



Appeal Decision

Site visit made on 9 January 2024

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/A0665/W/23/3326569

Greenacre Garage, Church Street, Tarvin, Chester CH3 8NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Sajeev Gowrinathan against the decision of Cheshire West and Chester Council.
 - The application Ref 23/01404/S73, dated 28 April 2023, was refused by notice dated 22 June 2023.
 - The application sought planning permission for "Change of use of existing vehicle workshop to retail associated with the existing petrol filling station and provision of a managers flat" without complying with conditions attached to planning permission Ref: 21/03484/FUL dated 29 July 2022.
 - The condition in dispute is No.5 which states that: *The use hereby approved shall only operate between the hours of 07:00 to 22:30 Monday to Sundays and Bank Holidays, unless otherwise agreed in writing by the Local Planning Authority.*
 - The reason given for condition 5 is: *To ensure that the residential amenities that occupiers can reasonably expect to enjoy are adequately protected.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal a revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and replaces the previous version published in September 2023. However, as any policies in the Framework that are material to this decision have not fundamentally changed, I am satisfied that this has not prejudiced any party and I have had regard to the latest version in reaching my decision.

Background and Main Issue

3. A filling station and associated shop is currently operating at the appeal site, following the grant of planning permission in 2022 to change the vehicle workshop at the filling station into an enlarged shop with a manager's office above. Consideration of the then proposed opening hours of 06:00 until 23:00 hours every day caused the Council and its Environmental Protection Team concern. As a result the hours were reduced as per condition 5, the subject of this appeal. The appellant wishes to extend the operating hours from those imposed on the planning permission to 06:00 hours until 23:00 hours every day of the week, including Bank Holidays. I saw that a sign with the extended opening hours has already been installed above the shop entrance, ahead of the outcome of this appeal.

4. The main issue in this appeal is the effect the proposed opening times would have on the living conditions of neighbouring residents with regard to noise and disturbance.

Reasons

5. Policy SOC 5 of the Local Plan Part One¹ (LPP1) is a broad policy that seeks, amongst other things, to ensure that new development that gives rise to significant adverse impacts on health and quality of life, including on residential amenity from factors such as noise, will not be allowed. Policy DM 30 of the Local Plan Part Two² (LPP2) is aligned to Policy SOC 5. It covers noise from commercial and industrial uses and its impacts on residential amenity. Development which generates noise will only be permitted if it accords with the development plan and does not have an unacceptable adverse impact on human health (mental and physiological) or quality of life.
6. The appellant wishes to open one hour earlier in the morning and 30 minutes later at night. I am told the appellant has invested in the business and from my observations during my site visit I saw the shop was clean and tidy and the shelves well-stocked, and the building was well-presented from the outside (apart from the untidy storage area outside at the back of the building). I have no reason to doubt that the shop provides a useful convenience retail outlet for local residents and passers-by.
7. I saw that the appeal site fronts the road but is surrounded on its other three sides by residential properties, whose rear gardens extend right up to the site boundary. These properties may well have been built while the premises was a vehicle workshop/petrol station. Nonetheless, whilst there may have been no restrictions on operating hours, planning permission was granted in 2022 for a different combination of uses, including a much larger retail shop, which has changed the nature of the activities on the site.
8. The enlarged and improved shop, whilst ancillary to the filling station, is likely to be a destination in its own right as a convenience store, and not all customers would be stopping for fuel. To be open at 06:00 hours until 23:00 hours, with cars arriving for fuel or just visiting the shop, would attract attendant noise and disturbance from vehicle doors slamming, engines, and voices early in the morning and late at night. Furthermore, the site's location on the edge of Tarvin with open fields beyond on the other side of the road means there is little other hustle and bustle in the vicinity, unlike in a town centre location, such that ambient noise levels would likely be low. As a result, noise and disturbance would be more marked at these extended hours when residents would have a reasonable expectation of a quieter environment .
9. Lighting and security lights would also be on longer, which already causes issues for some residents, according to comments from interested parties. The noise from the door entry system would also be in operation for longer, which some residents can hear. There would also be staff around the premises accessing stock from outside. I saw pallets of containers of various car fluids stored at the back of the site, as well as stands outside selling the containers as well as various items for lighting and burning fires, all in close proximity to the garden boundaries of adjoining residential properties.

¹ Cheshire West & Chester Council Local Plan (Part One) Strategic Policies

² Cheshire West & Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies

10. The Council's Environmental Protection Team has not provided any reasoning as to why they now have 'no adverse comments' to the proposed extended opening hours, when they did previously. I am aware of the petition of over 200 signatures from customers in support of the extended hours, but they do not all live next to the site to be affected. Whilst some third parties do not live immediately adjacent but in roads nearby, some claim the activity from the premises is audible. This indicates to me that the existing business with its existing opening hours is still capable of causing noise and disturbance to nearby residents. To extend the opening hours as proposed would make matters worse for neighbouring residents beyond what they can reasonably expect to enjoy early in the morning and late at night.
11. The existing opening hours mean the appellant can already trade for the majority of any 24-hour period, and this is not uncommon for convenience type stores. Comparison with other retail outlets is not necessarily appropriate as different locations have different circumstances, and commercial competition is not a factor. Tarvin is not a remote location and there are other facilities nearby and in the wider area that customers can use before 7am and after 10.30pm.
12. I am advised that a restriction in opening hours would have a harmful impact on the business. However, I have not been provided with any substantive evidence as to the business's financial circumstances and the impact that the current hours are having, or any viability issues that demonstrate the existing business is struggling and that the extra opening hours are vital to its continued success. The Noise Impact Assessment³ relates to noise from plant and refrigeration intended to be installed for the enlarged shop in the previous application and does not deal with noise from other activities at the site.
13. Drawing all the above points together, there is no material change to circumstances from when the hours condition was first imposed. Furthermore, I have not been presented with any substantive evidence that the proposed extended hours would be vital to the business and would not cause noise and disturbance to neighbouring residents. In the absence of evidence to the contrary, I find the proposed variation of condition 5 to extend the opening hours would likely cause noise and disturbance to neighbouring residents beyond what they could reasonably expect to enjoy in the early morning and late at night, and hence would adversely affect their living conditions. The existing condition meets the tests in paragraph 56 of the Framework. It also strikes a proportionate and reasonable balance between public and private interests in this case. Accordingly, the proposal would conflict with LLP1 Policy SOC 5 and LLP2 Policy DM 30, whose aims are outlined above.

Conclusion

14. The proposal to extend the opening hours would be harmful to residents' living conditions which would be contrary to the development plan and there are no other material considerations which outweigh this finding.
15. Accordingly, for the reasons given, the appeal should be dismissed.

K Stephens
INSPECTOR

³ Prepared by Noise Solutions Ltd dated 16 June 2022