



Appeal Decision

Site visit made on 24 April 2024

by H Miles BA (hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 May 2024

Appeal Ref: APP/Z5630/W/23/3327555

15a Claremont Road, London, KT6 4QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Waitrose Ltd against the decision of Royal Borough of Kingston Upon Thames.
 - The application Ref is 23/00694/FUL.
 - The application sought planning permission for redevelopment to provide new supermarket together with 2 storey car park accessed off The Crescent, involving junction alterations with The Crescent and Claremont Road and service area access off St. James Road without complying with a condition attached to planning permission Ref 97/7107/JH, dated 05 May 1998.
 - The condition in dispute is No 6 which states that: Vehicle deliveries to the supermarket hereby permitted shall not take place before 7.00am and after 10.00pm on any day.
 - The reason given for the condition is: To safeguard the amenities of the occupiers of nearby residential properties.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission was granted in 1998 for the development of the supermarket. A condition was attached requiring that deliveries must not take place before 7am or after 10pm. There have been subsequent applications which have sought to vary these delivery hours and the store has had temporary permission¹ to allow three deliveries over this nighttime period between 2017 to 2023. In practice these deliveries currently occur daily at 10.30pm and at 2am Mon-Sat and 4.30am on Sunday. The appeal that sought to establish these hours on a permanent basis was dismissed in 2020².
3. The main differences with this application are the hours and frequency of deliveries, with the appellant seeking that deliveries should not take place between 2am-7am, with only a single delivery between midnight and 2am. However, it would not place any restrictions on the number of deliveries that could occur between 10pm-midnight.

¹ 16/16066/FUL, 18/16236/FUL

² APP/Z5630/W/19/3238094

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of nearby occupiers with particular regard to noise.

Reasons

5. The appeal site is located on a residential street close to the train station and other commercial properties. Noise in this area is mainly from road traffic and the railway line. There are dwellings in close proximity to the delivery entrance at 17 and 19 St James' Road opposite, and adjacent at St James' Court.
6. The submitted noise assessment states that, without deliveries, the overnight ambient noise levels are between 66.6 and 51.9dB $L_{Aeq, 9hr}$. And between 10pm-2am there are around 18 vehicle pass bys per hour, where the example given shows a noise level of 65Db(a) L_{max} and 52 Db(a) $L_{Aeq, 1min}$. After 2am these events only occur around 3-4 times per hour.
7. In terms of the short term impacts from discrete events, the L_{Amax} noise levels generated by a delivery would be 68-70dB for each event including operating the roller shutter and the lorry arrival and departure, with $L_{Aeq, 1 min}$ between 58-61dB. Compliance with the delivery management plan would minimise any additional noise sources. Nevertheless, there would be multiple occurrences for each delivery when a vehicle enters and shutters are opened and closed, and similarly when it leaves.
8. Although only a single delivery between midnight and 2am is proposed, and whilst this would avoid the quietest time of the night, it would nevertheless create a short term noise level from the roller shutter and lorry arrival and departure which would be noticeably above ambient levels. Whilst there may be other existing noise events at a similar volume, the noise from a delivery would result in increased disturbance at a time when occupiers would expect to be able to sleep, resulting in a significant adverse effect.
9. Given the existing noise character of the area, occupants may choose to close windows to mitigate existing noise levels. However, and as evidenced in representations, this is not always the case particularly in summer and it would be unreasonable to require this.
10. Furthermore, there is no restriction on the number of deliveries that could take place between 10pm-midnight. The report concludes that the overnight background noise level increases by up to 1.7dB $L_{Aeq, 9hr}$ in a scenario where there are two deliveries. Whilst this is not a significant increase, this is an average across the whole night and does not take into account the character of the noise, which due to its short duration but loud volume would nevertheless be harmful for the reasons explained above. Nor does it account for the fact that the appeal scheme could result in more than two deliveries overnight.
11. Consequently, the frequency and timing proposed would result in noise impacts which would have a significant adverse impact on the quality of life of the nearby occupiers.
12. Deliveries have been carried out overnight since 2018. The Council's pollution control team have reported that they have not received any noise complaints and they have not objected to the proposed development. However, representations on the planning application and appeal make clear that

neighbours have been affected by this noise with reports of sleep disturbance. As such I am not satisfied that at present there is no disturbance to neighbours and therefore this does not weigh in favour of the scheme.

13. Consequently, the proposed development would be harmful to the living conditions of neighbouring occupiers with particular regard to noise. As such it would be contrary to Policy D14 of the London Plan (2021) (LP) and Policies CS8 and DM10 of the Core Strategy (2012) (CS). Together, in part these require that development relates well to its surroundings, has regard to the amenities of neighbours including in terms of noise and disturbance, and avoids significant adverse noise impacts.

Other Matters

14. The proposed delivery hours are required to support the operational requirements of the superstore. It would avoid the need to move stock while customers are on the shop floor, preventing obstructions for customers and ensuring that the full selection of goods are available. This would make the store more attractive to customers and would allow the store to continue to perform in a competitive convenience sector. However, I am not presented with detailed evidence that the store would not be able to viably operate without deliveries at the times proposed. Nevertheless, this would be in accordance with Policy SD6 of the LP and Policies S1 and CS12 of the CS which seek to enhance the vitality and viability of Surbiton. In addition, policy T7 of the LP provides support for deliveries outside peak hours. These factors weigh in favour of the application.
15. However, the harm I have identified would have a serious effect on nearby occupiers, which would lead me to conclude that these significant adverse effects attract greater weight that outweighs the benefits set out above. Therefore, the proposal would not comply with the development plan as a whole.

Conclusion

16. The proposal would not accord with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that this appeal should be dismissed.

H Miles

INSPECTOR