



## Report of the Chief Planning Officer

### SOUTH AND WEST PLANS PANEL

Date: 4<sup>th</sup> September 2014

Subject: 14/02987/FU - Variation of Condition 3 (opening hours and deliveries) and Condition 5 (net retail floorspace) of previous approval 12/02334/FU.

ASDA Store, Land at St Georges Road, Middleton, LS10 4SL

#### APPLICANT

ASDA Stores Ltd.

#### DATE VALID

21/05/2014

#### TARGET DATE

10/09/2014

#### Electoral Wards Affected:

Middleton Park

Y

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

## RECOMMENDATION:

**GRANT PERMISSION** subject to the following conditions:

### Conditions

1. Development to be begun before the 19<sup>th</sup> January 2014 (3 years from original permission)
2. Opening hours of the premises (supermarket, petrol station and office/warehouse development) shall be restricted to between 0700 and 2200 Monday to Sunday with the exception of a period of 24 months from the date of this permission when the hours of opening of the Supermarket and Petrol Filling Station shall be restricted to between 0600 to 2300 Monday to Saturdays and 0700 to 2200 on Sundays and Bank Holidays with the hours of opening of the office warehouse restricted to 0700 and 2200 Mondays to Sundays (including Bank Holidays).
3. Delivery hours to the premises shall be restricted to between 0700 and 2200 (supermarket, petrol station and office/warehouse development) Monday to Sunday with the exception of a period of 24 months from the date of this permission when deliveries to the supermarket and petrol filling station shall be restricted to between 0600 and 2200 Mondays to Saturdays and between 0700 and 2200 on Sundays.
4. Requirement for the submission of a delivery management plan.

5. Limitation on the number of delivery vehicles between 6am and 7am.
6. A scheme to be agreed and implemented to protect nearby residents from noise
7. Net retail floorspace shall be restricted to 3,597m<sup>2</sup>. No further mezzanines or other internal floorspace shall be created.
8. Comparison goods (i.e. non-food) to be restricted to no more than 40% of the net retail floorspace. The remainder of the net retail floorspace shall be used for the sale of convenience goods only.
9. The car park shall remain open at all times to the public.
10. The secondary customer entrance fronting onto St George's Road shall remain open to customers during opening hours of the store.
11. Materials in accordance with approved details.
12. Boundary treatments and details of steps and ramps in accordance with approved details.
13. Landscaping scheme in relation to supermarket and PFS in accordance with approved details.
14. Hard landscaping of any phase to be carried out in accordance with approved details.
15. Replacement of planting if required within 5 years from the date of planting.
16. Vehicular areas to be hard surfaced.
17. Lighting and security scheme in accordance with approved details.
18. Pedestrian routes through the site to be formed and signed and maintained in accordance with an approved scheme.
19. Contamination to be dealt with.
20. Remediation statement if required.
21. Remediation works to be carried out in accordance with remediation statement.
22. The building shall employ sustainable principles in accordance with the submitted report in order to achieve a BREEAM rating of "very good".
23. Disposal of storage and waste in association with proposed B1/B8 phase.
24. Details of cycle and motorcycle parking in relation to B1/B8 phase.
25. Drainage details to be approved including provision for on-site flow balancing of surface water and the management of the existing sewers and water mains within the site.
26. Phasing of the development to be agreed.
27. Details of the new adoptable access road including levels shall be agreed.
28. Off-site highway improvement works to be carried out.
29. Improvements to the Belle Isle Road and Throstle Road to be implemented prior to store opening.

## **1. INTRODUCTION**

- 1.1 This application is brought to Plans Panel at the request of Ward Members, who raised concerns regarding the impact on local residents of 24 hour opening and the extended delivery times that were originally proposed at this store as part of this application. The applicant has now significantly revised the opening hours and delivery times such that 24 hour opening is no longer proposed and only a slight extension to the delivery times and opening times is now sought as detailed in the report below.

## **2.0 PROPOSAL**

- 2.1 This is a full planning application submitted in accordance with Section 73 of the Town and Country Planning Act to vary Condition 3 (hours of opening and deliveries) and Condition 5 (net floorspace restriction) of 12/02234/FU, which was itself a Section 73 planning application to vary conditions pursuant to the original application in 2009 (09/02589/FU) for the development of the land at St George's

Road for the construction of a detached retail unit, office/warehouse unit, petrol filling station with associated access, parking and landscaping. Where an application under Section 73 is granted, the effect is the issue of a new planning permission. It is for this reason that this application refers to the 2012 application rather than the original 2009 permission.

- 2.2 ASDA has now developed the site at Middleton and the store is operational. However, having reviewed the original permission and taking into account their current business plan, ASDA is now seek to vary the following conditions:

2.3 Condition 3: Hours of opening and deliveries

As originally approved in 2009 (09/02589/FU) and then again in 2012 (12/02234/FUL), Condition 3 restricted the opening hours of the supermarket, petrol filling station and office/warehouse as follows:

*The opening hours of the premises and deliveries shall be restricted to between 0700 and 2200 (supermarket, petrol station and office/warehouse development) Monday to Sunday.*

This application seeks to amend the condition to allow the following:

*The opening hours of the supermarket and petrol filling station shall be restricted to between 0600 and 2300 Mondays to Saturdays and between 0700 and 2200 on Sundays and Bank Holidays whilst the opening hours of the office/warehouse development shall be restricted to between 0700 and 2200 Mondays to Sundays (including Bank Holidays). Deliveries to the supermarket and petrol filling station shall be restricted to between 0600 and 2200 Mondays to Saturdays and between 0700 and 2200 on Sundays with deliveries to the office/warehouse development restricted to between 0700 and 2200 Monday to Sunday.*

This proposal represents a significant revision of the variation of condition originally proposed as part of this application. ASDA were originally seeking 24 hour opening Monday to Saturday with an extension of the delivery hours to between 0400 and 2300 every day. The applicant advises that their decision to revise the proposal is in response to the concerns raised by local Councillors and residents in their on-going liaison with them, and also following discussions with the Council's Environmental Health Officer.

2.4 Condition 5: Net Retail Floorspace

Condition 5 of 12/02335/FUL restricts the net retail floorspace of the main retail store to a maximum of 3,561 square metres. This application seeks to increase the maximum net retail floorspace allowed by 36 square metres, resulting in a total net retail floorspace of 3,597 square metres to allow for the provision of an external canopy area, located just outside the main entrance. The canopy will be used to provide additional space to display and sell seasonal goods such as BBQ's, Christmas trees etc. The canopy structure itself is subject to a separate application. Members should note that the outdoor sales area has already been erected.

**3.0 SITE AND SURROUNDINGS:**

- 3.1 This application relates to the new ASDA store at Middleton accessed from St Georges Road. The store building occupies the northern part of the site with car parking to the southern half. A petrol filling station sits on the western roadside

edge. The 2009 application also included permission for the construction of a new office block to sit in the southeastern corner of the site. An access road runs around the edge of the car park to accommodate ASDA's delivery vehicles and to also provide an entrance into the car park and into the adjacent Household Waste Sorting Site. A number of highway alterations have been completed along St Georges Road as a result of the site redevelopment.

- 3.2 The store sits at the very edge of the designated Town Centre, which encompasses the Middleton District Centre to the western side of St Georges Road. Just to the south is the St Georges Centre, which provides community services and facilities. To the north-east is a vacant unit, Benyon House, which has approval for demolition, and to the east of the store is a Sharp Lane Primary School. The rest of the surrounding area is predominantly residential in character with a mixture of older Council housing and more modern houses and apartments built as part of the Sharp Lane development. The nearest residential properties lie along the southern boundary of the site at The Oaks. An acoustic fence has been erected along this boundary along with a landscape buffer; whilst this has been planted in accordance with the 2009 and 2012 permissions, this will obviously take some years to come to maturity.
- 3.3 The store opened earlier this year and features a Click and Collect facility, and as noted above, the outdoor trading canopy has also been erected.

#### **4.0 RELEVANT PLANNING HISTORY:**

- 4.1 The planning history most relevant to the consideration of this application is summarised below:
- 4.2 14/02988/FU: Retrospective application for the erection of an outdoor trade unit for the sale of seasonal goods. This application is pending consideration and will not be determined until this Section 73 application has been determined.
- 4.3 13/9/00187/MOD: Non-Material Amendment to 12/02334/FU relating to the relocation of the store entrance lobby, re-alignment of the pedestrian walkway within the car park and a surface change to the Petrol Filling Station forecourt.  
Approved: 13.12.2013
- 4.4 12/02334/FU: A Section 73 application to vary Conditions 2 (approved plans), 16 (pedestrian routes), 22 (cycle and motorcycle parking) and 23 (drainage) of full planning permission 09/02589/FU. This application included the amended store location, design, floor plans etc. that reflect the scheme now constructed on site.  
Approved: 23.09.2013
- 4.5 09/02589/FU: Detached retail unit, petrol filling station, detached office/warehouse unit and associated parking and landscaping.  
Approved: 19.01.2011
- 4.6 Prior to the above the site was occupied by a number of industrial/warehouse and office uses.

#### **5.0 HISTORY OF NEGOTIATIONS:**

- 5.1 With regard to the application to vary Condition 5 (net retail floorspace) the applicant did seek Officer advice prior to the application being submitted and advice was given regarding supporting information.

- 5.2 In respect of the proposed variation of delivery and opening hours, following the submission of the application, the Council's Environmental Protection Officer objected to the application principally in relation to the methodology and conclusions of the submitted noise report. In response, the applicant submitted additional information for consideration and also proposed to reduce the extension in opening hours and delivery times as set in Paragraph 2.3 above.
- 5.3 ASDA have also undertaken a meeting with Ward Members and organised a more general meeting with Ward Councillors and local residents that took place on 24<sup>th</sup> July 2014 to discuss this application and more general issues relating to the ASDA store at Middleton. The record of the meeting provided by the applicant notes that with specific reference to this application, the attendees considered that it was reasonable for ASDA to look at an additional period in the morning for deliveries but that at the current time, neither residents nor Ward Councillors could support 24/7 opening. ASDA have subsequently revised their proposal to respond to these concerns as detailed in Paragraph 2.3 above.

## **6.0 PUBLIC/LOCAL RESPONSE**

6.1 The application was advertised by means of direct neighbour notification, a site notice and a press notice in the Yorkshire Evening Post. In response to the original proposal for 24 hour opening on Mondays to Saturdays with an extension of the delivery hours to between 0400 and 2300 every day, the Council received 14 letters of objection, including two from Ward Members.

6.2 6 letters of support were also received in response to the original proposal.

### **6.3 Ward Member Concerns**

- Impact on local residents due to noise and additional traffic resulting from the proposal to extend opening and delivery hours.

### **6.4 Public Concerns**

- Amount of traffic on the road makes it difficult to get out of side streets onto St Georges Road;
- Noise from lorries on St Georges Road;
- Additional noise;
- Potential for increases in crime, especially if a 24 hour alcohol license is allowed;
- Assurances given by ASDA during the original applications that deliveries would be during sociable hours only and that delivery routes would not use St Georges Road. Also, that normal store hours only would be proposed;
- Speeding on St Georges Road; users of the site use it as a shortcut;
- Other 24-hour facilities nearby;
- Belle Isle/Middleton Framework does not state any support or need for a 24-hour facility.
- No account taken of noise from customers parking away from main entrance or of anti-social use of car park at night;
- Issues arising at Morley ASDA, which is 24 hour use due to inappropriate use of car park;

- Noise report bases findings on 2 storey buildings, but many buildings in the area are 3 storey. No recommendation to extend or improve the existing acoustic barrier. It also does not account for the future office building on site;
- Additional floorspace for outdoor goods could detract from District Centre where suppliers already provide seasonal goods;
- Unmanned petrol station is a risk at night when people's reaction times will be slower – one fire on the site already;
- Many residents would not have supported ASDA over Tesco if 24 hour opening had been proposed originally.

#### 6.5 Support comments

- No significant traffic impact since store opened;
- Greater convenience will be provided and additional jobs;
- Staff on site 24/7 will improve security and prevent anti-social behavior;
- Extended opening hours are beneficial to shift workers. The nearest 24 hour supermarket and PFS is in Batley, which is 6 miles away;
- Deliveries should be restricted to existing ring road, and directional arrows are required on the roundabout to assist drivers.

6.6 A further consultation has been undertaken on the revised hours and any comments received will be report to Members at Plans Panel.

### 7.0 **CONSULTATIONS RESPONSES**

7.1 Local Plans – With reference to the proposal to vary Condition 5 (retail floorspace) Local Plans advise that the increase of 36 square metres equates to less than a 1% increase in floorspace. They note that Policy P8 of the Core Strategy states that extensions under 200 square metres will not be subject to a Sequential Test and consider that due to the small scale nature of the proposal, the impact could not be considered as significantly adverse to the vitality and viability of the existing Town Centre.

7.2 Environmental Protection Officer – In response to the original proposal for 24 hour store opening and extended delivery hours between 0400 and 2300, the Environmental Protection Officer originally recommended that it could not support the variation of hours. The EPO raised concern about the methodology of the submitted Noise Assessment and recommended that an assessment in accordance with BS4142 (Guidance rating industrial noise impact) would be a more appropriate and accurate objective measure to try and assess the potential disturbance from extended delivery and opening hours. The EPO also requested additional information with regard to the number of vehicles accessing the car park during the night and the effect of these vehicles travelling at a higher speed than suggested as they pass near to the residential premises. Additional information with regard to the impact if the number of vehicles using the PFS during the night is higher than suggested was also sought.

7.3 Following further negotiation between the Council's Environmental Protection Officer (EPO) and ASDA's Noise Consultant, ASDA has submitted additional information with regard to customer numbers at night and vehicle speed on the access road. In addition, although ASDA believe their noise assessment to be favourable to their original proposal, they have also revised the proposed hours of opening and delivery hours as outlined above. The EPO comments that ASDA are now seeking store delivery hours of 06.00 to 22.00 Monday to Saturday and 07.00 to 22.00 on

Sundays. This represents an extension for morning deliveries of 1 hour on Mondays to Saturdays, although this extension moves deliveries into the night-time period from a noise assessment perspective. From discussions with ASDA's noise consultant, the impact on residential properties to the South will be due to the HGV movement along the site access road and not from noise within the delivery yard itself. The EPO comments that it is the short-lived, but loud noise events, (Lmax) which wake people up and cause sleep disturbance. From the figures provided, the EPO considers that the HGV movements from deliveries would result in levels likely to cause a level of disturbance. ASDA have put forward the argument that other Lmax events of a similar level are already taking place in the area. However, it is the Council's view that care needs to be taken to limit as far as possible Lmax events that will be above 45dBA inside residential flats and houses. It is also important to recognise the difference in the subjective disturbance to occupiers from an ASDA HGV driving through the supermarket site and passing bedroom windows than an anonymous noise of a similar intensity somewhere in the locality.

- 7.4 Although concerns on this issue remain, ASDA's noise consultant has advised that the Lmax data put forward was based on a refrigerated HGV and that other vehicles will be quieter. ASDA are also willing to accept a restriction of no more than two delivery vehicles between 06.00 and 07.00 and that a delivery management plan could be issued to all vehicles to reduce speed and take care to minimise noise while travelling along the site access road; both these options could be secured by means of additional conditions. The EPO considers that these measures would all help reduce the potential of disturbance to the nearby occupants and may allow the increased deliveries to take place without a significant loss of amenity.
- 7.5 With regard to the proposed extension to the store and PFS trading from the 0700 to 2200 on any day originally approved to 0600 to 2300 Monday to Saturday and between 0700 and 2200 on Sundays and Bank Holidays (as per approval), the Environmental Protection Officer notes that he is aware that ASDA have reconsidered the speed of customer vehicles along the site access road; it has been indicated to the EPO that this may well be around 20mph rather than the 10mph originally put forward. This change does indicate an increase in the impact from the customers coming and going during the night. However, the discussions with ASDA's noise consultant have indicated that the revised opening hours would mean that relevant objective noise criteria at residential properties would be met.
- 7.6 Members are advised to note that no amendment is sought to the opening hours of the office/warehouse approved as part of applications 09/02589/FU and 12/02334/FU such that they remain as previously stated. It is for this reason that the office/warehouse unit does not form part of the noise assessment prepared by the applicant.
- 7.7 Overall, the EPO considers that the reduction in changes to the proposed hours, together with the various measures and proposals outlined above, is positive in minimising any increased disturbance to nearby residents. However, any assessment of impact contains an element of uncertainty. Therefore, if planning permission is to be granted, EPO recommend that a temporary permission should be used to provide the opportunity for local residents to come forward and for Planning Services to gauge the actual impact from early morning/night time deliveries, increased store trading hours, and increased use of the petrol filling station.

## **8.0 PLANNING POLICIES**

- 8.1 Section 38 of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise.

#### Development Plan

- 8.2 The development plan for Leeds is made up of the adopted Leeds Unitary Development Plan (Review 2006) (UDP) and the Natural Resources and Waste Development Plan Document (DPD), adopted January 2013.

- 8.3 The site is unallocated in the UDP. The following UDP policies are relevant to the consideration of the application:

- GP5 – General planning considerations
- BD5 – General amenity issues.
- S2 – Development in Town Centres (Middleton)

- 8.4 The following DPD policies are also relevant:

GENERAL POLICY 1 – Presumption in favour of sustainable development.

#### Draft Core Strategy

- 8.5 The Local Development Framework will eventually replace the UDP but is presently still in production with the Core Strategy at an advanced stage.

- 8.6 On 12th June 2014 the Council received the last set of Main Modifications from the Core Strategy Inspector, which he considers are necessary to make the Core Strategy sound. These were published for a six week consultation between the 16th June and 25th July 2014. The Inspector has indicated that following this consultation he will publish his Report in August. The Plan is therefore at the most advanced stage it can be prior to the receipt of the Inspectors Report and subsequent adoption by the Council. Accordingly, significant weight can now be attached to the Draft Core Strategy as amended by the main modifications. Of relevance to this application is the following:

SP1 – Location of development in main urban areas on previously developed land.

P8 – Guidance on Sequential and Impact Assessments for Town Centre uses.

#### Supplementary Planning Guidance and Documents

- Belle Isle and Middleton Framework

#### National Planning Policy

- 8.7 The National Planning Policy Framework (NPPF), published on 27<sup>th</sup> March 2012, and the National Planning Practice Guidance (NPPG), published March 2014, replaces previous Planning Policy Guidance/Statements in setting out the Government's planning policies for England and how these are expected to be applied. One of the key principles at the heart of the Framework is a presumption in favour of Sustainable Development.

- 8.8 The introduction of the NPPF has not changed the legal requirement that applications for planning permission must be determined in accordance with the

development plan unless material considerations indicate otherwise. The policy guidance in Annex 1 to the NPPF is that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.

- 8.9 With regard to retail development, the NPPF advises at Paragraph 23 that planning policies should be positive and promote competitive town centre environments. It confirms at Paragraph 26 that when assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold. This advice is further reflected within the National Planning Guidance, which confirms that local planning authorities should plan positively to support town centres.
- 8.10 With regard to noise impact, Paragraph 123 of the NPPF states that planning decisions should:
- (i) Avoid noise from giving rise to significant adverse impacts on health and quality of life.
  - (ii) Mitigate and reduce to a minimum other adverse impacts on health and quality of life.
  - (iii) 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; and
  - (iv) Identify and protect areas of tranquility.
- 8.11 Guidance in the NPPG states the following:
- (i) Neither the Noise Policy Statement for England, nor the NPPF expects noise to be considered in isolation, separately from the economic, social and other environmental dimensions of proposed development.
  - (ii) Decision-making should consider – (i) Whether or not a significant adverse effect is occurring or likely to occur; (ii) Whether or not an adverse effect is occurring or likely to occur and (iii) Whether or not a good standard of amenity can be achieved. This should include identifying whether the overall effect of the noise exposure is, or would be, above or below the significant observed adverse effect level and the lowest adverse effect level for the given situation.
  - (iii) Noise has no adverse effect so long as the exposure is such that it does not cause any change in behavior or attitude. Noise starts to have an adverse effect when it starts to cause small changes in behavior, such as having to turn up the volume on the television or speak more loudly. Consideration should then be given to mitigating against these effects. A significant adverse noise level causes a material change in behaviour, such as keeping windows closed for most of the time, or avoiding certain activities during periods when noise is present. Appropriate mitigation should be taken such as altering design and layout of a scheme. Economic and social benefits should be taken into account but it is undesirable for such exposure to be caused. At the highest extreme noise causes sustained and extensive changes in behavior with no ability to mitigate. The impacts

on health and quality of life are such that this situation should be prevented from occurring.

## **9.0 MAIN ISSUES**

- 1) The impact of the variation of Condition 3 on the amenity of adjoining residents arising from the proposed extension of opening hours and the extension to delivery times to both the store and petrol filling station;
- 2) The impact of the variation of Condition 5 to extend the net retail floorspace by 36 square metres on the Middleton District Centre.

## **10.0 APPRAISAL**

- 10.1 This Section 73 application seeks to vary Conditions 3 (hours of operation and delivery) and 5 (net retail floorspace) of 12/02234/FU. On the basis that it is a variation of condition, the principle of the development cannot be revisited unless there has been some change in adopted policy. In this case, the 2012 application was considered in the context of the NPPF such that there has been no fundamental change in planning policy that would render the principle of the development or the other conditions imposed at that time unacceptable and indeed, the development has been implemented in accordance with the 2012 approval. Accordingly, this report relates only to the application to vary Conditions 3 and 5 albeit that all the conditions attached to 12/02234/FU will need to be repeated as part of this decision on the grounds that it forms a new permission.

### **Condition 3 (Hours of opening and delivery)**

- 10.2 The NPPF and accompanying guidance discuss noise in rather general terms and there is no British Standard that deals specifically with the impact of night-time noise from supermarkets. Relevant documents include BS4142:1997, which relates to rating industrial noise and guidance from the World Health Organisation. In this case, it is considered that the noise sources that relate to opening hours would be generated from customer cars, vehicle doors opening and closing, trolleys being moved about, pedestrian noise, noise from the PFS and noise from inside the store itself including potential tannoy announcements. There is also an issue of light emanating from vehicle headlights, car park lighting and the store lights.
- 10.3 The originally submitted noise assessment based its findings on the movements of 1 car per 5-minute period between the hours of midnight and 6 a.m. It also assumed a traffic speed through the site of 10mph. The Council's EPO queried whether this amount of movement was correct; it was felt that it was not inconceivable that several cars may turn up within the same 5 minute period. Furthermore, a site visit by Environmental Protection Officers also raised concerns that many vehicles do not accord with the 10mph limit. The applicant subsequently reassessed the speed of customer vehicles along the site access road, which it is considered may be around 20mph rather than the 10mph originally put forward. In the Council's response to the applicant, it was felt that this change did indicate an increase in the potential impact from the customers coming and going during the night and has contributed, in part, to the applicant's review of their original proposal and subsequent amendment to the opening and delivery times.
- 10.4 Following the applicant's decision to revise the proposed opening times and delivery hours, it is now essentially the case that the applicant is seeking to open the store and PFS one hour earlier and one hour later than the previous approval (Mondays to Saturdays), with the existing approved hours retained on Sundays and Bank

Holidays. They are also seeking to start delivery hours one hour earlier in the morning than the approved hours on Mondays to Saturdays with the existing approved hours retained on Sundays and Bank Holidays. This is a significant amendment to the originally proposed scheme and reflects the further consideration given to matters of noise impact by the Council's EPS and also the applicant's decision to have regard to concerns raised by local Ward Councillors and residents, which is welcomed. The applicant has also advised that they would accept a condition that no more than two delivery vehicles would access the site between 06.00 and 07.00 and that a delivery management plan to be approved by the Council could be issued to all vehicles to reduce speed and take care to minimise noise while travelling along the site access road. However, it is noted that the Council's EPO still considers that any assessment of impact contains an element of uncertainty. Therefore, if planning permission is to be granted, it is considered that a temporary permission would be appropriate and would provide the opportunity for local residents to come forward and for Planning Services to gauge over a reasonable period the actual impact from early morning/night time deliveries, increased store trading hours, and increased use of the petrol filling station. In this regard, a 24-month temporary period is recommended, which will provide the opportunity to meaningfully gauge the impact of the proposal.

- 10.5 Overall, it is considered that subject to an initial temporary permission, additional mitigating conditions to limit the number of delivery vehicles between 0600 and 0700 and a requirement to submit a delivery management plan, the proposed extension of hours and delivery times will not give rise to significant adverse impacts on health and quality of life and the effects such that a refusal is warranted. It is therefore considered that the proposal is not contrary to either guidance within the NPPF or Policies GP5 or BD6 of the UDP, which seek to protect residential amenity. A temporary permission is proposed, which is consistent with guidance within the National Planning Guidance, which states that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development. It is therefore recommended that Condition 3 be amended as follows to create two conditions; one relating to opening hours and one relating to deliveries:

*The opening hours of the premises (supermarket, petrol station and office/warehouse development) shall be restricted to between 0700 and 2200 Monday to Sunday except for a period of 24 months from the date of this permission whereby the opening hours of the supermarket and petrol filling station only shall be restricted to between 0600 and 2300 Mondays to Saturdays and between 0700 and 2200 on Sundays and Bank Holidays).*

*Deliveries to the premises (supermarket, petrol station and office/warehouse development) shall be restricted to between 0700 and 2200 Monday to Sunday except for a period of 24 months from the date of this permission whereby the deliveries to the supermarket and petrol filling station only shall be permitted between 0600 and 2200 Mondays to Saturdays and between 0700 and 2200 on Sundays.*

Two additional conditions are also proposed:

*Prior to the operation of the extended opening hours permitted by Condition 4 for a temporary two-year period from the date of this permission, a Delivery Management Plan (DMP) shall be submitted to and approved in writing by the Local Planning Authority. The DMP shall include the following details:*

- a *Code of conduct for drivers and delivery staff in relation to use of the access road and appropriate vehicle speeds.*
- B *Use of reversing alarms/bleepers, air brakes, goods trolleys etc.*

*The DMP as approved shall be implemented prior to the commencement of the extended delivery hours and the store shall be operated in accordance with the DMP thereafter.*

*To ensure that deliveries do not cause adverse impact on local residents by virtue of noise and disturbance.*

*In accordance with the temporary two-year extension to delivery hours from the date of this permission permitted by Condition 4 above, between 0600 and 2200 Mondays to Saturdays and between 0700 and 2200 on Sundays, no more than two delivery vehicles of any size shall access the site between the hours of 0600 and 0700 Mondays to Saturdays.*

### **Concerns regarding light**

- 10.6 The additional opening hours of the store could result in lighting being on for longer periods of time, although at present there is no restriction on the original permission in this regard. There are a number of lights within the car park, and also around and within the store, as well as within adverts. The nearest residential properties to the south are protected to some extent by the boundary treatment along the southern boundary which includes a tall acoustic fence and a landscape buffer. As this grows and matures any visual impact will be minimised further. In considering lights within the car park as part of the original approval, the light spill was taken into account and was not considered to affect nearby houses. Indeed, houses to the north are separated by the large roundabout and level changes so should not be negatively impacted on by light spill. Given the amendment to the hours now proposed, which is significantly less than the 24 hour opening originally sought, it is concluded that the additional hours of operation are not considered to give rise to undue concerns in relation to light spill or light pollution.

### **Condition 5 (Net Retail Floorspace)**

- 10.7 The proposed increase in floorspace of 36 square metres has resulted from a store concept of selling seasonal goods in a separate, easy to reach location. The type of seasonal goods to be sold includes items such as plants, BBQ's, Christmas trees etc. that will vary throughout the year and are often bulky and consequently, not the sort of item a customer wishes to put in their trolley. The outdoor trading area has been designed to provide a separate till point so that customers can buy goods separately from their main shop whilst being close enough to the main entrance that they know it is there. The actual structure is the subject of a separate application; this application is only to consider the principle of allowing this additional retail floorspace.
- 10.8 Condition 5 of 12/02334/FU originally restricted the amount of net retail floorspace to that originally requested by the applicant, which amounted to a maximum of 3561 square metres. This is standard practice for new retail applications in out of centre or edge of centre locations as it then prevents the retailer from expanding through the use of mezzanines or external floorspace, which could potentially impact on the vitality and viability of town centres. In this instance, the new ASDA lies right on the edge of the identified town centre, which is provided by the District Centre. The

original application considered whether the store would result in detrimental harm to the centre as a whole and it was found that the size then proposed would not.

10.9 Policy P9 of the Draft Core Strategy provides up-to-date guidance on the requirement for Sequential and Impact Assessments for town centre uses. With regard to proposals for extensions to existing units, Policy P8 confirms that for extensions up to 200 square metres neither a sequential nor an impact assessment will be required. Accordingly, at 36 square metres, this proposal is well below the requirement for any form of retail assessment.

10.10 It is the view of Officers that the additional increase is very small and it has also generated very little comment from the public. Those that have questioned the proposal query whether it will be detrimental to retailers who already sell seasonal goods and also raise comment in relation to the structure itself, which is the subject of a separate application. With regard to the impact on those that already sell seasonal goods, it is considered that the additional floorspace would not result in any additional harm to neighbouring retailers as it represents an increase of less than 1% of the current total. Whilst neighbouring retailers may sell seasonal goods, ASDA are not obliged to assess the impact of the scheme due to its small scale in any event. Furthermore the new floorspace would have to relate to the existing ASDA store and could not feasibly be located elsewhere outside of the site. Consequently, Officers consider that the proposed variation is compliant with Policy P9 of the Draft Core Strategy and guidance within the NPPF and NPG and will not be detrimental to the vitality and viability of the Middleton District Centre such that it is not contrary to Policy S2 of the UDP. There is therefore no objection to the proposed increase in floorspace and it is recommended that the condition be amended to reflect the new net retail floorspace proposed as follows:

*The net retail floorspace of the main retail store hereby permitted, which includes the retail sales area plus the checkouts, shall be limited to a maximum of 3597 square metres and no further mezzanines or other internal floorspace shall be created.*

10.11 Section 106

Members are advised to note that whilst an application under Section 73 has the effect of issuing a new planning permission such that the Section 73 typically repeats the conditions applied to the original approval and seeks to attach the requirements of any previous Section 106, in this case, all the financial contributions and physical works associated with the original planning permission (09/02589/FU) in relation to off-site public realm works, public transport contributions, highway works and adoptions have been paid or completed such that they are no longer outstanding. There is therefore no requirement for a Section 106 agreement to be attached to this permission.

## **11.0 CONCLUSION**

11.1 This is a full planning application submitted in accordance with Section 73 of the Town and Country Planning Act to vary Condition 3 (Hours of opening and deliveries) and Condition 5 (net floorspace restriction) of 12/02234/FU in relation to the development of the land at St George's Road for the construction of a detached retail unit, office/warehouse unit, petrol filling station with associated access, parking and landscaping. This application relates only to the ASDA store and petrol filling station, which is now operational, with the hours of opening and delivery in relation to the office/warehouse, which has yet to be constructed, remaining as approved.

- 11.2 In relation to Condition 3, the applicant initially proposed 24 hour opening Monday to Saturday with an extension of the delivery hours to between 0400 and 2300 every day. This has been substantially revised in the course of this planning application such that the applicant is now seeking to extend the opening hours of the supermarket and petrol filling station to between 0600 and 2300 Mondays to Saturdays and between 0700 and 2200 on Sundays and Bank Holidays with deliveries to the supermarket and petrol filling station to be restricted to between 0600 and 2200 Mondays to Saturdays and between 0700 and 2200 on Sundays. In addition, the applicant is willing to accept additional conditions to limit the site to no more than two delivery vehicles between 06.00 and 07.00 and the requirement for the submission and approval of a delivery management plan to be issued to all vehicles to reduce speed and take care to minimise noise while travelling along the site access road. The revised amendment to the hours has been fully considered by the Council's Environmental Protection Team who considers that the discussions with ASDA's noise consultant suggest that the revised opening hours would mean that relevant objective noise criteria at residential properties would be met. However, any assessment of impact contains an element of uncertainty such that a 24 month temporary permission is recommended to gauge the actual impact from early morning/night time deliveries, increased store trading hours, and increased use of the petrol filling station. Subject to the re-wording of Condition 3 as proposed and subject to the two additional conditions outlined above, it is concluded that the proposal will not give rise to significant adverse impacts on health and quality of life to the extent that a refusal is warranted. It is therefore considered that the proposal is in accordance with guidance within the NPPF and Policies GP5 and BD6 of the UDP.
- 11.3 With regard to Condition 5 and the proposal to increase the net floorspace restriction by 36 square metres, it is concluded that this variation represents an increase of less than 1% of the current total. Given this small scale, there is no requirement under Policy P9 of the Draft Core Strategy for the applicant to assess the impact of the scheme. Moreover, the new floorspace would have to relate to the existing ASDA store and could not feasibly be located elsewhere outside of the site such that it will not impact on the vitality of Middleton Town Centre. Consequently, Officers consider that the proposed variation is compliant with Policy P9 of the Draft Core Strategy and guidance within the NPPF and NPG and recommended that the condition be amended as proposed.
- 11.4 Subject to the amended scheme put forward by the applicant it is therefore recommended that Conditions 3 and 5 be varied as follows with Condition 3 being split into two conditions to separate the opening times and delivery hours:

Condition 3:

*The opening hours of the premises (supermarket, petrol station and office/warehouse development) shall be restricted to between 0700 and 2200 Monday to Sunday except for a period of 24 months from the date of this permission whereby the opening hours of the supermarket and petrol filling station only shall be restricted to between 0600 and 2300 Mondays to Saturdays and between 0700 and 2200 on Sundays and Bank Holidays).*

*Deliveries to the premises (supermarket, petrol station and office/warehouse development) shall be restricted to between 0700 and 2200 Monday to Sunday except for a period of 24 months from the date of this permission whereby the deliveries to the supermarket and petrol filling station only shall be permitted*

*between 0600 and 2200 Mondays to Saturdays and between 0700 and 2200 on Sundays.*

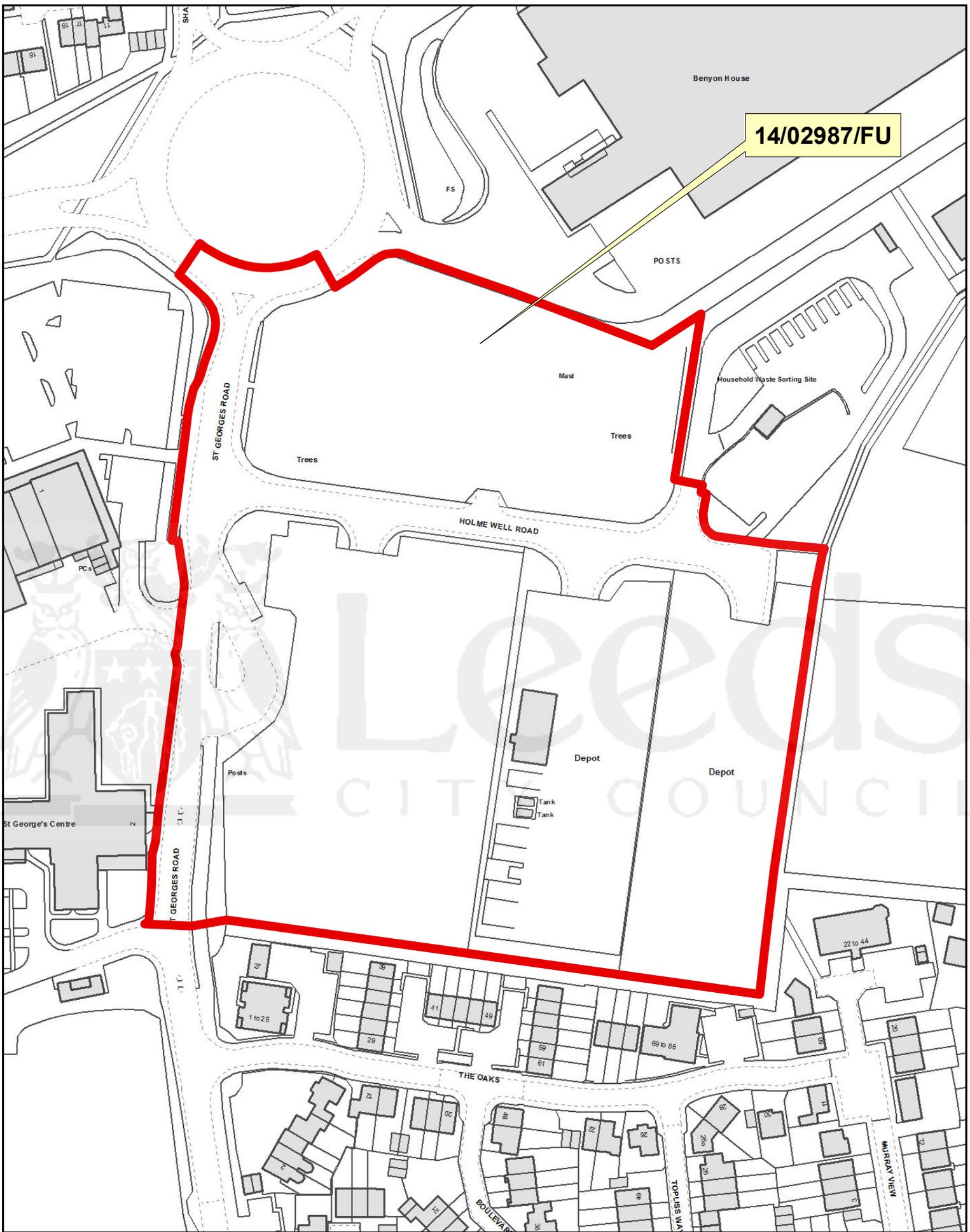
Condition 5:

*The net retail floorspace of the main retail store hereby permitted, which includes the retail sales area plus the checkouts, shall be limited to a maximum of 3597 square metres and no further mezzanines or other internal floorspace shall be created.*

- 11.5 Two additional conditions are proposed to limit the site to no more than two delivery vehicles between 06.00 and 07.00 and to require the submission and approval of a delivery management plan, which will be issued to all vehicles to reduce speed and take care to minimise noise while travelling along the site access road.
- 11.6 Finally, on the grounds that where an application under Section 73 is granted, the effect is the issue of a new planning permission; all other conditions pertinent to 12/02334/FU are repeated as part of this permission.

**Background Papers:**

Application and history files.  
Certificate of Ownership



14/02987/FU

# SOUTH AND WEST PLANS PANEL

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SCALE : 1/1500

