

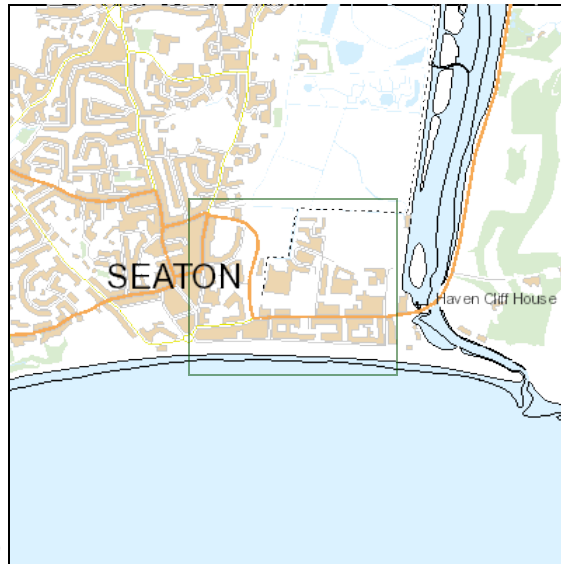
Ward Seaton

Reference 21/2219/VAR

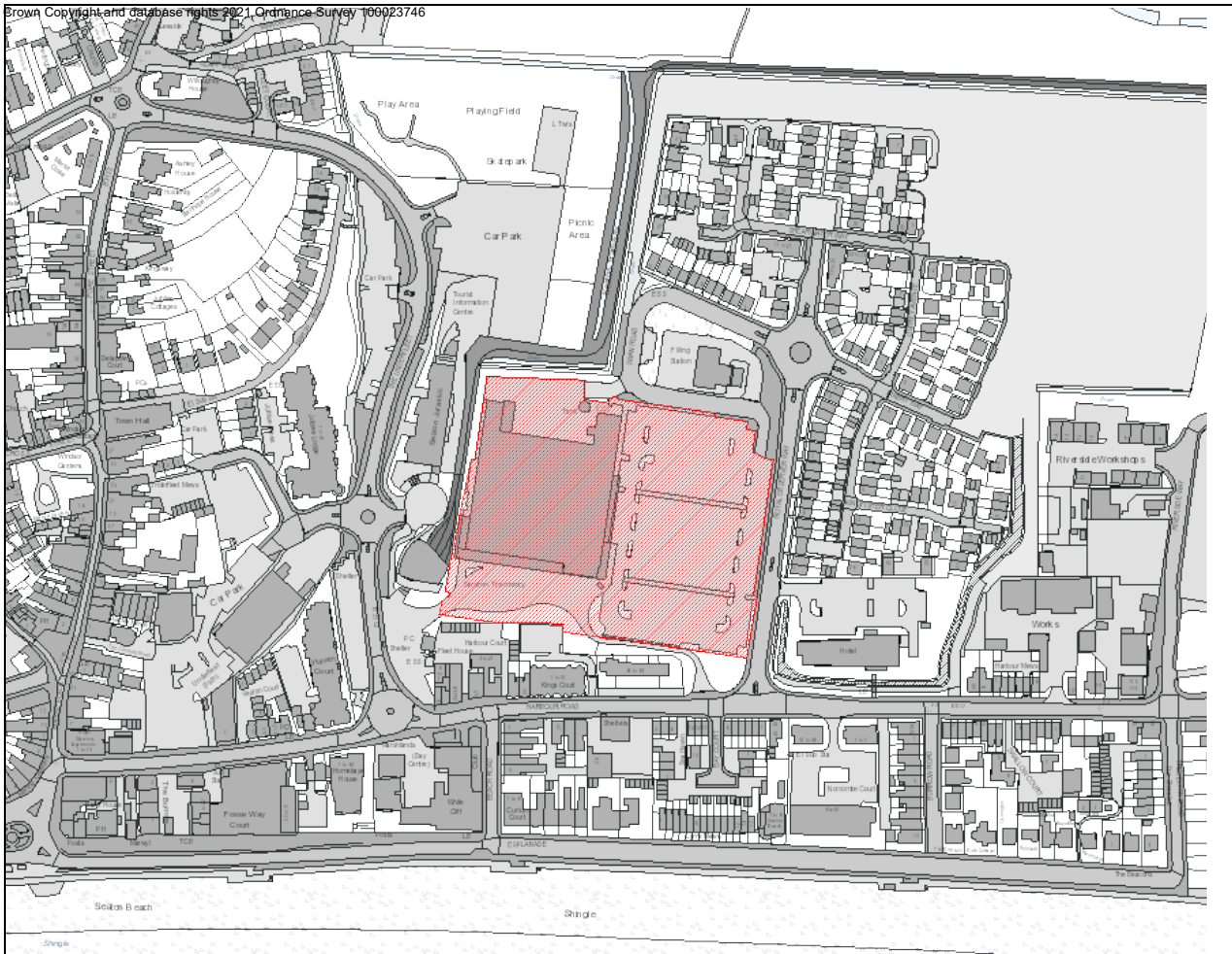
Applicant Tesco Stores Ltd

Location Tesco Stores Ltd Swan Road
Seaton Devon EX12 2US

Proposal Variation of condition 17 (operating hours) of planning permission 09/0019/MFUL (Erection of retail store (5,996 sq m gross) with petrol filling station, other retail units (633 sq m gross) with assorted car parking, pedestrian and vehicular and vehicular access and landscaping) to allow store servicing, deliveries and associated activities from 5am (instead of 7am) Monday to Saturday



RECOMMENDATION: Approval with conditions and subject to a linking agreement



		Committee Date: 24.11.21
Seaton (Seaton)	21/2219/VAR	Target Date: 16.11.2021
Applicant:	Tesco Stores Ltd	
Location:	Tesco Stores Ltd Swan Road	
Proposal:	Variation of condition 17 (operating hours) of planning permission 09/0019/MFUL (Erection of retail store (5,996 sq m gross) with petrol filling station, other retail units (633 sq m gross) with assorted car parking, pedestrian and vehicular and vehicular access and landscaping) to allow store servicing, deliveries and associated activities from 5am (instead of 7am) Monday to Saturday	

RECOMMENDATION: Approval with conditions and subject to a linking agreement

EXECUTIVE SUMMARY

This application is before Members because the development is major development and the recommendation is contrary to the view of the Town Council.

The application seeks permission to extend the hours during which deliveries to the store may take place. Currently the permitted start time is 7am and the application seeks a start time of 5am from Monday to Saturday, leaving Sundays unchanged. The reason for the application is to allow for two early morning deliveries of fresh and perishable goods to the store so that the shelves can be fully stocked during peak morning trading times.

The proposal 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.

Whilst residents have tolerated night time deliveries during this period, a number of objections have been received from people who experience disturbed sleep due to the lorry movements and unloading. Notwithstanding this, the Environmental Health Officer considers that the implementation of a Noise Management Plan adopting the principles of the Government's Quiet Deliveries Scheme would be sufficient to address local concern.

To enable the effectiveness of the Noise Management Plan to be assessed, it is recommended that a temporary permission be granted for a period of one year. Subject to the implementation of a Noise Management Plan and a time limited permission of one year, the 5am start is acceptable.

CONSULTATIONS

Local Consultations

Parish/Town Council

In light of the number of objections received to the planning application for the variation of condition 17 (operating hours) of planning permission 09/0019/MFUL (Erection of retail store (5,996 sq. m gross) with petrol filling station, other retail units (633 sq. m gross) with assorted car parking, pedestrian and vehicular and vehicular access and landscaping) to allow store servicing, deliveries and associated activities from 5am (instead of 7am) Seaton Town Council would support a compromise of deliveries commencing at 6.00am with a maximum of two deliveries only between 6.00am and 7.00am.

Technical Consultations

Environmental Health

I have considered the application 21/2219/VAR and I recommend approval with conditions:

Prior to extending the hours of night-time deliveries, a Noise Management Plan (NMP) (based on the recommendations of the applicants' noise assessment) will be submitted for approval by the Local Planning Authority (LPA). On written approval, the NMP will be implemented and operated during any night-time deliveries. The NMP must detail the methods by which the stores management will systematically assess, reduce and prevent noise emissions from HGV vehicle movements and during the delivery process, through operational managerial techniques and abatement technologies. The NMP will identify and employ appropriate measures to minimise the generation of noise including the provision of a Quiet Deliveries Scheme (QDS) for deliveries approaching the store, arriving at the service yard, 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 NMP will also cover HGV vehicle movements along Royal Observer Way and Swan Road.

Other Representations

Ten objections have been received raising the following concerns:

- Deliveries wake children up
- The noise activates the baby monitor
- A 5am start is unreasonable and unsociable
- People have not complained because late night deliveries were tolerated during the pandemic
- Have not been able to have windows open at night
- The gates to the yard have no acoustic protection

- Light pollution from the yard impacts residents and wildlife
- Vehicles leave their engine and refrigerator running in the yard and when queued or parked outside
- The tannoy is used before 7am
- Moving cages is noisy
- There is already excess noise from boy racers and the bus station
- Sound reverberates between the houses
- Earlier deliveries means earlier staff traffic as well

PLANNING HISTORY

Reference	Description	Decision	Date
09/0019/MFUL	Erection of retail store (5,996 sq m gross) with petrol filling station, other retail units (633 sq m gross) with assorted car parking, pedestrian and vehicular and vehicular access and landscaping	Approval with conditions	04.11.2010
11/1809/FUL	Amendments to planning permission 09/0019/MFUL to include revised position of ATM, landscape reconfigurations to car parking layout including provision of trolley bays and regularisation of works to southern boundary	Approval with conditions	10.10.2011
11/2134/FUL	Construction of "click and collect" unit within supermarket car park	Approval with conditions	17.11.2011
14/0449/FUL	Construction of canopy and kiosk to provide car wash facilities	Approval with conditions	26.03.2014
16/2104/FUL	Proposed jet wash and ancillary works	Approval with conditions	23.11.2016

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies
 Strategy 6 (Development within Built-up Area Boundaries)
 D1 (Design and Local Distinctiveness)

EN14 (Control of Pollution)

Government Planning Documents

NPPF (National Planning Policy Framework 2021)

National Planning Practice Guidance

Site Location and Description

The Tesco Store occupies a site to the east of the Seaton town centre. Seaton Tramway and Seaton Jurassic lie to the west and the store's car park is to the east with a fuel filling station at its northern end. The service yard is on the north side of the store and is accessed from Royal Observer Way and Swan Road where there are numerous dwellings fronting the road. There are also houses and flats on The Underfleet and Harbour Road which have an outlook towards the store.

The site is not subject to any landscape or heritage designations but it is within the designated 'Town Centre Shopping Area'.

Proposal

This application seeks permission to permanently extend the hours during which the service yard at the rear of the Tesco store may be used. Currently the permitted start time is 7am and the application seeks a start time of 5am from Monday to Saturday, leaving Sundays unchanged. In addition it is proposed to limit activity during the extended period by only proposing a maximum of two deliveries between 5am and 7am.

The relevant condition currently states:

17. Prior to the opening of the store and petrol filling station details of the times of operation including times for service deliveries and operation of the grocery delivery and other on line delivery services shall be submitted to and agreed in writing with the Local Planning Authority. The store and associated business elements shall not operate otherwise than in strict accordance with the approved details unless otherwise agreed in writing with the Local Planning Authority. (Reason - In the interests of local residential amenities.)

The following times were subsequently agreed:

1. Store Servicing, deliveries and associated activities - 07.00-22.00 Monday to Saturday, 09.00-22.00 on Sundays.
2. Petrol Filling Station 06.00-24.00 on any day, unmanned pumps 00.00-06.00.
3. Store Trading, Home Shopping and car park - 07.00-24.00 on any day. Lights to be dimmed in the store and turned off elsewhere by 00.30.
4. Recycling Facilities, Waste and other collections 07.00-18.00 Monday to Saturday.

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 the store began receiving deliveries outside the permitted hours. Indeed, the store's record of deliveries for the period 25 November 2020 to 30 January 2021 shows deliveries being received at all hours of the night as well as during the day. On most days there were two or three deliveries in a 24 hour period, one or two of which were outside the permitted times each day. The record also shows that deliveries were received every day except 6 and 25 December.

The supporting information for this application has explained that the extended hours are "to allow for two early morning deliveries of fresh and perishable goods to the store so that the shelves can be fully stocked during peak morning trading times".

It is of course relevant to note that there is a national shortage of HGV drivers impacting upon the delivery of goods and in the short-term whilst these shortage exist, this also weighs in favour of the proposal, at least on a short-term basis.

ANALYSIS

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

Impact upon residents and justification

Support from Central Government to the relaxation of delivery hours during the pandemic is clear and the national shortage of HGV drivers and the impact upon deliveries is also material to the application and provides the applicant with some justification to amend the hours. As does the desire for them to deliver fresh stock in time for morning peak trade.

This support does however need to be balanced against any impacts upon the amenity of nearby residents.

Being located within the town, the store is close to many residential properties on The Underfleet, Harbour Road, Royal Observer Way and Swan Road.

In light of the opportunity presented by the Government's temporary relaxation of restrictions, the applicant has undertaken a noise assessment, focussing on the nearest properties in Royal Observer Way and Swan Road. The assessment is based

on a survey undertaken on 26 February 2021 when a delivery vehicle arrived just before 5am and then left just after 6am having offloaded its groceries.

Noise levels were measured simultaneously in the delivery yard and outside 12 Royal Observer Way. Whilst there were noise peaks outside the residential property, these were attributed to passing vehicles and seagulls rather than any noise in the yard. Within the yard noise peaks were caused by the arrival and departure of the delivery vehicle and the movement of empty cages for reloading onto the delivery wagon. Having regard to these observations the assessment concludes:

"Clearly the arrival and departure of the delivery vehicle are necessary components of the delivery process, however, the movement of empty cages within the open areas of the service yard, and reloading of empty cages onto a delivery vehicle at night are not. These practices should not therefore be undertaken at any time during the night time period (2300 to 0700 hours). Empty cages required for use by the night shift should be moved into the store prior to 2300 hours; empty cages should only be returned on delivery vehicles occurring during the daytime."

To secure these restrictions, and having regard to a lack of recorded complaints from local residents, it recommends the imposition of a condition requiring a noise management plan. This is in line with the comments from the Environmental Health Officer.

However, public consultation on this application has led to ten objections from local residents and a common remark is that residents have displayed good will towards the store during the pandemic by tolerating the late night noise disturbance and not making complaints. Had the circumstances not been so unusual they say that they would have complained about disturbed sleep and a lack of consideration for their amenity by the store and delivery drivers.

The Town Council, taking on board the objections from local residents, has concluded that they would support a compromise of deliveries commencing at 6.00am with a maximum of two deliveries only between 6.00am and 7.00am. This would be in line with the recent variation granted to Sainsbury's in Ottery St Mary to allow a 6am start for a trial period of one year, subject to implementing a noise management plan based on the Government's Quiet Deliveries Scheme. This position is appreciated.

Since about 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."

Measures that could form part of the noise management plan 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

Further measures are listed in the Quiet Deliveries Good Practice Guidance and are similar to the measures listed in the applicant's noise assessment.

In the Sainsbury's case the applicant applied for a 6am start whereas in this case the application is for a 5am start. In both cases there has been no objection from the Environmental Health Officer, subject to a noise management plan being implemented. It is also noted that, like the Sainsbury's application, the applicant is willing to accept a temporary one year permission so that the effectiveness of the noise management plan can be assessed at a later date. Whilst the Town Council's suggestion of a 6am start would be in line with the permission granted in Ottery St Mary, the lack of objection from the Environmental Health Officer to a 5am start means that it would be difficult to justify refusal of the application on the basis of the operating hours.

For residents living in close proximity to the site the noise management plan and a temporary permission would allow the effectiveness of the plan to be monitored and reviewed after a year. Furthermore, the start time would revert to 7am after a year if the temporary permission has expired and 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 trial period.

Other matters

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 Noise Management Plan and a time limited permission of one year, the 5am start is acceptable.

RECOMMENDATION

APPROVE subject to a linking agreement and the following conditions:

1. The land to which this planning permission relates is outlined in with a dashed line on the location plan (drawing number AP103~E) received on 24 June 2009. (Reason - For the avoidance of doubt.)
2. The new access to the Underfleet from the south western corner of the application site shall be maintained to the satisfaction of the Local Planning Authority and kept open to the public at all times. (Reason - To ensure that the essential link between the store and the town centre is available for use in accordance with Policy TC7 - Adequacy of Road Network and Site Access of the East Devon Local Plan 2013-2031.)

3. All visibility splays shall be kept permanently clear of all obstructions greater than 600 mm high.
(Reason - In the interests of highway safety in accordance with Policy TC7 - Adequacy of Road Network and Site Access of the East Devon Local Plan 2013-2031.)
4. No lighting columns, bollard lights or security lights, other than those previously approved, shall be erected within the site or fixed to buildings or land without the prior written consent of the Local Planning Authority.
(Reason - In the interests of preventing light pollution and the protection of wildlife corridors in accordance with Policies EN5 - Wildlife Habitats and Features and EN14 - Control of Pollution of the East Devon Local Plan 2013-2031.)
5. (i) For a period of no longer than one year from the date of (and subject to) the approval in writing by the Local Planning Authority of a submitted Noise Management Plan (NMP), store servicing, deliveries and associated activities shall only take place during the following times and at all times in full accordance with the approved NMP: 05.00-22.00 Monday to Saturday (with a maximum of two deliveries between 05.00 and 07.00) and 09.00-22.00 on Sundays.
The NMP shall detail the methods by which the store's management will systematically assess, reduce and prevent noise emissions from HGV vehicle movements and during the delivery process through operational managerial techniques and abatement technologies. The NMP shall identify and employ appropriate measures to minimise the generation of noise, including the provision of a Quiet Deliveries Scheme (QDS) for deliveries approaching the store, arriving at the service yard, 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 NMP shall also cover HGV vehicle movements along Royal Observer Way and Swan Road.
(ii) At all other times store servicing, deliveries and associated activities shall not take place outside the following times: 07.00-22.00 Monday to Saturday and 09.00-22.00 on Sundays.
(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.)
6. The following facilities shall not be open or operated outside the stated times:
Petrol Filling Station- 06.00-24.00 on any day, unmanned pumps 00.00-06.00.
Store Trading, Home Shopping and car park - 07.00-24.00 on any day. Lights to be dimmed in the store and turned off elsewhere by 00.30.
Recycling Facilities, Waste and other collections - 07.00-18.00 Monday to Saturday.
(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.)

7. Notwithstanding the provisions of the Town and Country Planning Act 1990 (as amended) and the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Act or Order revoking and re-enacting that Act or Order with or without modification), there shall be no insertion of any mezzanine floor within the building (for any purpose) at any future date without a further grant of planning permission. For the avoidance of doubt the store hereby permitted does not include any mezzanine or internal floor above ground level.
(Reason - The Local Planning Authority considers the size of the store is at its maximum without impacting adversely on the viability and vitality of Seaton Town Centre. Any increase in retail floor space may have an adverse impact which the Local Planning Authority wishes to guard against in accordance with Policy E11 - Large Stores and Retail Related Uses in Area Centres of the East Devon Local Plan 2013-2031.)
8. Any coffee shop and restaurant that forms part of the store hereby permitted shall only operate during the times when the store is open to the public and shall not operate independently of the store.
(Reason - The Local Planning Authority considers that a free standing coffee shop and restaurant may adversely impact on the vitality and viability of Seaton Town centre and to comply with Policy E11 - Large Stores and Retail Related Uses in Area Centres of the East Devon Local Plan 2013-2031.)
9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the site other than those expressly permitted by this permission or by a condition of planning permission without the further prior written consent of the Local Planning Authority.
(Reason - In the interests of controlling future walls and other features in the interests of the appearance of the development in accordance with Policy D1 - Design and Local Distinctiveness of the East Devon Local Plan 2013-2031.)
10. The development shall not proceed other than in strict accordance with the Flood Risk Assessment received 3 February 2009.
(Reason - To ensure the development complies with the guidance as set out in the National Planning Policy Framework 2021 and Planning Practice Guidance.)

NOTE FOR APPLICANT

Informative:

In accordance with the aims of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 East Devon District Council works proactively with applicants to resolve all relevant planning concerns; however, in this case the application was deemed acceptable as submitted.

Plans relating to this application:

Location plan AP103~E received on 24 June 2009

List of Background Papers

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