



Appeal Decision

Site visit made on 6th February 2025

by Jonathan Price BA(Hons) DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2025

Appeal Ref: APP/P1560/W/24/3353476

Little Paddocks, Frating Road, Great Bromley, Essex CO7 7JL

- 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 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Vijay Ponnusamy against the decision of Tendring District Council.
 - The application Ref is 24/00680/VOC.
 - The application sought planning permission to enable/allow the shop to be open to general public and local community from 6am-11pm, 7 days a week without complying with condition attached to planning permission Ref 21/01679/VOC, dated 22nd December 2021.
 - The condition in dispute is No 13 which states that: The hereby approved retail outlet shall only be open to the general public between the following opening times: - 7:30am - 10pm (7 days a week).
 - The reason given for the condition is: In the interests of residential amenity.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The proposal relates to an operating convenience store. The business occupies a corner site at the junction of the B1029 with the main Harwich Road, within Great Bromley parish. The store and the parking, servicing and turning area has its own access from Harwich Road. Immediately adjacent is a recently built development of 7 dwellings, served by a separate access onto the B1029. The housing was granted outline planning permission in 2017, along with the conversion of an existing building to create a village shop¹.
3. Full planning permission for the convenience store, with its car parking and own access, was granted on 3 December 2020². On 22 December 2021, the Council gave permission to vary some of the conditions, keeping the opening times for the convenience store as already set³. This appeal relates to the refusal to vary these opening times, as set out in the bullet headings above.

¹ 16/01040/OUT - outline planning permission for 6 No. detached dwellings and garages, and the change of use of the existing barn into a village shop with associated parking for visitors. Granted 6 January 2017.

² 20/00859/FUL Proposed 3no. dwellings (replacements: Plots 1, 2 and 7), internal road and turning head; shop with visitor car parking and new access from Harwich Road; associated landscaping and structures.

³ 21/01679/VOC. Approval to vary conditions 2, 5, 11 and 15 of 20/00859/FUL by way of the rewording of the timescales of conditions 2 and 11 and the substitution of drawing number 058/2019/SK250920 with 058/2019/14/P5 (facilitates relocation of bus stop and associated works) for condition 5 and 15 (approved plans).

4. The main issue is the effect that varying the 7 days a week opening hours from 7:30am - 10pm to 6am - 11pm would have on the living conditions of neighbouring residents, with particular regard to noise and disturbance.

Reasons

5. Paragraph 135 of the National Planning Policy Framework (the Framework) seeks developments which promote health and well-being, with a high standard of amenity for existing and future users. Paragraph 198 requires that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health and living conditions. This includes by mitigating, and reducing to a minimum, potential adverse impacts resulting from noise, to avoid this giving rise to significant adverse impacts on health and the quality of life.
6. The development plan includes the Section 1 and 2 Tendring District Local Plan 2013-33 and Beyond (DLP)⁴. Policy SPL3 requires new development to be compatible with surrounding uses and minimise any adverse environmental impacts, including in respect of noise pollution.
7. Although the site is within a rural area, there exists a small aggregation of development at this road junction, including a public house and a car dealership on the opposite side of the Harwich Road. Busy road traffic and the activities from the nearby development all influence existing background noise levels and so it would not necessarily be an area of particularly tranquil countryside.
8. Although the extension of the operating time is a relatively small 2.5 hours, this is at early morning and late evenings, when background noise levels might well be lower and additional sounds more perceptible. Early mornings and late evenings are also unsociable times of the day for activities to be carried out, when the noise caused would stand out more in relatively quiet background levels. These would also be times residential occupiers would be expecting a relatively quiet period in respect of preparing for and emerging from a night's sleep.
9. The nature of noise varies in respect of its effects, and the level of disturbance caused. Neighbouring residents in this case refer to disturbance that is of a varied, irregular and unpredictable nature, such as loud car audio systems, reversing alarms and entry chimes.
10. The convenience store was originally a part of the approved mixed-use development, and residents of the new houses should have been aware of this situation. However, they might also have been aware of the conditioned opening hours and so concerns over the proposed extensions to these are quite reasonably made.
11. The two houses immediately adjacent the convenience store site might be those most affected by noise, and benefit both from the buffer of garaging on the exposed sides. However, there has been no assessment made of noise levels and how far the effects might reach. The appellant refers to noise levels being within the World Health Organisation's Guideline for Noise, without any evidence to support this. It is suggested approval could be made conditional upon adherence to a Noise Management Plan. However, in the absence of a noise report over the effects of

⁴ Adopted January 2021 and January 2022, respectively

the proposed opening hours, it is not possible to gauge if any mitigation would be acceptable.

12. A condition is offered, making permission temporary for one year to monitor the effect of earlier and later openings. However, it is evident that the Council has investigated breaches of the conditioned opening hours and already identified harm. This harm relates to noise and disturbance at sensitive times at both ends of the day. Therefore, I am not minded to make a split decision and allow one or other of the extended opening times sought.
13. I recognise the value this store provides to the local community. The longer opening times, available at the Budgen Store at nearby Elmstead Market, would further help this business to compete and continue to provide a local service. I note also that deliveries are scheduled to be after 8am in the morning, for six days a week. However, with the extended opening and closing times, this would be difficult for the Council to enforce.

Conclusion

14. In the absence of acoustic evidence to the contrary, I conclude that the proposal to open the convenience store from 6am to 11pm for seven days a week would likely have an unacceptably harmful impact on the living conditions of neighbouring residential occupiers, due to additional noise and the disturbance caused. This would be in conflict with both DLP Policy SPL3 and the Framework. Therefore, having taken all further matters raised into account, I conclude that the appeal be dismissed.

Jonathan Price

INSPECTOR