

Agenda Item A8	Committee Date 27 July 2009	Application Number 09/00506/VCN
Application Site BP Filling Station Scotforth Road Lancaster Lancashire	Proposal Variation of condition 2 on application 87/00325 to permit longer opening hours of filling station	
Name of Applicant Mr Inayat Munshi	Name of Agent Ms Susan Hughes	
Decision Target Date 21 July 2009	Reason For Delay	
Case Officer	Mr Martin Culbert	
Departure		
Summary of Recommendation	Approve, 1 year temporary permission	

1.0 The Site and its Surroundings

- 1.1 The site is in the existing service station which fronts onto the eastern side of Scotforth Road. The Bowling Green Public House and Booth Supermarket lie to the south to the site but otherwise it is almost completely surrounded by residential development. The main service station building, which also contains a shop and an automated teller machine, is situated alongside the southern boundary of the site. Jet wash, vacuum and air facilities are set back from the road in the centre of the site beyond the fuel pump forecourt area. A car wash building is situated adjacent to the northern boundary of the site, next to the nearest dwelling.

2.0 The Proposal

- 2.1 This proposal is a full application to modify the opening hours of the service station to 06:00 to 23:00 Monday to Sunday for a trial period of 12 months. The currently approved opening hours of the service station are restricted by condition 2 of permission 87/0325 to 07:00 to 23:00 Monday to Saturday and 08:00 22:00 on Sunday.

The hours of use of the jet wash are currently restricted by a different condition to 08:00 to 18:00 and this is to remain.

The hours of use of the car wash are presently unrestricted within the present opening hours of the site. These would remain unchanged.

Members should note that there is a related application on the agenda, Application no. 09/00507/VCN. This also seeks to amend the hours of opening at the site to accord with the current submission. This is because the hours of opening were reconfirmed in a later application in 2003 which covered other developments at the site and for administrative reasons it is necessary to ensure that any new consents are consistent with all previous decisions. While it is necessary for Members to be aware of this background the two applications are considered separately.

3.0 Site History

3.1 The site has a very long and complex history of which very little is of direct relevance to the consideration of this application.

Planning permission was originally granted for the development of the site as a petrol filling station in 1979 under application 79/1024. This restricted opening hours to 07:30 to 22:00 Monday to Sunday.

In 1987 permission was granted to extend the opening hours to 07:00 to 23:00 Monday to Saturday and 08:00 to 22:00 on Sunday.

In 1993 an application 93/00711, to extend opening to 24 hours was refused on the grounds that it would cause unacceptable disturbance and loss of amenity to the residents of nearby dwellings.

In 2003 an application 03/01157/FUL for a jet wash facility was approved subject restricting its hours of use the 08:00 18:00 Monday to Sunday.

In 2006 an application 06/00699/FUL, to extend opening to 24 hours was refused for the same reasons as the previous similar application.

In 2007 a subsequent appeal was dismissed by the Inspector for the following reason:-

“I conclude on balance that continuing to open the service station on a 24 hour basis as proposed would be likely to unacceptable harm the living conditions of neighbouring residents, with particular reference to noise and disturbance late at night and in the early hours of the morning, contrary to the LP Policy EC6 and the aims of PPG24 and PPG4. Furthermore, I conclude that condition no 2 is reasonable and necessary as a means of safeguarding the living conditions of those residents and I am also satisfied that it meets the other tests of conditions set out in Circular 11/95”.

4.0 Consultation Responses

4.1 The following responses have been received from statutory consultees:

Statutory Consultee	Response
Chief Environmental Health Officer	No objection to 12 months temporary permission
County Highways	No objection

5.0 Neighbour Representations

5.1 Seven letters have been received from residents in the local area objecting to the proposal on the grounds of increased noise and disturbance from cars, deliveries, use of the air machine. HGV parking on the highway while drivers use the shop at unsocial hours is a nuisance and it is suggested that there is no need for 6 am opening as there is little traffic at that time.

General noise and disturbance has increased dramatically in recent times following the closure of Toll Bar filling station and the introduction of cycle lanes on the A6 which have reduced the carriageway width to one lane, causing frequent queues past the filling station entrances and difficulties for people entering and leaving the site.

6.0 Principal Development Plan Policies

6.1 The preamble to Policy EC15 of the Lancaster District Local Plan (Business and Industrial Development Outside Employment Areas), states that -
“Whilst most employment development will take place on identified sites, some services uses can satisfactorily be located in residential areas. Some business located outside employment areas may also need to expand and appropriate employment development outside employment areas will be allowed where compatible with other policies of the Local Plan.

However it also goes on to advise that-

"Where proposal for employment use are located close to houses, residential amenity will be the primary consideration".

The policy itself states that:

"Business uses will be permitted outside established employment areas provided that there will be no significant impact on the amenities of adjoining residents and businesses."

7.0 Comment and Analysis

7.1 Detailed below are summary extracts from a statement submitted by the applicant fully explains the application proposed and its relationship to application 09/00507/VCN. This level of detail is necessary to properly understand the proposal and their background.

Careful consideration appears to have been given to the Inspector's Decision in respect of the application 06/00699/FUL for the 24 hour opening. The Inspector's Decision Letter comments "I conclude on balance that continuing to open the service station on a 24 hour basis as proposed would be likely to unacceptably harm the living conditions of neighbouring residents, with particular reference to noise and disturbance late at night, and in the early hours of the morning....."

In the light of such clear cut comments the applicants have realised that further applications for 24 hour use are most unlikely gain the support of the Council. They have therefore sought to investigate whether a more modest extension of the hours of opening may be acceptable. To this end they have appointed noise consultants to examine the impacts of opening an hour earlier in the morning, i.e. at 6 am, together with identical Sunday opening hours of 6 am to 11pm.

The applicants Acoustic Consultants undertook surveys of the subject site to consider the noise implications associated with the proposed hours of opening 06:00 to 23:00 hours Monday to Sunday. The results of that survey and the Acoustic Consultants recommendations are included within the Noise Assessment Report which accompanies the application. That report has also been the subject of discussions with the Councils Environmental Health Officer, and it is understood that the recommendations set out at the end of this report accepted by the Environmental Health Service.

The Acoustic Consultation Report concludes that there would be little adverse environmental impact from these longer opening hours and this is used to support the proposal for longer opening hours as requested. The applicants do, however recognise the controversial nature of their request and have applied for a temporary 12 month consent in order for the Council to gauge the impacts, adverse or otherwise, of the longer opening hours after this period and review the decision if necessary. If members wished to support this application it is considered that such a decision accords entirely with government advice regarding the use of temporary planning permissions.

On the basis of this evidence the applicants have formally requested that condition 2 of Application No.01/87/00325 is amended to allow the station to open between the hours of 6am to 11pm Mon – Sunday for a temporary period of 12 months.

Officers have considered this proposal at length. It has to be taken into consideration that the station occupies a prominent site on the busy main road into the City Centre. Background noise and disturbance is inevitably higher than more suburban locations. The Consultants conclusions regarding potential disturbance from noise are persuasive and are not contested by the Environmental Health Officer. With the added safeguard of a temporary consent it is difficult to find convincing reasons for opposing this application

The applicants Acoustic Consultant also considered the impacts of the car wash and the later approved jet wash. The jet wash already has controls over the hours of operation (8am to 6pm) and there is no intention to change these. The car wash which was approved much earlier currently has no controls over its operation. Given this background and the fact that it is an enclosed structure, and therefore a quieter operation, it is considered reasonable to seek to impose controls in line with the original hours of opening i.e. 7am to 11pm Monday to Saturday and 8am to 10 pm Sunday.

The acoustic consultants report then goes onto consider the impact of deliveries to the site but this is dealt with in the following agenda application which seeks to modify the conditions attached to Application No. 03/01157/FUL

8.0 Conclusions

- 8.1 The Planning Committee made it very clear in dealing with the last application that it did not consider that this was an appropriate location for a 24 hour filling station given the proximity of other residential property, notwithstanding its main road position. The appeal Inspector clearly supported this decision. Any relaxation from this stance is clearly a matter of judgement as to what is reasonable. To this extent the applicant has gone to some lengths by employing a consultant to examine the implications of a modest extension of hours at the site and offered acceptance of a temporary consent to monitor the impact.

Having regard to these factors it is considered that the proposal is acceptable and permission is recommended for a temporary twelve month period.

Recommendation

That Planning Permission **BE GRANTED** subject to the following conditions:

1. This permission relates to the temporary modification of Condition no 2 of Permission 87/0325 only and does not purport to grant consent for any other matters.
2. Condition no 2 of Permission 87/0325 is hereby temporarily modified to read:
The petrol filling station shall only open between 06:00 and 23:00 hours Monday to Sunday, and at no other time without the express consent of the Local Planning Authority. Such hours of operation shall be for a limited period, being the period of twelve months from the date of his Decision. At the end of that period, the opening hours of the petrol filling station shall return to between 07:00 and 23:00 hours Monday to Saturday and 08:00 to 22:00 hours on Sundays and Bank Holidays, and at no other time without the express consent of the Local Planning Authority. Furthermore the hours of use of the associated enclosed car wash shall be limited to 07.00 to 23.00 hours on Monday to Saturday and 08.00 to 22.00 hours on Sundays and bank holidays.

Human Rights Act

This recommendation has been reached after consideration of the provisions of The Human Rights Act. Unless otherwise stated in this report, the issues arising do not appear to be of such magnitude to override the responsibility of the City Council to regulate land use for the benefit of the community as a whole, in accordance with national law.

Background Papers

1. None