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Committee Date:	02/05/2013	Application Number:	2013/01029/PA
Accepted:	14/02/2013	Application Type:	Variation of Condition
Target Date:	16/05/2013		
Ward:	Sheldon		

WM Morrison Supermarket PLC, 2259-2297 Coventry Road, Sheldon, Birmingham, B26 3PD

Application to vary condition no. 4 attached to planning approval 2011/01688/PA to allow deliveries between 0600 and 2300 hours Monday-Sunday

Applicant: WM Morrison Supermarket PLC  
2259-2297 Coventry Road, Sheldon, Birmingham, B26 3PD  
Agent: Davis Weatherill Partnership LLP  
Harborne Court, 67-69 Harborne Road, Edgbaston, Birmingham, B15 3BU

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Recommendation  
**Refuse**

1. Proposal

1.1 Variation of condition 4 attached to planning approval 2011/01688/PA is sought. Planning consent under this reference was given to the erection of a supermarket and 5 separate retail units. The building has been constructed and is currently being fitted out by Morrison's. It is not yet open to the public and is expected to open early June.

1.2 Condition 4 of that approval relates to the permitted delivery hours for the site and is as follows:

"No deliveries shall be taken at or dispatched from the site outside of the hours of 0700-2200 Monday to Saturday and 0900-1700 on Sundays and Bank/Public Holidays. There shall be no more than 3 HGV deliveries to or from the site between 2100 and 2200 hours Monday to Saturday.

Reason: In order to define the permission and safeguard residential amenity in accordance with paragraphs 3.8 and 3.10 of the Birmingham UDP."

1.3 The proposed application seeks to vary the delivery hours for the super store as follows:

"No deliveries shall be taken at or dispatched from the site outside of the hours of 0600-2300 Monday to Sunday"

1.4 The supporting information with the application states that the additional delivery hours sought are necessary to allow Morrison's to consistently provide the highest levels of service to its customers. It is argued that there is not enough time between 7am (the time that deliveries can commence) and 8am (when the store opens) to efficiently unload and transfer fresh produce into the store. To achieve the level of

unloading required within this hour is likely to result in warehouse personnel being under pressure and producing more noise as a result.

- 1.5 The report also claims that by allowing the store to take deliveries from 6am Morrison's will be able to provide a wider range of benefits to customers, nearby residents and the environment such as more spread out deliveries, reducing congestion on the roads, fresher produce, increased store efficiency that would be passed on to the customers with lower prices.

## 2 Site & Surroundings

- 2.1 The application site is within Sheldon Shopping Centre and contains the recently constructed Morrison's store and 5 frontage retail units approved under Phase 1. None are yet open to the public but the supermarket is currently being fitted out in preparation for opening. Highway works and access into the site, as well as the laying out of the car park and boundary treatment, landscaping and tree planted have been carried out in accordance with the approval. Located to the west are 3 storey high office buildings Cannon House and Cartland House, these will shortly be demolished to make way for the construction of 5 more non food retail units recently granted approval under Phase 2 . Further to the east of the site is a cleared site currently displaying vehicles for sale, beyond this are further retail and office premises. Residential premises within Arden Croft, Marlbrook Close and Old Lode Lane (within Solihull MBC boundary) are located to the rear of the site. To the north, on the opposite side of the road there is a stretch of approximately 300 metres of retail frontage accommodating over 40 retail units between Sheaf Lane and the Ivy leaf PH. These are predominantly 3 storey buildings with residential at first and second floors

## 3 Planning History

### Phase 1 – Morrison's foodstore and 5 frontage retail units

- 3.1 01/02/2011 – 2010/03069/PA - 2259-2297 Coventry Road - Outline consent for the erection of a food retail store with associated fencing, landscaping and parking provision (access only) – approved, subject to various conditions including “No deliveries shall be taken at or dispatched from the site outside the hours of 0700-2100 Monday to Saturday and not at all on Sundays or Bank/public holidays”
- 3.2 08/06/2011 - 2011/01275/PA – 2259-2297 Coventry Road – Variation of condition 39 attached to planning approval 2010/03069/PA to allow the maximum gross (internal) floorspace of the proposed building shall not exceed 10,000 square metres (excluding the atrium and travelators) and the net floorspace shall not exceed 5,258 square metres. Up to 3,500 square metres of the net floorspace shall be used for the sale of convenience goods and up to 2,500 square metres of the net floorspace shall be used for the sale of comparison goods - approved
- 3.3 21/06/2011 – 2011/01688/PA – 2259-2297 Coventry Road - Application to vary condition no. 4 attached to planning approval 2011/01275/PA to allow deliveries between 0700 and 2200 hours Monday-Saturday and 0900-1700 hours on Sundays and Bank/public holidays. There shall be no more than 3 deliveries by HGVs to or from the store between 2100 and 2200 hours on Monday to Saturday – approved
- 3.4 20/10/2011 – 2011/05108/PA - Reserved matters application for appearance, scale, layout and landscaping pursuant to outline permission 2011/01688/PA for the

erection of a food retail store, 5 frontage retail stores, associated warehousing, servicing and parking and staff facilities – approved.

3.5 Ongoing – 2013/00233/ENF – 2259-2297 Coventry Road – erection of rota spikes on acoustic fences and lighting being left on through out the night. (Note: the rota spikes that are visible to occupiers of Arden Croft have been installed in accordance with the approved plans. Negotiations have taken place with Morrison’s who have agreed to relocate the spikes to the other side of the acoustic barrier so as to not be visible to local residents. It was also confirmed that undercroft lighting that is controlled by a timer, was left on from dusk til dawn by mistake. Morrison’s have advised that the timer has been re-set and that the lights should switch off once contractors leave the site in the evening. However, once the store is open to the public, they will be on until the store closes each day as approved.)

### 3.6 Phase 2 – 5 separate non food retail units

3.7 24/01/2013 – 2012/07433/PA -2245-2255 Coventry Road, Sheldon – Demolition of existing buildings and construction of 5 non-food retail stores (A1), provision of servicing, landscaping and parking – approved.

3.8 5/04/2013 - 2013/00681/PA – 2245-2255 Coventry Road, Sheldon - Variation of condition 4 attached to planning approval 2012/07433/PA to allow the premises to be open for customers between the hours of 07:00-23:00 Monday to Saturday and 09:00-20:00 on Sunday – approved subject to reduced hours of 08:00-20:00 hrs Mondays to Saturdays and 09:00-18:00 hrs Sundays

## 4 Consultation/PP Responses

4.1 Local councillors, residents, businesses and residents associations and the MP were notified. Solihull Metropolitan Borough Council was also notified. A site notice was displayed outside of the site and the proposals were advertised in the press.

4.2 There have been 8 letters/comments received in response to the proposals from local residents and businesses. Objections received can be summarised as follows:

- Noise from engines of delivery vehicles and refrigeration
- Adverse impact on quality of life for local residents

4.3 Solihull Metropolitan Borough Council – object to the proposals. They consider that the acoustic report prepared in support of the proposal does not adequately demonstrate that there would be no undue harm to nearby residential amenity.

4.7 Regulatory Services – Recommend refusal. The extension in delivery hours to this store has the potential to cause a significant impact to local residents, given the proximity. Before coming to a firm view on the proposals, the store should operate for a few months, preferably over the summer; to assess the impact of the existing delivery hours. This will allow the time to sufficiently consider the impacts and the noise climate at the residential properties, which is likely to have changed with the store being built.

4.8 Transportation/West Midlands Police – no objection

## 5 Policy Context

5.1 NPPF 2012. UDP 2005, Draft Birmingham Development Plan, Car parking standards SPD, Places for All SPG, Shopping and Local Centres SPD

## 6 Planning Considerations

### 6.1 Policy

6.2 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. Since the latest variation of condition was granted consent on 21<sup>st</sup> June 2011, all planning advice contained within PPS's and PPG's have been superseded by the NPPF that came into effect in March 2012. Despite this change, the main thrust of planning policy remains unchanged and the retail policies within the NPPF require the same considerations and assessments to be undertaken as before.

6.3 In addition to the NPPF, local planning policies including Car Parking Standards and Shopping and Local Centres SPDs have been adopted. The original proposal for a supermarket complies with the requirements of both of these policies in that the site is located within the Sheldon District Centre, within the primary shopping area and has more than adequate numbers of car parking spaces to serve the use.

### 6.4 Background

6.5 Your Committee was initially concerned about allowing the extension of delivery hours under 2011/01688/PA and following negotiation the following lesser extension of delivery hours was approved: deliveries between 0700 and 2200 hours Monday-Saturday and 0900-1700 hours on Sundays and Bank/public holidays. There shall be no more than 3 deliveries by HGVs to or from the store between 2100 and 2200 hours on Monday to Saturday 10pm Monday to Saturday and 9am to 5pm on Sunday and Bank Holidays. Your committee was satisfied and subsequently approved the proposals. Additional information on current company practice within delivery yards, and detail on the likely effectiveness of the proposed acoustic fence, underpinned that decision and appropriate conditions were attached.

### 6.6 Pre-application advice for the current application

6.7 Prior to the submission of this application, Morrison's agent enquired about the likelihood of gaining approval for extended delivery hours as currently proposed. Based on the level of local objection to the delivery yard element of the original proposal, and to the difficulties faced when seeking to amend the delivery hours within the previous application, they were advised to reconsider. Views of Regulatory Services were sought who confirmed that the proposals were likely to be contentious and that without having the benefit of being able to assess the impact of the current delivery hours on local residential amenity (due to the store not having yet opened) recommended that Morrison's wait until the store had been trading during the summer before applying. Nevertheless this current application has been submitted.

### 6.8 Current application

6.9. A Noise Acoustic Assessment has been submitted which concludes that the hour between 6am and 7am is the most sensitive period of the proposed delivery time extension. It asserts that the impact would be of little acoustic significance. The document explains various measurement types and relevant criteria and refers to the World Health Organisation (WHO Guidelines for Community Noise), NPPF and the Noise Policy Statement for England (NPSE), Noise Standards BS8233:1999 and BS4142: 1997, a Department for Transport, Department for Trade and Industry,

Department for Communities and Local Government and the Cabinet Office's Better Regulations Executive joint guidance entitled Delivering the Goods: Guidance and the Quiet Deliveries Demonstration Scheme (the result of work by various Government agencies such as the Noise Abatement Society) and Morrison's own Quiet Delivery System.

- 6.10 Noise monitoring measurements were taken outside properties in Arden Close and adjacent to Lyndon Court which are considered to be the most affected properties. The results were compared with advice contained within the previously mentioned documents and conclude that noise outside the closest bedroom windows associated with deliveries to the store would be reduced to occasional maximum levels of 49dB which is consistent with the WHO guidance intended to protect even vulnerable people from disturbance if sleeping with open bedroom windows.
- 6.11 There is no discussion or analysis in the assessment of the additional impact that would occur on Sunday and Bank Holidays as a result of the delivery hours now sought. The proposal, if allowed, would result in an additional 3 hours in the morning and 6 hours in the evening above that previously approved on Sundays and Bank Holidays.
- 6.12 Regulatory Services consider there are several deficiencies in the Noise Assessment and note the fact that Sundays and Bank Holidays are not considered. Refusal of the scheme is recommended by them primarily because the store is not yet open, and they cannot be certain that there would be no further impact upon residential amenity as a result. They have not been able to assess the current noise mitigation arrangements as required by previous conditions as the store is not yet in operation.
- 6.13 In addition to this Regulatory Services consider that to assess the impact of the proposed changes it is necessary to have representative measurements of the existing noise climate and to compare these to the predicted noise levels due to the introduction of the new noise source. It is particularly important to ensure that assessments are carried out at the appropriate time of day. The report submitted with the latest proposal only provides a limited assessment of the existing noise climate and does not include noise levels late in the evening or early on a Sunday morning where impact of these proposals would be expected to have the greatest impact.
- 6.14 Based upon the number of objections that have been received regarding the proposals and general complaints that have been made to the Authority during the construction period, combined with the events associated with the previous application to extend the delivery hours, I concur with this view. I consider that it would be appropriate to require Morrison's to operate under the existing delivery hours restrictions so that the Authority can monitor the situation. The summer would provide the ideal opportunity to assess the delivery patterns and impact on local residents, when it is likely that residents would be in their gardens and sleeping with open windows.
- 6.15 Transportation Development and West Midlands Police raise no objection to the proposal on highway safety or crime prevention grounds and I concur with these views.

## 7 Conclusion

- 7.1 On the basis of current supporting information Officers cannot conclude that the amenity of local residents would not be harmed as a result of the proposals. The Authority has not had the opportunity to assess or monitor the effectiveness of the

currently consented delivery hours and noise mitigation measures as the store is not yet open. It is considered inappropriate to extend the delivery hours without greater certainty that to do so would not be harmful to the quality of life for local residents.

## 8 Recommendation

8.1 That planning permission be refused for the following reasons

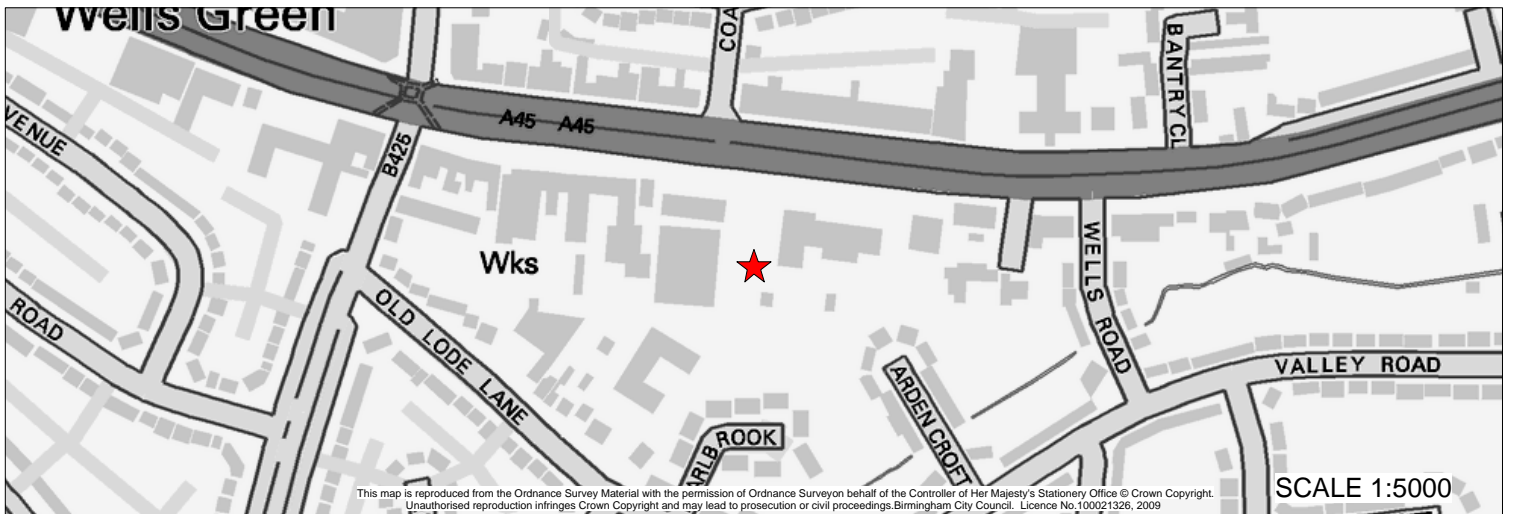
### Reason for Refusal

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- 1 It is considered that the proposed development would adversely affect the amenities of occupiers of dwellings in the vicinity by reason of noise and general disturbance. The store is not yet operational and it has not been possible therefore to assess whether the currently permitted delivery hours in combination with other noise mitigation measures proposed will effectively control the noise climate to satisfactorily safeguard residential amenity. As such this application is considered to be premature and the proposal would be contrary to Paragraphs 3.8 and 3.10 of the Birmingham UDP 2005 and the National Planning Policy Framework.
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Case Officer: Debbie Farrington









# APPENDIX



WM Morrison Supermarket PLC  
2259-2297 Coventry Road  
Sheldon  
Birmingham

2013/01029/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

