

**Borough Green**

**28 January 2019**

**TM/19/00199/FL**

Borough Green And  
Long Mill

Proposal: Section 73 application for the removal of condition 6 (opening hours) pursuant to planning permission TM/83/10931/FUL (Redevelopment of Petrol Filling Service Station, including erection of new sales building and canopy)

Location: Brackenhill Service Station 82 - 106 Maidstone Road Borough Green Sevenoaks Kent TN15 8HG

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**1. Description:**

1.1 Temporary planning permission was granted on appeal to use this petrol station on a 24 hour basis for a one year trial period. This application seeks the removal of the opening hours condition to allow the petrol station to be open for 24 hours on a permanent basis. In imposing the temporary planning permission, the Inspector noted that the use would not cause any material harm to the living conditions of surrounding properties and that there would be a positive contribution to the economy of the locality. The imposition of the one year temporary condition was in order to give an opportunity to reconsider the matter in light of the actual experience of the operation of the premises and to enable the Council to monitor the position.

1.2 In support of the application, the planning agents have submitted the following information:

- They state that the site has been used as a safe and successful operation for almost a year and a new noise impact assessment has been undertaken to determine the impact of noise as a result of the 24 hour opening; the report concludes that the use would not give rise to undue noise. The updated report also showed that the noise from the PFS was much lower than the original noise assessment – there were 28 transactions during one overnight period, with a maximum of 6 in any 15 minute period, whereas the original assessment assumed 15 transactions in any 15 minute period;
- There has been only one noise complaint to Environmental Health made in February 2018: this related to the air tower that was in use past midnight. The machine was subsequently taken out of use past 10pm each night to address this issue and prevent re-occurrence;
- Additional measures have been made to ensure that customers respect local neighbours including: an A4 poster asking to respect neighbours; reducing tannoy volume level to “night level”, and reducing night hatch volume level;

- Inspector concluded that lighting would not cause light pollution when considering the 2017 appeal;
- 24 hour use of the petrol station assists with the local economy of the area and meets the tests of sustainable development as set out in the NPPF.

**2. Reason for reporting to Committee:**

- 2.1 At the request of Cllr Perry in order that the amenities of surrounding properties can be reconsidered

**3. The Site:**

- 3.1 Brackenhill Service Station is located on the south side of Maidstone Road within the Rural Service Centre of Borough Green. There is a car sales/repair/servicing garage immediately to the west; residential properties are located to the south along Normanhurst Road, to the east and to the north of the site (on the opposite side of Maidstone Road).

**4. Planning History (relevant):**

TM/17/00908/FL	Refuse (allowed on appeal)	26 May 2017
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Section 73 application for 1 year trial of 24 hour operation being a variation of condition 6 (opening hours) of planning permission TM/83/10931/FUL  
(Redevelopment of Petrol Filling Service Station, including erection of new sales building and canopy)

**5. Consultees:**

- 5.1 PC: Objections Night time noise pollution causes serious disturbance to residents particularly in Normanhurst Road and adjacent roads.
- 5.2 KCC (H+T): No objections
- 5.3 Private Reps 37+ site and press notices: 37/0X/4R (including Fairseat Residents Association and a log of noise disturbance from a local resident)/1S

*Objections summarised as follows:*

- Rubbish generated by the Petrol Station is a nuisance;
- Noise more noticeable at night with customers shouting across the forecourt and vehicles speeding away;
- No need for a 24 hour petrol station in the area as other petrol stations nearby;

- Residents in Borough Green deserve peace during the night as suffer enough noise during the day with endless traffic;
- Consider more than one complaint has been made to Environmental Heath as they have made repeated complaints about waste collection, deliveries, floodlights, air pressure machine, night use of tannoy – all of these have resulted in disturbed sleep;
- Noise report is misleading – there was a more extensive report in 2010 and this report is only 2 nights – does not address the difference between road noise and forecourt activity – comments that existing residents are already exposed to high noise levels;
- There is no shielding of lights from the forecourt into nearby bedroom windows – the use of black out blinds affect physical and mental health;
- Constantly breaching condition regarding no deliveries between 2300 to 0700 – incidence and nature of these breaches reflects the applicant's attitude to neighbouring residents i.e. take action only when a complaint is transmitted by the authorities.

Support summarised as follows:

- Not noticed a difference in noise levels and it is useful having access to a shop 24 hours a day

## 6. Determining Issues:

- 6.1 The relevant development plan policies are CP1 and CP24 of the TMBCS and SQ1 of the MDE DPD. These policies require development to be well designed and through its scale, density, layout, siting, character and appearance to respect the site and its surroundings. It should also protect, conserve and where possible enhance the character and local distinctiveness of the area, including the prevailing level of tranquillity. Policy SQ6 of the MDE DPD regarding noise is no longer applicable as it conflicts with the policies contained within the Framework (this has been the case since 2012).
- 6.2 In paragraph 180 of the NPPF, the issue of noise and light pollution is addressed, stating:

*Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:*

- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life60;
- b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and
- c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

- 6.3 This is a material planning consideration in the determination of this application, as is the Inspector's previous decision. The Inspector, when allowing the use of this Petrol Filling Station for the temporary period, concluded that a 24 hour use of this site would not result in any material harm to the residents of the surrounding properties and there would be a positive contribution to the economy of the locality. However he considered that a temporary permission for a one year period would assist in discovering the exact impact of this more intensive use on the amenity of nearby residents.
- 6.4 The Planning Practice Guidance (PPG) sets out 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 or where it is expected that the planning circumstances will change in a particular way at the end of that period. It goes on to state 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. It is within this context that my assessment follows.
- 6.5 It is acknowledged that the nature of a Petrol Filling Station means that noise generated will vary from day to day. The submitted, updated, noise survey concluded that the use of the site on a 24 hour basis would not result in a noise environment that would not have any negative adverse impact on neighbouring residents. Despite comments from neighbours that the noise monitoring had not occurred over a sufficient time period, the Council's Environmental Protection Team agrees with the findings of this report.
- 6.6 This particular Petrol Filling Station is located in close proximity to nearby residential properties on all sides. The use of the site for 24 hours a day has been trialled for a year during which time the complaints received have been minimal, with only one nearby resident making complaints. Moreover, I am aware that the Council's Environmental Protection Team have met with the Operators to discuss any issues that have arisen over the last year and these have been addressed.
- 6.7 With regard to light pollution and the comments made regarding the shielding of lights, it is acknowledged that the existing lighting of this Petrol Filling Station is not controlled by condition. I accept that the Petrol Filling Station needs to be

illuminated for safety and security reasons if it were open on a 24 hour basis but the Inspector commented in his decision that he did not consider that the current layout and arrangement of the lights would result in any material harm to the living conditions of the adjoining occupiers. The subsequent light pollution from a 24 hour use on the residential amenities of these nearby properties is therefore considered to be acceptable.

- 6.8 Remaining representations raised by the PC and local residents, such as rubbish and general noise on the forecourt, cannot be conditioned as they are operational issues but nevertheless an informative is suggested encouraging the Operators to ensure proper management procedures are in place.
- 6.9 Given the previous clear analysis of the Planning Inspector, and subject to conditions to control the times of use regarding deliveries, tyre pressure machines and waste collections to address the issues that have occurred over the last year, I consider that the permanent continuation of the 24 hour use of this site would be acceptable. With the above assessment in mind, I consider that the proposal is acceptable in terms of policies CP1 and CP24 of the TMBCS, policy SQ1 of the MDE DPD, and the relevant paragraphs of the NPPF. As such, the following recommendation is put forward.

## 7. Recommendation:

- 7.1 **Grant planning permission** in accordance with the following submitted details: Location Plan dated 28.01.2019, Noise Assessment dated 28.01.2019, Letter dated 28.01.2019, subject to the following conditions:

### Conditions:

1. The sales building shall not be accessed by customers outside the following hours 0700 to 2300hrs  
Reason: To protect the amenities of the dwellings surrounding the site.
2. All trade effluents, including vehicle wash water, shall be discharged to the foul sewer.  
Reason: To prevent pollution of any water source.
3. All surface water liable to contamination by oil shall be discharged via a suitable three-stage petrol/oil interceptor.  
Reason: To prevent pollution of any water source.
4. The wall and fence on the southern boundary of the site on the plans approved under planning reference TM/17/00908/FL (appeal reference APP/H2265/W/17/3184809) shall be maintained at the heights shown on the approved plans to the satisfaction of the Local Planning Authority and the

aforementioned fence shall be of close boarded design and not less than one inch thick timber.

Reason: To protect the amenities of the dwellings to the south of the site.

5. No deliveries or waste collections shall occur outside the following hours 0830 to 1900 hrs on any day.

Reason: To protect the amenities of the dwellings surrounding the site.

- 6 The tyre pressure machine on the garage forecourt shall not be operational outside of the following hours 08.30 to 1900 hrs on any day.

Reason: To protect the amenities of the dwellings surrounding the site

**Informative:**

- 1 The applicant should within reasonable means ensure that a proper noise management procedure is in place and adhered to at all times to reduce the potential of any negative noise impact on residential properties. Signs advising customers/patrons to be mindful of neighbourhood disturbance and to use the services in a quiet manner should be displayed.

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