



Appeal Decision

Site visit made on 31 January 2025

by **A M Nilsson BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24th March 2025

Appeal Ref: APP/M1595/W/24/3347845

Coward Industrial Estate, St Johns Road, Chadwell St Mary, Thurrock RM16 4BF

- 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 Mr R Evans of Mileway Real Estate UK Limited against the decision of Thurrock Borough Council.
 - The application Ref is 24/00099/CV.
 - The application sought outline planning permission for the construction of 5,022m² B1/B8 units plus estate road without complying with a condition attached to planning permission Ref THU/341/92, dated 29 January 1993.
 - The condition in dispute is No. 9 which states that: No service, delivery, or collection vehicles shall visit or leave the site, and no industrial process shall be carried out on the premises except between the hours of 7 am and 7 pm Monday to Fridays, 7 am to 1 pm Saturdays. There shall be no such activities on Sundays and/or Bank Holidays.
 - The reason given for the condition is: To protect the amenities of nearby residential properties and the surrounding area.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of varying the condition would have on the living conditions of the occupants of surrounding residential properties in relation to noise and disturbance.

Reasons

3. The appeal site forms part of the Coward Industrial Estate which comprises 14 units within use classes B1 (General Industrial) and B8 (Storage and Distribution). It is accessed via Oak Grove which leads from St Johns Road, which itself leads from the busier Linford Road. There are residential properties to the north, east and west on Hill House Drive, Sandy Lane, Oak Grove and St Johns Road. To the south is the Star Industrial Estate and this shares the same access.
4. The appellant seeks to vary the condition as originally imposed to allow for service, delivery, or collection vehicles to visit or leave the site between the hours of 6am to 10pm Monday to Fridays, 7am to 6pm Saturdays and not at all on Sundays or Bank Holidays. It is not proposed to amend the condition as it applies to the undertaking of industrial processes.

5. The variation sought would inevitably increase vehicular movements around the site entrance and within the site. This would occur at the more sensitive early morning and late evening hours than the current situation when occupants of surrounding residential properties are likely to either be asleep or expect there to be a quieter environment.
6. On my site visit I observed that the access to the Industrial Estate has a gradual descent leading from St Johns Road. This, combined with the nature of approaching the entrance to the site and the presence of traffic calming, would require vehicles to travel in lower gears and at varying speeds. This would certainly be the case when vehicles exit the site and are required to increase engine power to ascend the access road and also when exiting the junction with St Johns Road. Additionally, although the proposed variation does not include extended hours for the undertaking of industrial process, there will inevitably be vehicle manoeuvres within the site, the slamming of doors, reversing beepers, and the possible loading and unloading of vehicles in advance of the commencement of the operational hours. This would be particularly noticeable from the closest residential properties.
7. The passing of vehicles, including HGVs, would represent a regular individual noise event. At the proposed hours, these would occur at times when residents may reasonably expect to be sleeping. It is identified that such noise events can cause sleep disturbance.
8. The noise generated would be sudden and intermittent. Such noise occurrences are typically those that cause the greatest level of disturbance, being highly noticeable and distinct. These are random, spontaneous and in effect not easily controllable. Such sudden noises, unlike continuous noise, can be significantly more intrusive and perceptible, with the potential to cause significant harm. This has been further demonstrated in the representations that have been received which refer to existing disturbance due to noise.
9. As outlined in the Planning Practice Guidance, the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation. These factors can include the source and noise level together with the time of day it occurs. Some types and level of noise will cause a greater adverse effect at night or very early than if they occurred during the day. This is because people tend to be more sensitive to noise at night or very early as they are trying to sleep. The adverse effect can also be greater simply because there is less background noise at these times.
10. Whilst some noise and disturbance from the site is inevitable, I consider that it is important that this is prevented at times when residents may reasonably expect a quieter noise environment, those times being early in the morning and late in the evening. It is also important that residents are entitled to some respite from the noise and disturbance that would otherwise occur throughout the day.
11. In a previous appeal decision¹ from 2001, an Inspector observed that a sizeable new residential estate was under construction immediately to the north of the industrial estate. I have taken this to be the Hill House Drive residential area. From the evidence and my own observations on site, it would also appear that the

¹ APP/M1595/A/01/1058667

residential development of Oak Grove has been constructed since both the original decision and the 2001 appeal decision.

12. The facts are therefore that the condition as originally imposed was done so prior to the closest residential properties being in existence and that there are now residential properties closer to the appeal site than at the time of these previous decisions. I accept that these properties have come into existence since the industrial estate, however they have been permitted in conjunction with the restrictions originally imposed. Through the Council's decision, or this appeal decision, these properties have not resulted in any greater restriction being imposed than that as originally set out.
13. I am also required to have regard to the representations received from interested parties. These refer to existing problems from noise and disturbance associated with the industrial estate, particularly at either ends of the working days.
14. A Noise Impact Assessment² has been submitted with the appeal. As part of the assessment, measurements of the existing background noise climate were undertaken close to the site entrance as this was considered to be representative of the closest identified Noise Sensitive Receptors (NSRs). An initial impact assessment of the predicted night-time noise impact indicated the potential for a 'low impact' at all NSR locations, with Rating Levels 1 dB or more below the representative night-time background sound level.
15. The technical data would therefore appear to support the appeal in relation to the impact from noise. The assessment assumes, however, that the occupants of the nearby residential properties are accustomed to the current noise climate from the Industrial Estate. The evidence, in terms of the submitted representations and planning enforcement history, would however suggest that there are noise complaints either as a result of the current situation or by exceeding the permitted operating hours. This would therefore appear to be an incorrect assumption.
16. It is also pertinent that the noise survey has been undertaken at a time when the estate is experiencing a high level of under occupancy. It would not be unreasonable to suggest that if fully occupied, the recorded noise levels, or at least their frequency, would be greater than recorded. Furthermore, whilst the evidence gives predicted numbers of additional vehicles, I am mindful the frequency of these movements could change over time.
17. I acknowledge, as has been highlighted, that the Star Industrial Estate, which uses the same access, is not subject to any restrictions. I do not have the full planning background to that site, which is of a different arrangement in a different location. Despite its presence, lack of restriction, and using the same access, the proposed variation would result in greater numbers of vehicles using the access than at present, at times when residents can reasonably expect are more subdued noise environment.
18. The appellant suggests that the proposed variation would address the matter of vehicles queuing at the site entrance before 7am, something that has been referred to in the submitted representations. I do not consider that the potential resolution of the matter justifies the harm that I have identified. There is also no

² Noise Impact Assessment – Peak Acoustics – Ref 0911234NR – 14/02/24

assurance that it would not, in effect, result in queuing of vehicles at the site entrance before 6am. This would not be a reason to allow the appeal.

19. Therefore, the suggested variation to the condition would cause significant harm to the living conditions of occupants of nearby residential properties in terms of noise and disturbance. The proposal would therefore be contrary to Policy PMD1 of the Thurrock Core Strategy and Policies for Management of Development (2015) which states that development will not be permitted where it would cause or is likely to cause unacceptable effects on amenity.
20. The proposal would also be contrary to paragraph 198 of the National Planning Policy Framework (the Framework) which seeks to ensure that development is appropriate for its location taking into account the likely effect (including cumulative effects) on, amongst other things, living conditions, and avoid noise giving rise to significant adverse impacts on quality of life.

Other Matters

21. I acknowledge that the current hours restriction may make the units undesirable for some prospective occupants, and this is supported in the evidence. It would also be the case that greater occupancy would bring greater economic activity, and this is a factor which weighs in favour of the appeal.
22. I acknowledge representations made in support of the application. In refusing to vary the operating hours there would not, however, be a reduction in the permitted hours as has been suggested.

Planning Balance and Conclusion

23. There would be economic benefits to allowing greater operating hours at the appeal site which in turn may lead to greater occupancy. I do not, however consider that this should be at the expense of causing significant harm to the living conditions of occupants of nearby residential properties. It therefore follows that in the planning balance, the benefits do not outweigh the harm.
24. The proposed variation would therefore conflict with the development plan and there are no identified other considerations, including the Framework, that outweigh this conflict.
25. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR