

**Location**                                    **Waitrose 273 Ballards Lane London N12 8NR**

**Reference:**                                **17/7023/S73**                                    Received: 3rd November 2017  
Accepted: 8th November 2017

Ward:                                         West Finchley                                    Expiry 3rd January 2018

Applicant:                                    N/a

Proposal:                                    Variation to condition 8 (Delivery Hours) of planning permission F/05449/13 dated 14/01/14 for `Variation of condition 2 of planning permission (C00019AR/04) dated (04/10/2004) for (Ground and first floor extension to existing store and installation of roof mounted generator and air handling unit) . Variation to include (To extend the permitted opening hours of this existing Waitrose store). Amendments include extension of delivery hours to 21:30 daily to include Sundays, Public and Bank Holidays and increase in the number of deliveries from 2 to 5 on a Sunday, bank or Public Holiday (amended description).

**Recommendation:** Approve subject to conditions

AND the Committee grants delegated authority to the Head of Development Management or Head of Strategic Planning to make any minor alterations, additions or deletions to the recommended conditions/obligations or reasons for refusal as set out in this report and addendum provided this authority shall be exercised after consultation with the Chairman (or in his absence the Vice- Chairman) of the Committee (who may request that such alterations, additions or deletions be first approved by the Committee)

- 1     The development hereby permitted shall be carried out in accordance with the following approved plans:

Delivery Management Plan  
Received 4 December 2017

Location Plan  
Noise Impact Assessment  
Received 3 November 2017

Reason: For the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the plans as assessed in accordance with Policies CS NPPF and CS1 of the Local Plan Core Strategy DPD (adopted September 2012) and Policy DM01 of the Local Plan Development Management Policies DPD (adopted September 2012).

- 2 The use hereby permitted shall not be open to customers before 7:00 am or after 11pm on Mondays to Saturdays or before 10:00 am or after 4:00pm on Sundays.

Reason:

To safeguard the amenities of occupiers of adjoining residential properties.

- 3 The level of noise emitted from the (specify machinery) plant hereby approved shall be at least 5dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property.

If the noise emitted has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or distinct impulse (bangs, clicks, clatters, thumps), then it shall be at least 10dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property.

Reason:

To ensure that the proposed development does not prejudice the amenities of occupiers of neighbouring properties in accordance with policies DM04 of the Adopted Barnet Development Management Policies DPD (2012) and 7.15 of the London Plan 2011.

- 4 The proposed generator hereby approved shall only be used for emergency purposes in the event of main power supply failure.

Reason: To ensure that the proposed development does not prejudice the amenities of occupiers of neighbouring properties.

- 5 No deliveries shall be taken at or despatched from the site outside the hours of 10.00am to 21.30pm on Sundays, bank or Public Holidays, during which time a maximum of 5 deliveries may be received, and outside the hours of 07.00am to 21.30pm on any other day.

Reason: To prevent the use causing an undue disturbance to occupiers of adjoining residential properties at unsocial hours of the day.

- 6 The deliveries to the site will be undertaken in accordance with the Delivery and Servicing Plan (DSP) submitted with the planning application and the development thereafter shall only be operated in accordance with the approved delivery service plan.

Reason: In the interest of highway safety in accordance with London Borough of Barnet's Local Plan Policy CS9 of Core Strategy (Adopted) September 2012 and Policy DM17 of Development Management Policies (Adopted) September 2012 and to ensure that the amenities of occupiers are not prejudiced by delivery noise.

**Informative(s):**

- 1 In accordance with paragraphs 186-187, 188-195 and 196-198 of the NPPF, the Local Planning Authority (LPA) takes a positive and proactive approach to development proposals, focused on solutions. The LPA has produced planning policies and written guidance to assist applicants when submitting applications. These are all available on the Council's website. The LPA has negotiated with the applicant/agent where necessary during the application process to ensure that the proposed development is in accordance with the Development Plan.

## **Officer's Assessment**

### **1. Site Description**

The application site is a Waitrose supermarket located on the north western side of Ballards Lane. It is an out of centre location approximately 400m south of the North Finchley Primary Shopping Area. The store fronts onto Ballards Lane which is a busy main vehicular and pedestrian thoroughfare. This part of Ballards Lane is characterised by a mixture of residential and commercial units. A restaurant and a separate public house lie immediately to the north, whilst residential properties are directly opposite. The closest residential properties to the delivery access are on Hutton Grove. The site is not within a conservation area and is not a listed building.

### **2. Site History**

Reference: F/01146/14

Decision: Approved subject to conditions

Decision Date: 08.05.2014

Description: Installation of external horticulture unit to the front elevation, including installation of covered trolley bay and relocation of covered trolley bay.

Reference: F/01527/14

Decision: Approved subject to conditions

Decision Date: 21.05.2014

Description: Erection of an additional canopy roof between the existing Waitrose warehouse and customer car park. Erection of a lightweight external store at first floor level.

Reference: F/05449/13

Decision: Approved subject to conditions

Decision Date: 14.01.2014

Description: Variation of condition 2 of planning permission (C00019AR/04) dated (04/10/2004) for (Ground and first floor extension to existing store and installation of roof mounted generator and air handling unit). Variation to include To extend the permitted opening hours of this existing Waitrose store

Reference: C00019AV/05

Decision: Approve subject to conditions

Decision Date: 15 February 2006

Description: Variation of Condition 12 of planning permission C00019AM/01 (approved at appeal, ref APP/N5090/A/02/1088875) to allow 4 deliveries to be made between 10.00am and 5.00pm on Sundays and Bank Holidays. Presently a maximum of two deliveries are permitted between 10.00am and 5.00pm.

Reference: C00019AU/05

Decision: Refused

Decision Date: 7 December 2005

Description: Variation of condition 12 of planning permission C00019AM/01 (approved at appeal, Ref APP/N5090/A/02/1088875) to allow 4 deliveries to be made between 9am and 5pm on Sundays and Bank Holidays. Presently a maximum of two deliveries are permitted between 10am and 5pm.

Appeal status: Dismissed

Reference: C00019AT/05

Decision: Refused

Decision Date: 7 December 2005

Description: Variation of condition 4 of planning permission C00019AN/01 (approved at appeal ref: APP/N5090/A/02/1088876) to allow 4 deliveries to be made between 9am and 5pm on Sundays and Bank Holidays. Presently a maximum of two deliveries are permitted between 10am and 5pm.

Appeal status: Dismissed

Reference C00019AN/01

Decision: Refused

Decision Date: 30 October 2001

Description: Variation of condition 04 of planning permission (Ref C00019AK/99) to enable the store to receive two deliveries between 10.00 and 17.00 hours on Sundays, Bank or Public Holidays.

Reference: C00019AM/01

Decision: Refused

Decision Date: 30 October 2001

Description: Variation to condition 12 of planning permission (Ref: C00019P) to enable the store to receive two deliveries between 10.00 hours and 17.00 hours on Sundays, Bank or Public Holidays.

Appeal status: Allowed

Reference: C00019P

Decision: Approve subject to conditions

Decision Date: 1 December 1995

Description: Food retail store with car parking, ancillary office and service areas (outline application)

Summary of site history: The original planning permission was granted in 1995 for a supermarket with a restriction on no deliveries on Sundays or public holidays. Numerous applications have been made seeking to vary the conditions around the operation hours and the number of deliveries. An application was refused but allowed by appeal to increase the deliveries to 2 deliveries on Sunday/Public Holidays. Numerous applications have been made to extend the hours and delivery numbers further which have been refused and dismissed. An application was allowed extending the deliveries to 4 deliveries between 10am-5pm on Sundays and Bank Holidays. Since that permission, a further application F/05449/13 was approved granting an extension of the store operating hours which restricted the deliveries to a maximum of only 2 on Sundays and Public Holidays between 10am-5pm. This is the current delivery condition.

### **3. Proposal**

The proposal is to vary condition 8 of planning permission F/05449/13 'Variation of condition 2 of planning permission (C00019AR/04) dated (04/10/2004) for (Ground and first floor extension to existing store and installation of roof mounted generator and air handling unit). Variation to include (To extend the permitted opening hours of this existing Waitrose store).

Amendments include extension of delivery hours to 21:30 daily to include Sundays, Public and Bank Holidays and increase the number of deliveries from 2 to 5 on a Sunday, bank or Public Holiday.

The condition states:

No deliveries shall be taken at or dispatched from the site outside the hours of 10.00 to 17.00 on Sundays, Bank and Public Holidays, during which a maximum of 2 deliveries may be received, and outside the hours of 07.00 to 18.00 on any other day.

The proposed variation is to reword the condition to read:

No deliveries shall be taken at or dispatched from the site outside the hours of 10.00am to 21.30pm on Sundays, Bank or Public Holidays, during which a maximum of 5 deliveries may be received and outside the hours of 7.00 to 21.30pm on any other day.

The variation results in an allowance of 3.no additional deliveries on Sundays and Bank and Public Holidays and extends the time for these deliveries from between 10am to 5pm to between 10am and 9.30pm. The variation also extends the delivery hours from 7 am to 6pm on any other day to between 7 am and 9.30pm. The delivery management plan was updated by the applicant in the course of this application to make a correction.

#### **4. Public Consultation**

Consultation letters were sent to 180 neighbouring properties. 4 responses were initially received comprising 4 letters of objection. During re-consultation of the proposal, a further 2 objections were received. The total number of objections received is 6. For the purposes of this assessment, 5 are valid objections as 1 is a duplicate response.

The objections received can be summarised as follows:

- The development doesn't comply with the delivery plan. Lorries block the road.
- Traffic impacts;
- Waitrose has sought to continuously stretch the limits of when they can operate;
- The delivery plan was amended in the course of the application and residents haven't had time to consider this new change;
- There is no indication of the increase in deliveries;
- Variations have previously been refused and there is no merit to this scheme to warrant a different outcome;
- Impact of noise and privacy to neighbouring residential properties;
- The noise report is taken from the eastern most boundary next to the loading bay gate whereas the loading and unloading bays are actually closer to the boundary with Vine Lodge;
- The noise report shows the noise is above the optimal amount.

Internal consultation:

Environmental Health- the hours proposed are reasonable in comparison with other supermarkets in the borough. Officers are not aware of any recent complaints regarding deliveries from this site and the applicants have prepared a plan to reduce some of the noise caused during the deliveries. Officers have recommended approval.

Highways- Officers have considered the proposal is unlikely to have any adverse impact on the public highway provided the Delivery Service Plan is complied with. Highways have requested a condition to ensure compliance with the approved plan.

#### **5. Planning Considerations**

## **5.1 Policy Context**

### National Planning Policy Framework and National Planning Practice Guidance

The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another.

The National Planning Policy Framework (NPPF) was published on 27 March 2012. This is a key part of the Governments reforms to make the planning system less complex and more accessible, and to promote sustainable growth.

The NPPF states that 'good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people'. The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would 'significantly and demonstrably' outweigh the benefits.

### The Mayor's London Plan 2016

The London Development Plan is the overall strategic plan for London, and it sets out a fully integrated economic, environmental, transport and social framework for the development of the capital to 2050. It forms part of the development plan for Greater London and is recognised in the NPPF as part of the development plan.

The London Plan provides a unified framework for strategies that are designed to ensure that all Londoners benefit from sustainable improvements to their quality of life.

### Barnet's Local Plan (2012)

Barnet's Local Plan is made up of a suite of documents including the Core Strategy and Development Management Policies Development Plan Documents. Both were adopted in September 2012.

- Relevant Core Strategy Policies: CS NPPF, CS1, CS5.
- Relevant Development Management Policies: DM01, DM02, DM04, DM17.

The Council's approach to extensions as set out in Policy DM01 is to minimise their impact on the local environment and to ensure that occupiers of new developments as well as neighbouring occupiers enjoy a high standard of amenity. Policy DM01 states that all development should represent high quality design and should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining occupiers. Policy DM02 states that where appropriate, development will be expected to demonstrate compliance to minimum amenity standards and make a positive contribution to the Borough. The development standards set out in Policy DM02 are regarded as key for Barnet to deliver the highest standards of urban design.

### Supplementary Planning Documents

Residential Design Guidance SPD (adopted October 2016)

- Sets out information for applicants to help them design an extension to their property which would receive favourable consideration by the Local Planning Authority and was the subject of separate public consultation. The SPD states that large areas of Barnet are characterised by relatively low density suburban housing with an attractive mixture of terrace, semi detached and detached houses. The Council is committed to protecting, and

where possible enhancing the character of the borough's residential areas and retaining an attractive street scene.

- States that extensions should normally be subordinate to the original house, respect the original building and should not be overly dominant. Extensions should normally be consistent in regard to the form, scale and architectural style of the original building which can be achieved through respecting the proportions of the existing house and using an appropriate roof form.

- In respect of amenity, states that extensions should not be overbearing or unduly obtrusive and care should be taken to ensure that they do not result in harmful loss of outlook, appear overbearing, or cause an increased sense of enclosure to adjoining properties. They should not reduce light to neighbouring windows to habitable rooms or cause significant overshadowing, and should not look out of place, overbearing or intrusive when viewed from surrounding areas.

Sustainable Design and Construction SPD (adopted October 2016)

- Provides detailed guidance that supplements policies in the adopted Local Plan, and sets out how sustainable development will be delivered in Barnet.

## **5.2 Main issues for consideration**

The main issues for consideration in this case are:

- Whether harm would be caused to the character and appearance of the existing building, the street scene and the wider locality;
- Whether harm would be caused to the living conditions of neighbouring residents.

## **5.3 Assessment of proposals**

The original planning permission for the Waitrose store was approved in 1993 and included condition 12 that states:

'No deliveries shall be taken or dispatched from the site on any Sunday or public holiday or before 7.00am or after 6.00pm on any other day'

Previous applications have been made to vary this condition. This includes an application which was refused and subsequently allowed at appeal to vary the condition to read:

' No deliveries shall be taken at or dispatched from the site outside the hours of 10.00 to 17.00 on Sundays, Bank or public holidays, during which a maximum of 2 deliveries may be received, and outside the hours of 0700 to 1800 on any other day'.

Two previous applications (C00019AT/05 and C00019AU/05) to increase the number of deliveries permitted have been refused and dismissed at appeal. It is noted these applications were refused and dismissed in the period 2005-2007 and sought to vary the delivery condition to increase the number of deliveries as well as the hours during which deliveries could be undertaken. However a subsequent application C00019AV/05 was approved which varied the condition to a maximum of 4 deliveries but did not increase the hours.

The condition was varied to read as follows:

'A maximum of 4 deliveries may be received or dispatched from the site between 10.00am and 17.00 on any Sunday, Bank or public Holidays. No deliveries may be received or dispatched outside these hours'.

Since this permission, a further application F/05449/13 was granted to allow the store to trade between 7am until 9pm on Monday to Saturdays and 10am until 4pm on Sundays and Public Holidays. The delivery condition (8) was attached stating:



'No deliveries shall be taken at or dispatched from the site outside the hours of 10.00 to 17.00 on Sundays, Bank and Public Holidays, during which a maximum of 2 deliveries may be received, and outside the hours of 07.00 to 18.00 on any other day'.

This restricts the store to only 2 deliveries on Sundays and Bank holidays rather than 4 as had previously been approved.

The original delivery window (from 7-6) for Mondays to Saturdays has not been varied since the original permission when the store was approved.

The applicant has engaged with the Council's Environmental Health department to discuss extending the condition and delivery hours. The applicant seeks to increase the amount of hours that deliveries can be made to allow deliveries until 9.30pm. The variation would also allow 5.no rather than 2.no deliveries on Sundays and Public Holidays. The increase to 5.no deliveries is 1.no additional delivery movement more than previously approved, although this variation would allow for deliveries to be made later than previously approved. The Council's Environmental Health team have reviewed this proposal and consider the hours sought are reasonable as the initial planning conditions for this development are quite stringent in comparison to other supermarkets in the Borough.

The applicant has submitted a noise impact assessment to accompany the proposal. The assessment has considered the noise impact to adjacent residential properties. There are existing residential properties adjacent to the service yard at Vine Lodge, No 15 Hutton Grove approximately 17m north of the loading bay doors and at Arkley Mansions along Hutton Grove opposite the service yard entrance approximately 34m from the loading bay. Environment Health officers have reviewed this noise impact assessment. In their assessment, Environmental Health officers advised they have not received recent complaints regarding deliveries at this site and consider the applicant has put together an acceptable plan to reduce some of the noise caused during deliveries. Environmental Health Officers have provided technical advice that the proposals would not cause harmful noise distribution. Environmental Health has therefore recommended this application is approved subject to a condition to require the delivery management plan to be implemented.

Highways have also reviewed the proposal and have raised no objections subject to full compliance with the Delivery Management Plan submitted. This has been conditioned.

The previous refusals and appeal decisions in 2005 were over 10 years ago. Environmental Health consider the current conditions are restrictive compared to current operations of supermarkets in the area. Environmental Health have raised no concerns with the proposal subject to compliance with the delivery management plan. Provided the applicant follows the delivery management plan, the proposal is not considered to result in harm to the residential amenity of neighbouring occupiers.

Therefore, based on a review of the documentation submitted and the recommendations of both Environmental Health and Highways, it is considered that the proposed variation is acceptable.

#### **5.4 Response to Public Consultation**

The concerns regarding the current operation and compliance with conditions is a matter to be raised with enforcement and is not material to this application.

The impacts of the proposal on the highway has been considered by the Council's Highways department and they have not raised any concerns with the proposal.

The delivery management plan was amended during the course of the application by the applicant to update the hours. It is not considered that the amendment has impacted on the public's ability to comment on this proposal. However the proposal was reconsulted with an amended description to make the increase in the number of deliveries clear to the public. This was previously not clearly stated in the description of the proposal.

The proposal has been looked at on its own merits and in consideration of the previous refused schemes and appeal decisions and it is considered that this proposal is acceptable in the current context. Environmental Health have considered the noise levels and noise report and have raised no objections.

## **6. Equality and Diversity Issues**

The proposal does not conflict with either Barnet Council's Equalities Policy or the commitments set in the Equality Scheme and supports the Council in meeting its statutory equality responsibilities.

## **7. Conclusion**

Having taken all material considerations into account, it is considered that subject to compliance with the attached conditions, the proposed development would have an acceptable impact on the character and appearance of the application site, the street scene and the locality. The development is not considered to have an adverse impact on the amenities of neighbouring occupiers and is acceptable on highways grounds. This application is therefore recommended for approval.

