

REPORT TO: Planning Committee

MEETING DATE: Tuesday 5 May 2015

BY: Depute Chief Executive
(Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Note - this application was called off the Scheme of Delegation List by Councillor Berry for the following reasons: We have just passed permission for Aldi in Dunbar Road with a 0700 to 2300 restriction in a similar residential area and should consider in Committee whether this should not also apply here.

Application No. **14/00951/P**

Proposal Variation of condition 5 of planning permission 05/00928/FUL to allow for deliveries to the store between the hours of 06:00 to 23:00 on Mondays to Saturdays inclusive and erection of acoustic panels on service yard fence

Location **Tesco Stores Limited
Tantallon Road
North Berwick
East Lothian
EH39 5NF**

Applicant Tesco Stores Limited

Per Mackay Planning

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

This planning application relates to the Tesco store in North Berwick. It is located to the south of Tantallon Road, at the eastern side of the town.

The service yard for the store is located immediately to the north of part of the store building. To the north of part of the service yard are the residential properties of Horsecrook. The existing boundary between the service yard and the residential properties of Horsecrook is enclosed by a 3.0 metres high solid timber acoustic fence, on top of which is a 1.5 metres high timber trellis fence. The remainder of the northern boundary of the service yard is enclosed by a 3.0 metres high solid timber acoustic fence.

Planning permission (Ref: 05/00928/FUL) was granted in October 2006 for the erection of the store and for a petrol filling station and associated works, subject to 22 conditions. Of these, condition 5 stipulates that:

“No delivery vehicle shall either access or egress the site nor be loaded or unloaded within the site outwith the hours of 07:00 to 23:00 on Mondays to Saturdays inclusive and 08:00 to 19:00 on Sundays and bank holidays.

Reason:

To ensure that the amenity of the occupiers of nearby houses is safeguarded”.

In November 2013 planning permission (Ref: 13/00942/P) was sought for a variation of condition 5 of planning permission 05/00928/FUL to allow for deliveries to the store between the hours of 06:00 to 23:00 on Mondays to Saturdays inclusive. That application was subsequently withdrawn prior to its determination.

Planning permission is now sought through this application for a variation of condition 5 of planning permission 05/00928/FUL to the following:

“No delivery vehicle shall either access or egress the site nor be loaded or unloaded within the site outwith the hours of 06:00 to 23:00 on Mondays to Saturdays inclusive and 08:00 to 19:00 on Sundays and bank holidays.

Reason:

To ensure that the amenity of the occupiers of nearby houses is safeguarded”.

Thus the proposed variation of condition 5 is seeking permission for delivery vehicles to access or egress the site or be loaded or unloaded within the site for one extra hour on Mondays to Saturdays inclusive, that being between the hours of 06:00 to 07:00.

Planning permission is additionally sought for the erection of a 1.5 metres high acoustic panel on top of the existing 3.0 metres high solid timber acoustic fence that encloses the northern boundary of the service yard. The proposed acoustic panel would be positioned immediately behind the existing 1.5 metres high timber trellis fence.

As it was originally proposed, the acoustic panel would have been of a solid timber construction to match the existing 3.0 metres high solid timber acoustic fence. However, as an amendment to the planning application, the applicant is now proposing that the acoustic panel would instead consist of a transparent “Plexiglas Soundstop” acoustic panel.

A noise assessment has been submitted by the applicant. It assesses how noise that may be generated as a result of delivery activity between 06:00 and 23:00 on Mondays to Saturdays inclusive would affect the amenity of nearby residents. Subject to the erection of the proposed acoustic panel, the assessment concludes that there would be no significant adverse impact from the proposed delivery hours.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is the approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Plan 2008.

There are no policies of the approved South East Scotland Strategic Development Plan

(SESplan) relevant to the determination of this application.

Relevant to the determination of the application is Policy DP2 (Design) of the adopted East Lothian Local Plan 2008.

Four written objections to the application have been received. Of these, two are from the same person and are made on behalf of the residents of Nos. 1 and 4 Horsecrook.

One of those two objections was made in respect of the solid timber acoustic panels, which were originally proposed. As stated above, solid timber acoustic panels are no longer proposed.

The other objection submitted on behalf of the residents of Nos. 1 and 4 Horsecrook is made on the following main grounds:

- * Objector's garden area would receive less sunlight as clear panels discolour and age (with light coming through the panels not being natural outdoor light);
- * Objector's garden would become damper and not dry out as it would not be getting natural sunlight but a filtered light through the screens;
- * Ventilation and air movement to the objector's garden area would be restricted/shielded and create dampness;
- * The safety issue with respect to high winds would be increased and the panels would act as a sail;
- * View or what is left of it will be further infringed when the clear screens age and will look unsightly and turn opaque, and prior to this ageing the view (or that which is left) will be distorted by the panels;
- * The extended hours for delivery are not acceptable as they would result in noise and light pollution; and
- * The ivy that Tesco previously planted to disguise the acoustic fence has caused a great deal of distress to the residents at the crook.

The other two objections are made on the grounds that the earlier deliveries would cause an unacceptable increase in noise levels at the objector's property, particularly on Sunday mornings, and would adversely affect the objector's sleep and possibly their health.

The loss of a private view is not a material consideration in the determination of a planning application. The ivy that the objector states was previously planted by Tesco is not a material consideration in the determination of this planning application.

North Berwick Community Council raise no objection to the proposed development. They advise that the applicant's noise assessment seems to take all necessary precautions against noise. They further advise that only one member of the public had raised concerns with them about the proposal on the basis that she would lose light by the erection of acoustic boards.

The determination of this application rests on the planning considerations of the impact of the proposed acoustic panel and on the likely additional impacts the proposed one hour extension (i.e. between 06:00 and 07:00 on Mondays to Saturdays inclusive) for

delivery vehicles either accessing or egressing the site or being loaded or unloaded within the site, would have on the amenity of any neighbouring use, including neighbouring residential properties.

With regard to these considerations Policy DP2 of the adopted East Lothian Local Plan 2008 requires that the designs of all new development must be appropriate to their location in terms of their positioning, size, form, massing, proportion and scale, and must ensure privacy and amenity, with particular regard to levels of sunlight, daylight and overlooking.

"Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice" by P.J. Littlefair gives guidance on the impact of a proposed development on the daylight and sunlight received by neighbouring properties.

The Guide states that no more than two-fifths of a main back garden of a neighbouring residential property should be prevented from receiving any sunlight on the 21st of March due to overshadowing from new development.

Application of the sunlight test demonstrates that the existing timber acoustic fence casts a shadow onto the garden of 1 Horsecrook that overshadows just under 40% of that garden for most of the day (the 21st of March). This is within the parameters set by P.J. Littlefair, which states that no more than two-fifths of a main back garden of a neighbouring residential property should be prevented from receiving any sunlight on the 21st of March due to overshadowing from new development.

However application of the sunlight test further showed that with an additional 1.5 metre solid acoustic panel being installed on top of the existing timber acoustic fence, as was originally proposed, more than 40% of the garden of 1 Horsecrook would be overshadowed for most of the day. Thus the additional 1.5 metre solid acoustic panel that was originally proposed failed the sunlight test.

It was for this reason that the applicant is now proposing a transparent "Plexiglas Soundstop" acoustic panel.

By being transparent, the acoustic panel now proposed would not result in any loss of sunlight to the neighbouring garden of 1 Horsecrook. On this consideration the proposed acoustic panel is consistent with Policy DP2 of the adopted East Lothian Local Plan 2008.

To ensure that the acoustic panel remains transparent, it would be prudent to require that a maintenance strategy for the panel should be submitted to and approved by the Planning Authority. This can be secured by a conditional grant of planning permission.

Subject to the imposition of this condition the proposed acoustic panel would not be harmful to the amenity of the residents of the neighbouring garden of 1 Horsecrook.

Due to its transparent nature and in its position behind the existing timber trellis fence, the proposed acoustic panel would be appropriate to its location and would not be harmful to the character or appearance of the area. On this consideration the proposed acoustic panel is consistent with Policy DP2 of the adopted East Lothian Local Plan 2008.

There is no evidence to suggest that the acoustic panel would constitute a risk to health or safety.

With respect to the proposal to permit delivery vehicles to access or egress the Tesco site or be loaded or unloaded within the site between the hours of 06:00 to 07:00 on Mondays to Saturdays inclusive, the Environmental Protection Manager advises that, subject to the proposed acoustic panel being installed, additional noise from this activity should not exceed L_{Amax} 60dB between the hours of 2300-0700, that being the maximum night time noise level considered acceptable by the World Health Organisation.

Notwithstanding this, the Environmental Protection Manager recommends that a condition should be imposed to ensure that noise levels during night time hours do not exceed L_{Amax} 60dB between the hours of 0600-0700. She further recommends that the service yard noise reduction measures specified in the applicant's noise assessment should be complied with at all times during deliveries between 0600-0700 hours. These recommended controls can be secured by a conditional grant of planning permission.

Subject to the imposition of the recommended controls, and subject to the proposed acoustic panel being erected prior to delivery vehicles accessing or egressing the Tesco site or being loaded or unloaded within the site between the hours of 06:00 to 07:00 on Mondays to Saturdays inclusive, the proposed variation of condition 5 would not harmfully impact on the amenity of neighbouring and nearby residential properties.

Given that this application is seeking only to vary condition 5 of planning permission 05/00928/FUL, all other conditions imposed on the grant of planning permission 05/00928/FUL would otherwise remain unaltered and in force. It would be prudent to confirm this in an advisory note on the decision notice.

CONDITION:

1 Condition 5

The operation of the store shall comply with the following requirements:

- a) No delivery vehicle shall either access or egress the site nor be loaded or unloaded within the site outwith the hours of 06:00 to 23:00 on Mondays to Saturdays inclusive and 08:00 to 19:00 on Sundays and bank holidays;
- b) No delivery vehicle shall either access or egress the site nor be loaded or unloaded within the site outwith the hours of 06:00 to 07:00 on Mondays to Saturdays inclusive unless and until:
 - i) the accoustic panels hereby approved have been installed; and
 - ii) a strategy for the future maintenance of the accoustic panels has been submitted to and approved by the Planning Authority. The accoustic panels shall thereafter be maintained in accordance with the schedule so approved;
- c) Noise associated with deliveries vehicles within the application site, including delivery vehicle movements within the Service yard, shall not exceed L_{Amax} 60dB between the hours of 06:00 to 07:00 on Mondays to Saturdays inclusive when measured in any neighbouring property with the noise measurement being taken with the window open at least 50mm; and
- d) The "Service yard noise reduction measures" docketed to this planning permission shall be complied with at all times during deliveries between the hours of 06:00 to 07:00 on Mondays to Saturdays inclusive.

Reason:

To ensure that the amenity of the occupiers of nearby houses is safeguarded.

Please note that the remainder of pages relating to this item have been removed as they contain personal information (for example - names and addresses of people that have made representation)