

<b>Application Number</b>	<b>21/01111/VARCO</b>
<b>Site Address</b>	<b>Aldi, Tybridge Street, Worcester, WR2 5BA</b>
<b>Description of Development</b>	Changes to condition 1 of application 20/00776/REM to alter the delivery times from the approved 0700 to 2300 to 0600 to 2300
<b>Expiry Date</b>	28 <sup>th</sup> March 2022
<b>Applicant</b>	Aldi Stores Limited
<b>Agent</b>	Mr Lloyd Collins
<b>Case Officer</b>	Tom Gabriel
<b>Ward</b>	St. John Ward
<b>Reason for Referral to Committee</b>	Called in by Cllr Udall
<b>Key Issues</b>	The principle of development and whether the proposal would be sustainable form of development having regard to the 3 dimensions of sustainable development in terms of its economic role, social role and environmental role.
<b>Web link to application</b>	<a href="https://plan.worcester.gov.uk/Planning/Display/20/00776/REM">https://plan.worcester.gov.uk/Planning/Display/20/00776/REM</a>
<b>Recommendation</b>	<b>The Corporate Director - Planning and Governance recommends that the Planning Committee grants planning permission subject to the conditions set out in section 9 of this report.</b>

## **1. Background**

- 1.1 The application was registered on 7<sup>th</sup> December 2021 and is due for a decision on 8 March 2022. An extension of time on the application until 28<sup>th</sup> March 2022 has been secured.
- 1.2 The application has been referred to the Planning Committee as the original application was determined by Planning Committee and it has been called in by Councillor Udall.

## **2. The site and surrounding area**

- 2.1 The application site is the Aldi store on Tybridge Street. The application site lies within the City of Worcester development boundary, approximately 0.7 km from the city centre. The site is considered to lie in an out of centre location in retail planning policy

terms.

- 2.2 The nearest defined centre to the application site is the St John's District Shopping Centre, approximately 0.4 km south west of the site. This is a relatively small centre, defined as a district centre in the Local Plan. It comprises a number of mainly independent shops on the main roads, with a sizeable Sainsbury store to the rear of the frontage. There is also a range of leisure and community uses in the vicinity of the site.
- 2.3 On the wider Hylton Road Retail Park site is a 'The Range' store whose deliveries are accessed via the entrance on Hylton Road and a 'McDonalds' whose deliveries are within the site. The site is bound to the east by the additional car parking associated with the retail park, beyond which lies the River Severn. Tybridge Street, Hickory's Restaurant and Bar and Cripplegate Park bound the site to the south, beyond which lies Worcestershire County Cricket Ground.
- 2.4 Residential dwellings bound the site to the west, whilst the railway line and the University Arena bound the site to the north. Access for deliveries vehicles to the site is from Tybridge Street.
- 2.5 The site comprises a large supermarket (retail – Use Class E).

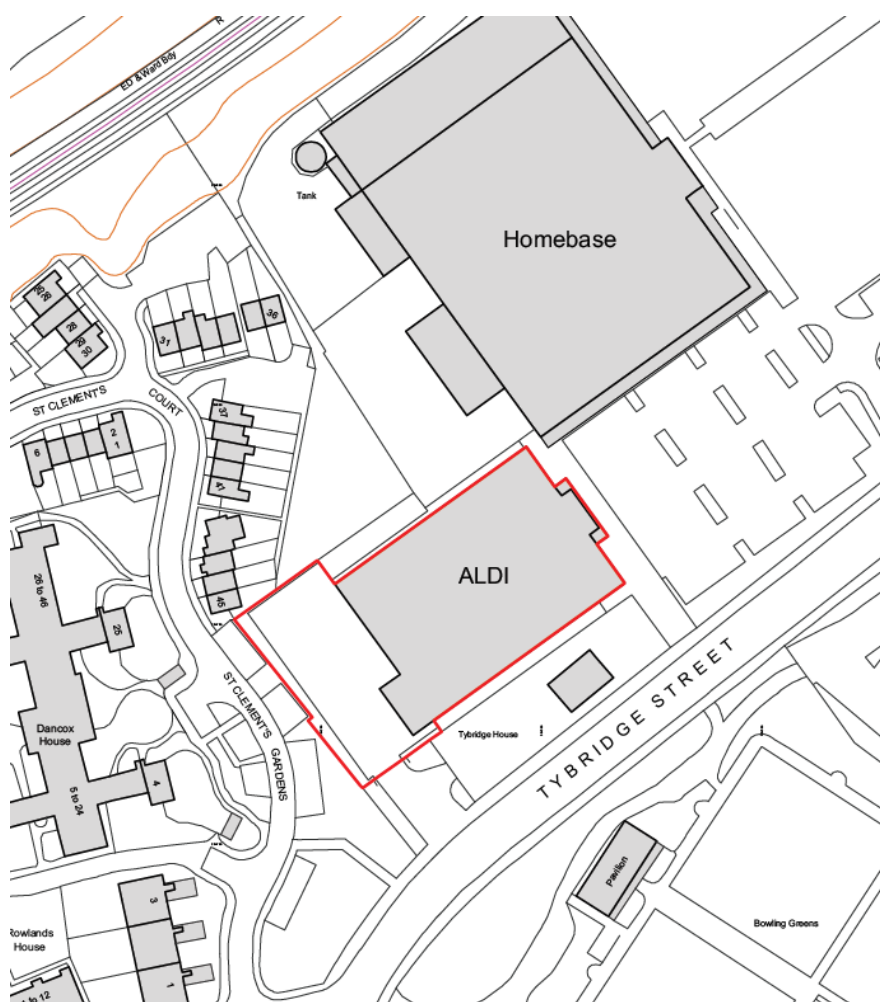


Figure 1. Site location plan

- 2.6 The site is within Flood Zones 3 and 2 and is in an Archaeological Sensitive Area.

### **3 The proposals**

- 3.1 Condition 1 of 20/00776/REM states:

*'From the date of this permission, for a twelve month period, no deliveries shall be taken or dispatched from the site outside the hours of 0600 to 2300 and in practices set out in the Service Yard Management Plan.*

*For the following reason:-*

*To maintain the residential amenity of the surrounding residential development*

- 3.2 The application is seeking to vary condition 1 to the revised hours of 0600 to 23.00 permanently.
- 3.3 On the original permission on the site (P15K0134), condition 10 requested a Service Yard Management Plan to ensure that activity in the Service Yard was managed:
- 10.*The premises hereby approved shall not be brought into use until there has been submitted to and approved in writing by the local planning authority a service yard management plan, which shall include details of all operations to be undertaken within the service yard, measures for the control of such operations, and provisions to be made for the control of light and noise emanating from the service yard, including delivery vehicles, wheeled racks, cages, containers, lift trucks or similar purpose built vehicles to be used on the property, and any security and tannoy systems, etc. The use of the service yard shall not operate other than in accordance with the approved management plan.*

*For the following reason:-*

*To ensure that the use of the service yard does not adversely impact the amenities of neighbouring residents in accordance with Policy BE1 of the City of Worcester Local Plan 2004 and the aims and interests that the National Planning Policy seeks to protect and promote with regard to amenity.*

- 3.4 Condition 10 was discharged under application D16K0056. A revised document has been submitted with the current application which retains all details relating to the management of the service yard but amends the delivery hours to ensure these safeguards are extended in line with the submitted application.
- 3.5 The application is accompanied by a full set of plans together with a suite of supporting documents that include:
- 190451-1110-P2 Site location plan.  
Acoustic Report by Sharps Redmore dated 23 November 2021  
Service Yard Management Plan
- 3.6 In accordance with Article 15 (7) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended), full details of the application have been published on the Council's website. Members will have had the opportunity to review the submitted plans and documents in order to familiarise themselves with the proposals prior to consideration and determination of the application accordingly.
- 3.7 The application is submitted under Section 73 of the Town and Country Planning Act 1990 that allows an application to be made to vary conditions associated with a planning permission. Section 73 of the Town and Country Planning Act confirms that on such applications the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted, and:

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and;

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

3.8 Thus, it is possible to apply for conditions to be struck out, or for their modification or relaxation.

3.9 However, to ensure decision making is robust, Local Planning Authorities should focus their attention on national and development plan policies, conditions attached to the existing permission and other material considerations which may have changed significantly since the original grant of permission. A successful application to amend conditions results in the issue of what is in effect a new planning permission but does not cancel the old permission.

3.10 It should be noted that the original planning permission will continue to exist whatever the outcome of the application under section 73. To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.

## **4 Planning Policy**

4.1 The Town and Country Planning Act 1990 ('the Act') establishes the legislative framework for consideration of this application. Section 70(2) of the Act requires the decision-maker in determining planning applications/appeals to have regard to the Development Plan, insofar as it is material to the application/appeal, and to any other material consideration. Where the Development Plan is material to the development proposal it must therefore be taken into account. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the application/appeal to be determined in accordance with the Plan, unless material considerations indicate otherwise.

4.2 The Development Plan for Worcester now comprises:

- The South Worcestershire Development Plan (SWDP) which was adopted February 2016, and;
- The Worcestershire Waste Core Strategy, which was adopted on December 2012.

### **South Worcestershire Development Plan**

4.3 The following policies of the SWDP are considered to be relevant to the proposal:

SWDP 4 Moving Around South Worcestershire  
SWDP 21 Design

### **Material Considerations**

#### **1. National Planning Policy Framework**

#### **2. National Planning Practice Guidance**

- 4.4 With regard Section 73 applications, pertinent advice is given at paragraphs 13 – 18 of NPPG: Flexible Options for Planning Permissions under the heading: 'Amending the conditions attached to a permission including seeking minor material amendments'.
- 4.5 Further guidance is contained in NPPG: Use of Planning Conditions. Paragraph 31 advises that in deciding an application under section 73 of the Town and Country Planning Act 1990, the Local Planning Authority must only consider the conditions that are the subject of the application – it is not a complete re-consideration of the application. A Local Planning Authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question.
- 4.6 Furthermore, it advises that the original planning permission will continue to exist, whatever the outcome of the application under section 73. To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In granting permission under section 73, the Local Planning Authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission. (Any pre-commencement conditions may not be imposed without the written agreement of the applicant to the terms of the condition (except in the circumstances set out in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018)).

### **3. Ministerial Statement – 13th March 2020.**

- 4.7 At the beginning of the pandemic, at a time of national food shortages in shops, the Government issued a statement advising of the need to increase deliveries to stores to support the response to Covid-19 (**Appendix 1**).
- 4.8 It recognises that many planning permissions have restrictive conditions in relation to food deliveries from lorries and other delivery vehicles, especially at night.
- 4.9 The statement sought to make it clear that, as a matter of urgency Local Planning Authorities should take a positive approach to their engagement with food retailers and distributors, as well as the freight industry, to ensure planning controls are not a barrier to food delivery over the period of disruption caused by the coronavirus.
- 4.10 It also states that Local Planning Authorities should not seek to undertake planning enforcement action which would result in unnecessarily restricting deliveries of food and other essential deliveries during this period, having regard to their legal obligations.
- 4.11 It was recognised this could have an impact on amenity of residents and sought to ensure good practices secured would continue, but placed the need for flexibility high. As advised, it would revoke the statement when 'the pressure from the coronavirus had reduced'.
- 4.12 It is clear that there is an expectation that Local Planning Authorities act flexibly to ensure that goods can be delivered.

### **4. Supplementary Planning Documents**

- 4.13 The following Supplementary Planning Documents (SPD) are relevant to the application proposals:-
- South Worcestershire Design SPD

- Planning for Health in South Worcestershire SPD

## **5. Other Material Considerations**

The following documents are considered appropriate to consider in the determination of the application:

### **Worcestershire's Local Transport Plan (LTP4) 2018 – 2030**

### **Worcestershire County Council Streetscape Design Guide**

## **5 Planning History**

5.1 The site has been the subject of the following planning applications:

**P01A0240** Erection of single retail warehouse building of 2,015 square metres gross and extension to existing retail warehouse with associated garden centre, additional parking spaces, customer and service access from Tybridge Street and works to provide independent curtilage to 52 Tybridge Street. Approved 24<sup>th</sup> July 2001

**P15K0134** Proposed variation of condition 2 attached to planning permission ref P01A0240 and associated external works to the building, to enable occupation of retail unit by a discount food retailer Approved 21<sup>st</sup> August 2015

**21/00776/REM** Changes to condition 7 of application P15K0134 to alter the delivery times from the approved 0700 to 2300 to 0600 to 2300. Approved 18<sup>th</sup> December 2020 for a period of 12 months.

## **6 Consultations**

6.1 Formal consultation, including display of site notices, has been undertaken in respect of the application. The following comments from statutory and non-statutory consultees and interested third parties have been received in relation to the original and amended proposals and are summarised as follows:

**Neighbours and other third party comments:** No objections from neighbouring properties have been received.

**Worcester City Council - Economic Development & Regeneration:** A change to the hours of delivery/operation will have minimal impact from an Economic Development and Regeneration perspective.

**Worcestershire County Council (Highway Authority):** No objection.

**Worcestershire Regulatory Services (Air Quality):** No adverse comments.

**Worcestershire Regulatory Services (Nuisance):** I have reviewed our records and can confirm that no complaints regarding noise have been received in relation to deliveries to Aldi, Tybridge Street.

The submitted noise impact assessment indicates that the extended delivery hours (from 06:00) do not pose an adverse impact and as such are acceptable.

I can confirm that the methodology used to assess the impacts appears to be in line with relevant British Standards and Industry Guidance.

Consequently I have no objection to the variation of Planning Conditions pertaining to delivery hours.

6.2 Members have been given the opportunity to read all representations that have been received in full. At the time of writing this report, no other consultation responses have been received. Any additional responses received will be reported to members verbally or in the form of a late paper, subject to the date of receipt.

## **7. Planning Assessment**

7.1 Policy SWDP1 of the South Worcestershire Development Plan sets out overarching sustainable development principles and these are consistent with the Framework. The various impacts of the development have to be assessed and the benefits and adverse impacts considered, to establish whether what is proposed is sustainable development. Taking the above matters into account, main issues raised by the proposal relate to the principle of development and whether the development would be sustainable, having regard to the three dimensions of sustainability set out in the Framework. The key determining issues are considered to be :

- The principle of development
- The impact on neighbouring residents' amenities
- Access, car parking and highway safety

### **The Principle of Development**

7.2 The proposal is compliant in terms of planning policy providing there is no detrimental impact generated by the proposal in terms of impact on retailing, including retailing in the city centre, the highway network and protection of the amenity of residents. There are no physical changes to the building or area which the application is seeking. The changes are to the operational deliveries to the store, with the proposal seeking one hour earlier, extending the delivery hours to 6am from 7am as is currently restricted by condition 1 on application 20/00776/REM.

7.3 Notwithstanding the above, it is appreciated that it is important to evaluate whether the proposals would represent a sustainable form of development and understand the implications of the proposed changes.

7.4 There is a clear drive from central government to support economic activity, especially during the pandemic, to support economic recovery through retailing and providing employment. The ministers statement makes clear an expectation for the local planning authority to support changes in the delivery processes of food retailers during the pandemic.

7.5 The proposal would expand the operating hours of deliveries to the foodstore from 7am to allow for one hour earlier at 6am.

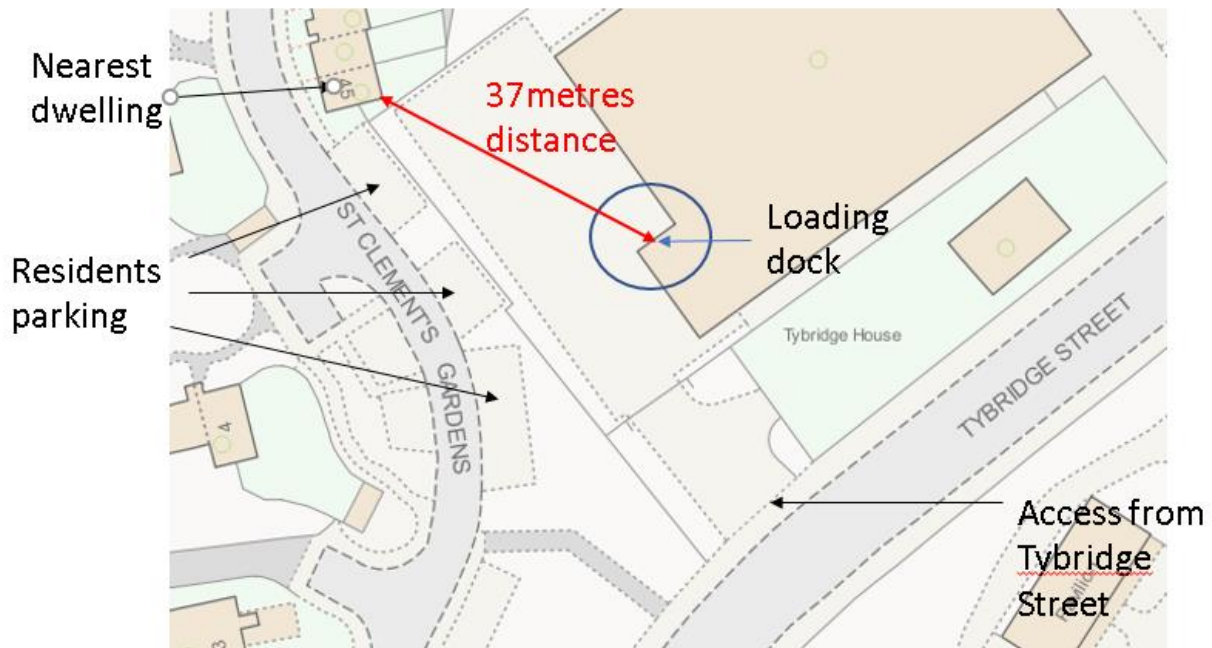
7.6 This amendment to the hours of delivery would allow for improved operation of the food store and allow for greater opportunity and flexibility in terms of the food delivery service. This improvement would support the economic activity of the site which weighs in favour of granting planning permission.

7.7 The impact of the proposal on nearby residents must be considered to ensure they are not detrimentally impacted by the proposed changes in operating hours within the site.

### **Impact on neighbouring residents' amenities**



- 7.8 The site lies adjacent to residential properties to the north of the site. As shown below, there is a distance of 37 metres from the corner of the nearest dwelling to the loading dock.



**Figure 2** - Plan showing relationship to nearby neighbours.

- 7.9 Policy SWDP 21 requires that new development does not have a significant adverse effect on neighbouring amenity. This is consistent with paragraph 127 of the NPPF that requires planning policies and decisions, amongst other matters, to ensure a high standard of amenity for existing and future users of land and buildings.
- 7.10 The extension of the delivery hours could give rise to potential noise and disturbance for the occupiers of the surrounding properties in the early morning hours as a result of vehicle movements as the loading area is located to the rear of the store.
- 7.11 Officers at Worcestershire Regulatory Services confirmed that they have not received any noise complaints about delivery activity at the Aldi Tybridge store during the Covid pandemic period. This is a further contextual consideration, one that cannot usually be obtained (without breaching a planning condition), that night-time deliveries to this store (including those made from 0600 hours) avoid significant adverse impact.
- 7.12 Essentially Aldi has been able to use the Covid pandemic period to undertake a trial of night-time deliveries to the store at Tybridge, Worcester. In the absence of any noise complaints being made to either the store or the local authority, the Council could be confident to grant permanent planning permission to allow deliveries from 0600 hours in the knowledge that over a prolonged eight-month period (including the warmer summer period when windows to the nearby residential properties are more likely to be open) noise from night time deliveries did not give rise to significant adverse impact.
- 7.13 There is a loading dock as seen in the photograph below which demonstrates the threshold for goods to be transferred from the HGV into the store and also a 'port' to limit noise from the loading activities. These proposed mitigation measures are already present and would help to safeguard amenity and to provide a safe environment around the service yard.



**Figure 3** - Photograph showing the loading dock

- 7.14 General activity to the store would not increase because of this application.
- 7.15 It is not considered that the change in the delivery times would make a significant impact on the amenity of residents given the distance to the loading area and the established noise and activity.
- 7.16 Worcestershire Regulatory Services have confirmed that they have not received any complaints regarding noise in relation to the Aldi store. The temporary 12 month grant of permission for the extended hours was permitted in compliance with the guidance within the Written Ministerial Statement (Appendix 1) advising Local Planning Authorities to be flexible during the pandemic period to ensure food supply is not affected. The 12 month period is considered to have been a reasonable degree of time to monitor whether the extended hours of delivery would have an adverse impact upon the amenities of the nearby residential properties. Given that the Council has not received any complaints about noise from the extended delivery times, it is considered reasonable to allow them to be extended permanently.
- 7.17 Given all of the factors, when considered cohesively, the proposal is unlikely to generate a significant impact and would not be significantly discernible from the degree of noise already generated by the site and is therefore in line with the section of policy SWDP 21 regarding amenity.

### **Access, car parking and highway safety**

- 7.18 The proposal would not change the existing highways arrangement for accessing and using the service area for both deliveries and the home delivery service. The proposal would result in vehicles using the highway network away from the peak travel times.
- 7.19 The Highway Authority has no objection to the proposal and have not sought any changes.

## **8 Planning Balance and Conclusion**

- 8.1 There is a clear advantage to the store for more flexibility regarding delivery times, to allow for earlier deliveries to avoid the times of greatest traffic.

There has been no correspondence from neighbours on the proposal with regard to this application, or any history of complaints to Worcestershire Regulatory Services which suggest the existing delivery area generates limited harm. Given that no adverse issues arose in the previously granted 12 month permission, it is considered reasonable to allow them to be extended permanently.

- 8.2 There are existing measures set out in the Service Yard Management Plan to ensure the ongoing protection of neighbouring amenity. These are proposed to continue and have been updated to reflect the new delivery times for the store.
- 8.3 Therefore, given the existing safeguards and the limited extension to the hours proposed, it is considered the increase in hours would not significantly increase activity on the site to such a degree as to have an unacceptable impact on the neighbouring residents.
- 8.4 On balance, the submitted scheme has provided more than sufficient detail to warrant approval.
- 8.5 All comments received as part of the consultation process and consider all material planning issues have been considered in the determination of this application. The adverse impacts of the development do not significantly and demonstrably outweigh the benefits. Overall, it is considered that the proposals constitute an environmentally, socially and economically sustainable form of development that accords with the Framework and the Development Plan as a whole.

## **9 Recommended Conditions**

- 9.1 In the event that members resolve to grant planning permission the following conditions are recommended:

1. No deliveries shall be taken or dispatched from the site outside the hours of 0600 to 2300 and in practices set out in the Service Yard Management Plan.

Reason: To maintain the residential amenity of the surrounding residential development.

2. The development hereby permitted shall be carried out and completed in accordance with the following approved plans and associated documents and the specifications and recommendations contained therein, except where otherwise stipulated by conditions attached to this permission.

190451-1110-P2 Site location plan.  
Acoustic Report by Sharps Redmore dated 23/11/2021.  
Service Yard Management Plan

Reason: To ensure compliance with the approved scheme.

3. The net sales area of the permitted retail unit will not exceed 1,424 sq m, which shall include checkouts, aisles and circulation space but not any lobby area. No more than 20% of the net sales area shall be used for the sale of comparison retail goods. The net sales area shall be restricted to 'limited product line deep discount retailing', and shall be used for no other purpose falling within Class A1 of the Town and Country Planning (Use Classes) Order 1987. 'Limited product line deep discount retailing' shall be taken to mean the sale of no more than 2,000 individual product lines. No increase in the number of product lines shall be permitted without the prior written approval of the Local Planning Authority.

Reason: To define the terms of this permission and in order to protect the vitality and viability of existing centres and to ensure the store retains its status as a deep discount retail food- store and in accordance with the provisions of policy SWDP 10 of the South Worcestershire Development Plan and the aims and interests that the National Planning Policy seeks to protect and promote with regard to retail development.

4. No retail unit shall be sub-divided into two or more units without the submission and approval of a separate application for planning permission.

Reason: To restrict the retail impact of the development in accordance with the policy SWDP 10 of the South Worcestershire Development Plan and the aims and interests that the National Planning Policy seeks to protect and promote with regard to retail development.

5. Noise emitted from the site shall not exceed LAeqT = 40dBA measured 1 metre from the facade of any residential unit between the hours of 2300 to 0600 on any day (where T is a minimum of 15 minutes, or if a series of measurements are made, a minimum of 5 minutes where the total measurement time is a minimum of 15 minutes), unless otherwise agreed in writing by the local planning authority.

Reason: To maintain the residential amenity of the surrounding residential development.

6. No materials, goods, plant or machinery, including motor vehicles shall be stored and/or displayed for sale in the open without the prior written consent of the local planning authority.

Reason: To maintain the character of the property and the quality of the street scene.

#### INFORMATIVE

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

## **Appendix 1**

Written ministerial statement -13th March 2020

Statement made by Robert Jenrick, Secretary of State for Housing, Communities and Local Government , Conservative, Newark, Commons

### Commons Statement

I wish to update the House on the urgent matter of enabling retailers of food, sanitary and other essential items to increase the frequency of deliveries to their stores to support the response to Covid-19.

Many supermarkets, food retailers and distribution centres in England are subject to controls which restrict the time and number of deliveries from lorries and other delivery vehicles, particularly at night. These include planning conditions, which are necessary to making the development acceptable to local residents who might otherwise suffer from traffic, noise and other local amenity issues as a result of these deliveries.

Given the exceptional challenges facing the UK from the coronavirus however, it is vital that deliveries of food, sanitary and other essential products over the coming weeks can be made as quickly and safely as possible, minimising disruption to the supply chains on which our communities depend. The likely pressures on driver capacity mean additional flexibility is needed so that retailers can accept deliveries throughout the day and night where necessary.

The National Planning Policy Framework already emphasises that planning enforcement is a discretionary activity, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

The purpose of this Written Ministerial Statement, which comes into effect immediately, is to make clear that as a matter of urgency local planning authorities should take a positive approach to their engagement with food retailers and distributors, as well as the freight industry, to ensure planning controls are not a barrier to food delivery over the period of disruption caused by the coronavirus.

Given the current situation local planning authorities should not seek to undertake planning enforcement action which would result in unnecessarily restricting deliveries of food and other essential deliveries during this period, having regard to their legal obligations.

