

TEWKESBURY BOROUGH COUNCIL - DEVELOPMENT MANAGEMENT

Committee:	Planning
Date:	15 February 2022
Site Location:	Tesco Supermarket Church Road Bishop's Cleeve
Application No:	19/00985/FUL
Ward:	Cleeve West
Parish:	Bishop's Cleeve
Proposal:	To allow for extended hours of delivery 0500-2300 hours Monday-Saturday and 0700-2200 hours on Sundays; variation of condition 5 of planning permission ref: 01/0041/0125/FUL (as modified by permission ref: 08/01358/FUL and 14/00552/FUL); and variation of condition 2 of planning permission ref: 14/00552/FUL to amend report of noise mitigation measures.
Report by:	Dawn Lloyd
Appendices:	Site location plan Comments of the Environmental Health Officer and response by Sharp Redmore Acoustic
Recommendation:	Refuse

1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1** The application relates to the Tesco Superstore at Church Road, Bishops Cleeve. The site is located within the defined retail area of Bishops Cleeve, south of the town's Conservation Area. There is a large parking area to the front of the site and it is readily accessible via established cycle and pedestrian links. The superstore is surrounded by a variety of land uses, including housing to the south-west and south-east; a retail area to the north; and a public house directly to the west.
- 1.2** Planning permission is sought to allow for extended hours of delivery to 05:00 to 23:00 hours Monday-Saturday with the Sunday hours to remain unaltered 08:00 to 22:00. The application for the variation of condition 5 of planning permission ref: 01/0041/0125/FUL, (as modified by permission ref: 08/01358/FUL and 14/00552/FUL) and for the variation of condition 2 of application 14/00552/FUL to amend report of noise mitigation measures.
- 1.3** The proposal seeks to bring the hours of delivery forward by one hour from the previous permission on Monday to Saturday. There are currently operational difficulties that arise from the current delivery start time at this store (of 06:00 hours).

- 1.4 Condition 1 of 14/00552/FUL states, "Hours of deliveries/collections and loading/unloading activities, within/to/from the site shall be limited to between 06:00 and 23:00 hours Monday-Saturday and 8:00 to 22:00 hours on Sundays only". The reason for the imposition of this condition was to safeguard the amenities of local residents in accordance with Policy P1 of the Tewkesbury Borough Local Plan to 2011 - March 2006
- 1.5 This application has been accompanied by a Noise Assessment prepared by a Sharps Redmore a professional Noise Consultancy dated 16th August 2019. The report concludes that the commencement of deliveries at 5:00 am Monday to Saturday could proceed without harming the residential amenity of local residents.
- 1.6 The planning statement suggests there are currently operational difficulties that arise from the current delivery start time at this store (of 06:00 hours). A variation to the condition is required to enable fresh goods to be delivered, processed in the warehouse and shelves stocked before the store opens.
- 1.7 **The application was considered by members at the Planning Committee meeting on 6th June 2020 and the application was DEFERRED in order to obtain the Environmental Health Officer's view in relation to the impact of the proposal on the residents of the flats above Mill Parade and the additional noise and disturbance that could potentially arise from vehicles coming and going.**

2.0 RELEVANT PLANNING HISTORY

Application Number	Proposal	Decision	Decision Date
01/00666/FUL	Variation of condition No. 15 attached to planning permission reference 97/0041/0772/OUT to permit deliveries - temporarily (6 month period) - between 06.00 and 23.00.	PER	19.06.2001
01/01205/FUL	Extension to foodstore, additional car parking and ancillary enabling works.	PER	20.10.2003
02/00708/FUL	Erection of single storey covered marshalling area in service yard	WON	03.07.2002
97/00772/OUT	Outline application for the erection of a retail food store, ancillary facilities & landscaped open space area; car parking & servicing to Mill Parade shops; including siting, means of access, design and external appearance.	PER	10.07.1998
98/00186/APP	Approval of reserved matters - landscaping	APPROV	07.09.1998
98/00281/LBC	Demolition of part boundary walls (Grade II Listed Building Ref: 16/101).	CONSEN	18.08.1998
04/01442/FUL	Proposed erection of acoustic grade timber boarded fence to service yard enclosure further to application no. 04/00041/0326/FUL	PER	25.11.2004

08/01358/FUL	Variation of condition 5 following the grant of permission 01/0041/01205/FUL to allow extended hours of deliveries.	PER	23.12.2008
10/01220/FUL	Variation of condition 1 of planning permission 08/01358/FUL to allow extended hours of deliveries between the hours of 04:00 to 01:00 from Monday to Friday.	WON	05.01.2011
14/00552/FUL	Variation of Condition 5 of planning permission ref: 01/0041/0125/FUL (as modified by permission ref: 08/01358/FUL) to allow deliveries to commence at 7am on Sundays.	PER	17.09.2014

3.0 RELEVANT POLICY

3.1 The following planning guidance and policies are relevant to the consideration of this application:

National guidance

3.2 National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG)

Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) - Adopted 11 December 2017

3.3 Policies: SO14 Health and Environmental Quality, SO2 Retail and Town Centres

Tewkesbury Borough Local Plan to 2011 - March 2006 (TBLP)

3.4 Policies: RET3 Retail Areas

Tewkesbury Borough Plan 2011-2031 Submission Version (May 2020)

3.5 Policies: RET3 Retail Centres

3.6 Human Rights Act 1998 - Article 8 (Right to Respect for Private and Family Life)

3.7 The First Protocol, Article 1 (Protection of Property)

4.0 CONSULTATIONS

4.1 Bishops Cleeve Parish Council - The Parish confirmed that they objected to non-temporary permission however they would support a temporary planning permission for 12 months with a review to assess the impact on residents.

4.2 Environmental Health- No objection subject to conditions requiring implementation of the noise mitigation measures identified in the Noise Report, and erection of an acoustic bund.

5.0 PUBLICITY AND REPRESENTATIONS

5.1 The application has been publicised through the posting of a site notice for a period of 21 days and/or the neighbour notification scheme. No public representations received.

6.0 POLICY CONTEXT

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70 (2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.

6.2 The Development Plan currently comprises the Joint Core Strategy (JCS) (2017), saved policies of the Tewkesbury Borough Local Plan to 2011 (March 2006) (TBLP), and a number of 'made' Neighbourhood Development Plans.

6.3 The Pre-Submission Tewkesbury Borough plan was submitted to the Secretary of State for Housing, Communities and Local Government on 18 May 2020 for examination. On the basis of the stage of preparation it has reached it is considered that the plan can be afforded at least moderate weight. However, the weight to be attributed to individual policies will be subject to the extent to which there are unresolved objections (the less significant the unresolved objections, the greater the weight that may be given) and their degree of consistency with the NPPF (the closer the policies to those in the NPPF the greater the weight that may be given).

6.4 The relevant policies are set out in the appropriate sections of this report.

7.0 ANALYSIS

7.1 National planning policy framework 2019 (NPPF) - paragraph 85 seeks, decisions should support town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.

7.2 NPPF - Paragraph 170 states, planning decisions should contribute to and enhance natural and local environment by:

- preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.

7.3 Paragraph 180 considers that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impact resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life.

7.4 Policy SD14 of Joint Core Strategy is in accordance with the NPPF, it considers that development should protect and seek to improve environmental quality. Development should not create or exacerbate conditions that could impact on human health or cause health inequality. New development must result in no unacceptable levels of air, noise, water, light or soil pollution or odour, either alone or cumulatively, with respect to relevant national and EU limits.

7.5 In assessing the acceptability of the proposal, the primary consideration is whether the extended operational hours on Monday to Saturday would have a detrimental impact upon the amenities of nearby residential dwellings.

- 7.6** The NPPF whilst seeking to support the economy and employment uses in town centre also recognises the need to avoid noise giving rise to significant adverse impacts on health and quality of life. Policy SD14 seeks to protect existing noise sensitive uses from development that would noise would cause harm.
- 7.7** An environmental noise assessment has been submitted in support of the application. A noise survey was conducted on Tuesday 22nd July 2019. The closest properties to the Tesco service yard are 23 Cheltenham Road and The Kings Arms pub. 23 Cheltenham Road is approximately 50 metres from unloading activity and The Kings Arms pub is approximately 55 metres from a vehicle upon arrival and departure. The report indicates that there is a slight exceedance of peak noise levels at the Kings Arms pub as the delivery vehicle uses the access road passed this property. The report also states that the existing noise climate needs to be considered in the context of vehicles on Church Road which also exceeds the WHO nighttime peak noise guideline value. The report considers that in this context, noise from the use of the access road would be of low impact. The report concludes that the predicted noise levels from the service yard delivery activity would comply with both the daytime and nighttime noise values and as such the proposed variation would be acceptable with the mitigation measures proposed.
- 7.8** The Council's Environmental Health Officer has considered the report and raised concerns with regard to the noise impact on The Kings Head. Additional noise mitigation measures are therefore recommended. It is recommended that an acoustic fence is erected in between the access road and the rear of the main public house building. Furthermore, that white noise reversing beeps are used between the hours of 22:00 - 07:00 on any day. The Applicant has confirmed agreement to an acoustic fence, and recommended noise mitigation measures.
- 7.9** Whilst concerns have been raised by the Parish Council, the technical evidence and assessment conclude the proposed hours of operation would be acceptable subject to the additional noise mitigation measure proposed. The Applicant has agreed to the recommended. Therefore, it is considered that the proposal accords with the national guidance set out in the NPPF and policy SD14.

8.0 CONCLUSION AND RECOMMENDATION

- 8.1** It has been demonstrated that the proposed extended hours of deliveries to the store would not result in inherent noise and disturbance to the occupiers of nearby residential properties. As such, it is considered that the proposal would have an acceptable impact on the residential amenity of nearby properties and is in accordance with JCS policy SD14 and that proposal be granted subject to conditions.

CONDITIONS:

1. Hours of deliveries/collections and loading/unloading activities, within/to/from the site shall be limited to between 05:00 and 23:00 hours Monday-Saturday and 08:00 to 22:00 hours on Sundays only.

Reason: To safeguard the amenities of local residents and neighbouring occupiers.

2. Prior to the commencement of the beneficial operating hours, the noise mitigation measures shall be implemented in accordance with the Environmental Noise Assessment Tesco, Church Road, Bishops Cleeve by Sharps Redmore Acoustic Consultants dated 16th August 2019. Between the hours of 22:00 - 07:00 reversing vehicles shall only use white noise reversing beeps. These noise mitigation measures shall be maintained as such thereafter.

Reason: To safeguard the amenities of local residents and neighbouring occupiers.

3. The deliveries times hereby approved shall not commence until the siting and details of an acoustic fence have been submitted, agreed in writing by the Local Planning Authority and implemented in accordance with the approved details and maintained as such thereafter.

Reason: To safeguard the amenities of local residents and neighbouring occupiers.

INFORMATIVES:

1. In accordance with the requirements of the NPPF the Local Planning Authority has sought to determine the application in a positive and proactive manner by offering pre-application advice, publishing guidance to assist the applicant, and publishing to the council's website relevant information received during the consideration of the application thus enabling the applicant to be kept informed as to how the case was proceeding.

UPDATE

- 9.1 The application was considered by members at the Planning Committee meeting on 6th June 2020 and the application was DEFERRED in order to obtain the Environmental Health Officer's view in relation to the impact of the proposal on the residents of the flats above Mill Parade and the additional noise and disturbance that could potentially arise from vehicles coming and going.**
- 9.2 The comments of the Environmental Health Officer and response by Sharp Redmore Acoustic Consultants are attached in full to this report.
- 9.3 The Environmental Health Officer in their assessment of the Noise Acoustic Assessment and present arrangements of operations consider that there would not have a significant impact on the wider Bishops Cleeve area.
- 9.4 The Environmental Health Officer assessment on the Flats on Mill Parade and the Kings Head Public House, considered that there would be an adverse effect for lorry unloading and so the effects need to be mitigated or reduced to make them acceptable in planning terms. Sharps Redmore have recommended various mitigation measures to reduce the noise from unloading activities.
- 9.5 Regarding the noise from delivery vehicles arriving & departing on the Flats in Mill Parade and the Kings Head Public House. It was found that some of the noise levels exceed the World Health Organisation Community Noise Levels and therefor the WRS Advisor recommended an acoustic barrier to be erected between the access road and the Kings Head. At the Flats the calculated maximum peak level of 66 dB exceeds World Health Organisation Community Noise Levels where sleep disturbance would be expected. Furthermore, the number of lorries delivering in the 5am to 7am (considered a nighttime period) could potentially increase from one to four and there would be adverse impact and recommendation for refusal.
- 9.6 The Agents Acoustic Consults responded to the Environmental Health Officer's comments (attached in full to this report). The consultants conclude:

That whereby for short durations peak noise levels from site operations exceed the WHO peak noise guideline value, it may be appropriate for any planning permission to be temporary in nature such that the direct effect of the noise source can be evaluated prior to any permanent consent being granted.

- 9.7 During the pandemic there was the lifting of delivery hour time restrictions. The consults considered that this enabled the direct impact of noise from out of hours delivery activity to be established. Tesco trialed nighttime deliveries from midnight until 2 am during this period. Although the measured peak noise levels of between 61-69 dB LAmax outside the Kings Arms from delivery vehicle pass by on arrival and departure, there were no noise complaints associated with this activity.
- 9.8 Our Environmental Health Officer maintains concerns regarding noise levels as the nighttime deliveries did not take place at 5am and that the deliveries could be from suppliers other than Tesco which may generate more noise. The Environmental Health Officer considered that the lifting of delivery time restrictions during the covid pandemic provided an opportunity for deliveries to be undertaken at 5:00am to assess the impact on neighbouring residents or that consideration be given to a temporary permission be granted for the delivery period.
- 9.9 The Applicant did not provide further information to indicate that deliveries at 5:00am had been undertaken during this restricted period and this relaxation has now been revoked.
- 9.10 The Acoustic report indicates that there would be short durations of peak noise levels from site operations that exceed the World Health Organization peak noise guideline value and mitigation measures would be required. Further assessment was undertaken during the pandemic and activities of residents and local business during the pandemic, an unusual time and not a direct comparison. The applicant has not applied for a short period to trial the new time periods but for full application. The time periods proposed are for deliveries/collection and the loading/unloading activities within/to/from the site shall be limited to between 05:00 and 23:00 hours Monday-Saturday and 08:00 and 22:00 hours on Sundays.

CONCLUSION

- 10.1 The further information provided indicates that short durations peak noise levels from site operations exceed the WHO peak noise guideline value. It has not been demonstrated that the hours proposed would not have an unacceptable impact on neighbouring residents and does not accord with policy SD14 of the Joint Core Strategy and recommendation is for **Refusal**.

REASON:

- 1 The proposed extension of the hours of operation would unreasonably affect the residential amenity of adjoining occupiers in terms of noise and disturbance. As such, the proposal would be contrary to Policies SD4 and SD14 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (2017) and paragraph 130 of the National Planning Policy Framework (2021).