



**MINUTES OF THE MEETING OF THE
PLANNING COMMITTEE**

**TUESDAY 1 NOVEMBER 2016
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor N Hampshire (Convener)
Councillor D Berry
Provost L Broun-Lindsay
Councillor S Brown
Councillor S Currie
Councillor T Day
Councillor J Gillies
Councillor J Goodfellow
Councillor D Grant
Councillor W Innes
Councillor J McNeil
Councillor T Trotter
Councillor J Williamson

Other Councillors Present:

Councillor F McAllister

Council Officials Present:

Ms M Ferguson, Service Manager – Legal and Procurement
Mr I McFarlane, Service Manager – Planning
Mr K Dingwall, Principal Planner
Mr C Clark, Principal Environmental Protection Officer
Ms P Bristow, Communications Officer
Mr C Kiely, Planner

Clerk:

Ms A Smith

Visitors Present:

Mr B Train, Mr S Warren

Apologies:

Councillor J Caldwell
Councillor A Forrest
Councillor K McLeod
Councillor J McMillan
Councillor P MacKenzie

Declarations of Interest:

None

1. MINUTES FOR APPROVAL – PLANNING COMMITTEE 4 OCTOBER 2016

The minutes of the meeting of the Planning Committee of 4 October 2016 were approved.

2. PLANNING APPLICATION NO.16/00726/PM: 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 AT TESCO STORES LTD, OLIVEBANK ROAD, MUSSELBURGH

A report was submitted in relation to Planning Application No. 16/00726/PM. Keith Dingwall, Principal Planner, presented the report summarising the key points. The report recommendation was to grant consent.

Mr Dingwall responded to questions from Members. He clarified that submission of a Noise Management Plan was a requirement of last year's grant of consent advising that discussions about this with the applicant had taken place. In relation to the number of complaints, he advised that two had been received by Planning Enforcement officers during the past year and one by Environmental Protection officers; these had been addressed. In response to further questions he clarified that the Planning Authority's position was that the applicant had submitted a Noise Assessment indicating that a single delivery to the front of the store would not breach the night time World Health Organisation guideline noise values, this remained the position; the applicant's proposal was the same as before and the same Noise Assessment applied. Mr Dingwall clarified that the reason for deliveries to the front of store had been to try and take these delivery vehicles away from the residential properties on Inveresk Road. Colin Clark, Principal Environmental Protection Officer, responded to questions, advising that the ambient noise level at night would not be greatly affected by the cessation of 24 hour trading at the store; the dominant noise at night came from the surrounding road network.

Ben Train, UK Town Planning Manager for Tesco Stores, informed Members that the overnight delivery had resulted in a significant improvement to the store's function in processing internet orders. The report prepared by their Acoustic Consultant indicated that noise levels were acceptable and complied with relevant guidelines. The temporary consent granted last year had included a range of mitigation noise measures. Regarding complaints, he was aware of an issue regarding the lorry tailgate noise and he highlighted measures taken to try and alleviate this. He confirmed that from 7 November 2016 the store would no longer be open 24 hours; it would be closed between midnight and 6am.

Simon Warren, Musselburgh Tesco Store Manager, re-iterated that the overnight delivery was essential to the internet shopping process. He highlighted potential adverse effects for the operation of the store if this delivery was cancelled. He stated that measures were in place to mitigate the noise and the refrigeration units were switched off during this delivery.

In response to questions, Mr Train outlined the importance of the overnight delivery to the operation of the internet business. In relation to why deliveries were to the front of the store and not the rear, he stated that deliveries to the rear would have been preferable, however due to the noise of delivery vehicles on Inveresk Road the advice from their Acoustic Consultant was for these to come to the front of the store. Regarding the direction of the vehicle as regards tailgate noise, the advice was that the vehicle direction did not make much difference; the key was having the appropriate matting in place. He detailed the process for accessing the car park for the overnight delivery. He clarified that their Acoustic Consultant had not undertaken full survey work on deliveries to the rear of the store.

Fraser McAllister, speaking as a neighbouring resident, made comments in objection to the application. He stated that for the past year residents had been regularly woken during the

night by the noise of these deliveries; it was excessive night time noise. The only testing had been carried out on behalf of Tesco; no independent testing had taken place by the Planning Authority. He highlighted several other factors. He stressed that this acoustic assault would continue if the application was granted. This was a growing residential area; one new housing development was in progress and a second, larger one, was planned. This application should be refused to safeguard the amenity of local residents.

He responded to questions. He stated that the mitigation measures had only been put in place recently by the applicant but even with these the situation was still unacceptable. In his opinion, deliveries to the rear of the store would be preferable. He confirmed that residents had not submitted complaints to the Council until recently as they had thought that an independent noise assessment would be carried out. He was not aware if other Local Members had received complaints from neighbouring residents. He confirmed that residents welcomed that the store would no longer be open 24 hours.

Local Member Councillor Currie remarked that the trial period had been helpful to enable reflection on the impact of the overnight delivery on the amenity of local residents. Constituents had raised this matter at his surgeries. The key issue was where the deliveries were going; to the rear of the store would be more appropriate. Based on the representations from constituents that deliveries should not come to the front of the store he could not support the application.

Councillor McNeil read out a statement on behalf of Local Member Councillor Forrest. He had concerns about granting permission for an overnight delivery on a permanent basis. This delivery had been ongoing for a year now and had had an adverse impact on the amenity of local residents. He urged the Committee to refuse permission because of the detrimental effect of this delivery on neighbouring residents.

Councillor McNeil referred to the original application in 2008 and to the many benefits the Tesco store had brought to Musselburgh. However, the noise issues had to be considered and given this he could not support the application.

Councillor Williamson remarked, given the objections, that he did not understand why more complaints had not been lodged with the Council. He made reference to the new housing development at Eskmills, stating that taking this into account he would prefer the trial period to be extended for another year in order to assess the impact of this overnight delivery on these new residents. He proposed this amendment.

Councillor Day expressed support for Councillor Williamson's amendment, indicating he would second this, providing Tesco investigated deliveries to the rear of the store.

Councillor Innes stated that he would also be prepared to support the amendment as long as an assessment of deliveries to the rear of the store was considered by the applicant.

Mr Train indicated that he would be willing to instruct their Acoustic Consultant to undertake a noise survey regarding deliveries to the rear of the store and would report the findings.

Councillor Grant remarked that after consideration he would be supporting the amendment.

Councillor Trotter indicated that he would also be supporting the proposed amendment.

The Convener indicated that Musselburgh Members had made a case for extending the temporary period to consider the effect on the new houses. He clarified the amendment proposed by Councillor Williamson, seconded by Councillor Day – that the trial period be extended for a further 12 months to assess the impact on the new housing development

and, in addition, that Tesco Stores Limited carry out a noise assessment on deliveries to the rear of the store.

The Convener then moved to the vote on the report recommendation (to grant consent), as amended, subject to the appropriate rewording of condition 5.

For: 11

Against: 2

Abstentions: 0

Decision

The Committee agreed to grant planning permission 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) Until 03 November 2017:

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 03 November 2017, 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.

- 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.

Signed

Councillor Norman Hampshire
Convener of the Planning Committee