

West Wiltshire District Council

Planning Committee

8 May 2008

**Victoria Garage, 36 Victoria Road, Warminster.
Proposed change to condition following resolution to grant
planning permission in principle on 19 April 2007 subject to a
Section 106 Agreement
06/00297/FUL**

1. Purpose

To consider a request by the applicant in respect of this application to vary the wording of Condition 21 relating to the hours of delivery to this development as agreed by this Planning Committee.

2. Background

Members may recall this application for mixed retail, residential and office uses on this former garage site at the junction of Grovelands Way and Victoria Road, Warminster. A Resolution to approve this application was taken by the Planning Committee in April 2007, subject to a number of Conditions (23) and a Section 106 Agreement relating to highway works, education and public open space. This Agreement is still being drafted and a formal decision is therefore pending.

This vacant site formerly comprised a petrol filling station, an MOT Centre, ancillary offices and a convenience store. It is now cleared pending contamination investigation required by a condition of the Resolution, in preparation for its redevelopment with –

- Two retail units and a replacement convenience store with residential accommodation above along the Victoria Road frontage of the site;
- The erection of 12 flats and 4 maisonettes in two separate buildings to the rear of the site.

These two areas are to be separated by a curved access road crossing the site from Victoria Road to Grovelands Way to provide for rear servicing for the retail units and the majority of the car parking for the proposed residential development.

Pending the completion of the Section 106 Agreement, a request has now been made to vary the wording of proposed Condition 21.

In the Council's Resolution of 19 April 2007, this condition reads –

“Delivery and despatch of goods to and from the site shall be limited to between 07.00 hours and 19.00 hours on Mondays to Fridays, 07.00 hours and 19.00 hours on Saturdays and at no time on Sundays and Bank Holidays.”

The request now being made by the applicant is that the restriction on Sunday and Bank Holiday deliveries is removed and that the condition is re-worded as follows:

“Delivery and despatch of goods to and from the site shall be limited to between 07.00 and 19.00 hours on Mondays to Sundays, inclusive of Bank Holidays.”

3. Key Issues

In originally imposing this condition, the Council's concern was to preserve the amenities of the surrounding residential properties. Advice from the Environmental Health Officer at the time was that the following delivery restriction be applied:

“In order to safeguard the amenities of the area in which the development is located deliveries and despatches of goods to and from the site shall be limited to between 07.00 hours and 19.00 hours on Mondays to Saturdays and 10.00 hours to 16.00 hours on Sundays and Bank Holidays.”

A more restrictive condition to exclude Sundays and Bank Holidays was recommended by your officer following discussions with the applicant and the expectation that such Sunday and Bank Holiday deliveries would not, at that time, be a likely consideration. The situation has now altered and appears to be a fundamental requirement of all potential occupiers of the convenience store.

The reasoning and justification for the proposed development is given by the applicant as follows:

“My client is now at an advanced stage with securing an occupier for the convenience store which will effectively replace the Cost-Cutter convenience store which previously operated at this site. Given the modest size of the approved store and its location, mixed in with residential development, it is clearly intended to operate as a local convenience store. Indeed, without exception, those operators in discussion with my client are all proposing a convenience store operation. They are also, in common with each other, adamant that in order to meet customer expectations for fresh produce and daily papers, deliveries will be required on a daily basis, including Sundays and Bank Holidays.”

In reconsidering this matter we would ask you to have regard to the following:

- The critical nature of this restriction to the implementation of the whole scheme in its entirety
- Comparison with the unrestricted activities associated with the former petrol station and Cost Cutter Store.
- Customer Expectations
- The lack of restrictions on the nearest competing local convenience store at Thornhill Road
- Advice on the use of conditions

The critical nature of this restriction to the implementation of the whole scheme in its entirety

First and foremost, it is clear that for the scheme as a whole to be implemented ie for the residential accommodation and the convenience store to be provided, an appropriate operator for the store needs to be contractually committed to occupying it. It is also clear from my client's negotiations with potential occupiers that such a commitment will not be entered into by an operator seeking to run a local convenience store where fresh produce cannot be delivered on a daily basis.

The Condition, as it stands, would have the effect of blocking any contractual commitment being entered into by a local convenience store operator and would thereby render the proposed scheme unviable. This is clearly a material consideration in three main respects.

Firstly, both national guidance and the Local Plan are broadly supportive of the provision of local shopping facilities close at hand to meet a local community's day-to-day needs without the need to travel far (Ref PPS 6 Paragraphs 2.55 to 2.58 and WWDLP Paragraph 3.5.20).

Secondly, the proposed scheme would also make a valuable contribution towards the Council's acknowledge reliance on unidentified 'brownfield' windfall dwelling completions in the urban areas.

And thirdly, bringing forward the redevelopment of this visually prominent site will also bring about a significant improvement to the visual amenities of the area in contrast to the previously vacant buildings and recently cleared site.”

Comparison with the unrestricted activities associated with the former petrol station and Cost Cutter Store.

The impact of any Sunday or Bank Holiday deliveries needs to be compared with the previous activities at the site where, it is understood, the petrol filling station, MOT Centre and the convenience store operated

without any restrictions on delivery times.

Customer Expectations

The insistence of local convenience store operators on being able to re-supply local community stores with fresh produce 7 days a week is largely a reflection of customer expectations. These types of stores offer a particular range of products geared to meeting day-to-day needs and as such, there is a clear expectation that this will include fresh produce. Indeed, the definition of convenience retailing set out in PPS6 includes the provision of 'everyday essential items including food ... and papers'. A restriction on Sunday and Bank Holiday deliveries would effectively prevent these expectations being met on a consistent basis.

Lack of Restrictions on the Nearest Competing Local Convenience Store at Thornhill Road

It is understood that the closest alternative local convenience store at Thornhill Road, which is surrounded by residential development, is not the subject of the same restrictions which would prevent the re-supply of local produce on Sundays and Bank Holidays. The advantages, in terms of convenience of opening a replacement store on the application site would be largely negated if customers were to be routinely forced to travel further a field on Sundays and Bank Holidays, and indeed on the following mornings, to make purchase of fresh everyday items of produce.”

In assessing the merits of this request, the following points are considered relevant –

- The Environmental Health Officer has been consulted on the current request and has commented as follows:

“ I note that our initial recommendation to the Planning Department was the following:

‘In order to safeguard the amenities of the area in which the development is located deliveries and despatches of goods to and from the site shall be limited to between 0700 hrs and 1900 hrs on Mondays to Saturdays and 1000 hrs to 1600 hrs on Sundays and Bank Holidays’

Our main concern is late evening and early morning and I therefore, have no problem in agreeing in altering this to the proposed condition of 0700 - 1900 hrs Monday - Sunday inclusive”

It is a point to note that the Environmental Health Officer originally had no objection to the principle of deliveries on Sundays and Bank Holidays and subsequently has no objection to the proposed modification of hours on those particular days.

- The previous CostCutter convenience store on this site, located even

closer to existing properties than is now proposed, appears to have been operating without any restriction on delivery times. Although this use has grown considerably from the original, much smaller garage shop many years ago, had that use continued instead of the current application, then delivery hours would have been longer and potentially of greater nuisance than is now being proposed.

The major difference between the two schemes is that the proposed development incorporates rear servicing (at the insistence of the Highway Authority) whereas the original store would have been serviced from the Victoria Road frontage. Any additional nuisance therefore is more likely to have an impact on proposed residents new development rather than existing properties surrounding the site.

It is, of course, recognised that any future residents would presumably be aware of the 7 day a week delivery arrangement before moving into the development.

- During negotiations on the original application with both the Highway Authority and Environmental Health Officer, the scale of deliveries to the convenience store was anticipated to be a single half-hour delivery per day. In view of the limited floor area of the convenience store, approx 350 sq ms, this is not unrealistic. At that level, the potential nuisance might be regarded as limited, although Members should be aware that there is no proposed condition specifically limiting the number of daily deliveries.
- Permitted hours of opening, controlled by proposed Condition 20, are limited to between 07.00 and 22.00 hours without variation on Sundays and Bank Holidays. Since no daily differentiation is being made as regards the use of the site, to impose a variation with regard to deliveries might be regarded as inconsistent.
- Consultations as part of the original application generated 8 letters of objection from nearby residents; of those received, only half referred to hours of opening and delivery, and their associated nuisance as part of their concerns.
- In his supporting letter, the applicant refers to unlimited delivery times at another convenience store nearby in Thornhill Road (this Tesco Express, together with a hairdresser and 2 no.take away premises is located approx 0.8km to the south) and the disadvantages this would have for both potential site operators and customers in terms of choice and availability of genuinely fresh produce. Neither concerns are, of course, planning matters, although clearly there is a desire to ensure that this development succeeds for the benefit of the community at large.

4. Conclusion

The Council's primary concern in imposing a condition limiting delivery hours was "in order to safeguard the amenities of the area in which the

development is located.” This is to accord with Policy C38 of the District Plan which states that –

“Proposals will not be permitted which would detract from the amenities enjoyed by, or cause nuisance to, neighbouring properties and uses. Consideration will be given to such issues as any loss of privacy or overshadowing, levels or types of traffic generation, the storage of hazardous materials, the generation of unpleasant emissions such as odour, fumes, smoke, soot, ash, dust or grit, the extension of existing un-neighbourly uses and the creation of an untidy site.”

Advice from the Environmental Health Officer, whose remit includes noise nuisance, is that the extended hours now proposed would not be of concern – his “main concern is late evening and early morning” and deliveries between 07.00 and 19.00 hours would, in his view be acceptable.

In the light of this advice, the limited size of the convenience store, the scale and frequency of deliveries to realistically serve the development, the proposed opening hours and the previous unrestricted use on the site, your officer is recommending a revision to the wording of Condition 21 as requested.

5. Recommendation

That planning permission be granted at a future date in the event of the Development Control Manager being satisfied as to the prior completion of a Legal Agreement relating to highway works, education and public open space, and the previously agreed 23 conditions, with the revision to Condition 21 as follows:

“Delivery and dispatch of goods to and from the site be limited to between 07.00 hours and 19.00 hours on Mondays to Saturdays, inclusive of Bank Holidays.”

All other conditions and informatives agreed by the Committee in the Resolution in the 19 April 2007 will continue to apply.

6. Financial Implications:

None.

7. Human Rights

No issues to report.

8. List of Background Papers

Planning application File 06/00297/FUL
Planning Committee Papers for meeting 19 April 2007 – Item 2

West Wiltshire District Plan 1st Alteration 2004.

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Manager

01 May 2008