

**REF: R01004/MR/DB/AP
VIA PLANNING PORTAL**

Dartford Borough Council
Planning Department
Civic Centre
Home Gardens
Dartford
DA1 1DR

06 March 2024

Dear Sir / Madam,

**SECTION 73 APPLICATION TO VARY CONDITION 10 (OPENING HOURS) ATTACHED TO
PLANNING PERMISSION REF. DA/08/01602/FUL
TESCO EXPRESS, 137 HENDERSON DRIVE, DARTFORD, KENT, DA1 5LD**

I write on behalf of the Applicant, Tesco Stores Ltd (Tesco), to submit an application to vary Condition 10 attached to planning permission reference DA/08/01602/FUL located at Tesco Express, 137 Henderson Drive, Dartford, Kent, DA1 5LD.

Background to Application

Planning permission ref. DA/08/01602/FUL was granted on 15th December 2008 for the:

“Change of use of first floor to 2 x 2 bedroom flats and associated alteration works, together with the erection of a ground floor front extension for retail purposes and associated works.”

Condition 10 of planning permission DA/08/01602/FUL states:

“The retail use hereby approved shall only trade between 0700-2100 hrs Mon-Sat and 0900 -1900 Sun. Deliveries and collections shall only be carried out between 0800-1800 hrs Mon - Sat and 0900-1600 Sun.”

In 2009, LPA ref. 09/00067/VCON sought to widen the permitted opening hours of the unit as follows:

“Application for Variation of Condition 10 of Planning Permission DA/08/01602/FUL in respect of changing trading hours from 0700-2100 hrs Mon-Sat and 0900 -1900 Sun to allowing trading between 0700-2300 hrs Mon-Sats and 0800-2200 hrs on Sundays.”

The application was recommended for approval by the Council but was refused at committee on 8th April

2009 on the following grounds:

“The premises lie in a predominantly residential area and are immediately adjacent to residential properties. Extending the opening hours beyond those already permitted would give rise to increased activity and consequent noise and disturbance, detrimental to the residential amenities of surrounding properties.”

This new Section 73 application proposes to widen the permitted opening hours of the unit, as detailed below.

Application Proposals

As noted above, Condition 10 of planning permission ref. DA/08/01602/FUL restricts the hours of operation of the unit. This application proposes to vary Condition 10 to extend the store opening hours by 1 hour in the evening on Mondays to Saturdays, 1 hour in the morning on Sundays and 1 hour in the evening on Sundays.

To summarise, we propose that alternative wording for Condition 10 be imposed as follows:

“The retail use hereby approved shall only trade between 0700-2200 hrs Mon-Sat and 0800 -2000 Sun. Deliveries and collections shall only be carried out between 0800-1800 hrs Mon - Sat and 0900-1600 Sun.”

A justification for this variation is set out below.

Planning Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In this instance, the development plan comprises the Dartford Core Strategy (2011), Dartford Development Policies Plan and the New Dartford Local Plan to 2037, found sound by the inspector on 5th February 2024.

It should be noted that Paragraph 81 of the National Planning Policy Framework, which is a material consideration, states that *‘Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth.’*

Justification for the Proposed Variation

This Section 73 application seeks to amend Condition 10 to allow for extended opening hours between 07:00 and 22:00 Monday to Saturday and 08:00 to 20:00 on Sundays. The amended opening hours

reflect the requirements of the proposed operator and the greater demand for round the clock availability of grocery goods. Across the entire Tesco Express portfolio, the preference is to trade from 06:00 to 23:00 hours Monday to Sunday in order to meet customer expectations and demand. Increasing the permitted opening hours will significantly improve the customer experience and the overall operation of the proposed convenience store. It will assist more generally in supporting the viability of the store, as well as providing local residents with easy access to grocery goods throughout the day.

Firstly, it should be noted that the previous application (LPA ref. 09/00067/VCON) to extend the opening hours of the store in 2009 was initially recommended for approval by the planning officer. LPA ref. 09/00067/VCON proposed extended opening hours between 07:00 and 23:00 Monday to Saturday and 08:00 and 22:00 on Sundays. These are significantly wider opening hours than those proposed by this new Section 73 application. LPA ref. 09/00067/VCON was refused at committee on the grounds that:

“The premises lie in a predominantly residential area and are immediately adjacent to residential properties. Extending the opening hours beyond those already permitted would give rise to increased activity and consequent noise and disturbance, detrimental to the residential amenities of surrounding properties.”

The application received a petition with 15 signatories objecting on the following grounds:

- Densely populated area and the increase in hours of trading would bring additional noise and disturbance due to increased pedestrian numbers, vehicle movements, late deliveries and gathering of young people causing noise and disturbance.

The two objections were summarised as follows:

- Will increase noise and disturbance in a quiet residential area; and
- Object to opening on public holidays and extending hours on Sundays.

Despite this, both Kent Highway Services and the Environmental Health Manager had no objection to the application on the basis that the previous use of the site was a public house and the opening hours of other nearby businesses in the surrounding area. In the delegated report, the planning officer had concluded that the previous use of the premises as a public house allowed noise and activity to take place well into the evening period and that the hours of opening of units in the nearby retail parade also reflected what was being proposed. As noted above, this new Section 73 application proposes significantly narrower opening hours than that proposed previously. Whereas LPA ref. 09/00067/VCON sought approval for closing hours of 23:00 Monday to Saturday, this new application proposes hours of 22:00 Monday to Saturday, thus proposing to close the premises an hour earlier than that previously sought. Proposing an additional hour of opening time in the evening than that consented under LPA ref. DA/08/01602/FUL will not give rise to increased activity and consequent noise and disturbance, detrimental to the residential amenities of surrounding properties.

A Noise Impact Assessment has been prepared by Sharps Redmore Acoustic Consultants to determine

how noise that may be generated as a result of the proposed additional trading periods would affect residential amenity. This report provides an objective assessment of noise associated with customer car parking activity which concludes that the proposed additional trading hours would not give rise to significant adverse impact, which is the test under paragraph 191 of the NPPF. The predicted Tesco Express customer car parking activity noise levels between 2100 and 2200 hours (Monday to Saturday), and between 0800 and 0900 hours and 1900 to 2000 hours on Sundays would comply with the WHO daytime guideline noise value and hence would be indicative of low impact. Predicted car park activity noise levels would be below the existing ambient noise climate during the proposed additional trading hours. This is further indicative of low noise impact.

The petition against the previous application incorrectly claimed that the extended opening hours would result in late deliveries. The application did not seek to extend delivery and servicing hours outlined in Condition 10 and is thus irrelevant. The same applies to this new Section 73 application. Furthermore, the petition expressed concern over additional noise and disturbance due to increased pedestrian numbers. In reality, allowing the extension of hours to 22:00 during the evening at the application site will likely spread the foot traffic and pedestrian activity more evenly during the evening hours instead of spiking at 21:00. Extending store hours enables customer demand to be spread throughout the day, thereby smoothing out any spikes in trading. Lastly, the petition expressed concern over the loitering of young people near the store as a result of extended opening hours. Extended opening hours would provide a greater degree of "natural surveillance" to the subject property specifically and the wider area generally, which would materially reduce or eliminate antisocial behaviour.

As noted in the delegated report of LPA ref. 09/00067/VCON, consideration should also be given to the fact that the unit is located in close proximity to premises with early and late opening hours. The Morrisons Daily at 171-175, Henderson Dr, Easington, Dartford DA1 5LD is open from 07:00 to 22:00 all week, identical to the hours proposed by this new Section 73 application for Monday to Saturday and even wider than the hours proposed for Sunday. In addition, Henderson Fish Bar and Kebab at 177 Henderson Dr, Dartford DA1 5LD, closes at 22:00 Monday to Saturday, the same as that proposed by this application. The aforementioned commercial units are all located along the same retail parade as the application site with residential properties in close proximity. On this basis, it is argued that local residential properties will not be adversely affected by extended opening hours.

Conclusion

Ultimately, the amended opening hours are required to enable the operation of the unit further in line with the operational requirements and standards of the retailer, improving access to retail goods for residents. The extension of opening hours had previously been recommended for approval under LPA ref. 09/00067/VCON which were far wider and more extensive than that proposed under this application. A Noise Impact Assessment has been prepared by Sharps Redmore Acoustic Consultants demonstrating that the proposed additional trading hours will not give rise to significant adverse impact. This letter has effectively addressed the previous concerns expressed by residents under LPA ref. 09/00067/VCON, highlighting that extending store hours enables customer demand to be spread throughout the day, thereby smoothing out any spikes in trading and also providing a greater degree of

"natural surveillance" to the subject property. Consideration has also be given to the fact that the unit is located in close proximity to premises with early and late opening hours, including the Morrisons Daily and Henderson Fish Bar and Kebab. Thus, it is not considered that the extended hours will cause any adverse harm to the local area or the amenity of local residents.

On the basis of the above, we respectfully request that planning permission be granted for this Section 73 application to vary Condition 10 (Opening Hours) attached to planning permission ref. DA/08/01602/FUL.

Scope of Application Submission

The following supporting documents have been submitted via the planning portal in support of this application:

- This covering letter produced by ROK Planning;
- The relevant planning application fee of £293.00;
- The completed application forms and Certificates;
- Noise Impact Assessment prepared by Sharps Redmore Acoustic Consultants (dated February 2024);
- Site Location Plan; and
- Copy of original Decision Notice (ref. DA/08/01602/FUL).

I trust that you have all the information you require to validate this application. If, in the interim, you have any queries please do not hesitate to contact either [REDACTED] or myself at this office. I look forward to your formal acknowledgement of the application.

Yours faithfully,

[REDACTED]
Associate Director
ROK Planning Ltd