



Appeal Decision

Site Visit made on 19 January 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd February 2021

Appeal Ref: APP/B5480/W/20/3260705

Coopers Arms Service Station, Rush Green Road, Romford, RM7 0QA

- 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 Motor Fuel Group Ltd against the decision of the Council of the London Borough of Havering.
 - The application Ref P1523.19, dated 3 October 2019, was refused by notice dated 14 May 2020.
 - The application sought planning permission for Proposed redevelopment of existing dis-used Petrol Filling Station (revised plans received 25.11.83) without complying with a condition attached to planning permission Ref L/HAV 1399/83, dated 21 December 1983.
 - The condition in dispute is No 3 which states that: The premises shall not be used for the purposes hereby permitted other than between the hours of 7am and 11pm throughout the week.
 - The reason given for the condition is: To enable the Local Planning Authority to retain control and to avoid disturbance to adjoining residents.
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Decision

1. The appeal is allowed and planning permission is granted for proposed redevelopment of existing dis-used Petrol Filling Station at Coopers Arms Service Station, Rush Green Road, Romford, RM7 0QA in accordance with the terms of the application, Ref P1523.19, dated 3 October 2019 without compliance with the conditions previously imposed on the planning permission L/HAV 1399/83 granted on 21 December 1983 but subject to the following condition:
 - 1) The air/water facilities shall be operated and deliveries shall be taken at or despatched from the site only between the hours of 0700 and 2300.

Main Issue

2. The main issues are the effect that removal of the condition would have on:
 - the character of the area; and
 - the living conditions of existing occupiers, with particular reference to noise and disturbance.

Reasons

Character

3. The appeal site is located on the junction of Rush Green Road and Dagenham Road and comprises an existing petrol filling station, granted planning permission in 1983, with a condition restricting the opening hours from between 7am and 11pm throughout the week. The appellant seeks to vary this condition to permit the opening of the petrol filling station for 24 hours a day, 7 days a week.
4. This part of Dagenham Road encompasses a mix of commercial and residential uses. Directly opposite the site are a range of small retail units with accommodation above. Further away from the junction the road is residential in character with two storey terraced and semi-detached dwellings. Dagenham Road is a wide road, becoming two lanes as it approaches the signalised junction with Rush Green Road.
5. It has been put to me that the introduction of a 24 hours night time use would be inappropriate having regard to the character of the area, which is located outside of the defined town centre where such uses are more typical. However, a petrol filling station would not be considered a town centre use as defined within Annex 2 of the National Planning Framework (the Framework), where main town centre uses include leisure, entertainment and recreation uses, as well as retail development, offices, culture and tourism.
6. The petrol filling station has been in existence for over 40 years and therefore is an established part of the locality and contributes to the mixed character of the area. Whilst I have not been provided with any details of other 24 hour businesses within Dagenham Road, I do not consider that the extended operation of the site would be detrimental to the character of the area given its location next to a road junction. As a result of its location, road movements would occur throughout the day and night in close proximity to the site. Therefore, I do not consider that the use of the petrol filling station over this extended period would be significantly different in character to the overall environment surrounding the development.
7. Policy DC23 of the Havering Core Strategy and Development Control Policies DPD 2008 (DPD), cited within the reason for refusal, deals with food, drink and the evening economy and seeks to ensure that such uses are located within the town centre. The justification for the policy defines evening economy uses as including restaurants, cafes, pubs, nightclubs, wine bars, cinemas and galleries and looks to ensure that proposals do not result in an overconcentration of such uses which could result in noise and disturbance. Therefore despite the sites location outside of a defined town centre, I do not consider that the proposal would be in conflict with this policy as the sites existing use as a petrol filling station would not fit within the definition of evening economy set out within the policy.
8. Policy DC61 of the DPD is a design policy, which seeks to ensure that development maintains, enhances or improves the character and appearance of the area. The proposal before me does not include any physical changes to the existing building and therefore visually the development would maintain the

character of the area, which is that of a mixed residential and commercial area which is next to a busy road junction.

9. In conclusion, the 24 hour use of the petrol filling station, which is located outside of the defined town centre, would not be detrimental to the character of the area and does not conflict with policies DC23 and DC61 of the DPD which seek to ensure that development would maintain the character of the area and that food, drink and night time economy uses are appropriately controlled within the town centre. The development would also accord with policy 7.4 and 7.15 of the London Plan, which together seek to ensure that development enables people to live in a healthy neighbourhood.

Noise

10. Given the sites proximity to existing residential development, there is the potential for increased disturbance to occur as a result of the proposed increased hours of opening. Therefore, the appellant has provided a noise impact assessment which provides detailed evidence which has been produced in accordance with the British Standard 4142 which is an accepted method for assessing commercial noise impacts on residential properties.
11. The assessment provides noise readings from the existing petrol filling station pumps and also gives information as to how this would compare with the existing background noise levels. It sets out that the background noise levels were dominated by general traffic noise from Rush Green Road and Dagenham Road and measurements were taken during the extended period of 0000-0600. The Council's Public Protection Officer raised no objection to the proposed 24 hours use on the basis of the evidence that was provided within the noise impact assessment.
12. The Council have also raised concern with the accuracy of the predicted customer numbers using the petrol filling station, however the appellant has based these upon evidence from other 24 hours petrol filling stations which are within their estate, of which there are approximately 1200 and therefore I am satisfied that this would provide a robust evidence base and therefore are likely to be representative of the anticipated use of the petrol filling station.
13. The Council's reasoning conflicts with the appellant's evidence which concludes that the proposed activity noise will not be distinctly noticeable given the existing noise climate within the vicinity of the site, which is attributable to the existing traffic using Rush Green Road and Dagenham Road. However, whilst I have had regard to the concerns of both the Council and those contained within the submitted representations, I am content to rely on the expert views provided within the appellant's evidence. This is supported by both the Council's Public Protection Officer and the overall conclusions of the BS 4142, which has been carried out by a suitably qualified person.
14. In conclusion, the 24 hour use of the petrol filling station would not result in harm to the living conditions of existing occupiers, with particular reference to noise and disturbance. It would be in accordance with Policies DC23, DC55 and DC61 of the DPD which ensure that development will not be granted if it will result in exposure to noise above acceptable levels affecting noise sensitive development, including residential accommodation. The development would also accord with policy 7.4 and 7.15 of the London Plan, which together seek to

ensure that development manages noise and enables people to live in a healthy neighbourhood.

Conditions

15. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The Council has suggested conditions which I have considered in light of the Planning Practice Guide and the tests of the Framework and where necessary amended them for clarity.
16. A condition relating to the commencement of development is not needed since the development has already been carried out and is the same as that for which I am granting permission. The conditions relating to external landscaping and the boundary wall have been complied with and are no longer required, therefore do not need to be re-imposed.
17. The condition which restricts the use of the existing shop for retail purposes incidental and ancillary to the use of the petrol filling station is not necessary as the site as a whole is considered as a sui generis use and therefore any changes to the use of the shop would require a separate grant of planning permission.
18. I have not imposed a condition which requires the development to be carried out in accordance with approved plans, as the development has been built and there is nothing before me to indicate that it has not been done so in accordance with the original plans and therefore it is no longer necessary. Furthermore, the submitted noise impact assessment does not include any mitigation measures which need to be complied with.
19. I have imposed a condition restricting the use of the air and water facilities and deliveries to the original opening hours of 0700 - 2300 in order to safeguard the living conditions of adjacent residential properties.

Conclusion

20. For the reasons set out above I conclude that the appeal should be allowed. I will grant a new planning permission without the disputed condition but retaining those non-disputed conditions from the original permission (L/HAV/1399/83) that appear to still be relevant.

G Pannell

INSPECTOR