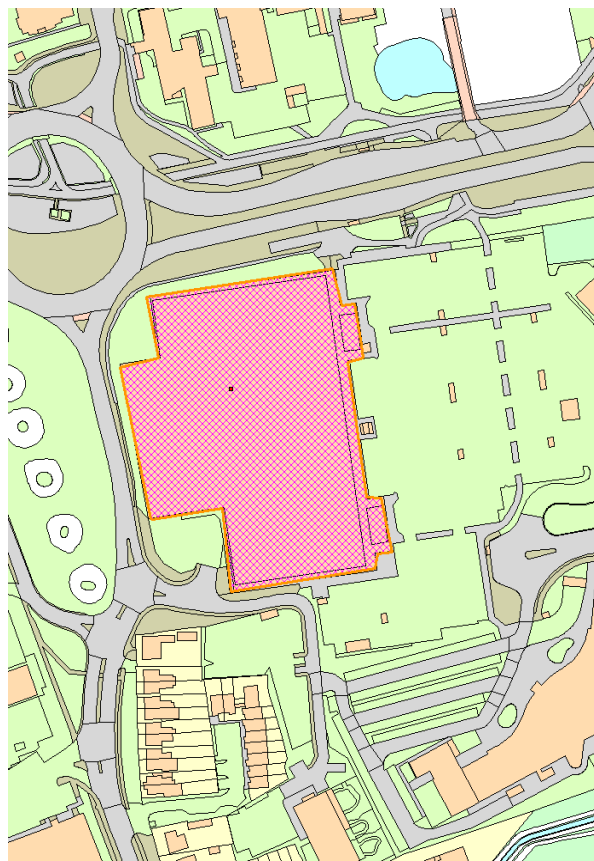


Meeting: Planning and Development Committee **Agenda Item:**
Date: 2 April 2024
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Lead Officer: Zayd Al-Jawad 01438 242257
Contact Officer: Ailsa Davis 07702 874529

Application No:	23/00774/ENF
Location:	ASDA Stores Ltd, Monkswood Way, Stevenage
Proposal:	Breach of servicing condition
Drawing Nos.:	N/a
Applicant:	N/a
Date Valid:	N/a
Recommendation:	SERVE AN ENFORCEMENT NOTICE



Plan for information purposes only

1. BACKGROUND

- 1.1 The enforcement site comprises ASDA superstore. The main customer car park and access to the store is from Monkswood Road. The service road for deliveries is located to the rear of the store along London Road. It comprises an outside yard where vehicles turn and reverse into a large storage and unloading area within the store. There are large, railed, manually operated gates giving access to a service road which leads onto London Road. There is a row of houses adjacent to the service road fronting onto London Road to the south, and the service road runs alongside the side elevation of the house at the end of the row. Northwest of the site across London Road is Six Hills House, formally an office building now converted to flats under permitted development. Directly opposite the service yard is Kings Court a vacant office building and to the south, the Royal Mail Delivery Office. The character of the surrounding area is therefore a mix of residential and commercial uses.
- 1.2 The store is subject to a planning condition restricting deliveries to 07.00 – 21.00 Mondays to Saturdays and 07.00 – 15.00 on Sundays and Public or Bank Holidays. However, deliveries are taking place 24 hours a day in breach of the terms of the condition, which is causing late night and early morning noise disturbance to residents living locally resulting in ongoing complaints to the Council.

Relevant Site history

- 1.3 Planning permission was granted at appeal on 13 March 2008 for a replacement college building of 7,000m² food and non-food retail development, totalling 10,000m² and 1080 car parking spaces plus petrol filling station in accordance with the application ref 06/0177/FP dated 28 March 2006. However, this was without compliance with condition number 16 previously imposed on planning permission ref 2/00176/98 dated 23 November 2000, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition:
- (1) No servicing of the retail units approved by application 2/0176/98 shall take place other than between the hours of 07.00 – 21.00 Mondays to Saturdays and 07.00 – 15.00 on Sundays and Public or Bank Holidays.
- 1.4 Following contact with the operations team at the store's head office in Leeds, including several emails requesting the 24 hour deliveries to stop, this has been unsuccessful. As a consequence of this, the Planning Authority served a Breach of Condition Notice on ASDA on 4 December 2023 giving them 28 days to comply with the servicing condition. To date, this has been ignored as officers are still receiving complaints from residents, including photographic evidence that deliveries are taking place outside of the permitted hours.
- 1.5 ASDA Stores Ltd submitted a retrospective planning application on 20 December 2023 to remove the condition which restricts the delivery hours to allow them to continue to service the store 24 hours a day (ref. 23/00942/FP). This was refused on the 14 February 2024 for the following reasons:
- (1) The proposal, if permitted, would be likely to give rise to unacceptable levels of noise and disturbance to the detriment of the residential amenities of the occupiers of residential properties adjoining the site and at Six Hills House contrary to the National Planning Policy Framework (2023) and National Planning Practice Guidance and Policy FP7 of the Stevenage Borough Local Plan 2011 - 2031 (adopted 2019).
- (2) In the absence of a delivery and servicing management plan which demonstrates how 24 hour servicing would be accommodated within the existing service yard without lorries

manoeuvring and parking on the service road outside of the store, the proposal would be prejudicial to the safety and operation of the service road creating a highway safety risk for both vehicles and pedestrians. The development proposal is therefore contrary to the National Planning Policy Framework (2023) and National Planning Practice Guidance and Policies SP6 and IT5 of the Stevenage Borough Local Plan 2011 - 2031 (adopted 2019).

- 1.6 During the determination of the application, it was suggested to ASDA that amending the servicing condition to extend their current delivery hours to 07.00 – 23.00 Mondays to Saturdays and 07.00 – 17.00 on Sundays and Public or Bank Holidays would be considered as an acceptable compromise. They were invited to apply to amend the condition to reflect these times, rather than remove it which they were advised was unacceptable. No response to this suggestion has been received.

2. POLICY

- 2.1 A revised National Planning Policy Framework (NPPF) was published in December 2023. This made significant changes to the September 2023 version and revised policy with respect to the following:

- maintaining supply and delivery of housing.
- making effective use of land with the allowance of mansard roof extensions to suitable properties.
- significant uplift in the average density of residential development can be seen as being inappropriate if the built form is out of character.
- strengthening policies around achieving well-designed and beautiful places.
- requirement for councils to prepare Local Design Codes.
- no longer a requirement to review or change Green Belt boundaries when plans are being prepared or updated.
- local planning authorities should now give significant weight to the need to support energy efficiency and low carbon heating improvements to existing buildings, both domestic and non-domestic.
- change to policies on Biodiversity.

- 2.2 The Council are content that the policies in the Local Plan are in conformity with the revised NPPF and that the Local Plan should be considered up to date for the purpose of determining planning applications. The NPPF provides that proposals which accord with an up-to-date development plan should be approved without delay (para.11) and that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted (para.12).

- 2.3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.

- 2.4 The development plan for Stevenage Borough Council comprises the following documents:

- The Stevenage Borough Council Local Plan 2011-2031 (adopted 2019)
- Hertfordshire Waste Development Framework 2012 and Hertfordshire Waste Site Allocations Development Plan Document (adopted 2012 and 2014); and
- Hertfordshire Minerals Local Plan 2002 – 2016 (adopted 2007).

3. DISCUSSION

3.1.1 A full policy assessment and appraisal of the impact of 24 hour deliveries was carried out under planning application 23/00942/FP, which was found to be unacceptable for the reasons cited in paragraph 1.4 above.

3.2 Is the breach of condition exempt from enforcement action under Section 171B of the Town and Country Planning Act 1990 (as amended)?

3.2.1 Section 171B Time Limits of the Town and Country Planning Act 1990 (as amended) states as follows:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

3.2.2 In March 2020, the Government announced plans to temporarily relax the enforcement of delivery hours restrictions for supermarkets and other food retailers to support the industry response to the spread of the coronavirus pandemic. Those measures were required to reflect the increased domestic demand for convenience retail goods, given the restrictions on individuals' movement throughout the UK which resulted in people spending more time at home. The relaxation on delivery restrictions formally ended on 31 January 2022. The store has therefore been operating in breach of the servicing condition since these temporary measures ended on 31 January 2022. It is officers' opinion therefore, that the breach of condition would not be immune from enforcement action under Section 171B of the Town and Country Planning Act 1990 (as amended).

3.3 Consideration of European Convention on Human Rights and the Equalities Act 2010

3.3.1 Consideration has been given to Articles 1 and 8 of the First Protocol of the European Convention on Human Rights (ECHR). It is not considered that the decision would result in a violation of any person's rights under the Convention. This is because the breach of condition relates to a food superstore owned and managed by ASDA Stores Ltd, which is a commercial

business. As such, the serving of an enforcement notice does not affect an individual person's rights under Articles 1 and 8 of ECHR.

- 3.3.2 Turning now to equalities, when considering proposals placed before Members it is important that they are fully aware of and have themselves rigorously considered the equalities implications of the decision that they are taking (This has been established as a key requirement in planning decision making by case law through the relevant courts). Rigorous consideration will ensure that proper appreciation of any potential impact of that decision on the Council's obligations under the Public Sector Equalities Duty ("PSED"). As a minimum this requires decision makers to read and carefully consider the content of any Equalities Impact Assessment ("EqIA") produced by officers.
- 3.3.3 The Equalities Act 2010 requires the Council when exercising its functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share protected characteristics under the Equality Act and persons who do not share it. The protected characteristics under the Equality Act are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex and sexual orientation.
- 3.3.4 Whilst there maybe persons who are employed or work for the retail operator who have a protected characteristic as defined under the Equalities Act, the serving of an enforcement notice relating to the unauthorised deliveries would not discriminate against those who have protected characteristics. More specifically, the breach of condition relates to a commercial business and not a private dwelling.
- 3.3.5 Therefore, it is not considered that serving an enforcement notice would discriminate persons who have protected characteristics.

4. RECOMMENDATION

- 4.1 That an Enforcement Notice be issued and served by the Assistant Director of Planning and Regulation and subject to an appointed solicitor by the Council being satisfied as to the evidence requiring compliance with condition 1 (Servicing) attached to planning permission reference 06/00177/FP (Allowed under appeal: APP/K1935/A/06/2031844) in relation to ASDA Stores Ltd, Monkswood Way, Stevenage. The precise terms of the Enforcement Notice, including all time periods, to be delegated to the Assistant Director of Planning and Regulation.
- 4.2 That, subject to an appointed solicitor by the Council being satisfied as to the evidence, the Assistant Director of Planning and Regulation be authorised to take all steps necessary, including prosecution or any other litigation/works in default to secure compliance with the Enforcement Notice.
- 4.3 That in the event of any appeal against the Enforcement Notice, the Assistant Director of Planning and Regulation be authorised to take any action required to defend the Enforcement Notice and any appeal against the refusal of planning permission.

5. REMEDY REQUIRED

- 5.1 Within three months of the date of any Enforcement Notice served, ensure all deliveries to the store are within the hours of 07.00 – 21.00 Mondays to Saturdays and 07.00 – 15.00 on Sundays and Public or Bank Holidays.

6. BACKGROUND DOCUMENTS

1. The application file, forms, plans and supporting documents associated with reference.
2. Stevenage Borough Local Plan 2011-2031 (2019)
3. Central Government advice contained in the National Planning Policy Framework December 2023 and Planning Policy Guidance.