



Appeal Decision

Hearing held on 15 November 2005

by Mrs K. A. Ellison BA, MPhil, MRTPI

an Inspector appointed by the First Secretary of State

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Date

15 DEC 2005

Appeal Ref: APP/H0738/A/04/1166223

Former petrol filling station & service station, Durham Road, Stockton-on-Tees TS19 0BS

- 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 TRS Developments Ltd against the decision of Stockton-on-Tees Borough Council.
- The application Ref 04/2373/FUL dated 20 July 2004 was refused by notice of 15 September 2004
- The application sought the variation of a condition attached to a planning permission Ref 04/0139/FUL dated 2 April 2004 for the erection of a two storey building with 3no. retail units on the ground floor with 5 flats above and associated car parking.
- The condition in dispute is No 7 which states: *The retail premises to which this permission relates shall not be open for business outside the hours 7.30am to 9.30 pm Monday to Saturday and 9.30am to 4.00pm on a Sunday.*
- The reason given for the condition is: *To ensure that adjoining residential properties are not adversely affected by the development.*

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions in the terms set out below in the Formal Decision.

Procedural Matters

1. The appeal proposes that, in relation to retail unit No.1, condition No. 7 be amended to 6am to 11pm Monday to Sunday, with the permitted hours of units 2 and 3 being unchanged. In addition, the following conditions have been proposed:

Except for the deliveries of newspapers, magazines, bread and milk which shall not be brought to the premises by articulated vehicles, deliveries to the retail units shall be restricted to 08.00 to 18.00 Mondays to Fridays and 09.00 to 17.00 Saturdays and Sundays.

Prior to the commencement of development, a scheme detailing security measures in respect of retail unit 1, including the provision of CCTV coverage to both internal and external areas, shall be submitted to the local planning authority for approval. The approved scheme shall be implemented in full prior to the occupation of unit 1 and shall be retained in use thereafter.

Main Issue

2. I consider that the main issue in this appeal is whether the disputed condition is reasonable or necessary to protect the living conditions of nearby residents, with particular regard to noise and disturbance.
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Planning Policy

3. The development plan includes the Stockton-on-Tees Local Plan 1997. Policy GP1 sets out a number of criteria for the assessment of development proposals, including the effect on the amenities of occupiers of nearby properties. I have also had regard to Planning Policy Statement 6: *Planning for Town Centres* (PPS 6) which supports the provision of easily accessible shopping to meet day-to-day needs.

Reasons

4. The appeal site is a former petrol filling station with retail sales located in the urban area. There are commercial and industrial uses to the east and south, with residential streets to the west and north. In particular, there is a terrace of houses with short front gardens directly opposite the appeal site. The intended tenant for unit 1 is a convenience store operator. The Appellant seeks to extend the opening hours in line with those of other stores within the same group.

Early morning opening

5. With regard to the early morning, residents expressed concern that they would experience noise and disturbance from traffic, especially arising from deliveries of fresh food and newspapers. I recognise that the activities associated with such deliveries would generate noise such as from vehicles manoeuvring and goods being unloaded. However, the loading bay would be to the rear of the unit and in my view this would serve to shield the houses opposite from most of this noise. Furthermore, Durham Road is one of the main approaches into Stockton. In view of the other industrial uses nearby such as the delivery and sorting office, it seems to me that there would already be a considerable degree of activity in the surrounding area at 6am. Consequently, whilst some noise associated with the unit may be audible to residents opposite, it would not in my opinion be unduly in excess of general background noise levels.

Late evening opening

6. In terms of late evening opening, the two main areas of concern were anti-social behaviour and noise disturbance arising from customers coming and going.
7. With regard to anti-social behaviour, residents were particularly concerned that large groups, attracted by the availability of alcohol, would congregate outside the unit and that this would lead to problems of alcohol-fuelled anti-social behaviour. They pointed to the Dispersal Order which had been introduced in the area as evidence that anti-social behaviour is a significant and persistent problem in the locality. However, the supporting documentation to the appeal shows that the intended tenant for unit 1 adopts a serious approach to crime, with provision being made for staff training and security measures such as CCTV. Thus, although I recognise the very real basis for local concerns on this matter, I consider that extended evening opening hours would not materially worsen existing problems relating to anti-social behaviour in the surrounding area.
8. However, other convenience store operators in the locality confirmed at the Hearing that their stores do not open in the late evening. In this respect, even though other uses such as hot food take aways may be open, the condition would not give rise to a commercial disadvantage and so would not be unduly onerous. Moreover, the fact that other similar

stores are closed at this time adds weight to assertions from residents as to the generally lower levels of activity and background noise later in the evening.

9. Activity relating to customers coming and going would be concentrated around the front of the unit. I note that the store would have an essentially local catchment but the Appellant acknowledges that there would also be an element of car borne trade. I consider that residents living directly opposite would be likely to find noise such as engines revving or car doors slamming extremely intrusive at a time when they could reasonably expect some peace and quiet. Later evening opening would thus, in my view, cause an unacceptable degree of disturbance to these residents and so would be contrary to Local Plan policy GP1.

Other matters

10. Whilst other stores run by this operator in similar residential settings may enjoy longer opening hours, I do not know the full circumstances of those cases. In any event, I have considered this proposal on its own merits. Also, although the petrol filling station was allowed to open until 11pm, I consider that there would be a greater likelihood for disturbance arising as a result of the larger scale of the proposed retail use.
11. No evidence was put forward to suggest that local circumstances on a Sunday were materially different from those on other days of the week. In the absence of any justification for different opening hours on a Sunday, I consider that the condition is also unreasonable in this respect.

Conclusions

12. Having considered all the evidence put forward, I consider that the proposed late evening opening hours would cause an unacceptable degree of disturbance to the occupiers of nearby properties. However, I have found that this would not be the case with regard to early morning and Sunday opening. On that basis therefore, I conclude on my main issue that the disputed condition in its present form is not reasonable.

Conditions

13. The disputed condition does not satisfy the tests in Circular 11/95, *The Use of Conditions in Planning Permissions* and should be deleted. However, I consider that a replacement condition to retain control of evening opening hours is necessary in order to protect the amenity of nearby residents. Whilst the appeal relates only to unit 1, the disputed condition applies to all three proposed retail units. On the grounds that other retail activity in the late evening could be expected to have similar adverse implications for local residents, the replacement condition should likewise apply to the other two units.
14. The Appellant suggested two other conditions. Since I have found that early morning activity would not be unduly harmful, the suggested condition relating to deliveries would be unnecessary. The suggested condition relating to security measures would not address the issue of noise arising from late evening activity so that this, too, would be unnecessary.

Overall Conclusion

15. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed. I will grant a new planning permission without the disputed

condition but substituting another and retaining the relevant non-disputed conditions from the previous permission.

Formal Decision

16. I allow the appeal and grant planning permission for the erection of a two storey building with 3no. retail units on the ground floor with 5 flats above and associated car parking at the former petrol filling station and service station, Durham Road, Stockton-on-Tees in accordance with the application Ref 04/2373/FUL dated 20 July 2004, without compliance with condition number 7 previously imposed on planning permission Ref 04/139/FUL dated 2 April 2004 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition:

- 1) The retail premises hereby permitted shall not be open for business outside the following times: 06.00 – 21.30.



Inspector