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## Appeal Decision

Site visit made on 17 May 2017

**by Grahame Gould BA MPhil MRTPI**

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

**Decision date: 31<sup>st</sup> May 2017**

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**Appeal Ref: APP/K3605/W/16/3167727**

**Petrol Filling Station, Kingston Bypass, Esher, Surrey KT10 9TL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Shell UK Retail against the decision of Elmbridge Borough Council.
  - The application Ref 2015/4443, dated 10 December 2015, was refused by notice dated 19 July 2016.
  - The development proposed is full site reconfiguration following demolition and removal of existing sales building, canopy, pumps, tanks and carwash.
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### Decision

1. The appeal is allowed and planning permission is granted for the full site reconfiguration following the demolition and removal of existing sales building, canopy, pumps, tanks and carwash at the Petrol Filling Station, Kingston Bypass, Esher, Surrey KT10 9TL in accordance with the terms of the application, Ref 2015/4443, dated 10 December 2015, subject to the conditions set out in the Schedule to this decision.

### Procedural Matter

2. The application was amended prior to its determination by the Council and I have therefore only had regard to the amended scheme.

### Main Issue

3. The main issue is the effect of the development on the functioning of the Hinchley Wood local centre (the local centre).

### Reasons

4. The development would involve the reconfiguration of the petrol filling station (PFS) at the junction between the Kingston Bypass and Manor Road South, with the existing forecourt structures and equipment being demolished or removed and replaced with a new sales building, canopy, pumps, tanks and carwash. The existing forecourt shop has a gross internal floor area (GIA) of 58.5 square metres, while the replacement shop would have a GIA of 127 square metres<sup>1</sup>.
5. The PFS is around a couple of hundred metres to the south of the local centre and the centre is made up of around 25 commercial units on Manor Road North and Station Approach. The units in the local centre are occupied by a

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<sup>1</sup> Floor areas taken from the details set out in the application form

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variety of class A (shops, financial/professional services and restaurants and cafes) and class D1 (non-residential institutions) businesses. The majority of the centre's occupiers are independent businesses.

6. The vast majority of the premises in the local centre are currently occupied, which is indicative of this centre having a high level of vitality. The businesses that are trading in the local centre for the most part are selling products and/or offering services which are not available in PFS shops. The development would involve just over a doubling in the size of the PFS's shop. However, I consider that the operation of the PFS's enlarged shop would not divert trade from the local centre at a significant level. That is because the enlarged shop would have a comparatively small sales area relative to the area of the premises in the local centre and the units in the latter provide a much broader range of goods and services than would be the case for the PFS's shop. I therefore consider that the enlarged shop's operation would not be harmful to the centre's viability and functioning.
7. I therefore conclude that the development would not adversely affect the functioning of the local centre. There would therefore be no conflict with Policies CS8 and CS18 of the Elmbridge Core Strategy of 2011 and Policy DM11 of the Elmbridge Development Management Plan of 2015. That is because the local centre's viability and functioning would not be undermined by the operation of the enlarged PFS shop and the local centre would continue to be available to support the needs of Hinchley Wood's occupiers. I also find there would be no conflict with paragraphs 26 and 27 of the National Planning Policy Framework because there would be no significant adverse impact on the local centre's vitality and viability.

### **Other Matters**

8. Concern has been raised that the access arrangements for the reconfigured PFS could affect highway safety. The revised access arrangements have been assessed by the highway authority and it has raised no objection to them. On the available evidence I see no reason to take a contrary view to the highway authority.
9. A combination of mature tree and shrub planting and fencing marks the boundary between the PFS and the houses in Hillcrest Gardens. Given that boundary screening and the distances involved I consider that the reconfigured PFS would not be visually intrusive for the occupiers of the neighbouring houses.

### **Conditions**

10. The Council has suggested various conditions and I have considered the need for their imposition, having regard to the provisions of the national policy and guidance.
11. Apart from the standard time limit condition, it is necessary for the development to be built to accord with the submitted plans for certainty. In the interests of safeguarding the appearance of the area it is necessary for the external finishes to be as specified on the application form or in accordance with alternative details that have been submitted to and approved in writing by the Council and I have imposed a condition to this effect.

12. The site has the potential to be subject to ground contamination. Accordingly before the development is commenced it is necessary for any ground contamination to be investigated and thereafter for a remediation strategy to be submitted for the Council's written approval. The development should then be implemented in accordance with the approved remediation strategy. I have therefore imposed a condition relating to ground contamination.
13. To screen the development from the neighbouring houses it is necessary that the boundary planting within or adjoining the site is retained and safeguarded throughout the construction period. I have therefore imposed a condition requiring an arboricultural method statement, including details of the tree protection measures, to have been submitted to and approved by the Council before the construction works are commenced. As the tree protection measures are to be installed in accordance with the approved details, I consider it unnecessary for them to have been inspected by the Council before the construction works can be commenced. That is because any issues with compliance would be capable of being enforced against should the Council consider such action to be expedient.
14. To ensure that the noise associated with the operation of the forecourt equipment and the shop's external plant is not intrusive to the occupiers of the neighbouring houses it is necessary for that equipment to be operated so that its noise levels do not cause disturbance. In line with the wording of a condition suggested by the appellant and the Council I have imposed a condition that will require the forecourt equipment and the shop's external plant to be operated at noise levels of not more than 5 dB(a) above the pre-development (existing) background level in accordance with details to be submitted to and approved by the Council. To safeguard the living conditions of the occupiers of the neighbouring houses it is necessary that a condition be imposed precluding the delivery of goods during the late evening and early morning periods.

### **Conclusion**

15. For the reasons given above the appeal is allowed.

*Grahame Gould*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 10018862 OSP/15 – Site Location Plan; 10018862 BLK/15 – Site Block Plan; 10018862 PLG2/15 Revision B – Proposed Site Layout; 10018862 PLG4/15 – Proposed Site Elevations; 10018862 PLG5/15 – Sales Building Plans; and 10018862 PLG6/15 – Proposed Sales Building Elevations.
- 3) The development hereby permitted shall not be commenced until a preliminary investigation for contamination has been carried out to assess the condition of the land to be re-developed. A written report of the preliminary investigation shall be submitted to the local planning authority for approval. If the preliminary investigation approved by the local authority identifies that the site is contaminated then the following additional steps shall be undertaken.
  - a) A written site specific investigation plan using the information obtained from the preliminary investigation, providing details for a further investigation for soil, gas and controlled waters where appropriate, shall be submitted to and approved in writing by the local planning authority. Thereafter the investigation of the site shall be undertaken in accordance with the approved site specific investigation plan. The results from the site specific investigation, a refined conceptual model and a remediation method statement (RMS) detailing the remediation requirements for any contamination found shall be submitted to and approved in writing by the local planning authority.
  - b) The development shall be carried out in accordance with the approved RMS and any addenda to that statement submitted to and approved in writing by the local planning authority. Any post remediation monitoring identified in the approved RMS shall be installed in accordance with the timescales specified in the RMS and operated and retained for as long as specified in the RMS.
  - c) If during the course of implementing the development contamination, previously unidentified, is found to be present at the site then no further development shall be carried out until: 1) the developer has submitted a written addendum to the RMS detailing how the previously unidentified contamination shall be dealt with; and 2) the addendum to the RMS has been approved in writing by the local planning authority.
  - d) The development shall not be commenced until the construction methodology for any piled foundations has been submitted to and approved in writing by the local planning authority. Thereafter any piling shall be undertaken in accordance with the approved piling details.
  - e) Only uncontaminated rock, soil, brick rubble, crushed concrete or ceramics shall be used as infill material in connection with the implementation of the development.
  - f) Upon completion of the remediation detailed in the RMS, and prior to the development being brought into use, a written verification report shall be

submitted to and approved in writing by the local planning authority. The verification report shall verify that the required works regarding the decontamination of the site and the installation of any post remediation monitoring have been carried out in accordance with the approved RMS and any addenda thereto and that the development is suitable for use.

- 4) No site clearance, preparatory work or development shall take place until a tree protection plan and an arboricultural method statement prepared in accordance with British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) have been submitted to and approved in writing by the local planning authority. The development shall be carried in accordance with the approved tree protection plan and arboricultural method statement. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.
- 5) The development hereby permitted shall not be brought into use until the results of a survey of the pre-development background noise levels and a noise impact assessment for: the external plant for the shop; the car wash; the car vacuum; and the air/water line have been submitted to and approved in writing by the local planning authority. The noise impact assessment shall specify the noise control measures to be implemented to ensure that the external plant for the shop, the car wash, the car vacuum and the air/water line will be operated with noise levels of 5 dB(A) below the pre-development background noise levels (or 10 dB(A) if the relevant noise is tonal or a discrete component). Any noise control measures forming part of the approved noise impact assessment shall be installed prior to the development being brought into use and shall be retained thereafter.
- 6) The external materials to be used in the construction of the development hereby permitted shall be as specified in Section 9 of the Application Form dated 10 December 2015 or in accordance with any other materials for which details have been submitted to and approved in writing by the local planning authority prior to their use in the construction of the development.
- 7) Deliveries to and collections from the premises shall only be carried out between 07.00 hours and 21.00 hours on Mondays to Saturdays and between 08.00 hours and 21.00 hours on Sundays and Bank or Public Holidays.