DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H16-0955-23**	**Applicant:**	**Karan Retail Ltd.**
Proposal:	Erect petrol station, fastfood drive thru' restaurant with associated works including access - approved under H16-1314-97. Modification of Condition 18 to allow 24 hour trading for petrol station.		
Location:	Lincs Co-Op Petrol Station Holbeach Road Spalding		
Terminal Date:	27th December 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

02	Development Management
03	Design of New Development
30	Pollution

National Guidance

National Planning Policy Framework 2023

Section 4 - Decision-Making
Section 12 - Achieving well-designed places

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SHDC INTERNAL	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This application seeks the removal of condition 18 attached to planning permission H16-1314-97. The condition restricted the operation hours to 0700 - 2330. The applicant seeks to remove this restriction allowing for 24 hour trading.

Site Description

The application site is accessed from Holbeach Road, this access is shared with McDonalds drive thru restaurant. Both the petrol station and the drive thru restaurant were approved under the same planning application. To the east of the petrol station is the A16 and to the north open agricultural fields. Woodhouse Farm Lodge is located to the south which functions as a hotel/guesthouse accommodation.

The petrol garage is highly accessible on the road network, way from the centre of Spalding.

History

H16-1314-97 - Erect petrol station, fast-food drive thru' restaurant with associated works including access. Approved 03-07-98

Material to this assessment is:
H16-1152-16 - Proposed unrestricted trading operation (McDonalds) LDC Approved 22-12-16.

Consultation Responses

*No objection: The reason given for the imposition of a restriction on the hours the Consented Petrol Filling Station would be allowed to operate is to safeguard residential amenity, rather than to manage the impacts the facility was expected to have upon highway safety or network capacity. The proposed *24 hours per day operation of this Petrol filling Station would not be expected to have an unacceptable impact upon highway safety or a severe residual cumulative impact upon the capacity of the local highway network and so the highway authority does not wish to object to the grant of Consent for this Application.*

Environmental Protection
I request a standard contaminated land condition be applied at this location.

Planning Considerations

The proposal is to remove an operating hours restriction attached to planning permission H16-1314-97. The condition was attached for the reason to protect 'residential amenity'. Therefore, the only issue relevant for assessment is the impact upon residential amenity

Impact upon residential amenity

Amenities and Environmental Considerations:

Policy 2 and of South East Lincolnshire Local Plan (2019) sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.
Policy 30 is concerned with pollution and places impacts in relation to noise, disturbance and air quality as important consideration when considering proposals for planning.

Paragraph 130 of the National Planning Policy Framework (2021) states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

The applicant has stated that there is a requirement for 24-hour trading at the petrol station. This is following a change in the way customers used the business following the pandemic. No other justification has been provided. Notwithstanding this the McDonalds Drive Thru restaurant operates 24 hours a day. This was established (made lawful) under H16-1152-16.

The petrol station utilises the same access from Holbeach Road and is located to the north of the restaurant, further away from nearby business and dwellings on Holbeach Road on this basis it is

considered that to maintain the operation restriction on the garage would be 'unreasonable' and thus failing the test for planning conditions set out under paragraph 56 of the NPPF. Furthermore both the petrol station and restaurant were approved under the same application; H16-1314-97. There is therefore an argument to state that this condition does not have any effect over the petrol station either.

Furthermore, it is considered that should the petrol garage function unrestricted it would not overly increase the impact upon residential amenity, to a level that would warrant refusal.

The proposal is therefore considered to accord with policies 2 and 3 of the South East Lincolnshire Local Plan as well as paragraphs 56 and 130 of the National Planning Policy Framework.

Re-application of conditions

Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.

A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect. Further information about conditions can be found in the guidance for use of planning conditions.

The only conditions considered to continue to have effect attached to planning application H16-1314-97 are conditions 11 & 17.

Condition 11

There shall be no means of vehicular or pedestrian access to the permitted building from the A16 Trunk Road.
Reason: In the interests of Safety and freedom of flow of traffic using this stretch of trunk road.

Condition 17

There shall be no overnight parking of heavy goods vehicles on the site.

Reason: In the interest of residential amenity and to define the terms of the permission.

Conditions were attached in respect of the noise environment. However, the db measurements were expressed by the condition to be taken at the south east boundary, this is now outside of the ownership of the applicant (and relates to the McDonalds site). Aside from this it is considered that petrol station is located at a sufficient distance from all residential properties (along with screening from intervening uses) not to give rise to the requirement for these conditions to be reattached. Lastly mitigation also exists under Environmental Legislation.

Other Issues

The highway authority have made comments and stated that they have no objections to the proposal.

Conclusion

It is considered that the proposal to remove condition 18 of H16-1314-97 is acceptable. The condition, given that the adjacent McDonalds is open 24 hours is no loner reasonable. The condition is hereby removed and only conditions that have effect will be reattached.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in

discharging its functions) to:
A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.