
Committee Date: 18/04/2013 Application Number: 2013/00607/PA
Accepted: 30/01/2013 Application Type: Variation of Condition
Target Date: 01/05/2013
Ward: South Yardley

Tesco, Swan Shopping Centre, Coventry Road, Yardley, Birmingham, B26 1AD

Variation of Condition No. 9 attached to approval 2012/03020/PA to allow the superstore only to be open to the public for 24 hours a day

Applicant: Tesco Stores Limited
 c/o Agent
Agent: GVA
 3 Brindleyplace, Birmingham, B1 2JB

Recommendation

Approve Subject To A Section 106 Legal Agreement

1. Proposal

1.1 Consent is sought to vary condition 9 attached to planning application 2012/03020/PA to allow the superstore only to be open to the public for 24 hours a day. (The agent has confirmed that Tesco will only be able to trade for a maximum of 6 hours during Sunday to comply with Sunday Trading Laws. However, they wish the description to remain as above)

1.2 The current wording of condition 9 states:

“The superstore, retail units and offices shall be closed for business outside the following hours, 0700 until 2300 hours Monday until Saturday and 1000 hours until 1700 hours on Sundays and 0900 until 1800 hours on any Bank Holiday”

1.3 The proposed wording of condition 9 would read:

The retail units (excluding the superstore) and offices shall be closed for business outside the following hours, 0700 hours until 2300 hours Monday until Saturday, 1000 hours until 1700 hours on any Sunday and 0900 hours until 1800 hours on any Bank Holiday.

2 Site and surroundings

2.1 The shopping centre and Tesco's was opened in February 2012 and is located on the corner of Church Road and Coventry Road. The surrounding area comprises a mix of land uses. Immediately to the south-west is the Equipoint Office building, adjacent to which is the Swan Island, a major grade separated junction where the A4040 meets the A45 Coventry Road. To the west is the Oaklands Recreation Ground. Further north is the Yew Tree Shopping Centre.

3 Planning history

- 3.1 1 May 2008 – 2007/06439/PA – demolition and redevelopment of the existing Swan Centre, multi storey car park, indoor market hall to provide retail superstore and 18 retail units (A1, A2 and A3), new covered mall, petrol filling station, offices, car parks, public plaza, landscaping, realignment of the A4040 Church Road and associated works – approved
- 3.2 15 November 2010 – 2010/02606/PA – application to vary conditions (lighting, samples of materials, CCTV, acoustic glazing, open storage, vehicle mounted refrigeration, roll cages, approved plans, including minor amendments to the approved plans – approved
- 3.3 12 April 2011 – 2011/00149/PA – variation of plans schedule attached to 2010/02606/PA for material minor amendments to the approved plans including the deletion of the petrol filling station and its replacement with additional car parking and landscaping – approved
- 3.4 21st June 2011 – 2012/03020/PA – variation of condition 19 attached to 2011/00149/PA to allow the superstore, retail units and offices to be opened 0900 until 1800 hours on any Bank Holiday – approved.

4 Consultee/pp responses

- 4.1 Regulatory Services – No objection but recommend 1 year temporary consent to monitor.
- 4.2 A site notice was displayed outside of the entrance to the store and the proposals were advertised in the press.
- 4.3 Local residents, businesses and ward councillors were notified. 9 letters of objection have been received on the grounds of exacerbation of existing security problems, additional noise from night time deliveries and impact on residents.
- 4.4 1 letter of support has also been received.

5 Policy context

NPPF 2012

UDP 2005

Places for All SPG

The Planning Framework for the Swan and Yew Tree Local Centres and Surrounding Areas

Draft Birmingham Development Plan

6 Planning considerations

- 6.1 The application seeks to vary condition 9 attached to planning permission 2012/03020/PA to allow the superstore only to be open to the public 24 hours a day. In determining Section 73 applications the DCLG advises Local Planning Authorities to focus on national or local policies or other material considerations which may have changed since the original grant of permission, as well as the changes sought.

- 6.2 Since the last variation of condition consent last year, there have been no changes in policy. Prior to this consent, the most significant change in policy is the adoption of the National Planning Policy Framework in March 2012. Whilst, this has replaced all previous advice and guidance within PPG's and PPS's, the main thrust of policy remains, with sustainable development remaining the main aim.
- 6.3 The variation of the condition would allow the superstore to be open to the public for 24 hours a day and would give the customer greater flexibility in terms of when to shop. I consider the main issue for consideration is the increase in noise and disturbance to local residents as a result of the proposals.
- 6.4 To help assess the proposals, information regarding two other Tesco stores and their 24 hour operation has been provided. At the Cradley Heath store, on a Saturday (the busiest day of the week) there are typically 8037 transactions during the daytime trading hours (7am-11pm). This equates to on average 502 transactions an hour. The night time transactions (between 11pm and 7am) are 189, this equates to on average, 24 transactions an hour. Similarly the Dudley store, on a Saturday would process 9061 transactions throughout the day time, equating to on average 566 transactions per hour and at night 559, equating to 70 per hour. For the application store the agents forecast that the percentage of night time activity would be a very small fraction of the total activity over 24 hours. It is forecast that between 250-300 transactions are likely to take place between 11pm and 7am; that averages out to 35 transactions an hour over the 8 hour night time period based upon current day time trading figures at the store.
- 6.5 It is also pointed out that there is already some night time activity taking place at the store – cleaning, maintenance and shelf stacking. They assert that the introduction of customers is unlikely to make a perceptible difference to nearby residents
- 6.6 A noise survey has been submitted in support of the application by the consultants who undertook the assessment of the original approval in 2008. It has been updated to take account of how the store operates now, as restricted/required by imposed conditions. The delivery hours to the store would remain the same (unlimited deliveries between 7am-10pm Monday to Saturday and 9am -5pm on Sundays and Bank Holidays and no more than 2 deliveries between 10pm and 7am Monday to Saturday) and there shall be no use of metal roll cages between these hours. The cumulative noise level condition (to restrict the overall noise to not exceed 10dB below the background noise at any noise sensitive level) would be not be breached by the proposals.
- 6.6 The noise survey includes an extensive series of noise measurements around the boundary of the car park. The Assessment provides noise data from locations close to the residential properties nearest to the car park and concludes that the levels are substantially lower than the acceptable limits provided in the World Health Organisation (WHO) guidelines as well as the Council's Guidance Note on "Noise and Vibration" (March 2002). The potential for sleep disturbance was specifically considered and the results of the survey indicates that noise levels likely to be generated by use of the car park as a result of the proposals would not reach maximum limits set by both sets of guidance. Additional noise from traffic generation from the proposals is unlikely to be significant and set against the background levels of the Coventry Road, is not likely to be perceptible.

6.7 Regulatory Services recommend a one year temporary consent to monitor the impact of the proposals on residential amenity. I concur with this approach and have recommended an appropriate condition.

7 Section 106 implications

7.1 The original consent secured:

- financial contribution of £3 million towards improvements and management of sporting and recreational facilities at the Oaklands Recreation Ground and Henry Road Education Playing Fields – this amount has been paid in full.
- Highway works, including a realigned Church Road, roundabout junction and bus stops – completed
- Financial contribution of £300,000 towards works at the Yew Tree roundabout and Yardley exit, or to carry out works on behalf of Council – works completed
- Financial contribution of £8000 towards residents parking scheme in Church Road – paid in full

7.2 All of these obligations have been discharged. However, there remains one “enduring” obligation, which is a commitment to engage with the City Council and other agencies to enter into a local training and employment scheme for the construction and operation of the development. Whilst it is clear that the construction phase is now complete, the commitment to employ and train local people with the daily operation of the businesses within the shopping centre and food store remains.

7.3 Legal Services have confirmed that a deed of variation is required to ensure that this obligation is carried forward and secured. A deed of variation is currently being prepared.

8 Conclusion

8.1 The proposal is considered acceptable and in compliance with both national but to fully assess the implications for local residents, a one year temporary consent is recommended.

9 Recommendation

(i) That consideration of 2013/00607/PA be deferred pending the completion of a section 106 planning obligation to secure the following:-

1. A commitment to engage with the City Council and other agencies to enter into a local training and employment scheme for construction and operation of the development.
2. Payment of a monitoring and administration fee associated with the legal agreement of £1500.

(ii) In the event that the section 106 obligation is not completed by 29th April 2013, planning permission shall be refused for the following reason:

1. In the absence of a suitable planning obligation to secure a commitment to engage with the Council and other agencies into a local training and employment scheme for the construction and operation of the development,

the proposed development conflicts with policies 8.50-8.54 of the adopted UDP 2005

- (iii) That the Director of Legal and Democratic Services be authorised to prepare, seal and complete the planning obligation.
- (iv) That in the event of the planning obligation being completed to the satisfaction of the Local Planning Authority by 29th April 2013, favourable consideration be given to this application, subject to the conditions listed below:

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- 1 The development to be implemented in accordance with the phasing plan and construction programme produced by Arup and Bower and Kirkland.
 - 2 Shopfronts to accord and be maintained in accordance with retailers handbook.
 - 3 All construction work on site shall be undertaken in accordance with the Considerate Constructors programme.
 - 4 Equipment, materials and goods, crates etc to be stacked only within service yard, no higher than boundary walls
 - 5 Delivery vehicles to park or wait within service yards.
 - 6 Delivery/collection times restricted to 7am-10pm Mon-Sat and 9am and 5pm Sundays
 - 7 No metal roll cages to be used/moved outside delivery hours
 - 8 Signs for delivery vehicle drivers to be displayed
 - 9 Temporary 1 year consent for the superstore only 24 hour operation, reverting to original operating hours thereafter.
 - 10 No buildings/tree planting within proximity of sewer.
 - 11 Surface water to pass through oil interceptor
 - 12 No mezzanines other than shown on the approved plans,
 - 13 The gross external floor area of the superstore shall not exceed 10,285 square metres.
 - 14 Cumulative noise levels restricted
 - 15 Servicing of recycle centre to remove waste restricted to 8am-6pm Mon-Sat
 - 16 Affiliation to Travelwise
 - 17 Multi modal survey for supermarket required within 1 year of opening.
 - 18 At least 50% of the internal mall elevation of the superstore hereby permitted shall be clear glazed or open,
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Reason for Approval

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- 1 Birmingham City Council grants Planning Permission subject to the condition(s) listed
-

below (if appropriate). The reason for granting permission is because the development is in accordance with:
Policies 7.13 - 7.16, 7.21 - 7.26 and 7.32 - 7.33 of the Birmingham Unitary Development Plan 2005; Places for All (2001), which has been adopted as Supplementary Planning Guidance; and the National Planning Policy Framework.

Case Officer: Debbie Farrington

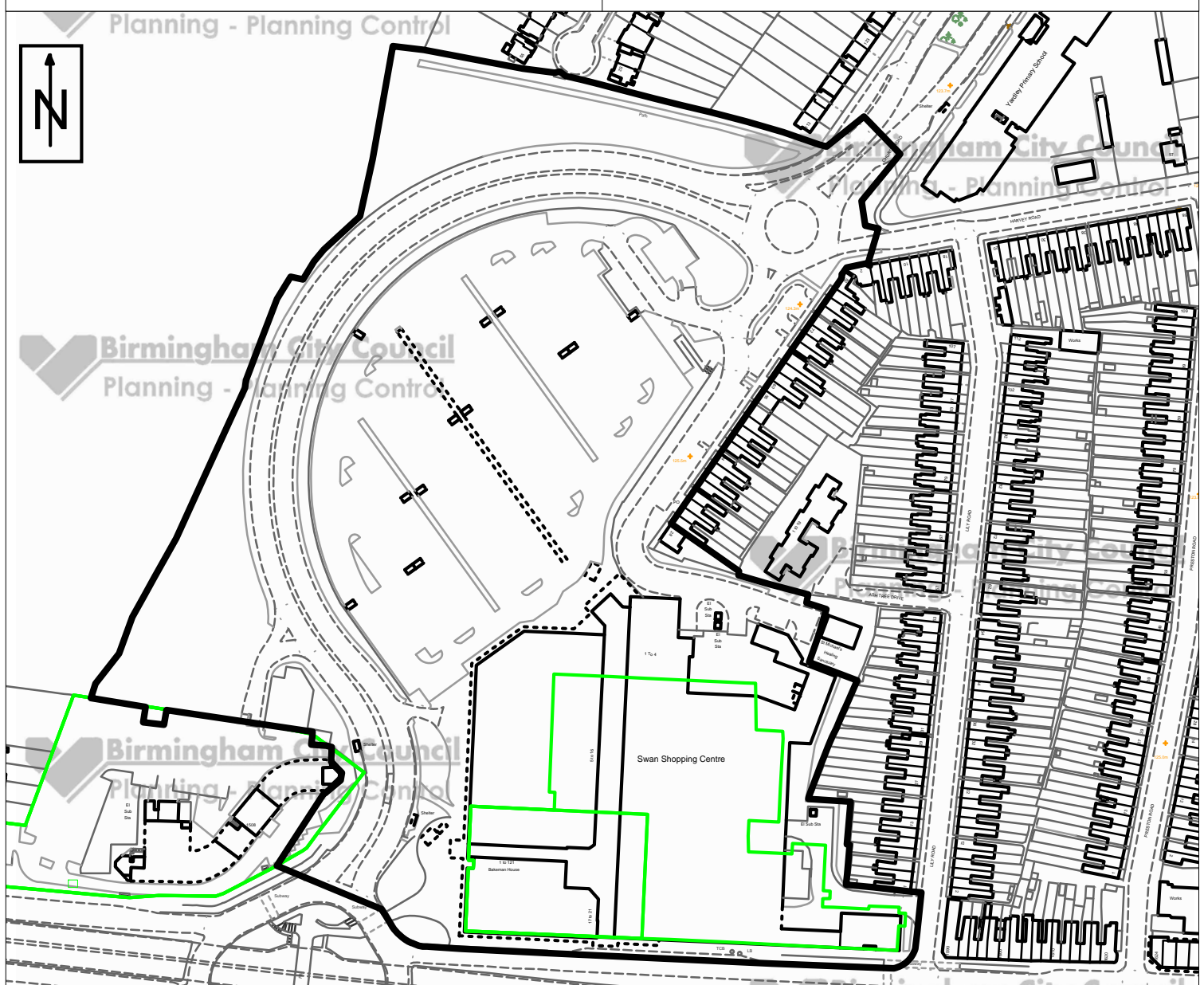


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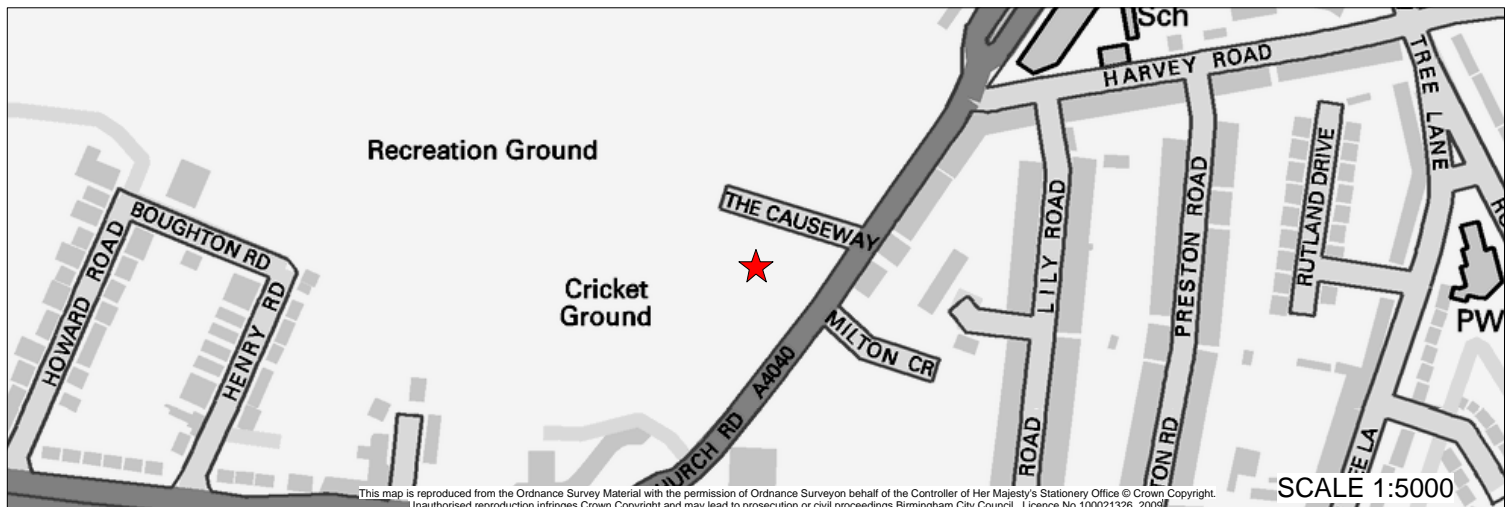
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SCALE 1:5000

Tesco, Swan Shopping Centre
Coventry Road
Yardley
Birmingham
B26 1AD

2013/00607/PA

-  Statutory Listed Building
-  Locally Listed Buildings
-  Conservation Area
-  Neighbourhood Offices
-  Site Boundary
-  Site Location

Development Directorate
1 Lancaster Circus
Queensway
Birmingham B2 2JE.



Date: 25/9/2007

