



Appeal Decision

Site visit made on 9 April 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th July 2024

Appeal Ref: APP/Z0116/W/23/3331720

South Bristol Retail Park, Wedlock Way, Ashton, Bristol BS3 2LQ

- 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 BAE Systems Pensions Funds Trustees Ltd c/o Threadneedle Portfolio Services Ltd against the decision of Bristol City Council.
 - The application Ref is 23/00942/X.
 - The application sought planning permission for erection of new building with drive thru facility and associated works to site layout without complying with conditions attached to planning permission Ref 22/01002/F, dated 22 December 2022.
 - The conditions in dispute are Nos 14 and 15 which state that:
 - 14. *The premises shall only be open during the following times 06:30 to 23:00 Monday to Friday and 08:00 to 20:00 on Saturdays, Sundays and Bank Holidays.*
 - 15. *The drive through facility shall only be open for serving customers during the following times 06:30 to 20:00 Monday to Friday and 08:00 to 20:00 on Saturdays, Sundays and Bank Holidays.*
 - The reasons given for the conditions are:
 - 14. *To safeguard the residential amenity of nearby occupiers.*
 - 15. *To safeguard the residential amenity of nearby occupiers.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published on 19 December and updated on 20 December 2023. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the matters relied on by the main parties are unchanged. Therefore, I did not need to consult with the main parties regarding the revised Framework and in determining this appeal, I have had regard to the most recent version.

Background and Main Issue

3. Planning permission for the erection of a new building with a drive-thru facility and associated works to the site layout was granted by the Council on 22 December 2022¹ (the 2022 planning application). The original permission included seventeen conditions. The appellant disputes two of those conditions (conditions 14 and 15), which they consider to be unnecessary and unreasonable.

¹ Bristol City Council application reference 22/01002/F

4. Disputed condition 14 restricts the opening hours of the premises to between 06:30 and 23:00 from Monday to Friday and between 08:00 and 20:00 on Saturdays, Sundays and Bank Holidays. Disputed condition 15 restricts the opening hours of the drive-thru facility to between 06:30 and 23:00 from Monday to Friday and between 08:00 and 20:00 on Saturdays, Sundays and Bank Holidays. The reasons given by the Council on its decision notice, for both conditions, is to safeguard the residential amenity of nearby occupiers.
5. The appellant applied to the Council to vary the opening hours that are restricted by disputed conditions 14 and 15² (the 2023 planning application). The Council refused the application on 11 August 2023. The reason given for the refusal is that the earlier opening times and later closing times would result in unacceptable and unjustified additional harm to residential amenity relating to noise. That refusal of permission is the subject of the appeal.
6. Bearing in mind this background, the main issue in this appeal is whether disputed conditions 14 and 15 are reasonable and necessary in the interests of living conditions of the occupiers of neighbouring properties, with particular regard to noise.

Reasons

7. The appeal site is located in a corner of the car park serving the South Bristol Retail Estate. It consists of a coffee shop and associated drive-thru facility. The A3029 runs near to the site and is separated by an area of grass and footway. Smyth Road is a residential street fronted by detached and semi-detached dwellings that have gardens to the rear. The rear elevations and gardens of a number of dwellings along Smyth Road are orientated towards the appeal site and the extant drive-thru facility and associated parking are very close to the rear boundaries of those properties.
8. The appellant would like to extend the hours of operation at the appeal premises and drive-thru facility, opening one and a half hours earlier on Mondays to Fridays, and three hours earlier at the weekend and on Bank Holidays; and to close three hours later at the weekend and on Bank Holidays.
9. The appellant included a Noise Impact Assessment (NIA) with the 2022 planning application for the appeal development. The potential sources of noise disturbance arising from the development were identified in the NIA as the order speaker, patrons, deliveries and fixed plant. The Council had sight of the NIA and concluded that the conditions limiting the opening hours were necessary to safeguard the living conditions of the neighbouring residents. Delivery hours are restricted by condition 12 of the original planning permission.
10. A high timber fence has been erected around the external plant compound, which aids in buffering the sound emanating from the plant, and condition 12 that restricts the delivery hours has not been disputed by the appellant. As such, the consideration of noise impacts is limited to those arising from the use of the drive-thru facility and patrons talking outside the premises.
11. The appellant contends that the NIA actually gave sufficient evidence to demonstrate that earlier opening times and later closing times would not harm the living conditions of the neighbouring residents. The NIA contains data taken

² Bristol City Council application reference 23/00942/X

from a survey carried out during a 24-hour period over two weekdays. A single sound level meter was placed near to the rear boundaries of the properties on Smyth Road, which were identified as the nearest Noise Sensitive Receptors. Between 11:30 and 23:00 the background sound levels were recorded as being in the region of 60dB L_{A90} , with a minimum L_{A90} level of 55dB. The background sound levels between 05:00 and 07:00 were recorded in the region of 61dB L_{A90} , with a minimum L_{A90} level of 55dB. The L_{Aeq} levels for both periods of time were recorded as 62dB.

12. The normal voice noise level of the order speaker at one metre is stated in the NIA as being 60dB and two voices at one metre is stated as being 63dB. The quoted sound power level of the order speaker is 71dB. In terms of patron noise, the sound power level of two patrons talking in raised voices is quoted as being 76dB. I note that the entrance to the premises is on the opposite side to the neighbouring residential properties. As such, the noise levels of patrons talking outside the premises that would be noticeable at the residential properties would be somewhat attenuated by the presence of the appeal building.
13. The NIA states that the increase in ambient noise level would be +0.3dB during the day time and +0.1dB during the night time. As such, the conclusion drawn is that the expected impact would be 'Not Significant' and this equates to 'No Observed Effect Level' when assessed in accordance with the Noise Policy Statement for England (Department for Environment, Food & Rural Affairs, 2010) and the Framework.
14. I have noted above that the two operational periods in the data tables are 11:30 to 23:00 and 05:00 to 07:00. The stated increase in ambient noise levels is not specific to the proposed extended time periods for opening. The evidence provided does not demonstrate that there would be a 'Not Significant' expected impact for the specific periods of time between 05:00 and 06:30 during the working week and between 05:00 and 08:00, and 20:00 and 23:00 during the weekend. From the evidence submitted, it is not possible to ascertain the actual change in sound levels and the resulting effect on the occupiers of neighbouring residential properties.
15. Additionally, the survey was not carried out at the weekend, and it is therefore also difficult to conclude that the effect on neighbouring residential occupiers resulting from the change to opening hours would be acceptable at the weekend. I acknowledge that the NIA follows the industry standard, but, given the proximity of the A3029 and potentially fluctuating traffic levels and activity in the retail park, the ambient and background sound levels at the weekend could be noticeably different from those levels recorded over the two weekdays. Moreover, the change in the opening hours would be greater than the proposed change on weekdays and there would therefore be a potential for a more significant change in the sound levels and resulting effect on neighbouring residential occupiers.
16. I acknowledge that the appellant queries the Council's conclusion that the opening hours restricted by the disputed conditions are reasonable as they consider that the restricted opening hours are not justified by the data contained within the NIA. The noise survey time history does show a notable difference in L_{A90} levels at the restricted opening and closing times and the proposed extended opening period. As such, without sufficient evidence to

demonstrate that the proposed variation would not result in harm to the living conditions of the occupiers of neighbouring properties, the current restricted opening hours are reasonable.

17. For these reasons, the proposed variation of disputed conditions 14 and 15 would result in harm to the living conditions of the occupiers of neighbouring properties. Consequently, the proposal conflicts with Policies BCS21 and BCS23 of the Bristol Development Framework Core Strategy (Adopted 2011) and Policies DM28 and DM35 of the Site Allocations and Development Management Policies Local Plan (Adopted 2014), which collectively seek, in part, to safeguard the amenity of existing development, avoid adversely impacting upon environmental amenity by reason of noise, and where development would have an unacceptable impact on environmental amenity by reason of noise, it will be expected to provide an appropriate scheme of mitigation. The proposal would also conflict with the Framework, insofar as it seeks to prevent adverse impact on existing development by noise pollution and mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development. It follows that the disputed conditions 14 and 15 are reasonable and necessary in the interests of living conditions of the occupiers of neighbouring properties, with particular regard to noise.

Other Matters

18. The appellant has drawn my attention to four allowed appeals that all relate to restaurants with drive-thru facilities and disputed conditions restricting opening hours. I cannot be certain that the site-specific circumstances and relationship between the facilities to nearby dwellings is usually comparable. Furthermore, the appeals concerning sites in Aldershot³ and Birmingham New Street⁴ were allowed as 12-month temporary permissions, which would have enabled further assessment to take place and a more informed decision be made over the permanent alteration to the opening hours. The appeals allowed at sites in Newcastle-under-Lyme⁵ and Manchester⁶ both had a condition requiring the respective premises to be operated in accordance with a Premises Noise Management Plan (PNMP). The mitigation measures contained within the PNMP were considered to be a significant factor in the prevention of harm to the living conditions of the occupiers of neighbouring properties. The 2022 planning permission did not include a condition requiring compliance with a PNMP or similar document. There are therefore substantial differences between the other appeals and that before me, which I have determined on its own individual merits.

Conclusion

19. For the reasons given above, the proposal would conflict with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Accordingly, the appeal is dismissed.

K Reeves

INSPECTOR

³ Appeal reference APP/P1750/W/21/3278383

⁴ Appeal reference APP/C4615/W/19/3237704

⁵ Appeal reference APP/P3420/W/3196812

⁶ Appeal reference APP/B4215/W/22/3304464