

Appeal Decision

Site visit made on 5 December 2016

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 19th December 2016

Appeal Ref: APP/D3640/W/16/3156743

Chobham Service Station, Station Road, Chobham, Woking GU24 8AJ

- 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 Rontec Watford Ltd against the decision of Surrey Heath Borough Council.
 - The application Ref 15/1133, dated 21 December 2015, was refused by notice dated 9 March 2016.
 - The application sought planning permission to allow the petrol filling station to remain open 24 hours a day, 7 days a week without complying with a condition attached to planning permission Ref 13/0367, dated 21 August 2013.
 - The condition in dispute is No 1 which states that: The petrol filling station and kiosk shall only be open to the public between the hours of 06:00 and 24:00 hours from Mondays to Sundays unless the prior written approval has been obtained from the Local Planning Authority.
 - The reason given for the condition is: In the interests of residential amenity and to comply with Policy DM9 of the Surrey Heath Core Strategy and Development Management Policies 2012.
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Decision

1. The appeal is allowed and planning permission is granted for the petrol filling station to remain open 24 hours a day, 7 days a week at Chobham Service Station, Station Road, Chobham, Woking GU24 8AJ in accordance with the application Ref 15/1133 dated 21 December 2015, without compliance with condition number 1 previously imposed on planning permission Ref 13/0367 dated 21 August 2013 and subject to the following conditions:
 - 1) Deliveries shall be taken at or despatched from the site only between 0700 and 2300 on Mondays to Saturdays and 0800 and 2300 time on Sundays.
 - 2) The air and vacuum facilities shall only be available for use between 0600 and 0000 on Mondays to Sundays.
 - 3) The development hereby permitted shall not be brought into use until details of all internal and external lighting to be used between 0000 and 0600 have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
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Background and Main Issue

2. The appeal relates to a petrol filling station (PFS) located next to the roundabout junction of Station Road (A3046), Castle Grove Road and High Street. The appellant wishes to extend the opening hours from those previously imposed to provide a 24 hour, 7 day per week operation for fuel sales and other retail offers within the kiosk. Permission is not sought for a change to the operating hours of the car wash, jet wash, air or vacuum facilities that are also present on the site.
3. The main issue in this appeal is therefore the effect of increasing the opening hours of the PFS would have on the living conditions of neighbouring residents with regard to noise and disturbance.

Reasons

4. The proposal is for 24 hour opening of the PFS. I understand that the car wash, jet wash and the automatic telling machine are subject to control by means of separate permissions.
5. Policy DM9 of the Surrey Heath Core Strategy Development Management Policies (2012) (the Core Strategy) states, amongst other things, that development should respect the amenities of neighbouring occupiers. This broadly reflects paragraph 123 of the National Planning Policy Framework, which sets out that planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development.
6. The PFS is located close to a number of residential properties and the proposal could result in an increase of the amount of noise generating activity emanating from the forecourt and from vehicles arriving and departing. The potential therefore exists for an increase in noise and disturbance to adversely affect those living nearby. Given the number of objections to the proposal, this is clearly a concern for local residents.
7. The appellant has submitted a Noise Impact Assessment¹ (NIA), the findings of which state that the increase in noise generated from increasing the PFS opening hours would be at worst, of marginal significance. The NIA used a period between 0000 and 0600 to establish the baseline conditions by which to measure the potential increase in noise at the site. It is reasonable to conclude that this represents the quietest period of the night. I note that the NIA has been considered by the Council's Environmental Health section which raised no objections to the proposal and having also considered the specific concerns raised by local residents, the effects were considered to be acceptable. Moreover, the NIA, adheres to the guidance set out in British Standards and I am therefore satisfied that the methodology employed to establish the baseline for assessment is appropriate and that the NIA is fit for purpose.
8. Having said that, British Standards were not drafted with the same objectives as planning policy, nor can they have the same formal role and effect as development plan policies. The Council argues that the numbers of visitors to the PFS could be more than anticipated. It would be perverse, in my view, for a business not to seek to maximise its revenue by attracting the highest number of potential customers. Nevertheless, the PFS faces competition from

¹ Enzygo Environmental Consultants Ref. SHF.418.001.R.002.A2 (December 2015).

other 24 hour service stations located nearby but on or close to more strategic transport routes. Whilst some of the additional custom generated would be drawn from elsewhere, I therefore recognise that the extended opening hours would mostly serve the local community within Chobham.

9. The Council also asserts that a technical assessment cannot predict the effects of isolated noisy incidents. Whilst I accept this, 'isolated' means exactly that and does not readily translate into regular occurrence. I recognise that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. Car doors slamming, people shouting, the PA system and traffic accelerating away would not be easy to ignore and would be less tolerable at say 0300 than it would at 1500. Furthermore, the character of the area plays a part in the tolerance of its residents. I have no reason to doubt the evidence that suggests Chobham is a quiet village, particularly after the local businesses have closed. It follows that its residents are less likely to be tolerant of noise and disturbance than if they lived in a busy urban environment.
10. However, there is nothing substantive within the evidence to suggest that the level of additional noise generated would be so significant that it would result in harmful effects on nearby residents. Indeed, I have already accepted that the findings of the NIA are sound and provide considerable clarity in predicting the change above the baseline noise levels.
11. The available records show a low level of anti-social behaviour locally and whilst this does not minimise the effects of any particular incidents, it nonetheless points to the absence of crime being a significant issue. There are a range of retail and commercial units located in High Street a short distance to the north of the site. The available evidence indicates that none of these, including the two public houses, have late opening hours, thus it is unlikely that the comings and goings of their customers would take place much after midnight. I do not therefore consider that there would be an increase in either anti-social behaviour or noise and disturbance simply because of the extended PFS opening hours.
12. I turn now to matters of lighting, which has the potential to negatively affect those living in close proximity to the PFS. It is clear that there have been historical issues with light-spill into neighbouring properties and I have no reason to doubt that this has caused inconvenience to the affected occupiers. However, in allowing the appeal, I am able to consider what, if any, conditions should be attached to the grant of planning permission. The information provided by the appellant supports the imposition of a lighting condition which, in my view, would provide a suitable control mechanism to ensure that the effects of lighting between the hours of midnight and 0600 would not be unacceptable.
13. Paragraph 18 of the Framework says that the Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future. An increase in the opening hours of the PFS would improve the local retail offer in an area where there is currently no 24 hour convenience store and provide for increased hours of the current PFS staff whilst also creating 2 new jobs. Given the government's clear objective to boost economic activity, these aspects of the proposal attract very

considerable weight. Furthermore, the rural nature of the area around Chobham means that, in order to access a 24 hour store outside of the current PFS opening hours, this would inevitably involve considerable travel distances by private motorised transport. The proposal would therefore help support the long term viability of the PFS. Overall, the proposal would contribute to supporting a prosperous rural economy.

14. I have taken into account all of the matters raised by interested parties. I take these representations seriously. However, I must make my decision based on the empirical evidence before me, which is clear that any effects from additional noise and disturbance would be marginal. Furthermore, I am not convinced that the available evidence backs up the proposition that extended opening hours will necessarily result in an increase in anti-social behaviour. In particular, I note the concerns regarding alcohol sales from the PFS. However, the hours for selling alcohol are already restricted and are not proposed to change. Therefore, the PFS would not attract late night revellers seeking to purchase alcohol after other local establishments had closed. Any subsequent proposal to alter this would be subject to a local licensing decision. The matter of need has also been raised. However, planning legislation does not require an applicant to demonstrate a need for the proposal.
15. I have had regard to the two appeal decisions² to which my attention has been drawn by an interested party. Whilst I note the findings of the Inspectors in those decisions, I do not consider they provide useful comparisons with the proposal before me for the following reasons: In relation to Warwick Road, Kenilworth, there is no clear indication that the Inspector had the benefit of a NIA as I do in this appeal. In the other decision, which relates to a site in Letchworth, the Inspector considered there to be flaws in the NIA, but this is not the case with the one before me.
16. I realise that the interested parties who contributed to the appeal process will be disappointed by my decision. However, having considered all of the available evidence, I am satisfied that the proposal will not result in unacceptable effects with regard to noise and disturbance. Thus it would accord with the objectives of Core Strategy Policy DM9 and the Framework. Moreover, the proposal would secure economic benefits, which when balanced against the identified marginal noise and disturbance effects, weigh in favour of the proposed extended opening hours.

Other matters

17. The PFS sits within the Conservation Area (CA). However, there will be no physical changes to the overall character of the PFS and thus, there would be no harm to the character or appearance of the CA.
18. In order to test the effects of the proposal on local residents, the appellant has invited me to grant a temporary permission. However, as I have not found that the proposal would result in unacceptable effects, I consider such a course of action to be unnecessary and have therefore made my decision on the terms of the application as made to the Council.

² Refs. APP/T3725/A/11/2159299 and APP/X1925/A/14/2227807

Conditions

19. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. I have imposed all those that I consider remain relevant but in amended form in the interests of precision and enforceability. New conditions relating to lighting and the use of the air and vacuum facilities are necessary in the interests of residential amenity. I have also been invited to consider the imposition of a pre-commencement condition requiring the submission of a management plan to control operations on the site. However, I do not consider such a condition could be made suitably precise or, in reality, enforceable and have not imposed it.

Conclusion

20. For the above reasons and having had regard to all other matters raised, the appeal succeeds.

Hayden Baugh-Jones

Inspector