

Item Number: 9
Application No: 15/00917/73A
Parish: Malton Town Council
Appn. Type: Non Compliance with Conditions
Applicant: Wm Morrison Supermarkets Plc
Proposal: Variation of Condition 13 of approval 99/00123/FUL dated 17.02.2000 to state: "All deliveries to the store shall be limited to between 05.00 hours and 23.00 hours Monday to Saturday with the number of delivery vehicles limited to one Morrisons company vehicle between the hours of 21.00 and 23.00. All deliveries to the store shall be limited to between 06.00 hours and 22.00 hours on a Sunday with the number of delivery vehicles limited to one Morrisons company vehicle between the hours of 06.00 and 07.00 and one Morrisons company vehicle between the hours of 20.00 and 22.00. The company vehicles delivering to the site shall switch off any refrigeration units prior to accessing the site, reversing beepers shall be switched off during manoeuvring and the engine shall be switched off as soon as manoeuvring is completed. Other vehicle deliveries to the store during the permitted hours shall switch off refrigeration units prior to accessing the site and switch off engines after manoeuvring." - alteration to delivery hours and restrictions.
Location: Wm Morrisons Castlegate Malton North Yorkshire YO17 7DT

Registration Date:
8/13 Wk Expiry Date: 27 October 2015
Overall Expiry Date: 11 May 2016
Case Officer: Rachel Smith **Ext:** 323

CONSULTATIONS:

Parish Council
Highways North Yorkshire
NY Highways & Transportation No objection
Environmental Health Officer object
Environmental Health Officer
Parish Council

Neighbour responses: Ms Lucy Jennings,

SITE:

Morrisons Supermarket is situated on the southern side of Castlegate, Malton, within Malton Conservation Area. The site is accessed by customers from Castlegate and via Railway Street/Carpenters Yard for deliveries, and some pedestrian access. The store is bordered to the south by the River Derwent to the west by a retail warehouse with flats beyond and to the north and east by a mix of residential and commercial premises.

PROPOSAL:

Permission was granted in 1999, application (99/00123/FUL), for the erection of alterations to the existing supermarket. The application included the formation of a new service access from Railway Street. The application was approved subject to a number of conditions, including the following:

All deliveries to the store shall be limited to between 0600 hrs and 2200 hrs. The number of delivery vehicles shall be limited to one Safeway company vehicle between the hours of 0600 and 0700 and one Safeway company vehicle between the hours of 2000 and 2200. The Safeway company vehicles delivering to the site shall switch off any refrigeration units prior to accessing the site, reversing beepers shall be switched off during manoeuvring and the engine shall be switched off as soon as manoeuvring is completed. Other vehicle deliveries to the store during the permitted hours shall switch off refrigeration units prior to accessing the site and switch off engines after manoeuvring.
Reason:- In the interests of residential amenity.

The current application seeks to vary this condition to allow deliveries:

- *between 05:00 and 23:00 Monday to Saturday with the number of delivery vehicles for Morrisons restricted to a maximum of one between the hours of 21:00 and 23:00.*
- *06:00 and 22:00 on a Sunday, limited to one delivery between the hours of 06:00 and 7:00, and one between the hours of 20:00 and 22:00.*

PLANNING HISTORY:

Permission was granted in 1983 for retail development of the site. The following includes a summary of the principle applications that provide background information for the current application.

1999: Application 99/00123/FUL: Permission granted for the erection of alterations to the supermarket including additional car parking and formation of new service access from Railway Street.

2000: Erection of extension to supermarket additional car parking and formation of service access - approved

2000: Amendment to condition to allow coffee shop facility - approved

2004 Permission granted for the erection of an extension to the southern elevation, to provide staff access route, installation of eight covered trolley stores within the car park and revision to layout of car parking bays. (appln 04/01482/FUL)

2004 Permission granted for the removal of condition 22 of approval 99/00123/FUL to allow the service yard to be secured as required between the hours of 06:00 and 22:00 and erection of service yard gates with increase in height of existing service yard walls.

2005: Erection of extension to south elevation and revision to car park layout - Approved. Application number 05/00233/FUL

2006: Extension to café - approved

2009 Permission granted (08/01144/MFUL) for the erection of a two storey and single storey extension, use of existing staff accommodation as extension to warehouse and alterations to parking layout. Subject to legal agreement to secure strategic transport contributions.

2012 (appln 11/00825/73A) Permission granted for removal of conditions 11 and 12 of application 08/01144/MFUL.

POLICY:

Ryedale Plan Local Plan Strategy

Policy SP7 Town Centres and Retailing
SP 20 Generic Development Management Issues.

NPPF March 2012

Section 2 Ensuring the vitality of town centres

NPPG (2014)

APPRAISAL:

The following includes the material considerations in relation to this application:

- policy considerations
- residential amenity
- highway considerations

POLICY CONSIDERATIONS

The NPPF states that Local planning authorities should plan positively, to support town centres to generate local employment, promote beneficial competition within and between town centres, and create attractive, diverse places where people want to live, visit and work. It requires local planning authorities to define the extent of town centres and also promote competitive town centres that provide customer choice.

In this case the application relates to an existing food store, which is situated within the town centre commercial limits. The applicants have submitted a supporting statement which includes the following:

1.02 "Food retailing is a highly competitive business and it is essential that major food retailers are able to organise their operations in an efficient manner. An important part of this is the need to ensure that the delivery to the store operates efficiently, providing the freshest produce at the store in time for it to be merchandised, at minimal cost whilst also considering other factors such as road congestion and the carbon footprint of such activities.

1.03 significant proportion of deliveries to Morrisons stores are made during the night (defined in acoustic terms as 23:00 - 07:00 hours). This provides a number of advantages including:

- *Fresh produce as it arrives, is unloaded and made available for purchase prior to the store opening;*
- *Delivery vehicles do not add to congestion on the road network during busier periods thereby minimising journey times and the carbon footprint;*
- *Ensuring vehicles can be unloaded in an efficient manner as opposed to unloading several vehicles at a time which leads to inefficient work and excessive noise as this has to be done as quickly as possible;*
- *Prevents congestion of delivery vehicles in and around the delivery yard/foodstore;*
-

The statement further advises that at present, there is insufficient time to unload vehicles, unpack products, merchandise and stock shelves ready for the store opening at 08:00 hours. The variation of condition 13 will allow deliveries to the store to be staggered and thereby provides the benefits identified at paragraph 1.03 above.

Given the location of the store in the town centre commercial limits, it is considered that the rationale for the extension of the delivery hours set out above accords with both national and local policy, in terms of enhancing the vitality of town centres and improving choice. Furthermore it will enable the store to remain competitive in the retail market. As such it is considered that the *principle* of the change to the delivery hours is acceptable.

NEIGHBOUR AMENITY

The site is located in a part of the town centre where there are existing neighbouring occupiers in relatively close proximity to the delivery yard. The closest are those in the Corn Mill on Railway Street which are around 50 metres from the delivery yard.

When the application to extend the store, and provide delivery from Railway Street was considered in 1999, the Committee report referred to the highway and neighbour amenity considerations. It included the following paragraph:

"The access route passes between Yates store and the Cornmill Flats. In addition the service dock and vehicle manoeuvring area would be only 50 metres from the flats. Currently delivery times are not fixed and activity at unsociable hours could result in a detrimental impact on neighbouring residential properties. This situation has to be balanced by the fact that the last user of the application site used the Carpenters Yard entrance to receive and deliver agricultural equipment often on larger vehicles. This issue is being addressed by either amendments to the scheme or possibly conditions."

Accordingly the conditions attached to application 99/001233/FUL were considered to be necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects. As such they satisfied the tests for condition detailed in the now superseded Circular 11/95. The tests are however repeated in para 206 of the NPPF.

Nevertheless it is considered that the information submitted by the applicant in support of the current planning application is a material consideration that carries significant weight. Which is required to be balanced against continuing neighbour amenity concerns. It is noted that an objection has been received from Yorkshire Housing, on behalf of some of the residents of Cornmill flats who are directly affected by the Morrison's delivery wagons. They have raised the following points;

- Delivery wagons are already arriving before 5am and can be as early as 4.30am
- The refrigeration wagons are often left running until they are allowed to deliver, and this disturbs sleep.
- Unloading from the wagons is also noisy with lots of banging etc.

The response from Yorkshire Housing further states *" Many are accepting of the fact that the deliveries need to happen and acquiesce that it is a fact of life whilst living at The Cornmill. However, if it is the case that deliveries are happening before the current 5.30 curfew then they are not adhering to the current restrictions and this is not fair to our customers"*

Officers have taken account of the objection raised. Nevertheless, the NPPG states that neither the Noise Policy Statement for England nor the National Planning Policy Framework expects noise to be considered in isolation, separately from the economic, social and other environmental dimensions of proposed development.

In this case, it is accepted that there are sound retail and economic reasons why extended delivery hours should be considered. It is also noted that Morrison's delivery lorries regularly wait outside the front of the flats at The Cornmill with their engines running. This occurs when the yard is already occupied by a delivery vehicle, and is likely to add to the disturbance of neighbouring occupiers. It is therefore considered that a review of the delivery process is required to address existing problems.

The Council's Environmental Health Officer has considered the submitted information, and expressed concern about the possible impacts of the longer delivery times on the amenity of neighbouring residents. She further advised that there was insufficient delivery information to demonstrate that the variation of conditions would not have a detrimental impact on nearby residents.

The Council's Environmental Health officer and Planning Case Officer visited the site and held a meeting with the store manager to consider which elements of the delivery process caused the greatest noise. It appears that the main concerns are the sound of trolleys clattering across the docking plate to the lorry and being pulled back into the store, together with queuing vehicles with their engines running, and refrigeration units. The applicants agreed to provide a delivery management plan to reduce such noise generating processes, in particular at unsociable hours. An initial plan has been submitted which addresses the points raised. However it is considered that it requires further amendment to ensure that the conditions within in it are sufficiently precise to be enforceable if required. The final version of the delivery management plan is awaited but includes the following broad terms;

- Minimise noise from vehicles travelling/manoeuvring within the site by making sure that the access road and delivery yard are kept clear of obstruction.
- Avoid excessive engine revving when entering and manoeuvring
- Drivers waiting outside the yard should switch their engine off, radio's kept low and cab doors closed.
- Unless otherwise instructed when leaving the distribution centre, the driver should make sure that reversing alarms are switched off before arriving at the site and if specified, ensure that trailer refrigeration units are switched off before arriving at the site.
- Avoid any unnecessary activity in the yard during the night
- Ensure that latches and bolts on the entrance gates to the service yard are properly maintained
- Appropriate signage to ensure all personnel are aware of need to avoid noise.
- Ensure that dock levellers are used correctly and PIEK compliant or Pedestrian Operated Electrically Powered pallet truck is used correctly by properly trained personnel.
- Move pallets slowly across the dock leveller/plate and the bed of the trailer and slowly enter/leave pallets to avoid noise being radiated from the bed of the trailer.
- Keep the delivery bay doors closed, particularly during the night.
- Establish and maintain good communication with neighbouring residents, ensuring they realise that their concerns are taken seriously.
- In the event of a major failure that will prevent the above systems being adhered to, postpone the night delivery until the morning.
- In order to ensure that delivery vehicles can drive straight into the delivery yard on arrival, delivery vehicles will wait at an industrial site in York before being called to the store to confirm that the yard is clear to receive deliveries.
- Rubber strips to be fitted to the 3 pallet trucks and the edge of the docking plate to reduce any clattering

The Council's Environmental Health Officer is of the opinion that changes are needed to the submitted delivery management plan to tailor it more specifically to this particular store, in order to address the noise concerned raised, and also ensure that the conditions are precise and enforceable. However, it is considered that subject to the receipt of a satisfactory revised document, the revision to the delivery hours can be permitted without having a significant adverse impact on the existing amenities of neighbouring occupiers. Furthermore it will reduce the existing impact that results from lorries waiting to enter the delivery yard, with their engines running. Nevertheless it is considered that it would be appropriate to restrict any approval to a temporary one year period. This will enable officers to monitor the impact of the proposed change for a trial period before committing to a permanent change.

Re-consultation on the submitted information has been carried out with the 3 neighbours that have raised an objection, and Members will be updated at their meeting if any further comments are received.

HIGHWAY CONSIDERATIONS

It is considered that the proposed changes to delivery hours will result in lorry movements being better spaced, without queuing vehicles. Accordingly, the Highway Authority has not objected to the development.

Conclusion

Officers have taken account of the need to ensure that the existing store remains competitive whilst balancing this with preserving the existing amenities of neighbouring occupiers. Accordingly, the recommendation is one of approval subject to:

- A temporary one year permission - trial period
- The expiry of the consultation period
- The submission of a revised delivery management plan that is precise and enforceable.

RECOMMENDATION: **Approval**

1 The development hereby permitted shall be begun on or before .

Reason:- To ensure compliance with Section 51 of the Planning and Compulsory Purchase Act 2004

2 There shall be no sale of food or drink for consumption on the premises by members of the public.

Reason: In the interests of the retail vitality and viability of Malton Town Centre.

3 Before any part of the development hereby approved commences, plans showing details of a landscaping and planting scheme to include upgrading of existing landscaping, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the planting of trees and shrubs and show areas to be grass seeded or turfed. The submitted plans and/or accompanying schedules shall indicate numbers, species, heights on planting, and positions of all trees and shrubs including existing items to be retained. All planting seeding and/or turfing comprised in the above scheme shall be carried out during the first planting season following the commencement of the development, or such longer period as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of five years from being planted, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar sizes and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To enhance the appearance of the development hereby approved.

4 No development or other operation shall commence on site until a scheme (herein after called the Method Statement for Arborticultural Works) which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site has been submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the Method Statement. In relating to that Statement:

a) No operations shall commence on site in connection with the development hereby permitted (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening, or any other operation involving the use of motorised vehicles or construction machinery) until the tree protection works required by the Method Statement are in place on site.

(b) No excavations for services, storage of materials, or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place inside or within 10m of an area fenced off or otherwise protected in the Method Statement.

(c) The fencing or other works which are part of the Method Statement shall not be moved or removed, until all works including external works, have been completed and all equipment, machinery and surplus materials removed from the site, without the prior written approval of the Local Planning Authority.

Reason:- To secure the protection, throughout the time that the development is being carried out, of trees, shrubs or hedges growing within or adjacent to the site which are of amenity value to the area.

- 5 Before the development hereby permitted is commenced, details and samples of the materials to be used on the exterior of the proposed building(s) shall be submitted to and approved in writing by the Local Planning Authority. No variation of the approved materials shall be undertaken without the express consent in writing of the Local Planning Authority.

Reason:- To ensure a satisfactory external appearance.

- 6 No development shall take place within the application site until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation submitted by the applicant and approved in writing by the Local Planning Authority.

Reason:- The site is of archaeological interest.

- 7 There shall be no raising of ground levels or storage of materials, including soil, within that part of the site liable to flood as delineated on the attached plan.

Reason:- To ensure that there will be no increased risk of flooding to other land/properties due to the impedance of flood flows and/or reduction of flood storage capacity.

- 8 Notwithstanding the provision of Schedule 2, Part 4, Class A of the Town & Country Planning General Development Order 1995 (or any Order revoking or enacting that Order) no temporary buildings or storage containers shall be erected within that part of the site liable to flood as delineated on the attached plan.

Reason:- To ensure that there will be no increased risk of flooding to other land/properties due to the impedance of flood flows and/or reduction of flood storage capacity.

- 9 Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through trapped gullies with an overall capacity compatible with the site being drained.

Reason:- To prevent pollution of the water environment.

- 10 Unless otherwise agreed in writing by the Local Planning Authority, no building or other obstruction shall be located over or within 3.0 metres of the line of the sewer which crosses the site.
- Reason:- In order to allow sufficient access for maintenance and repair work at all times.
- 11 The site shall be developed with separate systems of drainage for foul and surface water.
- Reason:- In the interest of satisfactory drainage.
- 12 Prior to the commencement of the development details of external lighting shall be submitted to and approved in writing by the Local Planning Authority.
- Reason:- In the interests of visual amenity.
- 13 All deliveries to the store shall be limited to between 05.00 hours and 23.00 hours Monday to Saturday with the number of delivery vehicles limited to one Morrisons company vehicle between the hours of 21.00 and 23.00. All deliveries to the store shall be limited to between 06.00 hours and 22.00 hours on a Sunday with the number of delivery vehicles limited to one Morrisons company vehicle between the hours of 06.00 and 07.00 and one Morrisons company vehicle between the hours of 20.00 and 22.00. The company vehicles delivering to the site shall switch off any refrigeration units prior to accessing the site, reversing beepers shall be switched off during manoeuvring and the engine shall be switched off as soon as manoeuvring is completed. Other vehicle deliveries to the store during the permitted hours shall switch off refrigeration units prior to accessing the site and switch off engines after manoeuvring.
- Reason: In the interests of residential amenity.
- 14 Prior to the commencement of the development, details of the pallet trucks to be used in association with the unloading of produce at the store shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the only approved pallet trucks shall be used for unloading purposes.
- Reason:- In the interests of residential amenity.
- 15 Details of ventilation and refrigeration shall be submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development.
- Reason:- In the interests of residential amenity.
- 16 Prior to the commencement of the development, detailed construction drawings shall be submitted and approved in writing by the Local Planning Authority for the improvement to the site access with Castlegate as indicated on Drawing No 4549/001 Rev B. The approved details shall be completed to the reasonable satisfaction of the Local Planning Authority before the extended store is first brought into use.
- Reason:- To secure implementation of the approved access arrangements in the interests of highway safety and the convenience of vehicles and pedestrians visiting the site.
- 17 Prior to the commencement of the development, detailed construction drawings for the service yard access and footpath link junction with Carpenters Way shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be completed to the reasonable satisfaction of the Local Planning Authority before the service yard and footpath are first brought into use.

Reason:- To secure implementation of the approved access arrangements in the interests of highway safety and the convenience of vehicles and pedestrians visiting the site.

- 18 The development shall not be commenced until full details of the construction, surfacing, lighting, surface water drainage and marking out of the car park, cycle park, recycling areas and service yard indicated on Drawing No A906/SK5 Rev E have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be completed to the reasonable satisfaction of the Local Planning Authority before the extended store is first brought into use.

Reason:- To secure implementation of the approved access arrangements in the interests of highway safety and the convenience of vehicles and pedestrians visiting the site.

- 19 The existing public right of way shall be protected and kept clear of any obstruction at all times.

Reason:- To ensure a satisfactory means of access to the site from the public highway in the interests of vehicle and pedestrian safety and convenience.

- 20 Prior to the commencement of the development, details shall be submitted to and approved in writing by the Local Planning Authority for the access and parking for construction traffic associated with the building of the extended store.

Reason:- To secure implementation of the approved access arrangements in the interests of highway safety and the convenience of vehicles and pedestrians visiting the site.

- 21 Details of the precautions to be taken to prevent the deposit of mud on public highways by vehicles travelling from the site during the construction of the store shall be submitted to and approved in writing by the Local Planning Authority. These facilities shall include the provision of wheel washing facilities where considered necessary by the Local Planning Authority. The approved precautions shall be made available before the development commences on the site and shall be kept available and in full working order until such time as the Local Planning Authority agrees in writing to their withdrawal.

Reason:- To ensure that no mud or other debris is deposited on the carriageway in the interests of highway safety.

- 22 Details of any gates, barriers or other means of enclosure at the boundary of the service yard and the public highway shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. Thereafter the access gates shall remain open to vehicular traffic between the hours of 0600 and 2200.

Reason:- To ensure a satisfactory means of access to the site from the public highway in the interests of vehicle and pedestrian safety and convenience.

- 23 Provision shall be made to prevent surface water from the site discharging onto the public highway.

Reason:- To ensure a satisfactory arrangement of highway drainage in the interests of the amenity of the area.

- 24 Prior to the commencement of the development a car parking management plan shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the car parking regime on site shall be managed in accordance with the approved management plan.

Reason:- To ensure the maximum utilisation of the car park.

Background Papers:

Adopted Ryedale Local Plan 2002

Local Plan Strategy 2013

National Planning Policy Framework

Responses from consultees and interested parties