

**Application Number**

P/2019/0412

**Site Address**Shell Riviera Garage  
376 Torquay Road  
Paignton  
TQ3 2DN**Case Officer**

Miss Emily Elliott

**Ward**

Preston

**Executive Summary/Key Outcomes**

The Shell Riviera Garage in Paignton, is a petrol filling station which was granted planning permission in 1990 (P/1990/0655). This planning permission was later varied by permission P/1997/0872 to allow an extension of the approved operating hours to 0600-0000hrs. The application under consideration proposes the removal of condition 1 relating to permission P/1997/0872 to enable the petrol filling station to operate 24 hours a day, 7 days a week.

The proposal is considered to be acceptable in terms of the principle of development, impact on residential amenity and highways. The proposal meets the requirements of the Torbay Local Plan and the Paignton Neighbourhood Plan.

**Recommendation**

That planning permission is granted, subject to the conditions detailed below. The final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Assistant Director of Planning and Transport.

**Reason for Referral to Planning Committee**

The application has been referred to Planning Committee due to the number of objections that have been received.

**Statutory Determination Period**

10<sup>th</sup> June 2019. Extension of time agreed until 16<sup>th</sup> August 2019.

**Site Details**

The site is an established petrol filling station comprising a 4 pump island with an overhead canopy facing onto a single storey forecourt shop.

The site is bounded by brick boundary walls and on the eastern boundary there is a hedge that has a variable height of some 2.5-3 metres. The north of the site fronts onto Torquay Road. To the east of the site beyond a public highway is a small number of terraced dwellings and the Devon Partnership NHS Trust and Disability Information Service. To the south of the site is Hollacombe Community

Resource Centre. To the west of the site are a number of residential terraced dwellings.

The site forms part of the built up area, but is not otherwise subject to any designations within the Torbay Local Plan.

### **Detailed Proposals**

The petrol filling station was granted planning permission in 1990 (P/1990/0655), which was then later varied by P/1997/0872 to allow extended opening hours. The application proposes the removal of condition 1 relating to application P/1997/0872 to enable the petrol filling station to operate 24 hours, 7 days a week.

The applicant wishes to operate the premises 24 hours, 7 days a week, in a response to lifestyle changes. The submitted information states that the applicant wishes to limit the activity to the shop and forecourt pumps only to address any concerns between the hours of 0000-0600. The applicant has also indicated in the submitted planning statement that these unrestricted hours of use can be given as a temporary consent to fully and properly assess the impact of the proposal on local amenity.

### **Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

#### Development Plan

- The Torbay Local Plan 2012-2030 ("The Local Plan")
- The Paignton Neighbourhood Plan 2012-2030

#### Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:

### **Summary of Consultation Responses**

**Senior Environmental Health Officer:** Further to your recent consultation regarding the above variation of condition to allow 24 hour trading I would confirm that I have no objection subject to this being limited to fuel sales on the forecourt and use of the shop. (Use of car wash, deliveries etc. to be excluded as per the supporting information provided).

I have read the noise impact assessment report produced by Hepworth Acoustics for the above site, and I have examined their findings. The assessment was undertaken in accordance with the guidelines set out in British Standard 4142: 2014 *'Methods for rating and assessing industrial and commercial sound'*, and has been based on noise surveys undertaken at the site. This is an acceptable method of determining whether noise from commercial sources is likely to have a significant detrimental impact on the amenity of nearby residential properties. As such I would agree with their conclusion that noise from cars using the forecourt during the proposed extension of operational hours will not result in a significant noise impact to the amenity of neighbouring residents.

**Designing Out Crime Police Officer:** The Police have dealt with reports from the premises with regard to forecourt crime e.g. fuel theft and late night antisocial/unacceptable behaviour, as such there is concern that an extension to the hours of trading could exacerbate this. There is also concern that there could be an increase in noise complaints from residents as a result of human and vehicle activity and behaviours throughout the night.

To provide reassurance all round and to enable the planning authority and police to monitor the situation the applicant's suggestion of a 'trial' period is much supported but it is recommended this is for 6 months and not 12 months. It is requested that I be re-consulted at the end of the trial period and provided sufficient time to carry out a crime and ASB overview and liaise with the local policing team.

It is not clear if the CCTV at the premise is monitored or if it has an audio capacity but for the safety of staff and to assist the police in the detection of crime and antisocial or unacceptable behaviour a monitored CCTV and alarm system should be installed (if not already). The system should have an audio facility and be linked into a personal attack function and capable of facial recognition and number plate identification.

The location and heights of the cameras should be appropriately placed so as to not be hindered by obstacles and it is vitally important that the surveillance gap across the forecourt is maintained.

A Passport for Compliance Document (formerly known as an Operational Requirement Document) should be obtained for each camera. *(A passport for compliance document is for organisations considering a surveillance camera system. The compliance document is crucial in specifying what the organisation wants the CCTV system to do, perform and to ensure that the passport complies with all relevant regulations. The compliance document will also set out how much it will cost to procure and to run. The passport to compliance puts responsibility for system development in the hands of the organisations that operate them. It guides organisations through the stages they need to go through*

*when planning, installing and eventually operating surveillance camera systems. It should be completed for new systems or where significant changes are made to an existing system).*

Lighting should be compatible with the CCTV system and the spread of lighting should provide minimal shadow spillage and be set at a uniform level ensuring there are no over lit or poorly lit areas where crime, fear of crime or ASB can flourish.

The night pay system is a good design feature in assuring the safety of night workers, but this must have appropriate glazing to protect staff with a suitable alarm and personal attack function.

Fuel theft has been a long standing issue for Petrol Filling Stations and if this is a concern for the applicant I would be happy to discuss additional prevention methods but in the first instance to assist in the prevention of fuel drive offs there are member companies listed with Secured by Design who have approved crime reporting and CCTV products successfully tested to meet the Police Preferred Specification.

It may prove useful to share a recommendation that consideration should be given to the inclusion of a pre-payment system so that customers pay for fuel prior to filling up. This would also prevent the need for costly retrospective fits should fuel theft become an issue.

If it is the intention for alcohol to be sold past the current approved licensing hours then the applicant should consult the Force Licensing Department as soon as possible.

**Highways Engineer:** Highways have no technical issues.

**Paignton Neighbourhood Forum:** No comments received.

### **Summary of Representations**

The application was publicised through a site notice and neighbour notification letters. Thirty neighbour notification letters were sent to those neighbours which the development could affect. Five letters of objection has been received.

Concerns raised by the objectors relate to:

- Noise
- Impact on local area
- Privacy/overlooking
- Residential amenity

### **Relevant Planning History**

P/2004/1295: Installation of ATM Cash Machine. Approved 31/08/2004.

P/2001/0799: Illuminated Signs In Connection With Proposed Installation of Car Wash. Approved 03/08/2001.

P/2001/0750: Installation of Car Wash. Removal of Jet Wash. Approved 03/08/2001.

P/1998/0262: Formation Of Jet Wash With Portico To Replace Existing Rollover Car Wash And Replacement Vacuum And Air/Water Facilities. Approved 25/03/1998.

P/1998/0261: Illuminated Advertisements. Approved 25/03/1998.

P/1997/0872: Variation Of Condition 4 Attached To Planning Permission 90/0655/Pa To Allow Hours Of Opening Between 6.00 Am And Midnight. Approved 14/08/1997.

P/1997/0142: Illuminated Signage To Existing Filling Station. Approved 20/03/1997.

P/1993/0876: Installation of Interceptor For Use In Conjunction With Existing Car Wash. Approved 31/08/1997.

P/1990/0655: Redevelopment Of Filling Station, Demolition Of Sales Building, Erection Of New Sales Building And Car Wash Building And Raising Of Canopy Height. 17/07/1990.

### **Key Issues/Material Considerations**

The key issues to consider in relation to this application are:

1. Principle of development
2. Residential amenity
3. Highways
4. Designing out Crime

#### **1. Principle of development**

As the petrol filling station is an established use, the principle of development is considered acceptable.

#### **2. Residential amenity**

Policy DE3 Development Amenity of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity.

Objectors have raised concerns regarding noise, privacy/overlooking, and the impact on the local area in terms of residential amenity. Both the Council's Senior Environmental Health Officer and the Designing out Crime Police Officer have commented on this application. The latter has commented on potential crime issues, which are discussed later in this report, and also stated that the proposal could result in noise nuisance for neighbours. The Council's Environmental Health Officer has assessed the submitted noise assessment and confirmed that they have no objections to the 24 hours use of the premises, subject to it being limited to fuel sales on the forecourt and the use of the shop, with the exclusions mentioned in the planning statement, which include the following:

- That all fuel and shop purchases would take place through the night pay hatch between 0000 and 0600 hours.
- Restrict fuel sales to the two inner pump islands closest to the southern boundary between 0000 and 0600 hours.
- Restrict external lighting to the recessed lights within the underside of the canopy and immediately above the two inner pump islands.
- Restrict car wash, vacuum, air and water hours to between 0700 and 2300 hours.
- Restrict all deliveries between 0700 and 2300 hours.
- Signage within the forecourt area requesting that customers respect neighbouring amenity.

The applicant has also agreed to a temporary planning permission of 12 months to enable the Local Planning Authority to monitor the activity of the premises. The Designing out Crime Officer has suggested a period of 6 months instead, however, planning officers consider this to be an unreasonably short amount of time to properly assess and understand the effects of the proposal.

Subject to the use of planning conditions to secure the above mentioned restrictions, it is considered that the proposal is unlikely to result in unacceptable additional harm to the amenities of neighbours over and above the existing situation where the premises can already open from 0600 until 0000. The use of a further condition to secure a 12-month temporary permission will enable the Council to re-consider the matter later following a testing period.

The proposal is therefore considered to be in accordance with Policy DE3 of the Local Plan.

### **3. Designing out Crime**

The Designing Out Crime Police Officer has reviewed the proposal and has stated that the Police have dealt with reports from the premises with regard to forecourt crime e.g. fuel theft and late night antisocial/unacceptable behaviour, as such there is concern that an extension to the hours of trading could exacerbate this. The applicant has submitted further details stating that the site has four CCTV cameras in front of the forecourt, along with one CCTV camera each side of the forecourt and two CCTV cameras at the back of the forecourt shop. The applicant has indicated that they are able to add more CCTV cameras if necessary. The CCTV is monitored on a hard drive system. The premises benefits from an alarm system, with an additional chasers silent button attack alarm.

The premises are locked at night and all trading is undertaken through the night pay hatch. The premises when locked presents a relatively secure place of work. The only immediate access is through the night pay hatch which has no direct opening between the cashier and the customer. The entrance door is activated

from the cashiers counter. The glazing to the shop front is bandit resistant. The applicant has also indicated that they can introduce a pre-pay system at the pumps if necessary.

A condition is recommended to secure measures for designing out crime and subject to its use, it is considered that the proposal would not result in any unacceptable crime or anti-social behaviour impacts. In any case, the proposed temporary permission would allow for a period of testing.

#### **4. Highways**

Policy TA1 Transport and Accessibility of the Local Plan states that the Council seeks to improve road safety, quality of life and equality of access for all, minimising conflict between road users and prioritising the transport hierarchy. Policy TA2 Development Access of the Local Plan states all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development.

The Council's Highways Engineer raises no objection to the proposal and considers there to be no technical issues with the proposal. It is considered to extend the hours of use of the premises to 24 hours, 7 days a week would not have a significant impact on the highway, given that the site can currently operate between 0600 to 0000, it is considered that the potential traffic generated between the hours of 0000-0600 would not exceed the capacity of the petrol filling station and therefore would not be detrimental to the safety of the public highway.

The proposal is considered to be in accordance with Policies TA1 and TA2 of the Local Plan.

#### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment,

pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **Local Finance Considerations**

#### **S106/CIL -**

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

### **EIA/HRA**

#### **EIA:**

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

### **Conclusions**

The proposal is considered acceptable, having regard to the Torbay Local Plan, the Paignton Neighbourhood Plan, and all other material considerations.

### **Condition(s)/Reason(s)**

#### **Temporary Permission**

The extended operating hours hereby approved shall be discontinued one calendar year from the date of this planning permission, and the operating hours shall then revert to those approved by planning permission P/1997/0872.

Reason: To maintain control over a temporary form of development and in order that the Local Planning Authority can assess the impact of the development, in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030.

#### **Hours of Use**

The use of on-site car wash, vacuum, air and water facilities, and deliveries to the premises, shall only take place between the hours 0700 to 2300 Monday to Sunday. Only the two inner pumps closest to the southern boundary shall be used by customers between the hours of midnight to 0600. All fuel and shop purchases made between the hours of 0000 to 0600 shall be made through the night-time pay hatch.

Reason: In the interests of the amenity of the area, in accordance with Policy DE3 Development Amenity of the Adopted Torbay Local Plan 2012-2030.

#### **Storage**

No storage shall take place at the premises except inside the shop.

Reason: In the interests of visual impact and in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030.

**Designing out Crime**

Prior to the extended opening hours coming into effect, a scheme of measures for designing-out crime and preventing anti-social behaviour shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the proposed use of CCTV, appropriate lighting for the premises, and signage relating to neighbour amenity. The approved measures shall be fully installed prior to the extended hours taking effect.

Reason: In the interests of amenity and preventing opportunities for criminal activity, in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030.

**Relevant Policies**

- DE3 - Development Amenity
- SS4 - The Economy and Employment
- TA1 - Transport and Accessibility
- TA2 - Development Access
- PNP1(c) - Design Principles