



Appeal Decision

Site visit made on 23 March 2020

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 20th April 2020

Appeal Ref: APP/D1780/W/19/3243340

30-32 Thornhill Park Road, Southampton SO18 5TQ

- 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 Rontec Watford Ltd against the decision of Southampton City Council.
 - The application Ref 19/01551/FUL/5014, dated 11 September 2019, was refused by notice dated 22 November 2019.
 - The application sought planning permission for redevelopment of the site by the erection of a new petrol filling station to include retail sales building (use Class A1) with ATM, pumps and canopy, storage compound to rear and associated car parking without complying with a condition attached to planning permission Ref 06/00937/FUL, dated 4 May 2007.
 - The condition in dispute is No 12 which states that:
*"Unless the Local Planning Authority agree in writing, the premises to which this permission relates shall not be open for business outside the hours specified below. For the avoidance of doubt the limitations in this condition shall also apply to the use of the proposed automatic teller machine.
Monday – Saturday 06:00 – 22:00
Sunday 07:00 – 22:00".*
 - The reason given for the condition is:
"To protect the amenities of the occupiers of adjoining residential properties".
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal relates to a petrol filling station (PFS) and associated retail store operating from a site on the southern side of Thornhill Park Road (the A334). The appellant wishes to extend the opening hours from those previously imposed to allow the site to operate 24-hours daily. This would also apply to the use of the automatic teller machine.
3. The main issue is the effect that the change in the opening hours would have on the living conditions of the occupiers of nearby residential properties with regard to noise and disturbance.

Reasons

4. The proposal is for daily 24-hour opening of the PFS and associated retail store. Although the PFS is located within the Thornhill Park Road local commercial

- centre there are residential properties on the opposite side of the road and a residential unit above the Bittern Public House, which is located to the west of the PFS.
5. The proposal would result in an increase in the amount of noise generating activity coming from the forecourt and from vehicles arriving and departing. The potential therefore exists for an increase in noise and disturbance to adversely affect the living conditions of the occupiers of nearby residential properties.
 6. The appellant has submitted a Noise Impact Assessment¹ (NIA) in support of the proposal. In summary, it concludes that *"with appropriate mitigation measures in place, and in the context of the existing noise climate, car activity during the proposed periods is unlikely to give rise to an adverse noise impact at the nearest noise sensitive receptors"*.
 7. I note that agreement was reached with the Council about the methodology employed for the NIA, including the baseline noise survey and the assessment of the impact of noise from car movements. Taking into account that the NIA adheres to the guidance set out in the British Standard², I am satisfied that the methodology employed is appropriate. Furthermore, the NIA has been considered by the Council's Environmental Health team which raised no objections to the proposal subject to the implementation of the recommended mitigation measures set out in the report. These include the installation of a suitably designed 1.8 metre high acoustic barrier along part of the western boundary of the site and sectioning off the car parking spaces along the western boundary between 2300 and 0700 to prevent customers parking in the spaces.
 8. The NIA considered that the nearest noise sensitive receptors are the residential unit above the Bittern Public House (NSR1) and residential properties located north of the appeal site on the opposite side of Thornhill Park Road (NSR2). It also considered that an impact may be experienced at other receptors, but this would likely be equal to or less than that experienced at the identified receptors.
 9. I acknowledge that with the recommended mitigation measures implemented, and in the context of the existing noise climate, vehicle activity at the PFS during the proposed period is unlikely to give rise to an exceedance of internal noise levels at the nearest existing noise sensitive receptors.
 10. The NIA includes consideration of maximum noise levels, such as a car door slamming, which may arise during the night-time period associated with car movements at the PFS. It indicates that the predicted internal maximum noise levels at NSR1 and NSR2 from car movements would potentially exceed the World Health Organisation³ (WHO) guidelines. However, it goes on to point out that the predicted maximum noise levels associated with car movements at the PFS, at the facades of the two receptors, are below the typical maximum noise levels already experienced at these receptors during the night-time period, which it says are also highly likely to be generated by cars.

¹ BWB Environment, MCA2069, Revision 0 dated 11/09/2019

² BS 8233:2014

³ World Health Organisation (WHO) 1999: Guidelines for Community Noise

11. Thus, the evidence indicates that in the context of the existing noise climate, predicted maximum noise levels associated with car movements at the PFS would be no greater than that already experienced at the nearest receptors.
12. However, the 24-hour opening of the PFS and the resultant customer arrivals and departures could potentially result in an increase in the number of occurrences during the night-time period when predicted maximum noise levels would be experienced at the noise sensitive receptors.
13. The NIA assumes, for the night-time period, a worst-case scenario of eight arrivals and eight departures during an hourly period. However, this figure may be on the low side in the context of the appellant's analysis of another of its sites at Hednesford. Although the evidence in respect of the site at Hednesford refers to pedestrians and vehicles, it nonetheless indicates, except for a period of around two hours in the middle of the night, the potential for significantly more than eight vehicles to arrive and depart each hour within the busier times during the night-time period. Moreover, in my view, it would be irrational for a business not to seek to maximise its revenue by attracting the highest number of possible customers.
14. Thus, whilst the predicted maximum noise levels associated with car movements at the PFS would be no greater than that which are already experienced at the nearest receptors, there would be an increase in the frequency of such events. Notwithstanding the location of the site on an 'A' road, this would likely cause sleep disturbance, that would be harmful to the living conditions of the occupiers of nearby residential properties in the context that the NIA refers to WHO guidance advising that for a good sleep, internal maximum noise levels should not be exceeded more than 10 to 15 times per night.
15. There would appear to be some evidence from interested parties of anti-social behaviour in the area, some of which purportedly originates from patrons of the adjacent Public House.
16. The proposal does not include the extension of a liquor licence to allow the sale of alcohol from the retail store during the night-time period. Furthermore, I have not been presented with any substantive evidence to indicate that the proposal would result in anti-social behaviour throughout the night-time period solely as a result of the sale of fuel and goods from the retail unit.
17. However, as a result of the proposed extended opening hours of the PFS there would be potential for people, some of which may be patrons of the Public House, to visit or congregate at the PFS during the night-time period. Thus, the proposal to open 24-hours daily has the potential to result in an increase in the instances of anti-social behaviour in an area where the evidence indicates that there is already an existing problem. There would, therefore, potentially be an increase in noise and disturbance in the area as a result of anti-social behaviour as a consequence of the extended PFS opening hours.
18. The appellant contends that the additional hours of opening would reduce the risk of anti-social behaviour occurring as there would be additional surveillance due to a physical presence on the site for 24-hours daily. In this regard I also note support for the proposal from a neighbouring business. However, whilst I do not doubt that the proposal would result in some improvement to security arrangements at the site I have not been presented with any substantive

evidence to demonstrate that this, or the adherence to a site 'Management Plan', would reduce the risk of anti-social behaviour occurring at the site.

19. For the reasons outlined above, and notwithstanding the comments of the Council's Environmental Health team, I conclude that the proposed change in the opening hours of the PFS would have a significant harmful effect on the living conditions of the occupiers of nearby residential properties with regard to noise and disturbance.
20. Consequently, the proposal would not accord with Policies SDP 1 and SDP 16 of the City of Southampton Local Plan Review (2015) (LPR) which, amongst other things, seek to ensure that planning permission is only granted for development which does not unacceptably affect the health and amenity of the city and its citizens, and does not cause an unacceptable level of noise impact. Furthermore, it would not accord with paragraph 180 of the National Planning Policy Framework which seeks to avoid noise giving rise to significant adverse impacts on health and the quality of life.
21. The Council has referred to Policies SDP 7 and SDP 9 of the LPR in their refusal notice. However, these policies are not directly relevant to the main issue.

Other Matters

22. I have had regard to the two appeal decisions⁴ to which my attention has been drawn by the appellant, and also the appeal⁵ dismissed in 2014 for the 24-hour daily operation at a PFS still owned by Rontec Watford Ltd in Tunbridge Wells, and the subsequent approval, in 2018, of a planning application⁶ for the same such proposal at the Tunbridge Wells site. Whilst I note the findings of the Inspectors in the two appeal decisions and acknowledge the planning permission granted in 2018 at the Tunbridge Wells site, I am not aware of the full circumstances of these cases nor whether they are directly comparable with the case before me. In any event, I have determined the appeal proposal based on the circumstances of the site and the evidence before me.
23. I note the appellant's point that the proposal seeks to respond to the changing needs and demands of a modern day society and acknowledge the economic benefits that the daily 24-hour opening of the PFS and associated retail store would bring. However, these considerations would not outweigh the significant harmful effect of the proposal on the living conditions of the occupiers of nearby residential properties.
24. The appellant has suggested that in order to test the impact of the proposal on neighbouring residents a temporary permission could be granted. However, as I have found that the proposal would have a significant harmful effect on the living conditions of the occupiers of nearby residential properties, I do not consider that such harm would be reduced because the proposal would be temporary rather than permanent. I do not therefore consider that this is an appropriate case for testing the proposal on a 'trial run basis'.
25. None of the other matters raised alter or outweigh my overall conclusion on the main issue.

⁴ References: APP/D3640/W/16/3156743 and APP/E5330/W/3166952

⁵ Reference: APP/M2270/A/14/2213185

⁶ Reference: 18/02939/FUL

Conclusion

26. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Andrew Bremford

INSPECTOR