assessment Version 1.2 9 June 2023 and Technical Note 3 Rev A – Response to Highway Comments 9 June 2023.
3. The premises shall only be used as retail (shop) and for no other purpose or use (including any other purpose or use within Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987), or in any provision equivalent to that Class in any Statutory Instrument revoking, re-enacting or amending that Order).
4. The shop hereby permitted shall not be open for the admission of customers to the premises outside the hours of 07.00-23.00 on any day.
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6. Prior to its installation, details of a rainwater butt to be incorporated within the scheme shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be constructed in accordance with the approved details and retained for the lifetime of the development.
7. Prior to commencement of development, a Delivery and Service Management Plan (DSMP) in accordance with Transport for London best practice guidance shall be submitted to and approved in writing by the Local Planning Authority. The DSMP shall describe the means by which servicing of the retail units are to be provided including means of provision for servicing and delivery vehicles. Any measures described in the DSMP shall be implemented within the time period identified and maintained thereafter in accordance with the approved details.