

 PLANNING COMMITTEE JULY 30TH		Agenda Item No.
Title	Section 52 Agreement – ASDA Store Chesterton Drive Leamington Spa	
For further information about this report please contact	John Edwards	
Service Area	Planning	
Wards of the District directly affected		
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	No	
Date and meeting when issue was last considered and relevant minute number		
Background Papers	Planning application ref W79/1306 Secretary of State's decision letter for W78/140	

Officer/Councillor Approval		
With regard to officer approval all reports <u>must</u> be approved by the report authors relevant director, Finance, Legal Services and the relevant Portfolio Holder(s).		
Officer Approval	Date	Name
Relevant Director		
Chief Executive		
CMT		
Section 151 Officer		
Legal		
Finance		
Portfolio Holder(s)		
Consultation Undertaken		
Please insert details of any consultation undertaken with regard to this report.		

1. SUMMARY

- 1.1 This report relates to a request received from planning consultants acting on behalf of ASDA to permit a variation to the opening hours of the store currently restricted by a Section 52 agreement entered into in 1980.

2. RECOMMENDATION

- 2.1 That the wording to clause 1 of Schedule 4 to the section 52 Agreement between WDC, Milcel Ltd and Associated Dairies be varied to permit the following variation to the opening hours of the store

“The superstore shall not be open to the public other than between the hours of 7 am and 11 pm Monday to Saturday and 10 am and 5pm on Sundays”.

3. REASONS FOR THE RECOMMENDATION

- 3.1 The existence of a 28 year old legal agreement which (inter alia) restricted the Monday to Saturday opening hours and prevented Sunday opening of the ASDA superstore in the Sydenham area has come to light. This predates changes to the Sunday trading laws and, in the opinion of your officers; any appeal to the Land Tribunal to have this now somewhat anachronistic restriction removed would be likely to be successful.

4. ALTERNATIVE OPTION CONSIDERED

- 4.1 None

5. BUDGETARY FRAMEWORK

- 5.1 No budgetary implications.

6. POLICY FRAMEWORK

- 6.1 No policy implications.

7. BACKGROUND

- 7.1 Outline Planning permission was granted by the Secretary of State for a retail superstore, community centre, squash courts and car parking on land at Sydenham Drive Leamington Spa on 10 May 1979. The permission was subject to a number of conditions but not one containing a restriction on opening hours.
- 7.2 Reserved matters relating to layout and design were submitted in August 1979 (W79/1108) and there was a further application for the provision of a Community Hall (W79/1306).
- 7.3 At the stage of the assessment of the latter two applications, ASDA and the developers of the Community Centre (Milcel) entered into a legal agreement (then under section 52 of the Town and Country Planning Act but now replaced by Section 106) which related to the provision of the community centre but also contained clauses relating to the opening hours of the store and to the routing of heavy traffic to ensure its construction.

7.4 The clause relating to opening hours stated:-

“The superstore shall not be open to the public on Sundays and the hours of opening from Mondays to Saturdays shall be restricted from 8 am to 8pm.”

- 7.5 Clearly, at the time, ASDA were prepared to voluntarily enter into the agreement, notwithstanding the fact that the Secretary of State had not imposed a restriction on opening hours on the outline permission granted on appeal. The full reasons for entering into the agreement are unclear but, in part, it probably reflected recognition on ASDA's part of locally held concerns about the impact of the store on the adjacent housing areas within the Sydenham estate and their willingness to show that such impact would be regulated to respond to these concerns. Its planning “validity”, however, is questionable given it post dated the outline permission for the store, where such a restriction ought to have been imposed as a planning condition had it been considered necessary. In this context, it is noteworthy that in his decision letter the Secretary of State concludes that “the site does not intrude excessively into the residential area”, being adjacent to a roundabout/road junction already flanked to the south by the large school and to the north–west by the industrial/ commercial sector”.
- 7.6 The store has been open on Sundays for a considerable number of years and for longer hours on other days of the week. The request from the consultants acting on behalf of ASDA asks for 11 am to 5 pm hours on Sundays to give flexibility to open during those times. Clearly, Sunday trading laws dictate that stores should open for no more than six hours in total. During Mondays to Saturdays, the store currently opens between 8 00 am and 10 00 pm. However, the company has plans to extend this until 11 00 pm to facilitate arrangements for a dispensing pharmacy.
- 7.7 It is considered that there are no reasonable planning grounds on which the proposed variation to opening hours can be resisted. The recent report of the Competition Commission on UK grocery retailing , which makes reference to the need to promote consumer choice and avoid anti-competitive restrictions within the retail sector reinforces my view on this issue , as no such hours of trading restrictions apply to the other large retail food supermarkets operating in the District.