

PLANNING STATEMENT



RETAIL ROADSIDE DESIGN AND PLANNING

Elta House
Birmingham Road
Stratford upon Avon
CV37 0AQ
+44(0)1789 414202
enquiries@adcockassociates.co.uk
www.adcockassociates.co.uk



1 INTRODUCTION

This Planning Statement supports an application by MFG Ltd made under Section 73 of the Town and Country Planning Act 1990 (as amended) to:

'Demolition of existing buildings and erection of a new filling Station complete with forecourt canopy and new tanks. Conversion of the site to post-payment self-service operation, without complying with condition 8 (hours of operation of petrol filling station) of planning permission (83/TP/829) to allow unrestricted opening hours (for a temporary 6 month period) following grant of planning permission,' at Leander Service Station, 182-184 Henley Road, Caversham, Reading, RG4 5LN, dated 19 March 1984.

The applicant has previously applied to operate the site without complying with condition 8.

A record of these applications is provided in the *Relevant Planning History* section of this statement.

2 CONTEXT

The application site is located to the North of Reading on the A4155 Henley Road which runs from Reading, through Henley on Thames and Marlow and beyond to Bourne End.

The site is located in a mixed residential and commercial area. Immediately to the West is a Travellers Rest public house outside of which is a signalled pedestrian crossing and the road junction with Lower Henley Road (B3345).

The site comprises a petrol filling station with 4 dispensing pumps under cover from the overhead canopy in the centre of the site. To the rear of the forecourt is a shop housed in a single storey building with a glazed shopfront facing onto the forecourt. To the rear of the shop building is a self-service jet wash.

Beyond the rear boundary is a block of lock-up garages.



3 RELEVANT PLANNING HISTORY

Date	Description	Reference	Decision
19/03/1984	Demolition of existing buildings and erection of a new filling station complete with forecourt canopy and new tanks. Conversion of the site to post-payment self-service operation.	83/TP/829	Approved
27/09/2017	Application for variation of condition 8 (Opening Hours) following grant of planning permission (83TP/829), to allow 24 hour use for a temporary period of one year.	171151	Approved
13/03/2019	Application for variation of condition 8 (Opening Hours) following grant of planning permission (83/TP/829), to allow 24 hour use for a temporary period of six months from 1 st April 2019 to 30 th September 2019.	181928	Approved
27/11/2019	Application for variation of condition 8 (Opening Hours) following grant of planning permission (83TP/829), to allow permanent 24 hour use.	191254	Refused

Planning application ref. 83/TP/829 granted planning permission for 'Demolition of existing buildings and erection of a new filling Station complete with forecourt canopy and new tanks. Conversion of the site to post-payment self-service operation...'

Condition 8 of that planning permission restricted the opening hours of the use granted, stating:

'The petrol filling station shall operate only between the hours of 7am and 10pm daily and the kiosk to be open only when the petrol filling station is open.'

The reason given on the decision notice for the condition states:

'To protect the amenities of the development and the locality generally.'

A copy of the decision notice for planning permission 83/TP/829 is included in this statement.

Applications have historically been submitted for Variation of Condition 8 (Opening Hours):

Ref. 171151 – The application for variation of condition 8 (Opening Hours) following grant of planning permission (83/TP/829) to allow 24 hour use for a temporary period of one year was approved, subject to conditions.

Ref. 18128 – The application for variation of condition 8 (Opening Hours) following grant of planning permission (83/TP/829) to allow 24 hour use for a temporary period of six months from 1st April 2019 to 30th September 2019 was approved, subject to conditions.

Ref. 191254 - The application for variation of condition 8 (Opening Hours) following grant of planning permission (83/TP/829) to allow permanent 24 hour use was refused, the reason given:

'The applicant has not provided sufficient evidence or other information that satisfies the Local Planning Authority that the petrol filling station has in fact, remained open, 24 hours, for a full 6 month trial period (ie. that temporary permission 181928 had been implemented, in whole or in part), in order to assess the impact of the development on the local residents and the amenity of the area. There has therefore been a failure to demonstrate that allowing unrestricted, permanent 24 hour use would not result in unacceptable noise and disturbance to the residential amenities of the nearby area, contrary to Policy CC8 (Safeguarding Amenity) of the Reading Local Plan 2019.'

Like the current application, applications 171151 and 181928 sought a variation of condition 8 (Opening Hours) of planning permission 83/TP/829. Both were approved each with 10 conditions attached, none of which sought to identify a level of sufficient evidence necessary to satisfy the Local Planning Authority that the petrol filling station has, in fact, remained open 24 hours for a temporary period of one year and six months respectively.

No objections were raised by statutory consultees.

The Licensing Enforcement Officer did express concerns in respect of the availability of alcohol and hot food throughout the night which was felt could lead to an increase in anti-social behaviour which could be detrimental to the area as a whole and noted, without further strict measures being outlined it is hard to see how these potential problems could be mitigated.

The Caversham and District Residents Association expressed concerns that 24 hour operation of the petrol pumps and shop would negatively impact on the character of the area, cause disturbance to residents nearby and perhaps raise security issues, asking for the application to be rejected.

The Environmental Health Officer noted that they would like to see some further conditions, should approval be granted in respect of lighting and noise.

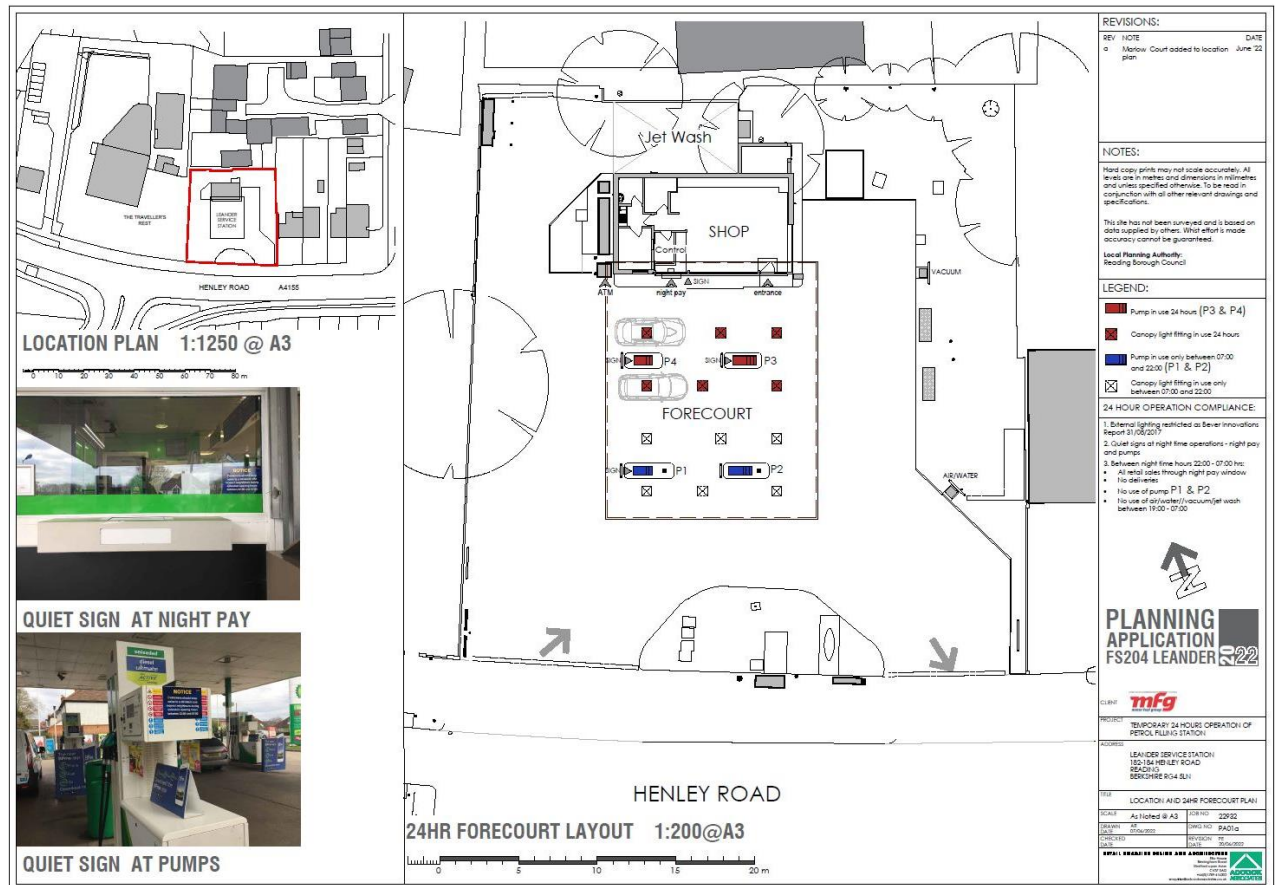
Application ref. 181928 was supported by a Lighting Report prepared by Bever Innovations (ref. Leander Service Station 31-8-2017), a copy of which is included in this statement.

It should be noted however, that planning application red. 171151 and 181928 were not accompanied by a Noise Impact Assessment.

This application is accompanied by a Noise Impact Assessment undertaken by Hepworth Acoustics which demonstrates that noise from the proposed change of opening hours would be of a low impact and would not have an unacceptable impact on the amenity of the area.

4 THE APPLICATION

The application seeks to vary Condition 8 (hours of operation of petrol filling station) of planning permission (83/TP/829) to allow unrestricted opening hours (for a temporary 6 month period) following grant of planning permission.



5 POLICY CONTEXT

Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) requires planning applications to be determined in accordance with the relevant development plan unless material considerations indicate otherwise.

For the purposes of this application, the relevant development plan comprises the Adopted November 2019 Reading Borough Local Plan, replacing the three previous development plan documents – the Core Strategy, reading Central Area Action Plan and Sites and Detailed Policies Document.

Consideration should also be given to the policies in the National Planning Policy Framework (the "Framework") which sets out the Government's national planning policy.

The relevant policies in the Framework and Local Plan are listed below and consideration to their requirements in relation to the proposed development is given within the "Planning Considerations" section of this statement.

6 NATIONAL PLANNING POLICY FRAMEWORK

The following sections in the Framework are considered relevant:

- *Achieving sustainable development, including the presumption in favour of sustainable development;*
- *Section 4: Promoting sustainable transport;*
- *Section 11: Conserving and enhancing the natural environment;*
- *Decision-taking; and*
- *Annex 1: Implementation.*

7 READING BOROUGH LOCAL PLAN, ADOPTED NOVEMBER 2019

The following policies in the Local Plan are considered relevant:

- *CC1: Presumption in Favour of Sustainable Development;*
- *CC8: Safeguarding Amenity; and*
- *Policy 9: Local Environment.*

8 NATIONAL PLANNING PRACTICE GUIDANCE

The National Planning Practice Guidance (NPPG) was published in March 2014. It provides guidance on the application of national planning policy in the Framework and is a material consideration in the determination of planning permissions.

Section 30 of the NPPG provides guidance on how local planning authorities should assess the impact of noise. It states that noise should not be considered in isolation, but should be considered alongside other economic, social and environmental dimensions of the proposed development.

At paragraph 30-003-20140306, the NPPG states that decision taking should consider:

- Whether or not a significant adverse effect is likely to occur;
- Whether or not an adverse effect is likely to occur; and
- Whether or not a good standard of amenity can be achieved.

In particular, it states that LPA should consider whether the effect of noise would be above or below the significant observed effect level for the given situation.

Paragraph 31-004-21040306 addresses when noise impacts should be a concern. It states that development that crosses the lowest observed adverse effect level and causes small changes in behaviour and attitude (such as turning up the volume of the TV) should not specifically be refused planning permission. Instead, consideration should be given to whether mitigation measures are required, balanced against the economic and social benefits of the proposed development.

Paragraph 31-004-21040306 states that development should only be avoided when noise exposure crosses the significant adverse effect level and causes a material change in behaviour (such as keeping windows closed for most of the time). Even then, it states that consideration should be given to whether mitigation would be appropriate to avoid these effects.

The Noise Impact Assessment submitted with this application demonstrates that the proposed unrestricted opening hours of the application site would not result in noise exposure for the nearest residential developments crossing the significant observed effect level. As such, in accordance with the guidance in the NPPG, consideration should be given to whether mitigation would be necessary to minimize the impact, giving regard to the other benefits of the proposed development.

9 PLANNING CONSIDERATIONS

Paragraph 206 of the Framework sets out the tests for the use of planning conditions. These are that conditions must be necessary, relevant to planning and to the development being permitted, enforceable, precise and reasonable in all other aspects.

Therefore, in applying to have a condition removed, the applicant must demonstrate why the existing condition does not comply with the tests; or propose measures to overcome the reason for imposing the condition.

It is considered that there has been no material change in circumstances since the determination of planning permission 171151 and 181928 that would mean that any additional issues / matters would need to be considered. In the absence of material planning considerations communicated by the authority beyond those conveyed by the authority in 1984; reasons given for condition 5-11 being to protect the amenities of the development and the locality generally. Therefore, residential amenity and road safety have been addressed.

10 RESIDENTIAL AMENITY

The previous planning application to vary condition 8 of planning application ref. 191254 was refused solely for the reason that the applicant had not provided sufficient evidence or other information that satisfies the Local Planning Authority that the petrol filling station has in fact remained open for 24 hours in a full year or 6-month periods.

It should be noted however that the previous applications 171151 and 181928 did not include a condition to enable an objective technical assessment to be made. Furthermore, from a review of the consultee comments, there were no outright objections, only recommendations for further conditions should approval be granted.

It must also be emphasized that at the time the condition was appended in 1984, the condition was applied as a precautionary measure and in a climate of very different road traffic conditions to the present day. As far as can be ascertained, no specialist Noise Impact Assessment has been carried out on the site before now. Accordingly, the local authority has not previously been provided with evidence to demonstrate that the condition is no longer necessary or reasonable in the context of the tests set out in paragraph 206 of the Framework.

The current application is accompanied by a Noise Impact Assessment that confirms that noise arising from the proposed development when existing ambient noise levels are factored in would not give rise to a significant adverse impact and would not result in an unacceptable impact on the amenity of the residents of the adjacent housing.

It is not proposed that deliveries to the application site will take place late at night. These are likely to take place at the same time to existing. The purpose of the proposed extension of opening hours is to allow 24 hour use of the petrol filling station facilities by customers. There would therefore be no noise impact from late night deliveries, as these would not take place. The applicant would be happy for a condition to be added to any approval that prevents deliveries from taking place at night, if this is of concern to the LPA.

Policy CC8 (4.1.39) states impacts on residential amenity are carefully controlled.

Paragraph 123 of the Framework states that planning decisions should avoid noise that would give rise to significant impacts. As referred to above, the NPPG states that development should only be refused where noise would give rise to a significant adverse effect. Where development would give rise to a less than significant adverse effect, that effect should be balanced against the economic and social benefits of the proposed development and / or any mitigation measures available to reduce or avoid the level of impact.

Paragraph 123 of the Framework also states that planning decisions should recognize that development will often create some noise and an existing business that wants to develop in continuance of their business should not have unreasonable restrictions put on them.

The Noise Impact Assessment which accompanies this application assesses the likely impact of noise from unrestricted opening hours at the petrol filling station based on noise source levels monitored at a similar petrol filling station site and based on a prediction of the number of customers that would visit the site outside of the current opening hours. The predicted number of vehicle trips to the site overnight is based on observed customer numbers at a similar petrol filling station in the applicant's estate of 24 hour operational petrol filling stations.

From noise readings undertaken at the nearest residential location, the Noise Impact Assessment finds that the level of noise that would be generated by use of the petrol filling station late at night would result in noticeable on/off conditions, but this would be at a low level. Furthermore, when background noise and the context of the site is taken into account, the potential noise from the petrol filling station operating during the night would be significantly lower than the average noise levels measured in the area.

The Noise Impact Assessment therefore concludes that, taking the site's context into account, there would likely be only a low impact categorization in accordance with BS4142.

The proposed extension of opening hours would therefore avoid giving rise to any adverse / significant adverse noise impacts in line with NPPF.. The Framework and guidance in the NPPG states that this should be balanced against the benefits of the proposed development and any potential mitigation measures that would reduce or avoid the level of impact.

Turning to the potential benefits of the proposed development, allowing the application site to be open 24 hours a day would have both social and economic benefits.

In terms of social benefits, longer opening hours would provide an additional petrol filling and retail service for members of the community travelling late at night and in the early hours of the morning, who may currently have to travel further to access such facilities / services. Additionally, the longer opening hours and activity at the site would provide security benefits. Allowing longer opening hours would ensure a staff presence on site and reduce the potential of crime. Having an active presence on the site overnight may also avoid potential instances of anti-social behaviour on the site's immediate surroundings.

In terms of economic benefits, consideration should be given to the second bullet point of paragraph 123 of the Framework which, as referred to above, states that planning decisions should recognize the importance of supporting the continuance of existing business. This is in the spirit of paragraph 19 of the Framework which states that the Government is committed to ensuring the planning system does everything it can to support sustainable growth and not act as an impediment to sustainable growth.

Furthermore, there are other statutory control mechanisms that can be employed to safeguard against noise nuisance. The LPA would be able to investigate noise complaints and, if necessary, restrict operations at the site under the control of the statutory nuisance regime in the Environmental Protection Act 1990.

The measure provides an additional safeguard for the LPA to control activities at the site.

It is considered that the proposed development would comply with the requirements of paragraph 123 of the Framework and guidance in the NPPG.

It is considered that the Noise Impact Assessment provides sufficient evidence that the condition preventing overnight opening of the petrol filling station is unnecessary. This is because, based on a comprehensive recent assessment of the existing situation and a specialist assessment of predicted impacts, if the service station were to operate on a 24 hour basis there would be no unacceptable impact on the amenity of neighbouring residents.

11 HIGHWAY SAFETY

The statutory consultee response for planning application ref. 171151 which proposed an identical variation of opening hours to this current application, confirmed that there would not be any highway safety issues that would preclude the proposed development from being granted planning permission. The Transport Development Control Officer was consulted on that application and did not wish to restrict the grant of planning permission for highways safety / traffic grounds.

It is considered that there has not been any material change in circumstances that would now make the proposed variation of opening hours unacceptable from a highways perspective.

12 PLANNING BALANCE AND PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT

The presumption in favour of sustainable development at paragraph 14 of the Framework states that development proposals that accord with the development plan should be approved without delay.

As set out, whilst the proposed development would result in a low level of noise impact on the amenity of the nearest neighbouring residents, this would be lower than the significant adverse effects level and would be outweighed by the benefits of the proposed development and the potential mitigation measures (which includes the option of restricting operations if noise levels reach unacceptable levels through the control of statutory nuisance regime).

The proposed development would therefore comply with policies relating to noise in CC8 and in the NPPF and NPPG.

The proposed development would also comply with highways / transport policy at paragraph 33 of the Framework and in the Reading Borough Local Plan (2019).

The proposed variation of condition 8 of planning permission ref. 83/TP/829 and the extension of opening hours that would result would therefore comply with relevant development plan policies and there are no material considerations that indicate that planning permission should not be granted.

Therefore, in accordance with the presumption in favour of sustainable development at paragraph 14 of the Framework, planning permission should be granted.

13 SUMMARY AND CONCLUSIONS

This statement supports an application made under Section 73 of the Town and Country Planning Act 1990 (as amended) to vary condition no. 8 of planning permission ref. 83/TP/829 which currently restricts the opening hours of the petrol filling station at Leander Service Station, 182-184 Henley Road, Caversham, Reading, RG4 5LN, dated 19 March 1984.

The condition was applied 39 years ago as a precautionary measure to protect the amenities of the development and the locality generally.

The statement, in combination with the Noise Impact Assessment prepared by Hepworth Acoustics submitted with the application, has now demonstrated that the proposed development without any restriction of operating hours, would comply with the relevant policies in the development plan and Framework and should be granted planning permission in accordance with the presumption in favour of sustainable development at CC1: *Presumption in Favour of Sustainable Development*.

The evidence base as required by the LPA that is the sole reason for preventing implementation of temporary 24 hour operation was recorded by the LPA (email Thursday 05/01/2023), *"evidence needed to be provided to demonstrate that 24 hour usage would not result in adverse disturbance to neighbours."*

The evidence base is not a condition of temporary planning permission. Particularly, submission of employee pay slips for this purpose (notwithstanding breach of confidentiality of personal data). The 05/01/2023 email acknowledged that the site had been in use over a period of 3 years, operating unlawfully. The applicant recognises and apologises for a genuine misunderstanding.

However the LPA acknowledged (email Friday 06/01/2023), *"When a future application is submitted, the lack of complaints from neighbours over the 3 years may, on balance, be given some weight in the overall assessment."*

The lack of complaints in a 3 year (albeit unlawful) 24 hour use is in contrast to the complaints received by the authority in the period of consultation to the previous applications for temporary 24 hour use, which notwithstanding, were granted planning permission.

On these occasions evidence, satisfactory to the authority that 24 hour use had been implemented, was the sole reason the ongoing submission for permanent 24 hour use was not acceptable.

In determining the application it should be noted that 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 and noise in the surrounding area (or that occurred during 3 years of unlawful 24 hour use).

From a planning point of view the determining issue in relation to this application 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. Other legislation is, of course, available to remedy such behaviour where it does occur. However, in order to demonstrate that 24 hour use would not result in any unacceptable or adverse noise impact, temporary permission is required and in accordance with paragraph 206, NPPF, containing conditions that are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

14 SUPPORTING DOCUMENTATION

The application is supported by:

- Planning Statement
- Management Procedures For 24 Hour Trading
- Lighting Assessment – Bever Innovations DDR170831-01
- Noise Impact Assessment – Hepworth Acoustics P23-148-R01v1
- PA01a – Location and 24 Hour Forecourt Plan (*previously submitted 10.01.2023*)
- MFG Leander – First and Last Transactional Times by Day (from 06 September 2022 to 12 March 2023)
- Images from CCTV record of site closed (*previously submitted 20.01.2023*)
- Images of employee signed Statement of Truth (*previously submitted 20.01.2023*)
- Reading Borough Council Planning Decision Notices:
 - Application Ref: 83/TP/829
 - Application Ref: 171151
 - Application Ref: 181928
 - Application Ref: 191254

ISSUE DATE: 04 APRIL 2023

