

ITEM NO:	<u>Location:</u>	Sainsburys Supermarket, Whinbush Road, Hitchin, SG5 1PU
	<u>Applicant:</u>	C/o Agent Sainsbury's Supermarkets Ltd
	<u>Proposal:</u>	Extension of delivery hours to 0700-2200 Monday to Saturday and 0800 to 2000 Sundays and Bank Holidays (as variation of condition 13 attached to planning reference 97/00823/1 granted permission 09/06/1998)
	<u>Ref. No:</u>	17/00411/ 1
	<u>Officer:</u>	Tom Rea

Date of expiry of statutory period: 19 May 2017

Reason for Delay (if applicable)

N/A

Reason for Referral to Committee (if applicable)

Site Area

1.0 Relevant History

- 1.1 97/0823/1: Retail foodstore (3720sqm) with associated parking spaces and vehicle and pedestrian access, walkway adjacent to River Hiz, traffic calming works, landscaping and ancillary works (variation to planning permission ref: 95/0120/1 granted 11/8/97). Granted 9/6/98.
- 1.2 15/00745/1: Extension of delivery hours to 0700-2200 Monday to Saturday and 0800-2000 Sundays and Bank Holidays for a temporary two year period (as a variation of condition 13 attached to planning ref: 97/00823/1 granted permission 09/06/1998. Granted 1/6/15. This permission expires on 1/6/17.

2.0 Policies

2.1 National Planning Policy Framework

Paragraph 14: Presumption in favour of sustainable development

Paragraph 123: 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.
- recognise that development will often create some noise and existing businesses wanting to develop in continuance with their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.

National Planning Practice Guidance: Noise

- 2.2 North Hertfordshire District Council Saved Local Plan 2007
Policy 42: Shopping
- 2.3 North Hertfordshire District Council Proposed Submission Local Plan 2017
Policy ETC3: New retail, leisure and other main town centre development
Policy D3: Protecting Living conditions

3.0 Representations

- 3.1 **Hertfordshire Highways:** 'Do not wish to restrict the grant of permission- raises no objections'
- 3.2 **NHDC Environmental Health officer:** Considers that the revised hours as negotiated with the applicant are acceptable (7.00am - 10.00pm Monday to Saturday and 8.00am - 8.00pm on Sundays and Bank Holidays on a permanent basis)
- 3.3 **Site Notice/Adjoining occupiers:** Letters received from the occupiers of Flat 33 Hazelwood Court and 5 Hazelwood Close raising the following points of concern:
- Objection to any increase in delivery hours
 - Damage and noise from delivery lorries
 - Lorries arrive early and leave after the delivery times
 - Lorries park up in layby of access road
 - 11.00pm cut off time is too late
 - Strongly disagree with proposals - fumes, noise and visual impact of lorries.
 - Noise and pollution from lorries waiting to deliver

4.0 Planning Considerations

4.1 Site & Surroundings

- 4.1.1 This application relates to the Sainsburys supermarket located between Bancroft and Whinbush Road within Hitchin Town Centre.

4.2 Proposal

- 4.2.1 The application, as amended, has been made by the applicant, Sainsburys Supermarkets Ltd, under Section 73 of the Town and Country Planning Act 1990 to vary condition 13 attached to planning permission ref: 97/0823/1 granted in 1998 for the existing supermarket. Condition 13 restricts the times at which deliveries can take place to the retail foodstore. The condition requires:

'No delivery vehicles serving the development hereby approved shall enter or leave the site outside the hours of 7.00am to 9.00pm Mondays to Saturdays and 9.00am to 5.00pm on Sundays, Bank or Public Holidays'

Reason: to safeguard the amenities of residential occupiers in Whinbush Road'
The applicants have originally requested with this application that condition 13 be permanently amended as follows:

'No delivery vehicle serving the development hereby approved shall enter or leave the site outside the hours of 0700 to 2300 Monday to Saturday and 0700 to 2100 Sundays and Bank Holidays'

- 4.2.2 Following negotiations with officers the applicant has agreed that condition 13 be amended as follows:

'No delivery vehicle serving the development hereby approved shall enter or leave the site outside the hours of 0700 to 2200 Monday to Saturday and 0800 to 2000 Sundays and Bank Holidays'

4.2.3 The application is supported by a Noise Assessment by consultants WYG Planning & Environment and a Service Yard Management Plan.

4.2.4 The applicants agents have stated that the proposed delivery hours will not result in an increase in the number of deliveries to the store. The need for the change in delivery hours is stated as follows:

Monday to Saturday hours - to allow for more accurate ordering and delivery of fresh produce to the store and replenishment after the store has closed.

Sunday and Bank Holiday hours - to provide for increased weekend and Bank Holiday demand, allow replenishment prior to opening hours, ensure good availability and fresh produce and reduce the need for replenishment during the day.

4.3 **Key Issues**

4.3.1 The key issues are residential amenity and highway safety

4.3.2 Residential amenity

The main issue in this case is to consider the reason for condition 13 and whether it is now reasonable to vary the condition as requested by the applicants. The condition was imposed *'to safeguard the amenities of residential occupiers in Whinbush Road'*. It is accepted however that new residential development has occurred in the immediate locality since the construction of the retail store, most notably the Peppermint Road development comprising a high density apartment scheme accessed from Whinbush Road and located directly opposite the supermarket.

4.3.3 The most up to date policy regarding noise is now paragraph 123 of the National Planning Policy Framework. The stated objective for planning decisions is to 'avoid noise from giving rise to significant adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions' The paragraph also states that decisions should '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'.

4.3.4 Delivery lorries servicing the supermarket access the site from Whinbush Road and then via a service road between Hazelwood Close and the Peppermint Road flats. The service yard to the supermarket is located adjacent the north elevation opposite a Council owned car park with the bowling greens forming part of Bancroft Gardens located further north. Whinbush Road is predominantly residential in character containing a mixture of houses and flats. However there are some commercial premises including two garages.

4.3.5 A noise assessment submitted in support of the application measured background noise levels and noise impact from delivery vehicles. Various noise sensitive receptors were identified in the vicinity of the store and access road. Monitoring was undertaken over a 96 hour period in total. The measurements included the extent of delivery noise against background noise based on 'worst case scenario' including a refrigerated HGV during quiet periods and the associated unloading process and vehicle manoeuvring into and out of the service yard.

4.3.6 The noise assessment has shown that noise from existing deliveries has no significant effect on nearby residential properties. The noise assessment also concluded that noise intrusion levels at the receptor locations remain below BS8233/WHO guidelines for disturbance during the proposed delivery periods. Overall the noise assessment, even on a worse case basis, concludes that the

proposed extension to delivery hours would not have an adverse impact on health or quality of life.

4.3.7 The Council's Environment Health Officer has expressed some reservations over the data presented in the Noise Assessment report on the basis that at some of the receptor locations noise levels may fail to achieve the Council's normal criteria. However, the NHDC local plan does not specify any particular local standards but refers developers to the guidance set out in the NPPG. The applicant has based the noise assessment on the updated standards in BS4142:2014 and the noise levels from deliveries are shown to be within the relevant noise intrusion criteria of the standard.

4.3.8 Since the granting of a temporary planning permission in June 2015 for the hours now sought on a permanent basis there has been only one complaint received by the Environmental Health team. It is understood that this complaint was resolved following an isolated incident and was not part of an on-going noise issue.

4.3.9 I consider that there are important wider sustainability benefits arising from longer periods in the day in which deliveries can take place. These benefits include:

- More efficient distribution of goods and perishable products
- Reduced traffic congestion during peak periods
- Fuel consumption reduced/less CO2 and particulate emission reduction
- Road safety improvement
- Less parking of HGV's in access road/layby whilst waiting for site access

4.3.10 Given the above benefits and the fact that only one complaint has been received over the last 22 months during which the currently proposed delivery hours have been in operation I am of the view that the hours now sought strikes a reasonable balance between the needs of the business and the amenity considerations of local residents.

4.3.11 Highway Safety

The objections received relate to the environmental impact of traffic congestion caused by several delivery lorries waiting to deliver to the site parking within the access road and access road layby. The concerns do not raise specific highway issues. The Highway Authority have not commented on this issue however it should be noted that only Whinbush Road is an adopted highway within which there have not been any reported problems. Congestion within the access road would be a matter beyond the control and remit of the highway authority unless it was causing traffic safety issues in Whinbush Road which there is no evidence of.

4.3.12 The variation to the opening hours and delivery hours would extend the morning and evening time frame. The Highway Authority comment that the original planning permission allowed deliveries within the peak time periods and that the proposed extended opening hours are beyond the peak traffic periods distributing the traffic generated by the store over a longer time frame and as such the Highway Authority raise no objections to the proposals.

4.3.13 It is considered that there are no highway grounds to refuse or restrict the requested hours of delivery.

4.4 **Conclusion**

4.4.1 The impacts of the variation in hours of goods delivery to the Sainsburys store have been considered against national and local planning guidance and negotiations have led to a reduction in the originally requested variation of hours. The temporary period during which the requested delivery hours have been operating has proved to be non-contentious. It is considered that the proposals now strike a reasonable balance between protecting neighbour amenity and supporting the economic needs

of an established business in accordance with the advice set out in paragraph 123 of the NPPF.

- 4.4.2 The national Planning Practice Guidance states that with Section 73 applications, to assist with clarity, Section 73 decision notices should also repeat the relevant planning conditions from the original planning permission unless they have already been discharged. In this case where a number of the original conditions have been discharged it will only be necessary to re-attach the conditions which require details of the scheme to be permanently maintained and the approved vehicular access conditions in addition to the revised wording of Condition 13 of planning permission ref: 97/0823/1.

5.0 Legal Implications

- 5.1 In making decisions on applications submitted under the Town and Country Planning legislation, the Council is required to have regard to the provisions of the development plan and to any other material considerations. The decision must be in accordance with the plan unless the material considerations indicate otherwise. Where the decision is to refuse or restrictive conditions are attached, the applicant has a right of appeal against the decision.

6.0 Recommendation

- 6.1 That planning permission be **GRANTED** subject to the following conditions:

1. The development hereby permitted shall be carried out wholly in accordance with the details specified in the application and supporting approved documents and plans listed above.

Reason: To ensure the development is carried out in accordance with details which form the basis of this grant of permission.

2. No vehicles shall gain access to the development hereby approved via the archway between 85 and 86 Bancroft.

Reason: In the interests of the safety of pedestrians and motorists in Bancroft.

3. No delivery vehicles serving the development hereby approved shall enter or leave the site outside the hours of 7.00am to 10.00pm Mondays to Saturdays and 8.00am to 8.00pm on Sundays, Bank or Public Holidays.

Reason: To safeguard the amenities of residential occupiers in Whinbush Road.

Proactive Statement

Planning permission has been granted for this proposal. The Council acted proactively through positive engagement with the applicant during the determination process which led to improvements to the scheme. The Council has therefore acted proactively in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.