



Appeal Decision

Site visit made on 27 January 2020

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2020

Appeal Ref: APP/Q1445/W/19/3241463

Patcham Service Station, A23 Patcham Bypass, Patcham, Brighton BN1 8YB

- 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 Tony Head of Highway Stops Retail Limited against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/02579, dated 14 August 2018, was refused by notice dated 8 August 2019.
 - The application sought planning permission for the erection of a new self-service petrol filling station with a canopy, and the installation of 32,000 gallons of fuel storage following demolition of an existing service station without complying with a condition attached to planning permission Ref BN83/386, dated 14 August 1984.
 - The condition in dispute is No 7 which states that: The development hereby permitted shall only be open for the purpose of retail trading between the hours of 0700 and 2300.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a new self-service petrol filling station with a canopy, and the installation of 32,000 gallons of fuel storage following demolition of an existing service station at Patcham Service Station, A23 Patcham Bypass, Patcham, Brighton BN1 8YB in accordance with application Ref BH2018/02579 dated 14 August 2018, without compliance with condition no 7 previously imposed on planning permission Ref BN83/386 dated 14 August 1984, but subject to the conditions set out in the attached schedule.

Procedural Matters

2. I familiarised myself with the local area during the hours of darkness on the evening prior to my formal site inspection. This provided an appreciation of the service station in operation, both in relation to noise impacts and illumination.
3. The appellant applied to vary the disputed condition to permit earlier opening from 0600 hours each day and later closing until midnight. However, it is also proposed to erect a 3 metre high timber fence along the southern boundary of the site. The officer report states that neighbours were reconsulted on this element of the scheme and I have treated it as being part and parcel of the application.

Main Issue

4. The main issue is the effect of the proposed extension in trading hours on the living conditions of neighbouring residential occupiers from noise, disturbance and light intrusion.

Reasons

5. Patcham service station is located adjacent to the A23 Patcham Bypass, but backs onto a number of residential properties on the Old London Road. These properties are set much lower than the forecourt of the service station and a wall runs along the boundary of the site with neighbouring gardens. A block of flats known as Greatham Court lies immediately to the south of the site and this is also below the level of the site.
6. The service station does not operate fast fill diesel pumps and as such refuelling activities are generally limited to cars and vans with no trade to heavy goods vehicles. The appellant has indicated that servicing and deliveries would not be a source of additional noise as these activities would continue to take place during the current permitted hours. As such, the principal noise impacts of the proposed extended trading hours would relate to the operation of the fuel pumps and air/water machine, and vehicle movements including the opening and closing of car doors and engines at start-up and idle.
7. The appellant commissioned a Noise Impact Assessment which was carried out in accordance with BS4142:2014 'Methods for rating and assessing industrial and commercial sound'. This included environmental noise monitoring at the site to determine background noise levels and calculations to predict noise levels at neighbouring residential properties, taking into account distance loss and any screening effects from site topography, the retail building and perimeter treatments. The report concludes that the activity noise rating level would be between 7dB and 21dB below the typical background noise level recorded for the additional trading hours, and as such is significantly better than the 'Low Impact' category detailed within the British Standard.
8. The methodology is not challenged, and the Council does not provide any alternative analysis to support its case. I have no reason, based on the written evidence and my own experiences of the site, to question the accuracy of the Noise Impact Assessment and I consider it to be robust for the purposes of demonstrating that the proposal would not have an unacceptable adverse impact on neighbouring residents by virtue of noise or disturbance.
9. The illuminated 'Esso' signage and downlighters beneath the forecourt canopy are visible from adjoining residential properties to varying degrees. The impact is greatest for those occupants of Greatham Court whose windows face directly towards the service station, but the residents of properties within Old London Road also have some, albeit partial, views of lights and the general 'glow' associated with the service station at night.
10. The Council accepts that the service station lighting is acceptable in terms of industry standards but contends that there would be an additional impact for two hours per day. However, as the submitted External Lighting Impact Assessment demonstrates, the illumination levels calculated at the windows of adjoining buildings are below the recommended thresholds set out within Institute of Lighting Professionals guidance, even applying stricter post-curfew

standards for Environmental Zone E3: Medium district brightness areas. Having regard to this, and the fact that Patcham Bypass corridor is already well-lit by streetlights, I do not consider the lighting to be obtrusive. On this basis, I find that the extended trading hours would not have a detrimental impact on neighbours by virtue of light pollution.

11. The proposed fence along the southern boundary would be tall and imperforate and it would prevent car headlights from shining into the windows of Greatham Court, not only during the extended operating hours being proposed but also during the current permitted hours. There would be some benefit over the existing low fencing, in addition to providing acoustic mitigation.
12. Policy SU10 of the Brighton and Hove Local Plan requires new development to minimise the impact of noise on the occupiers of neighbouring properties and the surrounding environment, and to secure noise attenuation measures where necessary. Policy QD27 is a more general policy which seeks to ensure that development does not cause material nuisance or loss of amenity to existing residents. The proposal would not cause material harm to the living conditions of adjoining occupiers and accordingly I conclude that there would be no conflict with these development plan policies.

Other Matters

13. The proposed fence would be viewed in the context of the service station and it would not harm the street scene or the setting of the Patcham Conservation Area. The new fence would be noticeably taller than the existing fence when viewed from Greatham Court, but the separation distance to the boundary is sufficient to ensure that there would be no material loss of daylight or outlook, and no significant diminution of views. The site lies immediately due north of the flats and therefore there would be no effect on sunlight.
14. A separate planning permission (Ref BH2016/02797) has been granted in respect of two car wash bays on the section of forecourt at the northern end of the site. A condition attached to this permission limits operation of the jet washing and vacuuming services to between 0800 and 2000 hours. This restriction would remain even in the event of this appeal being allowed.
15. The Planning Committee minutes indicate that members were concerned over the creation of a late night off-licence and anti-social behaviour. In view of the findings of the noise impact assessment, there is no compelling evidence to suggest that additional comings and goings, either on foot or by vehicle, would result in unacceptable levels of noise. The Council would retain control over alcohol sales under the Licensing Act which is a separate regime to planning.
16. It has been suggested that to allow this appeal would somehow be contrary to the previous appeal decision which resulted in the service station being granted planning permission. However, I have not had sight of the evidence which informed the operating hours set out under the disputed condition. I must determine the appeal having regard to the evidence before me, which includes technical evidence on light and noise impacts.
17. I have given careful consideration to all other representations made, including the comment that there are alternative petrol stations nearby which operate 24 hours, but nothing alters my conclusions on the main issue.

Conditions

18. The effect of allowing the appeal will be to grant a new planning permission which is totally separate from the original permission. Any conditions which were attached to the original permission will not automatically be carried over. I have considered the Council's suggested conditions and have amended the wording to improve precision and enforceability where appropriate.
19. The first six conditions from the original permission are no longer relevant, as these have already been discharged. It is necessary to attach a condition to reflect the new operating hours, and a further condition referencing the approved plans in the interests of certainty. Condition no 8 from the original permission prohibiting the display of motor vehicles for sale is still necessary and reasonable in the interests of highway safety and therefore I have reimposed it.
20. The proposed fence is needed to ensure a satisfactory living environment for neighbours, and therefore I have imposed a condition requiring its erection prior to the commencement of the extended trading hours.

Conclusion

21. For the reasons set out above, I conclude that the appeal should succeed.

Robert Parker

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans and particulars: Location Plan, Drawing QTPD-11420-001 Rev B, Noise Impact Assessment Ref Qt11420-002 Rev 001 and Fence Details.
- 2) The development hereby permitted shall not be open for the purpose of retail trading except between the hours of 0600 and 0000 (midnight) on Mondays to Sundays, including Bank and Public Holidays.
- 3) No motor vehicles shall be displayed for sale on site.
- 4) The additional opening hours hereby approved (which for the avoidance of doubt are 0600 to 0700 hours and 2300 to 0000 hours on Mondays to Sundays) shall not commence until the fence to the southern boundary as set out on drawing QTPD-11420-001 Rev B has been erected. The fence shall be not less than 5kg/m2 density and shall be retained as such thereafter.

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