



Appeal Decision

Site visit made on 9 January 2024

by H Senior BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeal Ref: APP/B4215/W/23/3322495

Fallowfield Shopping Centre, Birchfields Road, Manchester M14 6FS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 Lidl Great Britain Limited against the decision of Manchester City Council.
 - The application Ref 134931/JO/2022, dated 12 September 2022, was refused by notice dated 21 November 2022.
 - The application sought planning permission for demolition of existing units 4, 5, 6, 7, 8, and 10 and erection of a single storey building to form new retail foodstore (Use Class E) and separate hot food delivery unit (sui generis) with associated car parking and landscaping without complying with a condition attached to planning permission Ref 130189/FO/2021, dated 12 May 2022.
 - The condition in dispute is No 10 which states that: Deliveries, servicing and collections, including waste collections shall not take place outside of the following hours: 07.30 to 20.00 hrs Monday to Saturday; No deliveries/waste collections on Sundays and Bank Holidays.
 - The reason given for the condition is: To safeguard the amenities of nearby occupiers, pursuant to Policies DM1 and SP1 of the Manchester Core Strategy.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. There has recently been a revised National Planning Policy Framework (the Framework) published by Government. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach.

Background and Main Issue

3. Planning permission has been granted for the demolition of existing units 4, 5, 6, 7, 8, and 10 and erection of a single storey building to form a new retail foodstore (Use Class E) and separate hot food delivery unit (sui generis) with associated car parking and landscaping. The appeal seeks permission to carry out the development by varying condition 10 and seeks to amend it to read, deliveries, servicing and collections, including waste collections shall not take place outside the following hours: 05:00 to 00:00 Monday to Sunday (including Bank Holidays).

4. The main issue is the effect that varying the condition would have on the living conditions of nearby occupiers with particular regard to noise and disturbance.

Reasons

5. Birchfields Road is a busy road during the daytime, but it is unlikely to be heavily trafficked during the night. I visited the site at 8.30pm on a weeknight and although I accept that this was a snapshot in time, did not see any heavy goods vehicles using the road during my visit and the traffic using the road was relatively light. Although the servicing of the retail premises would take place to the rear of the building, access to it would be from a traffic light controlled junction on Birchfields Road.
6. The proposal would allow deliveries for an additional 2 and a half hours in the early morning and 4 hours late into in the evening. It would also allow deliveries during Sundays and Bank Holidays. This would result in a significant increase in the potential for deliveries at times when background levels of noise are lower and there is a greater expectation of peace and quiet.
7. Although the appellant's Noise Reports conclude noise levels would be at acceptable levels, I remain concerned that the introduction of additional irregular movements at these times to access the rear of the building, and the associated activity around the store, are still likely to cause unacceptable disturbance for nearby residents. This may not only relate to noise of the passing HGVs themselves, but also that associated with moving goods into the store, opening and closing of store and vehicle doors, engines stopping and starting and any need for manoeuvring within the yard. This is not only in terms of sleep during the extended hours but also general disturbance during quieter times on Sundays and Bank Holidays.
8. Whilst I accept that there would be company specific measures in place to reduce noise and disturbance including, turning off engines and limiting the number of daily deliveries, these are not measures that can be controlled by condition and may be changed by the company in the future. These measures so not therefore weigh in favour of the proposal.
9. While the condition may not meet the operator's preferred approach to deliveries, there is no substantive or persuasive evidence to suggest that the condition would have any material effect on the store's ability to operate satisfactorily. This does not therefore outweigh my concerns about the potential harm relaxing the condition would have on nearby residents.
10. Accordingly, I conclude that the disputed condition is reasonable and necessary in order to safeguard the living conditions of local residents and that it satisfies the other tests for conditions set out in paragraph 56 of the Framework. The proposed extension to the hours for delivery, servicing and collections would be harmful to the living conditions of the neighbouring residents in terms of noise and disturbance. As such the proposal is contrary to Policy DC26 of the Unitary Development Plan for the City of Manchester and Policies DM1 and SP1 of the Manchester Core Strategy which together amongst other matters, seek to ensure that development does not harm living conditions of residential property through an increase noise and disturbance.

Conclusion

11. The proposed development conflicts with the development plan as a whole and there are no other considerations that outweigh this conflict. I therefore conclude that the appeal is dismissed.

H Senior

INSPECTOR