

**Planning Committee:** 11 October 2022

**Item Number:** 7

**Application No:** [W 22 / 0178](#)

**Town/Parish Council:** Kenilworth  
**Case Officer:** Jonathan Gentry

**Registration Date:** 15/02/22  
**Expiry Date:** 17/05/22

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**Waitrose Foodstore, 51 Bertie Road, Kenilworth, CV8 1JP**

Application for variation of Condition 15 for planning permission W/16/0851 (Variation of W/05/2054) to read 'The use of the service area for the supermarket shall be limited to between 06.00 hours and 23.00 hours Monday to Sunday.' FOR C/O FirstPlan Ltd- Planning Agent

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**RECOMMENDATION**

Members are recommended to grant permission for the reasons outlined in this report.

**DETAILS OF THE DEVELOPMENT**

Planning permission is sought to vary condition 15 of planning permission W/16/0851, which reads: The use of the service area for the supermarket shall be limited to 07:00 hours to 23:00 weekdays and Saturdays and 08:00 to 21:00 hours Sundays'

The condition is proposed to be varied to: Deliveries for the supermarket shall be undertaken between 06:00 hours and 23:00 hours Mondays to Sundays.

This application was referred to the Planning Committee meeting of the 16th August 2022, but was deferred by Members. A decision of deferral was primarily due to concerns regarding the potential amenity implications of the expanded operation/delivery hours within the service area of the supermarket, with particular emphasis on HGV deliveries on Sundays.

Following this deferral and subsequent discussion with Officers, the scope of the variation has been reduced to explicitly omit any revision to the existing permitted HGV delivery hours. While the wording of the varied condition remains as initially proposed, additional measures set out in a Delivery Management Plan (DMP) and supplementary condition will therefore limit HGV deliveries to between 07.00 hours and 23.00 hours Monday to Saturday, and 08.00 hours to 21.00 hours on Sunday.

This application is made under section 73 of the Town and Country Planning Act 1990 .

In deciding an application under Section 73, the Local Planning Authority must only consider the disputed condition that is the subject of the application - it is not a complete re-consideration of the application (PPG Paragraph 031 Reference ID:

21a-031-20140306). In this case the applicant is seeking a variation to the wording of condition 15, relating to deliveries and use of the site's service area, through the use of a Section 73 application.

On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and-

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

The condition to be varied (No.15 of W/16/0851) itself forms an approved variation to the original consent W/05/2054 delivery hours condition, which read: The use of the service area for the supermarket shall be limited to 07:00 hours to 21:30 hours weekdays and Saturdays and 09:00 hours to 18:30 hours Sundays.

As such, the proposed variation would further expand the accepted use period of the store's service area. Following deferral at the Planning Committee meeting of the 16th August 2022 and subsequent Officer feedback, the proposed Quiet Delivery Procedures - Delivery Service Management Plan has been revised to limit use of the area as follows :

-HGV delivery hours: 07.00 hours and 23.00 hours Monday to Saturday, and 08.00 hours to 21.00 hours on Sunday. This reflects the currently permitted HGV delivery hours, as per W/16/0851. No change to the existing HGV delivery arrangements would therefore occur as a result of the revised proposal.

-Home van delivery hours: 0600-2300 Mon to Sun, allowing for up to 2no. home delivery vans loading at the front of the store between 0600-0800 Mon to Sun, with remainder of home van deliveries to take place within rear service area.

Justification for the proposed variation is centred upon increased demand for home delivery services in light of the Covid-19 pandemic and ongoing stress upon logistics and distribution networks.

The application was accompanied by a supporting statement, 2no. noise impact assessments relating to HGV deliveries and home delivery vans respectively, and an updated delivery management plan outlining quiet delivery procedures. As the expansion of HGV delivery hours has been omitted during the course of the application, the noise assessment report relating to this aspect is no longer relevant to assessment of the variation of condition.

## **THE SITE AND ITS LOCATION**

The application site relates to a Waitrose store and ancillary car park/loading areas located on the western side of Bertie Road and south of Station Road with pedestrian access to the store through Talisman Square. The site falls within Kenilworth Town Centre and is surrounded by a mix of commercial and residential properties.

### **RELEVANT PLANNING HISTORY**

Various relating to the store, the most relevant to this application being:

W/05/2054 - Erection of a convenience goods store; refurbishment/extension of part of Talisman Square Shopping Centre for retail/residential, car parking & access - Granted

W/16/0851 - Variation of condition 15 imposed under W/05/2054 to read: "The use of the service area for the supermarket shall be limited to 07:00 hours to 23:00 weekdays and Saturdays and 08:00 to 21:00 hours Sundays." - Granted

### **RELEVANT POLICIES**

- National Planning Policy Framework

#### Warwick District Local Plan 2011-2029

- BE1 - Layout and Design
- BE3 - Amenity
- TR1 - Access and Choice
- TR2 - Traffic generation
- TCP1 - Protecting and Enhancing the Town Centres
- TC2 - Directing Retail Development

#### Kenilworth Neighbourhood Plan (2017-2019)

- KP8 -Traffic
- KP13 - General Design Principles

### **SUMMARY OF REPRESENTATIONS**

**Kenilworth Town Council** - Members object to the proposed variation of condition stating that Condition 15 of W/16/0851 was set to protect the amenity of the area and remains justified as stated.

**WDC Environmental Health** - Initial objection to proposed HGV delivery provision between the hours of 06:00 and 07:00 Monday to Sunday on the basis of identified amenity impact to nearby residential noise receptors. No objection to hours as revised to exclude HGV deliveries between 06:00-07:00.

**Public Response** - Five objection comments received, citing the following concerns:

- There is a lack of evidence justifying the requirement for expanded home delivery operations
- The proposed revision will impact on local residents in terms of noise, light pollution and extra traffic.
- Extension to operating hours is not in keeping with providing a quiet atmosphere in the town centre
- Proposal will result in further noise and traffic to Bertie Road at unacceptable hours including before 7am.

## **ASSESSMENT**

### Residential Amenity

Warwick District Local Plan Policy BE3 requires all development to have an acceptable impact on the amenity of nearby users or residents.

Given that the proposed revision relates only to hours of operation and no physical development or alterations to the site form part of the scheme, the matter of residential amenity forms the primary material consideration.

There is no restriction upon store opening hours, however planning permission W/05/2054 restricted the delivery hours to between 07:00 and 21:30 each weekday and Saturday and 09:00 to 18:30 on Sundays, with the reason to protect the amenity of the area. This was expanded to between 07:00 and 21:30 hours weekdays and Saturdays and 09:00 hours to 18:30 hours Sundays under W/16/0851.

Two associated conditions were also imposed to the original consent. Condition 16 states that all vehicle reversing alarms and refrigeration plant to lorries shall be switched off when in the service yard and condition 29 requires all HGV's to be routed via the District Council's Abbey End car park with no HGV's approaching the site via Station Road or Bertie Road. These conditions were retained under W/16/0851 and will remain in effect under this scheme.

In support of W/16/0851 the applicant produced a Delivery Management Plan (DMP) that goes beyond the requirements imposed under condition 16 stating the following:

*The DMP has been prepared in the context of the known operational conditions at the store and seeks to further reduce noise breakout from the service yard through the implementation of a quiet delivery strategy as part of the delivery management regime.*

The DMP has been further updated under the current submission. A range of operational procedures designed to minimise potential noise generation from loading/unloading and vehicle manoeuvring have been set out. HGV Deliveries are to be limited to the rear service area, while 2no. home delivery vans would be

permitted to undertake loading to the frontage customer parking area (outside of trading hours).

The Council's Environmental Health Officer (EHO) was consulted to provide a detailed review of the noise assessment reports submitted in support of the application. Initially, the EHO raised objection to the proposed revision, with specific reference to the identified noise implications of extended HGV delivery hours.

No objection was raised by the EHO in regards to the proposed expansion of home delivery van operation, to which the following comment was provided:

*The applicant has submitted an assessment report prepared by Environmental Equipment Corporation (EEC) Ltd (Ref. EEC/EC18451-6, Ver. 2, dated 28th October 2021). This assessment report considers the potential noise impacts from the extension of delivery hours on Sunday evenings in the rear service yard and the introduction of home delivery van loading at the front of the premises in the early morning. ~ The applicant has also provided a revised delivery management plan which has been updated to reflect the proposed delivery hours and incorporates the control measures and assumptions highlighted in the submitted report. Subject to the implementation of the delivery management plan, we would have no objections to this aspect of the variation.*

A technical note was subsequently submitted with view to addressing the queries of the EHO in relation to early morning HGV deliveries. Following further discussions with the applicant's noise consultant additional comments were issued by the EHO, ultimately retaining objection. In light of this, the proposed updated Delivery Management Plan was revised to contain HGV delivery hours to between 07:00-23:00 Mon to Sun within the rear service area. This revision addressed the issued objection of the EHO which related specifically to the identified amenity impact of HGV deliveries to the site between the hours of 06:00-07:00.

The application was considered at the Planning Committee meeting of the 16<sup>th</sup> August 2022, but was ultimately deferred by members, who noted concerns in regards to the wider amenity implications of the expanded hours of operation, with particular emphasis on the increased HGV delivery hours on Sundays. Officers advised that further revisions to the sought variation could be considered with a view to overcoming these concerns. Following this and subsequent engagement with the agent, a revised scheme proposal was brought forward as follows.

The variation of condition 15 will remain as initially proposed to facilitate the required expansion of home delivery van loading and operation, but no expansion of the currently permitted HGV delivery hours would occur. HGV delivery hours will be controlled to this effect via the wording of an updated DMP document, secured via condition 40, and an additional standalone condition to define HGV delivery hours permitted to 07:00 and 21:30 each weekday and Saturday and 09:00 to 18:30 on Sundays.

Officers note and appreciate concerns raised by neighbours and members of the public in relation to the proposed extension to operation hours, alongside the

matters raised by Kenilworth Town Council in the received objection response. The further incremental expansion of permitted hours of operation of the service area and associated potential amenity implication does require detailed consideration. However, it is noted that the EHO has raised no objection to the expanded hours of delivery van loading and that HGV delivery hours would not change from the the current consent as per the revised proposal. As a result, Officers consider that the provisions of the updated DMP provide appropriate mitigation to potential amenity disturbance arising from the extended hours of operation through establishing a range of measures designed to minimise the noise generation potential of the operations taking place.

In view of this position, it is therefore considered that the variation of condition is acceptable and given the safeguards outlined, including previous conditions (16 and 29) and updated DMP, the changes are unlikely to create a disturbance so significant as to warrant refusal of the application. The development is therefore viewed to align with Local Plan Policy BE3.

### Highways

The proposed revisions set out in the proposed scheme would comprise an alteration to accepted loading hours within the superstore. The widened loading provision would not result in any appreciable intensification of traffic level into and out of the site.

No physical alterations or changes to HGV vehicle routing are proposed, with relevant highway related conditions attached to permission W/16/0851 therefore remaining in place including conditions 9, 20, 23, 25, and 28.

As a result, the proposed development is viewed acceptable in terms of highways impact and access, according with Local Plan Policies TR1 and TR2.

### Assessment of previously imposed conditions

Relevant associated conditions 16 and 29 relating to operational procedures within the service area and HGV routing shall be retained on the varied consent, as follows:

*16. In order to ensure that noise levels from service vehicles does not cause disturbance, the following measures shall be implemented:*

- a) All vehicle reversing alarms shall be switched off when in service area ,*
- b) All refrigeration plant to lorry trailers shall be switched off when in service area.*

*REASON :To protect the amenity of the area, and to satisfy the requirements of Policy BE3 of the Warwick District Local Plan.*

29. All HGV's accessing or egressing the site, whether service or delivery vehicles, shall be routed via the District Council's Abbey End car park and the direct access to the proposed development from the public highway

Station Road. REASON : In the interests of highway safety, in accordance with the requirements of Policy TR1 of the Warwick District Local Plan.

The original planning consent for the site under W/05/2054 has been implemented in full and all relevant conditions relating to the original planning application have been discharged as necessary. Where conditions include ongoing restrictions these will be repeated on any variation of conditions permission to be granted under the current application.

Additional conditions to secure compliance with the updated DMP and limit HGV delivery hours to the current consent shall be included for the avoidance of doubt.

### **SUMMARY/CONCLUSION**

The original planning permission was granted under application reference W/16/0851. The policies and material considerations that are relevant to that decision are set out in the associated officer report.

The variation of condition 15, comprising revised loading arrangements is viewed acceptable. There are no material changes in planning policy that would lead officers to a different conclusion to that which was reached previously through the assessment and determination of the previous application. Officers therefore consider that the development remains in accordance with the relevant provisions of the Development Plan and should be granted.

### **CONDITIONS**

- 6 The fume extraction system details approved under condition 6 of permission no W/05/2054 shall be retained at all times. **REASON** : To protect the amenities of surrounding properties, in accordance with Policy BE3 of the Warwick District Local Plan.
  
- 7 The noise attenuation measures carried out to external plant as approved under condition 7 of planning permission no. W/05/2054 shall be retained at all times. **REASON** :To protect the amenity of the area, and to satisfy the requirements of Policy BE3 of the Warwick District Local Plan.
  
- 8 The noise mitigation measures approved under condition 8 of planning permission no. W/05/2054 shall be retained at all times.**REASON** :To protect the amenity of the area, and to satisfy the requirements of Policy BE3 of the Warwick District Local Plan.
  
- 9 The gates to the lower car park shall be kept closed until half an hour before the store opens and shall be closed again one hour after the

store has closed. **REASON** :To protect the amenity of the area, and to satisfy the requirements of Policy BE3 of the Warwick District Local Plan.

- 11 The foul and surface water drainage measures approved under condition 11 of planning permission no. W/05/2054 shall be retained at all times. **REASON** : To ensure that proper provision is made, in accordance with policy FW2 of the Warwick District Local Plan.
- 14 No lighting shall be fixed to the external walls or roof of the building hereby permitted, without the written consent of the District Planning Authority. **REASON** : To ensure that the visual amenities of the area are protected, and to satisfy the requirements of Policy BE3 of the Warwick District Local Plan.
- 15 The use of the service area for the supermarket shall be limited to between 06.00 hours and 23.00 hours Monday to Sunday. **REASON** :To protect the amenity of the area, and to satisfy the requirements of Policy BE3 of the Warwick District Local Plan.
- 16 In order to ensure that noise levels from service vehicles does not cause disturbance, the following measures shall be implemented:
- a) All vehicle reversing alarms shall be switched off when in service area ,
  - b) All refrigeration plant to lorry trailers shall be switched off when in service area.
- REASON** :To protect the amenity of the area, and to satisfy the requirements of Policy BE3 of the Warwick District Local Plan.
- 17 Screenwalls erected in accordance with detailed plans approved under planning application W/05/2054 shall be be maintained in the positions shown unless otherwise agreed in writing by the District Planning Authority. **REASON** : To ensure that the visual amenities of the area are protected, and to satisfy the requirements of Policy BE3 of the Warwick District Local Plan.
- 20 No more than one vehicular access shall be made to the site from Station Road, Warwick Road or Bertie Road. **REASON** : In the interests of highway safety, in accordance with the requirements of Policy BE3 of the Warwick District Local Plan.
- 23 The gradient of the vehicular accesses into the site shall not be steeper at any point than 1 in 20 for a distance of 30m into the site, as measured from the public highway carriageway. **REASON** : In the interests of highway safety, in accordance with the requirements of Policy TR1 of the Warwick District Local Plan.



- 25 Obstructions, including gates and barriers, shall not be placed within the vehicular accesses to the site. **REASON** : In the interests of highway safety, in accordance with the requirements of Policy TR1 of the Warwick District Local Plan.
- 28 The site shall not be used for the purposes hereby permitted unless there is available vehicular turning spaces within the site so that all vehicles are able to enter and leave the public highway in a forward gear. **REASON** : In the interests of highway safety, in accordance with the requirements of Policy TR1 of the Warwick District Local Plan.
- 29 All HGV's accessing or egressing the site, whether service or delivery vehicles, shall be routed via the District Council's Abbey End car park and the direct access to the proposed development from the public highway Station Road. **REASON** : In the interests of highway safety, in accordance with the requirements of Policy TR1 of the Warwick District Local Plan.
- 34 Notwithstanding the Town and Country Planning (Use Classes) Order, 1987 (or any order revoking and re-enacting that Order, with or without modification) the supermarket shall be used for the sale of food or other convenience goods, notwithstanding the ancillary use of up to 15% of the net floor area for the sale of other goods. **REASON** : To protect the viability and vitality of the town centre, in accordance with Warwick District Local Plan Policy TC3.
- 35 The shared access from Warwick Road is for access to the residential parking. This route shall be physically separated from the Service Area so as not to encourage through traffic. **REASON:** In the interests of highway safety, in accordance with the requirements of Policy TR1 of the Warwick District Local Plan.
- 39 The Green Travel Plan approved in accordance with details submitted under planning application W/05/2054 shall remain in place. **REASON** : To promote sustainable travel choices for staff in accordance with Warwick District Local Plan Policy TR2.
- 40 Deliveries to and from the supermarket shall be undertaken in strict accordance with the 'Updated Quiet Delivery Procedures –Delivery Management Plan', dated September 2022. **REASON:** To protect the amenity of the area, and to satisfy the requirements of Policy BE3 of the Warwick District Local Plan.
- 41 No HGV deliveries shall take place outside of 07.00 hours and 23.00 hours Monday to Saturday, and 08.00 hours to 21.00 hours on Sunday. **REASON** :To protect the amenity of the area, and to satisfy the requirements of Policy BE3 of the Warwick District Local Plan.

- 42 No loading of home delivery vans within the rear service area shall be permitted before 06.00 hours or after 23.00 hours Monday to Sunday. Only between 06.00 hours and 08.00 hours Monday to Sunday, up to 2 home delivery vans are permitted to be loaded at the front of the store. **REASON:** To protect the amenity of the area, and to satisfy the requirements of Policy BE3 of the Warwick District Local Plan.
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