
Appeal Decision

Site visit made on 13 December 2016

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 24 January 2017

Appeal Ref: APP/Z4310/W/16/3158297

Former Queens Drive Service Station, Queens Drive, West Derby, Liverpool L13 0AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Euro Garages Ltd against the decision of Liverpool City Council.
 - The application Ref 15F/2499, dated 1 October 2015, was refused by notice dated 19 August 2016.
 - The application sought planning permission to refurbish the existing petrol filling station (replace existing shop, install ATM (cash machine), and install jet wash/car wash facilities with associated car parking) without complying with a condition attached to planning permission Ref 06F/1346, dated 13 July 2006.
 - The condition in dispute is No 6 which states that: *"The jet wash and car wash facilities shall only be operated between the hours of 0800 - 2000 Monday - Friday and 0800 - 1800 Saturday and Sunday and the shop shall only be accessible to the public between the hours of 0700 - 2300 and at all other times all retail sales shall be carried out solely through the sales kiosk/ serving hatch detailed on drawing nos: 4121 15 Rev.B and 16 Rev.B received by the local planning authority 3rd July 2006 and detailed in the agents letter of the same date."*
 - The reason given for the condition is: *"To ensure that nearby occupiers are not adversely affected by the development."*
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Decision

1. The appeal is dismissed.

Procedural Matter

2. A noise assessment was submitted by the appellant after the appeal was lodged, but before the date had passed for the Council and interested parties to submit their comments. Thus, I have taken this evidence into account and the parties were given extended timeframes so that they had the opportunity to comment on all the evidence before me, including the noise assessment. I have had regard to their submissions in reaching my decision.

Background

3. In 2006, the appellant obtained planning permission to refurbish the petrol filling station¹ subject of a number of planning conditions. Condition No 6 of that permission relates to the hours in which the jet wash and car wash

¹ Council Application Ref: 06F/1346

facilities can be used and the hours in which the shop is publically accessible. This appeal concerns the latter element.

4. Since, two applications have been made to vary condition No 6. The first² was approved with conditions enabling the shop to be publically accessible 24 hours a day for a 6 month period, so that the Council could monitor the site for complaints. The temporary period ceased on 30 April 2008. The second application³ in 2008 sought 24 hour opening on a permanent basis, but it was not determined by the Council. It is alleged that the shop has, until a Breach of Condition Notice (BCN) was served by the Council in September 2016, been open to the public 24 hours a day.
5. As such, the appellant seeks to vary condition No 6 to allow for public access in the shop 24 hours a day.
6. The appeal site lies on Queens Drive, which is a very busy dual carriageway that functions as a ring road around the city, with connections into the city and onto the M62 motorway. There are separate ingress and egress points into the site from Queens Drive. The site is in an area designated as Primary Residential in the City of Liverpool Unitary Development Plan (UDP), with dwellings to the front, sides and rear of the site on Queens Drive and Marlowe Drive. The site contains a number of fuel pumps beneath a canopy as well as three jet wash bays, a car wash, air, vacuum and a shop which includes a Subway and Greggs. Parking bays are adjacent to the shop building and the north western boundary.
7. With the exception of 23 and 25 Marlowe Drive, the rear elevations and gardens of dwellings on Marlowe Drive back onto the site at the side and rear. A brick wall roughly 2 metres high extends across the rear boundary (northern eastern) of the site. Inside this boundary is a grassed area and an acoustic timber fence. The flank elevation of 201 Queens Drive abuts the north western boundary of the site.

Main Issue

8. I consider the main issue is whether the part of the condition relating to the shop is necessary, precise and reasonable in order to ensure nearby residents would be likely to experience acceptable living conditions, having particular regard to noise and disturbance.

Reasons

9. The appellant considers the element of condition No 6 relating to the shop is not necessary, not reasonable and not precise. Insofar as whether the condition is necessary and reasonable, the 2006 planning permission entailed the complete refurbishment of the petrol filling station and included a new ATM, jet wash/car wash and parking facilities. Given this together with the proximity of residential occupants, even if their properties were only relatively new at this time, I consider that the condition was necessary and reasonable at this time to safeguard the living conditions of the neighbouring residents.
10. This leads me onto whether the condition remains to be necessary and reasonable. In support of their view, the appellant has provided a Noise

² Council Application Ref: 07F/2175

³ Council Application Ref: 08F/1231

Assessment. This is only a snap shot in time during the midweek rather than a full picture of activities at the site across a 24-hour period. Still, the site has and would continue to operate 24 hours a day, in terms of the sale of fuel. Customers also don't just come to the site for fuel or to use the shop. Other services such as the jet wash, car wash, air and vacuum are all limited to specific times of the day, and I note the suggestion they continue to be.

11. According to the appellant's Noise Assessment traffic on Queens Drive strongly influences the local environment and whilst there are quieter periods at night, noise from vehicle movements on and off the site and customers still arises even after ancillary services, such as the car wash, jet wash, air and vacuum finish each day.
12. I recognise that noise created from the site's use will vary across the day, a point shown in the Noise Assessment and that condition No 6 does not prevent noise arising from vehicle movements and customers between 23:00 and 07:00. However, in my opinion the findings of the Noise Assessment should be treated with a degree of caution, given the confined weekday period in which it measured. There is significant potential for noise to transmit across the forecourt to first floor bedrooms, even with modern standards of glazing and an acoustic fence. This is a point supported by a number of letters from local residents who point to noise and disturbance arising from the site, mainly at night when residents typically expect a quieter period of the day. This has according to residents lead to issues with their sleep and their overall quality of life. In addition, in support of their evidence, I am also mindful of the police incident log that has also been submitted by the Council.
13. This is strong credible evidence, even though it only relates to 2016, which demonstrates that on occasions neighbouring residents have experienced intrusive levels of late night noise and disturbance as a result of arguments, fighting, lack of public order, the use of the tannoy and the congregation of youths amongst other things. These are added to residents own submissions that on occasion loud music has been heard from vehicles that have been parked on the site. Since the Council served a BCN on the appellant in September 2016, there has been a decrease in reported incidents. Even though the period of time is considerably shorter than the earlier part of 2016, the Council identify that no reports of disturbance have occurred during the night. This infers that adherence to planning conditions has benefited the amenity of the area and neighbours' living conditions.
14. There are no details of residents' complaints to the Council, details of any police incidents or noise recordings relating to the period between the end of 2007 and December 2015 to accompany the picture shown for 2016. However, in any event the available police incident logs highlight that the site is prone to incidents occurring. While they may not always occur during nighttime hours, it is reasonable to consider that by allowing people to access the shop throughout the night that it would attract customers to the site. I appreciate the Greggs and Subway outlets close overnight, and that the appellant would have no control over the actions of customers outside the premises. Nevertheless, the shop is sizeable and offers a wide range of products. On the basis of the evidence before me it may well contribute to more prolonged and sustained activity on the site.

15. As a result there is a clear risk that by allowing 24 hour access to the shop, regardless of whether it has been accessed in this manner for a number of years unchecked, it would lead to a continuation of the noise and disturbance within this locality thereby causing unacceptable living conditions for residents.
16. I recognise customers may still be able to purchase shop items through the hatch at night and that the petrol filling station would continue to operate 24 hours a day which would result in vehicular movements, and noise from customers and the opening and closing of doors. However, even though they would be audible, the number of logged incidents has markedly decreased since the BCN was served.
17. By allowing customers into the shop building after 23:00, it is the appellant's view that any noise occurring would be largely confined to within the building's envelope itself and would not readily spill out of an open door and become audible outside of the shop. Allowing customers inside the shop may lessen noise relating to fuel and shop transactions, but it would not overcome noise and disturbance issues that appear to have been regular occurrences when the door was used or that may arise even if the entrance door was relocated.
18. While the appellant highlights measures that would be and have been undertaken, such as adhering to the jet wash and car wash time restrictions, delivery times, the use of particular petrol pumps and the use of internal speakers during evening hours, I am not satisfied that these would overcome the harm that would arise from allowing access to the shop 24 hours a day.
19. Even if the appellant has other similar sites elsewhere operating on a 24-hour basis, no specific examples are before me and in any event each case must be considered on its own merits.
20. Although I note the Council's suggestion, in the event I were minded to allow the appeal that I do so on a temporary basis until December 2017, I note that the appellant seeks a permanent permission allowing the shop to be publically accessible for 24 hours a day. While a six month temporary permission has been granted previously, and despite the lack of complaints during this time period, there is no presumption that a temporary grant of planning permission should be granted permanently⁴.
21. For these reasons, notwithstanding the use of the door since 2006, I consider that the condition strikes a balance between safeguarding the living conditions of neighbouring residents and supporting a local business. In this regard it remains both reasonable and necessary as evidence suggests that a shop open to the public 24 hours a day has the potential to cause noise or disturbance over and above that from the sale of fuel and shop items through the hatch.
22. In terms of the precision of condition No 6, despite reference to the jet wash and car wash, I am of the view that the condition is written precisely enough so that the appellant or any anyone else looking at the condition understands the requirements of each part so that it may be complied with.
23. For these reasons, I conclude that the condition remains as necessary now as it was in 2006 in order to ensure nearby residents experience acceptable living conditions, having particular regard to noise and disturbance. Accordingly, I

⁴ Planning Practice Guidance Paragraph: 014 Reference ID: 21a-014-20140306

conclude that the proposal conflicts with Policies H4 and EP11 of the UDP and paragraphs 109 and 123 of the National Planning Policy Framework. These policies together, amongst other things, seek to ensure developments to not give rise to significant adverse impacts in respect of the living conditions of residents through noise and disturbance.

Other Matters

24. Although the planning system encourages people to co-operate and engage with one another, parties cannot be forced to do so. In terms of whether the appellant company has complied with conditions of previous planning permissions this is not a matter before me in this appeal. The Council have the ability to enforce the compliance of such conditions in any event.

Conclusion

25. I have taken into account all the other matters raised, including the use of 'pay at the pump' facilities, but I find they do not alter or outweigh the main considerations that have led to my decision.
26. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR