
Appeal Decision

Site visit made on 23 January 2014

by **Gary Deane BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 February 2014

Appeal Ref: APP/N1350/A/13/2200798

Total Service Station, Grange Road, Darlington DL1 5NP

- 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 David Davis against the decision of Darlington Borough Council.
 - The application Ref 13/00235/FUL, dated 22 March 2013, was refused by notice dated 20 May 2013.
 - The application sought planning permission for the redevelopment of petrol filling station and car wash facility without complying with a condition attached to planning permission Ref 8/89/554/DM, dated 10 January 1990.
 - The condition in dispute is No (viii) which states that: The petrol filling station hereby permitted shall operate between the hours of 0700-2200 hours (Monday to Saturday) and 0800-2000 hours (Sundays and Bank Holidays) only.
 - The reason given for the condition is: To ensure that neighbouring residents are not adversely affected by the development.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of the occupiers of nearby residential properties with particular regard to potential noise and general disturbance.

Reasons

3. The Total Service Station fronts Grange Road and mainly comprises a petrol filling station (PFS) and a car wash. It is located in a predominantly residential area with housing just beyond the main sales building, facing Grange Road, and on the opposite sides of Kendal Close and Grange Road.
 4. The proposal is to allow the PFS including the sales building to be open to customers between the hours of 0600 to 0000 (midnight), Monday to Saturday, and 0800 to 2200 on Sundays and Bank Holidays. No change is proposed to the operating hours of the car wash or the times in which deliveries are made to the site. During the proposed extended hours, the car wash and the air and water facilities available on the PFS forecourt would not be in use.
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5. With housing close to the PFS, I understand the concerns of the occupiers of nearby properties about the potential of the proposal to cause noise and general disturbance, particularly early in the morning and late in the evening. It is at these times that residents are more likely to be at home and reasonably expect quieter conditions within which to relax and sleep, especially those with young children. It is the occupiers of 64 Grange Road, which is the closest residential property to the PFS that are most likely to be affected by the appeal scheme.
6. An Environmental Noise Assessment (ENA) accompanies the proposal that has been carried out to British Standards¹. The ENA, which I have carefully considered, concludes that there would be no discernable increase in noise to local residents if the PFS operated during the extra opening hours sought. That finding reflects the results of a noise survey. The survey found that the actual level of ambient noise during the proposed extended hours, which is dominated by passing traffic along Grange Road, would be above the predicted noise level from activities associated with the PFS, notably a car door shutting and a vehicle drive-off.
7. The Council's Environmental Health Officer and others have disputed the methodology adopted in the noise survey including the locations at which measurements of noise were taken. The Council has also queried whether the most appropriate British Standard has been used to assess the proposal. The Council does, however, accept that there is no definitive standard to be applied to this type of development.
8. The ENA acknowledges that the maximum noise levels would be slightly greater than the guidelines recommended in BS 8233: 1999. However, it concludes that the additional operating hours would be unlikely to cause significant noise disturbance. The Council contests this finding and notes that the results of the ENA indicate that residents would be exposed to peak noise levels that would be higher than the guidelines recommended by the World Health Organisation. There is, therefore, disagreement between the main parties regarding the interpretation of the data as well as the most appropriate methodology and relevant guidance to be used.
9. Even if the ENA and noise survey have been robustly carried out fully in accordance with relevant guidelines, its main findings sit uneasily with the representations of several interested parties that refer to the current operation of the PFS and the associated problems of noise and disturbance caused by its use. Specifically, these problems appear to regularly include users of the PFS acting inconsiderately by, for example, shouting across the forecourt, slamming car doors, leaving car radios on and motorists and motor bikers accelerating quickly away from the forecourt.
10. Objectors also draw attention to the noise from people closing the doors of the main building, car and building alarms being inadvertently switched on, the warning sounds emitted from delivery vehicles reversing onto the site and the use of the bin store, which photographs show to be adjacent to the shared boundary with No 64. The front bay windows of No 64, which appear to serve main habitable rooms, overlook this storage area at close range. This property

¹ Refs BS 7445:1991-Part 2, Description and Measurement of Environmental Noise: Guide to the Acquisition of Data Pertinent to Land Use and BS 8233: 1999, Sound Insulation and Noise Reduction for Buildings – Code of Practice

is also close to the exit point from the PFS and so would be susceptible to noise from vehicles leaving the PFS.

11. These representations indicate a broader range of noise sources from the PFS than those that are covered in the ENA. Some of these activities such as motorbikes accelerating quickly might be noisier than those to which the ENA refers. Almost all of these examples are likely to give rise to a sudden, sharp difference in sound level or its pitch. It is these differences that can cause more disturbance than a more continuous, consistent sound such as that from passing traffic, with which local residents are likely to be more accustomed.
12. The record of noisy occurrences related to the use of the PFS kept by the occupier of No 64 during late May and June 2013 also sits uneasily with the appellant's opinion that such events would occur infrequently. Irrespective of the likely number of such events, it is my judgement is that when such events occur, disturbance to nearby residents is likely to result. The effect of that disturbance is likely to feel more intrusive in the early morning and late evening especially if it interrupts sleep.
13. Against that background, it is my view that, whatever the efforts of the appellant through, for instance, adherence to an agreed management strategy, some people would not be mindful of the needs of others when visiting the PFS during the proposed extended hours. Therefore, I agree with the concerns of interested parties who value quieter conditions during the early morning and in the late evening and find that the PFS, which is already permitted to operate from 0700 until 2200 hours on most days, already harms this.
14. Having regard to the relationship of the PFS to existing residential properties, I consider that the permitted operating hours strike a more appropriate balance between utilising early morning and evening custom and recognising that nearby residents have a reasonable expectation of quieter conditions at certain times to relax and enjoy their properties.
15. Therefore, I conclude that the effect on the living conditions of the occupiers of nearby residential properties of granting planning permission without compliance with condition No (viii) would be unacceptably harmful in terms of noise and general disturbance. Accordingly, the proposal conflicts with an aim of Policy CS16 of the Darlington Local Development Framework Core Strategy, which is to safeguard the amenity and health of the community.
16. Allowing the PFS to operate for longer hours would enhance the service available to customers and increase competition with other similar facilities, some of which can operate on a 24 hours a day basis. In doing so, it would help support economic growth and create or safeguard jobs, which are encouraged in the National Planning Policy Framework (the Framework). However, a core principle of the Framework is to always secure a good standard of amenity for all occupiers of land and buildings. To my mind, the harmful effect on residential amenity is not outweighed by the economic benefits of the proposal and so the balance of national guidance does not support the proposal.
17. The Council raises no objection with regard to the effect of the proposal on the West End Conservation Area (CA), within which the site is located. I, too, reach a similar opinion given the established commercial use of the site and the absence of any significant external alterations proposed to the buildings.

Although the character and appearance of the CA would thus be preserved, the proposal would be unacceptably harmful to residential amenity in conflict with national guidance and a development plan policy.

18. Interested parties raise several additional objections to the appeal scheme including external lighting, air pollution, litter, anti social behaviour and crime. These are important matters and I have taken into account all of the evidence before me. However, given my findings on the main issue, these are not matters on which my decision has turned.

Conclusion

19. Overall, for the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Gary Deane

INSPECTOR