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PLANNING CONTROL COMMITTEE	
Application No:	CH/19/432
Received:	16-Dec-2019
Location:	Asda Stores Ltd, Lichfield Road, Cannock, WS11 8UF
Parish:	Non Parish Area
Description:	Variation of conditions 2 and 3 of planning permission CH/13/0302, to allow opening between 07:00 to 23:00 Monday to Saturday, 10:00-17:00 on Sunday and 10.00-18.00 on bank and public holidays; and to allow public access to car park between 06:30 to 23:30 Monday to Saturday, 09:30-17:30 on Sunday and 09.30 to 18.30 on bank and public holidays.
Application Type:	Full Planning Application

RECOMMENDATION:

Approve Subject to Conditions

Reason(s) for Recommendation:

Reason for Grant of Permission
 In accordance with paragraph 38 of the National Planning Policy Framework the Local Planning Authority has worked with the applicant in a positive and proactive manner to approve the proposed development, which accords with the Local Plan and/ or the National Planning Policy Framework.

Conditions (and Reasons for Conditions):

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

Reason
 To comply with the requirements of Section 91 of the Town & Country Planning Act 1990.

2. The premises shall not be open for business outside the hours of 7.00 am to 11.00 pm on Mondays to Saturdays, 10.00 am to 5.00 pm on Sunday and 10 am to 6.00 pm on bank and public holidays.

Reason

To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties and to ensure compliance with the Local Plan Policy CP3 and the NPPF.

3. There shall be no public access to the car park outside the hours of 6.30am - 11.30pm Monday to Saturday, 9.30am - 5.30pm on Sunday and 9.30 am to 6.30pm on bank and public holidays.

Reason

To ensure the development does not prejudice the enjoyment of neighbouring occupiers of their properties and to ensure compliance with Local Plan Policy CP3 and the NPPF.

4. There shall be no deliveries to or from the site outside of the hours of 7.30 am to 9.00 pm on Mondays to Saturday, 9.00 am to 5.00 pm on Sundays and public holidays nor shall there be any activity within the service yard outside of these hours.

Reason

To ensure the development does not prejudice the enjoyment of neighbouring occupiers of their properties and to ensure compliance with the Local Plan Policy CP3.

5. All sales area within the development hereby approved shall be used solely for the retail sale of food and other convenience goods, and for no other purpose (including any other use within Class A1 of The Town and Country Planning (Use Classes) Order 2006, or any other Order subsequently amending or replacing the provisions of that Order)

Reason

In the interests of the vitality and viability of Cannock town centre, in accordance with National Planning Policy Framework

Consultations and Publicity

External Consultations

None undertaken

Internal Consultations

Environmental Health

Original Comments

I am concerned that the proposed variation will increase noise impact on the nearby residents and erode the extent to which those residents can enjoy their property undisturbed.

I note that no traffic or noise assessments have been submitted to quantify this impact and must therefore register an objection to the proposed variation.

Comments Received on the Revised Proposal

No objections to the revised variation in hours.

Response to Publicity

Comments Received in Respect to the Original Submission

The application has been advertised by site notice and neighbour letter. One letter of representation has been received on the following grounds on the original proposed variation:

- We note that this is the fifth application since Asda took over the management of this store and therefore request that it should be considered by the Planning Committee. We also request that we are informed of the date of any such meeting.
- Firstly we would like to put on record our thanks to the officers of Cannock Case District Council who endeavoured to encourage this Asda Store to reduce noise levels in the latter part of 2019. There has been some improvement however it does appear to be dependent on who is the duty senior. For example we were woken on Sunday 5th January by shouting (including swearing) and the banging of crates etc. at approximately 7.00 am. The continuous noise level was such that we were unable to sleep again.
- We have lived next to this Asda Store for four years after purchasing our property. Our solicitor at the time made every effort to ensure that there were reasonable planning restrictions on the store to ensure that we could live in a reasonably noise free environment. However it has taken nearly four years to try and ensure that the planning restrictions should be observed by the local management.
- With respect to the latest planning application we note that the variation to allow longer opening hours were originally made in 2013 and granted. The store management however did not enact this within the three year period so it became void. We note that the new request does not include any restrictions for public holidays which was previously the situation. The management of the store have consistently opened at different times on public and religious holidays and we feel that a restriction should be put in place to ensure that they do not open at times of their choice which is what they currently advertise but are restricted to Sunday hours as at present.
- However with regard to the use of the car park we would like to put on record that at no time during the four years we have lived here has the car park been closed (despite that fact that pull up bollards are available at the entrance to the

car park). We also note that when the Company was instructed not to allow deliveries in the rear yard outside of the hours restricted by previous planning applications they started to accept deliveries in the front car park at hours outside of the approved hours. For example we have witnessed deliveries recently at 6.00 in the morning during the week and before 8.00 in the morning at weekends.

- We therefore feel that if the car park is allowed to be open for longer hours that it should be securely closed outside of these hours and that the restrictions currently in place for deliveries should include those in the front car park.

Comments Received on Revised Proposed Variation in Hours

Two neighbour representations were received to the amended variation in hours on the following grounds:

We purchased our property next to the ASDA store in February 2016 and were aware of the conditions imposed by the planning department including those relating to the opening and the use of the service yard and car park.

However it has taken until the last few months of 2019 and only with the assistance of officers from Cannock Chase Council to get the store management to observe those relating to delivery times and opening hours.

Notably some of the senior staff currently working in the store still do not recognise the conditions relating to the use of the car park or noise/disturbance in the service yard.

We therefore do not object to the latest request by Asda to open between 10.00 and 1800 on public holidays and bank holidays as long as they are restricted to these hours and that they are not flexible.

Our agreement is subject to the conditions imposed in condition 3 and condition 6 of the approval CH/13/0302 remaining in place and on the understanding that the store management all comply with these at all times

1. Public access to the car park should be restricted 6.30am-11.30 pm Monday to Saturday and 9.30am — 5.30pm on Sundays. With the hours changed on bank holidays from 9.30am until 6.30pm. *We note that the public car park is currently open for 24 hours a day and no attempt is ever made to restrict its usage (Condition No.3)*
2. Deliveries would be restricted 7.30am — 9.00pm Monday to Saturday and 9.00am -5.00pm on Sundays and bank holidays nor shall there be any activity in the service yard outside of these hours. *We note that the yard is often used from as early as 6.00 am. with substantial noise being made (Condition 6).*
3. Although, with exemptions, the delivery times appear to now be mainly observed we still have occasions when delivery lorries unload in the road to avoid delays to their timetables. *It is also of note that delivery vehicles now often arrive outside of these hours and park in the street or front car park*

often with the engines running by our property particularly on Sundays. (Condition 6).

4. We note that the conditions that: apply to bank holidays restricting opening times etc. only relate to approximately eight days a year however these are quintessential days because, similarly to Sundays, we are able to enjoy our garden sometimes entertaining etc. without being constantly disturbed by avoidable noise, abusive language and noisy activities. *We, therefore as stated, do not object to the revised application as long as every effort is made to comply with conditions 2; 3 and 6 of the 2013 approval with the acceptations requested for bank holidays.*
5. As stated we were very aware of these restrictions, but the failure to observe them by some ASDA staff and management has had and is continuing to have a detrimental effect on our and neighbours lifestyle.

The other representation was made on the grounds that direct neighbour consultation had not taken place and should have occurred because this property was closer to the application site than the neighbouring property, which did receive a neighbour consultation letter.

Relevant Planning History

CH/08/0584:	Demolition of existing retail units and construction of one single storey retail Full - Approval with conditions - 10/28/2009.
CH/10/0196	Advertisement signs -Grant with conditions - 28/07/2010.
CH/10/0431	Variation of conditions 15 and 21 of planning permission
CH/08/0584	Full - Approval with conditions - 21/02/2011.
CH/11/0153	New ATM and plant refrigeration units, enclosed within palisade fencing Withdrawn - 07/07/2011.
CH/11/0154	Re-branding of store. Internally illuminated fascia sign, aluminium painted tote Advert-Grant with conditions - 21/09/2011.
CH/11/0237	Retention of ATM and plant refrigeration units, enclosed within chainlink fencing. Approval with conditions - 21/09/2011.
CH/12/0302	Variation of conditions 2 and 3 of planning permission CH/10/0431, to allow opening hours of 08:00-22:00 Monday to Saturday and 10:00-17:00 on Sunday; and to allow public access to the car park between the hours of 07:30-22:30 Monday to Saturday and 09:30-17:30 on Sundays and public holidays 16/10/2012.
CH/13/0302	Variation of conditions 2 and 3 of planning permission CH/12/0302, to allow opening between 07:00 to 23:00 Monday to Saturday and 10:00-17:00 on Sunday and public holidays; and to allow public access to car park between 06:30 to 23:30 Monday to Saturday and 09:30-17:30 on Sunday and public holidays. Approval with conditions - 29/10/2013.
CH/14/0026	Residential development Res Mat - Approved with conditions - 28/05/2014.
CH/14/0285	Erection of 2 pairs of semi-detached 2 bedroom bungalows. Approval with conditions - 22/10/2014.
CH/15/0183	Non-material amendment to planning consent CH/14/0285 to retain path and wall to side of Plot D. Approved - 30/07/2015.

1 Site and Surroundings

- 1.1 The application site comprises a detached foodstore on the corners of Lichfield Road, Devon Road and Surrey Close.
- 1.2 The store is located centrally within the rectangular shaped site with a customer car park to the front and a delivery yard to the rear. The customer car park has access restricted by bollards half an hour beyond the opening and closing times for the store.
- 1.3 The store was constructed in 2009 and included a significant amount of levels works that has resulted in the neighbouring properties to the rear being some 2m higher than the level of the service yard.
- 1.4 There are a number of residential properties surrounding the site, particularly to the rear and to one side, to the other side is the Lichfield Road (A5190) which is a busy arterial road connecting Cannock and Lichfield.
- 1.5 The current opening hours of the store are 07:00 to 23:00 Monday to Saturday and 10:00-17:00 on Sunday and public holidays; and to allow public access to car park between 06:30 to 23:30 Monday to Saturday and 09:30-17:30 on Sunday and public holidays. The delivery hours have not been altered since the original consent in 2008, the delivery hours condition also precludes any working within the service yard outside the delivery hours.

2 Proposal

- 2.1 The applicant originally sought variation of conditions 2 & 3 of planning permission CH.13/0302 to allow opening on Bank Holidays (where they occur on Mondays and Fridays) to open between the hours of 07:00 to 23:00 Monday to Saturday and 10:00-17:00 on Sunday; and to allow public access to car park between 06:30 to 23:30 Monday to Saturday and 09:30-17:30 on Sunday.
- 2.2 The neighbouring residents and Environmental Protection Officer objected to the original proposal and following further consultation between the Environmental Protection Officer and the applicant the latter has suggested an amended proposal, namely:
 - 'vary conditions 2 and 3 of planning permission CH/13/0302, to allow opening between 07:00 to 23:00 Monday to Saturday, 10:00- 17:00 on Sunday and 10.00-18.00 on bank and public holidays; and to allow public access to car park between 06:30 to 23:30 Monday to Saturday, 09:30-17:30 on Sunday and 09.30 to 18.30 on bank and public holidays.'
- 2.3 Consequently, the application was deferred from Committee on 4 March 2020, in order to allow re-consultation with Environmental Protection and the neighbouring residents on the revision in hours of operation and access to the car park on Bank Holidays (in summary - an additional hour later where bank holidays occur on Mondays and Fridays).

3 Planning Policy

- 3.1 Section 38 of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise.
- 3.2 The Development Plan currently comprises the Cannock Chase Local Plan (2014) and the Minerals Local Plan for Staffordshire (2015-2030).
- 3.3 Relevant Policies within the Local Plan Include:
- | | |
|--------|-----------------------------------|
| CP1: - | Strategy – the Strategic Approach |
| CP3: - | Chase Shaping – Design |
- 3.4 National Planning Policy Framework
- 3.5 The NPPF (2019) sets out the Government’s position on the role of the planning system in both plan-making and decision-taking. It states that the purpose of the planning system is to contribute to the achievement of sustainable development, in economic, social and environmental terms, and it states that there should be “presumption in favour of sustainable development” and sets out what this means for decision taking.
- 3.6 The NPPF (2019) confirms the plan-led approach to the planning system and that decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise.
- 3.7 Relevant paragraphs within the NPPF include paragraphs: -
- | | |
|---------------------|--|
| 8: | Three dimensions of Sustainable Development |
| 11-14: | The Presumption in favour of Sustainable Development |
| 47-50: | Determining Applications |
| 124, 127, 128, 130: | Achieving Well-Designed Places |
| 180: | Noise |
| 212, 213 | Implementation |
- 3.8 Other relevant documents include: -
- None.

4 Determining Issues

- 4.1 The determining issue is the impact of the proposal upon neighbouring dwellings through the generation of noise and general disturbance at times of relative peace and quiet.
- 4.2 Policy CP3 of the Local Plan states that the following key requirements of high quality design will need to be addressed in development proposals and goes on to include [amongst other things] the protection of the "amenity enjoyed by existing properties".

4.3 Paragraph 127(f) of the NPPF states that planning policies and decisions should ensure that developments [amongst other things] create places with a high standard of amenity for existing and future users.

4.4 In addition to the above paragraph 180 of the NPPF states: -

“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 impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;”

4.5 The applicant has made it clear in their submission that the proposal relates solely to the opening hours of the store and does not include extending the delivery hours. In effect, it seeks to allow opening on Bank Holidays (where they occur on Mondays and Fridays) to open between the hours of 10:00 to 18:00 and to allow access to the car park between 09:30 to 18:30.

4.6 The last application CH/13/0302 extended opening hours by an additional hour in the morning and the evening on Monday–Saturdays was not considered to have an adverse impact upon the neighbouring dwellings. However, the officer report for the last application stated that it was considered that this should be the maximum allowance for opening hours for the store, and therefore any further applications for extension to opening hours would not be likely to be supported.

4.7 The Environmental Protection Officer has since removed his objection to the amended proposed variation in hours.

4.8 The neighbouring residents have also removed their objection on the grounds that the restriction in hours for CH/13/0302 with regard to deliveries to the Asda storey should be adhered to more stringently by the Asda delivery workers. This can be controlled by the Council’s Enforcement Officer.

4.9 It is therefore considered that the proposed variation in the hours of operation and use of the car park would not give rise to harm, or detriment by way of additional noise disturbance to the surrounding residents during periods when residents should reasonably expect to enjoy peace and enjoyment of their homes. As such, it is concluded that the variation in hours would retain a high standard of residential amenity to all existing and future occupants in compliance with Policy CP3 of the Local Plan, and paragraph 127(f) of the NPPF.

5. Other Issues

5.1 The neighbour representation regarding consultation has arisen due to the Council’s change in the Consultation Charter (2017) which now relies on direct neighbour letters being sent only to properties that directly abut the boundary with the application site. This is in addition to the minimum statutory requirement

to display a site notice as close as practical to the application site, which allows anyone who has an interest in the application proposal to comment on the application within 21 days if the notice being displayed.

6 Human Rights Act 1998 and Equalities Act 2010

Human Rights Act 1998

- 6.1 The proposals set out in this report are considered to be compatible with the Human Rights Act 1998. The recommendation to approve the application accords with the adopted policies in the Development Plan which aims to secure the proper planning of the area in the public interest.

Equalities Act 2010

- 6.2 It is acknowledged that age, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation are protected characteristics under the Equality Act 2010.

By virtue of Section 149 of that Act in exercising its planning functions the Council must have due regard to the need to:

Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited;

Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

It is therefore acknowledged that the Council needs to have due regard to the effect of its decision on persons with protected characteristics mentioned.

Such consideration has been balanced along with other material planning considerations and it is considered that the proposal is acceptable in respect to the requirements of the Act. Having had regard to the particulars of this case officers consider that the proposal would not conflict with the aim of the Equalities Act.

7 Conclusion

- 7.1 In conclusion, it is considered that the proposal would retain a high level of residential amenity, in accordance with Cannock Chase DC Local Plan Policy CP3 and the NPPF.
- 7.2 It is therefore recommended that the application be approved subject to the attached conditions.