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# Appeal Decision

Site visit made on 26 October 2023

**by R Bartlett PGDip URP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27<sup>th</sup> November 2023**

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**Appeal Ref: APP/F3545/W/23/3314221**

**Harding Garage Services, Bury Road, Stradishall, Suffolk CB8 9XX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Davis of Fuel Energy UK Ltd against West Suffolk Council.
  - The application Ref DC/22/0200/FUL, is dated 1 February 2022.
  - The development proposed is demolition of existing single storey Class E shop on the forecourt and the erection of a new single storey Class E shop unit on the forecourt with Sui Generis takeaway unit internally. Formation of new pump islands, new pumps and new canopy. Re-positioning of new offset fillers and new underground tanks.
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## Decision

1. The appeal is dismissed and planning permission is refused.

## Preliminary Matters

2. The site address used in the banner heading above is that stated on the application form, as no explanation has been provided for the subsequent change to Stradishall Service Station.
3. An amended plan was submitted with the appeal, which shows the hand car wash area replaced by a refuse storage area and an increase in parking spaces from 5 to 11. The appeal system should not be used to progress or evolve a scheme and the Local Planning Authority has clearly not considered the amended plan submitted. As there is nothing before me to suggest that the Local Highway Authority or third parties, who raised concerns regarding parking, would have been made aware of this amended plan being submitted at the appeal stage, in the interests of fairness, I have determined the appeal based upon the plans that had been submitted to the Council prior to the appeal being lodged and which other parties have been consulted on.

## Background and Main Issues

4. The Council's case confirms that had it determined the application based upon the submitted drawings, it would have refused to grant planning permission due to the scale of the proposed retail use, the absence of a retail sequential test and insufficient information regarding contamination.
5. Additional concerns, raised by consultees and local residents, which the appellant is aware of and has addressed as principal considerations within their grounds of appeal, and which I have sought further comments upon, include the effect of the development on highway safety, and on the living conditions of occupiers of the adjacent residential property.

6. The main issues are therefore i) whether the location of the appeal site is suitable for the proposed development ii) contamination; iii) the effect of the development on highway safety; and iv) the effect of the development on living conditions of occupiers of the adjacent residential property.

## **Reasons**

### *Location*

7. The appeal site is located in the countryside and comprises a petrol filling station (PFS) with associated small shop, a motor vehicle repair workshop with MOT testing station, an outdoor car display and sales area, and a sub-station. All of these well-established uses share the same access and parking facilities.
8. No changes are proposed to the sub-station in the rear corner of the site or to the large repair workshop and MOT station. The position of the two existing vehicular access points would also remain unchanged. It is proposed to replace the existing fuel pumps, underground tanks and the overhead canopy with new ones in more or less the same locations, albeit the pumps and canopy would be extended closer to the MOT garage. The existing shop would be demolished and replaced by a new shop and parking area to be constructed on part of the existing car sales area. It is unclear from the plans whether or not the display and sale of cars would continue from other parts of the site.
9. The existing shop is a very small booth that can only accommodate two or three customers at a time. It is used to take payments for fuel and offers a very limited range of cold drinks, snacks and some basic car accessories. The new shop would sell a wider range of food, drink and sundry goods, as well as hot food and drinks to take away. It would also have a customer toilet.
10. Policy DM40 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document (February 2015) (the Local Plan) specifically relates to ancillary retail sales facilities attached to petrol filling stations and other out of town businesses. In relation to such proposals, it states that the sale of goods should be small in scale in relation to the primary use or activity. As such it is the sale of goods that should be small in scale, and not the size of the building itself.
11. I am advised that the primary use would continue to be the PFS and the sale of fuel. The appellant's submissions advise that currently the shop sales amount to only 2% of the turnover of the PFS. Whilst no information has been provided in relation to income generated by the vehicle repair workshop, MOT garage or car sales business, it is likely that these are operated independently from the PFS and its shop.
12. It is not disputed that the new shop would be much larger than the one to be replaced and would offer a larger range of goods. However, even with the increased shop size proposed, it is estimated that the non-fuel sales would only amount to between 14% and 20% of the total turnover of the PFS. The figures provided have not been disputed and based upon these, the sale of goods from the replacement shop would be small in scale in relation to the sale of fuel, which is the primary use of the site.
13. Paragraph 87 of the National Planning Policy Framework (the Framework) states that local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre

nor in accordance with an up-to-date plan. A PFS is not a main town centre use, as defined by Annex 2 of the Framework, and a shop that is ancillary to such a use would accord with the up-to-date development plan.

14. As the proposal relates to the redevelopment of an existing PFS and ancillary shop (*sui generis*), not to a new standalone retail unit or hot food take-away, a retail sequential test is not necessary. A town centre location for the shop would not facilitate or support the business needs of the existing established use of the site. Moreover, as the shop would primarily provide a service for passing motorists needing to refuel, use the toilet, take a break or to have a snack, it would be unlikely to result in any harm to the vitality or viability of any nearby town centres.
15. I therefore conclude that the replacement shop would remain ancillary to the PFS use and as such would be in a suitable location, in accordance with Policy DM40 of the Local Plan, and as such would not need to be subject to a sequential test. The proposal would also accord with Policy DM5 of the Local Plan and the Framework, in so far as they support economic growth and the expansion of existing businesses in the countryside. As the proposal relates to the re-development of an existing PFS, it would not conflict with Policy DM35 of the Local Plan, which relates only to proposals for main town centre uses.

#### *Contamination*

16. Given the historic use of the site as a PFS, car sales display area and motor vehicle repair garage, there could potentially be some contamination. However, given that the site would continue to operate as a PFS, and would not be changing to a more sensitive use, it is unclear why the Council require a contamination assessment prior to making a decision. Such investigations and any necessary remediation measures can be secured by pre-commencement conditions. Moreover, the replacement and upgrading of the old underground fuel storage tanks and the above ground fuel pumps, is likely to result in improvements that would reduce the risk of future ground contamination from spills and leaks.
17. I therefore conclude that subject to suitable conditions, the proposal would accord with Policy CS2 of the St Edmundsbury Core Strategy (December 2010) (the Core Strategy), Policy DM14 of the Local Plan and the Framework, which seek to protect the natural environment, and to remedy existing and prevent future contamination.

#### *Highway safety*

18. The existing vehicular access to the site, and the parking and forecourt areas, are primarily comprised of broken areas of concrete, loose gravel and potholes. Whilst no improvements are highlighted on the submitted plans, conditions could be imposed to require the resurfacing of these areas and to ensure that the parking spaces for each of the businesses on site are clearly marked out, in order to cater for the likely increase in traffic using the site and in the interests of highway safety.
19. The car repair workshop and MOT garage on the site has three large doors to the front and one to the rear. At present cars are parked along the eastern and western boundaries of the site, including up to and in front of the unsurfaced access crossings, and to the front of the garage. Whilst many of these cars

appeared to be for sale, other cars to the front of the garage appeared to belong to staff or customers. The areas to the side and rear of the garage are restricted by various sheds, a storage tank and the need to retain access to the sub-station.

20. Following the demolition of the existing shop, it is proposed to relocate the new fuel pumps and canopy closer to the front of the workshop and MOT garage. This, together with the new shop would displace much of the existing parking on the site. The submitted plans do not identify any allocated parking spaces for staff and customers of this existing business, which is to be retained on the site. Nor do the plans show any areas to be retained clear to the front of the garage doors or to prevent vehicles refuelling on the northern side of the new pumps, from causing obstruction. There is also no information to confirm whether any car sales areas would be retained.
21. Upon request, the appellant has advised that parking would be retained along the eastern side of the site for the repair garage and sales business. Whilst this may be feasible, it was not identified on the submitted plans and has not been subject to consultation. I also noted on site that this area is directly in front of part of the dropped kerb access and is not delineated from it by any form of footpath, verge or barrier.
22. The Local Highway Authority objected to the proposal on the grounds of insufficient parking for the PFS and ancillary shop. It was recommended that 11 spaces should be provided for this use alone. The Local Planning Authority suggested a condition could be imposed to secure the required number of parking spaces. However, without knowing that the relevant parking requirements can be achieved for the whole of the development proposed and retained existing business uses on the site, I cannot be satisfied that the proposal would not result in changes that interested parties should be consulted on. In the interests of fairness such a condition would not therefore be reasonable.
23. Whilst I acknowledge that there is limited parking for the existing PFS, there is currently no reason for customers to remain on site after refuelling and paying. As such parking at the pumps is currently likely to be very brief and not an issue.
24. Although many customers of the proposed development would also stop only for fuel, the provision of a larger shop, hot food take-away and a toilet, would encourage fuel customers and motorists passing by, to stop for a break or to pick up convenience goods. As customers taking a break from driving, or stopping only to use the shop, would usually park away from the pumps to avoid congestion of that area, the refuelling spaces at the pumps should not, in my view, be counted as car parking spaces.
25. I am also mindful of the fact that some of the car parking spaces, such as those used by staff of the PFS and MOT garage, and those used for electric vehicle charging, would be occupied for long periods of time, leaving limited spaces for customers of the shop and MOT garage.
26. I therefore conclude that it has not been satisfactorily demonstrated that the proposal would provide sufficient parking and manoeuvring space for staff and customers of all businesses on the site, without obstructing vehicular accesses to the site or to the MOT garage. Accordingly, I cannot be certain that the

proposal would not result in significant harm to highway safety, from vehicles parking or queuing on the road. This would be contrary to Policy DM5 of the Local Plan which only supports economic growth and business expansion where there would be no significant adverse impact on the local highway network.

### *Living conditions*

27. The nearest residential property is above the shop which abuts the eastern boundary of the appeal site.
28. Neither the Council nor the appellant are aware of any existing planning restrictions relating to the operating hours of any of the existing businesses on the site. I noted at the time of my visit, the sign on the petrol filling station shop door advised opening hours of 07:00 to 17:30 Monday to Friday, 07:30 to 17:00 Saturday and 08:00 to 13:00 Sunday. The appellant has since confirmed that the current opening and delivery hours for the PFS are 7am to 5.30pm (Mon to Fri) 7am to 5pm (Saturday) and 8am to 1pm (Sunday). The opening and delivery hours for the car workshop and MOT centre are 7am to 5.30pm (Mon to Fri) 7am to 2pm (Saturday) and closed on Sundays.
29. I acknowledge the site is adjacent to a main road and has a long-established use. However, the proposal, which seeks to increase income, would intensify the use of the site. Whilst the business hours of the car workshop and MOT centre would be unchanged, I am advised that the PFS opening and delivery hours would be increased to 5am to 11pm 7 days per week. This would in turn increase the noise, light and disturbance caused to occupiers of the residential premises above the adjacent shop, at times which this is not currently experienced.
30. As the proposal would intensify the use of the site, it would not be unreasonable to impose opening hours conditions on the PFS and its shop. Conditions could also be used to control any new lighting and its hours of illumination. Operating and delivery hours similar to those of the adjacent shop, which I noted is open from 05:30 to 20:30 Monday to Sunday, would in my view be sufficient to avoid any unacceptable increase in disturbance to occupants living above the shop. However, such conditions may not be acceptable to the appellant.
31. Subject to conditions to secure appropriate opening and delivery times, and to control external lighting, the proposal could be made acceptable in terms of its effects on living conditions. However, based upon the information currently before me, I cannot be certain that the proposal would not result in an unacceptable increase in noise and disturbance to occupiers of the adjoining residential property. Accordingly, the proposal is contrary to Policy DM2 of the Local Plan, which seeks to ensure, amongst other things, that new development would not result in harm to residential amenity including by reason of noise, smell, vibration, light pollution or volume and type of vehicular activity generated.

### *Other Matters*

32. There is an existing convenience store immediately adjacent to the site, which also offers a post office service. Next door to this there is a café and takeaway. Whilst the planning system does not exist to protect personal interests or to prevent competition between retailers, paragraph 93(c) of the Framework,

- which is a material consideration, does seek to safeguard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs.
33. There is limited evidence before me as to what products and services would be available from the new PFS shop and how these would compare to the products and services provided by the adjacent shop and café.
34. The submitted plans do not show a kitchen or food preparation area and an area for eating in is not proposed. It is therefore likely that the choice of hot food and drinks available to take away would be very limited. Cold pre-prepared and packaged sandwiches, drinks and snacks are also likely to be sold. Whilst I accept that the alternative choice offered by the PFS shop and take away may result in some loss of takeaway trade to the adjacent café, it is unlikely to be directly comparable to the type of food and service offered by the café or to directly compete with it.
35. The adjacent convenience store and off licence also offers pay point and post office services. Although there is nothing to suggest that the PFS shop would provide such services, customers using the new PFS shop, could affect the long-term viability of the existing store, the closure of which would result in the loss of these community facilities. However, based on the evidence before me there is nothing to suggest that the risk of this happening would be high and as such, I afford it moderate weight.
36. However, paragraph 93(d) of the Framework also supports the development and modernisation of established shops, facilities and services, to ensure these are retained for the benefit of the community. I consider the re-development and modernisation of the existing well established PFS to fall within this.
37. I therefore conclude that as each of the existing and proposed facilities offer something different to local residents, visitors and passing motorists, the risk of one of these services being lost would not be significant and would, subject to the concerns I have identified being satisfactorily addressed, be outweighed by the overall benefits of the modernised PFS.
38. I acknowledge that the proposal would be sustainably designed and subject to suitable conditions could improve the appearance of the site. It would also generate employment and enhance the range of services available to passing motorists as well as local residents and visitors to the area. However, these benefits do not outweigh the concerns I have identified.

## **Conclusion**

39. I have found that the proposed shop would be ancillary to the overall PFS use and as such would not need to pass a sequential test. I am satisfied that contamination concerns can be resolved by the imposition of pre-commencement conditions and that any effect on adjacent businesses would be outweighed by the overall benefits of the proposal. However, based upon the evidence before me, I cannot be satisfied that the proposed site layout would accommodate the access, parking and safe flow of vehicles for staff and customers of all businesses on the site without detriment to highway safety. Nor can I be certain that the intensified use of the site would not adversely affect the living conditions of occupiers of the adjacent residential property above the shop.

40. For the reasons given above, the appeal is dismissed.

*R Bartlett*

INSPECTOR