



Appeal Decision

Site visit made on 6 June 2017

by AJ Steen BA (Hons) DipTP MRTPI

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

Decision date: 29 June 2017

Appeal Ref: APP/K3605/W/17/3171414

Petrol Filling Station, Stoke Road, Cobham KT11 3AS

- 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 MRH (GB) Limited against Elmbridge Borough Council.
 - The application Ref 2016/2336 is dated 15 July 2016.
 - The application sought planning permission for 24 hour operation of the forecourt and sales kiosk and use of car wash from 09:00 to 20:00 without complying with a condition attached to planning permission Ref EL.87.68, dated 9 April 1987.
 - The condition in dispute is No 11 which states that: *The opening hours of the premises shall be restricted, in the case of the forecourt and sales kiosk to between 7.00am and 10.00pm, and the car wash to between 9.00am and 8.00pm.*
 - The reason given for the condition is: *The site is located in a residential area, and the use of the premises outside the hours stated could injure the amenities of the area and in particular those of the adjoining properties.*
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Decision

1. The appeal is allowed and planning permission is granted for 24 hour operation of the forecourt and sales kiosk and use of car wash from 09:00 to 20:00 at Petrol Filling Station, Stoke Road, Cobham KT11 3AS in accordance with the application Ref 2016/2336 dated 15 July 2016, without compliance with condition number 11 previously imposed on planning permission Ref EL.87.68 dated 9 April 1987 and subject to the conditions in a schedule at the end of this decision.

Procedural Matters

2. Three neighbours requested that I visit their properties to see the relationship between the petrol filling station and their properties. The residents of 1 Ravenswood Close were out at the time of my visit, but I was able to see this relationship from the first floor bedrooms of nos. 5 and 6 and the garden and conservatory of no. 6.

Main Issue

3. The main issue is the effect of revised opening hours of the petrol filling station on the living conditions of neighbouring occupiers of surrounding properties with particular regard to light and noise disturbance.

Reasons

4. Planning permission was originally granted for a petrol filling station with a development of 17 dwellings to the rear that comprise a mix of detached and terraced two storey houses, known as Ravenswood Close. 1, 5 and 6 Ravenswood Close directly abut the rear of the petrol filling station and are separated by a tall wall, part of which is the rear wall to the sales kiosk, with modest gardens such that there is limited separation between the dwellings and the petrol filling station. Over Ravenswood Close from the petrol filling station is a nursing home with dwellings to the other sides of the petrol filling station, although located further away from the petrol filling station than the dwellings in Ravenswood Close.
5. The proposal would allow the use of the petrol filling pumps and sales kiosk for 24 hours each day. It is suggested that the kiosk would not be open for customers, with purchases made through a night hatch when the sales building is closed. The car wash, air and vacuum facilities would retain their existing opening hours. The Council's concern, and that of local residents, is the effect of vehicles using the forecourt arriving and departing, vehicle doors closing, engines turning on and off, use of the kiosk and headlights directed at neighbouring properties.
6. The appellant has submitted detailed noise and lighting assessments that seek to demonstrate there would not be a material effect on neighbouring occupiers from noise and lighting at the petrol filling station. The Noise Assessment includes an overnight noise survey and concludes that the change in opening hours of the forecourt would not give rise to disturbance to local residents, the additional use giving rise to a low impact with noise levels below that leading to sleep disturbance, with noise changes insignificant and not noticeable. This report was prepared to comply with British Standards and the Council's Environmental Health and Licensing Manager has concluded that it is comprehensive and accepts the calculations and findings.
7. However, the assessment as to whether noise would be a statutory nuisance is different from planning considerations that need to consider whether there would be an adverse effect on the living conditions of neighbouring occupiers. The Noise Assessment considers noises likely at the site, including continuous noises, such as plant, and distinct impulses, such as car doors closing. The assessment took account of background noise, the dominant noise during quiet periods being the traffic on the M25, with noise from Stoke Road more dominant when it was busy, and aircraft noise. Additional noise from the increased opening hours of the petrol filling station would have a low impact, noise changes would be insignificant and not noticeable, with maximum noise levels significantly lower than the existing maximum noise levels.
8. As a result, whilst there would be additional noise from the proposed increased opening hours, the evidence provided demonstrates that this would only have a low impact that would not materially affect the living conditions of neighbouring occupiers.
9. It is not proposed to alter the existing lighting at the site and the concerns of the Council appear to be from car headlights entering and leaving the petrol filling station. These would approach the canopy from the entrance in Ravenswood Close and exit to Stoke Road to the front of the site. The rear of the site is enclosed by tall walls that would limit the amount of light from these

cars to neighbouring properties, with the nursing home over Ravenswood Close being to the rear of cars accessing the site. Whilst the direction of car headlights would alter from the present situation of cars travelling along Stoke Road, this additional activity would not materially affect the living conditions of neighbouring occupiers.

10. For these reasons, I conclude that the revised opening hours of the petrol filling station would not result in material light and noise disturbance on the living conditions of neighbouring occupiers of surrounding properties. As such, the proposed development would not conflict with Policies DM2 and DM5 of the Elmbridge Local Plan Development Management Plan and the National Planning Policy Framework that seek high quality design that demonstrates environmental awareness including protecting the living conditions of neighbouring occupiers, particularly taking account of noise and light pollution.
11. Concern has been expressed as to the effect of the development on the safety and security of neighbouring occupiers, along with highway and pedestrian safety, but no evidence has been provided as to how the additional opening hours would result in adverse effects on safety and security. Reference is made to littering around the petrol filling station, but the shop would remain closed such that the purchase of goods other than fuel would not take place during the additional opening hours.
12. Part of the site is located within The Tilt Conservation Area. As the proposed development relates to the opening hours of the petrol filling station and does not include any built development, it would preserve the character and appearance of the conservation area. As such, it would not affect the significance of the designated heritage asset.
13. I understand that there are other petrol filling stations in the vicinity, some of which have restrictive opening hours, and most shops and other businesses in the area are closed by 10 or 11pm. Stoke Road is less busy during the night and the petrol filling station may increase the vehicles on the road past the site, but such an increase would not be at a level to affect the living conditions of surrounding occupiers. There is alternative provision of 24 hour facilities in the vicinity, including the M25 service station, but this would not alter my conclusions on the main issue.
14. Reference is made to the petrol filling station not complying with existing conditions, but little evidence has been provided to confirm this. My attention has been drawn to other cases, but I have limited information on these and they would have a different relationship to surrounding development. In any event, I need to consider the proposed development on its individual merits.

Conclusion

15. On the basis of the above considerations, I conclude that the appeal should succeed and I will issue a new planning permission with revised conditions.

Conditions

16. In allowing the appeal and granting planning permission I have considered those conditions imposed on the original planning permission. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant

conditions from the original planning permission, unless they have already been discharged.

17. Conditions are necessary to restrict the hours of operation of the sales kiosk, other than for fuel purchases, use of the air, vacuum and car wash facilities in order to protect the living conditions of occupiers of neighbouring dwellings. A condition restricting storage and display of goods outside the kiosk is also necessary to protect the living conditions of neighbouring occupiers.
18. A condition has been requested to minimise noise from plant that is clearer than that attached to the original planning permission relating to the noise from the car wash. As this is likely to be more enforceable, this is preferable to that original condition and would better protect surrounding residential occupiers from noise disturbance. In some cases I have amended the wording of conditions suggested by the Council in the interests of clarity.
19. The remaining conditions relate to those attached to the original planning permission that I have updated where necessary in the interests of clarity. I note that the times of opening were previously varied in 1995, but I have limited information as to the details of that permission or whether it was implemented, so have based my decision on the original planning permission reference EL.87.68. I have not repeated those that have been discharged or would have been complied with during the course of development.
20. A condition is necessary to restrict extensions and outbuildings at the dwellings approved by the original planning permission given the size of their curtilages and potential impact on living conditions of occupiers and neighbouring occupiers. A condition to restrict the use of the kiosk to the sale of certain items and precludes the use of the petrol filling station for repair, maintenance or sale of motor vehicles and sale of food other than that specified is necessary to protect the living conditions of neighbouring occupiers. A condition relating to sight lines, parking and turning on the site is required to protect highway safety around the site.

AJ Steen

INSPECTOR

Schedule of 7 Conditions

- 1) The sales building shall not be accessed by customers outside the following hours: 0700 - 2200.
- 2) The use of the air and vacuum facilities and the car wash shall only take place between the following hours: 0900 and 2000.
- 3) No storage or display of goods for sale shall take place outside the kiosk.
- 4) The measured or calculated rating level of the cumulative effect of the noise emitted from any plant (including ventilation, refrigeration, air conditioning and air handling units) shall be below the existing background level by at least 5 dB(A), or 10 dB(A) if there is a particular tonal or discrete component to the noise, at all times when the plant is in operation. The measurements shall be based on the 5 minute LAeq.

The measured or calculated noise levels shall be determined at the boundary of the nearest ground floor noise sensitive premises or 1 metre from the facade of the nearest first floor (or higher) noise sensitive premises, and in accordance with the latest BS4142; Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas.

- 5) Notwithstanding the provision of the Town & Country Planning General Permitted Development Order 1977 (as amended – or any order revoking or re-enacting that Order) no development falling within Class I (1) of the First Schedule to the said Order shall be carried out within the curtilage of any dwellinghouse, unless planning permission is first granted by the Local Planning Authority.
- 6) The premises shall be used only as a petrol filling station for the sale of petrol, oil, motor vehicle spares and accessories, together with the sale of sweets, drinks, cigarettes and tobacco and general goods from within the kiosk, but shall not be used for the repair, maintenance or sale of motor vehicles, or for the sale of other foodstuffs not referred to above.
- 7) The sight lines and space within the site for parking, loading, unloading, and the turning of vehicles clear of the highway required by conditions 12 and 14 of EL.87.68 shall be maintained in perpetuity.