

Urgent Non-Executive Decision taken by the Chief Executive under Delegation 24

24/04/2020

Committee that would usually have taken the report – Planning Committee

Application:	19/02869/PVAR3 for planning permission By: Zenith Planning And Design on behalf of Fibreshore Ltd For: Variation of condition 4 of planning permission reference 14/00287/PFUL3 to allow the petrol filling station and shop to operate 24/7, and to allow the operation of the automatic car wash to restricted hours and to allow the jet wash to operate at alternative hours to the 2014 permission without enclosure	
Director(s)/ Corporate Director(s):	Director of Planning and Regeneration	Wards affected: Radford
Report author(s) and contact details:	Rob Percival, Area Planning Manager Rob.percival@nottinghamcity.gov.uk	
Other colleagues who have provided input:	Jenny Curry, Senior Principal Planning Officer Richard Bines, Solicitor	
Summary of issues:		
<p>Protecting the City's economy is one of the 3 themes that Government expects Councils to focus their resources on during this crisis. The Planning System is a key contributor to the local economy and it is vital that we continue to operate our decision making. The Planning Directorate has moved successfully to remote working and the planning process is operating largely BAU. Planning applications continue to be received and decisions made under the scheme of delegation. It has not proved possible to establish a process for holding a virtual Planning Committee meeting for the decisions required in April. Applicants are rightly expecting their applications to be determined and to be unable to do so would seriously harm the City's reputation of being proactive and 'open for business' through this critical time. It is also vital that all opportunities to enable development and regeneration to come forward as speedily as possible are taken.</p> <p>This application concerns a longstanding enforcement matter that has generated significant local interest, hence its referral to Planning Committee. A decision on the application is critical for the applicant to help secure their business, and for neighbouring residents to safeguard their residential amenity.</p>		
Recommendation(s):		
1	GRANT PLANNING PERMISSION subject to the conditions substantially in the form of those listed in the draft decision notice at the end of this report but with power to determine the final details those conditions being delegated to the Director of Planning and Regeneration	

1 Background

- 1.1 The application relates to a petrol filling station on the west side of Lenton Boulevard between the junctions of Derby Road and Ilkeston Road. The site extends to 0.25 hectares and comprises a kiosk/retail unit with forecourt canopy covering the fuel pumps, a detached building currently being used as an automatic car wash and an unenclosed jet wash facility to its side. The site is bounded by the Marcus Garvey Community Centre and the City Council's Lenton Business Centre to the south, the two storey dwellings on Stansfield Street to the west, St Paul's Catholic Church to the north and two storey dwellings on the opposite side of Lenton Boulevard to the east.
- 1.2 Planning permission was granted under reference 14/00287/PFUL3 for the re-use of petrol filling station with extensions and alterations to the existing buildings, provision of new petrol pumps and associated facilities and activities (car washing, valeting, tyre sales and air and water facilities). As part of this permission the following hour restrictions were imposed:

The use of the petrol station shall only be permitted between the hours of 0700 and 2300 on any day.

Additionally, the following time restrictions were applied to the operation of each respective activity on the site:

- Air compressor (which is part of the air/water facility) - Monday to Friday 0700-2000hrs, Saturday, Sunday / Bank Hols 0830-2000hrs

- Vacuum facility - Monday to Friday 0700-2000hrs, Saturday, Sunday / Bank Hols 0830-2000hrs

- Hand car wash (on western boundary) - Monday to Saturday 0830-1730hrs, Sunday and Bank Hols 0900-1630hrs

- Hand valet (on western boundary) - Monday to Friday 0800-1930hrs, Saturday 0900-1900hrs, Sunday and Bank Hols 0900-1700hrs

- Jet wash (restricted to the designated enclosed bay) - Monday to Friday 0800-1930hrs, Saturday 0900-1900hrs, Sunday and Bank Hols 0900-1700hrs

- 1.3 The 2014 planning permission was implemented. Since its implementation the hand car wash and valeting have ceased at the site, and the building formerly used for tyre fitting has been altered to provide an automatic car wash (the purpose for which it was originally built).

2 Details of the proposal

- 2.1 Permission is sought to vary the restrictive hours in place for the petrol filling station and shop so that it can open 24 hours a day and to allow the jet wash to operate at different hours to those imposed in 2014, without the enclosure previously agreed. Permission is also sought for the operation of the automatic car wash to restricted hours. It is understood that the petrol filling station has in fact been operating 24 hours since October 2016, served from the shop via a hatch. The applicant has explained that this was initially for security reasons as a result of a number of burglaries, attempted break-ins and vandalism, but it was discovered that there was a significant demand for trade

between 2300 and 0700 from taxi drivers, delivery drivers, shift workers and QMC staff etc.

2.2 The Applicant initially sought permission for the automatic car wash to operate 6am to 11pm (Monday to Friday) and 7am-10pm (Saturday and Sunday), and for the jet wash to operate 6am to 10pm (Monday to Friday) and 7am-10pm (Saturday and Sunday). The application was advertised on this basis.

2.3 Through negotiations the applicant has now agreed to the following times of opening:

Automatic Car Wash

Monday – Friday – 8.30am to 9pm

Saturday – 9am to 9pm

Sunday and Bank Holidays – 9am to 6pm

Jet Wash

Monday – Friday – 8.30am to 9pm

Saturday – 9am to 9pm

Sunday and Bank Holidays – 9am to 6pm

2.4 These new operating times for the jet wash and automatic were not re-advertised as they are less than those originally proposed, and as such felt to cause less impact on the surrounding area.

2.5 As detailed below in section 7 (Appraisal), consideration has also had to be given to times of servicing and delivery, and blocking off access to the site.

3 Consultations and observations

Neighbouring Properties:

38 neighbouring properties on Lenton Boulevard and Stansfield Street were notified of the application by letter. A site notice was also displayed.

As a result of this publicity 54 letters of representation have been received, 4 raising objections and 50 in support of the application. A petition with 15 signatures objecting to the proposal has also been received.

The objections raise the following matters:

- Impact that extending opening hours will have on the quality of health and life for neighbouring properties as a result of additional noise and disturbance, particularly at night which could affect the quality of sleep;
- The site has already been operating outside of the permitted hours;
- The proposal will cause additional noise and disturbance in the form of car doors slamming, car radios/music and car engines revving, and also from operating a service hatch;
- The automatic car wash has added to noise and disturbance associated with the site and has been noted to operate at 2am. The lights flash and cause light pollution;
- The petrol filling station is within a residential area;

- Taxi cabs gather at night at the petrol filling station with noise generated by loud talking and music;
- Spray from the automatic car wash and jet wash impacts on neighbours enjoyment of their gardens; and
- The automatic car wash causes noise and disturbance.

Verbal concerns have also been raised in relation to deliveries taking place outside of the current petrol filling station/shop operating times, and the noise associated with such deliveries.

The letters of support raise the following matters:

- The need for a petrol filling station with the services offered at this location;
- Never noticing the petrol filling station causing noise or disturbance in the area; and
- Helpfulness of staff at the petrol filling station.

Additional consultation letters sent to:

Highway Authority: No objections to the proposal.

Environmental Health and Safer Places (EH&SP): Have confirmed that the following would be acceptable in relation to the extended opening hours of the petrol filling station and shop, and the operation of the car washing facilities:

Shop and Petrol Filling Station

No objection to the shop/petrol filling station opening 24/7. EH&SP have not received any complaints with regards to the recent 24/7 operation of the site. It is also noted that no objection is raised with regards the noise assessment submitted with the application.

Automatic Car Wash

The automatic car wash can be provided without doors providing it is operated during the following times:

Monday – Friday – 8.30am to 9pm
 Saturday – 9am to 9pm
 Sunday and Bank Holidays – 9am to 6pm

Jet Wash

The jet wash can be uncovered providing that it is operated during the following times:

Monday – Friday – 8.30am to 9pm
 Saturday – 9am to 9pm
 Sunday and Bank Holidays – 9am to 6pm

Servicing/deliveries

Servicing deliveries and collections should be restricted to the current permitted opening times of the service station, 7am to 11pm. The bread delivery proposed by the applicant

at 5.45am is felt to be too early and would cause noise and disturbance to neighbouring residents.

Chaining-off rear portion of the site

To prevent access to the western portion of the site that is adjacent to the nearest neighbouring residents, a series of chains are proposed to be used between the hours of 2300 and 0700 (see drawing submitted as part of the application).

EH&SP are aware of concerns being raised about taxis parking to the rear of the site and as such would prefer if this area could be chained off earlier, from 9pm, to further reduce noise and disturbance for neighbouring properties.

EH&SP have also advised that should they receive noise complaints in the future with regard to activity at the site, they would also be able to investigate under environmental legislation.

4 Relevant policies and guidance

National Planning Policy Framework (2019):

Paragraph 180 of the National Planning Policy Framework advises that planning decisions should 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 life.

Paragraph 182 of the NPPF sets out the approach to be taken where new development takes place at an existing business. In these instances existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed. Paragraph 183 states that, the focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively.

Aligned Core Strategies (ACS) (2014):

Policy 10: Design and Enhancing Local Identity

Local Plan Part 2 - Land and Planning Policies (LAPP) (January 2020):

Policy DE1: Building Design and Use

Policy IN2: Land Contamination, Instability and Pollution

5 Appraisal

- 5.1 The main issue concerning this application is the impact that the proposed operating hours would have on neighbouring residents in terms of noise and disturbance.
- 5.2 Neither EH&SP or the Planning team have received complaints about the petrol filling station and shop since they began operating 24/7. The complaints both have received have centred on the operation of the automatic car wash. It is also noted that the noise assessment submitted with the application advises that the operation of the petrol filling station kiosk/shop will not cause any increased noise above existing background levels. To conclude on this particular matter, the proposal for the petrol filling station/shop to be open 24/7 is therefore considered to be acceptable in principle, subject to the appropriate restrictions being imposed by condition.
- 5.3 However, as recommended by EH&SP, it is felt that servicing and deliveries to the site should be restricted to the between 7am and 11pm. This would correspond to the current opening hours and, therefore, those which servicing/deliveries can currently take place. Servicing and deliveries will be controlled through the use of a condition.
- 5.4 Chaining-off access to the western part of the site would further ensure that noise levels are kept to a minimum in the most sensitive area of the site. It would also ensure that activity cannot take place to the rear of the petrol filling station/shop, which has caused concern with local residents who have advised that taxi drivers have congregated in this area previously. Rather than aligning this requirement with the hours of use for the petrol filling station/shop, the applicant is proposing that this measure commence an hour earlier at 10pm. This chaining-off will be secured by condition.
- 5.5 Automatic car washes are commonly found at petrol filling stations. Indeed, the building proposed for this use was originally built for this purpose, but converted to a tyre sales/fitting facility under the previous permission. However, it is recognised that the use does have a specific noise profile uncommon with the rest of the site that justifies a tighter restriction on hours of operation. The applicant initially requested that this facility be operated 6am to 11pm (Monday to Friday) and 7am-10pm (Saturday and Sunday). They have also advised that fitting doors to the facility to make it completely enclosed would be prohibitively expensive, unless the hours of use are sufficiently wide.
- 5.6 EH&SP have considered the information submitted and have advised that the hours of use for the automatic car wash should be 8.30am to 9pm (Monday to Friday), 9am to 9pm (Saturday) and 9am to 6pm (Sunday and Bank Holidays), on the basis of it not being enclosed with doors. Overall these hours are felt to balance the need for the automatic car wash by the applicant, to help diversify the business, and the need to safeguard the residential amenity of neighbouring residents.
- 5.7 Without any enclosure it is also recommended that the hours of operation for the jet wash be the same as those as the automatic car wash. Again, these are common features of petrol filling stations and as with the automatic carwash, it is considered that these hours of operation balance the needs of the applicant with the amenities of neighbouring residents.
- 5.8 A condition is proposed to secure the provision of measures to prevent the automatic car wash and jet wash from being used outside of the permitted hours of use.
- 5.9 Although the hand car wash and valeting no longer take place at the site, it is appropriate that the conditions restricting the hours of such uses be retained. These

ancillary uses were part of the 2014 planning application and are therefore still capable of being undertaken at the site, but because of the noise and disturbance impacts that hand car washing and valeting could have on the surrounding area, these activities need to be controlled.

- 5.10 Subject to conditions securing the matters set out above, the proposed changes to the operation of this petrol filling station are considered to be acceptable and in accord with policy 10 of the ACS and policies DE1 and IN2 of the LAPP.

6 Sustainability / Biodiversity

No implications.

7 Financial Implications

None.

8 Legal Implications

The issues raised in this report are primarily ones of planning judgement., however the Chief Executive must be satisfied the decision is necessary to be taken in its own right in planning terms, before the next meeting of the Planning Committee. The reasons for urgency presented by the Director of Planning and Regeneration are set out in the "Summary of Issues". The reasons for urgency shall be submitted to the next meeting of the Planning Committee.

Comments provided by Richard Bines, Solicitor, Planning, Environment and Leisure Team – Legal Services 29 April 2020

9 Equality and Diversity Implications

None.

10 Risk Management Issues

None.

11 Strategic Priorities

None.

12 Crime and Disorder Act implications

It is considered that through the use of conditions restricting access to all parts of the site and the hours that the facilities can be used, that the potential for anti-social behaviour at the site can be reduced.

13 Value for money

None.

14 List of background papers other than published works or those disclosing confidential or exempt information

1. Application No: 19/02869/PVAR3 - link to online case file:

<http://publicaccess.nottinghamcity.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=Q308U0LYMQ800>

15 Published documents referred to in compiling this report

Aligned Core Strategy - September 2014

Land and Local Planning Policies - January 2020

NPPF (February 2019)


16 Consultation on decision

16.1 All Planning Committee members were invited to attend a consultation regarding this item on 15th April 2020. 12 of the 16 members of Committee attended and were able to raise queries and express their opinions on the proposals. Following this, consultation with the Chair and Vice Chair was undertaken on 22nd April 2020. The meeting was also attended by the Director of Planning and Regeneration, the Area Planning Manager and a Solicitor. The opposition spokesperson failed to attend or acknowledge an invite to the meeting. It was noted that he'd failed to respond to the invite for the informal consultation on 15th April and failed to respond to a telephone call from Constitutional Services ahead of the meeting on 22nd April. He also failed to answer a request to join the meeting from the Director of Planning and Regeneration, sent as the meeting commenced. The meeting proceeded on the basis of legal advice that it may be necessary to make a final effort to contact and consult with the opposition spokesperson before any decision is made in accordance with the constitution, but the consultation of the Chair and Vice Chair should not be impeded.

16.2 The decision Chair and Vice Chair concluded that they were content to support the recommendation as per the above report.

16.3 Following the meeting on 22nd April 2020, this report has been sent to the opposition spokesperson inviting their comments by 5pm, 28th April 2020.

17 Approval

Approving Officer Name	Ian Curryer, Chief Executive
Approving Officer Signature	
Date of Approval	29th April 2020

**Once signed, please return to Governance Services
(constitutional.services@nottinghamcity.gov.uk) for publication.**

Contact Officer: Paul Seddon/Rob Percival