

## COMMITTEE REPORT

**Date:** 3 December 2015      **Ward:** Westfield  
**Team:** Major and      **Parish:** No Parish  
Commercial Team

**Reference:** 15/02165/FULM  
**Application at:** Lidl Thanet Road York YO24 4PE  
**For:** Variation of condition 22 of permitted application  
09/02284/FULM to alter opening hours to between 07.00-  
22.00 Monday to Saturday and 10.00 to 19.00 on Sundays  
and Bank Holidays  
**By:** Lidl UK GmbH  
**Application Type:** Major Full Application (13 weeks)  
**Target Date:** 21 December 2015  
**Recommendation:** Approve

### 1.0 PROPOSAL

1.1 Planning permission is sought to vary the opening times set out in Condition 22 of planning permission 09/02284/FULM, this granted planning permission for the Lidl foodstore and imposed the following restriction:

The hours of operation of this approved use shall be confined to:

Mondays to Fridays	08.00 to 22.00
Saturdays	08.00 to 22.00
Sundays and Bank Holidays	10.00 to 17.00

Reason: To safeguard the amenities of occupants of the nearby dwellings.

1.2 The current application seeks to extend the opening hours to:

Monday to Saturday	07.00 to 22.00
hours on a Sunday and Bank Holidays	10.00 to 19.00.

The application has been amended to reduce the originally proposed Sunday and Bank Holiday opening hours of 07.00-22.00.

1.3 The application comes before committee at the request of Councillor Reid on the grounds that the extended hours may result traffic movements later in the evening and the store and car park being illuminated longer with the potential to cause disturbance to the occupants of the neighbouring dwellings. In addition question how the proposed hours sit with Sunday Trading legislation.

## **2.0 POLICY CONTEXT**

2.1 Development Plan Allocation: Air safeguarding: Air Field safeguarding

2.2 Policies: CYGP1 Design

## **3.0 CONSULTATIONS**

### INTERNAL CONSULTATIONS

#### Public Protection

3.1 No objections. Public Protection have received no complaints about noise from the store during opening hours and no noise complaints have been substantiated since the store opened. The change of one hour to either side of the current opening hours are not excessive and would only be during the day time hours as described in the World Health Organisations guidance on community noise levels which states that day time periods when noise is less likely to cause a nuisance are between 7am and 11pm.

### EXTERNAL CONSULTATIONS/REPRESENTATIONS

#### Police Architectural Liaison Officer

3.2 No objections

#### Publicity and Neighbour Notification

3.3 Two letters of objection have been received from one person:

- Increase in noise from traffic (customers and deliveries)
- Increase in light pollution from car park lighting, illuminated signs and vehicles lights
- Current deliveries cause noise and light disturbance, complaints to Public Protection, want the time of deliveries controlled
- Question if the number of deliveries/lorries are required and if the deliveries can be made by one lorry
- Proposed hours do not comply with Sunday trading laws

## 4.0 APPRAISAL

### RELEVANT SITE HISTORY

09/02284/FULM - Erection of foodstore with associated parking and landscaping after demolition of existing swimming pool - Approved

### PLANNING POLICY

4.1 The National Planning Policy Framework (NPPF) indicates a strong presumption in favour of sustainable development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. The core principles within the NPPF states always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

4.2 The NPPF is clear in that Planning should operate to encourage and not act as an impediment to sustainable growth. Paragraph 58 of the NPPF states that decisions should aim to ensure that development: will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

4.3 Paragraph 109 of the NPPF states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels noise pollution. In addition paragraph 123 states that planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development; mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions; and recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.

4.4 The City of York Development Control Local Plan was approved for development control purposes in April 2005. Its policies are material considerations although it is considered that their weight is limited except where in accordance with the NPPF.

4.5 Policy GP1 'Design' of the City of York Council Development Control Local Plan includes the expectation that development proposals will, inter alia; respect or enhance the local environment; ensure residents living nearby are not unduly affected by noise, disturbance, overlooking, overshadowing or dominated by

overbearing structures. It is considered that this policy is in accordance with the aims of the NPPF.

4.6 The opening hours within condition 22 were as requested by the applicant , but were also considered necessary to mitigate harm to the amenity of the occupants of the nearby dwellings during the quieter hours.

4.7 The unit is in a part of Thanet Road that opens up creating a spacious feel. The supermarket is set between two housing estates, and is surrounded on two sides by Hob Moor. To the south east of the site are dwellings and to the south west of the site is a Bowling Club and Acorn ARL Sports and Social Club. The closest dwelling (10 St James Place) is 65 metres from the retail unit, the closest dwellings to the car park entrance (1 and 2 St James Place) are 21 metres. Public Protection has confirmed that whilst noise complaints have been received from one complainant and investigated, they were not substantiated. The extension of the opening hours, Monday to Saturday, by 1 hour in the morning is not considered to significantly impact on the residential amenity of the occupants of the nearby dwellings. The proposed extension of Sunday opening hours, as amended, are within daytime hours as described by the World Health Organisation, when noise levels are slightly higher, and the comings and goings from the unit are not considered to result in undue harm to the residential amenity of the occupants of the nearby dwellings. It is considered reasonable to repeat the condition regarding the external lighting to prevent undue light disturbance.

4.8 Currently Sunday trading laws allow a large retail unit to open no earlier than 10.00 and ending no later than 18.00 for a continuous period of 6 hours. Granting planning permission for the proposed hours does not override Sunday Trading Legislation. The agent has confirmed that the proposed Sunday opening hours are speculative and is in response to the Government announcing (July 2015 Budget) potential revisions to Sunday trading hours.

## **5.0 CONCLUSION**

5.1 It is considered that the proposal complies with national guidance in the NPPF, Development Control Local Plan Policies and would not result in harm to the residential amenity of the occupants of the nearby dwellings . Therefore it is recommended that the application be approved.

5.2 If planning permission were granted, it would replace the 2009 permission. As such the relevant planning conditions are re-applied.

## **COMMITTEE TO VISIT**

**6.0 RECOMMENDATION:** Approve

1 The hours of operation of this approved use shall be confined to:

Mondays to Saturdays 07.00 to 22.00

Sundays and Bank Holidays 10.00 to 19.00

Reason: To safeguard the amenities of occupants of the nearby dwellings.

2 TIME2 Development start within three years

3 The following range of goods shall not be sold unless ancillary to the main range of goods:

- Clothing and Footwear
- Accessories
- Watches and Jewellery
- Music and Video recordings and Video and CD Rom
- Camera and Photographic equipment
- TV/Video/DVD and Hi-Fi equipment
- Toys
- Pharmaceutical goods
- Books/Magazines
- Leisure and Luxury goods (e.g. handbags, luggage, china, glass goods and cutlery)

Reason: To minimise the impact of comparison goods sold at these stores competing with York City Centre and the Acomb Centre retail outlets selling the same goods, and in compliance with Policy SP7a of the City of York Council Development Control Local Plan and advice within the National Planning Policy Framework and the National Planning Policy Guidance.

4 The amount of comparison goods sales floorspace shall be limited to no more than 15% of the net floorspace granted permission. The remainder shall be retained for the sale of convenience goods.

Reason: To minimise the impact of comparison goods sold at the store competing with York City Centre retail outlets selling the same goods.

5 The unit shall not be subdivided.

Reason: In the interests of the amenities of occupants of nearby residential properties and in compliance with Policy SP7a of the City of York Council Development Control Local Plan and advice within the National Planning Policy Framework and the National Planning Policy Guidance.

6 No mezzanine floor shall be installed into any part of the unit.

Reason: In the interest of protecting the vitality and viability of York City Centre and to ensure future retail proposal do not have an adverse effect on the vitality and viability of defined centres to accord with advice within the National Planning Policy Framework and the National Planning Policy Guidance.

7 The retail sales area shall not exceed 1,063 sq m.

Reason: In the interest of protecting the vitality and viability of York City Centre and to ensure future retail proposal do not have an adverse effect on the vitality and viability of defined centres to accord with advice within the National Planning Policy Framework and the National Planning Policy Guidance.

8 Details of all machinery plant and equipment to be installed in or located on the use hereby permitted, which is audible outside of the site boundary when in use, shall be submitted to and approved in writing by the Local Planning Authority. These details shall include maximum sound levels ( $L_{Amax}(f)$ ) and average sound levels ( $L_{Aeq}$ ), octave band noise levels and any proposed mitigation measures. All such approved machinery, plant and equipment shall subsequently be used on the site in accordance with the agreed details. Any approved noise mitigation measures shall be fully implemented and operational before the associated machinery, plant or equipment to which it relates is first used and shall be appropriately maintained thereafter.

Reason: To safeguard the amenity of occupants of neighbouring premises in accordance with the aims of the NPPF.

9 No raw materials, finished or unfinished products or parts, crates, materials, waste, refuse, or overnight/weekend storage of vehicles or any other item shall be stacked or stored outside any building on the site without the prior approval in writing of the Local Planning Authority.

Reason: In the interests of visual amenity.

10 The external car park lighting shall be switched off a maximum of 30 minutes after the store has closed for business, and switched on a maximum of 30 minutes before the store opens for business.

Reason: In order to protect the amenities of the neighbours and the character and appearance of the area from excessive illumination.

## **7.0 INFORMATIVES:**

### **Notes to Applicant**

#### 1. STATEMENT OF THE COUNCIL`S POSITIVE AND PROACTIVE APPROACH

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome:

- Use of conditions

#### **Contact details:**

**Author:** Victoria Bell Development Management Officer

**Tel No:** 01904 551347