

01 Reference Number: 22/00491/RVC

Description of application: Variation of condition 11 on TCP/18797/G to allow alterations to delivery times to include earlier delivery time of 8am on Sundays and Bank Holidays

Site Address: Marks and Spencer Plc, Church Litten, Newport Isle of Wight PO30 1XL.

Applicant: Mrs Geraldine Graham on behalf of Marks and Spencer PLC

This application is recommended for: Conditional permission

REASON FOR COMMITTEE CONSIDERATION

It is considered that the application raises a balanced of policy issues.

MAIN CONSIDERATIONS

- Impact on the character of the area and neighbouring amenity.

1. Location and Site Characteristics

- 1.1 Marks and Spencer is a large retail store located within the Town Centre Boundary for Newport and within the Settlement Boundary and Key Regeneration Area Boundary of the Medina Valley.
- 1.2 The existing store is located on the corner of St. Georges Approach and Church Litten. Although the customer vehicular access is off Church Litten to the north west of the building itself, the servicing yard is accessed from the south off St. Georges Approach.
- 1.3 The area is characterised by a mix of uses with primarily commercial to the north and residential to the south.

2 Details of Application

- 2.1 The proposed application seeks a variation to the hours that the store is permitted to receive deliveries on Sundays and Bank Holidays.
- 2.2 The variation seeks to amend the current hours from 10:00 to 08:00 on these days, with the end time of 16:00 remaining the same. Monday - Saturday times would remain as currently approved (07:00 – 20:00). No other changes are proposed.

3 **Relevant History**

- 3.1 21/02066/RVC - Variation of condition controlling hours of operation - Refused 13th January 2022.
- 3.2 P/02575/07 - Variation of condition no. 11 on TCP/18797/G to enable deliveries between 0600 hours & 2000 hours except on Sundays & recognised Bank Holidays when it shall only take place between 0700 hours & 1600 hours from 01 December 2007 & 05 January 2008 - Refused December 2007.
- 3.3 Appeal T/APP/P21 14/A/99/1027700/P2 - to vary condition 11 of consent TCP/18797/G - Allowed November 1999. The allowed appeal permitted deliveries to take place between 07.00 and 20.00 weekdays and Saturdays and between 10.00 and 16.00 on Sundays and Bank Holidays. The appeal also allowed deliveries to take place between 06.00 and 20.00 weekdays and Saturdays and 07.00 and 16.00 on Sundays and Bank holidays during the period between 18th December and 1st January of any given year.
- 3.4 TCP/18797/G - Proposed retail store, car parking, landscaping and service yard with access off Medina Avenue, demolition of dwellings fronting Medina Avenue - Approved 1993.

4 **Development Plan Policy**

National Planning Policy Framework

- 4.1 The NPPF explains that the purpose of the planning system is to contribute to the achievement of sustainable development. It refers to three interdependent social, environmental and economic objectives, which need to be pursued in mutually supportive ways, so that opportunities can be taken to secure net gains across all of these different objectives.
- 4.2 Section 6 (Building a Strong Competitive Economy) states that Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future.

Local Planning Policy

- 4.3 The Island Plan Core Strategy defines the application site as being within the Medina Valley Key Regeneration Area and within the defined settlement boundary for Newport. The site is also within the Newport Town Centre boundary. The following policies are relevant to this application:

SP3 - Economy

DM2 - Design Quality for New Development

DM8 - Economic Development

5 **Consultee and Third-Party Comments**

Internal Consultees

- 5.1 Island Roads raise no objection subject to no other changes being proposed in relation to the use of the service yard.
- 5.2 Environmental Health raise no objection to the amended hours, noise disturbance prior to the proposed delivery time should be kept to a minimum in order to protect residential amenity.

Parish/Town Council Comments

- 5.3 Newport and Carisbrooke Community Council have confirmed that they have no comments.
- 5.4 The Ward Councillor has objected to the proposal and requested that the application be discussed at Planning Committee, for the following reasons:
- It's been frequently recorded that current conditions are not adhered to with deliveries to the store, causing disturbance to residents that are close.

Third Party Representations

- 5.5 Two comments have been received from local residents, who have objected raising comments that can be summarised as follows:
- Marks and Spencer are regularly in breach of conditions, 6, 10 and 12 of the original consent
 - Service yard is located on Medina Avenue not on Church Litten as per the application
 - Conditions in place to protect annoyance and disturbances to neighbours
 - Very firmly within a residential location
 - Noise pollution
 - Early morning use of the delivery yard is noise pollution
 - Unacceptable degree of volume created by opening the gates
 - Reversing alarms and general lorry noise is unpleasant when they should be switched off
 - Environmental Health should be consulted
 - Whilst the unloading/loading bay is itself soundproofed getting vehicles into that position is always problematic as the open section of the delivery yard acts as an echo chamber
 - Sympathetic during lockdown but not now
 - It is clearly not required if the store management, systems and numbers of available staff were improved
 - Noisy preparative activity, in the goods in yard, already commences anything up to an hour and a half before the first lorry of the day arrives

- In theory, the yard would be open for business, on Sundays and Bank Holidays at 0630hrs
- Unlike most of our neighbours we have lived here in our family home since before M&S was even built in the early 90's and have direct, first-hand experience of all of the original negotiations that took place in respect of the goods inwards yard
- Nothing has changed to warrant further amendments to those original planning conditions
- Such applications have previously been refused by the LPA
- Ongoing safety concerns with deliveries and the highway
- Distance between the store and homes remain and therefore so should the conditions
- Service yard is not managed correctly

5.6 The Local Ward Member has requested a committee decision for the following reasons:

- Amendments to hours would be of strong local interest
- Concern over noise amenity and the arrival of lorries prior to approved times.

6 **Evaluation**

Impact on the character of the area and neighbouring amenity

6.1 This application seeks to vary the hours of delivery for the Marks and Spencer store, which are regulated by a planning condition allowed on appeal (see history section above). The appeal allows the service yard to receive deliveries during the following hours:

- 07.00 and 20.00 weekdays and Saturdays
- 10.00 and 16.00 on Sundays and Bank Holidays

The appeal also allowed specific delivery times for the period between 18th December to 1st January each year:

- 06.00 and 20.00 weekdays and Saturdays
- 07.00 and 16.00 on Sundays and Bank Holidays

6.2 The Planning Authority recently determined planning application 21/02066/RVC, which sought to vary the permitted delivery times to allow deliveries to occur between 06.00 and 20.00 hours, weekdays and Saturdays and between 08.00 and 16.00 hours on Sundays and Bank Holidays. That application was refused due to concerns that the proposed delivery hours would cause a loss of amenity to nearby residents. At the time of this application, the Council's Environmental Health Officer raised concerns that the applicant's noise report did not appear to take account of the fact that traffic noise would be lower between the hours of 6-7am on weekdays, than it is between 7-8am and looked at average noise levels against background noise levels.

- 6.3 The proposals now focus on the delivery times for Sundays and Bank Holiday, seeking consent to allow deliveries to be accepted from 08:00, rather than 10:00. The application seeks no changes to delivery times on weekdays and Saturdays.
- 6.4 Officers would highlight that during the height of the pandemic Local Planning Authorities were instructed to under enforce delivery conditions, to deal with the challenges store were facing at the time with stock and staffing. This provision has now been lifted but a number of applications have been submitted since to retain these more relaxed hours.
- 6.5 In respect of this site specifically it is acknowledged by officers that, on the basis that the store does not open to members of the public until 10:00 on Sundays and Bank Holiday's, the current delivery timeframe does impose issues with produce being stocked in time for the store to open and this variation would allow for greater fluidity between delivery and opening times to support the ongoing functions of the store in relation to SP3 and DM8 of the Island Plan Core Strategy.
- 6.6 On consideration of the application, the Council's Environmental Health Officer has reviewed an addendum to the noise report and has not objected to the application but does acknowledge that local residents have raised objection in relation to noise disturbances and activity on site in relation to preparation of deliveries prior to the existing allowed time.
- 6.7 There is some concern locally that deliveries on occasions arrive early to the store (prior to 10:00 on Sundays) and that this can be up to 90 mins before the time allowed for deliveries under the current planning restrictions. However, these incidents have not resulted in breaches of the current conditions, as the vehicles have parked outside of the store, rather than be permitted to enter the delivery yard. Officers understand that the vehicles have been idling while waiting. The variation of this application would allow for the unloading and delivery of produce two hours prior to the current time, which while earlier, would allow the vehicles to be unloaded and to then leave the site in a timelier fashion.
- 6.8 The agent for the application confirms that they are working with the store to resolve amenity concerns and has advised that there would not be a need for lorries to arrive prior to 08:00, as the store would not be opening earlier and that this would allow for sufficient time to unload the goods in a more effective manner. Therefore, whilst some lorries have waited outside the premises prior to 10:00, allowing this variation would be unlikely that this would then occur at a further extended time prior to 08:00 which understandably has been raised as a concern by third parties.
- 6.9 Thus, although this proposal would allow an earlier delivery time, delivery vehicles would be generally booked on a ferry that would coincide with this delivery time, and although somewhat dependent to some degree on ferry times, given that this application relates to Sunday mornings, it is likely that ferry availability and the regularity of this varied timeframe would allow for the restrictions for deliveries to be met.
- 6.10 This proposed change is therefore considered relatively modest and may result in an improvement to the current situation, where vehicles idle outside of the store,

by reducing the amount of time vehicles are at the store. As such, on balance the variation would protect neighbouring amenity and the function of the store and thus meets the aims of Policies SP3, DM2 and DM8 of the Island Plan Core Strategy.

7 Conclusion

- 7.1 The proposed variation of hours would be a modest change to the overall hours in respect of current deliveries to the store. The hours would allow for effective functioning of the store which has been in situ for a considerable period of time and positioned within an area of mixed-uses, which offers a number of commercial premises and thus would not alter the character of the area through this amendment and would therefore comply with policies DM2 (Design Quality for New Development) and DM8 (Economic Development).

8 Recommendation

- 8.1 Conditional Approval.

9 Statement of Proactive Working

9.1 ARTICLE 31 - WORKING WITH THE APPLICANT

In accordance with paragraphs 38 of the NPPF, the Isle of Wight Council takes a positive approach to development proposals focused on solutions to secure sustainable developments that improve the economic, social and environmental conditions of the area. Where development proposals are considered to be sustainable, the Council aims to work proactively with applicants in the following way:

- The IWC offers a pre-application advice service
- Updates applicants/agents of any issues that may arise in the processing of their application and, where there is not a principle objection to the proposed development, suggest solutions where possible

The application was considered suitable as submitted and therefore no further discussions were carried out.

Conditions

- 2 The use of the food retail shopping floor space within the retail store shall be restricted to maximum of 15,000 square (1393 square metres) only, to the satisfaction of the Local Planning Authority.

Reason: In the interests of the function of the town centre in accordance with DM9 (Town Centre) of the Island Plan Core Strategy.

- 6 The service yard off Medina Avenue shall remain in accordance with the plan approved as part of planning application: TCP/18797/G to allow for the

purposes of unloading and loading of delivery vehicles together, with adequate turning space for the manoeuvring of articulated lorries and such space shall be kept clear of all obstruction at all times.

Reason: In the interest of highway safety in accordance with policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.

- 10 The gates to the service yard shall be opened for direct access purposes only and all other times shall be kept closed.

Reason: In the interest of highway safety in accordance with policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.

- 11 The loading and unloading of delivery vehicles shall only take place between the following hours:

07.00 and 20.00 weekdays and Saturdays

08:00 and 16.00 on Sundays and Bank Holidays

(During the period 18 December to 01 January (inclusive) deliveries of goods to and the loading and unloading of vehicles in the service yard and loading/unloading bay shall not take place outside the hours of 06.00 and 20.00 weekdays and Saturdays or outside the hours of 07.00 and 16.00 on Sundays and Bank holidays)

Reason: To protect the amenities of neighbouring properties in accordance with policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.

- 12 The service area on the Medina Avenue frontage shall not be used for outside storage purposes and shall be kept clear of all used crates, packing materials, boxes or waste etc at all times to the satisfaction of the Local Planning Authority.

Reason: To protect the amenities of neighbouring properties and the character of the area in accordance with policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.

- 13 No fixed plant or machinery shall operate on the site at any time so as to cause a noise level at the perimeter of the site which exceeds 35 dBA between 20:00 and 07:00 hours (noise levels to be measured in accordance with BS 4142) to the satisfaction of the Local Planning Authority.

Reason: To protect the amenities of neighbouring properties in accordance with policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.