
Appeal Decision

Site visit made on 20 April, 2017

by S. J. Buckingham, BA (Hons) DipTP MSc MRTPI FSA

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

Decision date: 12th June, 2017

Appeal Ref: APP/E5330/W/17/3166952

79 Kidbrooke Park Road, Kidbrooke, SE3 0DZ

- 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 Rupert Ainsworth, Rontec Watford Ltd. against the decision of Royal Borough of Greenwich Council.
 - The application Ref: 16/2323/V dated 20 June, 2016 was refused by notice dated 10 November, 2016.
 - The application sought planning permission for a new petrol filling station, canopy and retail convenience store without complying with a condition attached to planning permission Ref: 14/2164/V dated 14 January, 2015.
 - The condition in dispute is No 1 which states that: *The operating hours should be restricted to 06.00 am – midnight seven days a week.*
 - The reason given for the condition is: *In the interest of neighbours' amenities and compliance with Policies E(a) and E(b) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies.*
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Decision

1. The appeal is allowed and planning permission is granted for a new petrol filling station, canopy and retail convenience store at 79 Kidbrooke Park Road, Kidbrooke, SE3 0DZ in accordance with the application Ref: 16/2323/V dated 20 June, 2016 without compliance with condition number 1 previously imposed on planning permission Ref: 14/2164/V dated 14 January, 2015 and subject to the following conditions and the conditions in the schedule to this decision:
 - 1) Deliveries shall be taken at the site only between 06.00 and midnight on Mondays to Saturdays, and not at any time on Sundays or on Bank or Public Holidays.
 - 2) Details of lighting mitigation measures shall be submitted to and approved in writing by the local planning authority and mitigation measures completed before the development hereby permitted takes place.
 - 3) The air and vacuum facilities shall only be available between the hours of 06.00 and midnight Mondays to Sundays.

Preliminary matters

2. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also
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repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

3. I consider that all of the original conditions are relevant, with the exception of the restrictions on the hours of operation, which have now been removed, and the time limit for commencing development, as the development has been implemented. The repeated conditions are set out in the schedule to this decision.

Main Issue

4. The main issue is the effect that varying the condition would have on the living conditions of the occupiers of neighbouring properties with respect to noise and disturbance and light pollution.

Reasons

5. The appeal property is a small petrol station and supermarket on a triangular site where Brook Lane meets Kidbrooke Park Road. To its south on Brook Lane is the Manor Brooke Medical Centre, and to its north and west across Kidbrooke Park Road St Jame's Church and Parish Hall. The area is, nonetheless, predominantly residential.
6. Kidbrooke Park Road is a relatively busy one, and the evidence before me indicates that it remains so into the evening. There is also ambient noise from the nearby A2.
7. The appellant has provided a Noise Impact Assessment relating to the extended opening hours, prepared following discussion with Council and following approaches set out in the relevant British Standards. It identifies the closest dwellings to the site, No 2 Wrinklemarsh Road, 28 Brook Lane, and Nos 74 and 76 Kidbrooke Park Road as the main potential receptors of additional noise.
8. The assessment, following BS4142:2014 (*Methods for rating and assessing industrial and commercial sound*) found that there would be a low likelihood of adverse impact arising from the forecourt and store operations during the proposed extended operating hours, and that that noise arising during those times would be likely to sit within guidance levels set out within BS8233:2014 (*Guidance on sound insulation and noise reduction for buildings*). I see no reason to doubt this evidence, and no technical information has been put before me to cause me to do so. I conclude therefore that noise generated by customers visiting the site would be unlikely to have a harmful effect on the living conditions of neighbouring occupiers.
9. Neighbours are, however, also concerned about noise and disturbance generated by deliveries to the site. The appellant is willing to accept the implementation of conditions to restrict delivery times and to restrict the use of air and vacuum facilities on site, which are also potentially noisy, both of which would be capable of mitigating this potential harm.

10. Some occupiers of adjacent dwelling have voiced concern that the lighting to the petrol station would remain on all night, thus extending light pollution into their properties for longer hours. The appellant has pointed out that there are no conditions restricting lighting conditions or the direction of lighting on the original approval, but that he is willing to accept a condition requiring a light survey to identify mitigation measures. It appears to me that this would be capable of mitigating existing and future harm, which would be a benefit.
11. Kidbrooke Park Road experiences traffic movements during the night, and as a suburban A road appears to be relatively well lit. I conclude therefore that any additional traffic movements generated by the extended opening hours are not likely to generate significant additional light pollution into neighbouring dwellings.
12. As I have found that varying this condition would not have a harmful effect on the living conditions of the occupiers of neighbouring dwellings in respect of noise and disturbance or light pollution, I conclude that it would not therefore conflict with the requirements of Policies E(a) and E(b) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies 2014 in relation to protecting or improving the living conditions of adjoining occupiers in respect to emission of noise or light. It would not conflict either with the provisions of policy 7.15 of the London Plan, which seeks development proposals to avoid or mitigate adverse noise impacts.

Other Matters

13. The appellant has indicated that the extended opening hours would provide facilities for existing road users and residents, rather than creating a new market, and I see no reason to doubt this. The proposal would, as a result, be unlikely to generation significant levels of additional traffic, pollution or parking pressure outside the site. No convincing evidence has been put before me to support fears of additional crime or antisocial behaviour arising from the proposal. Extended opening hours would not automatically allow extended hours for the sale of alcohol, as this requires a separate licence. The planning system is not expected to deal with commercial matters such as the need for the development or competition with existing providers.

Conditions

14. The Planning Practice Guide is clear that where granting permission under section 73 of the Planning Act, it is also possible to impose new conditions, provided they do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier permission. The appellant has suggested a number of conditions, which the Council has had an opportunity to consider, although it has declined to comment. Taking them into account I have added a condition requiring a strategy to secure lighting mitigation measures, a condition restricting the hours of commercial deliveries to the site, and a condition restricting the use of air and vacuum facilities. All are in the interests of protecting the living conditions of the occupiers of houses in the vicinity of the site and all could reasonably have been imposed on the original condition.

Conclusion

15. For the reasons given above, therefore, and taking into account all other matters raised, I conclude that the appeal should succeed.

S J Buckingham

INSPECTOR

Schedule of repeated conditions

- i. No loading or unloading of vehicles arriving at or departing from the premises shall be carried out except within the curtilage of the premises, and all activities associated with the business shall be confined to the curtilage of the premises.
- ii. The whole of the car parking accommodation shown on the drawings shall be provided and retained permanently for the parking of vehicles of the occupiers and users of the remainder of the building, before the use hereby permitted is brought into operation.
- iii. No development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of the development.
- iv. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority has given written consent to any variation.