

# PLANNING APPLICATION REPORT



<b>Application Number</b>	15/01619/FUL	<b>Item</b>	05
<b>Date Valid</b>	06/10/2015	<b>Ward</b>	Peverell

<b>Site Address</b>	282 OUTLAND ROAD, PLYMOUTH		
<b>Proposal</b>	Variation of condition 2 of planning permission 98/00780/FUL to permit the delivery of goods between 07:00 hours and 21:30 hours Monday to Saturday; with no changes to Sunday hours.		
<b>Applicant</b>	WM Morrison Supermarkets Plc		
<b>Application Type</b>	Full Application		
<b>Target Date</b>	<b>15/04/2016</b>	<b>Committee Date</b>	<b>Planning Committee: 07 January 2016</b>
<b>Decision Category</b>	Member Referral		
<b>Case Officer</b>	Christopher King		
<b>Recommendation</b>	Grant Conditionally		

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This application has been referred to planning committee by Cllr John Mahony

## **1. Description of site**

The application site comprises an area of approximately 2.4 hectares fronting onto Outland Road on the edge of the Peverell/Beacon Park area of the city. The site is currently occupied by a Morrison's food store, associated customer parking, servicing and landscaping. The store building occupies the south eastern and central parts of the site with customer parking located to the north, between the store building and Outland Road, and on the western part of the site, adjacent to Tor Lane. Shared vehicular access, for customers and delivery lorries, is from Tor Lane.

There is a row of tall leylandi trees along the eastern boundary, which screens the property from residential property in Tor Road to the east, and rows of much smaller trees, planted as part of the original landscape strategy in the car park. These trees are protected by a group Tree Preservation Order (TPO No 271 and 209). Levels fall within the site from east to west (approximately 5m) and from south to north (approximately 2m) in accordance with the surrounding topography.

The existing store building is essentially a flat roofed structure, but this is disguised by an element of roof plane, all around and on the conspicuous higher parts of the building, so that it appears, when viewed from ground level, as a pitched roofed building with decorative arches and an entrance portico.

The character of the surrounding area is dominated by Outland Road (A386), a dual carriageway which forms one of the main arterial route ways into the city.

The area around the site is completely residential in character. On the opposite side of Tor Lane, and in Chestnut Road to the west, are larger Edwardian/ Victorian terraces. Houses in Glentor to the south, Tor Road to the east and facing Outland Road, and in St Erth Road to the north, are a mixture of detached and semidetached houses in reasonable sized plots, dating from the middle of the last century.

## **2. Proposal description**

Variation of condition 2 of planning permission 98/00780/FUL to permit the delivery of goods between 0700 hours and 2130 hours Monday to Saturday; No Change on Sundays and Bank Holidays. The current approved hours for delivery are between 0800-2000 hours Monday to Saturday and 0900- 1600 hours on Sunday, meaning that the application seeks to extend the delivery hours by one hour in the morning, and one and half hours in the evenings on Mondays to Saturdays.

## **3. Pre-application enquiry**

No pre-application advice was sought with regards to this proposal.

## **4. Relevant planning history**

The site has an extensive planning history (35 applications since 1974). Some predate the current supermarket use and others relate to signage and minor applications. The following are considered most relevant:-

- Ref: 16/00368/FUL - Variation of condition 1 of decision notice 98/00780/FUL to allow extended opening for the sale of goods between 07:00 to 22:00 hours Mondays to Saturdays and between 10:00 to 16:00 hours on Sundays – Currently being considered by the Local Planning Authority
- Ref: 15/01617/FUL - Variation of condition 6 of planning permission 12/01724/FUL to permit the delivery of goods between 0700 hours and 2130 hours Monday to Saturday; and No Change on Sundays and Bank Holidays – Withdrawn because planning permission 12/01724/FUL is not being implemented
- Ref: 12/01724/FUL - Extension to food store 1,030sqm including decked car park and access works - Grated conditionally subject to S106 agreement.
- Ref: 12/00515/FUL – Extension to food store (1,415sqm) including 2 storey car park and access works - Withdrawn.
  - NB: The application had been prepared for a recommendation to committee to refuse the application due to highway concerns, design concerns, amenity and safety.
- Ref: 00/00379/FUL - Single storey side extension to retail sales area to provide an additional 585 sq. metres of retail sales floor space. The scheme reduced the number of parking spaces by 31 and provided 50 additional jobs - Granted subject to conditions Oct 2001
- Appeal Ref: T/APP/NI 160/A/98/299599/P4 – Planning Inspector overturned LPA decision to refuse 98/00780/FUL; granting conditional approval to allow Sunday trading and delivery's on Sundays.
- Ref: 98/00780/FUL - Variation of Cond.13 & 14 of Notice No.643/90 to now permit Sun. trading & Sun. deliveries, revised (shorter) delivery hours Mon-Sat, alterations to enclose & landscape service yard, additional landscaping - Approved Nov 1998 on Appeal T/APP/NI 160/A/98/299599/P4
- Ref: 96/00743/FUL - Vary Condition 13 and 14 of Notice No. 0643/90 to now permit Sunday trading and Sunday deliveries, revised (shorter) delivery hours Monday-Saturday; alterations to increase height of boundary walls an - Refused Dec 1996
- Ref: 96/00742/FUL - Variation of Cond.13 and 14 of Notice No.643/90 to now permit Sun. trading and Sun. deliveries, revised (shorter) delivery hours Mon-Sat, alterations to enclose and landscape service yard, and off site - Withdrawn Dec 1996
- Ref: 93/00143/FUL - Variation of condition 13 of Notice ref NO.643/90 to allow for Sunday trading - Granted Jun 1993
- Ref: 91/01241/REM - New access and highway improvements in connection with the outline permission Ref.0643/90 (dated Apr 1991) - Granted
- Ref: 91/01372/REM - Erection of superstore with associated parking and service areas (approval of reserved matters) - Granted Jan 1992
- Appeal Ref: LI 120/A/90/156592 and 1172788 - Planning Inspector overturned LPA decision to refuse 90/00643/OUT; granting conditional approval

- Ref: 90/00643/OUT - outline application to develop industrial site by erection of a retail shop (47,050sqft) with car parking new access and highway improvements - Granted on Appeal L1120/A/90/156592 and 1172788

## 5. Consultation responses

Local Highways Authority – No Objections

Public Protection Service – No Objections following the amended description and submission of satisfactory noise surveys

## 6. Representations

Four (4) letters of representation were received when the application was initially advertised, all objecting to this proposal, identifying the following concerns:

- Adverse impact on residents
- Unacceptable to have noise disruption at 5am
- Reduce standard of living
- Puts commercial interests before residents
- It is already noisy

Following negotiation with the applicant to reduce the extended hours, a revised application description was submitted which was supported with additional survey data.

The new description, which proposes delivery hours of '0700 hours and 2130 hours Monday to Saturday; No Change on Sundays and Bank Holidays', required re-advertising for 14 days.

During this further consultation period (which concluded on the 15<sup>th</sup> March), one additional letter of representation has been received, and raises the following comment:-

- There will be increased noise due to traffic movements and the unloading itself in a residential area. The restrictions were imposed for noise reasons and nothing has changed

## 7. Relevant Policy Framework

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan comprises of the Local Development Framework Core Strategy (Adopted April 2007).

The development plan is currently being reviewed as part of the Plymouth Plan. The Plymouth Plan-Part One was approved by the City Council in September 2015. The Plan, which incorporates draft development plan policy, has been prepared following a consultation process. As such it is a material consideration for the purposes of planning decisions.

The policies contained in National Planning Policy Framework (the Framework) and guidance in National Planning Practice Guidance (NPPG) are also material considerations which should be taken into account in the determination of planning applications. Due weight should be given to relevant policies in existing and emerging plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

The Framework provides that the weight to be given to an emerging draft plan is also to be determined according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given). The Plymouth Plan is at a relatively early stage of preparation.
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given).

At the heart of the Framework is a presumption in favour of sustainable development. In the context of planning applications, this means approving development proposals that accord with the development plan without delay but where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits; or
- Specific policies in the Framework indicate development should be restricted.

## 8. Analysis

This application has been considered in the context of the development plan, the draft Plymouth Plan, the Framework and other material policy documents as set out in Section 7.

1. This application turns upon policies CS22 (Pollution) and CS34 (Planning Application Considerations) of the Local Development Framework Core Strategy; Policy 30 (Safeguarding environmental quality, function and amenity) of the Emerging Plymouth Plan Part One and paragraphs 17 and 123 of the NPPF.
2. In considering the proposal, the main consideration is the impact of the proposed alterations to the hours towards neighbouring residential amenity through the possibility of increased noise disturbance.
3. The application site is an existing supermarket store; however application 12/01724/FUL refers to planning permission for a 1000m<sup>2</sup> extension to the store which is yet to be built, but has the same delivery hours imposed on it as the main store. The Service yard is located in the southern corner of the site, and access is from Tor Lane to the West.
4. The site is bordered by residential dwellings with the closest being located on Tor Road, Glentor Road and Tor Lane. The application to extend the hours of deliveries has the potential to cause disruption, and there was clear feeling amongst local residents that the initial proposal to allow deliveries from 5.00am to 11.00pm would have been demonstrably harmful.
5. Having agreed with local residents, officers advised the applicant that the original proposed extension of hours was excessive, and could not be supported; something that was echoed by

the Public Protection Service. Noise disturbance associated with delivery operations to supermarkets from heavy goods vehicles typically includes engine noise, door slams, radios, reversing alarm noise and clattering from roll cages being loaded/ unloaded and moved between areas etc. The LPA suggested that the applicant review the proposal and consider the need for the application and how best to mitigate the impact of the proposal.

6. The LPA has been presented with a significantly revised proposal, that seeks to extend the delivery hours by 1 hour in the morning (7.00am to 8.00am) and 1 ½ hours in the evening (8.00pm to 9.30pm). The revised noise survey has been carried out and submitted in support of the proposed changes, and has been reviewed by the Public Protection Service.
7. As part of the acoustic report, suitable monitoring has been carried out and has considered all associated noises associated with the proposed deliveries, including movement of roll cages, use of tailgate, secure straps being used and the roller shutter door being opened and closed. Reversing sirens on vehicles have not been considered, as the applicant has confirmed that reversing alarms will be turned off for the proposed deliveries, and this will be conditioned.
8. It is noted that in 1998 (Appeal Ref: T/APP/NI 160/A/98/299599/P4), the planning inspectorate allowed Sunday deliveries; however did not agree with the applicants request for deliveries before 8.00am. The supporting noise survey data for this planning application, and the use of conditions means that officers are satisfied that deliveries between 7.00am and 8.00am are acceptable.
9. The acoustic report demonstrates that the noise from deliveries during the proposed extension to the existing hours will not significantly exceed background noise levels and as such there will be no significant adverse impact. With respect to noise the application complies with policy and as such the Public Protection Service recommends approval of the proposed hours for deliveries.
10. Furthermore, officers are aware that similar delivery hours have been permitted at a number of supermarkets around the city, all of which are within comparable proximity to residential dwellings as with the application site, and include the following locations:
  - a. Aldi, Greenbank Road, Mutley
  - b. Lidl – Horn Cross Road, Plymstock
  - c. Morrisons - Pomphlett Mill, Plymstock
  - d. Tesco - Transit Way
11. Whilst every application is related on its own merits and circumstances, the LPA seeks to be consistent when considering applications of this nature.
12. Officers consider that the extended hours would not cause an increased or demonstrable loss of residential amenity, and would demonstrate a better scenario than what the applicant originally applied for when first submitted to the LPA for consideration provided suitable conditions are attached.
13. In conclusion the local planning authority has acted in the interests of residents and has been able to negotiate significantly reduced delivery hours which will protect residential amenity, whilst allowing the applicant to operate efficiently. The proposal accords with Policy CS22 and CS34 of the Plymouth's Local Development Framework Core Strategy (2006) as in the view of officers, there will not be unacceptable loss of amenity generated by the extended hours.

## 9. Human Rights

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

## 10. Local Finance Considerations

N/A

## 11. Planning Obligations

N/A

## 12. Equalities and Diversities

There are no equality or diversity issues to consider

## 13. Conclusions

Officers have taken account of the NPPF and S38(6) of the Planning and Compulsory Purchase Act 2004 and concluded that the proposal accords with policy and national guidance and specifically the Local Development Framework Core Strategy and the Emerging Plymouth Plan Part One and is therefore recommended for approval.

## 14. Recommendation

In respect of the application dated **06/10/2015** and the submitted drawings Planning Statement, Environmental Noise Assessment (Prepared by Gary King MIOA

Date 21 September 2015 - 1515511), it is recommended to: **Grant Conditionally**

## 15. Conditions

CONDITION: OPENING HOURS

(1) The premises shall only be open for the sale of goods between the hours of 0800 and 2100 Mondays to Saturdays (inclusive), and 1000 and 1600 on Sundays

Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects, including noise and disturbance likely to be caused by persons arriving at and leaving the premises, and avoid conflict with Policies CS22 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007, and paragraph 123 of the National Planning Policy Framework 2012 .

#### CONDITION: DELIVERY HOURS

(2) There shall be no deliveries made to the premises after 2130 hours or before 0700 hours Mondays to Saturdays (inclusive) and after 1600 hours or before 0900 hours on Sundays.

#### Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects, including noise and disturbance likely to be caused by delivery vehicles arriving at and leaving the premises, and avoid conflict with Policies CS22 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007, and paragraph 123 of the National Planning Policy Framework 2012 .

#### CONDITION: SERVICE YARD

(3) The service yard shown hatched blue on the drawing accompanying planning permission 98/1453, and also shown on drawing No 2697/10 Rev D, shall be kept clear at all times as a manoeuvring space for delivery vehicles, except for the area cross hatched blue, which shall only be used for the parking of delivery vehicles when being loaded and unloaded. The service yard shall not be used for any other purposes.

#### Reason:

To ensure that space is available at all times to enable such vehicles to be loaded and unloaded off the public highway so as to avoid:- (i) damage to amenity; (ii) prejudice to public safety and convenience, and (iii) interference with the free flow of traffic on the highway; in accordance with Policies CS28 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007, and paragraph 32 of the National Planning Policy Framework 2012.

#### CONDITION: LOADING AND UNLOADING

(4) There shall be no loading or unloading of delivery vehicles on any part of the premises, other than in the enclosure illustrated on Drawing No 2697/10 Rev D.

#### Reason:

To enable such vehicles to be loaded and unloaded off the public highway so as to avoid:- (i) damage to amenity; (ii) prejudice to public safety and convenience; and (iii) interference with the free flow of traffic on the highway; in accordance with Policies CS28 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007, and paragraph 32 of the National Planning Policy Framework 2012.

#### CONDITION: ACOUSTIC CURTAIN

(5) The acoustic curtain within the shutter door as illustrated on Drawing 2697/10, Rev D, and described in the letter from the Appellant's agent dated 8 February 1999, shall remain drawn at all times when the door is opened.



**Reason:**

To protect the residential and general amenity of the area from any harmfully polluting effects, including noise and disturbance likely to be caused by persons using the premises, and avoid conflict with Policies CS22 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007, and paragraph 123 of the National Planning Policy Framework 2012 .

**CONDITION: REVERSING SIRENS**

(6) No vehicle entering the service yard for the purpose of delivering goods to the premises shall be permitted to utilise their reversing sirens after 2000 hours or before 0800 Mondays to Saturdays

**Reason:**

To protect the residential and general amenity of the area from noise and disturbance likely to be caused by delivery vehicles arriving at and leaving the premises, and avoid conflict with Policies CS22 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007, and paragraph 123 of the National Planning Policy Framework 2012 .

**Informatives**

**INFORMATIVE: CONDITIONAL APPROVAL (WITH NEGOTIATION)**

(1) In accordance with the requirements of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 and paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the Applicant and has negotiated amendments to the application to enable the grant of planning permission.

**INFORMATIVE: (NOT CIL LIABLE) DEVELOPMENT IS NOT LIABLE FOR A COMMUNITY INFRASTRUCTURE LEVY CONTRIBUTION**

(2) The Local Planning Authority has assessed that this development, due to its size or nature, is exempt from any liability under the Community Infrastructure Levy Regulations 2010 (as amended).