

Appeal Decision

Site visit made on 20 February 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 21st March 2017

Appeal Ref: APP/P0240/W/16/3161813

**Norbury Hill Service Station, 80 Dunstable Road, Toddington, Bedfordshire
LU5 6DR**

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr Velavthampillai Paheerathan against the decision of Central Bedfordshire Council.
 - The application Ref CB/16/03359/VOC, dated 28 July 2016, was refused by notice dated 12 October 2016.
 - The application sought planning permission for extension to forecourt canopy and sales building, modification of crossover and re-siting of ATM without complying with a condition attached to planning permission Ref SB/TP/01/0401, dated 28 June 2001.
 - The condition in dispute is No 4 which states that: The resulting sales building and automated telling machine hereby granted permission shall not be open to customers outside the hours 0700 to 2200.
 - The reason given for the conditions is: To safeguard the amenity of nearby residential properties.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is the effect that the bringing forward of the service station trading hours from 0700 to 0600 would have on the living conditions of nearby residential occupiers, with particular regard to noise and disturbance.

Reasons

3. Norbury Hill Service Station is centrally located within Toddington on the main A5120 than runs through this quite large village. In addition to the two lines of fuel pumps at the service station, its reception building fulfils a small supermarket role, stocking a large range of food and convenience items. There is also a car wash facility and customer toilets. Trading hours are conditioned to between 0700 – 2200.
 4. The A5120 provides a link from the close-by M1 Junction 12, to the north of Toddington, south to Houghton Regis, the A5 and the wider Luton/Dunstable conurbation. Between these areas a major road scheme is under construction which will link the M1 and the A5 north of this urban area, where substantial housing growth is proposed.
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5. This major road scheme is sponsored by Highways England, the strategic road authority, which forecasts that on opening it would reduce traffic flows on the A1520 through Toddington by around 25%, which would later be expected to rise with the housing growth that is to occur north of Houghton Regis.
6. The proposed earlier opening of the service station is sought by the proprietor to offset the anticipated reduction in business turnover from passing trade which would be a consequence of the A5-M1 link. This would help secure the viability of the service station, which provides a valuable local facility for village inhabitants. Regard has been given to the sales and profit projection supplied in support of this appeal.
7. I noted from my visit that there are a few other shops and services in Toddington, including convenience stores, mainly to the north along the High Street. However, the service station meets a valuable local need in this southern part of the village, and therefore significant weight is given to this proposal helping to support a vital community facility.
8. This benefit has to be balanced against the effects on the living conditions of neighbouring residential occupiers, resulting from the increased level of noise and general disturbance that the earlier morning activity at the service station would entail. A condition which prevented the use of the eastern line of fuel pumps and the car wash, jet wash, car vacuum and air pump between 0600 – 0700 could be applied and be enforceable and so this could mitigate the effects of the services being open during this earlier period. On this basis the conclusions of the revised Noise Impact Assessment¹ (NIA) have been taken into account.
9. The service station is closely surrounded by residential development on all sides, although those houses to the east are on the opposite side of the Dunstable Road and separated by this highway. I can find no fault with the methodology in the NIA in that it applies the current national guidance for assessing noise impacts on residential properties from commercial operations set out in British Standard BS4142:2014², and considers the Planning Practice Guidance (PPG) on Noise, the Noise Policy Statement for England and the World Health Organisation *Guidelines for community noise*.
10. In summary, the NIA finds that, based on an estimated customer usage between 0600 – 0700 and the mitigation of restricting use to the western-most fuel pumps, the rated noise level would be 2 dB above background which is above the Lowest Observed Adverse Effect level but below the Significant Observed Adverse Effect level as set out in the PPG.
11. However, apart from the PPG, these standards and guidelines were not drafted with the same objectives as planning policy nor intended to have the same formal role and effect. Whilst objectively the NIA conclusions are accepted, it remains a matter of judgement of whether subjectively this proposal would comply with planning policy.
12. In terms of the current level of background noise in the 0600 – 0700 period this would mainly derive from the relatively more constant sound of the general passage of road traffic, which I consider residents along this street would have become habituated to and this does not result in undue disturbance. The

¹ Noise Impact Assessment RP01 – 15229 by Cass Allen issued 23 June 2016.

² BS4142:2014 – Methods for rating and assessing industrial and commercial sound (BS4142)

impacts of the service station opening at 0600 would result in noise impacts which would be disturbing not due just to the level of noise but its nature, suddenness and unpredictability. As examples, the sounds might derive from a driver parking on the street to cross the road to make a purchase, the opening of the shutters on the reception building or simply the incidence of loud conversation between people.

13. When the A5 – M1 link opens the residents along the A1520 can expect a reduction in the level of traffic along this link and in its associated noise and disturbance. Most residential occupiers in the immediate vicinity of Norbury Hill Service Station might either be recently out of bed, just awake or in the latter stages of their night's sleep during this period of the day. Nonetheless these occupiers would reasonably expect the early morning hours of 0600 to 0700 to provide for a relatively peaceful period of the day, without the need to close windows in the warmer months. The activity arising from this proposal would significantly detract from this relative peace.
14. The business case for opening the service station at 0600 would not outweigh the material degree of harm resulting from the incidental noise and disturbance caused by commercial activity commencing at this earlier time. A trial period to monitor the potential effects would not be appropriate in this case as the proposal would be clearly contrary to Policy BE8 of the South Bedfordshire Local Plan Review 2004, due to the noise and disturbance which would be generated and the unacceptable adverse effect on amenities this would result in.
15. Policy BE8 is afforded substantial weight as being consistent with the National Planning Policy Framework, in particular the core planning principle in paragraph 17 that decisions should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings and, in paragraph 123, aim to avoid noise giving rise to significant adverse impacts on health and quality of life.

Conclusion

16. For the reasons given, this proposal would cause material harm to the living conditions of nearby residential occupiers, due to noise and disturbance. Therefore, having taken into account all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Price

INSPECTOR