

**Application No:** [W 16 / 1558](#)

**Town/Parish Council:** Leamington Spa  
**Case Officer:** Ian Lunn

**Registration Date:** 23/08/16

**Expiry Date:** 18/10/16

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**Tesco Express, Crown Way, Lillington, Leamington Spa, CV32 7SE**

Application for variation of condition 13 of planning permission number W09/0351 to allow the delivery of goods to, and the removal of refuse from, the retail unit between 7.30am and 8am and 9.30am and 7pm Mondays to Fridays; 8am and 7pm on Saturdays; and 9am and 6pm on Sundays and Bank Holidays.

FOR Tesco Stores Ltd

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This application is being presented to Committee because of the number of objections received. The Town Council has also objected.

**RECOMMENDATION**

That Planning Committee agree to vary Condition 13 of planning permission number W/09/0351 to allow for deliveries to, and refuse collection from, the premises between the hours specified below, and to the imposition of a further condition requiring the noise reduction measures set out in the submitted Noise Assessment to be put in place whilst those deliveries/refuse collections are taking place.

**DETAILS OF THE DEVELOPMENT**

Approval is sought to vary condition 13 of planning permission W/09/0351 to allow deliveries to, and refuse collections from, the store between the hours of 7.30am and 8am and 9.30am and 7pm Mondays to Fridays, 8am and 7pm on Saturdays, and 9am and 6pm on Sundays and Bank Holidays. The current requirement for delivery vehicles to turn off their refrigeration plant whilst stationary at the site will remain.

**THE SITE AND ITS LOCATION**

The building the subject of this application is a freestanding part two/part single storey structure constructed of red brick under a part pitched concrete tile/part flat roof. It is located due south of the junction of Cubbington Road (B4453) and Crown Way in an area of predominantly residential development. The building is currently used as a retail store at ground floor level with a residential flat above.

## **PLANNING HISTORY**

W/09/0349 - Alterations to ground floor elevations - Approved 03/08/09

W/09/0350 - Installation of plant equipment - Approved 03/08/09

W/09/0351 - Erection of 42 square metre single storey rear extension and change of use of first floor to residential use (Class C3) - Approved 17/09/09

W/09/0352 - Installation of signage - Approved 03/08/09

## **RELEVANT POLICIES**

- National Planning Policy Framework

### The Current Local Plan

- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- DP9 - Pollution Control (Warwick District Local Plan 1996 - 2011)

### The Emerging Local Plan

- BE3 - Amenity (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)

## **SUMMARY OF REPRESENTATIONS**

**Leamington Town Council:** Object. Concerned that the proposal would lead to increased noise and disturbance to local residents.

### **WDC Health and Community Protection - Environmental Sustainability**

**Section:** Consider that early mornings and late evenings are the most noise sensitive times when local residents are most likely to be disturbed by noise. As such they consider that the delivery/refuse collection times should be limited to between the hours of 7.30am and 8am and 9.30am and 7pm Monday to Friday; 8am to 7pm on Saturdays; and 9am and 6pm on Sundays and Bank Holidays. They also recommend that a condition is imposed requiring that deliveries and refuse collections are carried out in accordance with the noise reduction measures set out within section 5 of the submitted Noise Assessment.

**WCC Highways:** Views awaited and will be reported to Members at the meeting itself. However, it is not anticipated that they will raise any concerns.

**Public Response:** 13 letters (including letters from Councillors Boad and Davies) and a petition containing 11 signatures have been received in respect of this proposal. The objections are:-

a) that an approval of this proposal would lead to an unacceptable increase in noise in the area. Such problems are already arising as a result of the number of delivery lorries visiting the site,

b) that an approval of this proposal would not be in the best interests of highway and pedestrian safety. It would lead to an increase in traffic visiting the premises exacerbating existing problems of congestion; conflict is already arising between cars and delivery vehicles as a result of the latter making deliveries within the car park; and highway safety issues are also arising as a result of delivery vehicles parking on adjoining roads.

c) that the extended hours will necessitate the use of security lighting in the winter months. Such lighting does, and will continue to, disturb local residents.

d) that there is no need to alter the existing delivery and refuse collection times as Tesco have operated successfully for the last seven and a half years without doing so,

e) that Tesco don't comply with their current delivery/refuse collection restrictions and are causing overnight noise problems,

f) that rats are being attracted to the site.

In order to overcome the above concerns it has been suggested that deliveries to the retail unit, and refuse collections from it, are limited:-

a) to between the hours of 7.30am and 8am and 9.30am and 6pm Monday to Friday with all other times remaining as originally approved, or

b) to between the hours of 10am and 5pm on any day of the week.

## **Assessment**

### Background

Planning permission was granted in September 2009 allowing for the extension of a former public house ('The Walnut Tree') and the change of use of the first floor to residential use (W/09/0351). The building was then converted into a retail store at ground floor level (Tesco Express) as 'permitted development'. The planning permission was granted subject to a number of conditions one of which (condition 13) restricted, and still restricts, the times when deliveries may be made to, and refuse collections may be made from, the premises. This was

imposed in order to safeguard the amenity of surrounding residents. In full this condition read (and still reads):-

*'The delivery of goods to the retail unit on this site and the removal of refuse from it shall only occur between the hours of 0730 to 0800 hours and 0930 to 1300 hours Monday to Friday, 0800 to 1800 hours on Saturdays and 0900 to 1800 hours on Sundays and Bank Holidays. All refrigeration plant on stationary delivery vehicles within the application site shall be switched off at all times.'*

The applicants (Tesco Stores Ltd) would now like to extend these hours to enable them to adapt to more recent changes in shopping trends and meet customer demand. They contend that fewer people now tend to do one weekly shop in a large retail store preferring instead to 'top up' more regularly in smaller convenience stores such as this. They therefore contend that they need a more flexible delivery/refuse collection regime. Originally they proposed to make deliveries and refuse collections to/from the premises between the hours of 7.30am and 8am and 9.30am and 9pm Mondays to Fridays, and between 7.30am and 9pm on weekends and Bank Holidays. However, they have since agreed to reduce these to between 7.30am and 8am and 9.30am and 7pm Mondays to Fridays, 8am and 7pm on Saturdays, and 9am and 6pm on Sundays and Bank Holidays.

#### Amenity Issues

This site is located within a predominantly residential area. Consequently, these proposals could potentially lead to disturbance of local residents especially if deliveries and refuse collections were to be undertaken unduly early in the morning or late at night. However, the revised proposals (which amount to an extra six hours between 1pm and 7pm Mondays to Fridays, an extra hour between 6pm and 7pm on Saturdays with no change on Sundays or Bank Holidays) are such that those deliveries/collections are not now proposed to be made at unduly early or late times of the day and in the main will be made during daytime hours when a degree of noise could reasonably be expected. Additionally, the applicants have submitted an Environmental Noise Assessment which recommends that certain noise mitigation measures are undertaken and retained at all times when those deliveries/collections are being made. These include ensuring that vehicle engines and vehicle radios are switched off when lorries are unloading and that staff work quietly when outside of the shop. With this in mind, and subject to a further condition requiring that the noise mitigation measures are fully implemented, it is considered that altering the delivery and refuse collection times to those now proposed will not unduly affect the amenity of local residents despite concerns to the contrary. The proposal has been

considered by the Council's WDC Health and Community Protection - Environmental Sustainability Service who support this view.

### Other Issues

The concerns expressed by the objectors to this proposal have been considered. However, they are not considered to raise issues that would be sufficient to justify the refusal of this proposal:-

a) it is not envisaged that the proposal will give rise to any undue highway safety concerns. Whilst it is likely to lead to an increase in the number of delivery and refuse vehicles visiting the site this increase will not be so great as to lead to the site becoming unduly congested with vehicles. Conflict between such vehicles and customer cars should not arise either because the store also benefits from a dedicated delivery bay which is separate from the main car park and which is available for delivery/refuse vehicles to use. Should delivery or refuse vehicles park on surrounding roads where there are parking restrictions they may be subject to action by the Police and/or Traffic Enforcement Officers.

b) a condition is attached to the original planning permission which requires the applicants to obtain the approval of the Local Planning Authority if they wish to install additional lighting on the premises. It would therefore remain possible for the Local Planning Authority to safeguard surrounding residents from undue light pollution should further proposals come forward.

c) The applicant has explained why they are proposing to alter their delivery/refuse collection times (see 'Background' section above),

d) The concerns raised about Tesco's alleged failure to comply with their current delivery/refuse collection restrictions are being reviewed by the Council's enforcement team. Concerns regarding excessive noise arising from the site can be considered, and where appropriate addressed, through separate Environmental Health legislation.

e) Extending the hours during which refuse may be collected may help to reduce any incidences of rats which should be reported to the Council's Environmental Health Team.

### **Summary/Conclusion**

It is considered that the proposal accords with the requirements of Policies DP2 and DP9 of the Warwick District Local Plan 1996-2011 and the provisions of the National Planning Policy Framework. It is contended that, subject to the imposition of a condition requiring the implementation of the specified noise minimisation measures, extending the delivery and refuse collection times as proposed will not harm the amenities of surrounding residents.

## **CONDITIONS**

- 1 The approved plans are drawing numbers 3603/(P)101/App(iii); /(P)201/aPP(iv); /(P)501/App(vi) and GC/31384.001/C and the details contained within the application submitted on 20th April 2009 as amended by the applicants agents letters dated 1st July 2009 and 19th August 2009. **REASON:** For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.
- 2 The existing boundary treatment shall be retained at all times. **REASON:** To ensure that the visual amenities of the area are protected, and to satisfy the requirements of Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.
- 3 No materials, plant or equipment of any description including skips or containers, shall be stacked, stored or deposited on any open area of the site. **REASON:** To ensure that the visual amenities of the area are protected, and to satisfy the requirements of Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.
- 4 The screen fences enclosing the service bay shall be retained at their current height at all times. **REASON:** To protect the amenity of adjacent residents in accordance with Policies DP1, DP2 and DP9 of the Warwick District Local Plan 1996-2011.
- 5 The first floor of the building shall be used solely for residential purposes. **REASON:** To ensure a satisfactory form of development and to ensure the total floor area of the building in retail use does not exceed that shown on the approved plans in accordance with Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.
- 6 No external lighting or sound amplification or tannoy system shall be installed on any external wall or roof of any building or within the open land comprised in the application site other than in accordance with details first submitted to, and approved in writing by, the Local Planning Authority. **REASON:** To protect the amenity of the occupiers of nearby properties, and to satisfy the requirements of Policy DP9 of Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.
- 7 All car, disabled car, resident and cycle parking spaces, and the associated footpaths and pedestrian routes, shall be kept available for their specified purpose at all times.

**REASON:** To ensure that satisfactory parking/pedestrian provision is retained in conjunction with the development to meet the requirements

of Policies DP1, DP2 and DP8 of the Warwick District Local Plan 1996-2011.

- 8 The delivery of goods to the retail unit on this site and the removal of refuse from it shall only occur between the hours of 0730 to 0800 hours and 0930 to 1900 hours Monday to Friday, 0800 to 1900 hours on Saturdays and 0900 to 1800 hours on Sundays and Bank Holidays. All refrigeration plant on stationary delivery vehicles within the application site shall be switched off at all times.

**REASON:** To protect the amenity of the adjacent residents in accordance with Policies DP1, DP2 and DP9 of the Warwick District Local Plan 1996-2011.

- 9 The noise reduction measures set out in the Environmental Noise Assessment by Sharps Redmore and dated 2nd March 2016 shall be implemented in full and retained in place at all times that the extended delivery and refuse collection hours are in operation. **REASON:** To protect the amenity of the adjacent residents in accordance with Policies DP1, DP2 and DP9 of the Warwick District Plan 1996 – 2011.

- 10 The retail unit on this site shall only be open to the public between the hours of 0600 and 2300 hours. **REASON:** To protect the amenity of the adjacent residents in accordance with Policies DP1, DP2 and DP9 of the Warwick District Plan 1996 – 2011.

- 11 The service vehicle turning area shall be retained at all times solely for the use of delivery and refuse vehicles. **REASON:** In the interests of highway safety in accordance with the requirements of Policies DP6 and DP7 of the Warwick District Local Plan 1996-2011.

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