



Appeal Decision

Site visit made on 28 September 2010

by **Stephen Roscoe** BEng MSc CEng MICE

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
21 October 2010

Appeal Ref: APP/L5810/A/10/2130338

39-41 Sheen Lane, Mortlake, London SW14 8AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Tesco Stores Ltd against the decision of the Council of the London Borough of Richmond-upon-Thames.
- The application Ref DC/JIT/09/0662/FUL/FUL, dated 16 March 2009, was approved on 14 December 2009 and planning permission was granted subject to conditions.
- The development permitted is the installation of one refrigeration condenser unit and three air conditioning units within an approved rear service yard and associated minor external alterations at the rear.
- The condition in dispute is No U29494 which states that: No development shall take place until a Servicing Management Plan, which provides for the parking of delivery and maintenance vehicles visiting the premises, the loading and unloading of goods at the site and the hours during which deliveries to and the servicing of the premises shall take place, has been submitted to and approved in writing by the local planning authority. The approved Servicing Management Plan shall come into effect from the first occupation of the retail premises for trading purposes and shall be permanently retained thereafter.
- The reason given for the condition is: To ensure that the proposals do not result in an adverse impact on the functioning of the local highway network or on the amenities of neighbouring residential occupiers.

Decision

1. For the reasons given below, I allow the appeal and vary the planning permission for the installation of one refrigeration condenser unit and three air conditioning units within an approved rear service yard and associated minor external alterations at the rear at 39-41 Sheen Lane, Mortlake, London SW14 8AB in accordance with the application Ref DC/JIT/09/0662/FUL/FUL dated 16 March 2009 deleting condition No U29494.

Main Issues

2. I consider the main issues in this case, having particular regard to the effectiveness and appropriateness of the condition in dispute and any other conditions that could be reasonably imposed, to be whether the disputed condition is necessary or reasonable:
 - (i) in the interests of highway safety on Sheen Lane; and
 - (ii) to protect the living conditions of nearby occupiers.

Reasons

Highway Safety

3. The appeal property comprises two former premises in a shopping parade that have been combined to create one retail unit which is appreciably larger than others in the parade. The unit has planning permission for Class A1 retail use subject to conditions that include a restriction on deliveries to and from the site to between 07.00 and 22.00 daily. The Council's decision notice specifically advises that the permitted retail use would not raise highway safety concerns. At the time of my visit, work to implement this permission and the appeal permission was in progress. That part of Sheen Lane which lies outside the appeal property is subject to a Traffic Management Order which restricts loading and unloading to 20 minutes in the hour between 11.00 and 18.30 with no limit outside this period. Sheen Lane is a busy local distributor road, and nearby parking and a level crossing affect the operation of the road.
4. The installation of air conditioning and refrigeration plant is not unusual for a newly refurbished retail unit of a size such as this, with permission for Class A1 use that could include food retailing. Indeed, the presence of similar plant at the rear of a much smaller adjoining food retail unit supports this view. Delivery and servicing arrangements for the appeal unit with the appeal development in place would therefore lie within the range that should be anticipated following the Council's grant of permission for a Class A1 use. The disputed condition therefore seeks to unreasonably restrict activities related to the permitted use that could already occur.
5. No reasoned link has been identified between the installation of the appeal plant and the frequency of, and the size of vehicles used for, deliveries and servicing. There is thus no convincing evidence that the appeal development would increase the frequency of, or the size of vehicles used for, these activities. The appeal development itself would not therefore create any hazard on the road network or harm any highway safety interests in conflict with UDP¹ Saved Policy TRN 2. It follows that the disputed condition would not be necessary in this regard.
6. The permission for Class A1 use was granted in the context of the restriction on loading which is in force outside the appeal unit. This restricts loading during the evening peak time which the Council's evidence identifies as having the highest traffic flows, and therefore the greatest likelihood of congestion. When considered in conjunction with the absence of any Council highway safety concerns in relation to the permitted Class A1 use, the restriction adds weight in support of the appeal.
7. It has been put to me that the appeal planning application was the first time that the Council had knowledge of the retail use to which the unit would be put. Whilst I recognise that food retailing usually requires more frequent deliveries than other forms of retailing, the Council's permission included for food retailing. The Council could have imposed a condition prohibiting food retailing, or indeed any aspect of food retailing thought to be harmful, but it did not do

¹ London Borough of Richmond upon Thames: Unitary Development Plan: First Review: 1 March 2005

- so. The opportunity to regulate the permitted use therefore existed but was not taken.
8. I have also been referred to appeal decisions Refs. APP/Q0505/A/08/2066756 and 2073579. In these cases however, the proposals comprised extensions to a retail unit and the installation of plant. Here, the appeal is against the imposition of the disputed condition on the permission for air conditioning and refrigeration plant. It does not have any impact on the permission for the Class A1 use, which has already, and recently, been granted by the Council. Moreover, in these other cases, the retail use was conditioned to prohibit loading and unloading outside the curtilage of the site. This has not been the case at the current appeal property, where the permitted retail use with kerbside loading already exists as a fallback position. The other cases are therefore different to that which is the subject of this appeal.
9. I therefore conclude that the disputed condition is not necessary or reasonable in the interests of highway safety on Sheen Lane and that it would fail these tests in conflict with Circular 11/95².

Living Conditions

10. Residential properties are close to that part of the appeal property which would contain the appeal plant. The plant would however be surrounded by a wall incorporating acoustic treatment. The appellant has undertaken a noise assessment which concludes that the appeal development would not have an adverse effect on residential amenity by reason of noise. Furthermore, the Council's Environmental Protection Department had no objection to the appeal development, subject to a noise criteria condition which was subsequently imposed. It is also reasonable to assume that the Council's Environmental Protection Officers were well aware of the influence of air and rail traffic on the local noise environment. In view of all of these points, I am satisfied that the appeal development would not create any unreasonable noise and disturbance in accordance with UDP Saved Policy BLT 16. Moreover, all of these points are in addition to the fact that I have not found any reasoned evidence of a relationship between the disputed condition and the use of the appeal plant.
11. I therefore conclude that the disputed condition is not necessary or reasonable to protect the living conditions of nearby occupiers and that it would fail these tests in the circular.

Other Matters

12. The appeal representations include much local opposition to the intended store operator. It is however the air conditioning and refrigeration plant, and not the operator, which is under consideration in this appeal, and little weight can therefore be given to concerns in relation to the particular operator. Many of these concerns also relate to the operation of the store, and not the appeal development, and again little weight can be given to these concerns in this particular appeal. I have also taken into account a letter from the MP for Richmond Park and North in respect of the appeal. The appeal plant would be visible from the upper floors of nearby buildings. It would however be seen in

² Circular 11/95: The Use of Conditions in Planning Permissions

the context of the rear elevations of the buildings in the shopping parade and, as such, it would not be of an unreasonably harmful appearance.

Conclusion

13. I have taken into account all other matters raised, but none carry sufficient weight to alter the decision. I therefore conclude that the appeal should be allowed.

Stephen Roscoe

INSPECTOR