

LOCATION: 89-91 GUILDFORD ROAD, LIGHTWATER, GU18 5SB
PROPOSAL: Variation of condition 3 of planning permission SU16/0520 so as to allow the retail unit to be open to customers between 07:00 and 23:00 hours Monday to Saturday, and 07:00 and 22:30 hours Sundays and bank holidays. (Additional information recv'd 18/10/17).
TYPE: Relaxation/Modification
APPLICANT: C/O Agent
Tesco Stores Ltd
OFFICER: Emma Pearman

This application would normally be determined under the Council's Scheme of Delegation, however it is being reported to the Planning Applications Committee at the request of Cllr Gandhum.

RECOMMENDATION: REFUSE

1.0 SUMMARY

- 1.1 This application is to extend the opening hours at the proposed Tesco, which has not yet been built, in Guildford Road, Lightwater. The application for Tesco, with residential accommodation above, was allowed on appeal in 2013, and at the time the Inspector limited the opening hours, requiring it to close at 2200 hours Monday to Saturday, and 2100 hours on Sundays. This application seeks to amend the opening hours so that the shop would be open until 2300 hours Monday to Saturday, and until 2230 hours on Sundays and Bank Holidays, with no change to the delivery times.
- 1.2 The Environmental Health Officer requested a noise report, which has been submitted. However it is not considered that the noise report sufficiently covers all the potential sources of noise, such as additional traffic, and isolated incidents of noise which could cause significant amenity impacts, given the site's close proximity to residential properties. The general noise climate of Lightwater after 10pm is quiet, given that most neighbouring shops shut at 10pm, and the two Planning Inspectors who dealt with appeals on the site both considered it necessary to limit opening hours. It is therefore considered that the application should be refused due to the potential impacts on amenity. The previous appeal decisions on this site are attached for information.

2.0 SITE DESCRIPTION

- 2.1 The application site is located on the western side of Guildford Road, close to the centre of Lightwater. The site currently has construction hoarding on all sides, with the previous building having been demolished, but construction does not yet appear to be substantially underway for the new Tesco.

The site is surrounded on all sides by residential properties, other than to the front where it borders Guildford Road, and to the south where there is a shopping parade.

3.0 RELEVANT PLANNING HISTORY

- 3.1 11/0104 - Erection of a two-storey building comprising of A1 (Retail) to the ground floor and 2 one bedroom flats above, following demolition of existing building.

Refused 09/06/2011 and Appeal Dismissed 21/12/2011 - attached as Annex A

- 3.2 12/0343 - Certificate of Lawful development for the proposed use of ground floor accommodation as A1 (Retail) to be occupied by Tesco Stores Ltd and the proposed use of first floor accommodation as 2 residential flats (C3).

Agreed 26/06/2012

- 3.3 12/0626 - Erection of a two-storey building comprising A1 (retail) to the ground floor and 2 one bedroom flats above with ancillary parking for 9 vehicles and 4 bicycles

Refused 29/11/12 Appeal Allowed 2/7/13 - attached as Annex B

Condition 4 of this appeal decision restricted opening hours to 0700-2200 hours Monday to Saturday and 0700-2100 hours Sundays and Bank Holidays, with no deliveries or servicing (other than from newspapers, magazines and single axle vehicles) outside 0800-1900 hours Monday to Saturday and 0800-1600 hours Sundays and Bank Holidays.

- 3.4 16/0520 – Variation of Condition 2 of the Appeal decision [so as to allow slight changes to the footprint of the building and floorspace of residential accommodation above, with additional first floor window]

Granted 14/10/2016. Condition 3 of this permission is identical to Condition 4 of the Appeal Decision above relating to opening hours.

4.0 THE PROPOSAL

- 4.1 The proposal is for the variation of condition 3 of planning permission SU16/0520 so as to allow the retail unit to be open to customers between 07:00 and 23:00 hours Monday to Saturday, and 07:00 and 22:30 hours Sundays and bank holidays. The time periods for deliveries and servicing are not proposed to be changed. The existing permission would allow the shop to be open until 22:00 hours Monday to Friday and 21:00 hours on Sundays, so this permission seeks an extra hour Monday to Saturday and an extra 1.5 hours on Sundays.
- 4.2 The site already has permission (granted on appeal) for a Tesco shop with residential accommodation above, and as such all matters including parking were considered at that stage. This application can only consider the implications of

the extended opening hours.

5.0 CONSULTATION RESPONSES

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| 5.1 | Environmental Health Officer | Objects on the grounds that insufficient information has been submitted in respect of noise. Recommends proposed plant area be surrounded by a close-boarded fence, and that lighting needs to be approved before installation. |
| 5.2 | Windlesham Parish Council | Objection – because of noise and anti-social behaviour issues. The previously approved hours had taken this into account and kept the opening times in line with other retailers in the vicinity. |

6.0 REPRESENTATION

- 6.1 At the time of preparation of this report 31 letters of objection have been received which raise the following issues:
- Disagree that this change in hours would be ‘minor’ and ‘negligible’ as stated by applicant, due to proximity of residential properties *[Officer comment: see section 7.2]*
 - Will cause a public nuisance from increased traffic noise, entrance and exiting the building and vehicles, litter *[Officer comment: see section 7.2]*
 - Parking will overflow into adjacent streets and as such there will be noise from that as well *[Officer comment: see section 7.2]*
 - BP/M&S site is not open after 10pm; applicant incorrectly states it is open 24 hours a day, 7 days a week *[Officer comment: This is noted - see section 7.2]*
 - Nothing else is open at those times so all noise would be from that site *[Officer comment: see section 7.2]*
 - Would put pressure on other sites to increase their opening hours to compete such as BP and Co-op resulting in even more noise etc *[Officer comment: see section 7.2]*
 - Selling alcohol later could cause behaviour problems *[Officer comment: see section 7.2]*
 - Not a local need for the additional hours/ seems premature before they have even opened *[Officer comment: The Local Planning Authority have to consider the application on its merits and there is no requirement for the applicant to demonstrate a need in this regard.]*
 - Tesco did the same in Ascot which led to detrimental effects on residents *[Officer comment: Noted, however each application must be determined individually on its merits]*

- Would be unfair to other shops; already have considerable commercial advantage *[Officer comment: This is not something that the LPA can take into account; other shops also have the chance to apply to extend their hours]*
- Contrary to the application granted by the Planning Inspector *[Officer comment: see section 7.2]*
- Should not be allowed to make deliveries very early or very late *[Officer comment: delivery times are not proposed to be changed]*
- Object to added flats above the store *[Officer comment: This has already been given permission and as such is not for consideration as part of this application]*
- Concern about parking provision *[Officer comment: This has already been given permission and as such is not for consideration as part of this application, other than in terms of noise – see section 7.2]*
- Lightwater has previously had problems due to late opening and a public disorder notice had to be put in place to control escalating problems due to late night take aways and alcohol *[Officer comment: see section 7.2]*
- Noise report concerns noise from building and plant itself and not the likely disturbance and disruption *[Officer comment: see section 7.2]*
- Will result in additional lighting later in the evening *[Officer comment: see section 7.2]*

7.0 PLANNING CONSIDERATION

- 7.1 The application proposed is considered against the policies within the Surrey Heath Core Strategy and Development Management Policies Document 2012, and in this case the relevant policies are Policy DM9. It will also be considered against the National Planning Policy Framework (NPPF). The issue to be considered is the impact on residential amenity.

7.2 Impact on residential amenity

- 7.2.1 Paragraph 17 of the NPPF states that planning decisions should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Policy DM9 states that development will be acceptable where it respects the amenities of the occupiers of neighbouring properties and uses.
- 7.2.2 The National Planning Practice Guidance (PPG) states that noise starts to have an adverse effect if it causes small changes in behaviour and attitude, and at this stage consideration needs to be given to mitigating and minimising those effects. If it causes a significant adverse effect (such as keeping windows permanently closed) then the planning process should avoid this effect occurring.

- 7.2.3 The site is surrounded by residential properties, with several properties in Guildford Road and Coyne Close within 10 metres of the site boundary. There are also residential properties proposed above the store itself. When the appeal was allowed for this site in 2013 (ref 12/0626), the Inspector stated that a previous Inspector (at the time of Appeal 11/0104) found that a restriction on opening hours was needed to overcome concern about the effect on the living conditions of neighbours, and agreed with this conclusion (see paragraph 19 of this appeal decision - Annex B). Accordingly, the hours of opening and the delivery times were restricted as per the above condition, which the applicant now seeks to amend.
- 7.2.4 The Inspector for the appeal on application 11/0104, in reaching the decision that it would be necessary to limit opening hours, noted the proximity of residential properties to the site and stated that the proposed opening times (at that time) of 07:00 – 23:00 hours may cause noise generated by customers in terms of car engines starting, doors closing and vehicles manoeuvring, general noise and disturbance from the shop opening and light pollution, and noted that this would be particularly evident early in the morning, late in the evening and on Sundays (see paragraphs 11 and 12 of this appeal decision - Annex A). Two Inspectors therefore have agreed that a condition limiting opening hours is required in this location, however there does not seem to have been a formal noise report submitted with either of these previous applications.
- 7.2.5 The applicants have now submitted a noise report, as requested by the Environmental Health Officer. He has reviewed the report and has stated that it considers the impact of plant noise, and with a close-boarded fence around it, would not exceed background noise levels. If the application was considered acceptable in other respects, then a condition could be imposed for this. However, the noise report does not consider the impacts of traffic movements as was requested, and does not cover noise incidents such as opening and shutting of car doors and other associated behaviour that may cause isolated incidents of noise and disturbance late into the evening.
- 7.2.6 Given the proximity of residential properties to the site, it is not considered that sufficient evidence has been submitted to demonstrate that the additional hours would not cause adverse impacts on amenity in this regard, as was the concern of both Inspectors who determined the appeals on this site. It is also noted that the parking on site is in close proximity particularly to the properties fronting Guildford Road on the opposite side of Coyne Close, the nearest of which is less than 8m from the boundary. It is also plausible that cars would park further afield, and as such increase noise elsewhere in the village at a time when all other shops are closed and the noise climate is very low. It is also considered that given that most other shops currently shut at or before 10pm, including BP garage and Co-op, later opening of this store could lead to pressure on other stores to open and the cumulative effect could change the noise climate in the town centre.
- 7.2.7 With regard to lighting, the Appeal Decision (ref 12/0626) did not impose any restrictions in this regard. The Environmental Health Officer has confirmed that given the proximity of the nearest properties, details of any lighting should be agreed prior to installation, to prevent any overspill, particularly given the extended hours and the proximity of dwellings to the site. As such, if permission is granted for

the change in opening hours, it is considered necessary to agree details of any proposed lighting to ensure that there are no significant effects on amenity in the additional opening hours particularly.

- 7.2.8 With regard to anti-social behaviour and selling alcohol later, the ability to sell alcohol to 11pm would be subject to a separate licensing application in which these issues would be looked at again. As such allowing the store to open until 11pm would not automatically entitle them to sell alcohol until this time. It is noted that anti-social behaviour was not raised in either of the Inspectors' previous decisions on this site as a concern, even when opening until 23:00 hours was proposed, however general noise and disturbance is likely to increase as set out above.

8.0 CONCLUSION

- 8.1 The proposed extended opening hours may cause an adverse effect on amenity given the proximity of residential properties to the site, and the general background noise climate in Lightwater at the times that the extended hours are proposed. It has not been demonstrated to the satisfaction of the Local Planning Authority that the additional noise, including that of traffic and parking, would not cause an adverse effect. The proposal is therefore considered to be unacceptable in terms of its impact on amenity. It is therefore considered that the application should be refused.

9.0 ARTICLE 2(3) DEVELOPMENT MANAGEMENT PROCEDURE (AMENDMENT) ORDER 2012 WORKING IN A POSITIVE/PROACTIVE MANNER

In assessing this application, officers have worked with the applicant in a positive and proactive manner consistent with the requirements of paragraphs 186-187 of the NPPF. This included the following:

- a) Provided or made available pre application advice to seek to resolve problems before the application was submitted and to foster the delivery of sustainable development.
- b) Provided feedback through the validation process including information on the website, to correct identified problems to ensure that the application was correct and could be registered.
- c) Have suggested/accepted/negotiated amendments to the scheme to resolve identified problems with the proposal and to seek to foster sustainable development.
- d) Have proactively communicated with the applicant through the process to advise progress, timescale or recommendation.

10.0 RECOMMENDATION

REFUSE for the following reason(s):-

1. The proposal by reason of operating at unsocial hours and the associated comings and goings of vehicles, activity and disturbance would result in an unneighbourly form of development that would be harmful to the residential amenities of the adjoining residential properties contrary to Policy DM9 of the Surrey Heath Core Strategy Development Management Policies Document 2012 and the National Planning Policy Framework 2012.