

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

Town/Parish Council: Kenilworth  
Case Officer: Jonathan Gentry  
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Registration Date: 15/02/22  
Expiry Date: 17/05/22

**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 "Deliveries for the supermarket shall be undertaken between 0600 hours and 2300 hours Mondays to Sundays, and in accordance with the 'Updated Quiet Delivery Procedures –Delivery Management Plan', dated August 2022'. FOR C/O FirstPlan Ltd- Planning Agent

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This application is being presented to Committee due to an objection from the Town Council having been received and the number of public objection comments received.

**RECOMMENDATION**

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

**DETAILS OF THE DEVELOPMENT**

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 2, relating to approved drawings, 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.

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.* 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.*

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, and in accordance with the 'Updated Quiet Delivery Procedures –Delivery Management Plan', dated November 2021.*

As such, the proposed variation would further expand the accepted use period of the store's service area. Following Officer feedback during the course of the application the proposed Quiet Delivery Procedures - Delivery Service Management Plan has been revised to limit use of the area as follows:

- HGV delivery hours: 0700-2300 Mon to Sun within rear service area.
- 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 only, 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 is 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.

## **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, noting the following:

*Delivery noise impact assessment*

*The applicant has submitted a report prepared by Environmental Equipment Corporation (EEC) Ltd (Ref. EEC/EC18451-7, Ver. 2, dated 28th October 2021). The noise report identifies that early HGV deliveries in the service yard could result in significant adverse noise impacts to residential receptors at Sexton House when assessed in accordance with BS4142:2014+A1:2019 (+15db above the existing background sound level between 06:00 and*

07:00, and +13dB above the existing background sound level between 07:00 and 08:00). The report suggests, however, that the store has already been receiving similar early morning deliveries since April 2020 without complaints regarding noise and that the subjective impact may not be significantly adverse as predicted. Having reviewed our records, we can confirm that noise complaints have not been made to the local authority regarding delivery noise during these earlier hours. We would caveat this by highlighting that BS4142 says that not all adverse impacts will lead to complaints and not every complaint is proof of an adverse impact. The same principle would also apply in reverse i.e. the absence of complaints does not necessarily mean that adverse noise impacts are not occurring.

Given that the BS4142:2014+A1:2019 assessment and comparison to BS8233:2014 guidelines indicate that adverse noise impacts are likely to occur for residential receptors at Sexton House, we must **object** to this aspect of the proposed amendment. It may be possible to overcome this objection if the assessor is able to demonstrate that the typical HGV delivery noise measured on-site is lower than the library data used for the noise assessment and thus the noise impacts at residential receptors are lower too. This would need to be demonstrated in an updated noise assessment/model.

#### Home delivery vans

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, particularly 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:

We have reviewed the technical note and still have concerns about the extended HGV delivery hours. The supermarket already benefits from relatively generous delivery hours on Mondays to Saturdays (07:00 to 23:00) and Sundays (08:00 to 21:00). The technical note highlights that noise levels would be below BS8233 guidelines if residents have their windows closed. Unfortunately this places the onus on existing residents to mitigate the impacts during what would still be considered night time hours and is not something that the applicant can guarantee will happen. The technical note also suggests that there may already be a level of tolerance to existing noise sources affecting the closest residential dwellings who are

*already exposed to service yard noise during other periods. It is possible that this tolerance may be tested should service yard activities begin earlier than 07:00 as this would have a higher possibility for sleep disturbance. The technical note says that the Sexton House dwellings are also directly above other commercial units that may generate noise so residents may already have modified their behaviours regarding extraneous noise. The commercial units in question are largely daytime-based retail and café units so the potential for noise disturbance during sleeping hours is reduced. Additionally we do not feel that adding to a potentially existing adverse noise impact would be a reasonable approach.*

*Our concern in this instance is the impact between 06:00 and 07:00am, and the potential for sleep disturbance. In our opinion, the noise from HGV deliveries and associated activity in the service yard will be clearly noticeable during these hours. Given that significant adverse noise impacts are predicted to occur (in accordance with BS4142) and the potential need for existing residents to keep windows closed to mitigate these impacts means that we would not be able to remove our objection to this aspect of the planning application.*

In light of the retained objection, the proposed updated Delivery Management Plan has been revised to contain HGV delivery hours to between 07:00-23:00 Mon to Sun within the rear service area. This revision has thus 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.

Officers note and appreciate concerns raised by neighbours and members of the public in relation to the proposed extension to delivery hours, alongside the matters raised by Kenilworth Town Council in the received objection response. The further incremental expansion of permitted hours of delivery and associated potential amenity implication does require detailed consideration. However, it is noted that the only element of the proposal that drew the objection of the EHO relates to HGV deliveries between the hours of 06:00 and 07:00 which have now been precluded through submission of an updated DMP. 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 both limiting the frequency of deliveries and 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 delivery/loading hours within the superstore. The widened

delivery/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 shall also 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 delivery hours and loading/unloading arrangements is considered to be 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 (including all relevant conditions from the original grant of planning permission)**

- 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 Screen walls erected in accordance with detailed plans approved under planning application W/05/2054 shall 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 August 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 before 07.00 hours or after 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.
- 42 With the exception of the loading of 2 home delivery vans at the front of the store only between 06.00 hours and 08.00 hours, no loading of home delivery vans shall be permitted before 06.00 hours or after 23.00 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.
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