

**Borough Green**  
Borough Green And  
Long Mill

**14 June 2016**

**TM/16/01245/FL**

Proposal: Section 73 Application to vary condition 13 of TM/14/03560/FL (as varied by non material amendment TM/16/00688/NMA) to remove the chamfer from the rear of the building, relocation of escape door, insertion of additional escape door, retention of existing covered porch, amendment to main entrance door, reduction in width and relocation of new access stairs, revised position of two car parking spaces

Location: 4 Wrotham Road Borough Green Sevenoaks Kent TN15 9DB

Applicant: Sainsbury's Supermarkets Ltd

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**1. Description:**

1.1 Members resolved to grant planning permission for single storey side and rear extensions, installation of plant machinery and reconfiguration of access to the existing residential accommodation above on 12 December 2014 (TM/14/03560/FL).

1.2 The plans approved as part of the above application were not listed within a condition. Therefore, the applicant took the step of submitting an application for a Non-Material Amendment to list the approved drawings (TM/16/00688/NMA), which was approved with the drawings listed within condition 13, an extra condition.

1.3 The applicant has made changes to the approved scheme and rather than resubmit a fresh planning application, in this s73 application they are seeking approval for that change as a "minor material amendment".

1.4 This application therefore seeks to vary condition 13 of TM/14/03560/FL (as inserted by TM/16/00688/NMA) to include a revised drawing to remove the chamfer from the rear of the building, relocate the escape door, insert an additional escape door, retain the existing covered porch, amend the main entrance door, reduce the width and location of the new access stairs and to revise the position of two car parking spaces.

1.5 Condition 13 of TM/16/00688/NMA states

*13. The development hereby approved shall be undertaken in accordance with the following approved plans and supporting documentation:*

*Proposed Floor Plans P-121603-102 C received 27.11.2014, Elevations P-121603-203 A received 27.11.2014, Elevations P-121603-204 A received 27.11.2014, Existing Floor Plans P-121603-101 received 17.10.2014, Floor Plan P-121603-111 received 17.10.2014, Drawing P-121603-115 B received*

*17.10.2014, Elevations P-121603-201 received 17.10.2014, Elevations P-121603-202 received 17.10.2014, Drawing P-121603-300 received 17.10.2014, Location Plan P-121603-100 received 17.10.2014.*

*Reason: For the avoidance of doubt.*

- 1.6 This is a retrospective application. The work has been carried out on site and the store has now opened. It is understood that delivery vehicles are not turning on site in the manner indicated when TM/14/03560/FL was granted.
  - 1.7 The building previously operated as a public house at ground floor, with manager's flat and separate flat at first floor and above. The General Permitted Development Order 2015 permits the change from A4 (drinking establishment) to A1 (shops) without the need for a planning application. Therefore, had the applicant not required an extension they would have occupied the building for retail purposes without referral to the Local Planning Authority.
- 2. Reason for reporting to Committee:**
- 2.1 Called in by Cllrs Taylor and Perry in order to consider the implications resulting from the loss of the chamfer to the rear of the building on highway safety, and comparison with the situation of other large convenience shops in the village.
- 3. The Site:**
- 3.1 The site lies on the eastern side of the A227 Borough Green Road, directly north of the London to Maidstone railway line, to the south of 10 Western Road and to the west of some commercial units within Bourne Enterprise Centre. To the west of the application site, on the opposite side of Borough Green Road, lies the Borough Green and Wrotham Railway Station and Co-op store, both of which are served by Station Approach. A small parade of shops lies on the junction of Station Approach with Wrotham Road.
  - 3.2 The application site includes 5 existing A1/A2 units which lie on the northern boundary on the site between 10 Maidstone Road and the Henry Simmonds PH.
  - 3.3 The site lies within the built confines of Borough Green and an Area of Archaeological Potential. The site is within the retail policy boundary for Borough Green as defined by Policy R1 of the DLA DPD 2008.
  - 3.4 The site is relatively flat with vehicular access off Maidstone Road toward to the north-west corner of the site. There is a pedestrian access off the Wrotham Road footway in the south west corner. A zebra crossing lies outside the site serving the Railway Station.



vehicles and pedestrians and leading to vehicles reversing within the highway which is contrary to highway safety.

5.3 Private Reps: Art 15 site notice and (16/0S/0X/0R). No comments received.

6. **Determining Issues:**

6.1 The imposition of a condition on a planning permission is not set in stone – the applicant has the prerogative under s73 of the Town and Country Planning Act 1990 to seek a variation and the LPA must consider such requests on their planning merits in the context of the Development Plan and other material land use planning considerations. The Government has endorsed s73 of an NMA (non-material amendment) application with a plans list as a condition as a way by which developers can seek approval for Minor Material Amendments.

6.2 Policy CP24 of the TMBCS 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. I am of the opinion that the removal of the chamfer from the rear of the building, relocation of the escape door, insertion of additional escape door, reduction in width and relocation of new access stairs would not have a detrimental impact upon the visual amenity of the site and its surroundings.

6.3 The planning permission for TM/14/03560/FL (the parent application) included a list of submitted details. This included 3 plans relating to vehicle tracking and a Transport Statement.

6.4 Condition 11 of TM/14/03560/FL states

*“The extension hereby approved shall not be occupied until the area shown on the submitted plan as turning area has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), shall be carried out on the land so shown or in such a position to preclude vehicular access to this reserved turning area.*

*Reason: Development without provision of adequate turning facilities is likely to give rise to hazardous conditions in the public highway.”*

6.5 The tracking diagrams submitted within the approved Transport Statement show how the delivery lorries would turn on the site. It had a swept path analysis for a delivery lorry going into the site, travelling around the rear of the building, and parking in a marked delivery bay to facilitate to manoeuvre entirely in a forward gear. The Transport Statement, at paragraph 3.7 states *“The service area of the development adjacent to the front of the store would be accessed from the car*

*park and, like cars, service vehicles would access and egress into and out of the existing access on Wrotham Road. Track plot*

***SSLBOROUGHGREEN(LOCAL).1/TK01**, presented in **Appendix B**, shows how the 18t (9.9m) rigid delivery vehicle would be able to access the site.”*

- 6.6 At paragraph 9.8, the Transport Statement states *“The delivery vehicle will turn left slowly into the site before turning manoeuvring around the car park in a clockwise direction, minimising the use of excessive brakes, before stopping in the loading area adjacent the front of the store. The engine will then be turned off after manoeuvring”*.
- 6.7 The Transport Statement forms part of the approved documents for TM/14/03560/FL. Given that it demonstrates that there was manoeuvring space around the building for delivery vehicles, in my view it is necessary for the applicant to demonstrate that delivery vehicles are still able to turn around on site notwithstanding the amendments that have been made to the scheme when built out.
- 6.8 The tracking shown on these diagrams includes the area where the building has now been squared off to remove the chamfer, and the hatched area surrounding disabled parking space SSL6, which has been moved 1.6m away from the building.
- 6.9 Therefore, I am of the opinion that amending only condition 13 on the plans list is inadequate, as the amended drawings would as a consequence be in direct conflict with condition 11. Condition 11 was clearly predicated on keeping the “turning area” available, and the original permission was granted based in part on the information provided in the Transport Statement regarding the proposed vehicle movement.
- 6.10 The application description needs to also vary (or remove) condition 11. Various attempts have been made to get the applicant to revise the proposal in this respect, and to submit an updated Transport Statement detailing an alternative delivery strategy.
- 6.11 The applicant is of the opinion that condition 11 is unenforceable because it refers to a “turning area” that does not exist and is not shown on any plans. They consider that a track plot is not a turning area, and therefore we would not be able to require an area to be kept available if it could not define the parameters of that area. The applicant suggests that even if a track plot could be interpreted as a “turning area”, there is nothing in condition 11 (or any other condition) to ensure that deliveries must take place in the manner envisaged during the course of consideration of TM/14/03560/FL.
- 6.12 Whilst a planning condition to ensure that vehicles **always** enter and exit the site in a forward gear would be unenforceable in a practical sense, it is still of benefit to the highway safety of the surrounding locality and proper planning to ensure that

there is an area on the site where vehicles can turn, as required by condition 11 of TM/14/03560/FL.

- 6.13 There are a number of other small “supermarkets” within Borough Green. Having considered the planning history for these, two of these were converted to supermarkets under the provisions of the General Permitted Development Order because of the uses of the buildings into which they located, and did not require the benefit of express planning permission (Co-op and Loco). The planning permission for the Nisa relates to an historical consent (MK/4/65/183), and has no conditions relating to delivery vehicles. However, given that this Sainsbury site is controllable under planning conditions, the other sites within Borough Green should not form a precedent and through planning, in my view the Council should seek to ensure that the use of the site as a retail shop should have minimal detrimental impact on highway safety and the free flow of traffic.
- 6.14 In light of this concern relating from the proposed changes resulting in inadequate turning conditions, I am of the opinion that the application to amend only condition 13 of TM/14/03560/FL would be in direct conflict with condition 11 of TM/14/03560/FL, which was predicated on keeping the “turning area” available. The tracking plans submitted as part of the Transport Statement approved under TM/14/03560/FL (which shows a delivery vehicle entering and leaving the site in a forward gear and thus “turning” on site) indicates that the area where the chamfer has not been built and one of the parking spaces relocated to encroaches into the tracking, and therefore breaches condition 11. In light of this, I recommend that the application be refused and enforcement action taken.

## 7. **Recommendation:**

### 7.1 **Refuse**

#### **Reasons**

- 1 The Local Planning Authority considers that amending condition 13 in isolation from amending condition 11 is inadequate because removing the chamfer and relocating parking will be in direct conflict with condition 11 of TM/14/03560/FL, by encroaching into the turning area for the delivery vehicle, as set out in the approved Transport Statement under TM/14/03560/FL. Insufficient information has been submitted within this application to demonstrate that delivery vehicles can enter and exit the site in a forward gear and therefore the proposal could give rise to hazardous conditions on the highway, on the A227 and within the site itself, contrary to paragraphs 32-35 of the National Planning Policy Framework and Policy SQ8 of the Managing Development and Environment DPD 2010.

2. An Enforcement Notice **BE ISSUED** to seek the construction of the site in accordance with the approved plans of TM14/3560/FL, the detailed wording of which to be agreed with the Director of Central Services.

Contact: Glenda Egerton