



Appeal Decision

Site visit made on 9 October 2017

by V Lucas LLB MCD MRTPI

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

Decision date: 7th November 2017

Appeal Ref: APP/D4635/W/17/3178942

Compton Service Station, Bridgnorth Road, Wolverhampton, WV6 8AP

- 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 Motor Fuel Group against the decision of Wolverhampton City Council.
 - The application Ref 16/01028/REM, dated 15 September 2016, was refused by notice dated 11 January 2017.
 - The application sought planning permission for 'demolition of existing buildings and redevelopment of petrol filling station including Class A1 shop and car wash' without complying with a condition attached to planning permission Ref C/1191/92, dated 11 February 1993.
 - The condition in dispute is No. 7 which states that: The garage, including the sales shop and car wash, shall not be open to members of the public outside the hours of 07:00 to 23:00 daily as agreed in the applicant's agent's letter dated 3 November 1992.
 - The reason given for the condition is: In the interests of the amenities of residential neighbours.
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Decision

1. The appeal is allowed and planning permission is granted for 'demolition of existing buildings and redevelopment of petrol filling station including Class A1 shop and car wash' at Compton Service Station, Bridgnorth Road, Wolverhampton, WV6 8AP in accordance with the terms of the application, Ref 16/01028/REM, dated 15 September 2016, without compliance with condition No. 7 previously imposed on planning permission Ref C/1191/92, dated 11 February 1993, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new conditions:
 - 1) The opening hours of the premises (petrol station and associated shop shall be restricted to between 07:00hrs and 23:00hrs Monday to Sunday except for a period of 12 months from the date of this permission whereby the opening hours of the petrol station and associated shop shall be restricted to between 06:00hrs and 23:00hrs Monday to Sunday.
 - 2) The operation of all ancillary equipment including (but not exclusively) the car wash, car vacuum and the airline shall be restricted to 07:00hrs to 23:00hrs.
 - 3) Deliveries and the collection of refuse shall be restricted to 07:00hrs to 23:00hrs.

- 4) Light intrusion arising from the under canopy luminaires, shall be restricted to reduced power and shall not exceed 2 Ev Lux (as vertical illuminance) and 1,000 candelas (as intensity) between 23:00hrs and 07:00hrs.
- 5) The perimeter lights (as indicated on Page 4 of the Lighting Impact Report dated 23rd November 2016) on the boundary with 177 Bridgnorth Road shall not be operated between the hours of 23:00hrs to 07:00hrs.
- 6) No part of the application site shall be used for motor repairs.

Background and Main Issue

2. The appeal premise operates as a petrol filling station with an associated retail shop and car wash. Permission was originally granted for the scheme in February 1993. The appeal proposal before me seeks to vary the opening hours condition that was applied to the original permission for the shop and petrol filling station to between 06:00 and 23:00 daily.
3. There are several residential dwellings close to the appeal property including No. 177 Bridgnorth Road which is immediately adjacent. The Council assessed the application in light of concerns regarding the effect of the proposed extension to the opening hours on the living conditions of neighbouring occupants, with particular regard to noise and light. An assessment of both these issues was submitted with the application.
4. The noise assessment concluded that there would be no significant impact as a consequence of the proposal. The Council's Environmental Health Officer (EHO) remained uncertain as to the impact of discrete noise events occurring and on that basis recommended that a 12 month temporary permission be granted to allow a period of monitoring.
5. The light assessment concluded that the proposal would comply with the relevant standards of the Institute of Light Professionals, subject to certain recommendations being followed. The Council's EHO was satisfied on that basis that the proposal would be acceptable, subject to conditions being attached.
6. The Council planning officer's report recommended approval of a temporary 12 month permission. The application was subsequently refused by Council members at committee. The reason for refusal was the adverse impact on the amenity of neighbours, due to noise and light disturbance caused by the use of the site for an extra hour
7. I therefore consider the main issue to be the effect of the proposed extension to the existing opening hours of the appeal premises on the living conditions of neighbouring occupants, with particular regard to noise and light disturbance.

Reasons

8. The appeal property is situated on the A454 Bridgnorth Road. The road at this point is lined with residential properties on both sides. The noise and light assessment submitted with the original application considered the impact of the proposed extension to opening hours of the appeal premises on the living conditions of neighbouring residents.

9. The noise assessment notes that the general noise climate of the area is dominated by road traffic noise from Bridgnorth Road. Survey results taken from the nearest dwelling showed that the prevailing noise climate was fairly high even between the hours of 06:00 and 07:00. On that basis, the assessment concludes that the impact of the proposal would not amount to a significant adverse impact.
10. Compton Service station is situated on a main A road. It is a busy thoroughfare with a high volume of vehicular traffic regularly passing along it. As a consequence, the background noise from passing traffic is a constant and noticeable feature of the area. I note the Council's EHO was concerned that the noise from the slamming of car doors or car radios may be noticeable during lulls in the general background noise environment. The appellant's noise report notes observations on site during the first hour of opening produced no significant noise impact from voices or car radios and there is no specific evidence to suggest why this should occur during the proposed earlier hour of trading. People often begin their daily commute between 06:00 and 07:00 hours and therefore the background noise of traffic travelling along Bridgnorth Road will already be apparent during those times, as noted in the appellant's noise assessment. However, for the avoidance of doubt a condition could be attached for a 12 month temporary extension to the existing opening hours of the business to allow for a period of monitoring of any adverse impacts that may occur.
11. The appellant's light assessment notes that the lighting at the service station has recently been replaced with controllable LED lighting which is much more focused than the previous lighting used at the premises. The result of this is that spill from the lighting used on the forecourt has been reduced and is being further controlled by proximity detectors. A curfew period was identified in the report for the purposes of assessing the effect of light disturbance on the living conditions of people living nearby. This was from 07:00 to 23:00. The existing lighting was found to be compliant with national recommendations pre-curfew and that it exceeded them post-curfew, although not by a large margin. The data shows that the greatest disturbance would be to rooms on the ground floor of neighbouring properties.
12. I note the concerns raised by neighbouring occupants regarding the effects of light disturbance on their living conditions, particularly at night and in the early hours of the morning. I understand that this is not a matter currently controlled via a condition. The appellant's light assessment makes two recommendations to ensure that the proposal would comply with national recommendations during the post-curfew period which would correspond with the late night period and the early hours of the morning.
13. Specifically, that the last under-canopy luminaire from the shop in each row be restricted to reduced power until post curfew and that the three perimeter lights on the boundary with 177 Bridgnorth Road are not operated until post curfew. These recommendations could be attached as conditions in line with the advice from the Council's EHO thereby ensuring that light disturbance to neighbouring residents would be reduced late at night and in the early hours of the morning. This would represent an improvement when compared with the existing situation. The enforcement of such a condition would be a matter for the Council.

14. I note that the minutes of the Council's Committee meeting state that the planning officer advised that both assessments have been conducted in line with professional standards acceptable to the Council's EHO and that he was satisfied that the noise and lighting assessments were robust for the needs of the application. Based on the evidence before me I see no reason to take a different view.
15. I acknowledge the concerns of local residents regarding the proposal. In addition to the issues that I have considered above, concerns relating to the non-compliance of existing conditions attached to the original permission, such as opening prior to the permitted opening hours, are a matter for the Council and not relevant to my consideration of this appeal. I understand that the hours during which deliveries can be made to the appeal premises are not currently controlled by a condition. If this appeal were to succeed then a condition could be attached to control this matter to ensure that early morning deliveries do not disturb nearby residents with regard to noise and this would amount to a benefit when compared with the existing condition.
16. Accordingly, I conclude that the proposal would not be harmful to the living conditions of neighbouring occupants, with particular regard to noise and light disturbance. The proposal would therefore not conflict with policies EP1, EP4 and EP5 of the Council's Unitary Development Plan (Adopted June 2006) which together seek to ensure that development that may result in noise or light pollution will not have a material adverse impact on amenity.

Conclusion and Conditions

17. For the reasons given above, I conclude that the appeal should be allowed and I shall vary the planning permission accordingly to reflect the extended opening hours sought by the appellant.
18. A condition is necessary to restrict the opening hours of the business in the interests of residential amenity, including the shop and car wash. I have therefore imposed a new condition allowing the business to be open to the public for an additional hour in the morning for a temporary 12 month period to allow the Council to monitor any effect of an extended opening period on the living conditions of neighbouring occupants. Additionally, in the interests of residential amenity I have also imposed conditions restricting the hours during which deliveries can take place, controlling the luminance of lighting at the premises and requiring the lighting next to No. 177 to be switched off between the hours of 23:00 and 07:00, and preventing motor repairs from taking place at the site.

V Lucas

INSPECTOR