

REPORT TO: Planning Committee

MEETING DATE: Tuesday 1 November 2016

BY: Depute Chief Executive
(Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Application No. **16/00726/PM**

Proposal Variation of condition 5 of consent 06/00769/FUL to allow for a single delivery to the store between the hours of 2300 and 0700

Location **Tesco Stores Ltd
Olivebank Road
Musselburgh
EH21 7BL**

Applicant Tesco Stores Limited

Per Mackay Planning

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

This planning application relates to the Tesco store in Musselburgh. It is located to the south of Olivebank Road and to the west of Musselburgh Town Centre.

The service yard for the store is located adjacent to the southeast corner of the store building. It is accessed along the northern section of Inveresk Road. Vehicular access to the store car park for customers is taken from Olivebank Road via a roundabout at the northwest corner of the store site.

The site of the Tesco store is located in close proximity to residential properties, including the 4 storey residential flats at the junction of Mall Avenue and the northern section of Inveresk Road (5-19 Inveresk Road), and the residential properties at the western end of the southern section of Inveresk Road.

Planning permission (Ref: 06/00769/FUL) was granted in September 2008 for the erection of the store and for a petrol filling station and associated works, subject to 27 conditions. Of these, condition 5 stipulates that:

"No service delivery vehicle or home 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.

Reason:

To ensure that the amenity of the occupiers of nearby residential properties is safeguarded".

In August 2015 planning permission (Ref: 15/00645/PM) was sought for a variation of condition 5 of planning permission 06/00769/FUL to allow for a single delivery to the front entrance of the store between the hours of 23:00 and 07:00. That application was decided by the Planning Committee at their meeting on the 03 November 2015. At their meeting, the Planning Committee agreed an amendment that approval of the variation of condition 5 be granted for a period of 12 months so that the impact on local residents could be assessed. Planning permission (Ref: 15/00645/PM) was therefore granted for a variation of condition 5 of planning permission 06/00769/FUL to the following:

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

a) Until the 06 November 2016:

i) With the exception of a single service delivery to the front of the store (accessed via the main vehicle entrance and not Inveresk Road), no service delivery vehicle or home 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; and

ii) Notwithstanding condition 5ai) above, there shall be no service delivery to the site outwith the hours of 07:00 to 23:00 unless and until a Delivery Noise Management Plan has been submitted to and approved by the Planning Authority. Once approved the Delivery Noise Management Plan shall be complied with at all times during deliveries outwith the hours of 07:00 to 23:00.

b) After the 06 November 2016, no service delivery vehicle or home 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.

Reason:

To ensure that the amenity of the occupiers of nearby residential properties is safeguarded".

Planning permission is now sought for a variation of condition 5 of planning permission 06/00769/FUL to allow for a single delivery to the store between the hours of 23:00 and 07:00 on a permanent basis.

A supporting statement submitted with the application states that the service access along the northern section of Inveresk Road is in close proximity to the flats at 5 - 19 Inveresk Road. Therefore in granting planning permission 06/00769/FUL it was considered that condition 5 was necessary in order to protect the amenity of those properties from night time deliveries.

The applicant further informs that the restriction on deliveries before 07:00 has an adverse effect upon the ability of the store to begin dot com (internet) deliveries promptly in the morning as items have to be delivered and on shelves before picking for dot com deliveries can take place. This process can take many hours and as internet deliveries are increasingly popular from the Musselburgh store, this places a significant limitation upon the store's ability to carry out internet deliveries throughout the daytime period.

In order to overcome this issue, planning permission 15/00645/PM allowed the store to carry out the previous 07:00 delivery at 03:00 (i.e. there would be no 07:00 delivery) for a one year period. The current application seeks to regularise this on a permanent basis. In order to further avoid any adverse impact upon residential amenity, this delivery could be carried out from the front of the store, through the store entrance or fire escape doors, thereby avoiding the use of Inveresk Road, the service access and the service yard at the rear of the store.

A noise assessment has also been submitted by the applicant. It concludes that the predicted delivery event noise levels comply with the night time World Health Organisation/BS 8233 guideline noise values. As such, it further concludes that a single delivery could be made to the front entrance of the store between the hours of 23:00 and 07:00 without associated noise giving rise to significant adverse impact on nearby residents. It does however recommend that a formal Delivery Noise Management Plan should be adopted, to ensure that noise from delivery activities to the store entrance are reduced as far as reasonably practicable.

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) or the adopted East Lothian Local Plan 2008 relevant to the determination of this application.

Seven written objections to the application have been received. All of the objectors are local residents.

The objections are made on the following main grounds:

- * Noise and disturbance from night time deliveries;
- * Ineffective noise dampening methods;
- * The need for night time deliveries is questioned given that the store will no longer be 24 hour;
- * Removal of night staff and impact on jobs; and
- * No independent decibel check to see if legal sound limits have been breached.

The determination of this application rests on the planning considerations of the likely additional impacts a single delivery to the store between the hours of 23:00 and 07:00 would have on the amenity of any neighbouring use, including neighbouring residential properties.

The Council's Environmental Health Manager has carefully considered the applicant's noise assessment and accepts its findings. In doing so, he accepts that the predicted noise levels from a single delivery event at the front entrance of the store between the hours of 23:00 and 07:00 do not exceed the maximum night time noise level considered acceptable by the World Health Organisation. He further advises that no justified complaints regarding excessive noise associated with the night time delivery have been received since planning permission 15/00645/PM was granted in November

2015. As such, the Environmental Health Manager raises no objection to the proposed variation of condition 5.

Notwithstanding this, the Environmental Protection Manager recommends that a condition should be imposed to ensure that there should be only a single delivery to the store between the hours of 23:00 and 07:00, and that single delivery should only be to the front entrance of the store. He further recommends that prior to the commencement of any deliveries between the hours of 23:00 and 07:00, a Delivery Noise Management Plan should be submitted to and approved by the Planning Authority. Once approved, the Plan should be complied with at all times. These recommended controls can be secured by a conditional grant of planning permission.

Subject to the imposition of the recommended controls, the proposed variation of condition 5 would give rise to significant adverse noise impacts and as such would not harmfully impact on the amenity of neighbouring and nearby residential properties.

The applicant's noise assessment was undertaken on the basis of the store being open 24 hours a day. Since that assessment was undertaken, the applicant has announced that from 07 November 2016, the store will only be open between 6am and midnight. In light of this, further clarification was sought from the applicant as to whether a single night time delivery to the front of the store would have a detrimental impact on surrounding residents given that delivery noise would no longer be experienced within the context of ambient noise and 24 hour customer activity combined should the store cease 24 hour trading.

The applicant has responded to state that their noise assessment assessed delivery noise using three principal assessment methods. These are BS 4142, where the noise source is compared to the existing background noise climate, World Health Organisation guideline values, and the existing ambient noise climate. They advise that the noise survey undertaken at the site, which is used as the baseline for the assessment, was principally dominated by local and more distant road traffic, with occasional customer vehicle movements within the Tesco car park observed. At no time during the night time period was noise from Tesco customer activity within the car park the dominant source. As such, in the absence of noise from the Tesco car park (should Tesco not trade at night) this would not materially alter the conclusion of the assessment that noise from a delivery being made to the front door at night would avoid significant adverse impact.

This view has been supported by the Council's Environmental Health Manager, who agrees that the dominant noise sources at night are from the surrounding road network and not from customers/operations at Tesco. As such, he remains satisfied that noise impacts from a night-time delivery will remain within guidelines and any conditions will continue to be met.

Subject to the imposition of the recommended controls, the proposed variation of condition 5 would not harmfully impact on the amenity of neighbouring and nearby residential properties.

The Council's Road Services and the Coal Authority raise no objection to the proposed variation of condition 5.

A revised version of Planning Series Circular 3/2013 (Development Management Procedures) was published by the Scottish Government in September 2015. Annex I of the Circular gives guidance on applications for planning permission under section 42 of the Town and Country Planning (Scotland) Act 1997, as amended. The application that

is the subject of this report is made under section 42 of the Act. Annex I states that "Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should apply and ensure (where appropriate) that permission is granted subject to the conclusion of any appropriate planning obligation". Therefore, planning permission should be granted subject to the applied for variation to condition 5 and subject to all of those conditions from planning permission 06/00769/FUL, where it is intended these should apply. In this case, the conditions that should continue to apply are 4, 6, 7, 8, 11, 12 and 18.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

- 4 The superstore hereby approved shall have a gross floor area no greater than 8,175 square metres and a net sales floor area no greater than 4,830 square metres. Of the net sales floor area no more than 2,415 square metres shall be used for the sale of comparison goods. The superstore hereby approved shall not be subdivided to form more than 1 retail unit.

Reason:

In order to retain control over the format of retail development at the site and in the interests of safeguarding the vitality and viability of the retail function of Musselburgh Town Centre.

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

a) With the exception of a single service delivery to the front of the store (accessed via the main vehicle entrance and not Inveresk Road), no service delivery vehicle or home 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; and

b) Notwithstanding condition a) above, there shall be no service delivery to the site outwith the hours of 07:00 to 23:00 unless and until a Delivery Noise Management Plan has been submitted to and approved by the Planning Authority. Once approved the Delivery Noise Management Plan shall be complied with at all times during deliveries outwith the hours of 07:00 to 23:00.

Reason:

To ensure that the amenity of the occupiers of nearby residential properties is safeguarded.

- 6 The car wash and jet wash shall only be open for trading between the hours of 08:00 to 20:00 hours.

Reason:

To ensure that the amenity of the occupiers of nearby residential properties is safeguarded.

- 7 The superstore, petrol filling station and car wash shall be designed and constructed so that noise from any associated plant and equipment shall be such that any noise emanating therefrom does not exceed noise rating curve NR15 over the frequency range 63-8000Hz when measured in any neighbouring property with the noise measurement being taken with the window open at least 50mm. Noise measurements may be taken outside noise sensitive properties on the condition that an appropriate façade transmission loss can be applied to enable internal noise rating levels to be calculated from the external noise level.

Reason:

To ensure that noise emanating from the development is such that it will not have a harmful impact on residential amenity.

- 8 Prior to any use being made of the superstore building, the service yard of it shall be enclosed on all of its boundaries by a solid acoustic barrier, including service yard access gates at least 2.5 metres in height above ground level. Details of the height, physical form and positioning of the acoustic barrier (including service yard access gates and any retaining wall to be built in association with the acoustic barrier) shall be submitted to and approved by the Planning Authority prior to the erection of it and the acoustic barrier erected shall be in accordance with the details so approved. Details for the operational opening and closing of the gates so that they can effectively serve as part of the acoustic barrier shall also be submitted to and approved by the Planning Authority prior to the erection of them and any other part of the acoustic barrier. The

operational opening and closing of the gates shall thereafter accord with the details so approved.

Reason:

To ensure that noise emanating from the service yard of the building is such that it will not have a harmful impact on residential amenity and to control the appearance of the acoustic barrier and retaining wall in the interest of safeguarding the visual amenity of the area.

- 11 The recycling point shown on the proposed site plan docketed to this planning permission shall be provided prior to the superstore opening for trade.

Detailed figures on the material collected at the recycling point shall be submitted to the Council as Waste Services Authority on a quarterly basis.

Reason:

To ensure that adequate facilities are provided to ensure compliance with the Council's policies for recycling.

- 12 No development shall take place until there has been submitted to and approved in writing by the Planning Authority a scheme of landscaping. The scheme shall provide details of : the height and slopes of any mounding on or recontouring of, the site; tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting. The scheme shall include indications of all existing trees and hedgerows on the land, details of any to be retained, and measures for their protection in the course of development.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation.

Reason:

In order to ensure the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.

- 18 A Green Travel Plan to minimise private car trips and to encourage use of alternative modes of transport such as buses, cycling, walking, and the use of home deliveries shall be submitted to and approved by the Planning Authority prior to the superstore opening for trade. Additionally the Green Travel Plan shall include details of the measures to be provided, the methods of management, monitoring, review, reporting and duration of the Plan.

The approved Green Travel Plan shall be implemented prior to the first opening of the superstore.

Reason:

In the interests of ensuring sustainable travel patterns in respect of the superstore use.