

**DARLINGTON BOROUGH COUNCIL**

**PLANNING APPLICATIONS COMMITTEE**

COMMITTEE DATE: 2 November 2011

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<b>APPLICATION REF. NO:</b>	<b>11/00571/FUL</b>
<b>STATUTORY DECISION DATE:</b>	<b>25 October 2011</b>
<b>WARD/PARISH:</b>	<b>BANK TOP</b>
<b>LOCATION:</b>	<b>Yarm Road Filling Station 194 Yarm Road DARLINGTON DL1 1XD</b>
<b>DESCRIPTION:</b>	<b>Variation of conditions 9 (hours of operation) and 10 (forecourt and external lighting) of planning permission 8/92/12/DM dated 28 May 1992 (for demolition of existing sales building and erection of new petrol filling station, canopy and vehicle jet wash) to permit opening of the filling station 0600 to midnight Monday to Saturdays, 0800 to 2200 Sundays, and the sales kiosk 24 hours every day; and forecourt and external lighting hours to be agreed</b>
<b>APPLICANT:</b>	<b>Admorre Limited</b>

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**APPLICATION AND SITE DESCRIPTION**

Planning permission was approved on 28 May 1992 for the erection of the petrol filling station (Ref: 8/92/12/DM).

The filling station is located to the south of Yarm Road close to the junction with Cobden Street. To the north the nearest residential properties (opposite on Yarm Road) are some 24m from the site. To the west (opposite on Cobden Street) the nearest residential properties are some 12m from the site. To the east the nearest residential property is some 22m from the site. To the south the site is directly bounded by residential properties and Eastbourne Nursing Home is located some 20m to the south of the site.

This current application seeks approval for the variation of conditions 9 and 10 of the original permission.

**Condition 9** states that the petrol filling station hereby approved shall only be open between the hours of 6.00 a.m. and 10.00 p.m. Monday to Saturday and between 8.00 a.m. and 8.00 p.m. on Sundays.

**Condition 10** states that all forecourt and external lighting shall be extinguished outside of opening hours unless agreed in writing by the Local Planning Authority and required for security purposes only.

Both conditions were imposed in order to safeguard the amenities of nearby residential properties.

The varied conditions would allow for an increase in opening times of the petrol filling station by an additional two hours (6:00 a.m. to Midnight) Monday to Saturday. There would be an increase in opening hours by two hours on Sundays (08.00 a.m. to 10.00 p.m.).

It is also proposed for the kiosk to be open 24 hours for retail sales but not for the sale of fuel outside of the hours specified above.

Condition 10 needs to be re-considered so that the external lighting would be extinguished outside of the normal filling station opening times but that allows lighting in connection with the use of the 24 hour kiosk.

## **PLANNING HISTORY**

Following the approval for the petrol filling station in 1992, an application was submitted in 1995 for the modification of the original planning permission to permit 24 hour opening (Ref: 8/95/423/DM).

Permission for this variation to 24 hours was refused permission on 27 July 1995 for the following reason:

*The extension of the opening hours to permit 24 hour trading will result in conditions prejudicial to local residential amenity, by reason of noise, general disturbance and light spillage from the site. The proposed extension of trading hours would be contrary to Policy E48 of the Borough of Darlington Local Plan, as a result of the likely increase in late night noise and disturbance that would result.*

## **PLANNING POLICY BACKGROUND**

The following policy of the Borough of Darlington Local Plan is relevant:

H15 – The Amenity of Residential Areas

## **RESULTS OF CONSULTATION AND PUBLICITY**

Occupiers of neighbouring properties were advised of the proposal by letter and a site notice was displayed.

Six objections have been received. The points raised are summarised below:

- *The area is predominantly residential.*
- *The proposal will increase traffic in an already busy area.*
- *The local community has no need of the 24 hour sales kiosk.*

- *There would be a noise nuisance during times when local residents would be trying to sleep.*
- *Longer opening hours will encourage young people to congregate around the garage and there are already enough young people hanging around which can be intimidating.*
- *Eastbourne Care Home is located to the rear in close proximity.*
- *A previous application for 24 hour opening has already been considered and refused.*
- *The petrol station is not competitive enough to warrant extra customers and there are other petrol stations nearby.*

Concerns have been expressed regarding the impact of the proposal on property values and in relation to the possibility of a licence to sell alcohol being sort. Neither of these issues are material planning considerations and do not affect the merits of the application in planning terms.

**Councillor Copeland** objected to the application citing concerns regarding issues of noise and disturbance to local residents.

The **Highways Engineer** raised no objections to the proposal.

The **Environmental Health Officer** raised no objections the proposal.

## **PLANNING ISSUES**

This is an application under Section 73 of the Town and Country Planning Act 1990 to vary two of the conditions attached to the previous planning permission. Section 73(2) provides that the local planning authority shall only consider the question of the conditions the subject of the planning application; the principle of development cannot be reconsidered.

The main planning issue relevant to the consideration of this application is therefore whether the variation of the two conditions would adversely affect the residential amenity of nearby residential properties.

When permission was granted for the extension it was acknowledged that the proposed use of the petrol filling station could impact upon the amenities of occupiers of nearby residential properties. As such it was considered appropriate to restrict both the hours of operation and the use of associated lighting.

The use of the site as a petrol filling station is already established and is considered acceptable with regard to its impacts on residential amenity. The extension of the opening times by an additional two hours (until 12.00 midnight Monday to Saturday and until 10.00 p.m. on Sundays) is not considered to be likely result in any significant issues of noise and disturbance. The filling station is unlikely to be in heavy use during the extended opening times when traffic levels along Yarm Road will be less than during peak hours.

A 24 hour kiosk for retail sales on a main road such as Yarm Road would not be an unusual feature. The applicant has advised that part of the requirement for a 24 hour kiosk is to increase the security of the site overnight. The operation of a 24 hour sales kiosk within the existing premises is not likely to result in significant issues of noise and disturbance.

Condition 10 can be amended so that the external lighting would still be extinguished outside of the normal filling station opening times (which are proposed as being extended). The replacement condition should also specify that the lighting used in connection with the 24 hour kiosk will not leak out of the premises to the detriment of residential amenity.

### **Section 17 of the Crime and Disorder Act 1998**

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect

### **Conclusion**

The proposed variation of conditions 9 (hours of operation) and 10 (forecourt and external lighting) of planning permission 8/92/12/DM dated 28 May 1992 is considered on balance, acceptable and will not cause significant impacts in terms of residential amenity. The proposal does not adversely impact on highway safety.

### **RECOMMENDATION**

THAT CONDITION NUMBERS 9 AND 10 ATTACHED TO PLANNING PERMISSION 8/92/12/DM DATED 28 MAY 1992 BE VARIED AND REPLACED WITH THE FOLLOWING CONDITIONS:

9. Notwithstanding the provision of a 24 hour kiosk for retail sales, the petrol filling station shall only be open between the hours of 6.00 a.m. and 12.00 Midnight Monday to Saturday and between 8.00 a.m. and 10.00 p.m. on Sundays. There shall be not fuel filling operations outside of the specified times

Reason – in the interests of the amenities of occupiers of nearby residential properties.

10. All forecourt and external lighting except in connection with the 24 hour kiosk shall be extinguished outside of opening hours. The lamps in connection with the operation of the 24 hour kiosk shall be directed and, if necessary, screened so that no light falls into the curtilage of neighbouring properties or onto the public highway.

Reason – to minimise any adverse effect upon the neighbouring residents and to obviate any hazard to traffic safety.

### **Suggested summary of reasons for granting planning permission**

The proposed variation of conditions 9 (hours of operation) and 10 (forecourt and external lighting) of planning permission 8/92/12/DM dated 28 May 1992 is considered acceptable and will not cause significant impacts in terms of residential amenity. The proposal does not adversely impact on highway safety. The proposal is considered acceptable in light of the following Policies of the Borough of Darlington Local Plan 1997:

H15 – The Amenity of Residential Areas