

REPORT UPDATE

Application No: FP/161/17/PL

Reason for the Update / Changes

Reason for Update/Changes:

The applicant wrote in on the 12th February to make the following comments about the Committee report:

- (1) The description of the application fails to represent the negotiated position and it should be made clear at the outset that Tesco is no longer seeking deliveries from 0600 and has agreed not to make deliveries on weekdays between 1500 and 1800.
- (2) The report should also be clear that the objection by Middleton-on-Sea Parish Council relates to the application as first submitted and that subsequently, the application has changed in terms of the amended delivery times and also the additional condition relating to delivery management. The same can be said for all but one of the public objections.
- (3) More should be made of the fact that were it not for the objection made by Middleton-on-Sea Parish Council (relating to the original proposal), the application would not in fact have come before the Committee at all.
- (4) Concern is raised as to the description used in respect of the current operation of the car park, where it is asserted that delivery vehicles cannot enter the site. Whilst it is acknowledged that the current conditions are not ideal (hence the agreement to submit a Delivery Management Plan), this assertion is not accepted. It has potential negative implications and may generate unnecessary concern.
- (5) Finally, applications for variation of condition, generate a new planning permission. The National Planning Policy Guidance is clear that: "decision notices for the grant of planning permission under Section 73 should also repeat relevant conditions from the original planning permission unless they already been discharged". Therefore an amended original consent should be issued.

Officers Comment:

Points (1) to (4) are noted.

In respect of point (5), having looked back at the original decision notice, it is clear that aside from the original delivery hours condition, all of the other conditions relate to the construction of the site and have either been discharged or are no longer relevant. Therefore, it would not be relevant to re-impose these original conditions. However the informative listed in the recommendation report should be deleted as this suggests the granting of a stand alone consent. An amended replacement recommendation sheet is therefore attached to this update.

Notes: Changes to recommendations, conditions and / or reasons for refusal will always be reflected in the recommendation section of the attached Officer's Report.

Recommendation Report for Planning Permission

REF NO: FP/161/17/PL

LOCATION: Tesco Express
126 Felpham Way
Felpham
PO22 8QW

PROPOSAL: Variation of condition 15 imposed under FP/133/08/ relating to hours of servicing/deliveries.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	The application seeks to vary condition 15 which states that: "Servicing/deliveries to the retail unit hereby approved shall only take place between the hours of 0900 and 1600 of the same day." The applicant requests that it be amended to state: "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." This is to align the delivery hours with the present trading hours in order to enable Tesco to address a number of operational issues, primarily, to provide fresh produce (milk, bread, sandwiches and fruit) upon opening, thus reducing storage requirements.
SITE AREA	0.18 hectares.
TOPOGRAPHY	Predominantly flat.
TREES	None affected by the proposed development.
BOUNDARY TREATMENT	Part open and part 0.5m high hedge/knee rail fencing.
SITE CHARACTERISTICS	Existing Tesco Express Store with car parking to the front and (east) side. Provision for delivery parking directly in front of the store.
CHARACTER OF LOCALITY	The immediate surroundings are considered to be predominantly non residential with a public house opposite and churches/playground space flanking and to the rear of the site.

RELEVANT SITE HISTORY

FP/83/14/A	Various illuminated and non illuminated signs on various elevations.	ApproveConditionally 18-06-14
FP/128/10/NMA	Application for a non-material amendment following a grant of planning permission FP/133/08/ for the addition	Approve 12-07-10

of a staff room window, re-positioning of ATM and addition of security door, Alteration of shop front, addition of a trolley bay & re-positioning of bollards

FP/119/10/DOC	Discharge of conditions 2,7,8,10 and 16, relating to planning application FP/133/08	DOC Approved 19-07-10
FP/133/08/	Redevelopment of site to provide A1 retail use with associated car parking.	App Cond with S106 06-10-09

Application FP/133/08/ was approved by the Development Control Committee following the receipt of advice from an independent transport consultant. It is noted that the Transport Consultant recommended a planning condition that would prevent deliveries in peak periods between 0700 & 0900 and 1600 & 1800. However, members decided that the delivery condition should allow servicing only between the hours of 0900 and 1600.

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Felpham Parish Council

"No objection"

Middleton Parish Council - "Objection. The existing conditions are there to reduce the risk to schoolchildren, local residents and traffic congestion. To change the hours of delivery will not remove those conditions for the better and in terms of traffic congestion make it more difficult during the peak rush hours and the times that schoolchildren go and leave school. Therefore in the opinion of the Parish Council we object to the existing conditions being changed."

Two letters of objection for the following reasons:

- * Before 9am and after 4pm are the busiest times for customers in the store;
- * It is a lie that there is existing capacity in the car park and cars are frequently parked elsewhere around the store site;
- * The entrance to the store is already extremely dangerous for pedestrians to cross;
- * Deliveries already occur at unauthorised times; and
- * Traffic build up at this junction is always bad at school starting and finishing times so any deliveries before 09.00 would just add to the congestion.

COMMENTS ON REPRESENTATIONS RECEIVED:

It should be noted that this is not a dual parish application and the boundary of Middleton Parish is some 615m away to the east. However, the two residents live close to the site. The issues raised will be considered within the Conclusions section. It should also be noted that the representations received were in response to the originally proposed replacement condition and not in respect of the two conditions now proposed.

CONSULTATIONS

Environmental Health
 WSCC Strategic Planning
 WSCC Strategic Planning
 WSCC Strategic Planning
 WSCC Strategic Planning
 WSCC Strategic Planning

CONSULTATION RESPONSES RECEIVED:

WSCC HIGHWAYS - There has been extensive negotiation between the applicant and WSCC Highways spread over the course of several months (between August and December). Agreement has been reached in respect of the varying of the condition albeit with an amended wording to that proposed and with the inclusion of a second condition to require details of how the servicing of the site will be managed so as to prevent future problems such as customers parking within the delivery vehicle space. Therefore, WSCC raise no objection.

ADC ENVIRONMENTAL HEALTH - "Environmental Health would request that the hours referred to in their proposed condition would be 7am - 11pm daily. This is in line with the World Health Organisation Guidelines on Night-time noise. I note that the applicant has asked for 6am onwards but this would not be in line with WHO guidelines."

COMMENTS ON CONSULTATION RESPONSES:

The comments of Environmental Health have been adhered to in the wording of condition 01.

POLICY CONTEXT

Designations applicable to site:

Within Built-up Area Boundary;
 On-site Public Sewer;
 Class A Road; and
 Class B Road.

DEVELOPMENT PLAN POLICES

[Arun District Local Plan \(2003\):](#)

GEN2	Built-up Area Boundary
GEN7	The Form of New Development
GEN32	Noise Pollution

[Publication Version of the Local Plan \(October 2014\):](#)

SD SP2	Built -Up Area Boundary
QE DM1	Noise Pollution
T SP1	Transport and Development

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun District Local Plan 2003, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

A new Local Plan is in preparation and constitutes a material consideration when determining planning applications. At this stage the Arun District Local Plan 2011-2031 (Publication Version) October 2014 and supporting documents were submitted for independent examination on 30 January 2015. The Examination into the submitted plan was suspended whilst Arun District Council addressed matters raised by the Inspector but it resumed on 17th September 2017 and has now concluded. The District Council is awaiting the Inspector's report which is due out in Spring 2018. The Main Modifications to the Arun Local Plan and evidence base are being made available for public consultation. Representations can be submitted to the council over a six week period starting on Friday 12 January until 5pm on Friday 23 February. This follows on from the Arun Local Plan examination hearings held in September 2017.

A number of Main Modifications to the Arun District Local Plan 2011-2031 (Publication Version) October 2014 were approved by the Council on 22nd March 2017 and consultation on these has taking place. The Main Modifications should be read alongside the Arun District Local Plan 2011-2031 (Publication Version) October 2014 and where there are changes the Main Modification may also be material consideration to take into account. The examination ended in Autumn 2017 following publication of modifications to the Plan.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

The Neighbourhood Development Plan

Where applicable, Neighbourhood Development Plan's (more commonly known as a neighbourhood plan or NDP), once made by Arun District Council, will form part of the statutory local development plan for the relevant designated neighbourhood area. Whilst an NDP is under preparation it will afford little weight in the determination of planning applications. Its status will however gain more weight as a material consideration the closer it is towards it being made. Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation (Reg.14).

Made Plans in Arun District Council's Local Planning Authority Area are: Aldingbourne; Angmering; Arundel; Barnham & Eastergate; Bersted; Bognor Regis; Clymping; East Preston; Felpham; Ferring; Kingston; Littlehampton; Rustington; Walberton; Yapton. Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation (Reg.14).

There are no relevant Felpham Neighbourhood Plan policies.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under

the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

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, the safety of the local highway, the residential amenities of nearby properties and it would not have an adverse impact upon the established character of the surrounding area.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

PROPOSAL:

The application seeks permission to replace the existing deliveries condition; "Servicing/deliveries to the retail unit hereby approved shall only take place between the hours of 0900 and 1600 of the same day" with the following:

"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"

PRINCIPLE:

The principle of the retail Tesco Express store is not in doubt as it already benefits from a permanent permission as a result of FP/133/08/ which places no restrictions on opening hours (albeit that the sale of alcohol is restricted to certain times by licensing rules) and restricts servicing/deliveries to between the hours of 0900 and 1600.

This application is to be determined as to whether the change to the delivery hours will adversely affect the safety & convenience of the local highway and the amenities of the local area.

HIGHWAY SAFETY & CONVENIENCE:

It is noted that Middleton Parish Council and local residents are concerned that the change to the condition will have an adverse effect on highway safety and on local traffic congestion.

There are no relevant Felpham Neighbourhood Plan policies. The only relevant development plan policies are considered to be GEN7 of the adopted Local Plan (aLP) and T SP1 of the emerging Local Plan (eLP). In addition, it is necessary to consider the National Planning Policy Framework (NPPF).

Policy GEN7 of the aLP states that: "Development will be permitted provided it:

(iii) promotes sustainable development, including the effective use and conservation of energy and reducing the need to travel, particularly by private car; and

(vii) allows for the safe movement of pedestrians and vehicles, giving priority to pedestrians"

Policy T SP1 of the eLP (Modified Arun Local Plan - January 2018 Consultation) states that:

"The Council will support transport and development which: (f) Explains how the development has been designed to: (1) accommodate the efficient delivery of goods and supplies;"

Paragraph 32, bullet 4 of the NPPF states that: "..... Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe."

Paragraph 35 is also relevant and states that: "Plans should protect and exploit opportunities for the use of sustainable transport modes for the movement of goods or people. Therefore, developments should be located and designed where practical to (1) accommodate the efficient delivery of goods and supplies".

This application has been carefully assessed by WSCC Highways. It is understood that there is an existing problem in respect of deliveries to the site in that customers vehicles often park in the delivery space to the front of the store meaning that delivery vehicles cannot then enter the site. This results in standing vehicles in the highway (either delivery vehicles or customers trying to access the site).

West Sussex Highways could not support the proposed change to the condition but have agreed an alternative wording whereby there is a restriction on deliveries between 1500 and 1800 hours on weekdays which corresponds with School peak movements. The applicant has agreed to this.

Proposed condition 01 is considered to assist the current situation by allowing deliveries between the hours of 0700 and 0900 and also after 1800 on weekdays or after 1600 on weekends. This will spread out deliveries throughout the day and this may then result in less deliveries at peak times.

The applicant has also agreed to a second condition, which has been worded specifically to combat the issue of unauthorised parking within the delivery parking area. Proposed condition 02 will require that the applicant submit a Servicing Management Plan for approval by the Local Planning Authority in consultation with County Highways. It is expected that this will set out measures for how the delivery parking area will remain open and unobstructed . For example, no parking markings adjacent to the store (enforced by staff), the coning off of the area when deliveries are due and a system to ensure that the store is notified of both Tesco and non Tesco deliveries.

It is considered that the deletion of the existing condition and replacement with the two new conditions will be of benefit to the local highway in terms of safety and convenience in that deliveries will be spread out throughout the day, deliveries will avoid the end of school day rush and measures will be put in place to prevent the obstruction of the on-site delivery parking area by customers. These changes are considered to improve the efficiency of the delivery of goods to the store. In addition, the resolution of the current issues in respect of the highway being blocked should also make it easier for pedestrians to walk along the site frontage.

It is therefore considered that the proposal is in accordance with the policies of the development plan and the guidance within the NPPF.

AMENITY:

Arun District Local Plan Policy GEN7 (iv) indicates that development will only be permitted if it takes into account the impact on adjoining occupiers, land, use or property. Furthermore, Local Plan policy GEN32 (Noise Pollution) states that "Development which is a potential source of significant noise pollution will not be permitted unless the Council is satisfied that appropriate measures have been included in the proposal to reduce noise pollution to acceptable levels".

It is not considered that the amendment to the delivery hours will affect the amenity of persons living

close to the store. This is because the proposed delivery hours will match the existing opening hours and therefore, there will be no new periods of activity at the site. In addition, the B2259 Felpham Way is a main road route through the area and one which would be expected to carry vehicles at all times of the day and also at night.

Council Environmental Health Officers stated that they would only be concerned if deliveries were to be made between 0600 and 0700 but as the new condition only allows deliveries from 0700 onwards (except newspapers), there is no objection to the changes.

It is therefore considered that the proposal complies with policies GEN7(iv) and GEN32 of the Arun Local Plan.

CONCLUSION:

It is considered that there is an existing problem with respect to the delivery arrangements at this store in that customers often park in the delivery parking space with the result that delivery vehicles cannot enter the site and either block the highway or cars entering the site behind them block the highway. The proposed changes to the condition will improve this situation by spreading out deliveries throughout the day, avoiding deliveries during the post school rush and by ensuring that a delivery management plan is submitted and agreed. It is therefore recommended that permission be granted subject to the following conditions.

HUMAN RIGHTS ACT

The Council in making a decision 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 Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, 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 interest and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

APPROVE CONDITIONALLY

- 1 For a period of 12 months from the date of this permission no servicing or deliveries (with the exception of newspapers) to the retail unit hereby approved shall take place between the hours of 2300 and 0700 on any day. Additionally, there shall be no deliveries to the retail unit between 1500 and 1800 on weekdays only. At the end of the 12 month period the hours of servicing/delivery shall revert to those approved under permission FP/133/08.

Reason: In the interests of highway safety and residential amenity in accordance with policy GEN7 of the Arun District Local Plan and the National Planning Policy Framework

- 2 Within two months of the date of this permission, a Delivery Management Plan (including details of delivery procedures and measures to prevent customer vehicles parking in the delivery area) shall be submitted to the local planning authority. The approved Delivery Management Plan shall operate for a period of 12 months from the date of approval. Within a period of two months after the end of this 12 month period a further DMP shall be submitted which takes into consideration any necessary amendments to the original. The DMP so approved shall be implemented and shall remain in force unless otherwise agreed by the local planning authority.

Reason: To safeguard the operation of the public highway in accordance with policy GEN7 of the Arun District Local Plan and the National Planning Policy Framework.

- 3 INFORMATIVE: Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.