

Report

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| Report to: | Hamilton Area Committee |
| Date of Meeting: | 26 September 2007 |
| Report by: | Executive Director (Enterprise Resources) |

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| Application No | HM/07/0295 |
| Planning Proposal: | Modification Of Condition 9 Relative To The Increase Of Servicing Hours (HM/05/0853) |

1 Summary Application Information

- Application Type : Modification of Condition(s)
- Applicant : Aldi Stores Ltd
- Location : Aldi store
Wellhall Road
Hamilton

2 Recommendation(s)

2.1 The Committee is asked to approve the following recommendation(s):-

- (1) Grant Detailed Planning Permission (Subject to conditions – based on conditions attached)

2.2 Other Actions/Notes

- (1) The Area Committee has delegated powers to determine this application.

3 Other Information

- ◆ Applicant's Agent: Turley Associates
- ◆ Council Area/Ward: 18 Hamilton West and Earnock
- ◆ Policy Reference(s): **Hamilton District Local Plan**
Policy RES1 – Residential Areas – General
Policy DC1 – Development Control General
Finalised South Lanarkshire Local Plan
(after modifications)
Policy RES6 – Residential Land Use
Policy DM1 – Development Management
South Lanarkshire Planning Policies
SLP6 – Development Control General
- ◆ Representation(s):
 - ▶ 2 Objection Letters
 - ▶ 1 Petition (9 signatures)
- ◆ Consultation(s):
Environmental Services

Planning Application Report

1 Application Site

- 1.1 This application relates to the existing Aldi store site, on Wellhall Road in Hamilton and is part of the former Safeway store site.
- 1.2 The site is bounded to the north west by a section of the former Safeway store site which received planning approval for residential development earlier this year (Planning Application No HM/07/0016). To the north east of the site is a cemetery, with this boundary defined by a high stone wall. The south eastern boundary is edged by Wellhall Road, as well as the roundabout that provides access to the site. To the south west of the site is an adjacent, established residential development. The application site is lower than this adjacent site.

2 Proposal(s)

- 2.1 Detailed planning permission is sought for the alteration of the servicing hours of the existing store. The application has been submitted in response to ongoing discussions with agents acting on behalf of ALDI Stores and Planning and Building Standards Service with regards to a current planning appeal against the refusal of a previous planning application for the same proposals at this location. The appeal, which is to be the subject of a Public Local Inquiry, was sisted pending the Council's assessment of this current planning application. However, the Council has been advised that the appeal is now to proceed.

- 2.2 Under the current consent for the store Condition 9 of the permission restricts the servicing hours of the store as follows:

That the servicing of the retail units hereby approved shall be restricted to the following hours:

7.30am – 9.00pm Monday to Friday
7.30am – 8.00pm Saturday
9.00am – 6.00pm Sunday

- 2.3 It is proposed to amend this approval to the following hours:

7.00am – 9.00pm Monday to Friday
7.00am – 8.00pm Saturday
9.00am – 6.00pm Sunday

- 2.4 An Environmental Noise Impact Assessment and supporting statement has been lodged with the application. The supporting information provided by the applicants states that servicing of the store would consist of only one main delivery per day with some additional light vehicles and vans visiting the store at other times. It advises that all deliveries would be undertaken by Aldi delivery drivers who will be aware of the sensitivity of the site. Vehicle speeds will be kept to the minimum and reversing beepers will be avoided. Engines would be switched off when the vehicles were stationary. The statement goes on to state that the delivery is effectively undertaken internally within the building and that Aldi buildings meet the most stringent noise attenuating system design.

3 Background

3.1 Local Plan Status

- 3.1.1 The application site is affected by Policy RES1 – Residential Areas General – as identified in the adopted Hamilton District Local Plan and Policy RES 6 – Residential land Use of the Finalised South Lanarkshire Local Plan (after modifications). These policies state that within areas identified primarily for residential use, the Council will oppose the loss of houses to other uses and will resist any development which will be detrimental to the amenity of these areas.
- 3.1.2 The proposed development is also affected by Policy DC1 of the adopted Hamilton District Local Plan which states that all planning applications shall take fully into account the local context and built form of the area. This policy is also supported by SLP6 – Development Control General of the South Lanarkshire Planning Policies and Policy DM1 – Development Management of the Finalised South Lanarkshire Local Plan (After Modifications).

3.2 Relevant Government Guidance

- 3.2.1 Government Guidance relative to the use of conditions states that conditions should not be imposed unless necessary and do not place unjustifiable burdens on applicants. Conditions should only be imposed where they are:-
- Necessary
 - Relevant to planning
 - Relevant to the development to be permitted
 - Enforceable
 - Precise
 - Reasonable in all other respects
- 3.2.2 Planning Advice Note 56 – Planning and Noise states that the planning system has an important role to play in preventing and limiting noise pollution. Although the planning system cannot tackle existing noise problems directly, it has the task of guiding development to the most suitable locations and in regulating the layout and design of new developments.

3.3 Site History

- 3.3.1 With regard to the history of the site the former Safeway Store which operated from this location was granted outline approval in 1988 by the then Secretary of State following a Public Inquiry. This approval stipulated that the hours of opening should be 8am – 8pm Monday – Saturday and 10am – 5pm Sundays. However, planning permission was granted to amend these hours under Planning Application No: HN/93/0213. Condition 12 specified:

“That the opening hours of the foodstore hereby granted consent shall be limited to between 8:00am and 8:00pm Mondays to Thursdays; 8:00am to 9:00pm Fridays; 8:00am to 6:00pm Saturday and 9:00am to 5:00pm on Sundays; and delivery times shall be limited to 8:00am to 8:00pm Monday to Saturday and 8:00am to 1:00pm on Sundays.”

- 3.3.2 Two planning applications were submitted (Planning Application Nos. HM/01/0097 and HM/01/0098) in respect of the servicing and trading hours of the Safeway Store which by the time of its closure had resulted in the following restriction applying to the hours of servicing:

Servicing: That servicing shall not take place outwith the following:

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|-------------------|-----------------|
| 7.30 am – 9.00 pm | Monday – Friday |
| 7.30 am – 8.00 pm | Saturday |
| 9.00 am – 6.00 pm | Sunday |

- 3.3.3 The existing Aldi Store and a second retail unit were granted planning permission in April 2006 (Application No.: HM/05/0853). The hours of operation were restricted to those imposed on the former Safeway Store at the time of its closure. A subsequent planning application for the amendment to the servicing hours of the store was refused consent in July 2006 (Application No.: HM/06/0336). This refusal is the subject of an appeal to the Scottish Ministers by Public Inquiry. This was sisted until recently to allow the consideration of this application. However, the applicants have recently requested that the Public Inquiry is now taken forward.
- 3.3.4 In addition to the above applications it is confirmed that detailed planning permission has been granted for the erection of a residential development consisting of 78 flatted properties and associated parking on the remaining land formerly associated with the Safeway Store which surrounds the Aldi Store and incorporates the land for the proposed second retail unit (Application No.: HM/07/0016). Whilst this Service is satisfied that the layout and design of the residential development has taken account of the Aldi Stores service yard and its current operational hours and noting Environments Services non objection to the proposal, cognisance was taken of the proposal to amend these servicing hours and the following condition was attached to the planning consent, approved at the Planning Committee of 19 June 2007 to assist in the protection of the residential amenity of both existing and future residents at this location. This condition states:

That notwithstanding the terms of Condition 8 above no property shall be occupied until such time as details of an acoustic barrier along the common boundary (shown BLUE on the approved plans) with the adjacent retail service yard have been submitted to and agreed, in writing, with the Council as Planning Authority

4 Consultation(s)

- 4.1 **Environmental Services** – accept the findings of the Airshed Environmental Noise Impact Assessment Report, dated 28/02/2007 and have no objection to the proposal subject to the imposition of a condition restricting the noise level emitted from the premises.
- Response:** Whilst noting Environmental Services comment it is also noted that the Airshed Report concludes that noise from the store would have marginal impact on the existing residential properties. With regards the proposed residential development adjacent to the site the report notes that a condition has been attached to the planning approval for that scheme to address any concerns in this regard. Given that formal consent has not yet been issued in respect of the proposed residential development it is my intention to impose a similar condition to that detailed at Section 3.3.4 above on this current application, should consent be granted to ensure the protection of both existing and future residents.

5 Representation(s)

- 5.1 Statutory neighbour notification was undertaken and the application was advertised in accordance with Article 12(5) due to the Scale or Nature of Operations. Two letters of representation and a petition on behalf of 9 residents were received in relation to the application. The grounds of objection raised are as follows:

(a) **The proposed servicing hours will result in noise which will have an adverse impact on residential amenity.**

Response: An Environmental Noise Impact Assessment has been submitted by the applicant and after consultation Environmental Services do not support these concerns having raised no objections to the proposal, subject to the imposition of conditions. However, for amenity reasons it is considered that the existing servicing hours of 9.00 to 6.00 on Sundays should be maintained and this matter is discussed further in Section 6 of this report.

(b) **Concerns over existing breaches of current controls of servicing hours.**

Response: Noted. It is confirmed that these concerns have been raised with and investigated by this Service on a couple of occasions. The store has advised that this was as a result of deliveries by a non Aldi Stores firm and agreed that these would not reoccur should consent be granted for the proposed amendments to the servicing hours. Given the submission of this application no formal action was pursued in this instance and it was stressed to the store manager that no further breaches would be tolerated.

These letters have been copied and are available for inspection in the usual manner.

6 Assessment and Conclusions

- 6.1 This planning application relates to the modification of a condition of a previous approval concerning the restriction of the servicing hours of the existing retail unit at this location (Planning Application No HM/05/083). In effect the proposed changes would result in an increase of half an hour each morning Monday to Saturday (7.30am to 7am) and two hours each Sunday morning (7am to 9am), an overall increase of 5 hours per week of morning deliveries.
- 6.2 A noise impact assessment has been carried out by the applicant in respect of the development and its findings raise no issues with regards the proposed hours of servicing. A supporting statement also advises that there is only one main delivery per day to an Aldi store with some additional light vehicles and vans visiting the store at other times. Vehicle speeds will be kept to the minimum and reversing beepers will be avoided through the use of a banksman. Engines would be switched off when the vehicles are stationary. The agent goes on to state that the delivery is effectively undertaken internally within the building and that Aldi buildings meet the most stringent noise attenuating system design.
- 6.3 The main determining factors in considering this planning application are whether the proposed changes raise any new planning issues and the impact upon the amenity of adjoining residents and the area in general.

- 6.4 In terms of local plan policy the proposed development relates solely to an increase in the servicing hours of an existing retail unit. It is therefore considered that the use of the site has been established and does not raise any new planning issues in terms of local plan policy.
- 6.5 In terms of site history the existing Aldi Store was granted planning permission on the basis that the principle of retail development on this site has been established and it is considered that there would be no amenity issues arising from the development. In terms of the servicing and operating hours associated to the units, consent was conditioned to restrict the hours to the same restrictions that were placed upon the former Safeway store.
- 6.6 Prior to the completion of the Aldi Store a subsequent planning application (Application No: HM/06/0336) for the amendment to the servicing hours of the store was received. This was considered to be inappropriate at that time, given the fact that the store was not yet operational and it could not be demonstrated that there would be no impact on amenity resultant from a change in the servicing hours that existed for the former Safeway Store. However, it was concluded that if no issues arose as a result of the servicing arrangements, it may be acceptable to this Service to alter these in the future. The application was refused consent in July 2006 and is the subject of an appeal to the Scottish Ministers. The Council's refusal was largely on the basis that it was considered premature to extend the servicing hours prior to the store being fully operational. The store is now operating and an Environmental Noise Impact Assessment and supporting information has been provided with this application.
- 6.7 Environmental Services were consulted on the application and are satisfied with the findings of the Environmental Noise Impact Assessment submitted by the applicant. However, third party objections raised in respect of the proposal regarding potential noise issues have been taken into account and I remain concerned about the significant increase in the proposed early morning servicing hours on a Sunday. Whilst I am satisfied that the proposed servicing hours for Monday to Saturday are acceptable, for amenity reasons it is considered that the existing servicing arrangements for 9.00 to 6.00 on a Sunday should be maintained.
- 6.8 On the basis of the above I would recommend the grant of planning permission subject to the conditions attached.

7 Reason for Decision

- 7.1 The proposals raise no issue with regards to Policy RES1 and DC1 of the adopted Hamilton District Local Plan, SLP6 of the South Lanarkshire Planning Policies and Policies RES6 and DM1 of the Finalised South Lanarkshire Local Plan (after modifications). Subject to conditions the proposal will not significantly impact upon residential amenity.

Iain Urquhart
Executive Director (Enterprise Resources)

7 September 2007

Previous References

- ◆ HM/06/0336

List of Background Papers

- ▶ Application Form
- ▶ Application Plans
- ▶ Consultations
Environmental Services 01/06/2007
- ▶ Representations
 - Representation from : William Cairns, 23 Tarbrax Way, Hamilton, ML3 9NN,
DATED 09/05/2007
 - Representation from : Winifred Vettraino, 25 Beattock Wynd, Oakmills
Estate, Hamilton, DATED 14/05/2007
 - Representation from : The Residents, 15/31 Beattock Wynd, Oakmills
Estate, Hamilton, DATED 14/05/2007

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

James Watters, Planning Officer, Brandon Gate, Hamilton
Ext 3522 (Tel :01698 453522)
E-mail: Enterprise.hamilton@southlanarkshire.gov.uk

Modification of Condition(s)

PAPER APART – APPLICATION NUMBER : HM/07/0295

CONDITIONS

- 1 That the development hereby permitted shall be started within five years of the date of this permission.
- 2 That the servicing hours of the store shall be as follows:

07.00am to 09.00pm Monday to Friday
07.00am to 08.00pm Saturday
09.00am to 06.00pm Sunday
- 3 That the method of servicing for the retail unit assessed by the Airshed Environmental Noise Impact Assessment Report, dated 28/02/07 shall be maintained to the satisfaction of the Council as both Planning and Environmental Services Authority unless otherwise agreed in writing by the Council.
- 4 That the development shall be carried out strictly in accordance with the plans hereby approved and no change to the design or external finishes shall take place without the prior written approval of the Council as Planning Authority.
- 5 That before any development commences on site or before any materials are ordered or brought to the site, details and samples of all materials to be used as external finishes on the development shall be submitted to and approved by the Council as Planning Authority.
- 6 That before development starts, full details of the design and location of all fences and walls, including any retaining walls, to be erected on the site shall be submitted to and approved by the Council as Planning Authority.
- 7 That before the development hereby permitted is occupied or brought into use, all the fences or walls for which the permission of the Council as Planning Authority has been obtained under the terms of Condition 6 above, shall be erected and thereafter maintained to the satisfaction of the Council.
- 8 That notwithstanding the content of condition number 6 above, work on the retail unit hereby approved shall not be commenced before a 2m high steel palisade security fence is erected along the boundary marked YELLOW on the approved plans and shall be retained in situ to the satisfaction of the Council as Planning Authority until such time as alternative boundary treatment is approved.
- 9 That notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (or any such order revoking or re-enacting that order), the use of the secondary smaller unit marked GREEN on the approved plans shall be restricted to use as a retail unit and for no other purpose within Class 1 as defined in the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1997, without the prior written consent of the Council as Planning Authority.
- 10 The opening hours of both the units hereby granted consent shall be limited to between:

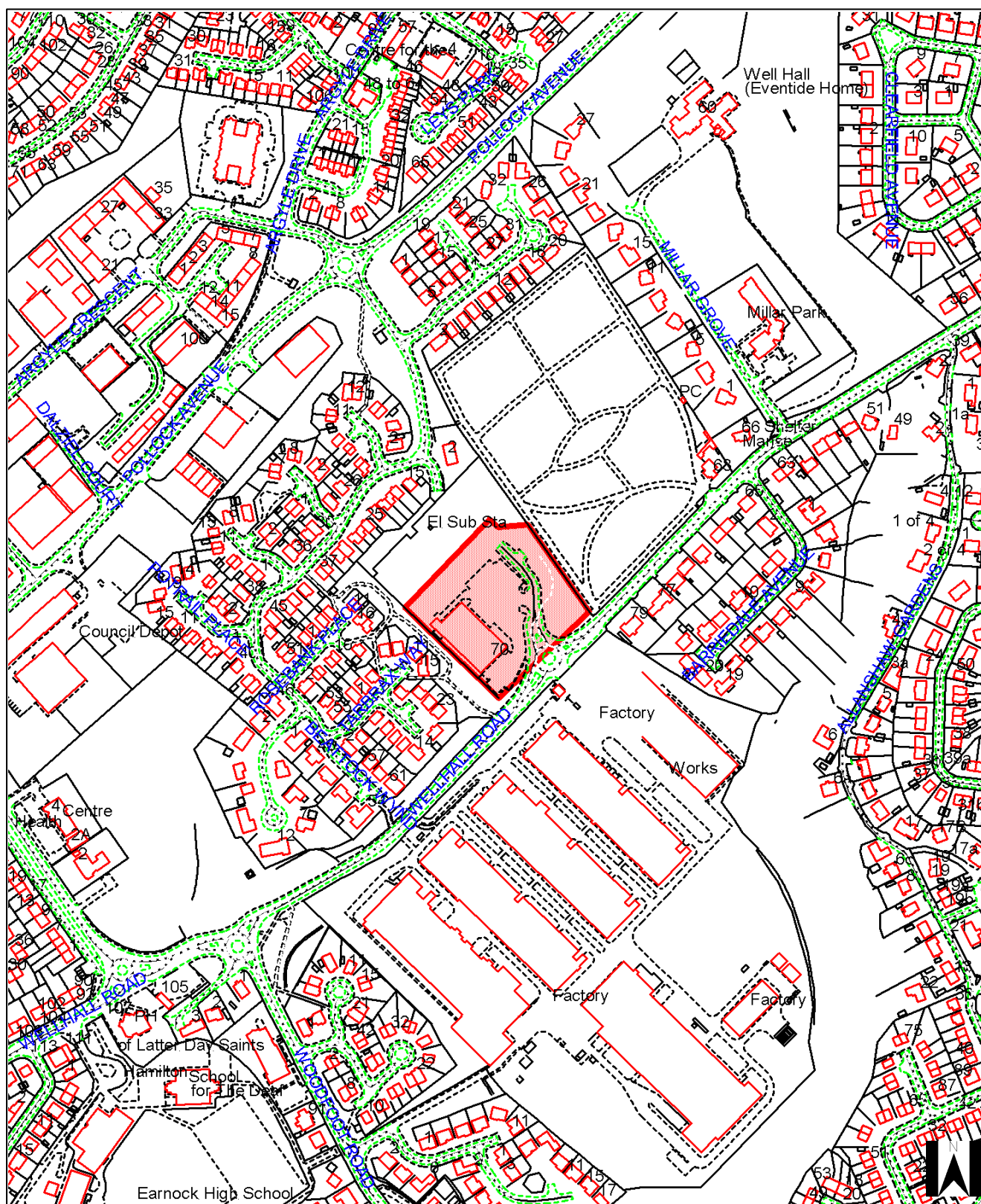
8.00am - 9.00pm Mondays to Fridays
8.00am - 8.00pm Saturdays
9.00am - 6.00pm Sundays
- 11 That before the development hereby approved is completed or brought into use, the new vehicular access so far as it lies within the boundaries of the road abutting the site, shall be constructed in accordance with the specification of the Council as Roads and Planning Authority.
- 12 That before the development hereby approved is completed or brought into use,

- all of the parking spaces shown in BROWN on the approved plans shall be laid out and constructed to the satisfaction of the Council as Roads and Planning Authority and thereafter maintained to the entire satisfaction of the Council.
- 13 That before any work commences on the site a scheme of landscaping shall be submitted to the Council as Planning Authority for written approval and it shall include:(a) an indication of all existing trees and hedgerows plus details of those to be retained and measures for their protection in the course of development; (b) details and specification of all trees, shrubs, grass mix, etc.; (c) details of any top-soiling or other treatment to the ground; (d) sections and other necessary details of any mounding, earthworks and hard landscaping; (e) proposals for the initial and future maintenance of the landscaped areas; (f) details of the phasing of these works; and no work shall be undertaken on the site until approval has been given to these details.
- 14 That the approved landscaping scheme shall be completed to the satisfaction of the Council as Planning Authority during the first available planting season following occupation of the building(s) or completion of the development hereby approved, whichever is the sooner, and shall thereafter be maintained and replaced where necessary to the satisfaction of the Council.
- 15 Between the hours of 0800 and 2000 the measured noise level emitted from the premises (LAeq(1 hour)) shall not exceed the pre-existing background noise level (LA90(1/2 hour)) by more than 5dB (A) when measured in accordance with BS4142:1997 at buildings where people are likely to be affected. Between the hours of 2000 and 0800 the noise level emitted from the premises (LAeq(5 min)) shall not exceed the pre-existing background noise level (LAeq (1/2 hour)) by more than 5dB(A) when measured in accordance with BS4142:1997 at buildings where people are likely to be affected.
- 16 Prior to the operation of the retail units hereby approved, all foul drainage from the site shall be connected to the public sewer. Prior to the commencement of development, written assurances shall be obtained from Scottish Water that the additional flow arising from the development hereby approved will not cause or contribute to the premature operation of the consented, storm overflows.
- 17 That notwithstanding the provisions of the Town and Country Planning (Control of Advertisements)(Scotland) Regulations 1984, no fascia signs, adverts or projecting signs shall be erected on the premises without the prior written consent of the Council as Planning Authority.
- 18 That no development shall commence until details of a method for gaining access to and maintenance of the wall running along the eastern boundary of the application site is submitted to and approved in writing by the Council as Planning Authority.
- 19 That notwithstanding the terms of Condition 4 above the amended servicing hours of the store, hereby approved, shall not be implemented until such time as details of an acoustic barrier along the common boundary (shown BLUE on the approved plans) with the adjacent site have been submitted to and agreed, in writing, with the Council as Planning Authority and thereafter shall be implemented to the entire satisfaction of the Council.

REASONS

- 1 To accord with the provisions of the Town and Country Planning (Scotland) Act 1997.
- 2 In the interests of amenity.
- 3 In the interests of amenity.
- 4 To safeguard the amenity of the area.
- 5 In the interests of amenity and in order to retain effective planning control.
- 6 In the interests of amenity and in order to retain effective planning control.
- 7 These details have not been submitted or approved.
- 8 In the interests of amenity and in order to retain effective planning control.
- 9 In the interests of amenity and in order to retain effective planning control.
- 10 In order to retain effective planning control
- 11 To safeguard the amenity of the area.
- 12 In the interest of public safety
- 13 To ensure the provision of adequate parking facilities within the site.
- 14 In the interests of the visual amenity of the area.
- 15 In the interests of amenity.
- 16 To safeguard the amenity of the area.
- 17 To ensure the site is served by a satisfactory drainage scheme.
- 18 To safeguard the amenity of the area.
- 19 To safeguard the amenity of the area.

For information only



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