



Appeal Decision

Site visit made on 27 November 2017

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 19th December 2017

Appeal Ref: APP/R4408/W/17/3182593

Former petrol filling station, Pontefract Road, Cudworth, Barnsley S72 8AY

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mason Corp Properties against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref 2017/0607, dated 3 May 2017, was refused by a notice dated 26 July 2017.
 - The application sought planning permission for a development described as the 'removal of Condition 2 of application 2013/1228, (Removal of former petrol filling station canopy, formation of 2 car washing bays, new boundary treatment and landscaping to create a new hand car wash and valet centre (sui generous)) to remove temporary permission and allow permanent use of the site, (Amended Plans),' without complying with a condition attached to planning permission Ref 2016/0322, dated 21 April 2017.
 - The condition in dispute is No 1 which states that: The use hereby permitted shall be for a limited period of 18 months from the date of this decision notice. At the end of the 18 month operational period the use shall be discontinued and all equipment shall be removed from the site.
 - The reason given for the condition is: In the interests of neighbouring amenities in accordance with CSP29 and CSP40.
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Decision

1. The appeal is allowed and planning permission is granted for removal of former petrol filling station canopy, formation of 2 car washing bays, new boundary treatment and landscaping to create a new hand car wash and valet centre (sui generous) at former petrol filling station, Pontefract Road, Cudworth, Barnsley S72 8AY in accordance with the application Ref 2017/0607 made on the 3 May 2017 without complying with condition No 1 previously imposed on planning permission Ref 2016/0322 dated 21 April 2017, but subject to conditions set out in the attached schedule.

Background

2. Planning permission was granted on appeal¹ in July 2014, for the existing hand car wash to operate for a temporary period of 18 months. The Inspector considered that the proposal was unlikely to give rise to unacceptable noise and disturbance but adopted a precautionary approach by granting a consent for a temporary period to enable the Council to monitor the situation and

¹ APP/R4408/A/14/2215170

assess the acceptability or otherwise of this use in terms of its effect on the living conditions of neighbouring residents.

3. A subsequent application to remove the condition limiting the life of the development and allow the use to continue permanently on the site was determined by the Council in April 2017. Planning permission was granted², however the permission was for again limited to a temporary 18month period only. A further application to remove the time restriction was subsequently refused by the Council, and it is that decision which is the subject of this appeal.

Main Issue

4. The main issue in this case is whether the condition is reasonable or necessary in the interests of the living conditions of neighbouring occupiers, with particular regard to water spray drift and noise.

Reasons

5. The car wash is located on Pontefract Road on the site of a former petrol filling station. It is situated in a predominantly residential area, with the gardens of residential properties adjoining the north and eastern boundaries of the appeal site.
6. The current business has been operating since July 2015. It is clear that during this time measures have been implemented to improve the appearance of the site and to reduce the impact of the proposal on neighbouring residents. Mitigation has including planting, acoustic screen fencing, drainage and acoustic screening for the vacuum machines.
7. Furthermore, in seeking to establish a permanent permission for the use in 2016, and to address on-going concerns of neighbouring residents in relation to water spray drift and noise, a further Acoustic Appraisal³ was provided which recommended further mitigation measures. Those measures would include additional planting, extension of the length of the screen to the eastern bay, solid roof to the bays, 6mm Perspex panels and the inclusion of cloth, rubber sponge and rubber foam layer to the lower half inner surface of the bays. Those additional measures, together with conditions considered necessary to specify noise levels, limit the areas of the site available to washing, valeting and drying and regulate the hours of operation were imposed by conditions attached to the planning permission Ref 2016/0322, dated 21 April 2017.
8. Planning Practice Guidance⁴ (PPG) states that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area. It further advises that it will rarely be justifiable to grant a second temporary permission - further permissions should normally be granted permanently or refused if there is clear justification for doing so.
9. Furthermore, Paragraph 206 of the National Planning Policy Framework (the Framework) advises that planning conditions should only be imposed where

² 2016/0322, approved 21 April 2017

³ Acoustic Appraisal, Waterman Infrastructure and Environment Ltd, dated 8 March 2017.

⁴ Paragraph: 014 Reference ID:21a-014021040306

they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects.

10. The car wash has now been operational for two years, and from observations on my visit to the site, and taking into account the letters of support received from neighbouring residents in response to the appeal, it is clear that the car wash is a busy operation which is highly valued by the local community. Furthermore, the general appearance of the site does not detract from the visual qualities of the street scene as a whole.
11. I have taken into consideration third party representations and evidence which clearly shows that the operators of the site do not always adhere to the conditions imposed on the planning permission. Whilst the enforcement of those conditions is not a matter for my consideration in the determination of this appeal, it is clear that the conditions imposed on the 2017 permission which control how the site operates, and require the implementation of additional mitigation measures, are reasonable and necessary to safeguard the living conditions of neighbouring residents.
12. The temporary planning permission granted on appeal in 2015 provided the Council with an opportunity to monitor the operation and assess the acceptability or otherwise of this use on the living conditions of neighbours. There is no presumption that a temporary grant of planning permission should be granted permanently, and consequently should the car wash have provided unacceptable living conditions for neighbouring residents during its 18month trial operation the Council had the opportunity to refuse consent for it to continue to operate further.
13. Although there are some general concerns regarding noise and disturbance from the operation of the car wash as a whole, the objections primarily relate to water spray drift when washing vehicles, including high vehicles outside of designated areas; operating the car wash outside of permitted hours; and the use of the vacuum machine outside of the acoustic fence or not within its acoustic box. The additional mitigation measures imposed by conditions on the 2017 permission would significantly reduce the opportunity for the washing of vehicles outside of designated areas and provide further screening of noise and containment of water spray. The officer's report concludes that *'the scheme shows sufficient mitigation measure to help to alleviate the various concerns raised by local residents. These mitigation measures can be conditioned to ensure the additional planting, erection of roofs to the bays, and management of the site is carried out to ensure the business is compatible with its surroundings.'* The Council's Environmental Health Officer is satisfied that subject to suggested conditions, the proposal would protect the living conditions of neighbouring residents. None of those suggested conditions related to a further temporary permission.
14. PPG⁵ advises that conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness. The appellant has already invested heavily in the business to adhere to the conditions imposed on the temporary planning permission granted back in 2015. The 2016 permission requires significant further investment to secure compliance and that investment would be undertaken with no assurance that a permanent permission would be granted in 18months time. To my mind such a

⁵ Paragraph: 005 Reference ID: 21a-005-20140306

financial burden without the assurance of a permanent permission is unreasonable.

15. The earlier temporary planning permission allowed the Council the opportunity to assess the effect of the development on the area. I can see no reason to disagree with the Council's own conclusions on this matter, namely that the scheme shows sufficient mitigation to alleviate concerns of neighbouring residents. As a result, I do not consider a further temporary permission is justified. Condition 1 as outlined is therefore not reasonable or necessary in this instance.
16. I therefore conclude that condition 1 is neither reasonable nor necessary. It fails to meet all the tests identified in paragraph 206 of the Framework. Accordingly, the removal of condition 1 would not result in material harm to the living conditions of neighbouring residents, in terms of water spray drift and noise. Furthermore, there would be no conflict with Policy CSP29 or CSP40 of Barnsley's adopted Core Strategy, 2011 which seek to ensure that new development is, amongst other things, of a high quality design and demonstrates that the effects of pollution have been minimised and provide mitigation measures where appropriate.

Other Matters

17. I have had regard to a third party representation relating to vehicles visiting the premises queuing on Pontefract Road, and cars parked on this road waiting for customer collection. However, the Council has not raised any objection on highway safety grounds, and on the basis of the evidence I have before me, I see no reason to disagree with the Council on this matter. On this basis, I am able to afford such concerns only very limited weight in the determination of this case.

Conclusion

18. For the reasons given above and taking into account all other matters raised I conclude that the appeal should be allowed. The planning permission I have granted allows for the continued and permanent use of the site as a hand car wash. The condition previously imposed specifying the approved plans is necessary as this provides certainty. Similarly, those conditions previously imposed to: require the mitigation measures set out in the Acoustic Appraisal to be implemented; limit opening hours; specify noise levels; limit the conditions of operation of the vacuum machine and areas of the site to be used for washing, valeting and drying of vehicles are necessary to protect the living conditions of neighbouring residents. I have also imposed a condition previously imposed relating to boundary screening and planting which are necessary to safeguard the character and appearance of the area, and a condition to secure adequate surface water drainage is required to reduce flood risk and impact on the highway network.

Elizabeth Pleasant

INSPECTOR

Schedule of Conditions

- 1) The development hereby approved shall be carried out strictly in accordance with the plan no. 2109-01-Rev G, proposed elevations drawing 2109 02 Rev B, and recommendations outlined in Appendix C of the Management Plan as approved unless required by any other conditions in this permission.
- 2) The use hereby permitted shall be carried out only between the hours of 09.00 to 18.00 Mondays to Fridays, 10.00 to 17.00 on Saturdays, Sundays or Bank Holidays.
- 3) All boundary screening, planting, seeding or turfing comprised in the approved details on plan 2109-01-Rev G shall be carried out within 28 days of the grant of this permission, and any trees or plants which die within a period of 5 years from the completion of the development, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with other of similar size and species. All boundary screening shall be thereafter so maintained.
- 4) The mitigation measures stated within Section 1.4 of the submitted Acoustic Appraisal by Waterman Infrastructure and Environment Limited, dated 8th March 2017, shall have been implemented on site within 2 months of the date of this decision notice. The measures shall thereafter be retained as such.
- 5) All surface water run-off and waste water from car washing shall be collected and disposed of within the site and shall not be allowed to discharge onto the adjacent highway or residential gardens.
- 6) There shall be no washing, valeting or drying of vehicles within the areas shown as being shrub planting or staff parking at any time.
- 7) The noise level from the operations of the car wash on the site must not exceed a level of 48 dB Leq, 15 mins, when measured in the rear gardens of Garden Cottages. In the event of a complaint being received in writing by the Local Planning Authority (LPA) alleging noise nuisance due to the operation of the car wash on the development hereby approved, and verified as a true and reasonable complaint by the LPA, the site operator shall, at its expense, employ a consultant approved by the LPA to measure the level of noise emissions from the operations at the location of, and external to, the complainant's property (or, in the event that access is not possible, at the nearest publicly accessible location acceptable to the LPA). The results of the consultant's assessment shall be provided to the LPA within 2 months of the date of notification of complaint unless otherwise agreed in writing by the LPA. The operator shall cooperate with the LPA to ensure that the development is compliant with the above defined limits for the site.
- 8) If the vacuum machine shown on plan 2109 01 Rev G is ever taken out from its acoustic fence to be used, it should be contained in an acoustic box. Noise levels specified in Condition 7 above shall be compromised at any time.