

4.2 – SE/15/02624/CONVAR Date expired 18 November 2015

PROPOSAL: Variation of condition 2 of 08/01850/CONVAR (Appeal reference APP/G2245/A/08/2092052/NWF) in order to allow deliveries to be made to the ASDA Store between 05:00 and 23:00 hours on Mondays to Saturdays and between 06:00 and 23:00 on Sundays and Christmas Day.

LOCATION: Asda Stores Ltd, London Road, Swanley BR8 7UN

WARD(S): Swanley White Oak

ITEM FOR DECISION

Councillor Rosen has referred this application to Development Control Committee on the concern of the impact of the extend delivery times upon the amenities of nearby residents

RECOMMENDATION: That planning permission be GRANTED subject to the following conditions:-

1) No deliveries shall be made to the ASDA Store except between 05:00 and 23:00 hours on Mondays to Saturdays and between 06:00 and 23:00 hours on Sundays and Christmas Day.

To protect the amenities of surrounding residential properties in the area in accordance with policies EN2 and EN7 of the Sevenoaks Allocations and Development Management Plan.

2) Notwithstanding condition one, the number of deliveries to the Asda Store shall be restricted to no more than 2 deliveries between 0500 and 0630 hours, no more than 2 deliveries between 2200 and 2300hours Monday to Saturdays and no more than 2 deliveries between the hours of 0600 and 0800 hours and no more than 6 deliveries between 1500 and 2300 hours on Sundays and Christmas Day.

To protect the amenities of surrounding residential properties in the area in accordance with policies EN2 and EN7 of the Sevenoaks Allocations and Development Management Plan.

3) The roller shutter doors that serve the service area/warehouse of the building shall remain closed at all times, except when required to be opened for the purposes of vehicular access/egress from the building or in an emergency.

To ensure the acoustic protection within the service area is not compromised and to protect the amenities of surrounding residential properties in the area in accordance with policies EN2 and EN7 of the Sevenoaks Allocations and Development Management Plan.

Note to Applicant

In accordance with paragraphs 186 and 187 of the NPPF Sevenoaks District Council (SDC) takes a positive and proactive approach to development proposals. SDC works

with applicants/agents in a positive and proactive manner, by;

- Offering a duty officer service to provide initial planning advice,
- Providing a pre-application advice service,
- When appropriate, updating applicants/agents of any small scale issues that may arise in the processing of their application,
- Where possible and appropriate suggesting solutions to secure a successful outcome,
- Allowing applicants to keep up to date with their application and viewing all consultees comments on line
(www.sevenoaks.gov.uk/environment/planning/planning_services_online/654.asp),
- By providing a regular forum for planning agents,
- Working in line with the NPPF to encourage developments that improve the improve the economic, social and environmental conditions of the area,
- Providing easy on line access to planning policies and guidance, and
- Encouraging them to seek professional advice whenever appropriate.

In this instance the applicant/agent:

- 1) Was updated on the progress of the planning application.

Description of Proposal

- 1 This is an application made under Section 73 of the Town and Country Planning Act 1990 (as amended) to allow the variation or removal of a condition of a specific planning permission to facilitate extended delivery times to the existing supermarket.
- 2 This application seeks to vary Condition 2 of planning permission SE/08/01850/CONVAR that states:

“No deliveries shall be made to the ASDA Store except between 06:30 and 22:00 hours on Mondays to Saturdays and between 08:00 and 15:00 hours on Sundays and Christmas Day.”
- 3 The reasoning for the condition is to safeguard the amenity of the locality, principally to safeguard the amenities of the residents opposite site from noise and disturbance.
- 4 Since 2003 the store has traded on weekdays for 24 hours per day, opening at 07:00 on Monday mornings and closing at 22:00 on Saturday evenings. It also trades between 10:00 and 16:00 on Sundays. Asda wishes to extend the delivery times as the store trades on a 24 hour basis and provides a home shopping service, in order to support this, there is a need to deliver fresh produce outside the hours permitted by the 2008 planning permission to ensure availability of product in store and allow fresh produce to be ‘picked’ for customers using the home delivery service.

- 5 The extended delivery times will allow for 2 fresh produce deliveries. It is intended that these two deliveries are to arrive at the store at the same time so they can be unloaded within the enclosed service area, first thing in the morning and mitigate the queuing of deliveries on the rampway.
- 6 Once the lorries have entered the service area to unload, the entrance shutters to the yard will be closed. The lorries will move to the northern most end of the service yard to unload the produce deliveries into the chillers or straight onto the shopfloor. Once unloaded, the vehicle(s) will depart from the service area from the northern most exit, which is not located opposite residential properties.
- 7 It is understood that the extended delivery periods would not result in further deliveries being made to the store, but will assist in the logistics in serving the store and increasing trading efficiencies.
- 8 No physical alterations to be building are being proposed.

Description of Site

- 9 The site lies within the urban area of Swanley, in the heart of the Town Centre. Vehicular access to the store can be gained from the adjacent orbital road into two car parks that are located on the east and western sides of the main store. There is a delivery entrance to the site independent of the car parks, accessed from a rampway that adjoins from Bartholomew Way. Approximately 30m to the east of the site are residential properties along Birchwood Park Avenue, to which the main orbital road separates the properties from the application site.
- 10 Deliveries of goods take place in a service yard area that abuts the eastern elevation of the store. This is a fully enclosed purpose built construction comprising of masonry walls of a height of approx. 2.9m with blanked-off louvres to provide acoustic mitigation.
- 11 As previously mentioned access to the service yard is facilitated by a dedicated ramp to the south of the yard with egress occurring at the northern end of the facility.
- 12 Since 2003 the store has traded on weekdays for 24 hours per day, opening at 07:00 on Monday mornings and closing at 22:00 on Saturday evenings. It also trades between 10:00 and 16:00 on Sundays.

Constraints

- 13 Built confines of Swanley

Policies

Sevenoaks Core Strategy

- 14 Policy – SP1

Allocations and Development Management Plan (ADMP):

- 15 Policies - EN2, EN7

Other

- 16 National Planning Policy Framework (NPPF)
- 17 National Planning Practice Guidance (NPPG) - Noise

Planning History

- 18 There is an extensive planning history to this site and the following planning permissions are relevant to this application:
 - 08/01850 - Variation of Condition 9 of SE/87/01732/FUL to allow deliveries between 06:30 and 22:00 Monday to Saturday with No Restriction on vehicle numbers on Sundays – REFUSED (*GRANTED at APPEAL*)
 - 08/00631 - Variation of Condition 9 of SE/87/01732/FUL to allow deliveries between 06:30 and 22:00 Monday to Saturday with No Restriction on vehicle numbers on Sundays. - WITHDRAWN
 - 02/02326 - Variation of condition limiting store deliveries of Application SE/87/01732 - REFUSED
 - 96/02267 - Variation of condition 9 of planning permission SE/87/1732to extend delivery hours on Monday to Saturdays and to allow deliveries on Sundays and Bank Holidays. – GRANTED

Consultations

Swanley Town Council

- 19 Swanley Town Council – Objects for the following reasons:

“Swanley Town Council strongly objects to this application as the proposed extension of delivery hours would be harmful to the residential amenities of properties in the vicinity due to the noise and pollution from exhaust emissions generated by the delivery vehicles which is contrary to planning policy EN1 of the Local Plan.

The planning conditions were set when the store was opened and there has been no material change in the surrounding neighbourhood during this time that would make changes to delivery times viable.

The Town Council request that Asda seeks to find a solution to the issue of vehicles queuing to enter the delivery yard and considers finding a suitable parking waiting area and must better manage its supply chain. The stacking of vehicles using the public highway raises serious concerns of highway safety. This situation is made worse by the size of the delivery lorries being used.

The WHO guidelines are already being exceeded and therefore any increase in opening hours would only make this situation worse.”

Kent Highways Services –

- 20 No objection

SDC Environmental Health

- 21 SDC – Environmental Health Officer – *“Having reviewed the acoustic submission I was mindful that it states that the highest LAFmax exceeded the WHO night time guideline values. However the measurement results and time history information demonstrate that the existing traffic movements generate significantly higher levels than the proposed delivery vehicles generate.*

I suggest that by agreement or possibly a condition that no more than two deliveries in the period 05:00 to 06:30 and two deliveries between 22:00 and 23:00 Monday to Saturday with no more than two deliveries 06:00 to 08:00 and no more than six deliveries between 15:00 and 23:00 on Sundays and Christmas Day.”

Representations:

- 22 9 Letters of objection received, objecting on the following grounds:
- Highways safety matters;
 - Noise generated at unsociable hours;
 - Cause noise and disturbance;
 - Pollution caused by stationary vehicles;
 - Already have been breaches of planning control.

Chief Planning Officer’s Appraisal

Principal Issues

- 23 This is a Section 73 application to allow the variation or removal of a condition of a specific planning permission. This will effectively allow the consideration of the variation(s) and allow further conditions to be imposed if it is considered reasonable and necessary in accordance with guidance in the National Planning Practice Guidance (NPPG). This report will discuss relevant material considerations that apply to the proposed variation.

Variation of Condition 2 of planning permission SE/08/01850/CONVAR. It states:

“No deliveries shall be made to the ASDA Store except between 06:30 and 22:00 hours on Mondays to Saturdays and between 08:00 and 15:00 hours on Sundays and Christmas Day.”

- 24 The applicant proposes varying the condition to:

“No deliveries shall be made to the ASDA Store except between 05:00 and 23:00 hours on Mondays to Saturdays and between 06:00 and 23:00 hours on Sundays and Christmas Day.”

- 25 Asda have found that the approved variation in delivery hours (*approved at appeal – planning reference – SE/08/01850*) is not sufficient for their operational requirements and they require early morning fresh produce deliveries to reduce the risk of the store running out of stock with a key emphasis on early

morning customers not being able to buy the products they require and offering fresher goods to be picked for home shopping customers.

- 26 The main issue in regard to this application is to whether the variation of condition 2 of SE/08/01850/CONVAR to allow for extended delivery times will have an adverse impact on the amenities of adjoining occupiers.
- 27 Under policies EN1 and EN7 of the ADMP, the environment and sensitive receptors should be protected against pollutants, including noise, and development should not be permitted if it would lead to an unacceptable level of noise nuisance for nearby residents. Moreover, Paragraph 123 of the National Planning Policy Framework stated that planning decisions should aim to “*avoid noise giving significant adverse impacts upon health and quality of life as a result of new development.*” Furthermore they should aim to “*mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including the use of conditions*”
- 28 The applicant has submitted a noise impact assessment (NIA) for extended delivery periods in accordance with BS4142:2014. The methodology used for the 2008 planning application/appeal was that of the PPG24: Noise and the recently superseded BS4142:1997, and was not disputed by the Planning Inspector. This submitted NIA not only considers BS4142:2014, but also uses standards as set out in the Noise Policy Statement for England 2010 (DEFRA) and further guidance published by NPPG 2014. The methodology used for the NIA has not been disputed by the Council’s Environmental Health Officer.
- 29 The results of the NIA establishes the typical background sound levels adjacent the nearest residential property, plus activity noise levels for a refrigerated articulated vehicle arriving on the access ramp and driving into the enclosed service yard.
- 30 The results of the report express that a noise rating of a refrigerated vehicle arrival would be 46 dB LAeq during the day and a rating level of 49 dB LAeq for night-time arrival. It shows that the most dominant noise source is road traffic activity on Bartholomew Way, which is at a higher noise level than the delivery activity to the store, at those proposed extended delivery hour times, which is also a similar conclusion the 2008 NIA.
- 31 As stated in the NIA, consideration has been given to the reference of the exceedance of World Health Organisation (WHO) night-time values, which has been highlighted by the Town Council. It is recognised that the noise activity of the deliveries exceeds the expected night-time values (as cited by WHO), however the existing background noise generated by traffic is even higher than that of the noise activity generated by the deliveries, as expressed by the NIA. Again this is a similar conclusion the Planning Inspector had made in the 2008 appeal whereby, paragraph 16 of that appeal decision, the Inspector stated:
- “Even at the most exposed property (now known as The Grove), predicted noise levels from the serving of the store would be effectively masked by noise from passing traffic along Bartholomew Way and other town centre activity during the particular periods concerned.”*
- 32 Again, it would appear that no harm can be demonstrated by the deliveries being made during the extended periods as qualified by the submitted NIA.

- 33 Further guidance from the Noise Policy Statement for England 2010 (DEFRA) aims to avoid significant adverse impacts upon health and quality of life and uses WHO concept toxicology phrases to determine the overall effect of the noise exposure is, or would be, above or below the significant observed adverse effect level and the lowest observed adverse effect level for a given situation. This is reaffirmed by guidance within the NPPG.
- 34 The observed effect levels are described as:
- “• *Significant observed adverse effect level (SOAEL): This is the level of noise exposure above which significant adverse effects on health and quality of life occur;*
 - *Lowest observed adverse effect level (LOAEL): this is the level of noise exposure above which adverse effects on health and quality of life can be detected;*
 - *No observed effect level (NOEL): this is the level of noise exposure below which no effect at all on health or quality of life can be detected.*”
- 35 Taking the above into consideration the submitted NIA demonstrates that the noise impact from the deliveries would be below the Lowest Observed Adverse Effect Level (LOAEL). This is acceptable in planning terms and as stated by NPPG, no further mitigation measures would be required.
- 36 The NIA has been independently assessed by the Council’s Environmental Health Officer. The officer raises no objection to the proposal but has suggested further restriction on the amount of deliveries during the extended periods, which would be a ‘balanced approach’, securing the minimum needs of the store and that of the amenities of the residents. The contents of the report, as qualified by the officer, the noise levels created by the deliveries would be no higher than that of the traffic noise generated within the proposed extended periods. Therefore as it cannot demonstrated that significant harm would caused to the amenities of adjacent residents, there is no basis to justify a reason for refusal of this proposal.
- 37 As discussed above, the only reason for the imposition of the previously conditioned delivery hours was to safeguard the amenities of neighbouring residents and the local area from any undue nuisances. As such there should be no additional material considerations in the assessment of this application. It is however noted that Highway Services have also confirmed no objection to the application, and the absence of any physical alterations will ensure no harm to visual amenity.
- 38 In light of the above it is considered that the proposed extended delivery hours are considered to be acceptable. The proposed hours would ensure the continued protection of sensitive receptors in the area and as such it is proposed that the condition should be varied as follows:
- “No deliveries shall be made to the ASDA Store except between 05:00 and 23:00 hours on Mondays to Saturdays and between 06:00 and 23:00 hours on Sundays and Christmas Day.*
- Reason: To protect the amenities of surrounding residential properties in the area in accordance with policies EN2 and EN7 of the Sevenoaks Allocations and Development Management Plan.*

39 Moreover, as suggested by the Environmental Health Officer and has been provisionally agreed by the applicant, it is proposed to introduce a further condition restricting the number of deliveries during the extended time periods to ensure deliveries within the extended periods are strictly controlled without inhibiting the trading efficiency of the store. The additional proposed condition should read -

40 *Notwithstanding condition one, the number of deliveries to the Asda Store is restricted to no more than 2 deliveries between 0500 and 0630 hours, no more than 2 deliveries between 2200 and 2300 hours Monday to Saturdays and no more than 2 deliveries between the hours of 0600 and 0800 hours and no more than 6 deliveries between 1500 and 2300 hours on Sundays and Christmas Day.*

Reason: To protect the amenities of surrounding residential properties in the area in accordance with policies EN2 and EN7 of the Sevenoaks Allocations and Development Management Plan.

41 Upon reviewing the existing planning permissions relating to the store, it is noted that there are no planning conditions relating to the use of the service area vehicle entrance and exit roller shutter doors. The service area has internal acoustic protection and as confirmed by the applicants, the submitted NIA had been undertaken with the service area fully enclosed. To ensure that the acoustic protection offered within the existing service yard is not compromised, it would be reasonable to expect that the service area roller shutters are closed at times when vehicles are being unloaded. At present it is only in-house guidance that ensures that the roller shutter doors remained closed during loading and unloading of vehicle(s) and cannot be wholly relied upon. Therefore by imposing a condition of adds a level of protection to ensure the acoustic performance of the service area is maintained. A condition of this nature would be reasonable and in accordance with the NPPG. The condition recommended condition proposed is:

“The roller shutter doors that serve the vehicular entrance and exit points from the building service area/warehouse shall only be opened in an emergency or when a vehicle is required to have access to enter or to exit the service area/warehouse.

Reason: To protect the amenities of surrounding residential properties in the area in accordance with policies EN2 and EN7 of the Sevenoaks Allocations and Development Management Plan. “

Other Matters

42 Concerns have been raised by residents that at present lorries parking on the access ramp are over spilling onto the main road, causing a traffic hazard. However, there is other legislation in place to deal with such obstructions on the highway and therefore not a planning consideration. Notwithstanding this, there is a perceived benefit of allowing extend the delivery hours. By allowing the 2 fresh produce deliveries in the morning, logistically these vehicles would come straight from Asda's 'Erith' depot to the allowing all the produce to be delivered to the store and in these first two deliveries. This would alleviate the need for split/mixed deliveries with other store allocations or other chilled foods making the logistical process more efficient. Furthermore being the first two deliveries of the day, the vehicle would enter into the service area without the need to wait

upon the rampway, reducing the risk of vehicles waiting. Therefore the extended delivery hours would only serve to improve the current situation and reduce the need for further deliveries throughout the day.

- 43 KCC Highways have raised no objection to this application; as such no highway objections can be raised.
- 44 The neighbours' representations have been considered. Most of the concerns relate to noise issues. However as highlighted in the previous paragraphs, there is no justified planning reason to withhold the variation of the condition.
- 45 It is worth noting that since previous appeal decision, there have been no reported noise complaints raised to the Council's Environmental Health Team and one complaint to planning enforcement relating to deliveries made outside permitted hours received in September 2015.
- 46 Consideration has been given to making this permission temporary for a time-limited period to assess the impact of the extended deliveries. This precautionary approach could be undertaken, however it is considered that it would not be appropriate in this instance as the Environmental Health Officer has not objected to the proposal and accepted that the variation of the condition proposed would be able to address any harm caused by deliveries outside those hours as cited and further restrictions placed by recommended additional planning conditions.

Conclusion

- 47 It is considered that the extended deliveries can be undertaken without causing disturbance to residential amenity as proved by the submitted NIA and as qualified by the Councils Environmental Health Officer. The application is considered to be acceptable when assessed against the objectives of Policies EN2 and EN7 of the ADMP and would be in line with Paragraph 123 of the NPPF Framework, which states that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development. It is recommended that the condition is varied and subject to the imposition of additional conditions as recommended.

Contact Officer(s): Sean Mitchell Extension: 7349

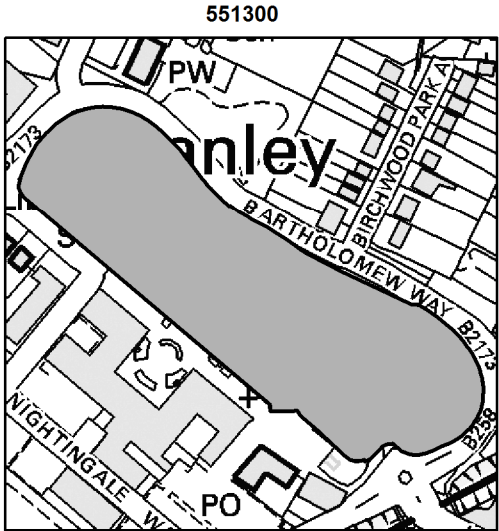
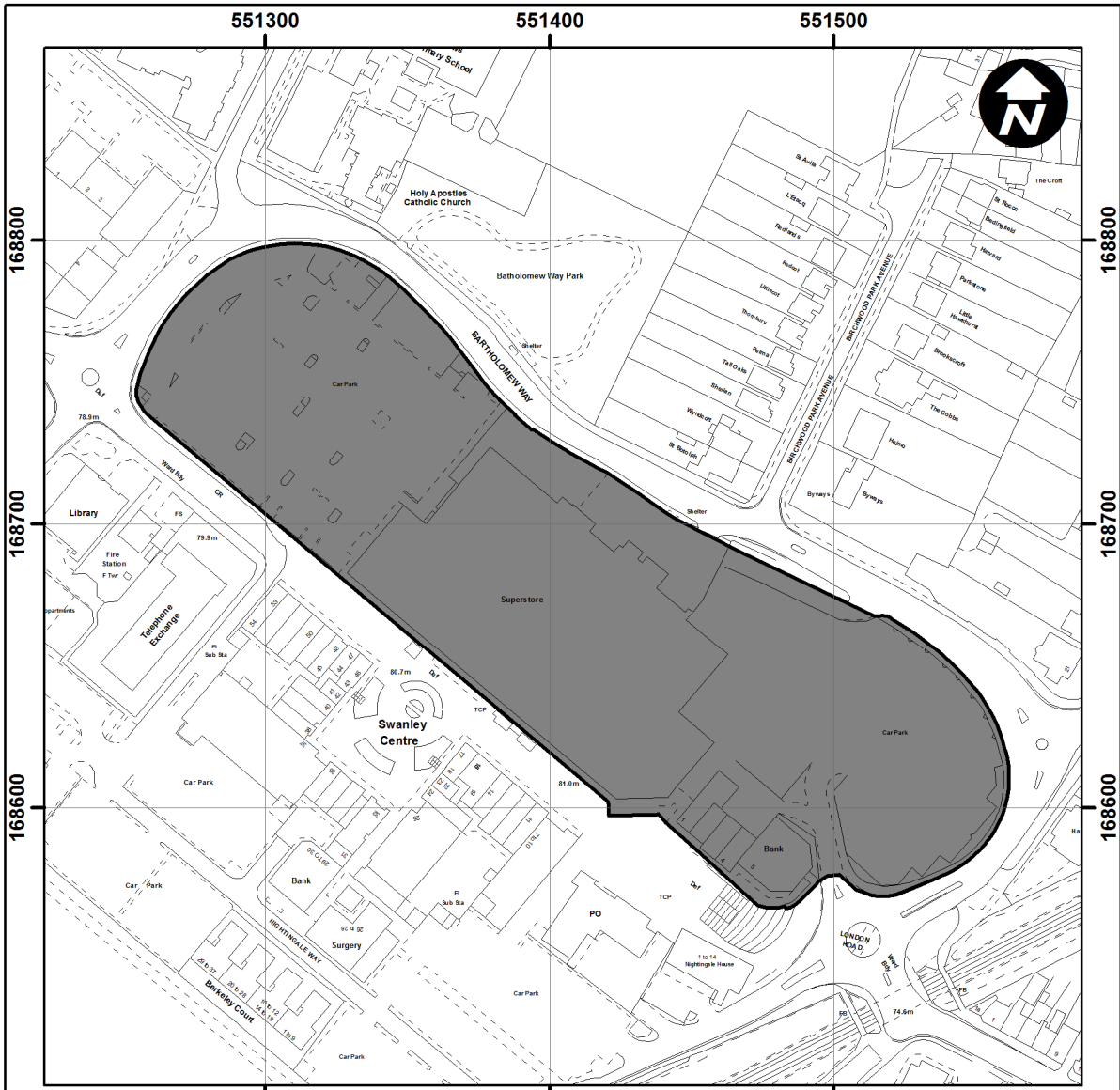
Richard Morris
Chief Planning Officer

Link to application details:

<http://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=NTBTA4BKKBZ00>

Link to associated documents:

<http://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NTBTA4BKKBZ00>



Site Plan

Scale 1:2,500

Date 21/10/2015



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