
Appeal Decision

Site visit made on 8 August 2017

by **Helen Cassini BSc(Hons) DipTP MRTPI**

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

Decision date: 22 August 2017

Appeal Ref: APP/N1350/W/17/3174408

66-76 Grange Road, Blackwell, 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 Rupert Ainsworth of Rontec Watford against the decision of Darlington Borough Council.
 - The application Ref: 16/01156/FUL, dated 2 November 2016, was refused by notice dated 14 February 2017.
 - 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 neighbouring residents are not adversely affected by the development.
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Decision

1. The appeal is dismissed.

Main Issue

2. The appellant made an application to vary a condition from the original permission in respect of opening hours on a Sunday and Bank Holiday. The evidence before me indicates that the determinative factor in this appeal is whether the increased opening hours would generate noise and disturbance from comings and goings early in the morning and late at night, and whether this would be disruptive in regard to residential amenity.
3. Accordingly, the main issue is whether the condition is reasonable and necessary, with reference to the living conditions of occupiers of nearby dwellings, with particular regard to noise and disturbance.

Reasons

4. The appeal site is a petrol filling station (PFS) consisting of a single storey retail unit, 4 petrol pumps under a central canopy and an enclosed car wash facility located to the rear of the site.
5. There are separate ingress and egress points into the site from Grange Road. The area is predominantly residential in nature, with 64 Grange Road being the

nearest dwelling to the appeal site. No 64 is separated from the exit by a low boundary wall and is also adjacent to the retail unit and bin storage area. It is noted that some commercial units are also located on Grange Road. However these are in the minority and do not open early in the morning or late into the evening.

6. The site is located within the West End Conservation Area. The proposal does not involve any external alteration to the PFS. No concern has been raised by the Council with particular regard to the effect on the character and appearance of the Conservation Area. From observations made during the site visit, I find no reason to reach a different conclusion.
7. I am mindful of the fact that the site has been the subject of previous refusals for planning permission¹ and a subsequent dismissal at appeal², all of which have been in relation to the variation of Condition (viii) of the original planning permission. However, I am also aware that the appellant has aimed to address the reasons for the refusals in the subsequent planning application, which is the subject of the appeal before me.
8. The PFS currently operates between the hours of 0700-2200 Monday to Saturday and 0800-2000 on Sundays and Bank Holidays. In order to improve the service offered by the PFS to both local residents and motorists the appellant wishes to extend the opening hours on a Sunday and Bank Holiday to 0700-2200; thereby bringing the hours in line with the opening hours for the rest of the week. The proposal would result in the PFS operating for an additional 3 hours during a week, increasing to 6 hours on a Bank Holiday weekend. No evidence regarding the demand or need for extended opening hours has been submitted.
9. The application was accompanied by a Noise Impact Assessment³ (NIA). The NIA concluded that the predicted internal noise levels at No 64 are above the guidance levels, whether the PFS is operational or not. Furthermore, it is considered that the proposed extended opening hours would not result in any increased impact in terms of amenity on No 64, with regards to noise and disturbance.
10. The Council's Environmental Officer raised significant concern over both the methodology and lack of evidence within the NIA. The concern relates particularly to the fact that noise emissions such as vehicles leaving the site, exhausts, car alarms and tyres screeching were excluded from the NIA. Subsequent information submitted by the appellant confirmed that the main noise source impacting on residential amenity, and in particular No 64, would be traffic exiting the PFS. Whilst the additional information states that such vehicle movements would not be noticeable above normal road traffic movements, the basis of the calculations have not been provided.
11. The Noise Policy Statement for England⁴ states that significant adverse impacts on health and quality of life should be avoided, and adverse impacts should be mitigated and minimised. It is evident that the opening times imposed by Condition (viii) of the original permission, recognised the need to mitigate and

¹ Council references 12/00144/FUL, 12/00623/FUL and 13/00235/FUL

² Appeal reference APP/N1350/A/13/2200798

³ Noise Impact Assessment for the Proposed Extension to Operation Hours, Grange Road PFS, Grange Road, Darlington Nov 2016

⁴ Defra – Noise Policy Statement for England (NPSE) 2010

minimise the amount of noise and disturbance to neighbouring residents at the weekends and during public holidays, whilst also taking account of the need to effectively service a PFS.

12. The front elevation of No 64 has habitable rooms with opening windows. Whilst these are more likely to be closed during weekdays, when people are generally at work, at the weekends and Bank Holidays residents are often at home and should be able to open their windows or make use of any external space without undue disturbance.
13. Noise from the existing road traffic is a significant noise source within the immediate locality. However, incidents at the PFS such as the slamming of car doors, leaving radios playing, loud conversations and harsh acceleration from the forecourt would be so intrusive as to cause undue noise and disturbance to No 64. Furthermore, the use of the bin storage by staff, which is adjacent to the boundary with No 64, and the location of the exit from the PFS would further exacerbate the level of noise and disturbance experienced. No substantive evidence regarding such incidents has been provided in order to persuade me that such occurrences would not adversely harm the levels of amenity of No 64.
14. The use of a management plan has been suggested by the appellant and an example plan utilised at another PFS has been submitted. The purpose of the plan is a preventive measure which aims to ensure no issues arise on site. However, the degree of control over which the appellant would have as to whether customers leave their radio on or engine running whilst on the forecourt would be limited. As such, on a day to day basis such a plan would be very difficult to control and enforce. The benefits of such a plan are therefore considered to be limited with regard to controlling the potential impact on residential amenity.
15. The appellant has suggested a temporary planning permission, in order to allow monitoring of the situation. In the absence of evidence of demand for extended opening hours and substantive evidence that the amenity of neighbouring residents would not be harmed, I am not satisfied that it would be appropriate to allow an appeal that would require the situation to be revisited in the future.
16. In the light of the above, an extension to the opening hours would have the potential to have significant adverse effects on the living conditions of occupiers of No 64 in that regard. Accordingly, it is considered that the disputed condition is necessary and reasonable in the context of local policies. It is also relevant to planning and to the development previously permitted, enforceable, precise and reasonable in all other respects. It is therefore found that it is both reasonable and necessary to continue to impose the restrictions on the use set out in Condition (viii) of planning permission Ref: 8/89/554/DM, for the reason set out in the permission. To allow the appeal proposal to operate with extended opening hours would be harmful to the living conditions of the neighbouring occupiers at No 64, with regard to noise and disturbance.
17. The proposal would therefore conflict with Policy CS16 of the Darlington Local Development Framework Core Strategy 2011 which seeks to ensure that new development does not give rise to significant adverse impact in respect of the living conditions of the community. I have taken into consideration the appellant's desire to improve the level of service offered to customers and the

modest increase in economic growth that this would bring, which is encouraged within the National Planning Policy Framework (the Framework). Nevertheless, the harm identified runs contrary to one of the Framework's core planning principle of seeking to secure a good standard of amenity for existing occupants of land and buildings. Accordingly, the harm identified to residential amenity is not outweighed by the modest economy benefit.

Conclusion

18. For the reasons given above, and taking account of all matters raised, I conclude that the appeal would not be in accordance with the development plan and it should therefore be dismissed.

Helen Cassini

INSPECTOR