



Appeal Decision

Site visits made on 8 and 28 November 2022

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2022

Appeal Ref: APP/U4610/W/22/3300256

Hillfields petrol filling station, Harnell Lane East, Coventry CV1 5AY

- 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 Mark Vetkai against the decision of Coventry City Council.
 - The application Ref S73/2022/0721, dated 15 March 2022, was refused by notice dated 9 May 2022.
 - The application sought planning permission for a self-service petrol filling station and car wash without complying with a condition attached to planning permission Ref G/C/23017D, dated 16 April 1975.
 - The condition in dispute is No 7 which states that:
The premises the erection and use of which is hereby permitted shall not be open for customer business except between 0700 hours and 2300 hours daily.
 - The reason given for the condition is:
To ensure that the premises and site are not used in a manner prejudicial to or likely to cause nuisance or disturbance to the occupiers of the nearby premises.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. In 1975 planning permission was granted for a self-service petrol filling station and car wash subject to a number of conditions. The appellant is seeking to remove Condition 7 restricting the opening hours to 0700 – 2300 daily. The appellant is seeking to vary the condition to permit the petrol filling station to operate 24 hours a day.
3. Taking into consideration the Council's reasons for imposing the condition the main issue is whether Condition 7 is necessary and reasonable having regard to the living conditions of nearby occupiers.

Reasons

4. The appeal site comprises a petrol filling station and car wash located on the junction of Harnell Lane East and Jesmond Road. This section of Harnell Lane East has a mixed character with a number of shops, hot food takeaways and community uses interspersed with terraced dwellings.
5. At the time of my first visit on a weekday morning I noted that there was a steady footfall and flow of traffic along the road. The majority of the shops were open and I observed a number of people loitering outside a number of these shops.

6. During my second visit on a weekday evening, I observed a number of the shops open late into the evening, but these premises were largely closed by 2300. Whilst there were pedestrians and vehicles along the road late into the evening, traffic was intermittent, noticeably less frequent compared to daytime. Whilst I acknowledge that these are snapshots in time, there is nothing before me to indicate that the conditions I observed are untypical.
7. I acknowledge that there are existing noise sources in the area. However, based on the evidence before me and my observations most retail premises are not open much beyond 2300. The proposal would attract customers in the late evening and early morning and there would be comings and goings. Whilst engines would be switched off during fuelling, the sound of car doors and vehicle engines starting, radios and conversations would be intrusive at times when nearby occupants would reasonably expect to enjoy the comfort of their own surroundings. This would be irrespective of the self service nature of the premises.
8. These activities would be intermittent and the uncertain and arbitrary nature of them is likely to be more noticeable having an unacceptable impact on the living conditions of existing occupants in terms of noise and disturbance. The adverse impacts could not, in my judgement, be controlled or adequately mitigated against by conditions, notwithstanding the appellant's contention.
9. The appellant contends that the business has seen a decline in trade and the opening hours proposed would help him to serve the local community. However, I have not been provided with any evidence to suggest that the petrol filling station is anything other than economically viable. Nor is there anything to suggest that the needs of the community could not be met by other shops or petrol filling stations.
10. Consequently, the proposal would adversely affect the living conditions of existing occupiers in terms of noise and disturbance. Taking all matters into account I find that the proposal would be contrary to Policy DE1 of the Coventry Local Plan (2017) which, amongst other things, requires development to respect and enhance their surroundings and positively contribute towards the local identity and character of an area.

Other Matters

11. The appellant has drawn my attention to paragraphs in the National Planning Policy Framework (the Framework) that promote sustainable development, promote conditions whereby businesses can invest, expand and adapt and contribute to the viability and viability of an area. I acknowledge that the Framework is a consideration in planning decisions. However, it also recognises that developments should ensure a high standard of amenity for existing users. In this particular case, it is not justification to allow inappropriate development.
12. I note the presence of other petrol filling stations with extended opening hours in the surrounding area. However, I have not been made aware of the individual circumstances that led to them being considered acceptable by the Council. In any case, every appeal must be considered on its own merits, as I have done. Their presence does not justify the harm that I have identified.

13. The low number of objections received to the application counts neither for nor against the proposal and does not lead me to reach a different overall conclusion that the appeal should be dismissed.

Conclusion

14. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR