

<b>No:</b>	<b>BH2018/02579</b>	<b>Ward:</b>	<b>Patcham Ward</b>
<b>App Type:</b>	<b>Removal or Variation of Condition</b>		
<b>Address:</b>	<b>Patcham Service Station Patcham By Pass London Road Brighton BN1 8YB</b>		
<b>Proposal:</b>	<b>Variation of condition 7 of application BN83/386 (Demolition of existing service station and the construction of a new self-service petrol filling station with canopy and 32,000 gallons of fuel storage) to extend trading hours in addition to the erection of a 3m high fence to the southern boundary of the site. Current approved hours are 07.00 to 23.00, hours now proposed 06.00 to midnight.</b>		
<b>Officer:</b>	Luke Austin, tel: 294495	<b>Valid Date:</b>	15.08.2018
<b>Con Area:</b>		<b>Expiry Date:</b>	10.10.2018
<b>Listed Building Grade:</b>		<b>EOT:</b>	
<b>Agent:</b>	Richard Baker 23 Magister Drive Lee On The Solent Portsmouth PO13 8GE		
<b>Applicant:</b>	Highway Stops Retail Ltd Unit 11 Metro Trading Centre Second Way Wembley HA9 0YJ		

## 1. RECOMMENDATION

- 1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

### Conditions:

- The development hereby permitted shall be carried out in accordance with the approved drawings listed below.  
**Reason:** For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
Location Plan			15 August 2018
Proposed Drawing	QTPD-11420-001 REV B		23 January 2019
Report/Statement	Qt11420-002 Rev. 001	Noise Assessment	15 August 2018
Other	FENCE DETAILS		22 January 2019

- The development hereby permitted shall not be carried out except between the hours of 06:00 and 00:00 on Mondays to Sundays, including Bank or Public Holidays.  
**Reason:** To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

3. No motor vehicles shall be displayed for sale on site.  
**Reason:** In the interests of highway safety and to comply with policies TR7 of the Brighton & Hove Local Plan and CP9 of the Brighton & Hove City Plan Part One.
4. The additional opening hours hereby approved shall not commence until the fence to the southern boundary as set out on drawing QTPD-11420-001 Rev. B received 23.01.2019 has been erected. The fence shall be not less than 5kg/m<sup>2</sup> density and shall be retained as such thereafter.  
**Reason:** To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.

## **2. SITE LOCATION & APPLICATION DESCRIPTION**

- 2.1. The application relates to Patcham Service Station located to the east of Patcham Bypass adjacent to the Patcham Conservation Area. The existing site comprises a single storey retail unit with associated petrol pumps with a canopy over the forecourt.
- 2.2. The application seeks permission for the variation of opening hours stipulated by condition 7 within the original permission, in addition to the erection of a 3m fence on the southern boundary of the site. The original submission included reference to a 3m boundary fence to be installed to the southern boundary of the site however no such wall was included within the submission. At the request of the council, the application was varied in order to include the boundary fence.

## **3. RELEVANT HISTORY**

- 3.1. **BH2016/02797:** Installation of two car wash bays. Approved 14/07/2017.
- 3.2. **BH2015/03594:** Application for Approval of Details Reserved by Condition 7 of application BH2014/03788. Approved 03/12/2015.
- 3.3. **BH2015/02226:** Application for variation of condition 7 of BH2014/03788 (Removal of existing underground fuel pipework and dispensers, including vent stack and offset fills. Installation of new underground fuel tanks, pipework, fuel dispensers, vent stack and offset fills and new concrete and hard forecourt paving) to state that within 3 months of completion of works a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. Approved 16/10/2015.

- 3.4. **BH2015/01458:** Application for Approval of Details Reserved by Conditions 5 and 6 of application BH2014/03788. Approved 26/06/2015.
- 3.5. **BH2014/04094:** Display of externally illuminated freestanding information signs and externally illuminated and non illuminated projecting signs. Approved 06/03/2015.
- 3.6. **BH2014/03788:** Removal of existing underground fuel pipework and dispensers, including vent stack and offset fills. Installation of new underground fuel tanks, pipework, fuel dispensers, vent stack and offset fills and new concrete and hard forecourt paving. Approved 21/04/2015.
- 3.7. **BH2014/01327:** Display of 2no internally illuminated and 3no non-illuminated canopy signs and 1no internally illuminated site identification sign. Approved 03/07/2014.
- 3.8. **BH2007/03876:** Installation of ATM cash machine and bollards. Approved 10/12/2007.
- 3.9. **BN83/386:** Demolition of existing service station and the construction of a new self-service petrol filling station with canopy and 32,000 gallons of fuel storage. Refused 14/12/1983. Appeal Allowed 14/08/84

#### 4. REPRESENTATIONS

- 4.1. **Seven (7)** letters have been received, objecting to the proposed development for the following reasons:
- Inappropriate Height
  - Noise
  - Overshadowing
  - Restriction of view
  - Adversely affects Conservation Area
  - Additional Traffic
  - Too close to the boundary
  - Contrary to previous appeal decision
  - Flawed noise assessment
  - The existing garage is intrusive to neighbours
  - No inclusion of 3m boundary wall
- 4.2. Following the inclusion of the 3m boundary fence within the submission and the re-consultation of neighbouring occupiers, a further **six (6)** letters have been received objecting to the proposal on the following grounds:
- Overshadowing
  - Noise
  - Restriction of view
  - Inappropriate Height
  - Adversely affects Conservation Area
  - Impact on neighbouring amenity

- The fence would not be sufficient
- Flawed noise assessment
- There is existing light pollution
- It will block out sunlight
- Anti-social behaviour
- Other 24hr petrol stations nearby
- Contrary to previous appeal decision

4.3. **Councillor Lee Wares** and **former Councillor Geoffrey Theobald** object to the proposed development. A copy of the objection is attached.

## 5. CONSULTATIONS

5.1. **Environmental Health:** Final Comment:

The latest amendment to the application includes the design of a 3000 mm high fence providing an acoustic barrier which if implemented and maintained in good condition will provide acoustic protection from the proposed activities on the site.

Initial Comment - 13/11/18

5.2. The conclusions of the acoustic report are predicated on the provision of a 3000mm high barrier, which does not yet exist, on the southern boundary of the site.

5.3. A barrier of that height would require planning consent and that has not been sought. It would be unsafe to recommend approval of the proposal without knowing that the barrier can and will be provided.

5.4. **Southern Water:** No objection

Southern Water has no objections to the above variation of condition 7.

5.5. **Sussex Police:** Comment

No objections however the applicant is advised that there must be sufficient security measures in place to ensure the safety of the staff and for cash handling whilst trading during the extended later hours. This should include CCTV internally to monitor the shop entrance, the retail floor and counter areas, together with a monitored intruder alarm system with remote panic button near the till area or carried by the on duty staff member.

5.6. Police records indicate that there are a number which are motor vehicle related, including fuel bilking, none refer to any alcohol related incidents. The local Policing Team for the area and also the Police Alcohol Licensing officers have no concerns regarding the extended hours.

## 6. MATERIAL CONSIDERATIONS

6.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan,

and all other material planning considerations identified in the "Considerations and Assessment" section of the report

- 6.2. The development plan is:
- Brighton & Hove City Plan Part One (adopted March 2016)
  - Brighton & Hove Local Plan 2005 (retained policies March 2016);
  - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
  - East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
- 6.3. Due weight has been given to the relevant retained policies in the Brighton & Hove Local Plan 2005 according to their degree of consistency with the NPPF.

## 7. **POLICIES**

### The National Planning Policy Framework (NPPF)

#### Brighton & Hove City Plan Part One

SS1	Presumption in Favour of Sustainable Development
CP2	Sustainable economic development
CP4	Retail provision
CP7	Infrastructure and developer contributions
CP9	Sustainable transport
CP15	Heritage
CP18	Healthy city

#### Brighton and Hove Local Plan (retained policies March 2016):

TR7	Safe Development
SU9	Pollution and nuisance control
SU10	Noise Nuisance
QD27	Protection of amenity
HE3	Development affecting the setting of a listed building
HE6	Development within or affecting the setting of conservation areas

## 8. **CONSIDERATIONS & ASSESSMENT**

- 8.1. The main consideration in the determination of this application relates to the impact of the additional opening hours on the amenity of neighbouring residents in addition to the impact of the proposed 3m boundary fence on the design and appearance of the local area and its impact on neighbouring amenity.

### **Background Information:**

- 8.2. The original approved scheme (BN83/386) was granted at appeal. The Inspector concluded that the proposal was acceptable in all regards and secured various details and measures by planning conditions. Most notably the Inspector stated that;

- 8.3. *'It is my opinion that not only would the proposal improve the appearance of the site, but that on balance the scale of the proposal is not significantly different to the development which exists', and;*
- 8.4. *'I don't do not feel that the proposal, insofar as the new sales building and style of operation are concerned, would be as such to impose unduly on the residential amenities that the occupiers of neighbouring dwellings might reasonably expect to enjoy'.*
- 8.5. Furthermore the Inspector concluded that;
- 8.6. *'it is my opinion that the canopy would not detract from the residential amenities of the neighbouring properties to an unacceptable degree', and;*
- 8.7. *'I conclude that the proposal would not devalue the appearance and character of the Patcham Conservation area'.*
- 8.8. The Inspector also acknowledged that there would be noise and disturbance to local occupiers associated with the day-to-day operations of the premises and secured conditions to ensure this would be to an acceptable level, stating;
- 8.9. *'I further recognise that the site abuts residential properties and I accept that trading on a 24 hours basis could result in some degree of nuisance to their occupiers, in which case I restrict hours of trading and levels of illumination'.*
- 8.10. On this basis, the Inspector allowed the appeal including the following condition relating to opening hours:
7. The development hereby permitted shall only be open for the purpose of retail trading between the hours of 07:00 and 23:00.

**The proposed variation of condition 7:**

- 8.11. This application seeks to vary condition 7 in order to allow the premises to operate for an additional two hours per day; between the hours of 06:00 and 00:00. A variation of the licence to sell alcohol was also sought to this effect where the licensing panel concluded that; *'[t]he location of the premises itself was some distance from the nearest residential premises and the panel considered that the level of activity caused by the extra hour of opening was unlikely to impact negatively on residents'.* The licence (ref: 2016/05706/LAPREV) was approved on this basis.
- 8.12. The existing service station is located within a prominent location adjacent to a number of residential properties and therefore impact of the proposed variation of the opening hours on neighbouring amenity is a main consideration in the determination of this application. The site borders a number of gardens of residential properties to the north/east (rear) which front onto Old London Road and are set considerably lower than the forecourt of the service station. To the east there is a commercial garage, a

supermarket with flats above and also a block of 8 flats to the south (Greatham Court).

- 8.13. Given the nature of the existing use with many comings and goings, vehicle movements and general noise, the additional opening hours have the potential to cause additional disturbance to neighbouring amenity. An acoustic report was submitted in support of the application. The report carried out an assessment of the existing noise levels on site and then calculated predicted noise levels associated within the additional opening hours in order to establish whether there would be a significant increase in noise levels during the additional opening hours.
- 8.14. The report identifies that the service station does not operate fast fill diesel pumps and as such refuelling activities are generally limited to cars and vans with no trade to heavy goods vehicles. Furthermore the report states that servicing and deliveries will not be a source of additional noise during the extended opening hours as all deliveries will take place during the existing operational hours.
- 8.15. Furthermore the report indicates that general noise associated with the shop / transactions is considered to be low as all transactions will take place within the sales building as there would be no night pay window.
- 8.16. The report identifies that the extension of trading hours will generate additional activities from the following operations and as such each were monitored as part of the survey:
- Fuel pump noise
  - Vehicle movement noise
  - Vehicle engine noise at start up and idle
  - Transaction associated noise
  - Air/water machine noise
- 8.17. The report concludes that the noise emission associated with the activities listed above would be less than the existing background noise levels and is therefore considered to result in a low impact and would accord with the relevant industry standards. The acceptable noise levels would however be subject to the erection of a 3m fence to the southern boundary of the site. The noise assessment methodology used and the results produced have been verified and agreed by the Environmental Health team as acceptable.
- 8.18. It has been noted that a number of objections have raised concerns relating to potential impact from matters other than just noise impact, including anti-social behaviour and additional light pollution. As indicated above, a licence variation to allow the sale of alcohol between the extended opening hours proposed under this application has been approved. During the assessment of the licence variation it was concluded that the additional opening hours were unlikely to impact negatively on this basis.
- 8.19. The Environmental Health team have confirmed that no complaints have been received in relation to impact from lighting to the existing garage.

Additionally it should be acknowledged that granting of this permission does not preclude Environmental Health from carrying out future investigations into noise/light nuisance under the Environmental Protection Act, should any complaints be received.

- 8.20. It is acknowledged that the additional opening hours would result in additional activity within the early morning and late evening hours, however given the noise assessment produced, the location of the site next to a busy road in addition to the mitigation methods proposed it is considered that the level of activity and associated disturbance would not amount to a level warranting refusal of planning permission. As noted above however, the acceptability of the proposal is subject to the installation of a 3m fence to the southern boundary of the site. The impact of the fence on neighbouring amenity and the character of the areas must therefore be considered.

**Design and appearance of the proposed fence:**

- 8.21. The proposed fence would be located on the southern boundary of the site and would replace an existing timber fence in the same location. The fence would be tongue and groove timber and would follow the line of the existing fence, adjoining the southern elevation of the sales building and extending parallel to the southern boundary to the front of the site. The site is not within a conservation area; however a section of the boundary does border the Patcham Conservation Area and there are several listed buildings adjacent to the eastern boundary.
- 8.22. In comparison to the existing fence, the proposal would be more evident due to the additional height. The fence would also be highly visible from the street due to the prominent setting within close proximity to the highway. The site does however include a 2.5-3m brick wall running around the remaining perimeter of the site, and tall fencing set on the perimeter of a forecourt of a petrol station such as this is not uncommon. The fence would be partially visible from several vantage points within the adjacent conservation area however it is not considered that it would affect the setting of it. Furthermore, as the fence would not adjoin the boundaries of the adjacent listed buildings, it is not considered that the fence would impact on their setting.
- 8.23. On this basis it is considered that the proposed 3m fence can be accommodated on site without resulting in significant harm to the visual amenity of the area or the adjacent heritage assets.

**Impact on amenity of the proposed fence:**

- 8.24. As identified above, an acoustic report has been submitted which addresses the impact of the extended opening hours on neighbouring amenity in terms noise and disturbance. The report however relies on the installation of a 3m fence in order to act as a sound barrier to neighbouring dwellings. As the fence is located adjacent to the residential properties, the impact of the physical structure on the amenity of neighbouring properties must be assessed.

- 8.25. The proposed fence would be located parallel to the southern boundary of the site which is shared with a two storey block of flats; Greatham Court. The adjacent block of flats faces onto London Road however it is accessed from Old London Road to the rear. The block is three storeys in height and has two forward projecting hipped sections, one of which is set parallel to the shared boundary with the application site. This particular section of the building contains two flats with windows serving habitable rooms which face towards the site of the proposed fence. The ground floor level of Greatham Court is set approximately one storey lower than the forecourt of the service station.
- 8.26. The proposed fence would be visible from adjacent windows due to the additional height and the relative site levels. The fence would however replace an existing fence which ranges from 1.3-2m in height. The proposed fence would therefore measure between 1 and 1.7m taller than the existing fence. The site of fence would be set approximately 9-10m away from neighbouring windows. It is acknowledged that the additional height would be evident compared to the existing situation, particularly due to the difference in levels, however the distance of separation is considered sufficient to alleviate any significant harm in terms of loss of light or outlook. The flats would also retain outlook from windows facing towards the (front) of the site.
- 8.27. Furthermore the fence would assist in alleviating the day-to-day impact of the service station within the existing opening hours by blocking noise and impact from vehicle headlights. On this basis it is considered that the fence is acceptable in terms of neighbouring amenity and its implementation prior to commencement of the additional opening hours shall be secured by condition.
- 8.28. Due to the location of the fence, it is not considered that any harm to neighbouring amenity would arise to properties to the east of the site fronting onto Old London Road or to the west

**Other Matters:**

- 8.29. The original application (BN83/386) was allowed at appeal by the Planning Inspectorate where a number of conditions were issued requiring details to be submitted to the council for approval prior to commencement in addition to several regulatory conditions.
- 8.30. As the required details have been approved and proposed development was implemented a number of years ago, several of the conditions are no longer required. Conditions 1-6 are not required and shall be marked as 'not used'. Condition 7 shall be updated in order to reflect the additional opening hours, condition 8 which restricts the sale of motor vehicles on site shall be retained and an additional condition shall be added securing implementation of the fence prior to implementing the additional opening hours. Furthermore an additional condition 1 has been added including the proposed drawings.

**9. EQUALITIES**

None identified.