



Appeal Decision

Site visit made on 6 June 2023

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2023

Appeal Ref: APP/H0724/W/23/3317885

234 Stockton Road, Hartlepool TS25 5DE

- 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 SRJ Convenience Ltd against the decision of Hartlepool Borough Council.
 - The application Ref H/2022/0440, dated 16 November 2022, was refused by notice dated 12 January 2023.
 - The application sought planning permission for demolition of existing kiosk building and forecourt canopy and erection of a roadside service facility, including petrol filling station (sui generis) with ancillary retail shop, associated access, car parking and landscaping arrangements without complying with a condition attached to planning permission Ref H/2021/0573, dated 3 August 2022.
 - The condition in dispute is No 15 which states that: *The fuel filling station, ancillary kiosk building and associated development hereby approved shall only be open to the public between the hours of 07:00 and 23:30 Monday to Sunday including Public and Bank Holidays.*
 - The reason given for the condition is: *In the interests of the amenities of the occupants of neighbouring properties.*
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing kiosk building and forecourt canopy and erection of a roadside service facility, including a petrol filling station (sui generis) with ancillary retail shop with associated access, car parking and landscaping arrangements at 234 Stockton Road, Hartlepool TS25 5DE in accordance with the application Ref H/2022/0440 dated 16 November 2022 without compliance with condition 15 previously imposed on planning permission Ref H/2021/0573 dated 3 August 2022 and subject to the conditions set out in the schedule below.

Background and Main Issue

2. Planning permission for the erection of a roadside service facility comprising a petrol filling station and ancillary retail included a condition that development should only be open to the public between the hours of 7am to 11:30pm. The appellant seeks to vary it through its removal to enable the 24-hour operation of the premises. The Council refused the application on the basis that it would result in significant adverse impact on the occupiers of nearby residential properties in relation to noise.

3. Taking the above into account, the main issue is the effect that removing the condition and the 24-hour operation of the development would have on the living conditions of nearby residents, with particular regard to noise.

Reasons

4. The nearest dwellings to the appeal site are 232 and 230 Stockton Road. There are also dwellings further away on the opposite side of Stockton Road, and to the rear on Stockton Road and Whistlewood Close. Given the site's proximity to existing residential development, there is the potential for increased noise to occur as a result of the proposed 24-hour operation of the site. The appellant has provided a noise impact assessment, undertaken by a suitably qualified person, which sets out detailed evidence, produced in accordance with the relevant standards for assessing commercial noise impacts on residential properties.
5. The assessment provides a baseline noise survey to capture the existing background noise levels between 9pm and 7:30am, which represents the proposed night time opening. A measurement position was chosen to represent the rear of the nearest dwellings to the site. The noise survey also had regard to a number of measures that have a bearing on the potential noise levels, including the erection of an acoustic boundary fence between the appeal site and the nearest dwellings and a restriction on the hours of delivery. No corrections have been applied as the potential noise is not impulsive or tonal.
6. I observed the area surrounding the appeal site to have a mixed-use character, with commercial, residential and community uses. Stockton Road is a wide dual carriage way. The primary source of noise would relate to vehicle movements, and this would include engine and car radio noise, and doors opening and closing. There may also be a degree of customer conversations on the forecourt and noise generated by the operation of the development. In seeking 24-hour opening, noise would consequently occur at night-time when the effects would be most keenly experienced when neighbouring occupiers are likely to be at home and sleeping.
7. It is not disputed that background noise levels at the site drop as the night progresses, but it is indicated in the noise survey that this would be matched by similar drops in activity at the petrol fillings station. Having considered all potential noise arising from the use of the site the survey found that the proposed activity noise would not be distinctly noticeable given the existing noise climate within the vicinity of the site and its mixed-use character. Overall, the survey concludes that impact should be low, albeit additional mitigation is proposed of acoustic fencing around the mechanical equipment.
8. In their statement, the Council has presented generalised concerns about the effect of the appeal site's adjacency to nearby dwellings and the schemes possible effects on the living conditions of the residents. Based on the evidence before me, the noise survey was completed correctly, and all relevant matters were taken into account. There is no detailed evidence to suggest that the technical conclusions of the survey are incorrect or unreliable, or that the imposition of planning conditions relating to a second acoustic fence and restricted delivery hours, in addition to the acoustic boundary fence between the site and nearest dwellings, would not protect the living conditions of neighbouring residents.

9. Accordingly, I have no clear reason to disagree with the findings of the noise impact assessment. I am satisfied that through the imposition of conditions there would not be any unacceptable effect on the living conditions of nearby residents from the 24-hour operation of the site. Overall, for the purposes of paragraph 185 of the National Planning Policy Framework (the Framework), a significant adverse impact would not occur.
10. As such, removing the condition and the 24-hour operation of the development would not be unduly harmful to the living conditions of nearby residents, with particular regard to noise. It would be in accordance with policies QP4 and QP6 of the Hartlepool Local Plan (2018) (HLP) which require proposals to investigate and satisfactorily address the effects on, or impacts of, general disturbance including noise development so that development does not negatively impact upon the relationship with existing neighbouring land uses and the amenity of occupiers of nearby properties. It would also align with the provisions of the Framework at paragraph 185.
11. The Council also allege a conflict with Policy RC17 of the HLP. It is not disputed that the appeal site is not located within the late night uses area designated under this policy, where the Council would expect late night commercial activity. However, Policy RC17 deals primarily with food, drink and the night time economy and seeks to ensure that such uses are located within the late night uses area. The policy provides a closed list of the businesses where the only appropriate location for operating during late night is the designated late night area. This list does not include petrol filling stations. Therefore, despite the appeal site's location outside of the late night uses area, I do not consider that the proposal would be in conflict with this policy as the site's use as a petrol filling station would not fit within the definition of the night time economy set out within the policy. As such, Policy RC17 has not been determinative in my decision.

Other Matters

12. Given that I observed the surrounding area to have a mixed-use character, the 24-hour operation of the site would not be detrimental to the character of the street scene. An objection has been raised from a local resident, including concerns about highway safety. However, any increase in traffic during the extended opening hours would be minimal and I note that the Council's traffic and transport section did not object to the scheme. Concerns were also raised about potential contamination. Conditions are imposed to ensure that any contamination is dealt with appropriately and that details are submitted regarding the disposal of surface water so that an appropriate scheme is secured.

Conditions

13. It should be noted that as I am allowing the appeal, a new permission is created, and the original permission remains extant and unaltered along with the conditions attached to it. The grant of planning permission under section 73 should repeat the relevant conditions from the original planning permission unless they have already been discharged. As I have no information before me about the status of the conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant.

14. I shall remove the disputed condition and impose a condition restricting hours of deliveries to protect the living conditions of neighbouring occupiers. I have amended the condition relating to hours of construction for clarity to make it clear this relates to deliveries during the construction phase. I shall also impose a condition requiring the provision of an additional acoustic fence around the mechanical equipment in the interests of protecting neighbouring occupiers living conditions. For clarity I have amended the condition regarding boundary enclosure to make reference to both acoustic fences.

Conclusion

15. For the reasons given above, I conclude that the proposal accords with the development plan. Material considerations have not been shown to carry sufficient weight as to indicate a decision otherwise than in accordance with it. Therefore, the appeal is allowed.

F Harrison

INSPECTOR

Schedule of Conditions

- 1) The development to which this permission relates shall be begun not later than three years from the date of this permission.
- 2) The development hereby approved shall be carried out in accordance with the following plans and details: Dwg. No. 1 (Site Location Plan), Dwg. No. 11 (Electric Meter Kiosk), Dwg. No. 10 (Petrol Canopy) received by the Local Planning Authority on 24th December 2021; Dwg. No. 12a (Site Elevations), Dwg. No. 15 (Bin Store Detail), received by the Local Planning Authority on 25th January 2022; Dwg. No. 1 (Below Ground Tank Section) received by the Local Planning Authority on 24th February 2022; Dwg. No. 8b (PPS Plans & Elevations) and Dwg. No. 7a (Planning [Proposed Site Plan] at a scale 1:100) received by the Local Planning Authority on 29th April 2022; Dwg. No. J7/01166 Rev 2 (Sales & Installation Drawing for Envirofence 1.2k – 2.0m high) received by the Local Planning Authority on 12th May 2022.
- 3) Prior to the commencement of development, a Construction Management Plan shall be submitted to and agreed in writing with the Local Planning Authority, to agree the routing of all HGVs movements associated with the construction phases, effectively control dust emissions from the site remediation and construction works, this shall address earth moving activities, control and treatment of stock piles, parking for use during construction and measures to protect any existing footpaths and verges, vehicle movements, wheel cleansing measures to reduce mud on highways, road sheeting of vehicles, offsite dust/odour monitoring, communication with local residents and measures to prevent the queuing of construction vehicles prior to the opening of the site.
- 4) Notwithstanding the submitted information and prior to the commencement of development (including any demolition works), details of the existing and proposed levels of the site including the finished floor levels of the buildings to be demolished and erected (within and out with the site) and any proposed mounding and/or earth retention measures shall be submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be carried out in accordance with the approved details.
- 5) No development shall take place until a scheme for the protection during construction works of all trees adjacent to the site (within the Tees Valley North Scout Centre), in accordance with BS 5837:2012 'Trees in relation to design, demolition and construction - Recommendations', has been submitted to and approved in writing by the Local Planning Authority. The scheme shall thereafter be carried out in accordance with the approved details and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development. Nothing shall be stored or placed in any area fenced in accordance with this condition. Nor shall the ground levels within these areas be altered or any excavation be undertaken without the prior written approval of the Local Planning Authority. Any which are seriously damaged or die as a result of site works shall be replaced with trees of such size and species as may be specified in writing by the Local Planning Authority in the next available planting season.
- 6) Prior to the commencement of the development hereby approved, a scheme detailing the proposed means of disposal of surface water shall be submitted to the Local Planning Authority for approval. Thereafter the development shall be carried out in accordance with the approved scheme.

- 7) No development shall commence until a scheme that includes the following components to deal with the risks associated with contamination of the site has been submitted to and approved in writing by the Local Planning Authority:

1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, shall be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme shall be subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings shall include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - a. human health,
 - b. property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - c. adjoining land,
 - d. groundwaters and surface waters,
 - e. ecological systems,
 - f. archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s). This shall be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

2. Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

3. Implementation of Approved Remediation Scheme

The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of development unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a validation report that demonstrates the effectiveness of the remediation carried out shall be produced, and is subject to the approval in writing of the Local Planning Authority.

4. Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be undertaken in accordance with the requirements of 1 (Site Characterisation) above, and where remediation is necessary a remediation scheme shall be prepared in accordance with the requirements of 2 (Submission of Remediation Scheme) above, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a validation report shall be prepared in accordance with 3 (Implementation of Approved Remediation Scheme) above, which is subject to the approval in writing of the Local Planning Authority.

5. Long Term Monitoring and Maintenance

A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of 10 years, and the provision of reports on the same shall be prepared, both of which are subject to the approval in writing of the Local Planning Authority.

Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out shall be produced, and submitted to the Local Planning Authority.

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11.

- 8) The development hereby permitted shall not commence until such time as a scheme to install the underground tanks has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include the full structural details of the installation, including details of: excavation, shallow groundwater level, the tanks, tank surround, associated pipework and monitoring system. The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme, or any changes subsequently agreed, in writing, by the Local Planning Authority.
- 9) Notwithstanding the submitted details and prior to above ground construction, details of all external finishing materials for the proposed development and application site shall be first submitted to and approved by the Local Planning Authority, samples of the desired materials being provided for this purpose. Thereafter, the development shall be carried out in accordance with the approved details.
- 10) Notwithstanding the submitted details and prior to the laying of any hard surfaces, final details of proposed hard landscaping and surface finishes shall be submitted to and agreed in writing by the Local Planning Authority. This

shall include all external finishing materials, finished levels, and all construction details, confirming materials, colours, finishes and fixings. The agreed scheme shall be implemented prior to the first use of the development or completion of the development, whichever is the sooner.

- 11) Notwithstanding the submitted details and the requirements of condition 12 and 13, and prior to above ground construction of the development hereby approved, full details of all walls, fences and other means of boundary enclosure, including size, siting and finishing materials, shall be submitted to and approved by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details prior to first use of the development.
- 12) Prior to first use of the development hereby approved, the 2m high acoustic fence as annotated on Dwg. No. 7a (Proposed Site Plan, received by the Local Planning Authority on 29th April 2022) and as detailed in Dwg. No. J7/01166 ('Sales & Installation Drawing for Envirofence 1.2k – 2.0m high' received by the Local Planning Authority on 12th May 2022) shall be implemented at the application site in accordance with the agreed details. The acoustic fence shall be designed to have a minimum mass of 15kg/m² and shall remain in place for the lifetime of the development hereby approved.
- 13) Prior to first use of the development hereby approved, details of an acoustic fence around the mechanical equipment, as shown in the 'Assessment of the noise impact of the recently consented Petrol Filling Station (PFS) and Shop, with particular regard to a proposed extension of hours' (dated 26 October 2022), shall be submitted to and approved in writing by the Local Planning Authority. The approved fence shall be constructed prior to the first use of the development and shall remain in place for the lifetime of the development hereby approved.
- 14) Prior to the installation of any photovoltaic (PV) panels and electric vehicle (EV) charging apparatus, details of the location and specification for such works, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed/installed in line with the approved scheme prior to the installation of PV panels or EV charging apparatus.
- 15) No demolition/construction/building works or deliveries/dispatches during the construction phase shall be carried out except between the hours of 8am to 6pm on Mondays to Fridays and between 9am to 1pm on Saturdays. There shall be no construction activity including demolition on Sundays or on Bank Holidays, unless otherwise agreed in writing by the Local Planning Authority.
- 16) Deliveries to the fuel filling station shall be taken at or despatched from the site only between the hours of 8am to 6pm on Mondays to Sundays including Public and Bank Holidays.
- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order with or without modification), the kiosk building hereby approved shall not be extended or altered in any way without the prior written consent of the Local Planning Authority.

- 18) Notwithstanding the provisions of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification, the premises shall be used as a fuel filling station (Use Class Sui Generis) and associated ancillary kiosk including a retail shop as defined in The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020) and for no other purpose or use.
- 19) Notwithstanding the provisions of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, no advertisements, applications, banners or other covers should be displayed at the application site hereby approved at any time without the prior written approval of the Local Planning Authority.
- 20) The development hereby approved shall be laid out and operate solely in accordance with the approved layout as detailed on Dwg. No. 7a (Proposed Site Plan, received by the Local Planning Authority on 29th April 2022), including the commercial unit, servicing areas, car parking and ingress/egress to/from the site, unless an amendment to the layout is agreed in writing with the Local Planning Authority. The proposed ancillary kiosk including a retail shop (shall only operate as an ancillary use to the approved petrol filling station use only. In the event of the petrol filling station use no longer trading, the ancillary kiosk including a retail shop shall cease to trade.
- 21) The ancillary kiosk building hereby approved shall be laid out and operate in general conformity with drawing Dwg. No. 7a (Proposed Site Plan, received by the Local Planning Authority on 29th April 2022) and there shall be no increase in the total sales area shown therein (187.64sqm), without the prior written consent of the Local Planning Authority.
- 22) Prior to the installation of any external lighting associated with the development hereby approved, full details of the method of external illumination, siting, angle of alignment; light colour, luminance of external areas of the site, including parking areas, shall be submitted to and agreed in writing by the Local Planning Authority. The agreed lighting shall be implemented wholly in accordance with the agreed scheme and retained for the lifetime of the development hereby approved.

*****End of Conditions*****