

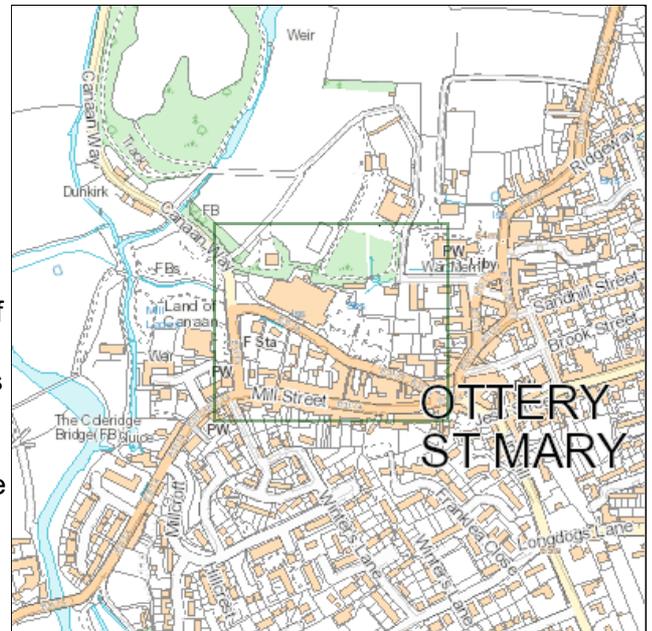
**Ward** Ottery St Mary

**Reference** 20/1953/VAR

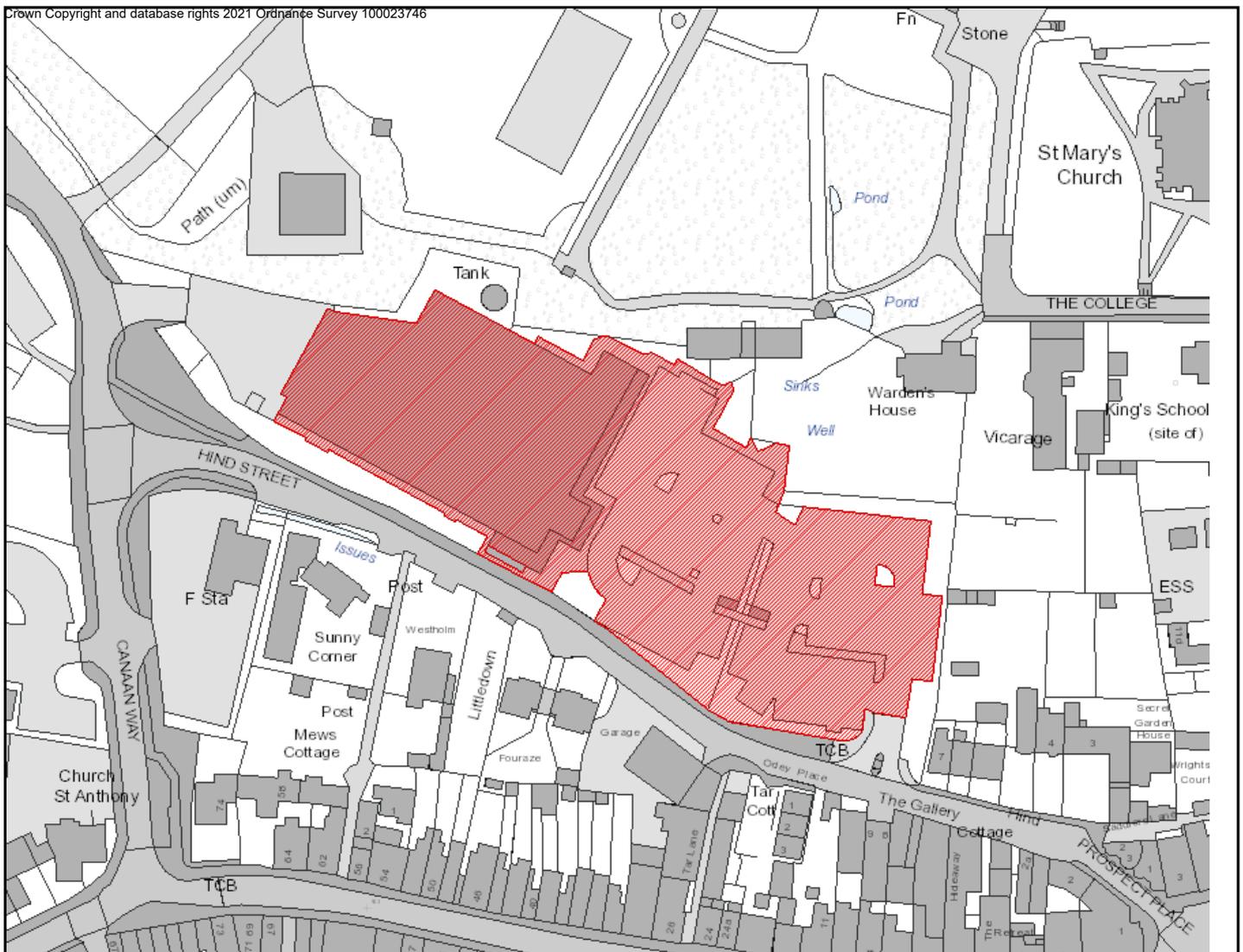
**Applicant** Sainsbury's Supermarkets Limited

**Location** Sainsburys Hind Street Ottery St Mary EX11 1BW

**Proposal** Variation of condition 14 (yard usage hours) of planning permission 09/2354/MFUL (Erection of class A1 food store, customer car parking, service access and associated development, as varied by 11/1173/VAR) to allow use of the yard from 6am (instead of 7am) Monday to Saturday for a temporary period of one year from the date of decision, formally extending the earlier start which began temporarily on 3 August 2020 as a result of the Government's response to the Coronavirus pandemic



**RECOMMENDATION: Approval with conditions and subject to a linking agreement**



		<b>Committee Date: 15<sup>th</sup> February 2021</b>
<b>Ottery St Mary (Ottery St Mary)</b>	<b>20/1953/VAR</b>	<b>Target Date: 10.12.2020</b>
<b>Applicant:</b>	<b>Sainsbury's Supermarkets Limited</b>	
<b>Location:</b>	<b>Sainsburys Hind Street</b>	
<b>Proposal:</b>	<b>Variation of condition 14 (yard usage hours) of planning permission 09/2354/MFUL (Erection of class A1 food store, customer car parking, service access and associated development, as varied by 11/1173/VAR) to allow use of the yard from 6am (instead of 7am) Monday to Saturday for a temporary period of one year from the date of decision, formally extending the earlier start which began temporarily on 3 August 2020 as a result of the Government's response to the Coronavirus pandemic</b>	

**RECOMMENDATION: Approval with conditions and subject to a linking agreement**

#### **EXECUTIVE SUMMARY**

**This application is before Members because the recommendation is contrary to the view of one of the Ward Members.**

**The application seeks permission to extend the hours during which the service yard at the rear of the Sainsbury's store may be used. Currently the permitted start time is 7am and the application seeks a start time of 6am from Monday to Saturday, leaving Sundays unchanged.**

**The reason for the application is to facilitate stocking of the store before it opens, which assists with social distancing. It follows a March 2020 Written Ministerial Statement advising Local Planning Authorities not to undertake planning enforcement action which would result in unnecessarily restricting deliveries of food and other essential deliveries during the period of disruption caused by the coronavirus.**

**Initially a permanent change to the operating hours was sought but the application is now for a temporary period so that the effects of the change can be assessed.**

**A condition of the original planning permission requires the yard to be operated in accordance with noise mitigation measures agreed at the time. However, owing to the earlier start and in the interests of the living conditions of local residents, a**

**new set of measures are required. These should be based on the principles of the Quiet Deliveries Good Practice Guidance produced by the Department for Transport. With such measures in place the proposal is unlikely to adversely affect the living conditions of local residents.**

**Subject to the implementation of a Quiet Delivery Scheme and a time limited permission of one year, the proposal is acceptable.**

## **CONSULTATIONS**

### **Local Consultations**

#### Ottery St Mary - Cllr Peter Faithfull

This application is in my ward and my preliminary view, based on the information presently available to me is that it should be refused.

Sainsbury's delivery yard is in a residential area, in close proximity to quite a number of residents homes. To date no residents have been consulted on this matter, only a notice at the shop. Delivery times were laid down for a reason, That the residents should be allowed an appropriate level of quiet in the early mornings. I do not consider the present situation is justified grounds to make early deliveries permanent.

These are my views, based on the information presently available to me. I reserve my right to change my views in the event that further information becomes available to me.

#### Parish/Town Council

08/10/2020 - Ottery St Mary Town Council supports the temporary use of the yard from 6am for a three month trial period, in order that the applicant can consult local residents for their views on this

07/01/20201 - The Town Council supports this application

### **Technical Consultations**

#### Environmental Health

I have considered the application 20/1953/VAR and I recommend approval with conditions:

Prior to the commencement of night-time deliveries (06.00 - 07.00) the applicant must provide a Quiet Deliveries Scheme (QDS) for deliveries arriving, unloading and leaving the store. The QDS shall be based on the Department for Transport's 'Quiet Deliveries Good Practice Guidance' document covering the key principles and processes for retailers.

The QDS shall be submitted to and agreed in writing with the Local Planning Authority prior to the commencement of any night-time deliveries. Night-time deliveries shall only be carried out in accordance with the approved QDS.

Reason: To protect the amenity of local residents from excessive noise.

### Other Representations

One objection has been received from the occupier of Ottery End raising the following concerns:

- The delivery vehicles are clearly audible and cause early waking, especially if they keep their engines running. At 7am that is just about acceptable. At 6am it would mean one less hour's sleep.
- Loss of sleep impairs decision-making ability in the day time through fatigue.
- The supermarket has functioned perfectly well with 7am as their yard opening time until now.

### PLANNING HISTORY

<b>Reference</b>	<b>Description</b>	<b>Decision</b>	<b>Date</b>
09/2354/MFUL	Erection of class A1 food store, customer car parking, service access and associated development.	Approval with conditions	12.08.2010
11/1173/VAR	Minor material amendment to planning consent 09/2354/MFUL (creation of Class A food store) comprising of the removal of biomass boiler, repositioning of sprinkler tank, alterations to car park layout, reduction in area supermarket building (by 18 sq m), creation of raised walkway, alterations to soft landscaping and fenestration alterations and repositioning of Japanese Bell housing.	Approval with conditions	05.10.2011

### POLICIES

#### Ottery St Mary and West Hill Neighbourhood (Made)

Policy NP18: Supporting Ottery St Mary as the Economic Focus for the Parish

Policy NP22: Ottery St Mary Conservation Area

#### Adopted East Devon Local Plan 2013-2031 Policies

Strategy 6 (Development within Built-up Area Boundaries)

D1 (Design and Local Distinctiveness)

EN10 (Conservation Areas)

EN14 (Control of Pollution)

### **Site Location and Description**

The Sainsbury's store in Ottery St Mary is located in the town centre and is accessed from Hind Street. This application relates to the service yard at the rear of the store which is accessed from Canaan Way. A public car park, doctors surgery, fire station and dental surgery occupy the adjacent land to the west and south of the yard, with the store itself on the east side. The extensive grounds of Chanters join the north boundary. Beyond this to the North West there are a small number of dwellings, the nearest being just over 100m away. At a similar distance to the south there are more numerous properties on Mill Street and connected roads.

### **PROPOSAL**

This application seeks permission to extend the hours during which the service yard at the rear of the Sainsbury's store may be used. Currently the permitted start time is 7am and the application seeks a start time of 6am from Monday to Saturday, leaving Sundays unchanged. The relevant condition states:

The use of the yard for unloading goods, including manoeuvring of delivery vehicles shall be restricted to the following hours:

Mondays to Saturdays 07:00 - 22:00

Sundays 09:00 - 17:00.

(Reason - To ensure that potential noise emanating from the site use does not unreasonably affect the amenity of nearby occupiers.)

### **Background**

On 13 March 2020 the Secretary of State for Housing, Communities and Local Government made a statement to the House of Commons to enable retailers of food, sanitary and other essential items to increase the frequency of deliveries to their stores to support the response to Covid-19. Acknowledging that many stores are subject to controls, he said "The likely pressures on driver capacity mean additional flexibility is needed so that retailers can accept deliveries throughout the day and night where necessary." He went on to say that Local Planning Authorities when exercising their enforcement powers should "ensure planning controls are not a barrier to food delivery over the period of disruption caused by the coronavirus." He concluded "The Government will review the need for the flexibility outlined in this statement after the pressure from the coronavirus has reduced, and it is the intention to withdraw it once the immediate urgency has subsided."

In light of this, from 3 August 2020 Sainsbury's in Ottery St Mary began receiving deliveries from 6am rather than 7am. This was around the time that the Argos shop opened within the store.

The supporting information for this application has explained that the extended hours are "to assist providing enough time to off-load the delivery from the lorry to stack shelves and to put out the fresh stock and perishables before the customers arrive at 8am." It goes on to say

"This change with the deliveries arriving one hour earlier has had multiple benefits for the operation of the store. The earlier deliveries have allowed the store to more easily meet the increased demands from customers by providing an improved system of stock management and distribution. Employees are better able to stock shelves before customers arrive at 8am, which helps meet customer expectations and assists with social distancing being achieved within the store at the current time."

Initially the proposal was for a permanent change to the opening hours but in response to concerns raised by the Town Council a compromise was sought with the applicant. Hence the application now seeks a temporary permission for a period of one year to allow the impacts to be assessed.

## **ANALYSIS**

The main issue in the consideration of this application is whether the extended hours would be harmful to the living condition of local residents.

Being located within the town centre, the store is close to many residential properties on Hind Street, Mill Street and Mill Stream Court, all of which lie to the south of the store, and a smaller number of properties around Dunkirk to the North West.

Public consultation has led to one objection from the occupant of a property just beyond the Canaan Way public car park, as well as to concerns from one of the Ward Members. No other objections have been received from local residents and the revised proposal is supported by the Town Council. It is also noted that no complaints were received in the weeks prior to the submission of the application when 6am deliveries were already being received. Even so, the potential for adverse impacts must be properly assessed.

Night time hours for the purposes of Environmental Health assessment are 11pm to 7am and during these hours it is reasonable to expect less noise and disruption than at other times. Nevertheless in a built-up area there will inevitably be some night time noise and activity arising from the density of people occupying the area, traffic on the road network, pubs closing, etc. This is in contrast to the level of activity one might expect in a more rural location.

Since 2010 the Government has promoted a Quiet Deliveries Scheme (QDS) seeking to "allow goods to be delivered to businesses outside normal hours, using techniques to minimise noise and disturbance. The aim of shifting deliveries to other times is to improve delivery schedules and reduce congestion and the impact of carbon emissions in peak hours."

This approach forms the basis of the Environmental Health Officer's response to the proposal which is that subject to the implementation of a QDS, the extended operating hours would not adversely impact on the living conditions of local residents.

Measures that could form part of the QDS include:

- Ensure delivery bay doors, gates and shutters are well maintained to minimise noise when opening and closing
- Ensure staff do not shout or whistle to get the attention of the driver or store employees
- Engines should be switched off immediately when not manoeuvring, however, try to minimise start-ups and avoid over-revving
- When working in the vehicle load space avoid banging cages into the vehicle walls

Comprehensive advice is given in the Quiet Deliveries Good Practice Guidance.

For residents living in close proximity to the site, including those working non-standard hours or for whom it is important that sleep is not disturbed, these measures should be sufficient to avoid an adverse impact. Furthermore, the start time would revert to 7am after a year if the Ministerial Statement is no longer in force. If at that stage a permanent permission is sought then it would be with the benefit of the knowledge gained during the initial period.

Obviously the benefits from the proposal in terms of continued and safe deliveries to the store during the Coronavirus pandemic weighs heavily in favour of the proposal.

### **Other matters**

The existing permission is subject to a condition limiting noise from plant such as ventilation, refrigeration and air conditioning equipment. During the hours of 11pm to 7am there are stricter controls than at other times and these controls would remain in place.

A further condition already requires compliance with 'Service Yard Mitigation and Management' measures in respect of noise. However, as an extension of the working hours is now sought, it is reasonable, in accordance with the Environmental Health Officer's comments, to require a new Quiet Delivery Scheme.

The proposal would preserve the character and appearance of the conservation area within which the site is located.

The original permission was granted subject to a S106 agreement and to ensure that this remains in effect, a linking agreement is required.

### **CONCLUSION**

Subject to the implementation of a Quiet Delivery Scheme and a time limited permission of one year, the proposal should adequately protect the amenity of nearby

residents, allow continued and safe supply to the store and as such is considered to be acceptable.

## **RECOMMENDATION**

APPROVE subject to a linking agreement and the following conditions:

1. The land to which this planning permission relates is outlined in red on the location plan (drawing number PL100) received on 25 November 2009.  
(Reason - For the avoidance of doubt.)
2. No lighting columns, bollard lights or security lights shall be erected within the site or fixed to the buildings or land without the prior written consent of the Local Planning Authority.  
(Reason - In the interests of preventing light pollution and protecting the amenity of nearby residents in accordance with Policies D1 - Design and Local Distinctiveness and EN14 - Control of Pollution of the East Devon Local Plan 2013-2031.)
3. Any plant (including ventilation, refrigeration and air conditioning) or ducting system to be used in pursuance of this permission shall be so installed and be so retained and operated so that the noise shall not exceed noise rating curves as follows:  
Bedrooms Noise Rating Curve NR25 (2300 to 0700 hours)  
Living Rooms Noise Rating Curve NR35 (0700 to 2300 hours)  
(Noise rating curves should be measured as a 15 minute linear Leq at the octave band centre frequencies 31.5Hz to 8kHz as defined by BS8233 Guidance on Sound Insulation and Noise Reduction for Buildings and the Chartered Institute of Building Service Engineers (CIBSE) Environmental Design Guide 2015).  
(Reason - To ensure the noise from plant does not unreasonably affect the amenity of nearby occupiers in accordance with Policies D1 - Design and Local Distinctiveness and EN14 - Control of Pollution of the East Devon Local Plan 2013-2031.)
4. The use of the yard for unloading goods, including manoeuvring of delivery vehicles shall be restricted to either the following hours:  
Mondays to Saturdays 07:00 - 22:00  
Sundays 09:00 - 17:00; or  
for a period of no longer than one year from the date of this decision, and only if a Quiet Deliveries Scheme (QDS) has been submitted to and approved in writing by the Local Planning Authority and the yard is operated in accordance with the approved QDS, the following hours:  
Mondays to Saturdays 06:00 - 22:00  
Sundays 09:00 - 17:00.  
The QDS shall be based on the Department for Transport's 'Quiet Deliveries Good Practice Guidance' document covering the key principles and processes for retailers.  
(Reason - To ensure that potential noise emanating from the site use does not unreasonably affect the amenity of nearby occupiers in accordance with

Policies D1 - Design and Local Distinctiveness and EN14 - Control of Pollution of the East Devon Local Plan 2013-2031.)

5. The net sales area of the building hereby permitted shall not exceed 1,850 sq.m. of which no more than 20% of the net sales area shall be for the sale of comparison goods.  
(Reason - To define the permission in the interests of minimising the impact of the development on the town centre in accordance with Policy E11 - Large Stores and Retail Related Uses in Area Centres of the East Devon Local Plan 2013-2031.)
  
6. When the QDS referenced in condition 4 of this planning permission is not in effect, the service yard and loading/unloading area shall be operated at all times in accordance with the 'Service Yard Mitigation and Management' measures identified within Section 6 of the Noise Assessment received 25 November 2009.  
(Reason - In the interests of reducing noise and disturbance from the service yard to benefit the amenity of nearby occupiers in accordance with Policies D1 - Design and Local Distinctiveness and EN14 - Control of Pollution of the East Devon Local Plan 2013-2031.)

Plans relating to this application:

See condition 1.

List of Background Papers

Application file, consultations and policy documents referred to in the report.