

Unrestricted Delivery Hours Proposed at Adsa Milton of Craigie

KEY INFORMATION

Ward East End

Address

Asda Stores
Milton of Craigie Retail Park
Milton of Craigie Road North

Applicant

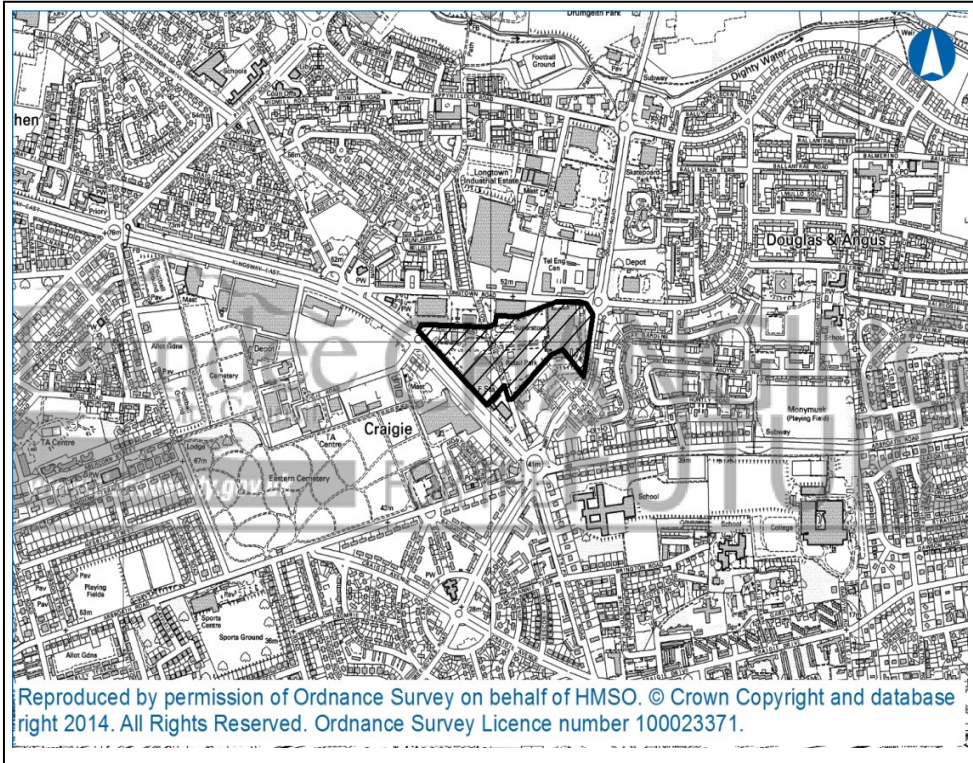
Asda Stores Limited
Asda House
Great Wilson Street
Leeds LS11 5AD

Agent

Katherine Sneedan
Jigsaw Planning
PO Box 2844
Glasgow G61 9DG

Registered 11 Feb 2014

Case Officer P Frickleton



SUMMARY OF REPORT

- This application seeks planning permission under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) for variation of Condition 16 of planning permission D13779 to allow unrestricted deliveries to the supermarket elements of the retail park.
- The statutory neighbour notification was carried out and four valid letters of objection have been received from neighbouring residents on the grounds of noise nuisance, detriment to residential amenity/environment, vibration of vehicles, deliveries already being carried out outwith permitted hours, inadequate goods/HGV servicing arrangements and increased traffic.
- In accordance with the Council's Scheme of Delegation this application is being reported to the Development Management Committee as the proposal falls within the meaning of a Major planning application as defined by the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009. A request has also been made by the Local Elected Member that the application be reported to Committee for determination.
- More details can be found at <http://idoxwam.dundee.gov.uk/idoxpa-web/applicationDetails.do?activeTab=documents&keyVal=N0U9U4GCHRO00>.

RECOMMENDATION

The application fails to demonstrate that the proposed variation to delivery times for the supermarket element of the retail park adequately safeguards the amenity of the occupiers of nearby dwellings. There are no material considerations that would justify approval of planning permission. Therefore, this application is recommended for REFUSAL.

1 DESCRIPTION OF PROPOSAL

- 1.1 Application under section 42 of Town and Country Planning (Scotland) Act 1997 as amended to vary Condition 16 of Planning Application Ref: D13779 to allow for unrestricted deliveries to the supermarket element of the retail park.
- 1.2 Condition 16 of the planning permission, which was issued on 7 February 1989, states that: “no deliveries to the site shall take place between 10.00pm and 7.00am”.
- 1.3 Asda seek to vary this condition to allow greater flexibility over when they can deliver goods to the store. The planning permission to which this condition relates covers the whole of the Retail Park and units therein. As such the agents have confirmed that the sought variation is solely in relation to the deliveries to the Asda store. They seek to replace Condition 16 with a condition stating that “with the exception of the supermarket, no deliveries to the site shall take place between 10.00pm and 7.00am.”
- 1.4 An application under Section 42 opens up all of the conditions to consideration, not simply the condition that the applicant is seeking to have varied. The Committee can consider the other conditions if it is so minded. Whilst all of the other conditions can be considered, this report concerns Condition 16 of planning application ref: D13779 only.
- 1.5 As the area of the application site exceeds 2 hectares the proposal falls within the meaning of a Major Planning Application as defined by Regulation 2(1) of the Town and Country (Hierarchy of Developments) (Scotland) Regulations 2009. In accordance with the Discretionary Scheme of Delegation, all Major Planning Applications must be reported to the Council’s Development Management Committee.
- 1.6 A request has been made by the Local Elected Member that the application be reported to Committee for determination.



Figure 1 – Service Yard



Figure 2 – Residential Properties on Douglas Road

2 SITE DESCRIPTION

- 2.1 The application site is located on the eastern side of Kingsway and occupies the eastern sector of the Milton of Craigie Retail Park. The application site takes the form of the Asda retail store and service yard (see Figure 1). The store faces west and overlooks a large store car park and the neighbouring commercial properties. The open service yard area to the east faces onto the residential properties on Douglas Road (see Figure 2). Delivery

vehicles enter the yard at the southern end, via a short service yard road accessed from Douglas Road (see Figure 3) and depart via the exit gates at the northern end of the yard onto Longtown Road.

3 POLICY BACKGROUND

- 3.1 The following plans and policies are considered to be of direct relevance:

DUNDEE LOCAL DEVELOPMENT PLAN

Policy 23: Goods Range Restrictions

Policy 24: Location of New Retail Developments

- 3.2 There are no other plans, policies and non-statutory statements that are considered to be of direct relevance.

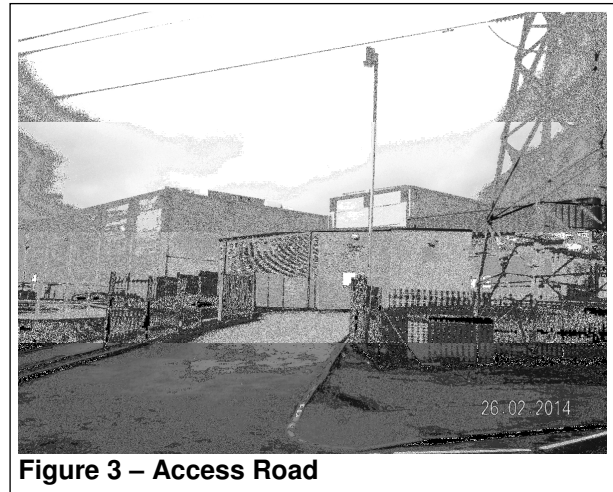


Figure 3 – Access Road

4 SITE HISTORY

- 4.1 Planning application ref: 87/12345/D sought planning permission in principle for a retail park with ancillary parking and service areas on the site of the former Timex Factory on Kingsway East. This application was approved by Tayside Regional Council on 9 July 1987 subject to conditions including one restricting delivery hours and the completion of a planning obligation restricting the range of goods that could be sold from the proposed retail park.
- 4.2 Planning application ref: 88/13779/D sought detailed planning permission for the erection of a retail park with shopper's restaurant and ancillary car parking and service areas at Milton of Craigie Retail Park. Planning permission was granted subject to conditions including one restricting delivery hours and the completion of a planning obligation restricting the range of goods that could be sold from the proposed retail park.

5 PUBLIC PARTICIPATION

- 5.1 The Statutory Neighbour Notification was carried out and as a result four valid letters of objection have been received from neighbouring residents on the grounds of noise nuisance, detriment to residential amenity/environment, vibration of vehicles, deliveries already being carried out outwith permitted hours, inadequate goods/HGV servicing arrangements and increased traffic.
- 5.2 Members will already have access to the letters of objection and the issues raised are considered in the Observations section below.

6 CONSULTATIONS

- 6.1 **Head of Environmental Protection** – following assessment of the submitted Noise Impact Assessment and proposed mitigation measures, the Head of Environmental Protection has confirmed that, unless the applicant is able to bring forward further mitigation measures that will alleviate the increased number of events that cause sleep disturbance during night time

hours, they cannot support the application. The findings are discussed under Other Material Considerations section of this report below.

7 DETERMINING ISSUES

- 7.1 **Section 25 of the Act provides that an application for planning permission (other than for a national development) shall be determined in accordance with the development plan unless material considerations indicate otherwise.**

THE DEVELOPMENT PLAN

- 7.2 The provisions of the development plan relevant to the determination of this application are specified in the Policy Background section above.
- 7.3 Since approval of the original application, the Dundee Local Development Plan has been adopted. The Policies relevant to the proposals are broadly similar to those contained in the previous Plan and do not impact upon the principle of development in this location. The proposed variation of Condition 16 relating to delivery hours does not affect the form and principle of the development approved by planning application D13779. Therefore, the proposal does not raise any new Development Plan policy issues on this basis.
- 7.4 **Therefore, the requirements of the Dundee Local Development Plan are met.**

OTHER MATERIAL CONSIDERATIONS

The other material considerations to be taken into account are as follows:

A - CIRCULAR 4/1998 – THE USE OF CONDITIONS IN PLANNING PERMISSION

- 7.5 The purpose of this circular is to provide guidance on the use of conditions in granting planning permission. Circular 4/1998 stipulates that while the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. The Circular demonstrates that conditions that are fair, reasonable and practicable satisfy 6 tests:
- necessary;
 - relevant to planning;
 - relevant to the development to be permitted;
 - enforceable;
 - precise; and
 - reasonable in all other respects.
- 7.6 Condition 16 of planning application ref: D13779 is relevant to planning, relevant to the development which was permitted, enforceable and precise. The test of necessity and reasonableness 27 years after the permission was granted is the essence of this application.
- 7.7 The original planning consent placed restrictions on delivery times to the premises in order that the amenity of nearby occupied premises shall be adequately safeguarded. The

nearest residential properties to the application site are around 23 metres to the east of the entrance to the service yard.

- 7.8 Historically there have been complaints of noise from the neighbouring residential properties associated with HGV delivery vehicles idling and moving in the access road area early in the morning, the use of fork lift trucks in the service yard and access road area early in the morning and through out the day, and early morning noise from activities in the home delivery service bay area to the south of the service yard. This application is however solely for the removal of the delivery time's restrictions to the premises and therefore only relates to the activities involving the arrival of delivery vehicles (HGVs/vans), the unloading and movement of goods from these vehicles to the premises, and the departure of the vehicles from the site.
- 7.9 A Noise Impact Assessment (NIA) was submitted in support of the application, following discussions with the Council the report has been amended with Version C being the most up to date report. Version C is based on deliveries of fresh, chilled or frozen goods to the premises only between the hours of 22.00 and 07.00 hrs. Ambient goods are to be delivered between during the hours of 07.00 to 22.00hrs only. The reason behind this is that the unloading location and process within the service yard is different for ambient goods as this requires the use of a fork lift truck in the southern aspect of the service yard near to the service yard entrance gates. The use of fork lift trucks is not covered by this NIA. In addition, Version C, also requires for a number of other measures being introduced by the applicant such as: the introduction of "Isotrak" system to enable store gates to open prior to the arrival of lorries to prevent them from sitting/idling on the access road; the "blanking" off of the service yard gates to full height to provide further noise protection; and reversing vehicles to have no reverse bleeper in operation with warehouse staff guiding the lorries to the scissor lift used for unloading.
- 7.10 With the above measures in place, the NIA suggests that due to the existing elevated noise climate in the area, from existing traffic noise, the removal of delivery restrictions would have no impact on the amenity of the nearby residential properties.
- 7.11 Environmental Protection have examined the noise levels contained within the NIA, the predictions indicate that the main noise impact of the delivery process would be from the lorry movement along the access road to the service yard gates. As the introduction of the "Isotrak" system would mean that the vehicles would enter without sitting and idling, the noise would be not dissimilar to a HGV driving past on Douglas Road, albeit at a slightly lower level due to distance and speed of the vehicle. Noise from the process of unloading goods from the delivery lorries using a scissor lift, including the movement of the goods in cages across the service yard to the chilled area entrance, has been obtained by Environmental Protection from a previous assessment carried out at a different location. Environmental Protection consider that it is the noise from this process during the night that is likely to attract attention from nearby residents and is likely to contain single sound events that may cause sleep disturbance, especially if the occupants, sleeping in bedrooms facing the service yard, sleep with their bedroom windows open. The NIA assessment does not mention any measures to manage staff to ensure that no shouting/whistling to attract attention of other staff occurs during night time hours.
- 7.12 The NIA concludes that with the implementation of the measures contained in sections 12.1 and 12.2 of the document, the assessment carried out using methodology contained in the technical advice notes (TAN) that accompany PAN 01/2011 indicates that the "Level of Significance" of noise from deliveries would be "slight, neutral/slight or neutral" at the three chosen receptor locations. The first step of the assessment in the NIA looks at the noise from deliveries compared to the existing background noise levels, ie when the existing noise levels are lower such as in between traffic movements on Douglas Road, in order to identify

the sensitivity of the receptors. The outcome of this assessment indicated that some noise from the delivery process would be as much as 10dB above the background noise level so medium and high sensitivity ratings are given. The noise with the greatest impact on the nearby properties, in terms of this part of the assessment, is predicted to come from the movement of delivery lorries along the service access road. The noise from the unloading process also exceeds the existing background noise level at receptor location 3. Barrier protection provided in the service yard walls and the proposed blanking off of the service gates lowers the impact of this process on the receptor locations used in the NIA.

- 7.13 The second step of the assessment methodology used in the NIA, a quantitative assessment, assessed the impact of the new noise level on the existing noise level, ie the change in the existing noise level measured over set periods of time during the night, giving a “negligible” magnitude of impact. As the existing noise survey indicates that noise levels during the night are raised, possibly due to existing traffic, the additional noise introduced by the deliveries would not cause any noticeable increase to this. This method, however, does not fully address the noise impact during the night time period as the potential for sleep disturbance and premature awakening are not considered, which should have been considered in the “qualitative” aspect of the PAN 01/2011 assessment, however, this has not been done. If the night time disturbances are taken into account, using Table 2.5 of the TAN for PAN 01/2011 to assign descriptors for qualitative impacts, the “magnitude of impact” should be changed to “moderate”, changing the magnitude of impact to “moderate” affects the “Level of Significance” by raising it from “neutral/slight” to “moderate/large”.
- 7.14 In conclusion, although the submitted NIA suggests that the store will be able to be serviced 24 hours a day, 7 days a week, this is based on the result of the PAN 01/2011 assessment used including restrictions on the types of deliveries allowed during the night and various measures being implemented to reduce the noise impact of deliveries. The PAN 01/2011 assessment methodology used by the author of the NIA does not take into account night time noise events which may lead to sleep disturbance of the nearby residents.
- 7.15 Permitting certain deliveries (chilled) only during the previously restricted hours of 22.00 to 07.00 hours, with the proposed mitigation measures implemented, is predicted to not greatly impact on the overall existing noise climate at the residential premises however there is likely to be an increase in the number of events causing sleep disturbance during night time hours. Therefore, unless the applicant is able to bring forward further mitigation measures that will alleviate the increased number of events that cause sleep disturbance during night time hours, the application cannot be supported.
- 7.16 The proposed variation to delivery times for the supermarket element of the retail park undermines the necessity, purpose and relevance of the original condition as the amenity of nearby occupied premises shall fail to be adequately safeguarded. In this instance, the proposal fails to adhere to the requirements of Circular 4/1998.

B - VIEWS OF OBJECTORS

- 7.17 A total of four valid letters of objection have been received from neighbouring residents on the grounds of:
- noise nuisance;
 - detriment to residential amenity/environment;
 - noise from delivery activities will disturb residents through the night;

- noise due to HGVs unloading outside the yard or whilst they sit and wait to get into the yard with engines running;
- vibration of vehicles as they wait to enter the yard;
- deliveries already being carried out outwith permitted times;
- Noise Impact Assessment is inaccurate or flawed in a number of areas;
- history of complaints to the Council on noise issues;
- inadequate goods/HGV servicing arrangement; and
- increased traffic.

7.18 These concerns have been addressed under the assessment of the Noise Impact Assessment above. Environmental Protection is aware of the history of the site and has been monitoring the situation. In this instance the views of the objectors are supported.

7.19 **It is concluded from the foregoing that the material considerations are not of sufficient strength to support the approval of planning permission.**

8 CONCLUSION

8.1 The application fails to demonstrate that the proposed variation to delivery times for the supermarket element of the retail park adequately safeguards the amenity of nearby occupied premises. There are no material considerations that would justify approval of planning permission. Therefore, it is recommended that this application be refused.

9 RECOMMENDATION

9.1 It is recommended that consent be REFUSED for the following reason:

REASON

- 1 The original restrictions imposed by Condition 16 of Planning Application Ref: D13779 to allow for restricted deliveries to the supermarket element of the retail park were imposed to safeguard the amenity of surrounding residents from noise disturbance. The proposal fails to demonstrate that by allowing unlimited delivery hours the amenity of the surrounding residents will be protected. The material considerations support the retention of the original restricted hours.