



Appeal Decision

Site visit made on 4 June 2024

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2024

Appeal Ref: APP/D1265/W/23/3332003

10 to 10A Lynch Lane Trading Park, Lynch Lane, Chickerell, Weymouth, Dorset DT4 9DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
- The appeal is made by Orchard Properties (Dorset) Ltd against the decision of Dorset Council.
- The application Ref P/FUL/2023/02483 was approved on 25 July 2023 and planning permission was granted subject to conditions.
- The development permitted is described as a change of use from storage to a vehicle repair use including the provision of MOT's.

The condition in dispute is No 3 which states that:

'The premises shall not be used for the purposes hereby permitted outside the hours of 08:00 - 17:00 Mondays to Fridays, 09:00 - 13:00 on Saturdays, and at no time on Sundays or Public Holidays'.

- The reason given for the condition is:

'To safeguard the character and amenity of the area and living conditions of any surrounding residential properties'.

Decision

1. The appeal is allowed and planning permission Ref P/FUL/2023/02483 for a change of use from storage to a vehicle repair use including provision of MOT's at 10 to 10A Lynch Lane Trading Park, Lynch Lane, Chickerell, Weymouth, Dorset DT4 9DN granted on 25 July 2023 by Dorset Council, is varied by deleting condition No 3 and substituting it for the following condition:

3) For a period of 12 months from the date of this appeal decision, the premises shall not be used for the purposes hereby permitted outside the hours of 07:00 - 18:30 Mondays to Saturdays and at no time on Sundays or Public Holidays. After 12 months, from the date of this appeal decision, the premises shall not be used for the purposes hereby permitted outside the hours of 08:00 - 17:00 Mondays to Fridays, 09:00 - 13:00 on Saturdays, and at no time on Sundays or Public Holidays.

Background and Main Issue

2. On the 25 July 2023, the Council approved full planning permission ref: P/FUL/2023/02483 for a change of use from storage to a vehicle repair use including the provision of MOT's, subject to several conditions. This included a condition restricting the hours of use (Condition 3).
3. The wording and reason for this condition are set out in the banner heading above. The applicant has lodged this appeal to vary Condition 3 as the existing tenant has acquired local contracts for vehicle recovery deliveries. These

contracts require the premises to be open from 7am – 8pm Monday to Saturday.

4. The appeal has been made pursuant to section 78 of the Act which provides the right to appeal where an application for planning permission is granted subject to conditions. Section 79 of the Act provides that I may allow or dismiss such an appeal, or reverse or vary any part of the decision of the Local Planning Authority, and I have considered the appeal on that basis.
5. Therefore, the main issue is whether the disputed condition is necessary and reasonable having regard to the character of the area and living conditions of neighbouring residential occupants with particular reference to levels of activity and noise.

Reasons

6. The Council have confirmed that the hours of operation as imposed via Condition 3 were taken directly from the original application form. While the area is partly industrial, there are residential properties and a holiday park sited close to the appeal site and the proposed increase to the opening times has potential to generate additional noise and activity.
7. Given the evidence submitted, the extension of hours to allow the use to start at 7am would be appropriate in character terms and would not generate a level of activity or noise that would detract significantly from the current living conditions enjoyed at neighbouring residential properties.
8. However, I am not persuaded by the limited information before me that extending the use significantly into the evenings on weekdays and Saturdays would be acceptable, in terms of its impact on the living conditions of neighbouring occupiers. In the absence of contrary evidence, the proposed alterations to Condition 3 in this regard would be unacceptable.
9. I acknowledge that the appellant's tenant has won a contract which requires vehicle recovery deliveries up to 8pm. While this contract would have social and economic advantages, it has not been clearly demonstrated how important these benefits would be or how essential they are to the appellant or the recovery operators. These benefits subsequently carry moderate weight and would not outweigh the harm I have identified above.
10. The Council suggest a compromise of restricting the use from 07:00 - 18:30 Mondays to Saturdays for a temporary period of 12 months. The purpose of this would be to assess the impact of the proposed development in a tempered way over a finite period. The appellant has not raised objection to this suggestion and there would be opportunity to review the situation at the expiry of the temporary period.
11. I therefore consider this to be a reasonable and proportionate approach balancing the need to protect living conditions of neighbouring residential occupants while supporting the economic and social benefits of the proposal. Subsequently a modified condition as set out above, would be in accordance with Policy ENV16 of the West Dorset, Weymouth & Portland Local Plan, and the National Planning Policy Framework. These, amongst other things, seek to ensure a satisfactory level of amenity for occupiers of neighbouring properties.

Other Matters

12. I appreciate that the proposed extension to hours may place more demand on car parking and the highway network. However, there is limited evidence before me to suggest what, if any, harm would arise in this respect. Given the finite nature of the proposed condition any impacts can be reviewed after the expiry of the temporary condition.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and substituting it with a new modified condition.

N Praine

INSPECTOR