
Appeal Decision

Site visit made on 23 August 2016

by M C J Nunn BA BPL LLB LLM BCL MRTPI

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

Decision date: 23rd September 2016

Appeal Ref: APP/Q3820/W/16/3151170

Texaco Service Station (The Co-op), Balcombe Road, Pound Hill, Crawley, RH10 7RU

- 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 The Co-operative Food against Crawley Borough Council.
- The application Ref: CR/2016/0042/NCC, dated 6 January 2016, was refused by notice dated 22 March 2016.
- The application sought planning permission for demolition of existing forecourt shop, jet washes, three existing pumps and partial demolition of existing petrol filling station canopy and erection of new forecourt shop, new pump and jet wash, new parking spaces and associated works, without complying with Condition 10 attached to planning permission Ref CR/2006/0592/FUL, dated 11 December 2006.
- The condition in dispute is No 10 which states: *'the filling station shall not be in operation before 0700 not after 2200.'*
- The reason given for the condition is: *'in the interests of residential amenity in accordance with Policy GD20 of the Crawley Borough Local Plan 2000'.*

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing forecourt shop, jet washes, three existing pumps and partial demolition of existing petrol filling station canopy and erection of new forecourt shop, new pump and jet wash, new parking spaces and associated works at Texaco Service Station (The Co-op), Balcombe Road, Pound Hill, Crawley, RH10 7RU, in accordance with application Ref CR/2016/0042/NCC, dated 6 January 2016, without compliance with Condition No 10 previously imposed on planning permission CR/2006/0592/FUL, dated 11 December 2006, but subject to the other conditions imposed, so far as they are still subsisting and capable of taking effect, and subject to the following new condition:

The filling station and its associated retail use shall not operate other than between 0700 hrs and 2300 hrs.

Background and Procedural Matters

2. Planning permission was granted for the petrol filling station and shop in its current form in December 2006 (Ref CR/2006/0592/FUL), subject to various conditions. Condition 10 restricted the hours of use of the premises to between 0700 hrs and 2200 hrs. The appellant now wishes to extend working hours by an extra hour in the evening period.
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3. The application, as originally submitted, sought permission to extend the hours of operation from 0600 hrs to 2300 hrs; in other words, an extra hour in both the morning and evening. Following feedback from Council Officers, this was subsequently amended to omit the extra hour in the morning period. The Council assessed the scheme on this amended basis, and I have done the same.
4. An application for an award of costs has been made by the appellant against Crawley Borough Council. This is subject of a separate decision.

Main Issue

5. The main issue is the effect of the additional hour of operation on the living conditions at neighbouring residential properties, with regard to noise and disturbance.

Reasons

6. The appeal site comprises a Texaco petrol filling station and associated Co-op convenience store. On the opposite side of the road is a car sales area. There are also a number of residential properties nearby, including a block of flats, 'The Pines' adjacent to the north, as well as residential properties to the east in Mayfield, and to the west in Hillcrest Close.
7. In support, the appellant has provided a detailed Noise Impact Assessment (NIA)¹ which seeks to assess the impact of extending the hours of use. The Assessment was carried out in accordance with British Standard 4142:2014 ('BS 4142'). This provides a method for assessing or rating the effects of industrial or commercial noise on residential areas. It advocates a comparison between the typical existing background noise and the noise level from the source being considered. BS 4142 states that a difference between the new noise source and the background level of around +10 dBA is an indication of a 'significant adverse impact' and a difference of around +5 dBA is an indication of an 'adverse impact'. Where the new noise source does not exceed the background noise level, this indicates the specific noise source has a 'low impact'.
8. The methodology of the NIA was to undertake a background noise survey to determine existing levels of background noise at the nearest residential properties. Noise monitoring equipment was located at a single location on the northern site boundary adjacent to 'The Pines'. This was identified as the location most likely to experience the greatest impact from the extended hours of operation. Measurements were undertaken between 1st and 8th December 2015. Road traffic noise was found to be the dominant source of ambient noise at the site. A noise survey and subjective observations were also undertaken at other similar Co-op sites to monitor customer activities and vehicle movements, in this case at Eastleigh, Hampshire. Finally, predictions were made as to the likely noise level from the operation of the site at the nearest residential properties.
9. The NIA concluded that any new source of noise as a result of this proposal would not exceed the background sound level at the closest residential properties. This was based on a worst case scenario in terms of numbers of customer visits. The NIA indicated there would be a low noise impact level, as

¹ 24 Acoustics Ltd, dated 5th January 2016

defined by BS 4142. The NIA also concluded that no additional mitigation was necessary to reduce noise impact at the nearest properties. The Council's Environmental Health Officer (EHO) did not dispute the NIA's methodology or its technical findings, and raised no objections to the extended evening opening. On that basis, the Council's Committee Report recommended that permission be granted. However, the Council's Committee, having regard to the concerns of local residents, and various complaints and alleged breaches of conditions at the site over the years, took a different view and concluded that the application should be refused.

10. The representations from local residents give an indication of their concerns. The matters raised include the noise of car alarms, car horns, cars with loud thumping music, motorbikes revving, car doors being slammed, delivery trucks reversing with alarms sounding, metal delivery trolleys clattering across the forecourt, the use of a tannoy system to attract customers attention, noisy customers congregating at night and people shouting. There are also concerns about high levels of air pollution. I am sympathetic to the experiences that residents appear to have endured, and fully understand residents' reluctance to see hours of operation extended in any way.
11. That said, I must have regard to the technical findings of the NIA, the findings of which have not been disputed by the Council's EHO. Indeed, no substantive technical evidence has been adduced by the Council to rebut its findings. I see no reason to doubt the NIA's robustness or accuracy. Furthermore, and importantly, I note that other conditions restrict the operation of the premises. For example, Condition 7 prevents delivery of fuel or goods before 0800 hrs and after 2100 hrs. Condition 6 restricts the use of the jet wash between 0800 hrs and 2100 hrs Mondays to Fridays and 0830 and 2030 at weekends and bank holidays. These existing restrictions would not be altered by this appeal, so that these potentially noise generating activities would not take place in the extended period sought.
12. Reference has been made to various complaints and alleged breaches of conditions. However, I understand that most of these occurred before the appellant began operating the site. Clearly, it is regrettable that such breaches appear to have occurred in the past, but it does not follow that future applications at the site should automatically be refused. Should any breaches occur in the future, it is incumbent on the Council to take appropriate action to ensure proper compliance. The record of past alleged breaches, many of which relate to a previous operator, is not, in itself, a reason for the appeal to fail.
13. Concerns have been raised regarding the longer hours of illumination of the premises, although this did not specifically feature in the reasons for refusal. The site is on a busy road, in a well-lit area, with street lamps in close proximity. There is no evidence that an additional hour of illumination would adversely affect residential properties to any material extent. Residents have also raised concerns in relation to air quality and pollution. However, there is no firm evidence before me that there are excessive levels of air pollution at the site, or that the one additional hour of operation in the evening would materially increase air pollution to unacceptable levels.
14. To sum up, it seems to me that a petrol filling station and associated shop will always result in some level of activity and general noise. Complete peace and tranquillity for residents nearby is unlikely during operating hours, given the nature of the use. Many of the noises and sounds highlighted by local

residents are not unusual or unexpected at such sites. It is my view that, provided the premises are properly managed, and the various existing conditions complied with, there is reason why local residents would experience unacceptable noise levels or disturbance, or suffer from interrupted sleep were an hour's extension to be agreed to 2300 hrs.

15. I conclude, therefore, that Condition No 10 should be replaced with a new condition allowing the extra one hour in the evening sought by the appellant. I am satisfied that the reworded condition would comply with Policies CH3 and ENV11 of the Crawley Borough Local Plan which, together, require proposals to provide a good standard of amenity for all existing occupants of land, and not to cause unreasonable harm by way of noise. It would also be consistent with the requirement of the National Planning Policy Framework² that decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life.
16. Although this appeal sought solely to vary existing Condition No 10, the Council has suggested additional conditions be imposed. All, bar one, replicate those on the original permission and are therefore unnecessary. An additional condition has been suggested preventing additional lighting being installed. However, no installation of additional lighting is proposed as part of this appeal and I do not consider this to be necessary in this instance.
17. The appeal is allowed and the planning permission varied in the terms set out above, but subject to the other conditions previously imposed, so far as they are still subsisting and capable of taking effect.

Matthew C J Nunn

INSPECTOR

² Paragraph 123