

MC/13/3284

Date Received: 13 December, 2013

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

Proposal: 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) 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

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**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 goods shall be loaded, unloaded, stored or otherwise handled and no vehicles shall arrive or depart the service yard, within the application 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 does not prejudice the amenities of neighbouring property in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 2 Prior to the commencement of the varied hours of goods being allowed to loaded, unloaded, stored or otherwise handled and the varied hours of vehicles arriving or depart the service yard, as permitted by Condition 1 above, 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 on following the damage occurring 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, 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 goods shall be loaded, unloaded, stored or otherwise handled and no vehicles shall arrive or depart the service yard, within the application outside the hours 08:00 to 23:00 Monday to Friday, 08:00 to 23:00 Saturday and 08:00 to 13:00 on Sundays and Bank Holidays, 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 The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Number (00)001, (00)004, (00)010, (00)013, (00)020 and (00)021 received on 22 May 2013 and Acoustic Consultancy Report: Noise Impact Assessment for Extended Delivery, Home Shopping and Click and Collect Activity Periods received 13 December 2013.

Reason: For the avoidance of doubt and in the interests of proper planning.

- 5 No existing tree identified for retention behind or to the side of the Grocery collection canopy 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 Grocery collection canopy 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

- 6 The Grocery Collection Point hereby permitted shall only operate between the hours of 08:00 to 20:00 Mondays to Fridays inclusive and between the hours of 08:00 to 20:00 on Saturdays and 09:30 to 16:30 on Sundays and Public Holidays unless otherwise agreed in writing by the Local Planning Authority.

Reason: To regulate and control the permitted development in the interests of amenity in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 7 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 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). 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/13/3283	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/13/3282	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.

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

- The intrusive noise from Asda can be heard in the wider area.
- 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 notice MC/13/1236, Asda were granted permission for the construction of 2 no. bay van loading canopy within the existing service yard and construction of grocery collection canopy within existing car park. Condition 4 of decision notice MC/13/1236 stated that “*No goods shall be loaded, unloaded, stored or otherwise handled and no vehicles shall arrive or depart the service yard, within the application outside the hours 08:00 to 23:00 Monday to Friday, 08:00 to 23:00 Saturday and 08:00 to 13:00 on Sundays and Bank Holidays.*” The reason for this was to ensure that “*the development does not prejudice the amenities of neighbouring properties in accordance with policy BNE2 of the Medway Local Plan 2003.*”

### *Main Issue*

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. After discussions with the agent it is understood that at this time the current hours of operation of both the home delivery service and the click and collect service will not be changing. However this application is submitted on the basis that should applications MC/13/3282 and MC/13/3283 be approved, then this application would ensure that the delivery times in connection to these operations could be made consistent with the store in the future.

### *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 advises that the proposed variation of the hours sought is 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 04 of MC/13/1236 is in accordance with policy BNE2 of Medway Local Plan 2003.

### *Highways*

As Members will have noted above, Planning Condition 04 of MC/13/1236 A was imposed in the interests of amenity. Vehicles already arrive or depart the service yard to 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 04 of the original consent, case law indicates that the effect of granting such a 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.

Condition 1 of MC/13/1236 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.

Condition 2 of MC/13/1236 related to the approved plan numbers and needs to be re-imposed as part of this consent should Members be minded to grant consent.

Condition 3 of MC/13/1236 relates to the hours of use of the Grocery Collection Point and needs to be re-imposed as part of this consent should Members be minded to grant consent.

Condition 5 of MC/13/1236 relates to the retention of existing trees behind or to the side of the Grocery collection canopy and prevented them being cut down, uprooted, destroyed, Etc. This condition should be re-imposed as part of this consent should Members be minded to grant consent.

## **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 policies BNE2, T1 and T13 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 this should therefore go to committee to be fully determined.

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## **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/dconline/AcolNetCGI.gov>