

MC/14/2470

Date Received: 20 August, 2014

Location: 387 Maidstone Road, Chatham, ME5 9SE

Proposal: 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

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 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.

- 3 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.

- 4 No tree identified for retention within 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

- 5 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.

- 6 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.

- 7 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 3dB 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.

- 8 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.

- 9 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.

- 10 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 1 of planning application MC/13/3282 (No deliveries to the food store 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/14/2468 | 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 on this agenda |
| 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. 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 by individual neighbour notification to the owners and occupiers of neighbouring properties.

Four 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/13/3282 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 Asda have found that 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/13/3282 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 have been independently assessed by Medway Council's environmental health officer. In addition, officers from planning and environmental health have taken noise readings from the garden of the nearest affected neighbour, the results of which are set out 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 (discussed 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/13/3282 was imposed in the interests of amenity. The variation of hours proposed will not increase vehicle movements but will spread out the existing number of movements over a 24-hour period and 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/13/3282, case law indicates that the effect of granting such consent, is to issue a fresh planning permission. Accordingly it is necessary to consider whether the other conditions previously imposed should be re-imposed or varied or have been complied with.

Condition 02 of MC/13/3282 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 require the fence to be maintained and repaired when necessary.

Condition 03 of MC/13/3282 relates to the submission of an updated acoustic appraisal to demonstrate the effectiveness of the repaired acoustic fence. This application provides an updated assessment and accordingly the condition has been complied with.

Condition 04 of MC/13/3282 relates to the provision of parking spaces as detailed in

the original planning application (ME92/0481). 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 5-6 of MC/13/3282 relates to the landscaping, landscape implementation and protection of trees during construction. The landscaping as implemented must be maintained and the tree condition should be updated.

Condition 7 of MC/13/3282 relates 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 8 of MC/13/3282 relates to the restriction of materials and equipment being stored on the site outside of the building, with the exception of waste materials and should be re-imposed.

Condition 9 of MC/13/3282 relates to the rating level of noise emitted from fixed mechanical plants associated with the development and should be re-imposed.

Condition 10 of MC/13/3282 relates to restricting the development to the sale of food and convenience goods only and for no other purpose. This condition needs to be updated.

Condition 11 of MC/13/3282 relates to the acoustic fence, which surrounds the service yard to being of a height of 5 metres above the level of the service yard on site and should be re-imposed.

Condition 12 of Mc/13/3282 relates to HGV parking within the service yard and as such should be re-imposed should members be minded to grant consent.

Local Finance Considerations

There are no Local Finance Considerations.

Conclusions and Reasons for Approval

The application has been assessed and it is considered that 24 hour deliveries can take place without harm to residential amenity subject to conditions being re-imposed as detailed above. 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.

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/>