

MC/14/2469

Date Received: 20 August, 2014

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

Proposal: 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.

Applicant: ASDA Stores Ltd

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 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 Within 1 month of the date of this planning permission, the diesel fire pump(s) as shown on drawing PL02-WH Rev A, received on 08 January 2008, and as detailed on drawing number 8158-100 Rev X, received on 03 March 2008, shall be fitted with a critical silencer to reduce the noise levels to 85 dB and the pump house shall provide a sound reduction of 40 dB(A) in accordance with the original details submitted pursuant to MC/08/0233. 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.

- 3 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.

- 4 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 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.

### **Relevant Planning History**

MC/14/2468	MC13/3284 - 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 Also 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 on this agenda
MC/14/2070	Provision of a condenser plant mounted on a new steel platform including walkway and handrail Approved 24/09/2014
MC/14/0944	Construction of a seasonal canopy at the entrance to the existing store Awaiting decision

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 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.
- The submitted acoustic report does not take readings from the wider area.

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/13/3283 Asda were granted a variation to allow for delivery hours between 5am and midnight 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 was still not sufficient for their operational requirements and 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 the removal of condition 1 of MC/13/3283 to allow for 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. These reports have been independently assessed by Medway Council's Environmental Health team. In addition officers from both planning and environmental health have taken noise readings from the nearest affected garden at 5am during a delivery to Asda to consider the noise impacts - this is set out 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	

This noise assessment was undertaken at 5am, 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 negligible. 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 should Asda be granted planning permission, 24 hour a day deliveries would still allow residents to have an undisturbed sleep.

Subject to the imposition of appropriate conditions (considered below) it is considered that this proposal to remove condition 01 of MC/13/3284 conforms to the objectives of Policy BNE2 of the Medway Local Plan 2003.

### *Highways*

Planning Condition 01 of MC/13/3283 was imposed in the interests of amenity. The proposal will not increase the number of heavy vehicle movements but will spread the existing number over the day and it is considered that spreading these deliveries across a 24-hour day, 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. The development is considered to be acceptable in terms of Policies T1 and T13 of the Local Plan.

### *Other Matters*

Whilst this application is only seeking to remove condition 01 of decision notice MC/13/3283, case law indicates that the effect of granting such a consent, is to issue a fresh planning permission. As a result it is necessary to consider whether the remaining conditions of MC/13/3283 should be re-imposed or varied or whether they have been complied with.

Condition 02 of MC/13/3283 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 requiring the fence to be retained and maintained.

Condition 03 of MC/13/3283 relates to the submission of an updated acoustic appraisal to demonstrate the effectiveness of the repaired acoustic fence. This application includes an updated acoustic appraisal and this has been independently assessed. Accordingly the condition can be removed.

Condition 04 of MC/14/3283 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.

Condition 5 of MC/13/3283 requires HGV parking only to take place within the service area shown on the approved plans. This condition needs to be re-imposed.

Condition 6 of MC/13/3283 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.

#### *Local Finance Considerations*

There are no Local Finance Considerations.

#### **Conclusions and Reasons for Approval**

It is considered that 24-hour deliveries can be undertaken without causing disturbance to residential amenity subject to the conditions being re-imposed as detailed above and particularly the imposition of revised conditions related to the maintaining of the acoustic fence. 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 Planning Committee for determination due to the extent of the representations received expressing a view contrary to the recommendation.

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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://publicaccess.medway.gov.uk/online-applications/>