

Location **The TVR Centre 129 Barnet Road Barnet EN5 3LJ**

Reference: **20/3828/S73** Received: 20th August 2020
Accepted: 28th August 2020

Ward: High Barnet Expiry 23rd October 2020

Applicant: Mr Marsel Theodhori

Proposal: Variation to condition 1 (Opening Hours) pursuant to appeal ref
APP/N5090/C/15/3008963 dated 20/10/2015

OFFICER'S RECOMMENDATION

Approve subject to conditions

AND the Committee grants delegated authority to the Service Director – Planning and Building Control to make any minor alterations, additions or deletions to the recommended conditions/obligations or reasons for refusal as set out in this report and addendum provided this authority shall be exercised after consultation with the Chairman (or in their absence the Vice- Chairman) of the Committee (who may request that such alterations, additions or deletions be first approved by the Committee)

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Existing Block and Site Location Plan
 - Noise Impact Assessment

Reason: For the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the plans as assessed in accordance with Policies CS NPPF and CS1 of the Local Plan Core Strategy DPD (adopted September 2012) and Policy DM01 of the Local Plan Development Management Policies DPD (adopted September 2012).

- 2 This development must be begun within three years from the date of this permission.

Reason: To comply with Section 51 of the Planning and Compulsory Purchase Act 2004.

- 3 Within 3 months of the date of this decision notice, a detailed external lighting scheme in connection with the car wash use, including siting of lighting columns, a

site plan with lux lines, and the hours of operation shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such details as approved.

Reason: To safeguard the visual amenities of the locality and prevent disturbance to existing and future occupants thereof and to ensure the free flow of vehicular and pedestrian traffic and security of the site in accordance with Policies CS9 of the Core Strategy (2012) and DM01, DM04 and DM17 of the Development Management Policies (2012).

Informative(s):

- 1 In accordance with paragraphs 38-57 of the NPPF, the Local Planning Authority (LPA) takes a positive and proactive approach to development proposals, focused on solutions. The LPA has produced planning policies and written guidance to assist applicants when submitting applications. These are all available on the Council's website. A pre-application advice service is also offered. The LPA has negotiated with the applicant/agent where necessary during the application process to ensure that the proposed development is in accordance with the Development Plan.

OFFICER'S ASSESSMENT

1. Site Description

The site lies on the south side of a busy main road. On adjacent land to the east of the site is a vacant garden nursery and to the west a row of detached residential dwellings which face onto the main road. A terrace of cottages in Glebe Lane back onto part of the western boundary. The site is partly within the Metropolitan Green Belt.

The site is physically separate from surrounding land and its boundaries clearly delineated. It is physically and functionally separate from its surroundings and comprises a separate planning unit. A series of workshop type units provide various car repair services and facilities. A certificate of lawfulness has been granted for use of the appeal site as existing car repair and servicing garage for repairs, servicing and MOTs.

The car wash operates in the south east corner of the site, taking place under three canopies. The car wash activities are located some distance from the nearest residential dwellings and other noise producing activities exist on the site, many nearer to the dwellings than the car wash.

2. Site History

Reference: 18/1611/S73

Address: The TVR Centre, 129 Barnet Road, Barnet, EN5 3LJ

Decision: Refused

Decision Date: 14 September 2018

Description: Variation to condition 1 (Opening Hours) pursuant to appeal ref APP/N5090/C/15/3008963 dated 20/10/2015

Reference: 18/4349/FUL

Address: The TVR Centre, 129 Barnet Road, Barnet, EN5 3LJ

Decision: Application Returned

Decision Date: No Decision Made.

Description:

Reference: B/00972/13

Address: The TVR Centre, 129 Barnet Road, Barnet, EN5 3LJ

Decision: Withdrawn

Decision Date: 25 June 2013

Description: Single storey front extension including a new entrance door. Single storey side/rear extension and alterations to the existing service area

Reference: B/04906/08

Address: The TVR Centre, 129 Barnet Road, Barnet, EN5 3LJ

Decision: Refused

Decision Date: 16 February 2009

Description: Demolition of existing buildings and construction of a detached four bedroom dwelling.

Reference: B/04912/08

Address: The TVR Centre, 129 Barnet Road, Barnet, EN5 3LJ

Decision: Refused

Decision Date: 13 February 2009

Description: Demolition of existing buildings and construction of four two bedroom dwellings with associated access, parking and amenity areas.

3. Proposal

This application seeks permission for the Variation to condition 1 (Opening Hours) pursuant to appeal decision ref APP/N5090/C/15/3008963 dated 20/10/2015:

The change of the operating Hours would be as follows:

From 08.00 - 17.00 Monday - Friday (inclusive) to 08.00 - 18.00 Monday - Friday (inclusive) additional hour is requested towards the end of the day

From 09.00 - 16.00 Saturday to 09.00 - 18.00 Saturday additional 2 hours requested towards the end of the day.

Sunday hours will remain the same as that previously allowed between 10.00 - 14.00 Sunday and Bank Holidays therefore there will be no change to the operational hours on Sundays.

4. Public Consultation

Consultation letters were sent to 157 neighbouring properties.

29 responses have been received, comprising 18 letters of objection, 11 letters of support.

MP Rt Hon Theresa Villiers have also written in support of her constituents objecting against the proposed change of operating hours.

The objections and representations received can be summarised as follows:

- During the period of the National lockdown, residents were unable to enjoy peaceful time because of noise and traffic.
- The car wash is very noisy and can be heard from the neighbouring gardens, preventing the enjoyment of private amenity space
- The car wash was previously denied permission by the LPA, but allowed on appeal of the enforcement notice, without any consultation
- The car wash causes traffic congestion on the main road which is a risk to pedestrian and motorist safety
- Constant noise from traffic queueing
- The listed comparative car wash establishments are not comparative as they are not sited within a semi-rural area
- The distance from the car wash to the objector's garden is reported incorrectly - it is much closer in reality
- The site has flood lights which are kept on at all times and shine into the windows of the objector's property 24hrs per day
- The car wash already operates outside of its permitted hours.
- The noise from the car wash can be heard from within the neighbour's house
- The car wash has de-valued the neighbouring properties
- The location of the business is inappropriate as the land is green belt.
- The majority of comments made in support of the application are from people who have their car washed at the premises, as opposed to those that live in the area.
- The car wash is an eyesore
- It is scandalous that Barnet Council are considering this application a Planning Inspector has adjudicated on an appeal sought by the owner of the site which clearly stipulates the operating hours of the car wash.
- It is a business and is clearly seeking to profit at the expense of the nuisance it causes to local residents.
- By operating outside of the stipulated hours the car wash has generated a demand for an out of hours service and has created a perception that a restriction is being imposed.

- The comparison with the opening times of other businesses on the site is inaccurate if the published information about two of the main businesses on site (Murphys Motors and AZ Motorcycles) is taken into account. Both of these businesses publish information showing that the former is closed on Saturday afternoons and both closed on Sundays.
- The inspector stated that "I do accept that the site, may give rise to unacceptable noise at times when other businesses are closed. This will prolong the period during which residents may be disturbed, including Sundays when car washing may be in demand and background noise levels lower than during the working week. I therefore conclude that the car wash....is likely to cause undue harm to the living conditions of nearby residents outside normal working hours."
- The current business causes civil conflict between the operator and neighbouring residential occupiers.

Comments in support with this proposal can be summarised as follows:

- an extension of one hour with weekdays and extra two hours on Saturdays would not cause more than existing impacts.
- The car wash Business offers a good contribution and services for the local community.
- extra working hour would allow residents to get the after work.

5. Planning Considerations

5.1 Policy Context

National Planning Policy Framework and National Planning Practice Guidance

The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another.

The revised National Planning Policy Framework (NPPF) was published on 19th February 2019. This is a key part of the Governments reforms to make the planning system less complex and more accessible, and to promote sustainable growth.

The NPPF states that 'good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities... being clear about design expectations, and how these will be tested, is essential for achieving this'. The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would 'significantly and demonstrably' outweigh the benefits.

The Mayor's London Plan 2016

The London Development Plan is the overall strategic plan for London, and it sets out a fully integrated economic, environmental, transport and social framework for the development of the capital to 2050. It forms part of the development plan for Greater London and is recognised in the NPPF as part of the development plan.

The London Plan provides a unified framework for strategies that are designed to ensure that all Londoners benefit from sustainable improvements to their quality of life.

The Mayor's Draft London Plan

The draft New London Plan is at an advanced stage. In December 2019, the Mayor issued the "Intend to Publish" version of the emerging New London Plan. After considering that Plan, on 13 March 2020 the Secretary of State for Housing, Communities and Local Government wrote to the Mayor making a series of eleven Directions to the Plan. The Mayor cannot publish the New London Plan until the Directions have been incorporated, or until alternative changes to policy to address identified concerns have been agreed. Those policies affected by the Directions carry moderate weight, whilst those with no modifications can carry significant weight.

Barnet's Local Plan (2012)

Barnet's Local Plan is made up of a suite of documents including the Core Strategy and Development Management Policies Development Plan Documents. Both were adopted in September 2012.

- Relevant Core Strategy Policies: CS NPPF, CS1, CS4, CS5, CS10, CS14.
- Relevant Development Management Policies: DM01, DM02, DM03, DM08, DM12, DM13 and DM17.

Supplementary Planning Documents

Residential Design Guidance SPD (October 2016)

Sustainable Design and Construction SPD (October 2016)

5.2 Main issues for consideration

The main issues for consideration in this case are:

- Whether harm would be caused to the character and appearance of the area and the wider locality;
- Whether harm would be caused to the living conditions of neighbouring residents.

5.3 Assessment of proposals

Background:

The original planning permission for the use of the site as a car wash was granted as a result of the deemed planning application following an appeal against an enforcement notice served by the council in respect of the use of the land without planning permission which was regularised by this appeal decision. The grant of opening hours under this appeal decision was conditioned that the premises shall not be open to customers outside 08.00 - 17.00 Monday - Friday (inclusive); 09.00 - 16.00 Saturday; and, 10.00 - 14.00 Sunday and Bank Holidays.

Subsequent planning application ref 18/1611/S73 sought to vary the operating hours from that allowed under the appeal to operating hours between 0900 - 1900 hours seven days a week which was refused by the Chipping Barnet Area Planning committee (04/09/2018) (Variation of condition 1 (Opening Hours) pursuant to appeal ref APP/N5090/C/15/3008963 dated 20/10/2015) for the following reason:

The proposed increased operational hours would lead to increased activity, nuisance, noise and light disturbance to the detriment of the amenities of the surrounding residential occupiers contrary to Policies CS9 of the Core Strategy (2012) and DM01, DM04 of the Development Management Policies (2012).

This was also dismissed on Appeal ref: (APP/N5090/W/19/3224381).

In determining this appeal the inspector concluded that varying the opening hours of the car wash from 9am in the morning until 19.00 hours seven days a week may give rise to unacceptable noise at times when other businesses are closed which will prolong the period during which residents may be disturbed, including Sundays when car washing may be in demand and background noise levels lower than during the working week. The inspector concludes that the car wash with its use of cleaning equipment and jet washers is likely to cause undue harm to the living conditions of the occupiers of the nearby residents outside normal working hours, with particular regard to noise and disturbance contrary to the relevant requirements of policies DM01 and DM04 of the Barnet

Development Management policies 2012 which expect development to demonstrate high levels of environmental awareness and seek to ensure that development likely to generate unacceptable noise levels is not sited close to the noise sensitive uses and dismissed the appeal.

This S73 application as noted above whilst proposes variation of opening hours from 08.00 - 17.00 Monday - Friday (inclusive) to 08.00 - 18.00 Monday - Friday (inclusive) additional hour is requested towards the end of the day; from 09.00 - 16.00 Saturday to 09.00 - 18.00 Saturday additional 2 hours requested towards the end of the day.

Sunday hours will not change and will remain the same as that previously allowed by the appeal decision between 10.00 - 14.00 Sunday and Bank Holidays therefore there will be no changes to the operational hours on Sundays.

To clarify the difference between this application and the previously refused and dismissed application is to propose new opening hours from outside normal working hours to coincide within normal working hours as per the other operational existing lawful uses currently operating on the application site (inclusive of car repair and servicing garage for repairs, servicing and MOTs) which are engaged in noisy activities relative to their established functions. The operating hours of these uses are not controlled by any planning conditions approved under planning permission referenced: N00785.

- Whether harm would be caused to the character and appearance of the area and the wider locality;

This application solely proposes a variation of the operating hours that was allowed under the appeal scheme and thus there are no built physical forms proposed, therefore, no harm to the character and appearance of the application site, its vicinity, the wider locality and the local character of the area. As such the assessment of the proposal will focus on the impacts to the living conditions of neighbouring residents.

- Whether harm would be caused to the living conditions of neighbouring residents

It is acknowledged that the car wash is a use that could have the potential to cause statutory nuisance and annoyance to the neighbouring residential occupiers outside of normal working hours - as remarked by the Appeal Inspector - and Officers note that the majority of the objections received from neighbouring residents concerned the breach of current prescribed operating hours, noise disturbance from the car wash activities and light nuisance from the flood lights on site which are alleged to be left on 24 hours-a-day. Notwithstanding this, at present the Local Planning Authority (LPA) and Environmental Health (EH) have insufficient evidence to conclusively confirm that a minor extension to the hours of operation within the normal working hours would demonstrably harm the residential amenities of the neighbouring occupiers over and above the existing operational hours (8-5pm Mon-Fri) and (9-4pm sat).

The proposed operating hours of Mon-Fri: 08:00-18:00 and Sat: 09:00-18:00 given these are within normal working hours Officers consider these to be reasonable extension of hours in respect of both business operator and the neighbouring residents. Closing one hour later in the weekdays and 2 hour later on a Saturday is unlikely to be noticeable to the majority of residential occupiers, whom will leave and return from work around these times. For many people and businesses, Saturday is a full working day in which activity, even in semi-rural areas is to be expected, and therefore, it is not considered that the proposed additional hours of operation would be demonstrably harmful to the amenities of the neighbours.

Sundays and Bank Holidays are acknowledged to be the most sensitive days. Indeed when the inspector dismissed the previous appeal he was most concerned that extension of the Sunday hours would have the most significant impact on the residential amenities of the neighbouring residents. Given there would be no extension of hours proposed on Sundays and Bank Holidays it is considered that there would be no appreciable adverse impact on the amenities of the neighbouring residential occupiers.

The proposed extension of hours falls within the normal working hours expected between Monday to Friday and Saturdays therefore officers do not consider there would be any significant adverse impact that would result from the proposed extension of operating hours.

Furthermore, the application was accompanied with a Noise impact assessment report which has been assessed by the Environmental Health Team.

The Environmental Health Officer comments as follows:

"There has been couple of complaints from Glebe Lane residents concerning noise from loud music. Following this an unannounced visit was carried to the site on 25th June 2020. The EH officer confirms that he could see through the rear garden of a Glebe Lane property facing the car wash but could not hear the car wash which was operating that would cause unacceptable impact on the residential amenities.

There was No music was being played at the time of the visit.

It is noted that the compressors for the jet wash are behind a barrier with absorptive material and that there is no line of sight to any residents. I would recommend however that the vacuum area which is enclosed behind a fence could be housed in the area under the tarpaulin to minimise noise levels which was agreed by the applicant.

The houses in Glebe lane are protected by long gardens, car park area and the conifers. The residents on the Barnet road experience higher noise levels due to traffic on A411 and there is no line of sight to compressors or vacuum. The main source of noise which is not enclosed is the jet washing, but it is a moderate to high frequency noise which does not travel as far as the vacuum and compressor noise.

With the better housing of the vacuum I feel the applicant is using best practical means and therefore there are no objections to the current application for extended hours especially as no changes are proposed to the Sunday and bank holiday operating hours".

With respect to the existing flood lighting on site, this did not form part of the Appeal Inspector's assessment as the primary consideration was about determining the lawful use of the car wash operation and establishing its operating hours. Accordingly, the flood

lighting is also not under consideration as part of this application as it relates to a variation of the hours of operation. Notwithstanding this, it is recognised that the operation of the car wash in the winter months may be dependent on the lighting and given the number of objections raised with regard to the flood lightings impact on neighbouring amenities it is considered both relevant and reasonable for Officers to recommend a planning condition prescribing the submission of further details on the setup and operation of the flood lighting specifically used in association with the car wash business to minimise potential light nuisance to neighbouring residential occupiers.

5.4 Response to Public Consultation

Officers have reviewed and considered the concerns raised through the public consultation process and addressed these where possible in the above Officer assessment of the scheme.

As summarised above the majority of the objections received under this application relate to the breach of current prescribed operating hours, noise disturbance from the car wash activities and light nuisance from the flood lights on site which are alleged to be left on 24 hours-a-day.

Other matters are addressed as follows:

- Civil disputes between parties (business operator and residents) are not a material planning consideration and therefore outside the scope of consideration for this assessment.

6. Equality and Diversity Issues

The proposal does not conflict with either Barnet Council's Equalities Policy or the commitments set in the Equality Scheme and supports the Council in meeting its statutory equality responsibilities.

7. Conclusion

Having taken all material considerations into account, it is considered that subject to compliance with the attached conditions, the proposed variation of hours 8-6pm Monday to Friday and Saturday 9-6pm is considered acceptable with no appreciable adverse impact on the residential amenities of neighbouring occupiers. This application is therefore recommended for approval.

