



Appeal Decision

Site visit made on 19 December 2017

by Darren Hendley BA(Hons) MA MRTPI

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

Decision date: 22nd January 2018

Appeal Ref: APP/X4725/W/17/3179544

United Co-operatives Ltd, Ackworth Road, Pontefract WF8 3QJ

- 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 City of Wakefield Metropolitan District Council.
 - The application Ref 16/01275/FUL, dated 18 May 2016, was refused by notice dated 23 January 2017.
 - The application sought planning permission for a redevelopment of the existing filling station without complying with a condition attached to planning permission Ref 88/99/04241/F, dated 12 January 1990.
 - The condition in dispute is No 6 which states that: *"The premises shall only be operated between the hours of 0700 to 2300 Monday to Sunday with the car wash available for use during these hours Monday to Saturday but from 0900 hours to 1600 hours only on Sundays"*.
 - The reason given for the condition is: *"To prevent nuisance to the occupants of neighbouring residential properties"*.
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Decision

1. The appeal is allowed and planning permission is granted for a redevelopment of the existing filling station at United Co-operatives Ltd, Ackworth Road, Pontefract WF8 3QJ in accordance with the application 16/01275/FUL dated 18 May 2016 without complying with condition No 6 attached to planning permission Ref 88/99/04241/F, dated 12 January 1990 and subject to the conditions in the attached Schedule to this Decision.

Background

2. The appeal concerns a petrol filling station (PFS) which the appellant wishes to operate for 24 hours per day 7 days a week, which is prevented by condition 6 of planning permission 88/99/04241/F. The appellant has suggested alternative conditions that would prevent both deliveries and use of a forecourt tannoy outside the hours of 0700 to 2300 on any day, a management plan to control disturbance and, if necessary, details of lighting mitigation measures.

Main Issue

3. I consider the main issue is whether condition 6 is reasonable and necessary, in the interests of protecting the living conditions of the occupiers of nearby residential properties, in relation to the potential for noise and disturbance.

Reasons

4. The PFS is located at the junction of Ackworth Road (A628) and Hardwick Road (A639), and can be accessed for use from either of these roads. As well as containing petrol pumps on the forecourt, it also contains a small convenience shop, a drive through car wash, and air, water and vacuum facilities. The layout of the site also permits an amount of customer parking and there is also a small building which is understood to be used as an office.
5. The PFS shares a common boundary with residential properties at No 67 Ackworth Road and 'Starbeck', on Hardwick Road. These boundaries are defined by boundary walls of approximately a height of 2m and, in the case of 'Starbeck', also by the side elevation wall of the office. A number of other residential properties also face towards the low boundary wall of the site frontage, around the road junction. The area is residential in character, with the nearest other commercial uses comprising a public house and a local shop, a short distance down Hardwick Road.
6. With the proximity of residential properties to the PFS, and its location in a predominantly residential area there is the potential for the proposal to cause additional noise through the increase in opening hours. As such, during the course of the planning application, the appellant submitted a Noise Impact Assessment¹ (NIA) and subsequently further noise information². The NIA sets out to assess noise levels generated by activities within the site with regard to the guidance and criteria in British Standard 4142:2014 (BS4142) and finds there would be a low likelihood of adverse impact at worst.
7. Paragraph 005 of the Planning Practice Guidance: Noise (PPG) also recognises that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. Therefore, it is also important to consider the effect of the characteristics of the noise, given that the technical assessment methods are largely based on an averaging approach over the measurement periods. The PPG sets out that a contributory factor includes non-continuous sources of noise. This is of relevance to the proposal because of the intermittent nature of the noise that would be likely to arise from the nature of the use during the additional opening hours associated with vehicular movements, customers and staff, and at a time when the noise levels would likely be at their quietest and when the public house and the shop would not be creating noise and disturbance. The NIA does, however, also include an assessment of the characteristics of noise and adds +3dB for impulsivity, which I have taken into account.
8. The potential for the occupiers of the nearby properties to experience noise and disturbance also has to be considered in the context that vehicular movements to and from the PFS during the additional opening hours would be likely to be occasional. As the PFS lies within an urban environment and is at a main road junction, there would already be some noise from vehicular movements in close proximity to these properties during the additional opening hours. Taking these matters together, I find no reasons to disagree with the conclusions of the NIA.

¹ Enzygo Environmental Consultants, Ref: SHF.418.026.R.001 (May 2016)

² Enzygo Environmental Consultants, Ref: SHF.418.026.NO.R.002 (16th September 2016)

9. There are also no current restrictions on delivery hours and given the nature of, in particular, fuel tanker deliveries, this has the potential to cause substantial noise and disturbance. I am though able to consider what, if any, conditions, should be attached to the grant of planning permission. I consider the restriction of deliveries between the hours of 2300 and 0700 would be likely to reduce the potential for noise and disturbance, and this attracts significant weight.
10. Restrictions over the use of the forecourt tannoy during the same hours would also reduce a source of noise and disturbance during the additional opening hours. A management plan, in my view, would also be an appropriate means of ensuring the co-ordination and implementation of measures to control noise and disturbance. The Council Officers also considered that the car wash and vacuum facilities on the site should be restricted to the current permitted hours and I agree this would also contribute to effectively control related noise and disturbance.
11. As regards lighting, there are also no current restrictions and representations from local residents have set out concerns over light overspill, in particular from the lighting under the canopy over the forecourt. I also consider that a condition which provides for lighting mitigation measures would reduce the potential for associated disturbance.
12. When taken together, the low likelihood of noise impact and the conditions which may be imposed to control noise impact would safeguard the living conditions of nearby residents. The conditions also have the potential to further limit noise and disturbance that arises from some of the existing activities on the site that may affect the living conditions of local residents. I acknowledge the reason why the planning condition was originally applied, although, as I have set out, the original planning permission did not contain controls over delivery and tannoy system hours, a management plan, nor lighting mitigation.
13. Therefore, I conclude the proposal would not have an unacceptable effect on the living conditions of nearby residents, in relation to the potential for noise and disturbance. As such, condition 6 is not reasonable or necessary, and its removal would comply with the tests for planning conditions set out in paragraph 206 of the National Planning Policy Framework (Framework) and the related advice in the PPG concerning the application of these tests, subject to the imposition of the matters under conditions that I have set out above.
14. The proposal would also comply with Policy D9(k) of the City of Wakefield Metropolitan District Council, Local Development Framework Development Policies (2009) (DP) which require that development shall have no significant impact on the amenity of neighbouring residents. It would also comply with Policy D20 of the DP, as far as this also seeks to protect amenity for this type of development.

Other Matters

15. The appellant has estimated the proposal would create 3 additional full time equivalent jobs and generate £86, 000 per annum. I consider that on this basis the proposal would thus accord with Policy CS8 of the DP which states that the economic performance of the district will be improved by strengthening and diversifying the urban and rural economy. Similarly, it

would also comply with paragraph 18 of the Framework concerning the Government's commitment to securing economic growth in order to create jobs and prosperity. It would also serve community needs as regards providing a local service, although as the appellant has stated, there is already a PFS in Pontefract which operates without opening restrictions, as well as in nearby Ackworth. I also consider the associated desire to compete for trade is largely a company benefit. I attach moderate weight to the economic benefits of the proposal.

16. With regard to the effects on highways safety, as the roads nearest the PFS are likely to be considerably less busy during the additional opening hours, I consider the extended hours of operation would not cause a significantly heavier flow of traffic nor place undue pressure on the customer parking spaces on site. The restrictions on delivery hours would also address highway safety issues arising during the period of the additional opening hours for fuel tankers and other such vehicles.
17. I also have no substantive evidence before me that would lead me to believe that the proposal would result in anti-social behaviour and, in this respect, the draft management plan which the appellant has submitted contains measures to limit general nuisance from customers using the site. Matters in relation to the licensing of alcohol sales concern other regulatory regimes, so I can only give limited weight to this in my decision.
18. When assessing the effects on the living conditions of the occupiers of residential properties this does depend largely on the individual site circumstances, and as such I attach limited weight to other appeal decisions and details of other sites that I have been referred to. The appeal decision on the site itself concerning an automated teller machine did not concern noise and disturbance issues, and I am satisfied this does not alter my conclusions. I also attach limited weight to matters raised in relation to alleged breaches of planning control as my decision is based on the merits of the proposal subject of this appeal.

Conditions

19. I have imposed new conditions in relation to the delivery hours (1), use of the forecourt tannoy (2), details of a management plan concerning noise and disturbance measures (3) and details of lighting mitigation (4). This is in the interests of protecting the living conditions of the occupiers of nearby residential properties as regards noise and disturbance. For similar reasons, I have also imposed a condition concerning the hours of use of the car wash and vacuum facilities (5). I have imposed all those remaining conditions from the original planning permission that I consider remain necessary and relevant (6, 7 and 8).
20. I require the management plan and the lighting mitigation to be agreed and implemented prior to the additional opening hours coming into operation, so they are effective in protecting the living conditions of the occupiers of nearby residential properties. Where I have altered the wording of the remaining conditions put forward by the Council and the appellant, I have done so in the interests of precision, without changing their overall intention.

Conclusion

21. The proposal would not have an unacceptable harmful effect on the living conditions of the occupiers of nearby residential properties, in relation to the potential for noise and disturbance. I have considered all matters that have been raised but none would demonstrate that condition 6 is reasonable and necessary. Accordingly, I conclude the appeal should be allowed and condition 6 should be removed.

Darren Hendley

INSPECTOR

Conditions Schedule

- 1) Deliveries shall be taken at or despatched from the site only between the hours of 07:00 to 23:00.
- 2) The forecourt tannoy shall only be used between the hours of 07:00 to 23:00, except when necessary for the purposes of health, safety and security.
- 3) The development hereby permitted shall not be brought into use until a noise and disturbance site management plan has been implemented in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The approved details shall thereafter be maintained.
- 4) The development hereby permitted shall not be brought into use until lighting mitigation measures have been implemented in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The approved details shall thereafter be maintained.
- 5) The car wash and/or vacuum at the site shall be operated only between the hours of 07:00 to 23:00 Monday to Saturday and only between the hours of 09:00 to 16:00 on Sundays and Bank Holidays.
- 6) At no time shall a continuous sound pressure level (Leq) of 64dB(A) be exceeded at the south west boundary of the site as measured on a sound level metre over any five minute period.
- 7) Surface water from areas likely to receive a petrol/oil contaminate, including vehicle parking and hardstanding areas, shall be passed through adequate oil/grit interceptor(s) prior to discharge to public sewer, watercourse, soakaway or pond.
- 8) Any tanks for the storage of fuel oil, process chemicals or similar liquids shall be located within a bund having a capacity of not less than 110% of the largest tank. If tanks are connected by pipework such as to allow equalisation of the level of the contents, then the bund capacity shall be 110% of the largest combined volume. The floor and walls of the bund shall be impervious to oil and water, and resistant to any stored chemicals. Inlet/outlet/vent pipes and gauges must be within the bunded area. In the event that any amendments are required to the means of disposing contaminated surface water from within the bunded area, such that no uncontrolled discharge occurs to any drain/sewer, a scheme detailing these methods of surface water disposal shall be submitted to the Local Planning Authority for written approval prior to any amendments being implemented. The approved scheme shall thereafter be retained and maintained for the lifetime of the development.