



Appeal Decision

Site visit made on 14 July 2025

by **T Bennett BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25th July 2025

Appeal Ref: APP/A1530/W/25/3364083

93a London Road, Marks Tey, Colchester, Essex CO6 1EB

- 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 Zbigniew Gazda against the decision of Colchester City Council.
 - The application Ref is 250282.
 - The application sought planning permission for change of use from clothes shop to bakery shop without complying with a condition attached to planning permission Ref 231616, dated 15 September 2023.
 - The condition in dispute is No 3 which states that: *The use hereby permitted shall not OPERATE/BE OPEN TO CUSTOMERS outside of the following times: Weekdays: 08:00-18:00 Saturdays: 08:00-18:00 Sundays and Public Holidays: No opening.*
 - The reason given for the condition is: *To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from people entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.*
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Decision

1. The appeal is allowed and planning permission is granted for change of use from clothes shop to bakery shop at 93a London Road, Marks Tey, Colchester, Essex CO6 1EB in accordance with the application Ref 250282, without compliance with condition number 3 previously imposed on planning permission Ref 231616 dated 15 September 2023 but subject to the conditions in the attached schedule.

Background and Main Issue

2. Planning permission was granted for a change of use from clothes shop to a bakery shop in September 2023 subject to conditions. Condition 3 of the 2023 permission restricts the operating and public opening hours to between 08:00 and 18:00 Monday to Saturday. The Council considers this condition to be necessary to safeguard to the living conditions of neighbouring occupiers. The appellant is seeking to vary the condition to allow the bakery to open at 06:00 rather than 08:00.
3. The main issue is the effect of varying the opening hours on the living conditions of neighbouring residential occupiers, with particular regard to noise and disturbance.

Reasons

4. The appeal site is located on a section of London Road where several other commercial businesses are located. This includes a convenience store with post office, a petrol station, petrol station shop and a sandwich bar, all of which open

before 08:00. A car garage, pharmacy, butchers, solicitors and hot food takeaway are also located in close proximity. Residential properties are predominantly located to the west and east of the appeal site, further down London Road, although there is a bungalow to the rear of the pharmacy and a first floor flat above the convenience store.

5. London Road is a busy road, due its close proximity to the A12, a major arterial route. On my site visit at approximately 07:00, I observed that background road noise emanating from the A12 was a noticeable feature of the area. I also observed regular comings and goings of vehicles from members of the public visiting the other commercial premises that are open before 08:00.
6. I acknowledge that some noise would arise from customers and their vehicles when visiting and leaving the appeal site between the hours of 06:00 and 08:00, such as engines starting and car doors closing and that this is a time when residents would typically expect ambient noise levels to be lower. However, given the proximity of the appeal site to the A12, surrounding commercial premises that are already open before 06:00, along with their associated comings and goings, it is thus inevitable that noise from the surrounding roads and the commercial premises forms part of the normal background noise for many local residents.
7. Whilst the appellant has not provided any details on the preparation time needed and what time they would enter the premises, I note the site is not a plant bakery and is predominantly selling pre-baked goods and sandwiches, similar to other premises nearby which already open before 08:00. There is nothing before me to indicate any adverse noise is currently generated by any equipment within the premises or that any such noise would be generated before 08:00.
8. Given the limited scale of the development, the nature of the business and the existing base levels of noise, I am not persuaded that the additional opening hours would result in such an increase in comings and goings or operational noise, either individually or cumulatively with the other businesses, as to cause material harm to the living conditions of neighbouring residents, over and above the existing situation with regards to noise and disturbance.
9. In coming to the above view, I am mindful that there was no objections from environmental health on grounds of noise and disturbance. Moreover, there is no substantive evidence before me which would indicate that the surrounding commercial premises have given rise to unacceptable impacts on nearby residents in terms of adverse noise.
10. For the above reasons, I conclude that the proposed amendment to the opening hours would not have a harmful impact on the living conditions of neighbouring residential occupiers with regards to noise and disturbance. It would thus accord with Policy DM15 of the Colchester Borough Council Local Plan – Section 2 (2022) which seeks to protect and promote public and residential amenity with regard to noise and disturbance and it would also accord with Policy SP7 of the Colchester Borough Local Plan – Section 1 (2021) which has similar aims.

Other Matters

11. Interested parties have referred to other nearby premises with similar offerings, arguing there is no proven need for the bakery to open earlier and that it will undermine existing businesses. However, it is not my role, in the context of this

appeal, to determine whether there is a commercial need, nor have I been directed to a local plan policy requiring such a demonstration.

12. Interested parties have informed me that the appellant is already in breach of the planning conditions, opening before the permitted time. Indeed, on my site visit I observed the premises was open and trading before 08.00. However, this is a matter for the local planning authority and is not within the remit of my decision.
13. I note that the interested parties have raised concerns that allowing this appeal could set a precedent for other businesses wishing to open earlier. However, each case is determined on its own merits and on the basis of the evidence and case specific circumstances. As such, I am satisfied that my decision on this proposal, would not harm the ability of the Council to exercise in equity their judgement on similar matters in future cases.
14. Representations from interested parties express concerns that earlier opening hours may exacerbate traffic and parking issues on the road in the early morning, potentially hindering emergency vehicles and raising public safety concerns due to the increased traffic.
15. During my site visit I observed that the road was heavily trafficked, with parked vehicles on the road near the appeal site from customers visiting the nearby commercial premises. I do not dispute that the volume of traffic on the road has likely increased over recent years. However, there is little substantive evidence to suggest that the increase in opening hours of the appeal premises alone would materially exacerbate traffic and parking or harmfully increase air pollution. Considering the limited scale of the business, any additional traffic generated by the increased opening hours would likely be minimal, spread over the two hours, and generally from people already using the road network or visiting other nearby premises, and would not be of a level which would detrimentally harm the living conditions of nearby occupiers.
16. Moreover, condition 3 was not originally imposed on highway safety grounds. Neither the Councils Highways officer or National Highways have raised any objection to the proposal on highway safety grounds, nor did the Council raise specific issues in this regard. I also have no substantive evidence of any road accidents having occurred in the vicinity of the site. I am thus not persuaded that the proposal would run contrary to the National Planning Policy Framework, which states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.

Conditions

17. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The Council have supplied a list of conditions which is based upon the original permission. From the information before me, condition 5 and 6 of the original permission have been discharged and I will not re-impose them. I am also aware that condition 7 of the original permission has been varied in relation to the use class and I have been supplied with details of the varied condition. This varied condition is necessary for certainty.

18. It is not necessary to repeat condition 1 of the original permission, as the development is already operational. However, a plans conditions is necessary for certainty.
19. I have amended the condition stipulating the opening hours to the public. An hours condition is necessary to ensure no adverse impacts on living conditions of neighbouring occupiers. For these same reasons a condition is necessary with regard to delivery times.

Conclusion

20. For the reasons given above, the appeal is allowed and condition 3 is varied in accordance with the schedule attached to this letter.

T Bennett

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with drawing nos 050 and 051.
- 2) The use hereby permitted shall not operate/be open to customers outside of the following times: Weekdays: 06:00-18:00 Saturdays: 06:00-18:00 Sundays and Public Holidays: No opening.
- 3) No deliveries shall be received at, or despatched from, the site outside of the following times: Weekdays: 07:00-19:00 Saturdays: 07:00-19:00 Sundays and Public Holidays: No deliveries.
- 4) The change of use hereby approved shall be used solely for a bakery and for no other purpose including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended through the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. The bakery use may include the heating up of savoury goods that have been cooked offsite specifically sausage rolls, pasties, savoury slices, sausage baps and bacon baps only. No cooking of savoury goods or other food for eat in or takeaway purposes shall take place on the premises.

**** End of conditions ****