

3/14/0992/FO – Variation of condition 16 (Opening Hours) of Planning Permission ref 3/10/2047/FO to read "The retail store hereby permitted shall only be open for customers between the 07:00 and 22:00 hours Mondays to Saturdays, 07:00 and 22:00 hours on Bank Holidays and for no more six hours between 07:00 and 22:00 on Sundays" at McMullen's Brewery Site, Hartham Lane, Hertford, Hertfordshire, SG14 1QN for Sainsbury's Supermarket Ltd .

Date of Receipt: 03.06.2014

Type: Variation of condition

Parish: HERTFORD

Ward: HERTFORD - BENGEO

RECOMMENDATION

That subject to the applicant entering into a legal obligation, or providing an acceptable Unilateral Undertaking, pursuant to Section 106 of the Town and Country Planning Act 1990 to cover the following matters

- The continuation of S106 obligations and provisions of the agreements related to the historical permissions at the site ref: 3/10/2047/FO

The Director of Neighbourhood Services be authorised to **GRANT** planning permission subject to the following conditions:-

1. Cycle parking facilities shall be retained in accordance with the approved details on plan 2500 SK 1006E as approved by letter dated 14th May 2012.

Reason: To encourage the use of cycles as means of transport, in accordance with policies TR13 and TR14 and Appendix II of the East Herts Local Plan Second Review April 2007.

2. 231 parking spaces, a designated taxi rank as indicated on plan 2500 SK1008D, shall be retained at all times for use in connection with the development hereby permitted.

Reason: To ensure adequate off street parking provision for the development, in the interests of highways safety, in accordance with policy TR7 and Appendix II of the East Herts Local Plan Second Review April 2007.

3. All hard and soft landscape work shall be carried out in accordance with the approved details, approved by letter dated 18th July 2012, and to a reasonable standard in accordance with the relevant recommendations of

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appropriate British Standards or other recognised Codes of Good Practice. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved, unless the Local Planning Authority gives its written consent to any variation.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscaping in accordance with the approved designs, in accordance with Policy ENV2 of the East Herts Local Plan Second Review April 2007.

4. The planting shall be maintained in accordance with the agreed Landscape Maintenance Plan April 2012, as agreed by letter 14th May 2012, for a minimum of five years from the first use of the store (June 2012)

Reason: To ensure the provision of amenity afforded by the proper maintenance of existing and/or new landscape features, in accordance with policy ENV2 of the East Herts Local Plan Second Review April 2007.

5. The ground floor layout of the store shall be retained in accordance with the approved details on plan 2500 SK1008D as approved by letter dated 14th May 2012, providing open areas behind the shop windows within the north and east elevations of the building. No posters, boards, display equipment or other obstructions shall be placed within the identified shop window areas.

Reason: To ensure that the main building frontages and shop window areas for the new building are attractive and retain transparency in the interest of the appearance of the development in the Conservation Area and in accordance with Policies ENV1, BH6 and STC1 of the East Herts Local Plan Adopted Second Review April 2007.

6. No external loudspeaker systems shall be installed.

Reason: In the interests of amenity of the residents of nearby properties, and in accordance with policy ENV24 of the East Herts Local Plan Second Review April 2007.

7. No deliveries to the site shall take place by vehicles longer than 13.5m. A written record of the time and date of deliveries and vehicle details shall be kept for inspection by the local planning authority on request.

Reason: To mitigate the impacts of deliveries on the environment and in the

interests of highway safety.

8. No more than 20% of the net retail sales area shall be used for the sale of comparison goods.

Reason: To ensure that the impact of the development on the town centre is minimised in accordance with national guidance in PPS4, and policy STC1 of the East Herts Local Plan Second Review April 2007.

Directives:

Summary of Reasons for Decision

East Herts Council has considered the applicant's proposal in a positive and proactive manner with regard to the policies of the Development Plan (Minerals Local Plan, Waste Core Strategy and Development Management Policies DPD 2012 and the 'saved' policies of the East Herts Local Plan Second Review April 2007); the National Planning Policy Framework and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2012 (as amended). The balance of the considerations having regard to those policies and the other material considerations relevant in this case is that permission should be granted.

_____ (204714FO.TH)

1.0 Background

- 1.0 The application site is shown on the attached Ordnance Survey site plan. The site includes the new Sainsbury's food store and its car park which opened in Hartham Lane a little over two years ago.
- 1.1 The development was originally approved in 2010 and members may recall that it followed a Planning Inquiry and a referred decision of the Secretary of State. The objections to traffic congestion of the County Council, as Highways Authority, were upheld by the Inspector and the Secretary of State, but the overall benefits of the development, including the repair and re-use of the Listed Brewery building and the regeneration of this part of the Conservation Area, were considered to outweigh these problems. There was not considered to be any significant impact on the living conditions of nearby residents, although the limited opening hours of the proposed store was a contributing factor in this judgement, and planning conditions to mitigate related impacts were agreed.
- 1.2 While the Brewery is yet to find a new use, the building has been repaired and the area as a whole has been greatly enhanced with new landscaping, enhanced public linkages between the Town Centre and Hartham Common

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- 1.3 including the new riverside walk.
- 1.4 The hours of the store were restricted by planning condition 16 of the 2011 amended permission, and this states that

The retail store hereby permitted shall only be open for customers between 07:00 and 22:00 hours Mondays to Saturdays and for no more than six hours between 07:00 and 22:00 hours on Sundays and Bank Holidays.

Reason: Having regard to the amenities of nearby residents and in accordance with policy ENV24 of the East Herts Local Plan Second Review April 2007.

- 1.5 The application proposes to extend the opening hours of the store from 6 to 15 hours on Bank Holidays only, to opening between 07:00 and 22:00 hours, the usual opening hours for the store. The applicant contends that they are currently at a trading disadvantage with their main local competitor, who is not restricted by opening hours on Bank Holiday, and this limits customer choices. There is no proposed change to Sunday trading hours which restrict opening to six hours only or the general hours of opening.
- 1.6 The application is submitted with an accompanying Noise Assessment.

2.0 Site History

- 2.0 The main relevant planning history for the site in consideration of this application is as follows:-
- 3/08/1528/FP. Mixed use redevelopment of part of the McMullen's Brewery site, comprising a foodstore and conversion of the former brewery building to provide elements of the foodstore, including the cafe, offices and commercial space, community space, associated car parking and landscaping, riverside walk, re-naturalisation of river bank, bridge link to town centre, re-routing of Hartham Lane. Approved (Sec of State), 20 Jan 2010.
 - 3/08/1529/LB: Alterations of listed brewery building. Approved 14 Jan 2009.
 - 3/10/2047/FO: Variation of Condition 39 of planning permission 3/08/1528/FP to allow for alterations to the café area, interpretation centre to compensate for the theft of the copper hop back, associated elevational changes to Hartham Lane, minor alterations to other elevations, alterations to roof lights and changes to service yard. Mixed business/community use at old brewery including use classes B1 and D1. Approved. 17 May 2011.

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- 3/12/0749/AD. Illuminated and non-illuminated signage including 1no.3m Store Totem (internally illuminated), 3no.2m Pedestrian Totem (non-illuminated) 2no.Sainsbury Fascia lettering (internally illuminated) (Amended details). Part permitted. Part refused. Appeal allowed. 15 Jan 2013.

3.0 Consultation Responses

- 3.0 County Highways have no objections to the change. They observe that the worst times for congestion are morning and evening peak hours during the working week, so the worst case scenario is already a reality. Increased shopping hours on bank holidays are not going to result in any worse situation so no significant public highway issues arise.
- 3.1 The East Herts Environmental Health Officer has reviewed the Noise Assessment submitted with the report and comments that the recordings do not indicate noise levels that are likely to cause noise concerns. He has confirmed no record of complaints about lighting or car park disturbance or any history of complaints relating to the operation of the store since opening. He has no objections to the application.

4.0 Hertford Town Council Representations

- 4.1 The Hertford Town Council objects that Sunday and Bank Holiday trading is known to be 10am to 4pm and these times should not be varied. The sensitive location given its proximity to the park and Folly Island make the proposed changes totally unsuitable.

5.0 Other Representations

- 5.1 The application has been advertised by way of press notice, site notice and neighbour notification letters including to all the adjacent properties within Folly Island, Waters Edge and residents in Old Cross and Cowbridge.
- 5.2 No third party letters of representation have been received to the application.

6.0 Policy

- 6.1 The relevant 'saved' Local Plan policies in this application include the following:-
- TR2 Access to New Developments
 - STC1 Development in Town Centres and Edge of Centre

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- ENV1 Design and Environmental Quality
- ENV23 Light Pollution and floodlighting
- ENV24 Noise Generating Development
- ENV25 Noise Sensitive Development

6.2 The National Planning Policy Framework (NPPF) is also a material consideration for this application. In particular the provisions of Paragraph 123 is considered to be of relevance.

6.3 The more recently published National Planning Practice Guidance (NPPG) comments that local planning authorities should not consider noise in isolation from other economic, social or environmental considerations. It advises that authorities should take account of the acoustic environment and consider whether or not a significant adverse effect is occurring or likely to occur.

7.0 Considerations

7.1 The primary reason given for the opening hours planning condition, now proposed for amendment, is that of neighbour amenity. The County Council as Highways Authority have indicated that the change will not result in objection on highways grounds as the worst case scenario of peak hours congestion is already a reality and this application does not impact on the working week. The change does not therefore raise issues that would justify any refusal of the application on highway grounds.

7.2 The main issue to consider, and the stated reason for the opening hours condition, relates to the neighbour amenity question. The impact of the store and its car parking was a key point of consideration at the original application stage.

7.3 Hertford Town Council have objected in fairly strong terms to the proposed change although they make reference to Sunday trading, (hours of which are not being changed), a point that the applicants have sought to clarify in a subsequent submission.

7.4 The Town Council describe the location as sensitive, but in response the applicants refer to a recent appeal decision that related to illuminated signage at the site. The Inspector allowed the appeal observing that the character of the area was a balance of elements but that it had significantly changed to one with a more pronounced retail character.

7.5 Following the store's opening in 2012 some alterations of lighting details were made unilaterally by Sainsbury's as well as changes to the approved

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landscaping to address neighbour objections about lighting intrusion from the adjacent car park. Since then it is understood no further objections to Sainsbury's have been made.

- 7.6 The submitted Noise Assessment identifies that no noise is anticipated that would exceed the British Standard BS 8233 criteria at nearby critical receptors, although a 'slight' impact for residents will be experienced.
- 7.7 Environmental Health have not challenged the noise report and have not objected to the proposal. They have confirmed that since the store opening they have not received any complaints arising from residents about the use of the store or its car park. The car park is regularly used up to 10pm in the evening.
- 7.8 The applicant has referred to the close work that they did with residents to ensure that impacts on amenity were addressed and additional landscaping was carried out. Since then no complaints have been received. I acknowledge all of the above and consider that the proposed change is acceptable, that no significant adverse impacts should arise and additional impacts that may occur are likely to be only modest. In reaching this judgement I give weight to the formal submissions, representations of Environmental Health and the lack of resident's objection.
- 7.9 The issue of landscaping is not the matter to be considered in this application, which is whether the extended hours on Bank Holidays will result in significant adverse noise effects or other disturbance, but it should be noted that some of the landscaping work carried out, which wasn't referred to the local planning authority at the time, replaced a native plant species of hedging to the car park with Evergreen Laurels and this has been subject of objection by the Council's Landscape Officer and the Environment Agency. The matter was referred to Sainsbury's but with no final agreement on a way forward.
- 7.10 The variation of the condition effectively results in a new planning permission being granted under the planning regulations, so those planning conditions that need to be re-imposed are carried forward and a new S106 agreement is needed to ensure the provisions and obligations established to mitigate the impacts of the development continue in place.

8.0 Conclusion

- 8.1 Subject to the re-imposition of necessary planning conditions and the continued S106 obligations for the development, I consider the proposed change to opening hours for Bank Holidays only to be a relatively modest one and an acceptable change having regard to the likely impacts of the

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change.

- 8.2 No adverse impacts on health or quality of life will result and the proposal thereby accords with the provisions of the Local Plan Policy ENV24 and the NPPF. The application is therefore recommended for approval as set out.