
Appeal Decision

Site visit made on 6 February 2017

by **B Bowker Mplan MRTPI**

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

Decision date: 10 March 2017

Appeal Ref: APP/W0340/W/16/3161477

Calcot Filling Station, Bath Road, Calcot, Reading RG31 7QN

- 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 Mr K Navaratnam against the decision of West Berkshire Council.
 - The application Ref 16/01794/FUL, dated 24 June 2016, was refused by notice dated 7 September 2016.
 - The application sought planning permission for small extension to BP service station without complying with a condition attached to planning permission Ref 14/03270/FUL, dated 9 March 2015.
 - The condition in dispute is No 5 which states that:
The use of the premises shall be restricted to the hours of 05:00 to 23:30 Monday to Sunday.
 - The reason given for the condition is:
To safeguard the living conditions of adjacent occupiers in accordance with Policy CS14 of the West Berkshire Core Strategy 2006-2012 and OVS6 of the West Berkshire Local Plan Saved Policies 2006-2026.
-

Decision

1. For the reasons given below, the appeal is dismissed.

Background

2. The appeal seeks to remove the condition stated above which would consequently allow Calcot Filling Station to operate throughout the entire week at unrestricted hours. The original permission related to an extension to the service station which, based on the evidence before me, is yet to be constructed. No concern is raised by the Council in relation to the extension, and my determination of the appeal relates solely to the necessity of condition no 5 of the permission. Accordingly, the main issue is as below.

Main Issue

3. The main issue is whether the condition is reasonable and necessary in the interests of safeguarding the living conditions of adjacent occupants.

Reasons

4. The appeal site is a service station adjacent to Bath Road which I saw was a busy road during my site visit. Calcot Priory, a retirement home, is to the north and east of the site and residential properties are to the immediate west. The Council's concern relates to the living conditions of occupants of 5 flats at
-

first and second floor level at Calcot Priory, 4 of which have windows serving bedrooms and living rooms facing directly towards the site. Based on my site visit observations, I agree that the occupants of these flats would be the most effected by the proposal.

5. With reference to crime incidents at service stations across the country, the appellant considers it is necessary for a 24 hour service at the site to prevent crime and related financial loss. It is also put to me that 24 hour use would safeguard neighbouring living conditions by preventing potentially dangerous fuel extraction and the need for loud security alarms. However, with no site specific evidence of crime or no substantive reasons why other crime prevention measures would not be effective, I afford limited weight to this matter. In addition, I note that natural surveillance is provided at the appeal site by the adjoining residential use. My conclusion on this matter is reinforced by the reasoning at paragraph 8 of the appeal decision¹ referred to by the appellant.
6. Neighbours at Calcot Priory are concerned that their living conditions would be harmed by disturbance from headlight glare, light from the totem pole and noise from the site, which includes car movements and doors being opened and closed at anti-social hours. Whilst concern was not raised to the previous application, despite the mitigation measures proposed, the Council's Environmental Health Officer also raises concerns. During my site visit I saw that a wooden panel fence forms the eastern boundary of the site and that owing to access arrangements and the site layout, vehicle headlights tend to face towards Calcot Priory.
7. Whilst the cash machine is already used outside existing opening hours, it is inevitable activity at the site would increase as a result of the opening hours proposed. In addition, it is reasonable to assume that background traffic noise from Bath Road would reduce outside of existing opening hours. The noise of vehicles stopping, starting, manoeuvring, doors opening and closing and customers and staff communicating in close proximity directly adjacent to neighbouring windows would be a consequence of the proposal. In addition, the night kiosk and cash machine are located on the eastern side of the site close to Calcot Priory. Consequently, noise from vehicular movements and people at the site would be particularly noticeable and disruptive.
8. A number of noise mitigation measures are suggested by the appellant. However, I consider that the suggested mitigation measures both individually and combined are deficient. Firstly, the use of large posters to promote customer behaviour would not guarantee a significant reduction in noise. The suggested changes to staff management to ensure a constant presence at the kiosk would not guarantee noise reductions, nor would it be enforceable or reasonable in all other respects as required by the relevant tests of paragraph 206 of the National Planning Policy Framework (the Framework). Upgrades to the CCTV system, preventing deliveries between 2300 and 0600 and installing volume controls to the cash machine would also not fully prevent noise arising from vehicular movements and people at the site.
9. As the illuminated totem sign is currently turned off outside of opening hours and is intended to remain operated as such, I am satisfied it would not be a source of disturbance for neighbours. The appellant's drawing demonstrates

¹ APP/P4605/A/14/2215338

that restrictions to the site access and exit and use of fuel pumps would reduce headlight glare towards Calcot Priory. In addition, as the appellant notes, neighbours are likely to have curtains to reduce the effect of headlights and my site visit confirmed that this is the case. Furthermore, curtains are likely to be already closed outside of existing opening hours, particularly those facing towards the service station.

10. As a number of 24 hour service stations are in the local area, the appellant considers trade at the site would be limited. Nonetheless, it is reasonable to assume some trade would occur, the extent of which could not be controlled. Moreover, even occasional custom would result in a harmful level of noise and disturbance to neighbouring living conditions during a quieter time of the day associated with respite. In addition, the nearby 24 hour service stations are not located close to residential use.
11. It is not clear whether a trial period has been undertaken previously at the site. The appellant states that it has not, yet notes that no substantive complaints were received when the site was in 24 hour use for an eight month period beginning January 2015. I understand that the site already has a 24 hour Premises Licence. However, the planning system has a broader remit than public nuisance and takes into account planning policies and objectives relating to neighbouring living conditions. Therefore, it does not follow that the appeal should be allowed on this basis. Nor would the nearby hotel justify allowing the appeal as the hotel would not generate a comparable level of noise and disturbance during the opening hours sought.
12. I have considered the potential of a one year trial period, particularly in the context of the appeal decision referred to by the appellant. Whilst I have not been provided with the full details of the decision, it differs to the appeal before me, particularly as neighbour objections related to noise from the use of a car wash, an aspect the Inspector identified was subject to control by a separate condition. Consequently the appeal proposals are not fully comparable.
13. Moreover, based on the evidence before me, which includes a number of neighbour representations, noise and disturbance from the site is already having an adverse impact on neighbours at Calcot Priory. Consequently, to allow unrestricted use of the site would expose neighbours to further noise and disturbance which would be significant over a one year period and particularly during a more sensitive time of the day. The previous commercial use at the Calcot Priory site would not prevent this harm nor change the weight that I afford to it.
14. In the context of the Framework, I have considered the economic benefits associated with the proposal via its support to an existing business. However, the need to secure a good standard of amenity for existing occupants is a core planning principle as stated at paragraph 17 bullet point 4 of the Framework. In this light, the economic benefits associated with the proposal would be outweighed by the significant adverse impacts identified above to neighbouring occupants by virtue of noise and disturbance. Nor would the absence of harm to neighbouring living conditions via light pollution prevent or reduce the harm identified above with reference to noise and disturbance.
15. Therefore I conclude that the condition is reasonable and necessary in the interests of safeguarding the living conditions of adjacent occupants. Consequently, the proposal would be contrary to Policy CS14 of the Core

Strategy and saved Policy OVS6 of the Local Plan. Insofar as they relate to this matter, these policies require development to make a positive contribution to the quality of life and minimise any adverse impact as a result of noise generated.

Conclusion

16. For the reasons given above, and having taken all matters raised into account, I conclude the appeal should be dismissed.

B Bowker

INSPECTOR