

MC/14/2468

Date Received: 20 August, 2014

Location: 387 Maidstone Road, Chatham , ME5 9SE

Proposal: Removal of condition 1 of planning permission MC/13/3284 (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 to 24:00 hours on Sundays and National / Bank Holidays) to allow 24 hour deliveries, seven days a week

Applicant: ASDA Stores Ltd

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 5 November, 2014.

Recommendation - Approval with Conditions

- 1 The acoustic fence to the north of the delivery yard shall at all times be retained on site and maintained in an appropriate condition to protect the residential amenity of neighbouring residents. If at any time the fence is damaged it shall be repaired within 48 hours and during the time that it is damaged no deliveries shall take place after 23:00 hours and not before 07:00 hours 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.

- 2 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 and Acoustic Consultancy Report: Noise Impact Assessment Rev B for Extended Delivery, Home Shopping and Click and Collect Activity Periods both received 20 August 2014 .

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

- 3 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

- 4 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.

- 5 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 01 of planning permission MC/13/3284 (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 to 24:00 hours on Sundays and National / Bank Holidays) to allow 24-hour deliveries, seven days a week.

Relevant Planning History

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| MC/14/2469 | Removal of condition 1 on planning permission MC/13/3283
-(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 hours on Mondays to Saturdays (inclusive) and 07:00 hours to 24:00 hours on Sundays and National / Bank holidays) to allow 24 hour deliveries, seven days a week.
Also for consideration on this agenda |
| MC/14/2470 | Removal of condition 1 of planning application MC/13/3282
(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 to 24:00 hours on Sundays |

and National / Bank Holidays) to allow 24 hour deliveries, seven days a week
Also for consideration on this agenda

- MC/14/0944 Construction of a seasonal canopy at the entrance to the existing store
Under consideration
- MC/13/3282 Variation 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.
Approved 3 April 2014
- MC/13/3283 Variation 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.
Approved 3 April 2014
- MC/13/3284 Variation 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.
Approved 3 April 2014
- 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

Representations

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

Five letters of representation have 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

Following negotiations, under decision notice MC/13/3284 Asda were granted a variation to condition 4 of decision notice MC/13/1236 to allow for delivery hours between 5am and midnight (12:00AM) on Monday to Saturday and 7am to Midnight on Sundays and Bank Holidays. Having implemented this decision notice, Asda have found that the approved variation in delivery hours are still not sufficient enough for their operational requirements. As such they require 24 hour deliveries to reduce the risk of the store running out of stock with a key emphasis on early morning customers not being able to buy the products they require.

Main Issues

The main issue in regard to this application is to whether 24 hour deliveries, 7 days a week will have an adverse impact on the amenities of adjoining occupiers.

Amenity

The applicant has submitted a noise impact assessment for Extended Delivery, Home Shopping and Click and Collect Activity Periods and a noise mitigation scheme as well.

These documents have been assessed and the Environmental Health Officer has undertaken an independent noise assessment, the results of which are shown in the table below:

	No Delivery				Delivery in progress								No Delivery
Time	05:05	05:10	05:15	05:20	05:25	05:30	05:35	05:40	05:45	05:50	05:55	06:00	
Laeq	52.2	53.7	55	54	54.8	55.1	55.6	55.5	55	55.1	54.7	53.1	
L90	49.4	51.4	53.1	52.2	52.7	53.1	53.7	53.6	53.5	52.9	55.3	52.5	
LAF Max	57.8	62.3	66	58.7	59.1	60.2	59.9	59.6	57.8	59.4	58.2	54.1	

The noise assessment was undertaken at 5 am, when Asda currently receives its first delivery. The test was undertaken from the garden of a nearby residential neighbour, using a Sound level meter set on a tripod at a height of 1.4 metres and at least 3 metres from any reflecting surface. Predominantly the main noise heard throughout the assessment was traffic noise from the M2 motorway, with increasing noise coming from Maidstone Road as the morning progressed.

Overall whilst there were noises created during the course of the delivery by Asda, these noises lasted for a matter of seconds and were not significantly loud. It is therefore considered that the noises created by Asda were not dominant over the noise of traffic when they occurred and that the only reason the noise from Asda is noticeable is because it is different from the noise generated by traffic. As a result it is considered that any noise generated by Asda would not be audible from within dwellings and therefore no substantive objection is raised to 24 hour a day deliveries as there would be no proven detrimental impact upon neighbour residential amenities.

On the basis of consideration of the submitted noise assessment and mitigation and independent assessments it is considered that there will be no unacceptable impact on neighbours and the proposal conforms to Policy BNE2 objectives of Policy BNE2 of the Medway Local Plan 2003.

Highways

Planning Condition 01 of MC/13/3284 was imposed in the interests of amenity. The proposal will not increase the number of vehicle deliveries but will spread these throughout a 24-hour period and therefore there will be a lesser impact on the highway network. 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 Local Plan.

Other Matters

Members will be aware that whilst this application is only seeking to remove condition 01 of decision notice MC/14/2468, case law indicates that the effect of granting such consent is to issue a fresh planning permission. It is therefore appropriate to consider the other conditions imposed on the previous permission and whether they need to be re-imposed or varied or whether they have been complied with.

Condition 02 of MC/13/3284 relates to the repairing of the acoustic fence, which surrounds the application site. Whilst the acoustic fence has been repaired, the condition should be re-imposed but varied to require its retention and maintenance.

Condition 04 of MC/13/3284 relates to the approved plan numbers and needs to be re-imposed as part of the consent should members be minded to grant consent.

Condition 05 of MC/13/3284 relates to the retention of existing trees behind or to the side of the Grocery collection canopy and prevents them being cut down, uprooted, destroyed, Etc. This condition should be re-imposed.

Condition 06 of MC/13/3284 relates to the hours of operation for the Grocery Collection Point. Whilst this application seeks to vary condition 01 and the delivery hours for the store, it does not propose to vary the hours of delivery for the Grocery Collection Point and as such it is recommended that Condition 06 is re-imposed.

Condition 07 relates to HGV parking within the service yard and as such should be re-imposed.

Local Finance Considerations

There are no Local Finance Considerations.

Conclusions and Reasons for Approval

The noise assessments undertaken and independently checked prove that 24 hour deliveries will not impact on adjoining residential amenity. As a result, subject to the conditions being re-imposed as detailed above and the imposition of revised conditions particularly relating to the maintenance of the acoustic fence, this application is considered acceptable in terms of its impact on amenity. Accordingly the application is considered to be acceptable when assessed against the objectives of Policies BNE2, T1 and T13 of the Medway Local Plan 2003 and is recommended for approval.

This application would normally fall to be considered under officers' delegated power, but is being reported to Committee for determination due to the number of representations expressing a view 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://publicaccess.medway.gov.uk/online-applications/>