

MC/13/3283

Date Received: 13 December, 2013

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

Proposal: 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) 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 and to comply with Policy BNE2 of the Medway Local Plan 2003.

- 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 and to comply with Policy BNE2 of the Medway Local Plan 2003.

- 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, for 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 and to comply with Policy BNE2 of the Medway Local Plan 2003.

- 4 Prior to the first use of the development, the diesel fire pump(s) shall be fitted with a critical silencer to reduce the noise levels to 85 dB and the construction of the pump house shall provide a sound reduction of 40 dB(A) and such arrangements shall be thereafter maintained.

Reason: To ensure that the development does not prejudice conditions of amenity and to comply with Policy BNE2 of the Medway Local Plan 2003.

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

Reason: To ensure that the development permitted does not prejudice conditions of highway safety or efficiency.

- 6 The warehousing, as approved, shall only be used for the storage of goods ancillary to the Host Store (ASDA) and shall not be used as retail floorspace at any time.

Reason: In the interests of ensuring adequate warehouse storage the retail use of the wider site.

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 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). 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

- 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/13/3282 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) 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.

10 representations have been received raising the following summarised planning objections:

- There is no justification for Asda seeking a removal of this condition.
- Residents have the right to undisturbed sleep.
- Noise levels generated by Asda are too loud already.
- The condition imposed allows for a few silent hours at night for the residents.
- Noise generated from the construction of the warehouse will be excessive.
- A condition should be put on this application to limit the number of hours a day construction works should occur.
- The noise assessment submitted is flawed; consideration has not been given to the residents of Thorndale Close.
- A bigger warehouse will lead to more rubbish pollution.

All other concerns raised are not considered to be material planning considerations. It should also be noted that no construction works are proposed as part of this application, which purely seeks to amend the current hours of delivery restriction.

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 notice MC/08/0233 Asda were granted planning permission for the construction of single storey side/rear extension for use as warehouse, canopy to side and new sprinkler tank and pump house. Condition 4 of decision notice MC/08/0233 states, "No deliveries to the food store shall take place outside the hours of 07.00 to 23.00 on Mondays to Saturdays (inclusive) and 08.00 to 13.00 on Sundays or National Holidays." The reason for this condition was to "regulate and control the permitted development in the interests 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 4 of MC/08/0233 is in accordance with policy BNE2 of Medway Local Plan 2003.

Highways

As Members will have noted above, Planning Condition 4 of MC/08/0233 was imposed to regulate and control the permitted development 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 4 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 of MC/08/0233 related to the implementation of the development, which has already taken place. This being the case there is no need to bring this condition through to this revised permission should Members be minded to grant consent.

Conditions 2 of MC/08/0233 related to the materials used in the construction of the external surfaces of the extension and canopy approved requiring them to match the existing building. As this work has already been undertaken there is no need to bring this condition through to this revised permission should Members be minded to grant consent.

Conditions 3 of MC/08/0233 relates to the diesel fire pumps being fitted with a critical silencer to reduce noise levels to a specified standard. This condition needs to be re-imposed.

Conditions 5 of MC/08/0233 requires requiring HGV parking only to take place within the service area shown on the approved plans. This condition needs to be re-imposed.

Condition 6 restricts the warehouse, as approved to be used for the storage of goods ancillary to the host store (Asda) and prevents the warehouse being used as additional retail floorspace. This condition needs to be re-imposed.

Conclusions and Reasons for Approval

Subject to a new condition expanding the time limit for deliveries rather than the removal of condition 4 it is considered that the application as proposed conforms to policy BNE2 of the adopted Local Plan. Subject to all other original conditions, which are still relevant to the current supermarket being updated and re-imposed and the imposition requiring the acoustic fence to be repaired this application is recommended 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, and the acoustic fence being repaired this application is considered acceptable in terms of its impact on amenity. This being the case the application is considered to be acceptable when assessed against policies BNE2, T1 and T13 of the adopted Local Plan.

This application would normally fall to be considered under officers' delegated powers, but is being reported to Planning committee due to the level of neighbour representations received which are contrary to the recommendation.

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>