

Unrestricted Report

ITEM NO: 6

Application No.
23/00410/FUL
Site Address:

Ward:
Swinley Forest

Date Registered:
22 June 2023

Target Decision Date:
21 September 2023

**Tesco Stores Ltd Whitton Road Bracknell Berkshire
RG12 9TZ**

Proposal: **Section 73 application to amend condition 15 of application 09/00727/FUL to allow a single night time delivery to be brought to the store between the hours of 0200-0400 daily.**

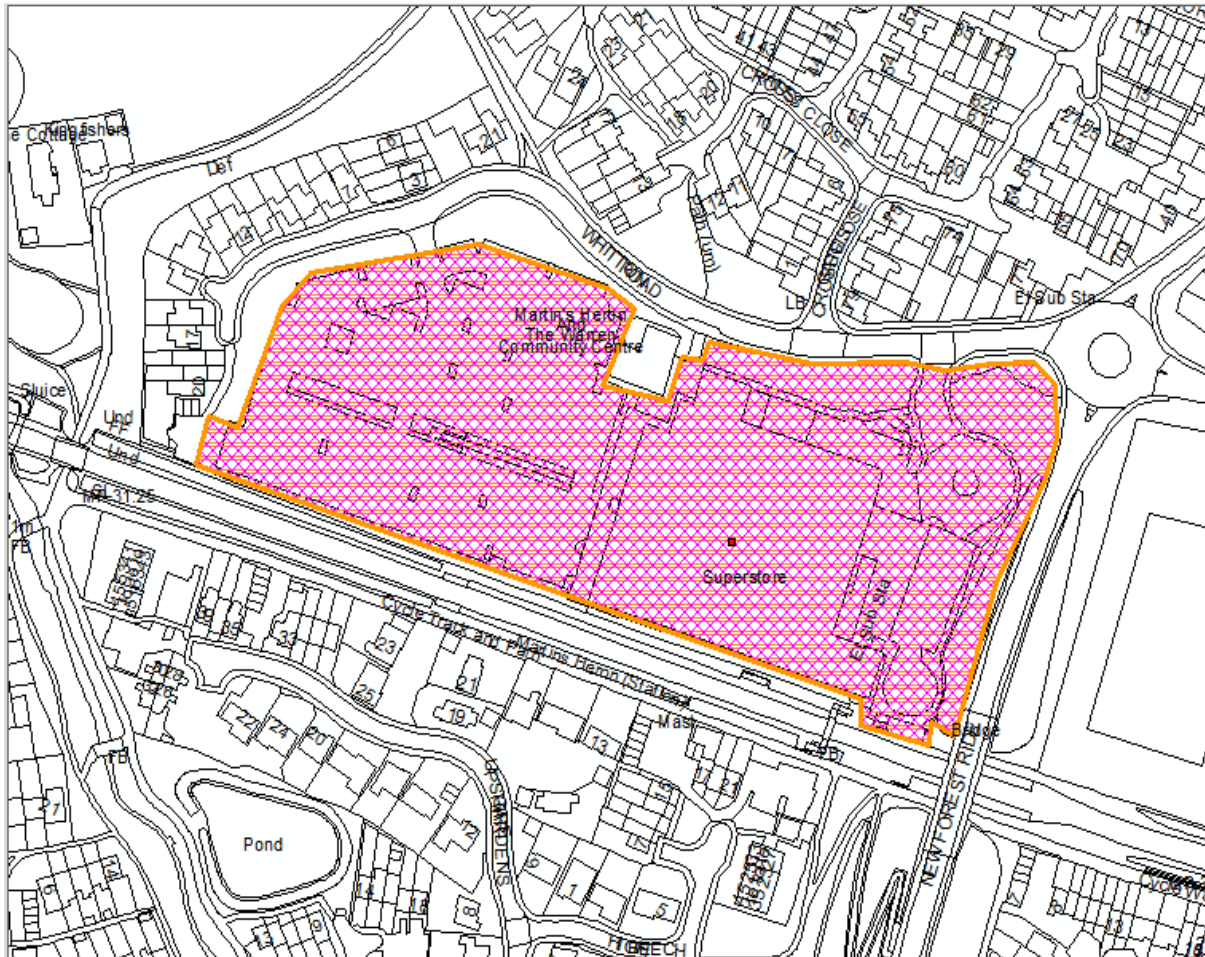
Applicant: Mr Ben Train

Agent: Mr Roderick MacLeod

Case Officer: Margaret McEvit, 01344 352000

Development.control@bracknell-forest.gov.uk

Site Location Plan (for identification purposes only, not to scale)



OFFICER REPORT

1. SUMMARY

- 1.1 This s73 application proposes varying condition 15 of application 09/00727/FUL to permit one delivery to be made to the site between the hours of 02:00-04:00. Condition 15 repeated a condition on earlier planning applications allowed on appeal (08/01037/FUL, 08/01038/FUL, 08/01039/FUL and 08/01040/FUL). A subsequent planning permission 09/00220/FUL permitted the store's Dotcom home delivery facility to receive deliveries and despatch goods between the hours of 07:00 and 23:00, Monday to Saturday and these delivery hours are included in the proposed wording of condition 15.
- 1.2 The noise likely to arise as a result of the single delivery during these hours is not considered likely to result in significant adverse impacts on health and the quality of life which the NPPF advises should be avoided. The noise assessment submitted with the application indicates that noise from a single delivery to the site will exceed World Health Organisation (WHO) guidelines for night time noise levels only for the seconds when the delivery vehicle arrives at and leaves the site and the unloading of deliveries will be below WHO recommended night time noise level guidelines. The noise levels were assessed in trial deliveries made to the site during the hours of 02:00-04:00.

RECOMMENDATION

Planning permission be granted subject to conditions in Section 11 of this report

2. REASON FOR REPORTING APPLICATION TO COMMITTEE

- 2.1 The application has been reported to the Planning Committee because more than 5 objections have been received.

3. PLANNING STATUS AND SITE DESCRIPTION

PLANNING STATUS

Settlement Area

Neighbourhood Centre

- 3.1 The Tesco store is located within a residential estate and adjoins the Martins Heron rail station. The current store, retail units and community centre form a neighbourhood centre that is defined as a Neighbourhood Centre on the Bracknell Forest Borough Policies Map. Vehicular access to the main car park to the store is from Whitton Road opposite nos. 3-7, with deliveries and staff access from a mini roundabout on Whitton Road close to the junction with Cross Gates Close. This access also serves the adjoining station car park.

4. RELEVANT SITE HISTORY

08/01037/FUL

Section 73 application to extend the opening hours on Mondays-Saturdays to 07.00-22.00 without compliance with condition 13 of permission 610811 which states "the opening hours of the store shall be limited to 9am to 8pm Monday to Thursday and Saturday, and 9am to 9pm Friday".

Allowed on appeal.

08/01038/FUL

Section 73 application to allow store to open on Sundays and Bank Holidays between 10.00hrs and 16.00hrs without compliance with condition 13 of planning permission 610811, which states "the opening hours of the shop shall be limited to 9am to 8pm Monday to Thursday and Saturday, and 9am to 9pm Friday".

Allowed on appeal.

08/01039/FUL

Section 73 application to extend delivery times during weekdays and Saturdays from 07.00 to 22.00 hours without compliance with condition 25 of planning permission 07/00994/FUL which states that "deliveries to and despatch of goods from the site shall take place between the hours of 07.00-18.30 Monday-Saturday only".

Allowed on appeal.

08/01040/FUL

Section 73 application to allow despatch and delivery of goods between the hours of 0900hrs and 1700hrs on Sundays and Bank Holidays without compliance with condition 25 of planning permission 07/00994/FUL which states "deliveries to and despatch of goods from the site shall take place between the hours of 07:00-18:30 Monday-Saturday only".

Allowed on appeal

09/00220/FUL

Section 73 application to allow store's dot.com facility to receive deliveries and despatch goods between the hours of 07:00 and 23:00, Monday to Saturday, without compliance with condition 25 of planning permission 07/00994/FUL which states that "Deliveries to and despatch of goods from the site shall take place only between the hours of 07:00-18:30 Monday-Saturday only."

Approved

09/00727/FUL

Section 73 application for variation of (a) condition 11 of planning permission 610811 which states: "Deliveries to and despatch of goods from the site shall take place between the hours of 0700 hours and 1830 hours Monday to Saturday only" to allow deliveries to the store between 0700 hours and 2200 hours Monday to Saturday and 0900 hours and 1700 hours on Sundays and (b) condition 13 of planning permission 610811 which states: "The opening hours of the store shall be limited to 0900 to 2000 Monday to Saturday, and 0900 to 2100 Friday only" to allow the store to trade from 0700 hours to 2200 hours Monday to Saturday, and from 1000 hours to 1600 hours on Sundays.

Approved. This permission consolidated permissions on the site and is subject to conditions relating to both opening hours and deliveries.

17/00003/FUL

Change of use of nine parking spaces to hand car wash and valeting operation including installation of an office and erection of a canopy.

Approved 23.6.2017

23/00314/FUL

Proposed erection of canopy, timber fence and access gate following demolition of existing canopy.

Approved 11.07.2023

5. THE PROPOSAL

5.1 Section 73 application to amend condition 15 of application 09/00727/FUL to allow a single night time delivery to be brought to the store between the hours of 0200-0400 daily. For clarification, this application seeks that condition 15 is reworded to read: Deliveries to and despatch from the store shall only be received at and despatched from the existing service yard and deliveries shall only take place between 0700-2200 on Monday to Saturday and between 0900 and 1700 on Sundays with an additional single delivery permitted between 0200-0400 daily save for deliveries to and dispatch of goods for the purposes of home shopping deliveries from the dot.com service yard (as identified on drawing reference 483303/17 of planning permission 09/00727/FUL) which shall only take place between the hours of 07:00 and 23:00 Monday to Saturday and only by electrically operated vans no larger in storage capacity than a 2 litre Mercedes Sprinter Van or equivalent.)

5.2 The proposed amendment to condition 15 also includes the delivery hours to the Dotcom home delivery service permitted under application 09/00220/FUL. The permitted delivery and despatch hours for the Dotcom facility are 07:00 and 23:00, Monday to Saturday with deliveries to take place only from the designated Dotcom service yard in electrically operated vans no larger in storage capacity than a 2 litre Mercedes Sprinter Van or equivalent.)

6. REPRESENTATIONS RECEIVED

Representations

6.1 Ten letters of objection have been received raising the following planning considerations:

- 1) The application attempts to override the strongly stated and very necessary planning constraints applied when the original appeal was granted.
- 2) It is unacceptable to allow night time deliveries in a residential area.
- 3) The change to delivery hours would set a precedent for further disruptive and inappropriate night time delivery applications.
- 4) Tesco have allowed deliveries to take place outside the permitted hours for some time, resulting in disturbance to residents.
- 5) The retaining wall which is noted as having a sound attenuating effect is in fact a reflector for noise for residents of no.78 permitting voices on the loading bay and trolleys in the delivery yard to be heard outside the site. Reversing beepers and refrigeration compressors can be heard in nearby properties.

6) Disturbance of sleep in the early hours of the day especially between 0200-0400 is very significant and stressful to health and wellbeing.

7. SUMMARY OF CONSULTATION RESPONSES

Highways Officer

7.1 No objection to the proposal. The additional two vehicle movements that would occur (into and out of the site) would be minimal and at the time period specified would not have an impact of the local road network.

Environmental Health Officer

7.2 The proposals are unlikely to result in significant adverse noise impact and there is no objection to the proposed night-time delivery.

8. MAIN POLICIES AND OTHER DOCUMENTS RELEVANT TO THE DECISION

8.1 The primary strategic planning considerations applying to the site and the associated policies are:

	Development Plan	NPPF	Weight to be attributed, with reference to para. 213 of NPPF
Sustainable development principles	SALP Policy CP1	Para. 11(d) refers to 'policies which <u>are most important for determining the application are out-of-date</u> '. CP1 wording differs to this. Furthermore, the PPG states that there is no need for a policy to directly replicate para. 11.	Limited (policy not used in planning application decision-making)
	CSDPD Policy CS1 CSDPD Policy CS2	Consistent (Paras. 7, 8, 11, 12, & 117 - 119)	Full
Retail development	CSDPD Policy CS21	Consistent.	Full
	BFBLP "saved" policies E5 and E11	Not entirely consistent.	Limited

Design & Character	CSDPD Policy CS7	Consistent (Chapter 12)	Full
	BFBLP 'Saved' Policy EN20	"	Full
Transport	CSDPD Policies C23	Consistent (Chapter 9)	Full
Other publications:			
National Planning Policy Framework (NPPF) (2021) National Planning Policy Guidance (NPPG)			

9. PLANNING CONSIDERATIONS

9.1 The key issues for consideration are:

i. Impact on the amenities of the area.

9.2 The main issue likely to result in an impact on the amenities of the area is the potential for noise from the deliveries to have an adverse effect on local residents.

9.3 Currently deliveries to the Tesco store are controlled by condition 15 of application 09/00727/FUL which states that:

15. Deliveries to the store shall only be received at the Service Yard (as shown on Drawing No. 483303/17). Deliveries shall only take place between 0700 hours to 2200 hours Mondays to Saturdays and 0900 to 1700 on Sundays.

REASON: In the interests of the amenities of the area.

[Relevant plans and policies: BFBLP EN25].

9.4 Application 09/00220/FUL permits dot.com vans to deliver to and despatch from the identified dot.com service yard between 07:00-23:00 Monday to Saturday.

9.5 This application seeks to allow a single delivery to be made to the store between the hours of 0200-0400.

9.6 The application is accompanied by a noise assessment which considers if a single delivery during these hours would result in a significant adverse impact. The NPPF at para 185 advises that:

185. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural

environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;

9.7 Footnote 85 to this paragraph refers to the Explanatory Note to the Noise Policy Statement for England (Department for Environment, Food and Rural Affairs 2010) which discusses that noise exposure can cause annoyance and sleep disturbance both of which can impact on quality of life and that many experts agree that annoyance and sleep disturbance can give rise to adverse health effects. There is also emerging evidence that long term exposure to some types of transport noise can additionally cause an increased risk of direct health effects.

9.8 The Explanatory Note does not define what may constitute a significant adverse effect on health and quality of life.

9.9 National Planning Policy Guidance (NPPG) gives guidance on the interpretation of policy aims in the NPPF. The NPPG introduces a Noise Exposure Hierarchy Table . As noise levels increase, increasing noise exposure will cause significant observed adverse effect. Above a certain level noise causes a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is present. If the exposure is predicted to be above this level, appropriate mitigation should be used such as altering the design and layout. Decisions must be made taking account of the economic and social benefit of the activity causing or affected by the noise, but it is undesirable for such exposure to be caused.

9.10 For deliveries that may occur during the night, the WHO Guidelines for Community Noise (GCN) offer the most relevant assessment criteria. This is because for noise that occurs at night the absolute level of noise is the critical factor in relation to recognised sleep disturbance criteria.

9.11 The submitted noise assessment includes details of the noise survey carried out on behalf of the applicants. A baseline noise survey was carried out in April 2023 with noise levels measured from a point on Cross Gates Close at the entrance to the delivery area to obtain background noise levels. Separate noise surveys were carried out in May 2023 with two night time deliveries arranged for consecutive nights with noise levels measured to the rear of properties in Cross Gates Close and in High Beech. .

9.12 The noise assessment indicates that measured noise from the delivery activity within the service yard in the early morning is well below the World Health Organisation guideline night time noise value of 60 dB LAmax. The noise limit of 60 dB LAmax does not represent a level above which people will be woken, but is at the onset of sleep disturbance where the depth of sleep may be altered or eyelids flicker.

9.13 LAmax is considered an appropriate measure for shorter duration sounds. Disturbance at night is considered to be more likely as a result of impulsive sounds such as short thuds and dragging boxes that are typical from delivery activities rather than a continuous sound. The guidance for LAmax levels is that levels inside of above 45dB occurring over 10-15 times per night will cause sleep disturbances. A partially open window will reduce external to internal noise levels by approximately 15dB, so the external noise limit for LAmax (short impulsive sounds peak noise levels) is 60dB. The

graphs show that the only sounds from the delivery which rise above that 'limit' are the arrival and departure times, which is 2 vehicle movements for a few seconds as the delivery vehicle approaches the site. The noise generated is comparable to other unrelated vehicle movements. The noise levels from the actual unloading, in terms of LAmax levels is shown to be well below 60dB at the receptor at around 47dB.

9.14 The NPPF advises that noise giving rise to significant adverse impacts on health and the quality of life should be avoided. The likely noise impact, as measured on site in test deliveries indicates that noise would be above the level of 66dBLAmax which the WHO advises could result in sleep disturbance with windows open at night for only the period the vehicle arrives at the site. This application seeks only one delivery to be made to the site between 02:00-04:00. This is not considered to represent significant adverse impacts on health and the quality of life.

9.15 The Council's environmental health officer has been consulted on the proposal and has stated that during the Covid pandemic, the government temporarily lifted all delivery time restrictions allowing night-time deliveries to supermarkets that may not have been previously allowed, to ensure that essential supply stocks could be maintained. This store, along with most other supermarkets during the pandemic, carried out night-time deliveries during this time at a similar time period to that proposed (around 3AM) and no nuisance complaints were received by the Environmental Health Service about those. This would indicate that night-time deliveries to this store did not result in unreasonable disturbance to local residents then and should not do so should consent be given for this application.

9.16 The noise assessment also includes a series of noise reduction measures to reduce noise levels from service yard activity:

- There will be adequate signage and instruction to ensure that all drivers and staff follow the noise management measures;
- All engines to be switched off as soon as vehicles are parked at the unloading dock;
- All delivery vehicles to be driven in as quiet a manner as possible, avoiding unnecessary engine revving;
- No radios or stereos to be left on in vehicles during deliveries or at other times;
- Staff to be instructed to work quietly when outside the store or in the service yard - only performing essential tasks where noise could be generated;
- All components of the delivery system to be maintained in good working order.

9.17 For deliveries to be carried out relatively quietly in residential areas and not cause disturbance requires following good practice for quiet deliveries. This would include a loading bay where trolleys can be wheeled off directly into the warehouse, care by the driver not to sound horns, slam doors, radio off, quiet talking and turning the engine off once unloading. These measures have been included within the noise assessment and a condition can be applied to any permission requiring the measures to be implemented.

9.18 The noise assessment also includes an assessment of predicted delivery activity in the context of BS 4142. This is mainly designed for the purpose of assessing industrial plant such as air handling units etc, to determine the likelihood of complaints being made to assist with determining planning applications rather than specifically for delivery noise. The method compares the typical background sound level at the same time period as the proposed delivery with the rating level of the noise source (that is based on the specific noise level of the activity, in this case measured 5m from the source, with character correction penalties added where applicable).

9.19 The noise prediction using BS4142 corrected for the distance has concluded that the rating level at 73 Cross Gates Close will be +12dB with corrections applied for just perceptible sound. BS4142 explains that "A difference of around +10 dB or more is likely to be an indication of a significant adverse impact, depending on the context". There is a predicted +3dB at 21 High Beech, which is below +5dB BS4142 explains that "A difference of around +5 dB is likely to be an indication of an adverse impact, depending on the context" and "The lower the rating level is relative to the measured background sound level, the less likely it is that the specific sound source will have an adverse impact or a significant adverse impact. Where the rating level does not exceed the background sound level, this is an indication of the specific sound source having a low impact, depending on the context".

9.20 The predicted BS4142 assessment predicted rating level at the receptor is well above the level Environmental Health would generally consider acceptable as typically a target of 0dB above background or below is preferred and would usually recommend refusal of rating levels in excess of +5dB.

9.21 However an environmental health officer has carried out a site visit and the delivery yard is a good structural design to allow for carrying out best practice quiet deliveries. There are 2 loading bays (only 1 in use at night for this proposal) where delivery lorries can be backed into the warehouse so trolleys and pallets can be offloaded directly from the HGV and into the warehouse minimising noise break-out. The yard is on a slight slope and so deliveries are at a slightly lower level than ground level. There is a brick boundary wall around the delivery yard with the sliding gate access being the only opening so it is relatively well designed for containment of noise.

9.22 The view of the environmental health officer is that whilst delivery sound may be perceptible if the residents were to listen out for it, it is unlikely to cause residents to be woken and cause nuisance. This is evidenced by the lack of complaints received when deliveries have been made, supported by the noise data for the impulsive sounds (LAMax) being within the recommended limits and that the delivery is of relatively short duration at around 30 mins.

ii Highways Issues

9.23 No impact on the local highway network is considered likely to arise as a result of permitting one delivery to be made to the site between 02:00-04:00.

10. CONCLUSIONS

10.1 The impact of permitting one delivery to be made to the store between 02:00-04:00 is not considered to be so significant that it would result in noise levels at the site that would result in significant adverse impacts on health and the quality of life which the NPPF advises new development should avoid.

10.2 The environmental health officer has considered the submitted noise assessment and considers that a single delivery between 02:00-04:00 would be unlikely to cause residents to be woken and cause nuisance. This is evidenced by the lack of complaints received when deliveries have been made during the Covid pandemic and the trial deliveries carried out as part of the noise assessment on behalf of the applicant. Noise data for the impulsive sounds LAMax levels as set out in the noise assessment indicate that other than the seconds when delivery vehicles arrive and leave the site noise from deliveries are within the recommended limits and that delivery is of relatively short duration.

10.3 Condition 15 of 09/00727/FUL includes delivery hours which were allowed on appeal (08/01037/FUL, 08/01038/FUL, 08/01039/FUL and 08/01040/FUL). The recommendation set out in Section 11 below proposes an amendment to Condition 15 which also includes the permitted delivery hours for the store's Dotcom facility which were allowed under planning permission 09/00220/FUL to allow all delivery hours for the site to be contained in one condition. An additional condition is also recommended to ensure that the deliveries are undertaken in accordance with 'best practice'.

11. RECOMMENDATION

That the application be **APPROVED** subject to the following conditions:-

1. The development hereby permitted shall commence within three years of the date of this permission.

REASON: To comply with Section 91 of the Town and Country Planning Act 1990.

2. No further external lighting shall be provided at the site unless otherwise approved in writing by the local planning authority.

REASON: In the interests of the amenity of neighbouring property and the character of the area.

[Relevant Policies: BFBLP EN20 and EN25]

3. All external lighting on site shall be extinguished half an hour after closing time except for any security lighting.,

REASON: In the interests of the amenity of neighbouring property and the character of the area.

[Relevant Policies: BFBLP EN20 and EN25]

4. The gross external area of the store shall not exceed 7,366 sqm.

REASON: To control the overall size of the store in accordance with retail planning policy.

[Relevant Plans and Policies: BFBLP E6 and E7]

5. The net sales area of the store (which is defined as the retail sales area, checkouts and customer services), shall not exceed 4,121 sqm.

REASON: To control the nature of the retail offer of the store in accordance with retail planning policy.

[Relevant Plans and Policies: BFBLP E6 and E7]

6. No more than 20% of the retail sales areas of the store as extended shall be used for the sale or display of comparison goods. For the purpose of this condition, comparison goods are as defined in the URPI Information Brief 98/1 but shall exclude health and beauty and pharmaceutical goods.

REASON: To control the nature of the retail offer of the store in accordance with retail

planning policy.

[Relevant Plans and Policies: BFBLP E6 and E7]

7. The recycling centre approved shall be permanently retained.

REASON: In the interests of the amenities of the area.

[Relevant Plans and Policies: BFBLP EN20 and EN25]

8. The trolley management system approved by the local planning authority shall be permanently retained.

REASON: In the interests of the amenities of the area.

[Relevant Plans and Policies: BFBLP EN20 and EN25]

9. Existing vehicle parking spaces shall be kept available for parking at all times

REASON: To ensure that the development is provided with adequate car parking to prevent the likelihood of on-street car parking which would be a danger to other road users.

[Relevant Plans and Policies: BFBLP M9]

10. The 33 car parking spaces and turning areas provided at Martin's Heron Railway Station car park shall be kept available for parking at all times.

REASON: To ensure that the development is provided with adequate car parking to prevent the likelihood of on-street car parking which would be a danger to other road users.

[Relevant Plans and Policies: BFBLP M9]

11. The walkway which runs along the northern side of the staff parking area and the shop unit forming a link between the station and the site shall be retained at all times.

REASON: In the interests of pedestrian safety and convenience.

[Relevant Plans and Policies: BFBLP M6]

12. The covered and secure cycle parking, and the shower facilities and lockers for employees shall be retained.

REASON: In the interests of accessibility of the development to cyclists.

[Relevant Plans and Policies: BFBLP M6]

13. The car parking marked out and signed for people with disabilities shall be retained.

REASON: To ensure that people with disabilities have adequate access to the development.

[Relevant Plans and Policies: BFBLP M7]

14. The opening hours of the store shall be limited to 0700 hours to 2200 hours Mondays to Saturdays, and 1000 hours to 1600 hours Sundays.

REASON: In the interests of the amenities of the area.

[Relevant Plans and Policies: BFBLP EN20]

15. Deliveries to and despatch from the store shall only be received at and despatched from the existing service yard and deliveries shall only take place between 0700-2200 on Monday to Saturday and between 0900 and 1700 on Sundays with an additional single delivery permitted between 0200-0400 daily save for deliveries to and despatch of goods for the purposes of home shopping deliveries from the dot.com service yard (as identified on drawing reference 483303/17 of planning permission 09/00727/FUL) which shall only take place between the hours of 07:00 and 23:00

Monday to Saturday and only by electrically operated vans no larger in storage capacity than a 2 litre Mercedes Sprinter Van or equivalent.

REASON: In the interests of the amenities of the area.

[Relevant Plans and Policies: BFBLP EN20]

16. The road surface of the covered area of the Service Yard shall be maintained to provide a smooth running surface for the cages to prevent unacceptable noise disturbance to local residents.

REASON: In the interests of the amenities of the area.

[Relevant Plans and Policies: BFBLP EN20]

17. The 'Dot Com Service Yard' (as shown on Drawing No 483303/17 of planning permission 09/00727/FUL) shall only be used for the purposes of home shopping deliveries, and shall be limited to 0700 hours to 2300 hours Monday to Saturday.

REASON: In the interests of the amenities of the area.

[Relevant Plans and Policies: BFBLP EN20]

18. The 'Dot Com Service Yard' (as shown on Drawing No 483303/17 of planning permission 09/00727/FUL) shall be accessed by vehicles with an axle weight of no more than 3,500 kg. No HGVs shall access the 'Dot Com Service Yard'.

REASON: In the interests of the amenities of the area.

[Relevant Plans and Policies: BFBLP EN20]

19. The existing boundary wall to the Dot Com service yard constructed to a height of 3.5m and 2 bricks in width shall be retained.

REASON: In the interests of the amenities of the area.

[Relevant Plans and Policies: BFBLP EN20]

20. The delivery activity noise reduction measures set out in section 5 of the Environmental Noise Assessment (Sharps Redmore) dated 24th May 2023 shall be implemented at all times.

REASON: To ensure that the amenities of nearby residents are not adversely affected by noise.

[Relevant Policies: BFBLP EN25]