

Borough Green
Borough Green And
Long Mill

561267 157100 4 August 2009

TM/09/01510/FL

Proposal: Redevelopment of existing petrol filling station and neighbouring garden land to provide a replacement petrol filling station and retail sales building (Tesco Express) and alterations to access

Location: Land To The Rear And 84 - 106 Maidstone Road Borough Green Sevenoaks Kent

Applicant: Esso Petroleum

1. Description:

- 1.1 Planning permission is sought for the redevelopment of the existing Petrol Filling Station (PFS) at Esso, Maidstone Road, Borough Green. It includes the incorporation and change of use of garden land of 3 Crouch Lane to the rear of the existing PFS site to result in a larger development area.
- 1.2 The existing PFS has a large forecourt, petrol pump islands, canopy and small ancillary sales building. The proposal would alter the access and egress arrangement and provide a new layout, petrol pump islands, parking areas, canopy and larger sales building.
- 1.3 The existing ancillary retail sales building has an internal floor area of 76 sq m with a net tradable floor area of 45 sq m. The existing building would be demolished. The proposed retail sales building would have an internal floor area of 285 sq m and a net tradable area of 228 sq m. The proposal has been amended quite significantly, especially in terms of overall site layout, since it was originally submitted.
- 1.4 The existing petrol station has six dispensing positions on 4 islands in a square configuration. The existing canopy above the forecourt has an area of 350 sq m. The proposal would result in six dispensing positions on 3 pump islands and a significantly smaller canopy area.
- 1.5 The existing garden land to the rear is on a higher level than the main petrol station and, accordingly, the ground level of this additional land would be reduced to provide a larger, level site. The existing retaining wall would be removed and a new retaining wall constructed further back within the site close to the rear of existing residential gardens of properties on Normanhurst Road.
- 1.6 At present there are two lines of mature conifer trees within the garden land at the back of the application site. The first row (most northern) would be removed, with the southernmost row remaining.

2. Reason for reporting to Committee:

- 2.1 Called in by Local Members due to the proposals being locally controversial and receiving a high level of response from consultees.

3. The Site:

- 3.1 The site lies on the south side of the A25 Maidstone Road in Borough Green, to the east of the junction with Crouch Lane and to the west of the junction with Brockway. Directly west of the site lies a car sales building, to the north, east and south lie residential properties.
- 3.2 The site lies within the built confines of Borough Green which is identified as a "Rural Service Centre" for the purposes of the Tonbridge and Malling Borough Core Strategy 2007 (TMBCS).
- 3.3 The site lies outside the retail area of Borough Green which is defined by the Development Land Allocations Development Plan Document 2008 (DLA DPD), and its associated Changes to the Proposals Maps Document.
- 3.4 The site has an historic use as a Petrol Filling Station with ancillary retail sales building, as can be seen from the Planning History below.

4. Planning History (selected):

MK/4/54/393	Grant with conditions	5 October 1954
Re-siting of petrol pumps and sign, alteration of access. Borough Green Road Borough Green		
MK/4/58/592	Grant with conditions	18 November 1958
Sales Kiosk, alterations to forecourt and pumps		
MK/4/59/633	Grant with conditions	24 September 1959
Erection of garage showroom		
MK/4/60/354	Application Withdrawn	18 November 1960
Siting of caravan for use as living accommodation		
MK/4/62/423	Grant with conditions	15 October 1962
Petrol storage tank		

Area 2 Planning Committee

MK/4/62/44	Grant with conditions	7 February 1962
Extension to lubrication bay		
MK/4/66/680	Grant with conditions	16 January 1967
A petrol pump and tank		
MK/4/71/302	Grant with conditions	12 August 1971
Two bungalows, for Mayhew Motors.		
MK/4/72/10	Grant with conditions	10 February 1972
Service building and installation of 1,000 gallon diesel storage tank, for Esso Petroleum Company Ltd		
TM/74/474	Grant with conditions	11 October 1974
Demolition of part of existing premises and construction of new building		
TM/76/132,,	Grant with conditions	17 June 1976
The demolition of workshop and rebuilding same		
TM/82/848	Grant with conditions	21 April 1983
Redevelopment of Petrol Filling Service Station, including erection of new sales building and canopy		
TM/91/922	Refuse	24 September 1991
Relaxation of condition (vi) of permission TM/82/848 dated 21.04.83 to allow 24 hour use of petrol service station		
TM/07/02244/FL	Application Withdrawn	3 January 2008
Development of site to provide 14 new units and 1 refurbishment		
TM/08/00712/FL	Refuse	13 June 2008
Erection of 10 no. 2-bedroom flats and 8 no. 4-bedroom houses		

TM/10/00569/FL

Refuse

27 April 2010

Provision of access and crossover from Maidstone Road Borough Green (A25) onto 80 Maidstone Road Borough Green with parking and turning area

TM/09/01504/AT

Pending consideration

Advertisement application comprising 6 no. fascia signs, 1 no. projecting sign, 1 no. freestanding services sign and 1 no. pylon sign (internally and externally illuminated signs)

5. Consultees:

5.1 Borough Green PC: Various concerns/issues raised regarding statements made within supporting information. Main comments in summary:

- Borough Green has been designated as a Rural Service Centre because of its shops. Introducing a small supermarket would compromise the commercial community and the status of the Rural Service Centre.
- If the Borough Green Bypass were built the proposal may be unviable as a potential 70% loss in passing trade would occur.
- Size and scale of retail element contrary to government objectives of PPS7 and out of keeping with the rural village aspirations of the PC.
- Harm to well being of village resulting in harm to the sustainability of the village.
- The proposal could compromise the Council's LDF designation of Borough Green as Rural Service Centre.
- Increase in noise pollution to neighbouring properties from extra vehicle movements, deliveries via HGV, air conditioning compressors and condensers, refrigeration compressors and condensers.
- Loss of mature trees will have a detrimental impact on local ecology and the street scene. Loss of trees will result in an increase in noise to residents who are currently shielded by these trees.
- Insufficient mitigation has been made to overcome potential groundwater pollution from hydrocarbon contamination.
- The proposals do nothing to remove existing ground contamination by the retention of disused underground storage vessels and only seek to compound matters by adding more.

- Risk to highway safety as a result of increased traffic movements

5.1.2 Platt PC: (adjoining parish) Platt Parish Council has a number of objections to these proposals.

- The existing arrangements at this location provide for twelve petrol filling points and 45 sq m. of retail area while the proposals change this to six petrol filling points and 255 sq m. of retail area. Although the retail sales are predicted to account for only about 30% of the site turnover, the proposals, with seventeen parking spaces provided for the shop aspect, clearly change the characteristic of the site from being a petrol filling station that has a convenience shop for the motorists using it to being a local store providing a wide range of goods and which also supplies petrol. Since the value per customer at the pumps is probably much higher than per customer at the shop it is possible that the applicants are actually expecting more customers to the shop than the pumps but no figures have been given. We feel that this is bound to have a significant impact on the trade carried out by the small retailers in Borough Green and would be detrimental to their long term viability. This in turn would give a net reduction in choice of local shopping rather than the increase advocated by this application.
- There are times at present when all of the existing twelve fuel filling points are occupied and with additional vehicles waiting to reach the pumps. With a reduction to only six filling points, and the probability of vehicles being left at the pumps while drivers are in the shop or waiting to pay, the backlog of vehicles could easily prevent others who wish to enter the site from leaving the Maidstone Road and causing hold ups on this primary route. No specific numbers of existing or predicted vehicle movements could be found in the Design & Access Statement but page 19 of the Noise Assessment gives the maximum expected figures used for that analysis. This quotes 12 cars per space in any daytime hour and 12 cars in any 5-minute nighttime period. With seventeen parking spaces these figures equate to 204 movements (i.e. 12 x 17) in and out per daytime hour and 144 in and out per nighttime hour. During the day, therefore, there could be an entry or exit from the site every nine seconds with half of these needing to cross over to the northern carriageway of the A25, and the frequency could be as high as an entry or exit every 12.5 seconds at nighttime. Such vehicle movements would create additional hold ups on the A25 and/or a backlog of vehicles trying to leave the site particularly during peak traffic times.
- We have limited technical knowledge to interpret the predicted noise assessment figures in paragraphs 8.1 to 8.4 of the Noise Assessment Report which all appear to show higher predictions for night than for day. With greater numbers of customers using the site during the day for both fuel filling and shopping we would expect to see the average daytime noise

generated from the site to be higher than at night, while the infrequent deliveries of fuel or shop goods would produce the same, or similar, noise levels whether during the day or night periods. We would welcome any clarification of interpretation of these figures and must rely on the planning authority's environmental department to fully examine this area of the application.

- The proposals are for an extension of the current operating hours of the site by one hour from 23:00 to 24:00 every day creating additional noise and light pollution at this late hour. We feel that this would be severely detrimental to the residential amenity of the surrounding dwellings whilst being of limited value to the business carried out on the site and therefore object to this extension of hours.

5.2 DHH: Environmental Protection: Owing to the close proximity of residential premises, the applicant should be required to submit details of control measures to prevent unreasonable light intrusion and pollution. We have reviewed the submitted acoustic assessment in the light of local concerns. There are concerns over the accuracy of some of the figures quoted in the report. It is also noted that it has not been updated to reflect the revised site layout. In the light of all these factors, we have concerns regarding the potential for noise disturbance to local residents from: 1) vehicles parking, vehicle doors slamming, from people visiting the store, without purchasing fuel. 2) early morning deliveries to the store 3) movement of roll cages to and from the service area and within the service area (complaints have been received by the EP team in respect of this issue from a similar premises within the Borough).

5.2.1 Further detailed comments are awaited from DHH, which will be included in a supplementary report.

5.2.2 Food and Safety: Comments regarding requirement for an asbestos survey as a result of the proposed demolition of the existing building.

5.2.3 Query raised regarding parking for staff – this may take up the spaces allocated at the top of the site. I would like to see a one way system for vehicles entering/exiting the site as a condition. I would like to see a designated pedestrian walkway for parking spaces at the top of the site to the shop entrance.

5.2.4 Contaminated Land: The submitted preliminary Risk Assessment Report (dated April 2009) prepared by Arcadis, Geraghty and Miller International Ltd is fit for the purpose of determining the application. The report identifies the need for further investigation. I agree with the conclusion drawn from the report – recommend condition.

5.3 EA: No objection provided that the conditions within this letter are imposed on any planning permission granted. Drainage: Further information will need to be provided for the surface water arrangements at the site. The application has stated

that soakaways will be used, but the level of pollution control and their locations on the site have not been made clear. Please note that due to the risk of contamination existing within the ground beneath the site, the suitability of soakaways at the site is reliant on the results of investigations into ground conditions at the site. Recommend condition regarding infiltration and surface water drainage.

5.3.1 Land contamination: condition required regarding submission of further ground contamination and remediation works. The site has been subject to land uses with the potential to have caused contamination on or beneath the ground surface. The site lies within a sensitive location with regards to groundwater. This is due to the site being underlain by a principal aquifer (Folkestone Formation) and located within the Source Protection Zone 3 area for public water abstractions at Borough Green.

5.3.2 The preliminary risk assessment report (April 2009) has been carried out in line with relevant guidance. The recommendations for further investigations at the site to determine any required appropriate remediation works should be carried out and relevant proposals agreed with the LPA before any site clean-up works are commenced. The relevant planning condition should not be discharged until such time as all relevant works are complete and a closure report submitted and approved by the LPA. Any construction on site should not commence until this approval has been granted.

5.3.3 Informatives for storage of fuels/chemicals recommended.

5.4 KCC Highways: The proposal is for the redevelopment of the existing petrol filling station enhancing the existing fuel/retail facilities currently on site. These proposals provide for a revised layout to the fuel stations, an increase in the retail element and a significant increase in off street customer parking. The existing combined petrol filling station/retail outlet has been operating for some considerable time. I am unaware of any adverse highway issues occasioned by the current operating regime either from customer usage, fuel or retail, or deliveries. Indeed the KCC accident data base has been interrogated and shows that in the last three years no personnel injury accidents have been recorded in the vicinity of the site. This leads me to the conclusion that, although the Maidstone Road (A25) can be very busy, the existing on site arrangements along with the associated manoeuvring of all vehicles into and out of the site currently operates satisfactorily without detriment to highway safety.

Comments based on the submitted information and drawing number 6367-200944-P-20 Rev C.

5.4.1 Fuel tanker servicing: The proposals will relocate the fuel storage tanks to the rear of the site. The waiting on site by the tanker could affect the overall operation of the site at times of delivery. In order to accommodate the vehicle during deliveries

it is proposed to cone off the rear parking bays and end pump island. The site is to be managed such that the area is coned off prior to the tanker arriving to ensure that the tanker has free access to the delivery point. Although the tanker deliveries are to be outside of the peak times this does still raise concerns. Deliveries are to be two or three times a week and be on site for approximately fifty minutes. Deliveries will result in a reduction of available parking spaces and fuel stations. Although it is expected that fuel customers will remain at current levels, the reduction in fuel stations could result in queuing at the remaining stations and unnecessary circulation movements with retail only customers looking for parking possibly leading to inappropriate forecourt parking. The potential queuing at the remaining fuel stations could inhibit the circulation of vehicles, potentially preventing the tanker from entering the site.

5.4.2 I would recommend that the best solution is for the forecourt to be closed during fuel deliveries as has been suggested by the applicant. The current operation already attracts fuel tanker and retail deliveries and I am unaware of any adverse highway issues occasioned by the current access arrangements. It is not stated whether the site is closed or partially closed at times of deliveries.

5.4.3 Retail deliveries: In order to accommodate the retail delivery vehicle it is proposed to cone off the rear five parking spaces in front of the shop. This suggests that a smaller vehicle than the fuel tanker or an articulated lorry will service the shop. I require that the applicant clarify what vehicle is to be used. Although five bays will be temporarily lost, deliveries being between fifteen and twenty minutes, it is unlikely to affect the general operation of the site during the comparatively short time that the delivery vehicle will be on site. The use of the fuel stations and circulation route are unlikely to be inhibited. Access to the front door for pedestrians will be maintained. Again advance warning required to ensure that these bays are coned off prior to the delivery vehicle arriving. I would recommend that the vehicle size and delivery times be conditioned. The current retail delivery arrangements are not stated but as previously stated I am unaware of any adverse highway issues occasioned by the existing servicing arrangements

5.4.4 Routing of the fuel tanker: The applicant has clarified that the tanker will arrive and depart in the direction of the M20/M26 junction and using the A25. This would be the ideal direction and would not unnecessarily route tankers through Borough Green. From this direction the tanker will approach the site on the near side lane thus negating the potential for the tanker to wait on the public highway for a suitable gap in the on coming traffic prior to turning into the site. However, the applicant may not be able to guarantee vehicle routing as other possible routes will be on public highways and available for use by all vehicles. It has to be remembered that the site is currently serviced by a fuel tanker and it is likely that routing is not conditioned and all approaches to the site are possible. I would encourage the applicant to accord with the suggested lorry routing.

- 5.4.5 Site operation: My recent site observations show that the existing site operates satisfactorily. No adverse highway issues were observed. Based on the applicants own experiences and assessments although the number of fuel stations will be reduced the site should still operate satisfactorily without unnecessary queuing. The highway authority has no data to use to make an independent assessment. However, it is not uncommon to accept the information provided by the applicant based on his extensive expertise in his field. My recent observations have shown that at all times during the peak times not all of the fuel stations been in use and that suggests that the site can operate satisfactorily with a reduction in the number of fuel stations.
- 5.4.6 The applicant estimates that under the proposed development the number of fuel customers is unlikely to rise. However, the applicants own assessment concludes that the number of retail customers is likely to rise. The applicant states that the site currently benefits from 2 car parking spaces. The proposed layout will provide a total of 16 dedicated car parking spaces, increasing the on site parking provision by 14 spaces. Using SPG4, Kent Vehicle Parking Standards (2006) as a reasonable basis for assessing parking requirements, the proposed increase in retail floor area could attract a total of up to 14 off street parking spaces.
- 5.4.7 The proposed additional off street parking would therefore accord with this maximum requirement. With no anticipated queuing at the fuel stations free access around the circulation route is available. With modern fuel pumps having the ability to 'pay at the pump' rather than a customer queuing in the shop the movement of vehicles through the site may be speeded up. However, should a customer wish to use the retail element then there is the potential to move the vehicle to a parking bay thus freeing up the pump and reduce the potential queuing. A simple sign attached to the pump could encourage customers to adopt this.
- 5.4.8 I am of the opinion that AM peak customers are unlikely to use the retail element but be more generally stopping off for fuel on their way to work. There may be a greater element of shopping during the PM peak with the higher use being during the off peak times. With the site being well located in relation to residential areas there is likely to be an element of 'walk in' customers. All this leads me to the conclusion that the proposed on site arrangements are likely to operate satisfactorily.
- 5.4.9 Pump arrangements: The first fuel island is located close to the front of the site; that could promote inappropriate queuing of vehicles close to the entrance. However, with the anticipation that the number of proposed fuel stations can accommodate the expected customers with little or no queuing, I am satisfied that adverse highway conditions are unlikely to occur on the public highway with the proposed fuel station arrangements. Indeed the risk of queuing potentially obstructing the access to the site could occur under the current arrangements.

- 5.4.10 It has been suggested that vehicles using the parking bays fronting the shop could result in conflict of movement with vehicles manoeuvring from the fuel stations. However, I am of the opinion that this risk is limited and unlikely to be detrimental to the operation of the site nor be detrimental to highway safety.
- 5.4.11 Other matters: The applicant is proposing to close off one of the existing vehicle accesses and construct a new one. With the existing access I require that the drop/taper kerbs are removed and replaced with full face kerbs and the footway surfacing adjusted to suit. The applicant will need to liaise with Kent Highway Services (KHS) regarding these works. All works are to be done to KHS specification and satisfaction.
- 5.4.12 Surface water from private areas is not to discharge onto the public highway. The applicant must liaise prior to and during the demolition/construction phase to ensure that the safety of all users of the public highway is maintained at all times.

Additional comments based on the revised layout plan drawing number 6367-200944-P-20 Rev D.

- 5.4.13 The applicant has relocated and re-orientated the sales building and fuel station layout. I find this revised layout an improvement on the original layout. It provides for improved manoeuvring to the east side of the site, additional room to accommodate potential queuing at the fuel stations, further additional off street parking and a dedicated area for the retail delivery vehicle. Based on this layout I would recommend that the eastern access be 'IN' and the western access be 'OUT'. This will require suitable signage supported by white forecourt markings.
- 5.5 Southern Water: Our initial investigations indicate that Southern Water can provide foul sewerage disposal to service the proposed development. Southern Water requires a formal application for connection to the public sewer to be made by the applicant or developer. Request informative is attached to any permission. Request condition attached to any approval regarding surface water disposal.
- 5.6 South East Water: Borough Green Pumping Station, which supplies drinking water to parts of West Kent, is situated close to this site (within EA Groundwater Source Protection Zone 2/3). Therefore there is a necessity to be careful when developing in this area in terms of groundwater protection. South East Water is unclear at this stage whether these proposals could pose a contamination risk and a threat to drinking water supplies going forward.
- 5.6.1 The preliminary risk assessment highlights the potential for historic contaminants to exist on this site. The risk assessment outlines a number of potential pathways through to underlying groundwater and to the major aquifer which South East Water extracts from. The assessment concludes that further studies are required to find out more information on the underlying ground conditions (potential pollutant linkages). It also states that more intrusive site specific investigations are required to ascertain if historic contamination exists.

5.6.2 Holding objection raised pending further intrusive ground investigations and a hydro-geological assessment.

5.6.3 Additional comments received: South East Water supports the measures and conditions being requested by the Environment Agency. The Company upholds its original concerns with regards to groundwater protection. However, with these stringent conditions put into action, the Company is minded not to object to ongoing development of this site at this stage. We strongly recommend that the Local Planning Authority and the Applicant continue to work with the Environment Agency at all times through this development here.

5.6.4 If development proposals are granted, South East Water would like to receive a copy of the completed risk assessment report, the site investigation report and an update on the plan of action for any potential remediation required to deal with any potential contamination risks. If we are able to gain a copy of these reports, if and when they become available, it will be possible for us to liaise with the Environment Agency and raise any concerns should there be any.

5.7 KCC Trading Standards: Concerns raised regarding deliveries. One of the documents states lorries will park adjacent to the shop, I am assuming this is to the side as opposed to blocking the view of the cashiers to the pumps.

5.8 Private Reps: (departure press and site notice) A total of 53 letters of objection have been received from 23 contributors. Many contributors have written in several times due to re-consultation letters being sent out to advise neighbours of amendments to the application submission. In addition, one letter of no comment was superseded by a letter of objection. Objections received are summarised below:

- Increased traffic flows through the village detrimental to village and increase harm to pedestrians including school children.
- The proposal would result in an increase in crime/youth anti-social behaviour
- Fundamental differences between the existing Tesco Express at Larkfield and the proposal. Being namely: proximity of residential dwellings, impact on garden land, dangerous section of road, proximity of shop to pavement.
- Harm to viability/vitality of Borough Green High Street and Western Road shops and services.
- Noise impacts on adjacent houses as a result of forecourt activity, parking noise including reversing alarms on tankers, service yard activity and air conditioning/chiller units.
- Light pollution as a result of floodlights and headlights.

- No need for additional grocery/convenience shopping in Borough Green.
- Insufficient parking will lead to cars parking on the A25 Maidstone Road.
- Opening hours proposed are too long.
- Increased exposure to Benzene fumes.
- Proximity of tanker deliveries and vents to adjacent residential property.
- Over-intensification of a commercial use outside the confines of the village centre.
- No alcohol sales should be allowed.
- Lack of privacy to dwellings on the North side of Maidstone Road – people filling up at the pumps would have a direct view of the front garden area.
- The proposal would bring commercial use closer to dwellings which are used to having garden land adjacent to them.
- Misleading to say that “other commercial premises nearby” as there is only one other.
- Land stability – retaining stability of land on existing rear gardens when levels are altered on application site.
- Breach of “building line” by canopy and forecourt sales building.
- If garden land developed it should be to meet Affordable Housing need or bungalow need rather than commercial uses.
- Insufficient noise screening planned – a 2m fence is not effective – a wall should be used.
- There are gaps in the existing tree line at the southern boundary of the site.
- Is there a car/jet wash planned?
- Security of residential property – will CCTV be installed?
- Building and canopy are “template” designed and not designed with the site in mind.
- Would delivery vehicles block the forecourt?
- A pitched roof canopy would fit in better with the area.

- Poor visibility for vehicles existing on to A25 as a result of the proposed sales building and signage.
- No objection to redevelopment of existing petrol station with double skinned fuel tanks and modern pipework systems.
- The proposal would result in competition to existing shops in Borough Green and is not therefore welcome.
- Will new tree planting be required?
- Proposal too large and not in keeping with the streetscene.
- The proposal would result in an increase in litter.
- Revised layout shows access point moved to within 2m of existing access to Fairseat House.
- This site is an accident black spot and the proposal would result in fatalities.
- Existing tree line at the rear was a requirement of updating of the site in 1982 to provide visual and acoustic screening. None should be removed.
- Garden to be retained with bungalow is too small.
- More residents should have been consulted on the application.
- Traffic queuing likely on A25 – potential stacking.
- ATM's with 24hr use would result in the potential for noise to be 24 hours from car doors, stereos etc.
- The development would result in “garden grabbing” which is contrary to the recent change in government policy.

6. Determining Issues:

Policy framework and principal issues:

- 6.1 The site lies within the confines of the Rural Service Centre of Borough Green, where Policy CP12 of the TMBCS allows for housing and employment development or redevelopment, conversions and changes of use. Accordingly, the principle of general redevelopment of this petrol station is, in broad policy terms, acceptable. However, there is a proposed increase in the retail element of the proposal from a minor ancillary sales building to a much larger retail sales building which could be argued to become the dominant use.

- 6.2 Retail development is subject to Policy R1 of the DLA DPD and Policy CP22 of the TMBCS. Policy R1 of the DLA DPD and Policy CP22 identify Borough Green as a “District Centre” for the purposes of retail policy.
- 6.3 Policy CP22 of the TMBCS states that “New retail development will be proposed in the LDF or otherwise permitted, if it maintains or enhances the vitality and viability of the existing retail centres and properly respects their role in the retail hierarchy in accordance with the following sequence:
- a) on sites located within the defined limits of the town, district or local centres;
 - b) on edge-of-centre sites, but only if there is sufficient capacity and a retail need is demonstrated that cannot be accommodated within a town, district or local centre;
 - c) on out-of-centre sites, but only if there is sufficient capacity and a retail need is demonstrated that cannot be accommodated within or on the edge of a town, district or local centre. Sites that are well related to an existing retail area will be preferred to ones that have no such relationship....
- 6.4 Policy CP22 goes on to state that proposals which might harm the vitality or viability of an existing centre either in terms of retail impact or, in the case of smaller centres, undermining the balance of uses or harming their amenity, will not be permitted.
- 6.5 PPS6 (Planning for Town Centres) has been superseded by PPS4 (Planning for Sustainable Economic Growth) during the course of the determination of this application.
- 6.6 Policy EC6.2 of PPS4 is the most relevant policy for assessing retail development in rural areas (i.e. outside of town centres and within the countryside or rural service centres). Policy EC6.2 states that “in rural areas, local planning authorities should, inter alia,
- a. *strictly control economic development in open countryside away from existing settlements, or outside areas allocated for development in development plans*
 - b. *identify local service centres (which might be a country town, a single large village or a group of villages) and locate most new development in or on the edge of existing settlements where employment, housing (including affordable housing), services and other facilities can be provided close together....”*
- 6.7 Policy EC5.4 of PPS4 is also relevant, stating that “in assessing the impact of proposed locations for development under EC5.5 local planning authorities should:
- a. *take into account the impact considerations set out in Policy EC16, particularly for developments over 2,500 sq m or any locally set threshold under EC3.1.d, ensuring that any proposed edge of centre or out of centre sites would not*

have an unacceptable impact on centres within the catchment of the potential development

- b. ensure that proposed sites in a centre, which would substantially increase the attraction of that centre and could have an impact on other centres, are assessed for their impact on those other centres, and*
- c. ensure that the level of detail of any assessment of impacts is proportionate to the scale, nature and detail of the proposed development”*

6.8 Policy CP24 of the TMBCS relates to the quality of new development and its visual impact. Policy CP24 requires all development to be “*well designed and of a high quality in terms of detailing and use of appropriate materials, and must through its scale, density, layout, siting, character and appearance be designed to respect the site and its surroundings.*” CP24 goes on to state that “*development which by virtue of its design would be detrimental to the built environment, amenity or functioning and character of a settlement or the countryside will not be permitted.*”

6.9 A recent change in national policy has occurred through the revised PPS3 issued in June 2010. It is commented in paragraph 40 that a key objective for Local Planning Authorities should continue to be to make effective use of land by re-using land that has been previously developed (PDL). This is also commonly known as “Brownfield Land”.

6.10 Paragraph 41 of the PPS3 states that there is no presumption that PDL is necessarily suitable for housing development nor that the whole of the curtilage should be developed. Annex B of PPS3 says that land such as private residential gardens which, although they may contain paths, pavilions and other buildings, has not been previously developed is excluded from the definitions of PDL. In the superseded PPS3, garden land had been included within the definitions of PDL.

6.11 Accordingly, whilst the development proposed is not for *housing* on garden land (which is the primary focus of PPS3), it does relate to new development on existing garden land. Therefore, in my view, the issue of the principle of development on the garden land to the rear of the existing PFS site must now be considered.

6.12 PPS4 requires a prioritisation for using PDL which is suitable for re-use when considering proposals for retail and economic growth. Hence the new definition of “previously developed land” is fundamentally important. PDL is defined within PPS3 and, accordingly, the amendments to PPS3 in June this year described above are relevant. I therefore consider the principle of retail development on garden land, which forms part of the principal issue pertinent to this application, is contrary to PPS4 as the site would not be fully within PDL, as defined by PPS3. I attribute significant weight to this issue in the balance of material considerations.

Retail impact:

- 6.13 As stated above, the application involves the increase (five fold) in the net sales area of the existing store, and accordingly, in this situation, the resultant retail element is not considered to be “ancillary” to the existing use for the purposes of PPS4 but becomes a mixed use development of part PFS and part A1 convenience store. The application must therefore be tested against the relevant tests contained within PPS4 and Policy CP22 of the TMBCS.
- 6.14 The proposal site is approximately 300m from the boundary of the District Centre as defined in the DLA DPD maps pursuant to Policy R1. In view of the relative scale of the District Centre and the lack of intervening retail uses, it is my view that the application site is “out of centre” for the purposes of PPS4 and Policy CP22.
- 6.15 The proposal is for a relatively modest increase in total floor space on the site (228 sq m gross). If the applicant were to extend the existing unit rather than propose a replacement store, the additional floor space would only just be over the threshold for which the sequential approach would be relevant. In addition, the proposal is well below the threshold for which retail impact assessments would normally be required (2,500sqm gross). In view of the relative size and nature of the proposal in relation to the village centre, I consider it necessary to apply the sequential approach and also, in general terms, to assess the likely impact on the retail centre of Borough Green.
- 6.16 Nathaniel Lichfield and Partners (NLP) is an independent Planning Consultancy which specialises in retail impact assessments and it was appointed by the Borough Council to undertake a full evaluation of the existing Borough Green District Centre (known as a Health Check) and to apply the sequential test to the proposed development. The report was prepared when PPS6 was the national retail policy statement but the consultants carried out additional work following the adoption of PPS4.
- 6.17 The Health Check produced on Borough Green took into account a number of the factors identified in PPS6 and PPS4 as assisting in assessing the health of a centre. The conclusions of the Health Check enable an assessment of vitality and viability to help inform all understanding of the impact of the proposed application on the district centre. The Health Check assessed the following characteristics of the centre: physical structure, convenience store retail provision, other retail provision, diversity of uses, retail rankings, retailer requirements, prime retail yields, vacancies, pedestrian flows, accessibility, car parking and environmental quality.
- 6.18 The summary of the Health Check states that “*the District Centre is a relatively healthy and vibrant centre with the main convenience retail offer provided by the Co-op store. There is generally a lack of quantitative indicators (reflecting the relative size of the centre) but a low vacancy level. The assessment of Borough*”

Green carried out in August 2006 as part of our review of the Existing Retail Hierarchy highlighted the centre's overall lack of a large convenience store and this still applies."

- 6.19 The sequential approach remains as a key principle to be adopted in selecting an appropriate development site. The order for site assessment is set out in paragraph EC5.2 of PPS4 being (in summary and in order of appropriateness) locations within existing centres, edge of centre locations and out of centre locations.
- 6.20 An extension to a retail unit in this location has a 200 sq m threshold below which the sequential approach would not be relevant. However, this is a new build of 285 sq m gross internal floor area and the sequential test applies.
- 6.21 The Borough Green District Centre is the only relevant centre for consideration of the sequential approach as it is the only defined retail centre within the catchment area of the proposed development. Various potential sites have been assessed for their potential as alternative sites to accommodate the retail floor space of this proposal; these sites are within the centre and on the edge of the centre. The conclusions of the sequential approach are that no alternative sites exist within the centre or on the edge of the centre which are of an appropriate size or available for occupation/redevelopment.
- 6.22 The applicants have provided a need analysis which is based on a quantitative analysis. The retail capacity and impact assessment of NLP is partly based on the applicants' need analysis.
- 6.23 The proposal would have two catchment areas, a local catchment area (2km radius) and a wider market catchment formed by passing trade. The local catchment will be assessed for the purposes of the retail capacity and impact assessment.
- 6.24 NLP calculates the total benchmark turnover (a calculation based on the floorspace of existing outlets and average sales per sq m for those types of units) of convenience sales floor space in the catchment area to be £3.77 million. Of this turnover, £3.22million is from facilities within the defined Borough Green District Centre. Their assessment is broadly consistent with the applicant's analysis that £3.55 million is spent in Borough Green District Centre and out of centre facilities. Due to the recession and limited projected expenditure growth, it has been assumed that the benchmark turnover of convenience floor space will not increase between 2009 and 2011.
- 6.25 It is the consultant's opinion that, due to the limited range and choice of convenience facilities within Borough Green with the largest having a net floor space of 267 sq m (Co-op), it is unrealistic to assume that Borough Green's catchment area is anything other than a net exporter of most of its convenience goods expenditure to the much larger food stores in the surrounding area.

Available figures indicate 30% retention of convenience goods spending within the catchment area. NLP considers this retention level is realistic in view of the scale of the centre and relative attractiveness of the larger facilities in surrounding centres.

- 6.26 In impact terms, the proposal is likely to generate an estimated turnover of £3.22 million resulting in a net uplift of £3.02 million over the existing facility. NLP advise it is difficult to quantify the proportion of additional trade which will come from the catchment area and that which will be “pass by” trade. A figure of 50% as a portion of the store’s turnover (£1.51 million (est)) will be “pass by” trade. This results in £1.51 million being sourced from within the catchment area.
- 6.27 The £1.51 million of convenience goods spending will be redirected from two sources, firstly from expenditure currently being spent in the catchment area (primarily within the Borough Green District Centre) and secondly from expenditure being spent outside the catchment area. It is considered that the diversion of turnover from outside the catchment area is likely to be significant due to the distance of other main food stores (primarily Sevenoaks and Tonbridge).
- 6.28 The residual convenience goods turnover of the application proposal is likely to be diverted from other convenience stores within the catchment area (principally within the centre of Borough Green). However, due to the low level of provision within the catchment area, it is likely that many of the existing convenience facilities are trading reasonably well above Company average levels. The Co-op appears to trade well, in part underpinned by pass-by trade, due to its location adjacent to the station. A further area of potential impact on the District Centre is the reduction in linked trips.
- 6.29 In summary, the overall opinion of the Council’s retail consultant is that the centre appears healthy, has a diversity of uses and the main convenience food store appears to trade well and will remain attractive to passing trade from the train station. Its conclusion is that the level of impact is unlikely to materially harm Borough Green District Centre when assessed against the criteria within PPS4. They also consider it is unlikely to undermine the balance of uses, which would be contrary to Policy CP22 of the TMBCS.
- 6.30 In this context, it is my view that it would not be reasonable to refuse the application based upon PPS4 and Policy CP22 with regard to impact on the viability and vitality of existing retail/town centre uses.

Visual amenity issues:

- 6.31 The existing site, sales building and canopy are fairly dated and in need of updating in my view. The general form of the proposed development is similar to that of the existing site, in that it would comprise petrol pump islands, canopy, parking and single storey sales building. The main difference in the proposed scheme is the size and scale of the proposed sales building, and its proximity to

the road. It is my view that, irrespective of issues of principle or other impacts of the development, the design of the proposed sales building, and its location within the site would not give rise to harm to visual amenity when assessed from public vantage points. The scale, form, height and detailed appearance are somewhat restricted by the type of use and although flat roofs are resisted in some locations they are commonplace on petrol filling stations and would not therefore be out of context with the use of the site.

- 6.32 Details of external finishes and materials could be required by condition to ensure that the development is of a high quality in terms of materials. Similarly, landscaping details would be required by condition to ensure the development is softened by some on site planting.

Highway matters:

- 6.33 KCC Highways raise no objection to the application on highway safety or parking grounds (see comments set out in section 5 above). Whilst many of the letters of objection to this application, including the PCs, have included issues of highway safety and impact on the A25, the Local Highway Authority (LHA) has assessed all of these issues and does not consider that undue harm from a highway safety point of view would arise as a result of the development. The revised plans submitted in July 2010 which alter the location of the proposed sales building and amend the internal layout of the site would, in the LHA's view, reduce the likelihood of potential stacking of vehicles compared to the original layout and these changes were therefore welcomed by it.
- 6.34 It is therefore my view that, as the LHA does not judge that the development will significantly harm highway safety, the proposal would not breach Policy SQ8 of the Tonbridge and Malling Borough Managing Development and the Environment DPD (MDE DPD) sufficient to warrant refusal.

Residential amenity issues:

- 6.35 The proposal would involve the increased use of the existing commercial premises of Esso, whilst also introducing commercial activity to garden land at the rear of the site. The change of use of this land would result in the rear gardens of properties on Normanhurst Road, specifically numbers 37- 43, and the rear portion of the garden area to Fairseat House, Maidstone Road being adjacent to an expanded petrol station and retail use. This introduction of commercial activity would result in a detrimental impact on the amenity of these properties in my view.
- 6.36 As set out above, policy CP24 of the TMBCS states that "development which by virtue of its design would be detrimental to the built environment, amenity or functioning and character of a settlement or the countryside will not be permitted." Policy CP1 of the TMBCS states that "the need for development will be balanced

against the need to protect and enhance the natural and built environment. ...in determining planning applications the quality of ...residential amenity and land ...will be preserved and, wherever possible, enhanced.”

- 6.37 The existing dwelling at Fairseat House currently has the Esso use adjacent to the flank of the house. This results in the rear garden area of the dwelling being protected from intrusive noise and disturbance by the existing garden serving 3 Crouch Lane. The change of use of the garden associated with 3 Crouch Lane would lead to a significant increase in the level of activity which would be generated by the proposal, directly adjacent to the garden boundary of Fairseat House. It is my view that the prevailing level of tranquillity for these residents should be protected from an undue level of commercial activity in such close proximity to their rear garden areas.
- 6.38 It is therefore my view that the proposal would be detrimental to the residential amenity of the occupants of Fairseat House which is contrary to Policies CP1 and CP24 of the TMBCS and Policy SQ1 of the Tonbridge and Malling Borough Managing Development and the Environment Development Plan Document 2010 (MDE DPD). This harm to amenity would be caused by the introduction of vehicle movements, disturbance from car doors opening and closing, deliveries of retail goods and fuel, the movement of delivery roll cages and the general activity of staff and visitors; the occupants of Fairseat House and users of the garden would experience an unacceptable increase in the level of commercial activity, which would erode the prevailing level of tranquillity associated with the rear of this property.
- 6.39 The above comments in relation to Fairseat House are equally relevant to the occupants of and garden users of Nos. 37- 43 Normanhurst Road to the south of the application site. It is therefore my view that the proposal would be detrimental to the residential amenity of the occupants of Nos. 37- 43 Normanhurst Road which is contrary to Policies CP1 and CP24 of the TMBCS and Policy SQ1 of the MDE DPD.
- 6.40 Whilst the existing bungalow at 3 Crouch Lane is familiar with being directly adjacent to the existing Esso petrol station and having its garden adjacent to the development, the proposal would result in significant material changes to the use of the site by introducing an arguably dominant retail use and a service yard area/delivery area directly adjacent to the bungalow. In addition, the garden serving 3 Crouch Lane would be all but removed, leaving a patio area as the only domestic curtilage associated with the dwelling. Furthermore, a high boundary treatment to this new curtilage is likely as a 2.5m close-boarded fence was originally planned to be erected around the perimeter of the dwelling, though this has been amended on the revised proposal to show a retaining wall. Due to the level change between the Esso site and 3 Crouch Lane it is my view that a high level fence would be sought by the applicants to screen this patio area from the Esso development. In any event, the main garden area of 3 Crouch Lane has

already been separated off from the retained patio and a 2m close boarded fence already exists in the location shown on the submitted drawings which already erodes outlook significantly in my view. This fence is only likely to remain in this location if development were granted on the associated garden land.

- 6.41 It is my view that the proximity of the storage/delivery area to the remaining dwelling at 3 Crouch Lane, with its associated roller cage noise and general commercial activity, would result in an unacceptable harm to the prevailing level of tranquillity to the occupants of the dwellinghouse and users of the remaining patio area garden. In addition, the proposal would result in a significantly reduced residential curtilage to serve 3 Crouch Lane which, in my view, is so limited as to result in undue harm to the residential amenity of future occupants of this dwellinghouse. This is also relevant to the existing 2m close-boarded fence which affords the dwellinghouse much reduced outlook and results in an oppressive impact in my view. It is therefore my view that for the reasons outlined above, the proposal would be detrimental to the residential amenity of the occupants of 3 Crouch Lane which is contrary to Policies CP1 and CP24 of the TMBCS and Policy SQ1 of the MDE DPD.
- 6.42 The proposal has been submitted with indicative details of external lighting in that the proposed layout plan shows the location of proposed floodlights. It is my view that the introduction of floodlights into the existing garden land would result in an unacceptable intrusion for the occupants of Fairseat House and Nos. 37- 43 Normanhurst Road. In addition, the revised layout plan (date stamped 29 June 2010) shows the removal of a cluster of trees located centrally along the southern boundary of the site, not previously proposed. It is my view that the removal of this cluster of trees will heighten the impact of floodlighting on the residents of 37- 43 Normanhurst Road to a detrimental level. Whilst full details of floodlighting and general external lighting could be conditioned on any approval, I am of the view that the principle of floodlights on the garden land associated to 3 Crouch Lane, added to the proposed removal of trees along the boundary, would result in an unacceptable level of light pollution to the occupants of 37- 43 Normanhurst Road, resulting in harm to residential amenity. It is therefore my view that the proposal would be detrimental to the residential amenity of the occupants of Nos. 37- 43 Normanhurst Road which is contrary to Policies CP1 and CP24 of the TMBCS.
- 6.43 I consider a condition could be attached to any permission to submit a scheme of reduced lighting for the site outside of opening hours which would ensure the site is appropriately lit for safety and security purposes, whilst also ensuring light levels are reduced for residential amenity reasons.
- 6.44 The proposal would result in the increase of opening hours on the site from 06.00-23.00 to 06.00-24.00. Although an increase of one hour appears minor, in this residential area with residential property only a few metres away, I consider a midnight closing time is over and above the needs of the village and any commercial benefits are outweighed by the harm caused to residential amenity

through increased late night opening. Whilst I appreciate that other Tesco Express stores on Esso sites have been granted midnight closing in the past, I remain of the view that the development must be assessed against the specific site constraints at the application site and, in this case, the proposal is directly adjacent to the rear gardens of several properties and the level of noise and disturbance would be heightened at such a late hour when residents and their children are likely to be sleeping. I therefore consider the proposed hours of use are unacceptable and, if permission were granted, a condition should be attached limiting the opening hours to 23.00hrs.

6.45 One of the objections received from a resident was of the petrol station being more visible from their front garden and front windows than is the case at the present time. I agree that the repositioning of the petrol islands to the east of the site would result in the commercial use of the site being more readily visible than is currently the case. However, the house in question already overlooks the eastern side of a commercial premises and I do not consider the relocation of the pumps would unduly damage the amenity of the occupants of this property. Moreover, front gardens tend to be semi-private spaces as they are overlooked by users of the public highway and footways and, accordingly, I do not consider the privacy of this resident would be unduly affected.

6.46 Some of the letters of objection received raise concerns over fumes/air pollution/benzene. The applicants submit that the proposed redevelopment of the petrol station would result in the site being brought up to current standards and with modern technologies which reduce the potential for contamination. New tanks, delivery systems and dispensing pumps would collect fumes and recover those fumes to the tanker during the next delivery. Accordingly, there is no evidence that there will be more potential for smells or air pollution and I therefore do not consider the proposal would cause undue harm to health, air quality or residential amenity through smells/fumes.

Contamination issues:

6.47 The application includes a comprehensive risk assessment report relating to contamination of land and ground water. Both the EA and DHH have concluded that the method of the report and its findings are acceptable. The report recommends further investigative work is carried out and the EA and DHH agree with this conclusion. Several conditions are suggested by the EA and DHH to ensure the development as proposed would not result in harm and that any historic contamination is effectively dealt with prior to redevelopment works being carried out. I am of the view that, if permission were granted, appropriate conditions could be attached to safeguard land and water from contamination.

Summary:

6.48 In light of the above considerations I am of the view that, balancing all issues, the proposal does not accord fully with current planning policy and would result in demonstrable harm to residential amenity. In summary, the main reasons for recommending refusal are set out below:

- The proposal would represent development on garden land which is no longer considered as “previously developed land” under PPS3.
- The proposal would result in the introduction of a commercial use of existing garden land, being that commercial use close to the garden areas of Fairseat House and 37- 43 Normanhurst Road. This would result in an unacceptable intrusion through noise from vehicle movements, car doors opening/closing, retail and fuel deliveries, roll cages and general commercial noise such as staff and visitors, being directly adjacent to residential gardens.
- The proposal would result in an unacceptably small garden/amenity area serving 3 Crouch Lane and would unduly harm the amenity of the occupants of that dwelling through a significant loss of outlook as a result of a high level boundary treatment in such close proximity to windows serving habitable rooms. The proximity of the storage/service area to the retained garden area for 3 Crouch Lane would result in an unacceptable impact on the amenity of the occupants of the dwelling through noise from deliveries, roll cages and general staff activity.
- The proposal would result in the introduction of floodlights close to the boundary of residential gardens serving Fairseat House and 37- 43 Normanhurst Road. This impact, added to the removal of a cluster of conifer trees centrally on the southern boundary, would result in an unacceptable light intrusion to residential properties, unduly harming their residential amenity.

7. Recommendation:

7.1 **Refuse Planning Permission**, for the following reason:

- 1 The proposal, by virtue of the change of use and redevelopment of garden land associated with 3 Crouch Lane, results in the introduction of commercial use in unacceptable juxtaposition to neighbouring dwellings and gardens. The proposal would result in an undue level of noise, disturbance and light pollution to these properties, harming residential amenity contrary to Policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007 and Policy SQ1 of the Tonbridge and Malling Borough Managing Development and the Environment Development Plan Document 2010. Therefore this is a town centre use proposed

on land outside the designated district centre which encroaches onto garden land that is not Previously Developed Land suitable for re-use and therefore the proposal is also contrary to PPS3 (Housing) and PPS4 (Planning for Economic Growth).

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