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PLANNING STATEMENT

VARIATION OF DELIVERY RESTRICTION (CONDITION 15 OF PERMISSION FP/133/08)

**TESCO EXPRESS
126 FELPHAM ROAD
BOGNOR REGIS
PO22 8QW**

JUNE 2017

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APPENDICES

Appendix 1 – Surrounding Land Use (Figure Plan)

Background

1. This Statement is submitted in support of an application pursuant to Section 73 of the Town & Country Planning Act 1990 (as amended) to vary condition 15 of planning permission FP/133/08 relating to delivery hours associated with the Tesco Express store at 126 Felpham Way, Bognor Regis. The store is currently prevented from taking deliveries before 0900 and after 1600. The application seeks to extend the delivery hours in line with the store's current trading hours.
2. Planning permission FP/133/08 was granted by notice dated 6th October 2009 for the redevelopment of the site to provide A1 retail use with associated car parking. Relevant conditions were discharged and the consent implemented. The store opened in October 2010 and has trades very effectively. Subsequent planning applications relate to non-material amendments (2010) and alterations to signage in 2014.
3. The store lies on a busy corridor between Bognor Regis and other south coast towns. The entrance is arranged such that vehicles enter the site from Felpham Road and egress from Middleton Road (ie, either side of the junction with Flansham Lane). A ghosted lane is provided opposite the Southdowns PH to facilitate right-turning customers travelling in an easterly direction. Appropriate signage helps prevent incorrect use of the car park and observations from the site demonstrate this is being respected.
4. The store car park lies to the front and side of the building and provides a total of 14 bays, in addition to 2 bays for disabled drivers, an area for motorcyclists and facilities to secure bicycles to the side of the store. A gated access to the west of the site provides access to the King George V Recreation Ground (eg. mowing and deliveries, etc). To the east side of the building is a service yard, enclosed by timber panel fencing. Site observations suggest the car park operates with spare capacity, even at peak times. There is sufficient space within the site to accommodate large HGVs without the loss of parking.

5. The site is surrounded predominantly by non-residential properties, as indicated on the plan at Appendix 1. To the south and west lies the King George V Recreation Ground, its various facilities and a separate enclosed playground. Beyond this, to the west, is Felpham Methodist Church. To the east lies a public footpath providing access to residential properties at Triton Place and also the King George V Recreation Ground. Beyond the path, further east, lies the Brethren's Meeting Rooms. To the north lies the junction of the B2259 and B2132, and beyond that to the northwest the Southdowns PH. The nearest residential property is approximately 20m away at Triton Place, and is separated from the store by fencing and a footway.
6. The store presently operates from 0600 to 2300 seven days a week. The store is open 364 days per year and provides an important facility to a substantial residential population, in addition to considerable passing trade. In addition to 'food on the go', the store provides a wide range of convenience groceries, newspapers and some non-perishables, in addition to an ATM. The store employs approximately 25 members of staff (FTE). The store is an important, well-regarded community asset.
7. The planning application was initially deferred by the Planning Committee to enable the Council to obtain advice from an independent transport consultant, notwithstanding the highway authority had not objected. The Council's transport consultant recommended that conditions be attached to the application to ensure deliveries are made within site (i.e. to avoid obstructing the highway) and ideally avoid the morning and evening peaks. Care should also be taken to avoid multiple deliveries occurring at the same time. The consultant recommended that *"...planning conditions should be included in any approval for servicing/deliveries to be made avoiding the peak periods of traffic between 0700 - 0900 and 1600 - 1800"*.
8. Despite this, a far more restrictive condition was imposed, stating that: *"Servicing/deliveries to the retail unit hereby approved shall only take place between the hours of 0900 and 1600 of the same day."*

9. The reason for the condition was said to be “...*in the interest of highway safety and residential amenity*”. However, there is no discussion within the Committee Report in respect of the impact of the proposal on local amenity and thus, little justification for such a condition.

Proposal

10. Tesco seeks consent, pursuant to Section 73 of the Town and County Planning Act 1990 to vary condition 15 of permission FP/133/08 such that it mirrors the present trading hours of the store (ie, 06:00 to 23:00 daily). This will enable Tesco to address a number of operational issues, primarily, to provide fresh produce (milk, bread, sandwiches and fruit) open opening, thus reducing storage requirements, which are finite. Ideally stores such as this, serving early morning customers, would take one or more early morning deliveries to cater for such products and reduce chilled and other storage requirements.
11. The store currently operates within the imposed restriction, with the exception of newspaper deliveries, which arrive at the store in the early morning (typically around 0400). This has occurred we understand, since the store first opened and we are unaware of any criticism or complaints. This exception aside, the store has, to some extent, adapted to the constraint on delivery hours through the provision of an instore bakery and well-managed storage protocols. However, Tesco’s preference, as with any retailer, is to stock products early so that the freshest produce is available to customers and to trade from the maximum floor area possible.
12. Observations show that the store is very popular with early-morning customers, particularly tradespeople. As it is located on a primary route with access to strategic locations, it is an important establishment serving those passing through, along with local residents who use the store throughout the day. The relaxation of delivery hours would therefore allow the store to be better managed and ensure fresh products are always available.
13. In light of this, the application seeks to vary the condition, as follows:

No servicing or deliveries (with the exception of newspapers) to the retail unit hereby approved shall take place between the hours of 2300 and 0600 on any day.

14. This would bring the delivery restriction in line with the operating hours of the store. Indeed, the store already attracts large numbers of vehicles from 0600 and would not generate any additional deliveries; rather, an alteration as to when those deliveries occur.

Decision-Making Framework

15. Section 73 of the Town and Country Planning Act 1990 (as amended) provides a basis for the development of land without compliance with conditions previously attached; put simply, existing conditions may be modified, deleted, or new conditions added. Applications can be made prior to the commencement of development, or where development is already operational. Applications approved pursuant to Section 73 should generate a new planning permission¹, including the deleted/added/amended conditions and also providing an opportunity to review/amend other conditions.
16. Paragraph 203 of the NPPF places a duty on local planning authorities to assess whether otherwise unacceptable development can be made acceptable using appropriate planning conditions. This also works in reverse, in that conditions should only be used where, without them, development would be refused. Paragraph 206 of the Framework also confirms that “...*planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects*”.
17. Further guidance is provided in the NPPG, which confirms that conditions must be imposed “...*in a way that is clearly seen to be fair, reasonable and practicable*”. It also notes that conditions must be “...*tailored to tackle specific*

¹ Paragraph 21a-031-20140306 of the NPPG confirms that “*decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged*”.

problems, rather than standardised or used to impose broad unnecessary controls". The NPPG confirms that local planning authorities must only consider the disputed condition and the implication of amending or deleting it, and not the planning permission as a whole.

Highway Considerations

18. The following section will demonstrate there is insufficient linkage between the operating characteristic of the development and the condition to which this application relates, to the extent it fails a number of tests.
19. The original application (FP/133/08) attracted no objection from the highway authority. Notably, when first reported to Planning Committee (25th February 2009) no delivery or trading restrictions were included amongst the schedule of conditions in the Committee Report. One can only assume that the professional view of officers, was that no grounds existed to impose conditions controlling the operating and delivery hours of the store.
20. Members subsequently resolved to defer the application in order to take the advice of an independent transport consultant, flowing from concerns raised by members of the public and Councillors.
21. The application returned to Committee on 15th July 2009, whereupon the Head of Planning presented a detailed update report setting out the findings of the Council's independent transport consultant. It confirmed the consultant did not consider the proposals flawed in transport terms and that, despite Member's concerns regarding traffic flows and safety, there were no grounds to refuse permission, subject to conditions recommended by the consultant (see below) and a further condition requiring a Travel Plan to manage staff parking.
22. The independent consultant confirmed that the adjacent junction *"...is not subject to any capacity constraints in the PM peak"* and that additional analysis showed that even when adding peak development traffic (2000 to 2100) to peak network traffic (1700 to 1800), there would be *"...no material difference to vehicular delay or queuing"*. It was also noted that *"...implementation of the*

Bognor Regis Northern Relief Road would result in a material reduction in traffic volumes passing through the Felpham Way/Flansham Lane/Middleton Road roundabout". The report concluded that "...the capacity analysis has therefore illustrated that the development traffic, even in the worst case scenario and not accounting for the potential future Bognor Regis North Relief Road would have a minimal effect upon traffic at" the junction. To confirm, no objections were raised by the consultant relating to highway safety or the capacity and operation of the proposed customer car park.

23. In this context, there can be no justification whatsoever, to impose a condition preventing deliveries during the peak hours, whether in respect of highway capacity, safety or site operation. Whilst the aim of removing HGVs from the network during busy periods is understood, there was no unacceptable impact in need of mitigation, and thus, the test of necessity was failed. The test of reasonableness was also failed, in terms of placing disproportionate burdens on the applicant (ie, in terms of the logistics of working around the restriction).
24. Even if the condition had been necessary, its effectiveness is questioned. Due to the nature of delivery logistics, it is probable that delivery vehicles are already on the adjacent highway, en route to other deliveries. Indeed, deliveries to small convenience stores by HGVs are typically one of a number of deliveries on a larger circuit. This greatly improves efficiency and reduces carbon emissions. Indeed, there are four further Tesco Express stores within 5km of the site, in addition to a major superstore and PFS at Shripney Road. Delivery vehicles will typically visit several of these as part of one journey. Thus, preventing entry to one of these stores reduces the effectiveness of that circuit, by potentially forcing a separate journey or reorganisation/retiming of the route.
25. The unique layout of the site should also be noted, whereby there is potential for delivery vehicles to avoid the junction altogether if arriving from the west and departing to the east (given the Tesco Express access and egress is laid out either side of the junction). Whilst it is accepted that turning movements still arise, the number of delivery vehicles (potentially only one or two in the AM and

PM peaks) must be considered against the very substantially greater number of customer vehicles. In short, removing one or two vehicles from a network which is agreed to perform adequately, simply cannot be justified.

26. Even if the condition could be justified in the circumstances attendant in 2009, a material change in circumstances would now render it wholly unnecessary.
27. In March 2016, the Bognor Regis Northern Relief Road (BRNRR) opened. One of the aims of the road was to cut congestion on the B2259 and B2132 (which meet at the junction opposite the store) by allowing traffic to pass north of Bognor Regis via the A259. The BRNRR was brought forward as part of a major urban extension on land to the north of Felpham (forming part of Policy Site 6 of the Arun District Plan 2003). The application was called-in by the Secretary of State who, whilst approving the scheme, confirmed the “...*provision of the Bognor Regis Relief Road...., will bring benefits to the wider Bognor Regis area*”. (Paragraph 15 of the decision letter²). Likewise, the Inspector noted that “*on the basis of the evidence presented to the Inquiry, the Bognor Regis Relief Road has widespread and almost universal support*” given that the road is “...*designed to act as a bypass and distributor road, providing easier access to the northern parts of the urban area*” (paragraph 12.10).
28. The Council’s transport consultant specifically assessed the potential impact of the BRNRR. The consultant sourced modelled traffic data relating to the effect of the relief road on the local network in order to confirm Tesco’s assertion that Felpham Way would see reductions in traffic as a result of the BRNRR. The results confirmed that the implementation of the BRNRR would indeed be accompanied by a notable decrease of traffic travelling through the Felpham Way / Flansham Lane / Middleton Road roundabout. The consultant concluded that this effect is more pronounced in the AM than in the PM peak.
29. The Review also confirmed that, even with the additional traffic being generated by the convenience store, traffic levels at the junction would be lower than at

² ref. APP/C3810/A/04/1167106 and ref. APP/C3810/V/1170039

before its opening (paragraph 5.2.7). Thus, a result of the BRNRR, the addition of one or two HGV's on the network, arriving at the site during the peak hours, has significantly less impact today than the pre-existing situation.

Local Amenity

30. The Council's independent transport consultant recommended a delivery restriction between the hours of 0700 to 0900, and from 1600 to 1800. The decision notice however, records a restriction between 1600 and 0900. Whilst the second Committee Report indicated the applicant's willingness to accept this (in the context of expediency and the desire to secure a consent), there is an alarming lack of justification for this level of restrictiveness. One can only assume the expanded part arises due to 'residential amenity' (ie, the second reason stated on the decision notice).
31. Yet neither of the Parish Council's objected on the basis of local amenity, whilst noise / amenity is absent from the summary of objection letters set out in the February 2009 Committee Report. The report confirmed "*...the proposal is considered to comply with relevant Development Plan Policies in that it would have no materially adverse effect on the visual amenities of the locality nor would it have an adverse impact upon the character of the surrounding area*". No concerns were raised by officers in relation to noise and, accordingly, the schedule of proposed conditions did not seek to restrict the trading or delivery hours of the proposed store. Neither is there any discussion in the post-deferral Committee Report relating to noise and local amenity, and likewise no restriction on trading hours on the subsequent decision notice. Quite simply, there is no justification for the restrictive regime imposed by condition 15.
32. Even if the Council sought to resist the proposed relaxation, account should be taken of the following.
33. The nearest residential property is approximately 20m from the site boundary and 35m from the cage-marshalling enclosure. The surrounding area is notably mixed, with all immediate neighbours in non-residential use (see Appendix 1).

The closest residential property is separated from the store by a footpath and notable boundary treatment, including a fence around the property, a fence at the application site and a further fence surrounding the cage marshalling area (ie, where deliveries take place). Furthermore, the property is a bungalow with no first floor windows. The properties to the north east of the site are separated from the site by Middleton Road and a junction. Traffic is present on the road from early in the morning and relatively late into the evening, which creates background noise against which deliveries to the site take place.

34. Observations during delivery events demonstrate these are carefully coordinated. Tesco logistics' provides plentiful notice to the store of an incoming delivery and this enables store staff to place cones in front of the store to ensure the vehicle is directed swiftly into a safe and suitable location. The driver is assisted by staff to move cages from the lorry to the cage marshalling area at the side of the store. In anticipation of the delivery vehicle arriving, store staff prepare empty cages containing returns, refuse and recycling to be taken away. A member of store staff remains with the vehicle at all times during loading and unloading to ensure the safety of the site for staff and customers. Once complete, the delivery is logged and the driver departs. The whole procedure, from arrival to departure, rarely takes longer than 20 minutes. Deliveries to the site by non-Tesco vehicles, tend to be quicker.
35. The site is relatively spacious, enabling large delivery vehicles to pull-up adjacent to the store without reducing the number of parking bays or capacity and safe operation of the car park.
36. Against this context, and in light of the location of residential properties in the area, in respect of screening, boundary treatment and the existing road network and operation of the store from 0600 to 2300, the current restriction is wholly unnecessary, and unreasonable. It fails NPPF tests and should be deleted.
37. Notwithstanding grounds for deletion, Tesco is conscious of the concern this might raise for residents nearby and therefore proposes an amended restriction consistent with the current trading hours of the store (ie, no deliveries between

2300 and 0600 on any day). This is seen as a sensible balance between any local interests and the operational requirements of the store.

Conclusion

38. It is proposed to relax condition 15 of planning permission FP/133/08 such that the ability to delivery to the Tesco Express store at Felpham Way is consistent with the store's present trading hours. The store is currently restricted by the inability to receive deliveries prior to 0900 or after 1600, thus limiting the availability of certain fresh products and increasing storage requirements. Approval of the application will secure qualitative improvements to the store.
39. Notwithstanding the applicant's agreement to the restriction in 2009, a thorough analysis of correspondence, advice received by the Council and presentation of the application to Committee, demonstrates no justification for the condition, either as first recommended by the Council's consultant, or subsequently translated into the planning permission. Even if the Council can identify historic justification, completion of the Bognor Regis Northern Relief Road is an important material change of circumstances, resulting in a reduction of traffic at the junction adjacent to the store, and further diluting any requirement to restrict peak hour access by delivery vehicles. In any event, such a restriction could be ineffective given delivery vehicles may already be on the network as part of a wider delivery circuit.
40. The proposed relaxation will not impact amenity to any material extent given the number of non-residential uses in the vicinity, the proximity of residential dwellings and separation from the site by other noise generating activities. No night-time deliveries are proposed.