

MC/13/3282

Date Received: 13 December, 2013

Location: Asda, 387 Maidstone Road, Chatham, ME5 9SE

Proposal: Removal of condition 16 on planning permission ME/92/0481/A (details pursuant to outline for the, erection of a food store with car parking and, access onto the A229) to allow for deliveries between the hours of 5AM to Midnight (12:00AM) on Monday to Saturday and 7AM to Midnight (12:00AM) on Sunday and Bank Holidays.

Applicant: Asda Stores Limited

Agent: Mr M Underwood Deloitte LLP Athene Place 66 Shoe Lane
London EC4A 3BQ

Ward Rochester South & Horsted

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 2 April, 2014.

Recommendation - Approval with Conditions

- 1 No deliveries to the foodstore shall take place outside the hours of 5:00 hours to 24:00 hours on Mondays to Saturdays (inclusive) and 07:00 hours to 24:00 hours on Sundays and National / Bank Holidays.

Reason: to ensure that the development is without prejudice to conditions of amenity.

- 2 Prior to the commencement of the varied hours of delivery, hereby permitted, the acoustic fence to the north of the delivery yard shall be repaired to the satisfaction of the Local Planning Authority. Any subsequent damage to this acoustic fence shall be repaired immediately and no deliveries shall take place after 23:00 hours and not before 07:00 hours the following day until the repair works have been completed.

Reason: To ensure that the development is without prejudice to conditions of amenity.

- 3 No later than six months from the commencement of the varied hours of delivery, hereby permitted, the applicants shall submit to the Local Planning Authority an updated acoustic appraisal, to demonstrate the effectiveness of the repairs to the acoustic fence on the Northern boundary, of its written approval. The acoustic appraisal must also confirm that there is no

detrimental impact on the amenities of adjoining occupiers in Maidstone Road and Thorndale Close. Should no acoustic appraisal be submitted or should the acoustic appraisal indicate an adverse impact on the amenities of adjoining occupiers or should the acoustic appraisal be considered to be unacceptable to the Local Planning Authority the varied hours of delivery shall cease immediately and the original hours of delivery, being no deliveries to the foodstore shall take place outside the hours of 7.00 to 23.00 on Mondays to Saturdays (inclusive) and 08.00 to 13.00 on Sundays, shall be complied with.

Reason: To assess the impact of the development on adjoining amenity following the repairs to the acoustic fencing and to ensure that the development is without prejudice to conditions of amenity.

- 4 The vehicle parking scheme approved under planning decision reference ME/92/0481 and ME/92/0481A, as amended by drawing numbers A(00)-07 Revision A and 0002/20 of planning decision MC/06/1259 and drawing numbers (00)003 Revision B and (00) 010 of planning decision MC/13/1236, shall be kept available for such use and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: To ensure that the development does not prejudice conditions of amenity and highway safety.

- 5 The scheme of landscaping and boundary treatment shown on the approved plans under decision notice ME/92/0481/A and as amended by planning applications MC/06/1259 and MC/13/1236 shall be maintained.

Reason: Pursuant to condition 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality, in accordance with Policies BNE1 and BNE6 of the Medway Local Plan 2003.

- 6 No tree identified for retention with the approved landscaping plan of ME/92/0481 shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than as detailed on the approved plans. Any pruning to accommodate the Boundary Treatments shall be carried out in accordance with British Standard 3998 Tree Work.

Reason: Pursuant to section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality, in accordance with policy BNE1 and BNE6 of the Medway Local Plan 2003

- 7 The car park lighting scheme approved under decision notice ME/92/0481/A shall be maintained in accordance with the approved plans.

Reason: To ensure that the development does not prejudice conditions of amenity and highway safety.

- 8 No materials or equipment shall be stored on the site outside the building except for waste materials contained within bins for periodical removal.

Reason: In the interests of visual amenity and to ensure a satisfactory provision for refuse and recycling in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 9 The rating level of the noise emitted from fixed mechanical plant associated with the development shall not exceed the existing background noise level, determined to be LA90 (1 hour) 46dB, by more than 3dBA between 07:00 Hours and 23:00 hours on any day and LA90 (1 hour) 45dB by more than 3 dBA at any other time. The Noise levels shall be determined at any of the nearest noise sensitive premises. The measurement shall be made according to BS4142:1990.

Reason: To ensure that the development is without prejudice to conditions of amenity and to comply with Policy BNE2 of the Medway Local Plan 2003.

- 10 The building shall only be used for purposes of the sale of food and convenience goods and for no other purpose (Including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any Statutory Instrument revoking and re-enacting that Order) other than 1,478.8 sq.m of the retail store, including the approved mezzanine floor, which may be used for the sale of comparison goods

Reason: To restrict the total area of comparison goods sold to ensure that the proposals do not undermine retailing in the vicinity.

- 11 The acoustic screen adjoining the delivery area shall be of a height of 5 metres above the level of the delivery area on the site,

Reason: To safeguard the amenities of occupants of neighbouring property and to accord with Policy BNE2 of the Medway Local Plan 2003.

- 12 HGV parking shall only take place within the service area shown on the approved plans.

Reason: To ensure that the development does not prejudice conditions of amenity and highway safety.

For the reasons for this recommendation for approval please see Planning Appraisal Section and Conclusions at the end of this report.

Proposal

This application seeks planning permission for the removal of condition 16 on

planning permission ME/92/0481/A (details pursuant to outline for the, erection of a food store with car parking and, access onto the A229). Initially the applicants sought 24-hour deliveries seven days per week, but following correspondence with the applicant's agent they have advised that they are willing to vary this request to delivery hours of 5AM to Midnight (12:00AM) on Monday to Saturday and 7AM to Midnight (12:00AM) on Sunday and Bank Holidays.

Relevant Planning History

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| MC/13/3283 | Removal of condition 04 on planning permission MC/08/0233 (construction of single storey side/rear extension for use as warehouse, canopy to side and new sprinkler tank and pump house) for 24 hour deliveries seven days per week
Also on this agenda |
| MC/13/3284 | Removal of condition 04 on planning permission MC/13/1236 (construction of 2 no. bay van loading canopy within the existing service yard and construction of grocery collection canopy within existing car park) for 24 hour deliveries seven days per week
Also on this agenda |
| MC/13/1236 | Construction of 2 no. bay van loading canopy within the existing service yard and construction of grocery collection canopy within existing car park
Approved 12 July, 2013 |
| MC/09/0733 | Removal of condition 4 of planning permission MC2008/0233 to allow extended opening hours for deliveries
Withdrawn 06 July 2009 |
| MC/09/0556 | Construction of a part single storey/two storey front & side extension (part demolition of existing single storey front & side projection)
Approved 19 June 2009 |
| MC/08/0233 | Construction of single storey side/rear extension for use as warehouse, canopy to side and new sprinkler tank and pump house
Approved 22 July, 2008 |
| MC/06/1259 | Installation of 1,392 square metres of floorspace at mezzanine level and improvements to parking facilities
Approved 28 October, 2007 |
| MC/03/0200 | Construction of new entrance lobby to front and canopy over marshalling area to rear
Approved 19 March, 2003 |

96/0540	Variation of Condition 12 of Planning Permission ME/92/0481 to permit the sale, of non-convenience goods Refused 25 September 1996 Appeal Allowed 21 October 1996
92/0481/A	Details pursuant to Outline Permission for the, erection of a food store with car parking and, access onto the A229 Approved 07 February 1996
92/0481	Outline Application for erection of 55,000, sq. ft. (gross) for food retailing, petrol, filling station, car parking and access, onto A229. Refused 31 May 1994 Appeal Allowed 08 June 1994

Representations

The application has been advertised on site and by individual neighbour notification to the owners and occupiers of neighbouring properties.

One representation has been received raising the following summarised planning objections:

- Residents have the right to undisturbed sleep.

All other concerns raised are not considered to be material planning considerations and therefore cannot be addressed in the determination of this application.

Development Plan

The Development Plan for the area comprises the Medway Local Plan 2003. The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework, 2012 and are considered to conform.

Planning Appraisal

Background

Under decision notices ME/92/0481 and ME/92/0481/A, Asda were granted planning permission for the erection of a food store with car park and access onto the A229. Condition 16 of decision notice ME/92/0481/A stated; *“No deliveries to the foodstore shall take place outside the hours of 7.00 to 23.00 on Mondays to Saturdays (inclusive) and 08.00 to 13.00 on Sundays.”* The reason for this condition was to *“ensure that the development is without prejudice to conditions of amenity.”*

Main Issues

The main issues in regard to this application are whether the variation in the hours of delivery from that stated above to delivery hours of 5AM to Midnight (12:00AM) on Monday to Saturday and 7AM to Midnight (12:00AM) on Sunday and Bank Holidays will have an adverse impact on the amenities of adjoining occupiers.

Principle

The application site is currently a stand-alone food superstore within the urban area as defined by the Medway Local Plan, 2003. This site is not subject to any specific area based policies in the Medway Local Plan 2003, therefore consideration needs to be given to matters of amenity under policy BNE2 of the adopted Local Plan .

Amenity

The applicant has submitted a noise impact assessment entitled Noise Impact Assessment for Extended Delivery, Home Shopping and Click and Collect Activity Periods - Asda Chatham [Ref. 10652 - Revision B - 02/12/2013] with their application. This noise impact assessment has been considered by the Council's Environmental Health Section who advise that the proposed variation of delivery hours are acceptable on the basis of that assessment.

Having visited the site it is clear that whilst the application is acceptable there are areas of damage to the existing acoustic fencing on the Northern boundary, especially behind the hazardous waste store and minor damage in other areas. It is considered that if the acoustic fence were to be repaired and maintained then any noise produced would be insufficient to cause harm to the amenities of adjoining occupiers due to the distance between the delivery yard and the nearest residential dwelling.

Subject to the imposition of appropriate conditions it is considered that this proposal to vary condition 16 of ME92/0481A is in accordance with policy BNE2 of Medway Local Plan 2003.

Highways

As Members will have noted above, Planning Condition 16 of ME/92/0481A was imposed in the interests of amenity. Delivery vehicles already deliver to this store though out the currently delivery restrictions and it is considered that the spreading these deliveries across the varied hours, as revised, will not result in an increased effect on amenity over and above that which currently occurs. Indeed varying the hours could have the benefit of improving air quality as a result of deliveries getting to the store out of peak times with the potential result of less fuel being used and less time being spent on the road network thereby prospectively decreasing air quality impacts.

In addition to the above, it is not considered that this development will have any adverse impact on the existing parking provision and site access. Bearing in mind all of the above this development is considered to be acceptable in terms of Policies T1

and T13 of the adopted Local Plan.

Other Matters

Members will be aware that whilst this application is only seeking to vary condition 16 of the original consent, case law indicates that the effect of granting such consent is to issue a fresh planning permission. This being the case should members be minded to grant consent they need to be mindful of pulling through any conditions previously imposed, as may be required to be varied to reflect current circumstances.

Conditions 1-3 (Inclusive) of ME92/0481 related to the submission of reserved matters and the implementation of the works. These conditions were fully complied with and there is no need to bring them through to this revised permission should Members be minded to grant consent.

Condition 04 of ME92/0481 related to the provision of parking spaces as detailed in the main application. This condition will need to be updated to reflect the most recent parking arrangements as granted under planning reference MC/06/1259 and MC/13/1236.

Conditions 5–7 of ME92/0481 related to landscaping, landscape implementation and protection of trees during construction. The landscaping as implemented must be maintained and the tree condition should be updated. However, there is no need to require the landscape implementation condition to be re-imposed.

Condition 8 of ME92/0481 related to lighting within the car parking areas and was approved as part of the reserved matters application ME/92/0481A. The approved lighting scheme, as implemented, must be maintained and the condition should be updated to reflect this fact

Condition 09 relates to noise from fixed plant and needs to be re-imposed.

Conditions 10 and 11 relate to the site access and improvement to the Bridgewood Roundabout. These works have been undertaken and there is no need to re-impose these conditions.

Condition 12 restricted the development to the sale of food and convenience goods only and for no other purpose. This condition was updated through the granting of MC/06/1259 that imposed a condition limiting the sale of comparison goods to no more than 1,478.8 sqm. This being the case, this condition needs to be updated should Members be minded to grant consent.

Condition 13 restricted materials and equipment being stored on the site outside of the building, with the exception of waste materials, whilst condition 14 required windows on the north facing elevation to be obscure glazed and fixed shut. Condition 13 should be re-imposed, but condition 14 was approved as part of the reserved matters application ME/92/0481A.

Condition 15 required the acoustic screen, adjoining the delivery area to be

maintained at a height of 5 metres above the level of the delivery area and condition 17 required the lighting for the site to be implemented in accordance with the details submitted. Condition 15 needs to be re-imposed, but condition 17 has been complied with. In this instance Condition 17 does not need to be re-imposed.

Additional conditions

It is appropriate to impose a condition requiring HGV parking only to take place within the service area shown on the approved plans.

Conclusions and Reasons for Approval

Subject to the conditions being re-imposed as detailed above and the imposition of new conditions related to the expansion of the time limit for deliveries, as revised, the acoustic fence being repaired and the condition requiring HGV parking only to take place within the service area this applications is considered acceptable in terms of its impact on amenity. This being the case the application is considered to be acceptable when assessed against policy BNE2 of the adopted Local Plan.

This application would normally fall to be considered under officers' delegated powers, however because this application is of a similar nature to application MC/13/3283 it is considered that it is in public interest for planning committee to determine this proposal.

Background Papers

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://planning.medway.gov.uk/donline/AcolNetCGI.gov>