

5f 3/12/1278/FO – Removal of condition of planning reference 3/97/1447/FO to allow the petrol filling station to operate 24 hours a day, 7 days a week at Tesco Stores Ltd, Lancaster Way, Bishop’s Stortford, CM23 4DD for Tesco Stores Ltd

Date of Receipt: 27.07.2012

Type: Full – Minor

Parish: BISHOP’S STORTFORD

Ward: BISHOP’S STORTFORD SILVERLEYS

RECOMMENDATION:

That planning permission be **GRANTED** subject to the following condition:

1. Three year time limit (1T12)

Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and the saved policies of the East Herts Local Plan Second Review April 2007 and in particular policy ENV1), and the National Planning Policy Framework. The balance of the considerations having regard to those policies is that permission should be granted.

_____ (127812FO.SE)

1.0 Background:

- 1.1 The site is the petrol filling station adjacent to the Tesco retail store to the north of Lancaster Way on the Bishop’s Park Estate, as shown on the attached Ordinance Survey extract.
- 1.2 The applicant seeks to remove condition 1 of planning reference 3/97/1447/FO to allow petrol filling station to operate 24 hours a day, 7 days a week.
- 1.3 The applicant states that the existing petrol filling station operates from the hours of 07:00 to 22:30 Monday to Saturday and 08:00 to 20:00 on Sundays, in accordance with permission granted under application 3/97/1447/FO. The adjacent food store currently operates 24 hour opening from 06:00 Monday to 24:00 Saturday, and 10:00 to 16:00 on Sundays. There are no planning conditions associated with the store opening hours. The applicants therefore propose the variation of the

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condition of 3/97/1447/FO to allow 24 hour opening of the petrol station in line with that currently available at the associated food store.

2.0 Site History:

2.1 Planning permission was granted for the store and petrol filling station in July 1990 under 3/0801/90/FP. Condition 10 of that permission stated:

- The filling station shall not be open between the hours of 8:00 pm and 8:00am, nor shall any advertisement be illuminated between those hours and the majority of the forecourt lighting shall not be switched on between those hours.

2.2 In April 1991, an application was made by Tesco to change the opening hours of the petrol filling station, under 3/0624/91/FO. The application was granted planning permission and condition 1 stated:-

- The petrol filling station shall not be open for business except between the hours of 7:30 am to 8:30pm on Mondays to Thursdays, 7:30 am to 10:00pm of Fridays and 7:30am to 8:30pm on Saturdays.

2.3 In October 1997, an application was made by Tesco to change the opening hours of the petrol filling station, under 3/97/1447/FO. The application was granted planning permission and condition 1 stated:-

- The petrol filling station shall not be open for business except between the hours of 7:00 am to 10:30pm on Mondays to Saturdays and 8:00am to 8:00pm on Sundays.

3.0 Consultation Responses:

3.1 The Environmental Health Unit does not wish to restrict the grant of permission and initially emphasised that this store is already open nearly all of the time, and traffic into and out of the site is already the main cause of noise from the site as a whole. Some of these vehicles are there just for the store (deliveries and customers), some just for the fuel, and some for both purposes. Petrol filling stations are always either next to a busy road or busy supermarket so it is impossible to just measure the noise associated with the filling station alone. Microphones on sound level meters pick up all incoming noise. Noise from vehicles approaching or having left the site on public roads adds to ambient noise, but these cannot be separated from vehicles that are simply passing by the site. Fuel pumps themselves are fairly quiet.

3.2 The applicant's acousticians say they have measured noise from filling

stations in the past and use this as proxy data for this site, but for the reasons outlined above this data must be treated with caution. They say that noise levels at night from filling stations are on average 47dB. The Environmental Health Officer visited a large 24/7 Asda store / filling station in Luton and recorded an average noise level adjacent to the filling station of 51.9dB (23:37 – 00:37hrs), but most of this noise was from vehicles driving by and / or driving to the store. Hardly any vehicles used the filling station after midnight, and store only traffic also dropped off markedly, so if the Officer had stayed out all night he would probably have recorded an overall average of approximately 47dB alongside the filling station.

3.3 The Officer comments further that perhaps a more appropriate way of evaluating this proposal would be by carrying out an analysis of numbers of customers visiting other existing 24/7 filling stations, ideally split into numbers of customers who also use the store and customers who only visit to refuel their vehicles. Such data would need to be separated into separate time periods such as 00:00 – 06:00 / 06:00 – 12:00 etc.

3.4 The Officer considers that the salient points of the applicant's Noise Survey Report are as follows:

- Sleep is likely to be disturbed if the average noise level in the bedroom is over 30 decibels, expressed as the LAeqT (see page 8 of the report). Most bedrooms in the UK are as quiet as this overnight, with a window ajar. Typically 27dB – 30dB (8 hour night time average);
- A level of 30dB indoors equates to a level of approximately 43 - 45dB just outside the bedroom (a wall with an open window in it reduces sound by 13 - 15dB);
- Because sound decays with increased distance according to a defined mathematical formula it is possible to calculate how loud a sound will be at any distance from the source of the sound;
- At a distance of 45 metres from a sound source (i.e. the stated distance between the filling station and the nearest noise sensitive premises in this case) the reduction of sound due to distance is - 13dB;
- Overnight ambient noise levels at the nearest residential premises in Knights Close are already very high (the report says 62dB), so residents' sleep is already probably disturbed unless they close their

windows.

- 3.5 If a filling station typically emits an average of 47 - 52dB at night this will only measure 34 - 39dB 45 metres away, in the absence of other extraneous sound. This is much less than the average level that must not be exceeded to ensure restful sleep (45dB outside an open bedroom window), which should reassure all concerned.
- 3.6 In this particular case local residents probably will not notice most of the traffic noise from the filling station at night because it will be drowned out by the existing ambient night time noise (mainly general road traffic and store - only related traffic) in their neighbourhood. However they may notice the occasional loud bang of a car door being slammed or shout from customers using the filling station but this will depend on the type of customers likely to be attracted to this particular filling station.
- 3.7 In this case there is a small shop / till point at the filling station. If this is allowed to stay open 24/7 this may or may not attract noisy youths, which might vary from year to year depending on local demographics and the weather. Perhaps the applicant just wants the till to remain open overnight via a security window? The main store is already open 24/7 so perhaps the potential for this problem at the filling station is slight? This issue is not referred to in the acoustician's report.
- 3.8 County Highways does not wish to restrict the grant of permission and commented that the application was subject to pre-application consultation with the agent. The proposal will not have a detrimental impact in highway terms.
- 3.9 The Police Licensing Officer for Hertfordshire Constabulary has objected to this proposal. He has commented that Tesco at Lancaster Way, Bishop's Stortford is situated on the edge of a large residential area named Bishop's Park. This is an area of predominantly private housing and is serviced by pedestrian walk-throughs. The Bishop's Park estate has a large park area consisting of a children's playground, a cricket pitch and a large area of fields. This in turn leads to the Thorley Estate at which there is situated a rival supermarket. This supermarket also has a petrol station; this does not have an overnight authority. A concern is that if this application is successful for Tesco there may be an increase in incidents of crime, disorder and anti-social behaviour across the areas of Bishop's Park and Thorley. Residents report to Police incidents of wheelie bins being kicked over and litter and broken bottles left in this area from groups of youths. No arrests have been made in relation to these matters. In the town of Bishop's Stortford there is no Petrol Station, shop or off-license open overnight and they are concerned that if Tesco succeed in their

application they may become a magnet for a criminal element wishing to use the facilities of both the forecourt and shop.

3.10 The Crime Prevention Design Officer of the Hertfordshire Constabulary has commented that the police do have substantive concerns regarding this site becoming a potential crime magnet. In order to mitigate this, and to comply with East Herts Policy ENV3 - Planning Out Crime New Developments - the Police Design Service request that should this be granted planning permission it must be conditioned that the entrance and exit of the store off Oriel Way is covered with an Automatic Number Plate Reading camera. If this request is granted then the Police Licensing Officer is prepared to withdraw his original objection.

4.0 Town Council Representations:

4.1 Bishop's Stortford Town Council objects to the proposal and comments that it will be detrimental to the quality of life of local residents. Members [of the Town Council] agreed the importance of the condition.

5.0 Other Representations:

5.1 The application has been advertised by site notice and neighbour notification.

5.2 13 letters of representation have been received which can be summarised as follows:

- Noise nuisance from the site;
- Light pollution from forecourt lights and signage;
- Increase in traffic accessing the site;
- Existing anti-social behaviour will be exacerbated;
- The reasoning behind the original condition has not changed;
- The noise survey was undertaken during a quiet evening period and is not representative;
- No need for a 24/ 7 petrol filling station;
- A 24/ 7 alcohol license has recently been refused due to noise and disturbance from the store;
- It would exacerbate existing litter and parking problems within the adjacent residential estate.

6.0 Policy:

6.1 The relevant 'saved' Local Plan policy in this application includes the

following:

- ENV1 – Design and Environmental Quality

6.2 The National Planning Policy Framework is also relevant in the consideration of the application.

7.0 Considerations:

- 7.1 The main issue in this case relates to the impact that the extended opening hours of the filling station would have on residential amenity.
- 7.2 The applicants have submitted a Noise Assessment with the application. Existing noise levels were measured overnight between 17th and 18th July 2012, at the location adjacent to the northern boundary of the garden of no. 16 Knights Close, which is one of the two closest dwellings to the petrol filling station. The measurement location is approximately 70 metres from the forecourt of the filling station.
- 7.3 The Noise Assessment sets out that at the measurement location, LA_{max} values of over 80 dB were measured regularly throughout the night (noise from passing vehicles). The Noise Assessment sets out typical noise levels for forecourt activity. Taking into account these typical noise levels and the distance attenuation (the change in noise levels taking into account the distance of properties from the petrol filling station) it was concluded that, when comparing the predicted noise levels to guideline values, all are below the level necessary for a good noise climate during the night i.e. the predicted noise levels are below the existing ambient noise level, and they are below the World Health Organisations guideline values for noise levels. The Noise Assessment therefore concludes that noise from the proposed additional hours of operation of the petrol filling station will result in no significant harm and would be unlikely to be noticeable at the nearest noise sensitive property.
- 7.4 The submitted Noise Assessment has been assessed by the Council's Environmental Health Officer who does not raise any objections to the application. They comment that the predicted noise levels emitted from the petrol filling station (having regard to the nearest residential property) is much less than the average level that must not be exceeded to ensure restful sleep. Furthermore, taking into account the ambient noise levels, they comment that in this particular case local residents probably won't notice most of the traffic noise from the petrol filling station at night because it will be drowned out by the existing ambient night time noise (mainly general road and store only related traffic).

- 7.5 Taking into account the above considerations, and in particular the comments of the Council's Environmental Health Officer, it is considered that the proposed increase in hours of operation of the petrol filling station would not lead to an unacceptable increase in noise levels from the petrol filling station that would be harmful to the amenity of local residents, or warrant the refusal of the application.
- 7.6 The concerns of local residents in respect of anti-social behaviour that they currently experience (which, they comment, is related to the use of the site) have been noted. Members will note that Hertfordshire Constabulary have commented on the application and express their concern that this proposal may increase incidents of crime, disorder and anti-social behaviour across the areas of Bishop's Park and Thorley. They do comment, however, that no arrests have been made in relation to these matters. The comments of the Hertfordshire Constabulary conclude that, if permission is granted, they are concerned that the site may become a magnet for a criminal element wishing to use the facilities of both the forecourt and the shop. They do not however set out any evidence as to why this may be the case.
- 7.7 Officers have no reason to question the concerns raised by local residents in this respect. However, from a planning point of view, the determining issue in relation to this matter is whether the increase in opening hours of the petrol filling station will result in an increase in the amount of anti-social behaviour and/or noise disturbance in the area such as to warrant refusal of the application.
- 7.8 No evidence or convincing argument has been put forward to show why the proposed increase in opening hours of the petrol filling station would necessarily result in an increase in anti social behaviour in the surrounding area. The comments from the Police and local residents do not identify how any current anti social behaviour relates to the operation of the existing store and/ or petrol filling station, nor, how the increased opening hours of the station itself would worsen that situation. No evidence is available of any link between the use of the petrol filling station and anti-social behaviour.
- 7.9 The store is currently open 24 hours a day (apart from on Sundays), and this application would align the opening of the petrol filling station with these hours (apart from on Sundays when it would be open longer than the store). This application would therefore only result in an increase in activity on the wider site between the hours of 16:00 on Sundays and 06:00 on Mondays. Taking this into account, and the lack of any clear evidence that the proposal would result in an increase in anti-social behaviour, Officers do not consider that the increase in the hours of

opening of the petrol filling station would result in such an increase in the amount of anti-social behaviour that would warrant refusal of the application. Other legislation is, of course, available to remedy such behaviour where it does occur, as now.

- 7.10 Hertfordshire Constabulary has requested that a condition be imposed on any approval that requests the entrance and exit of the store to Oriol Way to be covered by an Automatic Number Plate Reading camera. However, Circular 11/95 states that conditions should only be imposed where, inter-alia, they are necessary to make the development acceptable and are related to the particular development proposed. In view of the lack of clear evidence that the increase in the hours of opening of the petrol filling station would lead to anti-social behaviour at the superstore site, Officers consider that such a condition would not be necessary or justified and therefore fails to meet the tests of Circular 11/95. The suggested condition is not therefore recommended by officers.
- 7.11 Concerns have also been raised by local residents that the proposal would result in an increase in light pollution and traffic generation. Whilst it is acknowledged that an increase in the opening hours of the petrol filling station will result in the lights on the forecourt being operational throughout the night. However, taking into account the distance between the petrol filling station and the nearest dwellings, and that the lighting for the store's car park is operational six evenings a week, it is the view of Officers that the level of light spillage from the site would not result in significant harm to the amenities of nearby residential properties to warrant refusal of the application.
- 7.12 The submitted Traffic Assessment sets out that the extended opening hours would result in a 4% increase in traffic each day during those additional hours when the petrol filling station is opening. Not taking into account the noise implications of this increase in traffic (which have been considered earlier in this report), it is considered that the increase in traffic accessing the site is not significant and would not have any impact on highway capacity. The Highway Authority do not raise any objections to the application on these grounds.

8.0 Conclusion:

- 8.1 For the reasons set out above Officers do not consider that there is any clear evidence that the proposal will result in any significant harm to the amenities of local residents or any other related planning matters. It is therefore recommend that planning permission is granted.