



Appeal Decision

Site visit made on 21 May 2018

by **G P Jones BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 June 2018

Appeal Ref: **APP/X1925/W/17/3191930**

Jackmans Service Station, Baldock Road, Letchworth Garden City SG6 2EJ

- 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 MRH (GB) limited against the decision of North Hertfordshire District Council.
 - The application Ref 17/00474/1, dated 24 February 2017, was refused by notice dated 14 July 2017.
 - The application sought planning permission for redevelopment of petrol filling station to provide new forecourt, canopy, underground tanks, and sales building, new "in" and "out" access arrangements and car parking, following closure of existing access, in accordance with amended layout and elevation drawings 10627/024 Rev B and 10627/025 Rev A without complying with a condition attached to planning permission Ref 02/01291/1, dated 19 December 2002.
 - The condition in dispute is No 4 which states that: The new petrol filling station and associated sales building shall open to the public only between the hours of 7am and 11pm on any day, with no petrol, oil or diesel deliveries taking place outside of those hours.
 - The reason given for the condition is: To safeguard the residential amenities of occupiers of adjoining and nearby properties.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect that varying the disputed planning condition would have on the living conditions of the occupiers of nearby dwellings, having particular regard to noise disturbance.

Reasons

3. The petrol filling station (PFS) occupies a corner position outside of, but adjacent to, the Letchworth Conservation Area with vehicular access off Baldock Road and with egress only via Radburn Way. This is predominantly a residential area with houses located in close proximity to the north, south and west of the site, particularly no. 203 Baldock Way that adjoins the western boundary of the site. In addition no. 1 Radburn Way lies to the south beyond the PFS building and a number of terraced and semi-detached properties lie to the north on the opposite side of Baldock Road.

4. The proposal would be for the 24 hour operation of the PFS for customers, but with deliveries still restricted to the hours as set out in the extant permission, ie fuel deliveries only between 7 am and 11 pm on any day. There would be no changes to the infrastructure of the PFS.
5. The appellant has submitted a Noise Assessment (NA)¹ which included background noise monitoring that was undertaken from 17:45 on Tuesday 7 February 2017 to 07:55 on Wednesday 8 February 2017. The NA has calculated the noise levels at the nearest residential properties due to the change in the proposed opening hours. Also the appellant has provided a response to EHO Comments and a Supplementary Noise Assessment that provides an update to the NA but does not contain any additional noise monitoring. The NA has calculated that the greatest potential effect would be on the occupiers of no. 203 Baldock Road rather than the properties that lie on the opposite side of Baldock Road or no. 1 Radburn Way. I have no reason to disagree with this.
6. The Council did not conduct its own noise monitoring. However, it did, raise concerns about the duration and timing of the background noise monitoring in the NA. The Council contends that weekends would be likely to have lower background levels than the period when monitoring was undertaken, due in part to there being less HGV traffic using the industrial estate. The appellant contends that background noise levels are very little affected by individual vehicles and the background noise level could be 6 dB lower than measured and the noise associated with the proposal would still be classified as a low impact. However, I have no reason to doubt the Council's view on background noise and I consider that the amount of noise monitoring that has been undertaken to be quite limited for a proposal of this nature.
7. In addition, the Council contends that it would be difficult to properly measure the sporadic and percussive noise associated with the slamming of car doors, car stereos playing and the revving of engines. I note that actual noise monitoring from the flank bedroom of no. 203 has not been conducted. Instead the potential sporadic noises associated with the use of a PFS have been recreated and measured in another location. The NA has assumed that vehicles would be used in such a noisy manner for 50% of the visits, and there would be a 8 dB reduction if vehicles were operated more considerately, ie doors were not slammed, car stereos were not on loudly and engines not revved strongly.
8. In addition, the highest number of vehicle movements has been used based on the highest usage in the hour immediately after opening and before closing. In reality the night time usage is likely to be less than this. Therefore it is my view that a reasonable worst case scenario has been adopted in the NA and thus a precautionary principle has been applied. The NA has calculated a worst case Rating level of 31 dB at 203 Baldock Road which, based on the advice in BS 4142, is an indication that the proposal would give rise to a low impact.
9. Under the 'noisy manner' scenario for forecourt activities the appellant has calculated that the L_{Amax} would be 65 dB at 5m and that this would equate to an L_{Amax} of 55dB at the outside façade of no 203, and this would be within World Health Organisation (WHO) guidelines. Furthermore, the NA states that the impulsive characteristics of the noise generated, such as car door slams,

¹ Noise Assessment, February 2017, KC Environmental Ltd

are “*unlikely to be audible*” when observed at the neighbouring properties, although an impulse correction of + 3 dB has been applied.

10. However, it is my view that insufficient information has been provided in regard to how these L_{Amax} calculations and impulse noise assumptions have been arrived at. The residential property of no. 203 Baldock Way lies close to the boundary with the appeal site near to the petrol pumps and has a bedroom window in its flank elevation facing towards the petrol pumps. It is not unreasonable to expect occupants of this property to have their bedroom windows open in the hot weather. Notwithstanding the presence of a boundary wall with mature vegetation beyond it along the common side boundary, there remains a clear line of sight from the forecourt area to the flank bedroom window of no. 203. Furthermore, this window is reasonably close to the nearest part of the forecourt, particularly pump no. 1, and the access off Baldock Road.
11. Due to the close distance between these areas and no. 203 I consider it highly likely that some of the resultant night time activities associated with the PFS, such as the noise of car doors slamming and engines being revved, would be clearly audible above the background noise, particularly if the flank window of no. 203 was open. Furthermore, although there would be some amount of impulse noises and car engines being started associated with any residential area, the pattern of use of an all-night PFS would be likely to be quite different than the usual comings and goings of residents. Therefore I disagree with the appellant’s assertions in this regard. In addition, the appellant has not proposed any measures to try to mitigate such noise.
12. The appellant has referenced other appeals that have been allowed². The Council and interested parties have made reference to appeal decisions³ for other petrol stations in the locality that have been dismissed. This includes a case where it is argued that the residential properties were further away from the PFS than for the proposal that is before me. Therefore I have been presented with appeal decisions for extensions to the operating hours for PFS’s that have been both dismissed and allowed. Whilst I have very limited information about these other cases, inevitably they would differ from the proposal that is before me in terms of their relationship with the nearest residential properties and their respective background noise levels. For these reasons I afford these other decisions little weight.
13. Consequently, I consider that on balance it has not been adequately demonstrated that the proposal would not give rise to an unacceptable effect on the living conditions enjoyed by the occupiers of the nearest residential properties, especially no. 203. Therefore the proposal would be contrary to paragraph 123 of the National Planning Policy Framework that seeks, among other matters, to ensure that decisions avoid noise from giving rise to significant adverse impacts on health and quality of life, mitigate and reduce to a minimum other adverse impacts arising from noise, whilst avoiding unreasonable restrictions on businesses wanting to develop.
14. In its reason for refusal the Council has also referenced saved Policy 8 of the North Hertfordshire District Local Plan no. 2 with Alterations 1996, Saved Policies September 2007. However, I concur with the appellant’s view that as

² Appeal references APP/D3640/W/16/3156743, APP/K3605/W/17/3171414 and APP/E5330/W/17/3178190

³ Appeal references APP/X1925/W/14/2227807 and APP/X1925/A/14/2214936

this saved policy references the aims of other development plan policies, none of which have been cited, it is not directly applicable to the case that is before me.

Planning balance and conclusion

15. The proposal would allow the 24 hour operation of a long-standing PFS and this would provide a greater degree of convenience for customers and also some additional economic benefits, including employment creation. However, the site lies in what is primarily a residential area with houses nearby on three sides. I do not consider that the appellant has satisfactorily demonstrated that the proposal would not give rise to significant adverse impacts on the living conditions of the occupiers of neighbouring properties in terms of noise, and in particular for the occupiers of no. 203. I consider that the potential harm would clearly outweigh the limited benefits of the proposal that I have identified.
16. For the reasons set out above, and having regard to all other matters raised including other relevant development plan policies, I conclude that the appeal should be dismissed.

GP Jones

INSPECTOR