

APPLICATION: MA/09/1410 Date: 6 August 2009 Received: 6 August 2009

APPLICANT: W M MORRISON SUPERMARKETS PLC

LOCATION: W M MORRISONS SUPERMARKETS PLC, ST SAVIOURS ROAD,  
MAIDSTONE, KENT, ME15 9NN

PARISH: Maidstone

PROPOSAL: Removal of condition 2 of MA/07/0489 to allow CNG (Compressed Natural Gas) vehicles to arrive and depart twenty-four hours a day, seven days a week until 30th November 2010 as supported by e-mail received on 28 October 2009 and letters from Belair Research Limited dated 16 and 27 October 2009.

AGENDA DATE: 26th November 2009

CASE OFFICER: Janice Tan

The recommendation for this application is being reported to Committee for decision because:

- Councillor Moriarty has requested it be reported for the reason set out in the report

### **POLICIES**

Maidstone Borough-Wide Local Plan 2000: R1  
The Southeast Plan 2009: NRM10  
Village Design Statement: N/A  
Government Policy: Planning Policy Guidance No. 24

### **HISTORY**

MA/09/0990 Submission of details received on 24th March, 19th June and 17th July 2009 pursuant to condition 1 of MA/07/0489 being confirmation of the completion of extensions and alterations – Granted

MA/09/0500 Application for the discharge of condition 2 (noise control), condition 3 (materials) relating to planning permission MA/07/0465 (Proposed alterations and extensions to existing Morrison's Superstore) – Granted

MA/07/0489 Removal of condition 2 of planning permission MA/03/1916 – approved with conditions.

MA/07/0465 Proposed alterations and extensions to existing Morrison's Superstore

- approved with conditions

- MA/06/1423 New service yard enclosure plus alterations to car parking and trolley bays - WITHDRAWN
- MA/03/1916 Variation of condition 01 of planning permission MA/99/0583 to allow CNG delivery vehicles to arrive/depart between the hours of 0600 and 2300 Monday to Saturday as shown on drawing number 634/47/3 received on 30.09.03. - APPROVED
- MA/03/1311 Variation of condition 1 of planning permission MA/99/0583 to allow delivery vehicles to arrive/depart between the hours of 0600 and 0000 (midnight) Monday to Saturday, as shown on dwg No. 634/47/3 received on 01/07/03 - REFUSED
- MA/02/2003 Extension to an existing foodstore - APPROVED
- MA/02/0312 Extension to existing foodstore - REFUSED
- MA/99/1331 Variation of condition (i) of planning permission reference MA/99/0583 to allow delivery vehicles to arrive/depart on bank holidays between the hours of 8am and 7pm - APPROVED
- MA/99/0583 Variation of condition (xii) of permission reference MA/87/ 2087 to allow delivery vehicles to arrive/depart on Sundays between the hours of 0800 and 1900. Application also involves the erection of an acoustic fence at a height of 3.5m above ground level - APPROVED
- MA/98/1517 Variation of condition xii of permission MA/87/2087 to permit servicing of foodstore on Sundays between 0800 and 1900 hours.(Retrospective application) - APPROVED

## **CONSULTATIONS**

**MBC Environmental Health** has no objections given that the developer was not able to implement the full trial period granted under condition 2 of MA/07/0489 which has a cut-off date of 30 November 2009 in order to monitor the impact of 24 hour deliveries to the surrounding area. One noise nuisance complaint has been received by the Environmental Health section. This would be investigated under the Environmental Health Legislation.

**Kent Highway Services** have no objections as they consider that the proposal would not cause a significant traffic increase onto the publicly maintainable highway.

## **REPRESENTATIONS**

**Cllr Moriarty** has called the application to committee if officers are minded to approve the application on the following grounds:-

Vehicles arriving and parked up on the public highway awaiting entry into the unloading bay with their refrigerated units running throughout the night are no more than 60m from residential properties resulting in harm to the well-being of local residents.

**Five representations** were received making the following objections:

- CNG vehicles have to manoeuvre to reach their final unloading point. Numbers 48 and 47 Queen Elizabeth Square face Morrison's goods yard and therefore these residential properties are subjected to high levels of noise and pollution.
- 24 hour deliveries would generate constant noise from the delivery lorries and the delivery yard which would cause sleepless nights to local residents including children who presently cannot sit out in the garden during the day time because of the noise caused by the deliveries.
- Currently Morrison lorries park out on the public highway and engines are left running which vibrate the adjacent houses. Doors are slammed shut, reversing lorries together with their reversing alarms are heard in addition to the cages of stock that rattle and bang about in the yard when unloading all hours of the morning. The 24 hour deliveries would extend these types of noise throughout the night which would echo around Queen Elizabeth Square even more in the quiet of the night and thus harming the quality of life of local residents.

## **CONSIDERATIONS**

### **Site location and description**

The application site is located at St. Saviours Road/ Sutton Road junction within the urban area of Maidstone. The supermarket building is positioned at the southeast corner of the site, approximately 8m from the southwest site boundary adjacent to the rear gardens of no.s 38-44 Queen Elizabeth Square. The southeast side of the building is 7.76m to 19.70m from the southeast site boundary forming the common boundary with the Senacre Technology School site which is currently being redeveloped to provide 357 residential dwellings on the site. The rear gardens of several dwellings would adjoin the southeast site boundary of the Morrison site. The main parking area is located to the front (northeast) of the building facing Sutton Road and to the northwest facing St Saviours Road.

The delivery yard of the supermarket is located at the southwest corner of the building which is adjacent to the rear gardens of 41 to 44 Queen Elizabeth Square. There are two vehicle accesses into the site. Both are off St. Saviours Road. One access is opposite Morrison's petrol station and the other access which is deeper into St Saviours Road, is opposite the frontage of a pair of semi-detached houses, nos. 47 and 48 St. Saviours Road. St. Saviours Road leads into the residential estates of Queen Elizabeth Square and Morton Close.

## **Background**

The permitted hours of deliveries to the supermarket have changed over the years since it was built. The most recent significant permanent change was under application MA/03/1916 which allows delivery vehicles to arrive and depart between the hours of 0600 and 2300 Monday to Saturday and 0800 and 1900 on Sundays and Bank Holidays.

Under planning permission MA/07/0465 a number of alterations and extensions to the supermarket were allowed which included the construction of a partially covered and enlarged delivery yard. Condition 2 of MA/07/0465 was imposed which required the developer to submit details of sound insulation measures for the delivery yard. These details were subsequently submitted and the condition was discharged under application MA/09/0500.

Subsequent to the last permission (MA/07/0465) to alter/extend the store, planning permission was granted under MA/07/0489 to remove the restricted delivery hours imposed under condition 2 of MA/03/1916, in effect allowing 24 hour deliveries, 7 days a week. However, three conditions including a time-limit were imposed on the permission. These conditions are contained in the decision notice attached at Appendix A of this report and are explained below.

Condition 1 of MA/07/0489 required the development permitted under MA/07/0465 to be completed to the satisfaction of the Local Planning Authority before 24 hour deliveries could commence. Condition 1 of MA/07/0489 was recently discharged under condition application MA/09/0990 when the required insulation to the delivery yard had been implemented to the satisfaction of the Local Planning Authority.

Condition 2 of MA/07/0489 stipulated the cut-off date for the 24 hour delivery trial period as being 30 November 2009 after which the delivery hours would revert to the hours of hours of 0600 and 2300 Monday to Saturday and 0800 and 1900 on Sundays and Bank Holidays as permitted under MA/03/1916.

Condition 3 of MA/07/0489 requires that all deliveries should be carried in accordance with the night time delivery noise management report, prepared by Belair Research Limited, submitted as part of that application.

## **Proposal**

Condition 2 of MA/07/0489 allowed for a 7 day /week/24 hour /day delivery trial period until 30 November 2009. Given that the sound insulation measures to the delivery yard gates were only completed by 7 September 2009, the 24 hour trial period restriction contained in condition 2 of MA/07/0489, which had a cut-off date of 30 November 2009, could not be tested and monitored fully.

This application seeks to remove condition 2 of MA/07/0489 and its replacement with a similar condition to allow CNG vehicles to arrive and depart twenty-four hours a day seven days a week until 30 November 2010.

As a result of this situation, the applicant has submitted the current application. The current application seeks permission to remove condition 2 of MA/07/0489. Condition 2 states as follows:

*"The use hereby permitted shall be discontinued and the hours in which deliveries may be taken and dispatched shall revert to those permitted by condition 2 of MA/03/1916 on or before 31/11/09.*

*Reason: To enable a trial run to assess the effect of the development on the surrounding area in accordance with policy QL1 of the Kent and Medway Structure Plan 2006."*

Given that the above condition stipulates a cut-off date of 30 November 2009 for the unrestricted delivery to the service yard, the applicants considered that the remaining 2 month trial period following the installation and insulation of the service yard gates was insufficient to fully evaluate the impact of 24 hour deliveries, 7 days a week on the surrounding area.

## **Considerations**

The principle to allow unrestricted deliveries to the service yard was established under planning permission MA/07/0489 which was considered by the Planning Committee on 2 March 2007. The report is attached at Appendix A.

However, this was allowed subject to the pre-requisite that works to install amelioration measures were completed and undertaken. The works have now been completed.

The issue to be considered is whether allowing a further 12 month monitoring period for a full evaluation of the extended delivery hours would be harmful to the amenities of local residents.

Policy NRM10 of The South East Plan 2009 requires measures to address and reduce noise pollution. Policy R1 of the Maidstone Borough-Wide Local Plan 2000 protects neighbour amenity from inappropriate development and provides that adequate arrangements for servicing of retail units should be put in place.

Local residents are concerned that the 24 hour deliveries would generate constant noise from the delivery lorries and the delivery yard throughout the day and night. Representations received indicate that noise disturbance presently relates to lorries parked out on the public highway, engines left running, slamming of doors, reversing lorries including reversing alarms are heard, in addition to the cages of stock that rattle and bang about in the yard when unloading. There is concern that these kinds of noises would continue throughout the night during trial period.

However, in supporting information submitted previously, one of the reasons given for extending the delivery hours to 24 hours, would mean that there would be no rush to unload deliveries in the morning which requires the stacking of vehicles nearby, but would allow delivery times to be staggered so that vehicles would arrive at specified times.

A further survey was carried out by Belair Research Limited on the morning of 30 September 2009 following the installation of insulation to the service yard gates. The location of the sound level readings was selected as being approximately equivalent to the front facades of the houses on St Saviours Street which face the service yard gates.

The results of this survey noted two types of unloading activity dependent on the type of delivery lorries used. The survey noted that curtain-sided vehicles are more noisy than rear loaded vehicles. Deliveries by curtain sided vehicles produced sound levels slightly exceeding the target, however the survey concluded that even these slightly raised sound levels would still be significantly lower than the sound levels produced by the numerous vehicles passing the dwellings in front of the store. However, the report concludes that deliveries are generally within the expected range and the two instances that were found to slightly exceed the expected level should be investigated further to avoid a repetition.

The Environmental Health section has considered the acoustic assessment and has no objections to the application subject to the previously approved mitigation measures being adhered to. They note that the additional noise survey submitted was carried out after the service yard gates had been insulated and do not dispute the findings of the survey. However, they have stated that one noise nuisance complaint has already been received and will be investigated, together with any subsequent complaints that may be received using Environmental Health legislation.

I agree with the views of the Environmental Health section that the further period would allow proper monitoring over a reasonable period to enable any impact on residents to be fully assessed.

### **Conclusion**

Given that sound insulation measures to the service yard and gates are now in place and that condition 3 (mitigating measures) of MA/07/0489 ensures that mitigating measures to control noise are carried out, it is considered that the extension of the delivery trial period of 1 year would be reasonable to allow monitoring of the disturbance caused by the 24 hour delivery period, 7 days a week over a reasonable period. This recommendation is supported by the Environmental Health section.

I note the concerns of the occupiers of neighbouring dwellings in relation to allowing 24 hour deliveries to Morrison Supermarket, however, this permission only grants a trial run for the 24 hour deliveries. After the monitoring period, the delivery hours would revert to those permitted under MA/03/1916. It would then be necessary for the applicants to seek permanent removal of the condition by a further planning application on which appropriate consultation would be undertaken.

I therefore on balance recommend the application be approved.

### **RECOMMENDATION**

GRANT PLANNING PERMISSION subject to the following conditions:

1. The delivery hours hereby permitted shall be discontinued and the hours in which deliveries may be taken and dispatched shall revert to those permitted by condition 2 of MA/03/1916 on or before 30/11/2010.

Reason: To enable a trial run to assess the effect of the development on the surrounding area in accordance with policy NRM10 of The South East Plan 2009.

### **Informatives set out below**

The developer is reminded that condition 3 of MA/07/0489 should be adhered to in order to implement condition 1 of MA/09/1410 and is advised to have regard to the recommendations contained in Belair Research Limited letters dated 16 and 27 October 2009 to further improve the methods used to minimise noise associated with the deliveries to the store during the extended hours.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.