



Appeal Decisions

Site visit made on 9 August 2023

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2023

Appeal Ref: APP/M1595/W/22/3307474

Former Fairway Filling Station, Southend Road, Corringham SS17 9EY

- 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 J Williams, on behalf of Supply 2 Location, against the decision of Thurrock Borough Council.
- The application Ref 21/01746/CV, dated 11 October 2021, was refused by notice dated 22 March 2022.
- The application sought planning permission for retention of change of use of land to B8 (open air storage) and sui generis (where the site will be used for a 'drive through' hand car wash) without complying with a condition attached to planning permission Ref 17/00747/FUL, dated 3 October 2017.
- The condition in dispute is No 4 which states that: The storage use hereby permitted shall not be operated from the premises or accessed by any vehicle before 7am nor after 7pm on weekdays nor at any time before 7am or after 2pm on Saturdays with no access or operation on Sundays, Bank or Public Holidays.
- The reasons given for the condition is: In the interests of amenity and to ensure that the proposed development is integrated within its surroundings as required by policy PMD1 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development [2015].

Decision

1. The appeal is dismissed.

Preliminary Matters, Background and Main Issue

2. This appeal was submitted alongside another appeal¹ for this site, and these were identified as linked cases. However, the appeal type, nature of development and main issues in each case are materially different. The cases have therefore been considered independently with a separate decision for each.
3. Planning permission was granted in 2017 for retention of change of use of land to B8 (open air storage) and sui generis (where the site will be used for a 'drive through' hand car wash). Condition No 4 of that permission sought to ensure the storage use was not operated from the premises or accessed by any vehicle before 7am nor after 7pm on weekdays, nor at any time before 7am or after 2pm on Saturdays, with no access or operation on Sundays, Bank or Public Holidays.
4. The appeal is seeking to replace condition No 4 with two conditions dealing with the operational hours for the storage use and for vehicular access to the site

¹ Appeal Ref: APP/M1595/W/22/3307471

separately. The replacement conditions would extend the hours permitted for vehicle movements to and from the site to between 6am and 11pm Monday to Friday, 8am to 6pm on Saturdays, and 10am to 5pm on Sundays. Vehicle movements on public holidays would remain prohibited. I am advised that these hours would apply to the movement of two heavy goods vehicles (HGVs).

5. The hours of operation for the permitted storage use would remain in accordance with those currently set out within condition No 4.
6. The main issue is the effect of the variation of the conditions on the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance.

Reasons

7. The surrounding area is characterised by a mix of intermittent commercial and residential development, within a wider landscape of agricultural fields and sporadic woodland. A car repair garage, petrol station, car sales businesses, a small row of commercial units, a public house and a hotel are close to the appeal site. The A13 dual carriageway is to the north. In the immediate vicinity of the site however there are several dwellings, including a short terrace.
8. The appeal proposal would enable vehicles, including HGVs, to access the site for longer periods on each day of the week. This would include access on weekdays up until 11pm, and up to 6pm on Saturdays. Additionally, the site could be accessed for up to 7 hours on Sundays, which is currently prohibited.
9. I observed during my site visit that there is a steady flow of traffic at the nearby roundabout and on connecting roads during the weekday. Noise from this and the adjacent dual carriageway is clearly audible, in addition to that generated by neighbouring commercial uses.
10. However, it is likely that such noise will reduce later in the evening and at times on a weekend, including those hours in which the appeal is seeking to extend access to the site. In such cases, any additional noise introduced by HGV and other vehicle movements during these periods, including engine noises, doors closing and reversing sounds, may result in undue noise pollution and disturbance.
11. Anecdotally, representations from interested parties and planning enforcement investigation records indicate that operations and vehicle movements at the site outside of the currently permitted hours are noticeable and have led to complaints.
12. Policy PMD1 of the Core Strategy and Policies for Management of Development (as amended) adopted January 2015 (CSPMD) states that the Council will require assessments to accompany planning applications where it has reasonable grounds to believe that a development may cause noise pollution.
13. I recognise there are other commercial premises in the surrounding area that may have later opening hours. However, there is no substantive information before me concerning the levels of background noise and other noise in the area during the proposed extended hours. There is also no information on the anticipated number of vehicle movements, nor any assessment of the level of additional noise and disturbance that would be generated by the proposal.

14. In the absence of such assessment and based on the evidence before me, I find that the proposal would result in an undue increase in noise and disturbance that would be harmful to the living conditions of the occupiers of neighbouring properties.
15. The appellant contends that vehicles could park on street in the locality, irrespective of the outcome of this appeal, and that this is a fallback position. However, this is reliant on land not within the appellant's control, and there is no compelling evidence before me to indicate that any harm to the living conditions of the occupiers of neighbouring properties associated with such activity would be the same as, or worse than, the appeal proposal. This therefore would not outweigh the identified harm.
16. The appellant has also suggested a further revision to the condition wording could be accepted to limit the hours to no later than 10pm on weekdays. However, the appeal process should not be used to evolve a scheme and it is important that what is considered at appeal is essentially what was considered by the Council, and on which interested people's views were sought. Even if such changes were accepted however, this would not demonstrate that the proposal is acceptable with respect to the main issue.
17. I therefore conclude that the proposed variation of conditions would harm the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance. It is therefore contrary to Policies CSTP6 and PMD1 of the CSPMD. These policies, among other provisions, seek to ensure proposals for new economic development outside the Primary and Secondary Industrial and Commercial areas are compatible with uses in the surrounding area, and development does not cause unacceptable effects on the amenity of others.

Other Matters

18. I recognise that the proposal would support the existing business operation. There is little evidence before me however regarding such benefits and therefore, on the basis of the information before me, I consider this to be a modest contribution.
19. The appellant indicates breaches of the existing condition have occurred due to matters outside the appellant's control, including breakdowns and protests, and that the appeal proposal would address this. However, such events are infrequent and do not provide compelling justification for the proposed extended hours.

Conclusion

20. The proposed variation of conditions conflicts with the development plan, taken as a whole, and I have found no material considerations that indicate the appeal should be determined other than in accordance with the development plan. Consequently, I conclude that the appeal should be dismissed.

Ryan Cowley

INSPECTOR