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## Appeal Decision

Site visit made on 13 March 2018

**by Mrs J Wilson BA BTP MRTPI DMS**

**Inspector appointed by the Secretary of State**

**Decision date: 1<sup>st</sup> June 2018**

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**Appeal Ref: APP/G1250/W/17/3184344**  
**271 Kinson Road, Bournemouth BH10 5HE**

- 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 the decision of Bournemouth Borough Council.
  - The application Ref 7-2017-915-AE, dated 10 February 2017, was refused by notice dated 10 May 2017.
  - The application sought planning permission for the erection of petrol filling station (amended plan) without complying with a condition attached to planning permission Ref 7/83/915/S, dated 11 October 1983.
  - The condition in dispute is No 3 which states that: The use hereby permitted shall operate between the hours of 7 a.m. to 11 p.m. only.
  - The reasons given for the condition is: To safeguard the interest of occupiers of adjoining and nearby (residential) properties.
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### Decision

1. The appeal is dismissed.

### Background and Main Issue

2. The appeal seeks to allow the petrol filling station to operate throughout the night. The building would be closed to customers and transactions would take place via a night pay window. My determination of the appeal relates solely to the necessity of condition 3. Accordingly the main issue is whether that condition is reasonable and necessary in the interests of safeguarding the living conditions of occupiers of adjoining and nearby residential properties.

### Reasons

3. The noise assessments measured from within the site show generally consistent ambient noise levels between the hours of 23:00 and 07:00, with occasional noise occurrences during the night up to 25 decibels higher. The appellant asserts that the noise assessment demonstrates the acceptability of the proposal in acoustic terms, taking account of noise events such as car doors/radios and modelling worst case scenarios, whereas the Council suggest noise levels are not representative, given the timing, location of equipment and base line levels used in the calculations and predictions. I have a number of concerns regarding the assessment including the position of the monitoring equipment on the site with no gathered data at the sensitive receptor locations

instead relying on estimated levels. I share the Councils' concern that maximum noise levels are greater than the levels used to make the predictions.

4. The appellant argues that the Council did not oppose the principle of the extended hours and as the assessment followed best practice the reservations of the Environmental Health Officer (EHO) should carry no weight. The EHO raised issues regarding monitoring and questioned the background noise levels, also highlighting concerns over the reliance on predictions. It is inaccurate to describe the EHO assessment of the noise report as "not disputed". In my judgement the concerns over the timing and position of data gathered and the inclusion of the higher noise levels in the predictions are legitimate concerns. I also noted significantly higher noise levels were recorded during the first half hour after the garage opened at 07:00. These factors together give me sufficient concern over the robustness of the overall analysis even though the central methodology may accord with agreed practice.
5. I note that the appellant argues that traffic volumes would be unaffected in response to the Councils assertion regarding increased customers though I have no evidence to support or dispute this. Nonetheless it seems clear to me that even if traffic flows remained relatively constant the opening of the business throughout the night would inevitably mean vehicles would be moving onto and off the site. This would cause increased noise from the petrol pumps, car doors, engines and general vehicle movements along with activity at the night pay window. This would introduce night-time sources of noise which do not currently occur and would inevitably have an impact.
6. It seems to me that in the event that the garage were to be permitted to trade throughout the night there would be a significant probability of noise disturbance to the occupiers of dwellings closest to the site, when residents would be sleeping and particularly in warmer weather when windows would be open. Without data taken over a longer period and verified from the positions of sensitive receptors I am unconvinced that residents would not be subject to unacceptable noise nuisance.
7. For the reasons given the operation of the petrol station throughout the night would be likely to have a significant and unacceptable effect on the living conditions of the residents in adjacent properties causing unacceptable levels of disturbance. Consequently the proposal would conflict with Policies CS38 and CS41 of the Bournemouth Local Plan: Core Strategy (2012) and to the aims of the National Planning Policy Framework (Framework) which together seek to ensure that development respects its surroundings and secures a high standard of amenity for neighbouring residents.

### **Other matters**

8. The appellant states that the proposal is for a form of sustainable development, which should be allowed. The Framework sets out the 3 dimensions of sustainable development; in relation to its economic role, I accept that the longer trading hours would have a beneficial effect on the business, would create additional employment and therefore a small effect on the local economy; in relation to the social role, I consider that night time trading would have a negative effect due to the likely levels of disturbance; the environmental role refers to the natural, built and historic environment and in my judgement is not applicable here. Taken as a whole, I consider that the

significant unacceptable social effects of the proposal far outweigh any economic benefits and so the proposal does not represent a sustainable form of development.

9. I note the appellant comments with regard to vegetation which has been removed and which it is claimed should not count against the current appeal. It does not appear that this would have been sufficiently dense to be an effective barrier to noise and it has not influenced my conclusion. I have also noted references regarding a 24hr petrol filling station some distance away however this does not influence my consideration of the impact of night time operation in relation to adjoining residents in the locality of this site.
10. My attention has been drawn to a number of appeal decisions<sup>1</sup> by the appellant in support of the appeal and by the Council who refer to appeal decisions<sup>2</sup> where additional operating hours have been rejected. It appears to me that these decisions have either a different context or are for substantively different proposals. Similarly I do not have information to assess whether the relationship of neighbouring residential properties in those cases is similar to those which exist here and I cannot be sure that they represent like for like comparisons and can therefore attribute them little weight. In any event I have to come to my decision based on the evidence before me in relation to the particular circumstances and local impact of this case.

### **Conclusion**

11. Based on the evidence before me I consider the extended opening hours would be highly likely to cause significant disturbance to occupiers of nearby dwellings. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Janet Wilson*

INSPECTOR

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<sup>1</sup> APP/D3640/W/16/3156743; APP/K3605/W/17/3171414 and APP E5330/W/17/3178190

<sup>2</sup> APP/W0340/W/16/3161477; APP/X1925/A/14/2227807 and APP/T3725/A/11/2159299