The Planning Inspectorate

Appeal Decision

Site visit made on 6 January 2020

by Rachael Pipkin, BA (Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2020

Appeal Ref: APP/H2265/W/19/3238919
Brackenhill Service Station, 82-106 Maidstone Road, Borough Green, Sevenoaks, TN15 8HG

- 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 MFG against the decision of Tonbridge & Malling Borough Council.
- The application Ref: TM/19/00199/FL dated 24 January 2019, was refused by notice dated 11 April 2019.
- The application sought planning permission for 'Redevelopment of Petrol Filling Service Station, including erection of new sales building and canopy' without complying with a condition attached to planning permission Ref TM/82/848, dated 21 April 1983.
- The condition in dispute is No 6 which states that: *Hours of opening shall be restricted to between the hours of 7 am – 11 pm daily*.
- The reason given for the condition is: *To protect the amenities of dwellings surrounding the site*.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The decision notice in respect of the original development supplied with the documents is referenced as TM/82/848. The parties in their statements refer to the original planning permission as TM/83/10931/FUL. Both parties have confirmed that the Decision Notice with reference TM/82/848 is correct. This reference number is the original reference (i.e. from the paper system). When the Council changed to the computer system new references were allocated which in this case was TM/83/10931/FUL. I am therefore satisfied that this is the correct original decision notice. I have used the original reference number in my banner heading above as this is the number with which the permission was issued.

3. The occupants of 108 Maidstone Road (No. 108) requested that I visit their property to see the relationship between the Petrol Filling Station (PFS) and their house. I carried this visit out as part of my site visit.

Main Issue

4. The main issue is whether the condition is necessary and reasonable having regard to the effect of the proposed development on the living conditions of occupiers of 108 Maidstone Road, with particular regard to noise disturbance and lighting.

Reasons

5. The appeal site accommodates a PFS comprising a retail sales building, 4 sets of pumps under a canopy and an air/water bay. The retail sales building includes an ATM. The site is on a busy main route, Maidstone Road which is also designated as the A25 within the village of Borough Green. The surrounding area is predominantly residential in character and the site is immediately adjacent to two residential properties, No. 108 to the east with 3 Crouch Lane to the rear of the site. The site is separated from these properties by a high fence and additionally along its rear boundary by dense evergreen hedging.

6. The appellant wishes to extend the opening hours from those originally imposed, restricted to 7 am to 11 pm, to allow the PFS to permanently operate on a 24-hour basis every day of the week. A temporary planning permission was granted on appeal[1] for a one year trial period to allow for these operational hours to be reconsidered in the light of the actual experience of the operation of the premises and its effect on the living conditions of adjacent occupiers and to enable the Council to monitor the position.

7. The appeal site's location on a main road, means local residents experience quite high noise levels as a result of traffic. During the trial period, the occupants of No. 108 have indicated that they have experienced noise and disturbance arising primarily from the sudden loud noises associated with deliveries, car doors slamming, shouting, music and the tannoy rather than the increased level of traffic. They have provided both a diary of events and photographic evidence in support of this.

8. The appellant has submitted a detailed Noise Assessment in support of the application to permanently extend the hours of operation. This acoustic report determined that the operation of the PFS overnight resulted in the same pattern of noise experienced on site as the previous 2016 survey which was undertaken when the PFS was closed overnight. The acoustic report sets out that the calculated noise levels associated with the PFS being open overnight were low impact, based on the British Standards 4142 (BS 4142) categories. Noise at this level would be below the level at which the World Health Organisation considers there is any effect on sleep.

9. The acoustic report, whilst undertaken using an accepted methodology based on BS 4142, draws from just 2 separate periods of overnight monitoring. Whilst it suggests that the overall noise levels are comparable between the PFS being open and closed, I note that the data also indicates a couple of higher L_{Amax} readings when the PFS was open during the depths of the night when people would be most deeply asleep.

10. With such a short monitoring timeframe I cannot be sure that the assessment has properly taken into account those instances when a car door would be

[1] APP/H2265/W/17/3184809

slammed shut or voices raised, which whilst being short-lived, would be particularly intrusive when residents were trying to sleep. On this basis, I cannot be certain that the disturbance claimed by the neighbours is not unacceptable. Furthermore, whilst the petrol station would be less frequently visited by all vehicles at night, there remains the prospect of numerous vehicles visiting at the same time as well as vans and HGVs.

11. The Council's Environmental Protection Team found that the 24-hour operation of the PFS would not result in a statutory nuisance based on the submitted information. 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.

12. I appreciate that the appellant has taken steps to address issues arising on site, including restricting the use of the air tower, displaying a 'Respect our neighbour' poster, reducing both the tannoy level prior to 10pm and setting the night hatch volume at a reasonable level. Nevertheless, the 24-hour operation of the site has caused harm to the living conditions of the neighbour at No. 108.

13. Whilst I accept that the Inspector for the previous appeal concluded that the 24-hour operation of the site would not result in material harm to the living conditions of surrounding residential properties, I am also mindful that this was subject to a further period of assessment and monitoring. During this period, the 24-hour opening has given rise to unacceptable noise and disturbance to the occupiers of No. 108 which is directly adjacent to the appeal site. I accept that sensitivity to noise varies between people. However, I have no evidence to suggest that these occupants are unusually sensitive to noise disturbance. The absence of multiple complaints from different sources, does not diminish the harm to the living conditions of occupants of No. 108 that I have identified.

14. There are no restrictions on the operation of lighting to the PFS and it could be illuminated on a 24-hour basis. Whilst I acknowledge this possibility, it would also seem unlikely that the PFS would be fully illuminated when it was not open. The adjoining residents have raised concerns about light disturbance. However, the only bedroom window facing the appeal site is a very small, secondary window from which the PFS is partially visible. The full canopy was not lit up at the time of my site visit, however the PFS was well lit by other lights. I did not observe any noticeable light intrusion into the bedroom, although I accept that at night-time with the canopy lit up there could be some. Nevertheless, I consider that any light disturbance arising from this small window could be mitigated through the use of an appropriate window treatment. This leads me to conclude that there would be no material harm as a result of light pollution. I note the previous Inspector also concluded this.

15. The appellant has referred to two recent appeal decisions[2] which have allowed 24-hour operation of a PFS in close proximity to residential uses. However, no details have been provided. Although there will be circumstances where such operational hours are acceptable, I have to consider this appeal on its own individual merits. In this case, I have identified harm to the adjacent occupiers.

[2] APP/K305/W/17/3171414 and APP/E5330/W/17/31781900

16. I conclude that the condition is necessary and reasonable having regard to the effect of the proposed development on the living conditions of occupiers of No, 108, with particular regard to noise disturbance but not with regard to light disturbance. It would therefore conflict with Policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy and Policy SQ1 of the Tonbridge and Malling Borough Managing Development and the Environment Development Plan Document 2010. These policies, together and amongst other things, seek to protect the character of an area, ensuring high quality development and that residential amenity is preserved. It would also conflict with the National Planning Policy Framework which requires noise from development to not give rise to significant adverse impacts on health and the quality of life.

Other Matters

17. The extended hours of operation would enhance the economic viability of the PFS. The proposal would also provide some economic and social benefits in contributing to the evening economy and providing a service to the local community. However, I note there is existing 24-hour provision of similar services within a couple of miles of the appeal site. Nevertheless, these are positive aspects of the scheme to which I give limited weight. It would also be an extension of an existing use and would not involve any additional resources or infrastructure. This is a neutral factor in the overall balance.

Conclusion

18. For the above reasons, I conclude the appeal should be dismissed.

Rachael Pipkin

INSPECTOR