

REPORT TO: Planning Committee

MEETING DATE: Wednesday 29 March 2017

BY: Depute Chief Executive (Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Application No. **17/00033/PM**

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

Location **Tesco Stores Ltd
Olivebank Road
Musselburgh
East Lothian
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. Further residential properties are also under construction to the west of the site at Inveravon Terrace.

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".

In November 2016 planning permission (16/00726/PM) was granted for a further 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.

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 via the rear service yard between the hours of 23:00 and 07:00 on a permanent basis.

A supporting statement submitted with the application states 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 16/00726/PM allows 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. However, although the Council granted this consent, there was much discussion during the determining Planning Committee meeting in relation to the single night time delivery to the front of the store. It is understood by the applicant that there have been 3 formal complaints and a number of 'informal complaints' relating to the front of store night time delivery. Planning permission 16/00726/PM was therefore granted against the backdrop of recent complaints being balanced against the operational requirements of Tesco. The applicant states that they understood from the discussion at the Planning Committee meeting that on balance the consensus of officers and Members was that the use of the rear service yard for the night time delivery would be preferable to the permitted use of the front store entrance, thereby placing the deliveries within the service yard at the rear of the store, away from residential neighbours. This application therefore proposes a single delivery to the service yard between the hours of 23:00 and 07:00 instead of to the front of store.

A noise assessment has also been submitted by the applicant. It assesses noise from both delivery activity occurring within the service yard and noise from delivery vehicles as they approach and depart the store using Inveresk Road. The assessment concludes that a single delivery could be made to the rear service yard between the hours of 23:00 and 07:00 without associated noise giving rise to significant adverse impact on nearby residents. It does however suggest that a formal Delivery Noise Management Plan could be adopted, to ensure that noise from delivery activities to the rear service yard 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.

At the time of writing this report two objections have been received with regards to the proposal.

A copy of the written representations are contained in a shared electronic folder to which all Members of the Committee have had access.

Objections relate to the noise from vehicles accessing the service yard to the rear of the store as well as the need for the night time deliveries given the store no longer opens during the night. Objection is also raised as it is considered that the store operator consistently breaches Council requirements for licensing and environmental health requirements regarding use of the service yard to the rear by large vehicles.

The alleged breaches of Council requirements for licensing and environmental health requirements can be investigated separately under planning and environmental health legislation. The alleged breaches are not a material consideration in the determination of this planning application.

The determination of this application rests on the planning considerations of the likely additional impacts a single delivery to the rear service yard of the store between the hours of 23:00 and 07:00 would have on the amenity of nearby residential properties, including those on Inveresk Road that would be passed by the service delivery vehicle as it accesses and egresses the site.

The applicant's Noise Assessment concludes that noise from delivery activity within the service yard avoids significant adverse impacts to surrounding residential properties in accordance with the assessment methodologies in British Standard 4142:2014, the World Health Organisation guidelines entitled 'Guidelines for Community Noise' and change in noise level. Noise from the use of the service yard access road would also avoid significant adverse impact.

The Council's Environmental Health Manager has carefully considered the applicant's noise assessment and accepts its findings. He states that there will be a limited impact upon residential properties located on Inveresk Road due to noise as the delivery vehicle passes by on the public road that leads to the service yard. The WHO Guidelines specify a guideline night time L_{Amax} value at the facades of bedrooms of 60dB. The predicted L_{Amax} levels on Inveresk Road will be in the range of 71-78dB for a short duration as vehicle passes by receptor properties. However, the officer agrees with the conclusions of the Noise Assessment and is satisfied that, when placed into context and in terms of significance of impact, two vehicle movements (one in and one out) in exceedence of the guideline value of 60dB would not result in significant adverse impact upon neighbouring receptors. The likelihood of significant impact increases with the number of events in exceedence of the 60dB guideline with a suggested limit of 10-15 times per night suggested before significant impact arises. The Environmental health Manager is also satisfied that noise associated with the actual unloading process will be lower than that currently experienced with front-of-store deliveries as the delivery vehicle shall reverse and offload goods directly into the delivery bay therefore minimising noise impacts from roll cages, etc. As such, he raises no objection to the proposed variation of condition 5.

Notwithstanding this, the Environmental Health Manager 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 prior to commencement of night time deliveries to the service yard. The Plan should specify measures to be taken to minimise noise associated with service yard activities as well as noise from any delivery vehicle accessing the service yard from Inveresk Road. The Plan should include details of any pre and post delivery instructions to drivers as well as measures to be adopted during the unloading process itself. Where possible, refrigeration units on vehicles should be switched off prior to accessing Inveresk Road. 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 not give rise to significant adverse noise impacts and as such would not harmfully impact on the amenity of neighbouring and nearby residential properties.

The Council's Road Services state that the roads are quiet during this period of time within Musselburgh and the application shall therefore have a positive impact of potentially removing an HGV movement during the daytime when the roads are busier. As such, they confirm that they have 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 rear service yard of the store (accessed via 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. Notwithstanding any previous planning permission granted to allow deliveries to the front of the store, no deliveries shall be carried out to the front of the store; 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 within 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.