



Committee and Date

North Planning Committee

9<sup>th</sup> June 2015

Item

7

Public

### Development Management Report

Responsible Officer: Tim Rogers

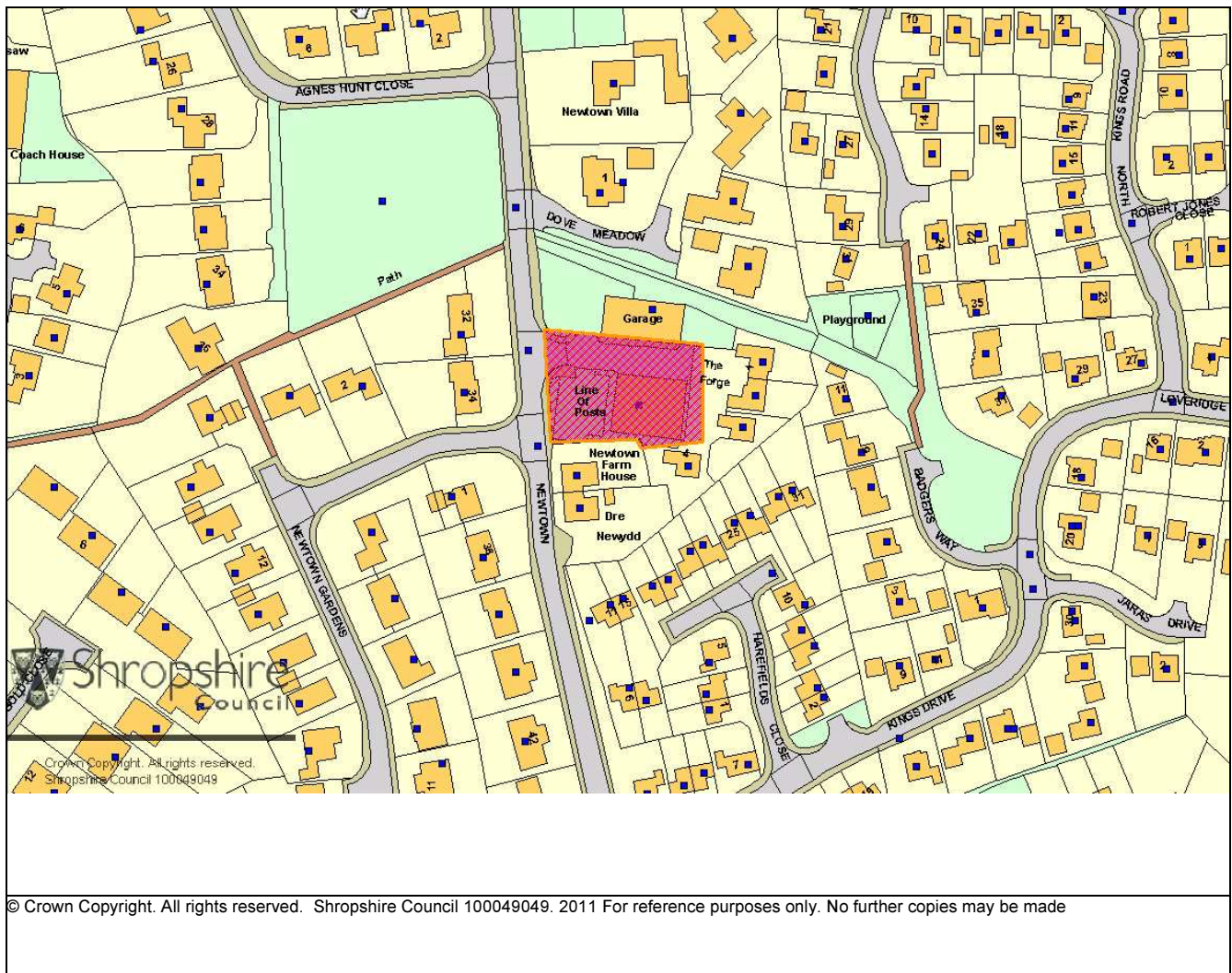
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#### Summary of Application

<b>Application Number:</b> 14/05767/VAR	<b>Parish:</b>	Baschurch
<b>Proposal:</b> Variation of condition No.23 (opening hours) attached to planning permission 11/04795/FUL dated 14.03.12 to amend Sunday opening hours to between 8:00 hours - 22.00 hours		
<b>Site Address:</b> Spar Convenience Store Forge Lane Newtown Baschurch		
<b>Applicant:</b>		
<b>Case Officer:</b> Richard Denison	<b>email:</b> <a href="mailto:planningdmne@shropshire.gov.uk">planningdmne@shropshire.gov.uk</a>	

**Grid Ref:** 342567 - 321878

Plan shown over the page.



**Recommendation:- Grant Permission subject to the conditions set out in Appendix 1.**

## REPORT

### 1.0 THE PROPOSAL

1.1 This is a variation of conditions application to the Spar convenience store in Baschurch to allow an extension to the opening hours on Sunday. The proposed extension of hours will allow the convenience store to be open from 08:00hrs to 22:00hrs on Sunday.

### 2.0 SITE LOCATION/DESCRIPTION

2.1 The existing Spar store is located on a former commercial site which was previously used as a coach depot and car sales. A vehicle repair garage is located directly to the north with four new dwellings positioned to the east to the rear of the Spar store with access along a private driveway which also serves the car park for the Spar. Newtown Farm House is located along the southern boundary with two detached dwellings directly facing the site on the opposite side of the Newton Road to the west. The frontage of the site is located within Baschurch Conservation Area.

### 3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The Parish Council have submitted a view contrary to officers based on material planning reasons which cannot reasonably be overcome by negotiation or the imposition of planning conditions. The local ward member respects the view of Public Protection, although the assessment was not undertaken on Sunday and from experience traffic along Shrewsbury Road on a Sunday is significantly reduced so that noise from the car park would be more noticeable. The Principal Planning Officer in consultation with the committee chairman agrees that the Parish Council has raised material planning issues and that the application should be determined by committee.

### 4.0 COMMUNITY REPRESENTATIONS

#### 4.1 Consultee Comments

- 4.1.1 **Shropshire Council, Historic Environment Team (Conservation)** - A formal response has been raised raising no comments.
- 4.1.2 **Shropshire Council, Public Protection** - The noise report highlights that there is a significant difference in noise between the current opening hours and the current situation outside of the current opening hours which have been proposed as opening hours in this application in Tables Two and Three. It is important to note that the noise level difference noted in these tables is not the expected noise difference from the proposed change in opening hours.

Although an increase in noise at certain residential premises has been suggested by the noise assessment, having witnessed on site the general character of noise from vehicles visiting the SPAR and those passing on the Shrewsbury Road it is not considered that the noise from vehicles in the car park will have a significant detrimental impact on nearby residential receptors. Noise from vehicles in the car park at all residential receptors to the front of the SPAR was noticeably less than that produced by the traffic on the Shrewsbury Road. In a 30 minute spell on site I witnessed 11 cars enter and exit the car park. One of these over revved when it left the site to the extent which I would have expected it to be perceived at nearby residential dwellings. It is appreciated that vehicle numbers on the Shrewsbury Road may be less on Sundays than that witnessed on site. However, road traffic noise will still be the dominant noise source in the area. As the noise created by cars visiting the SPAR at the proposed opening hours is the same as the dominant noise source it is unlikely that any extra vehicles visiting the SPAR would have a significant impact on the area.

Furthermore vehicles are in the car park for around 20 seconds with the engine on. As a result the amount of time any noise will be on site in the extended hours period will be small, again suggesting no significant detrimental impact which would result in refusal of this application. Only two car doors were noted to be shut forcefully causing a noise which may be heard as a distinct noise above background at residential properties.

It should also be noted that not all visits to the SPAR will be by motorised vehicle.

While on site 15% of visits were on foot or by push bike which resulted in no significant noise.

In conclusion it is not expected there to be a significant detrimental impact which would result in refusal of the proposed additional opening hours where no mitigation is suggested. It is suggested that no noise mitigation is required in order to allow the additional opening hours. It is noted that there is space to provide mitigation in future if required although it is not recommended necessary in this case.

4.1.3 **Baschurch Parish Council** object to the application on the same grounds as the previous objection relating to the opening hours and in view of the comments made by the Inspector at the appeal.

#### 4.2 **Public Comments**

4.2.1 Eighteen letters of objections have been received raising the following concerns:-

- Existing congestion and unauthorised parking along the road.
- Staff use the loading bay and delivery vehicles have to park on the roadside.
- The village is quiet on Sundays and extended hours will cause increase in noise and disturbance.
- Adequate alcohol sales within the village after the supermarket closes.
- HGV's reverse into the site stopping traffic in both directions.
- Noise from car doors slamming and vehicles accelerating away from the store.
- Increase in litter.
- Concerns raised regarding accuracy of Noise Impact Assessment.
- Previous appeal to extended hours was refused.
- No site notice erected.

4.2.2 The letter has been received from a local resident indicating that the Parish Council are supporting residential development in Baschurch, but do not appear to be providing increased facilities. Residents rely on the village convenience store and concerns are raised that the store closes too early on Sundays.

### 5.0 **THE MAIN ISSUES**

- History & Background
- Impact of current proposal on Residential Amenity
- Highways
- Crime and Disorder
- Other Matters

### 6.0 **OFFICER APPRAISAL**

#### 6.1 **History & Background**

6.1.1 Planning permission was granted in March 2012 for the erection of a single storey convenience store with associated car parking and formation of a new vehicular and pedestrian access following the demolition of the existing bungalow (application reference 11/04795/FUL). The submitted application indicated opening times of

07:00hrs to 22:00hrs on Monday to Saturday and 10:00hrs to 16:00hrs on Sunday. These hours were proposed as a condition by officers and approved by members at committee. A late representation was received from the agent confirming that the end user (Spar) had requested amended opening hours of 07:00hrs to 23:00hrs Monday to Sunday. Additional comments were received from the Public Protection Officer raising no objection, although indicated that large delivery vehicles can cause a noise disturbance and therefore Sunday deliveries should be discouraged. This was discussed by members at committee who were of the opinion that it would not be appropriate to amend the opening hours without seeking the views of the local residents and the Parish Council.

- 6.1.2 A variation of conditions application was submitted to seek an extension to the opening hours which followed consultation with local residents and the Parish Council (application reference 12/01149/VAR). The variation of the opening hours was requested by the applicant as the end user considered that the approved hours are unduly restrictive and would seriously undermine the viability of the store. The store is required to offer a comparable service to that offered by other convenience stores. The agent indicated that the amended hours of opening on Sunday would enable the convenience store to serve the local residents of Baschurch with their morning Sunday newspapers and breakfast goods. Furthermore it is indicated that 16:00hrs onwards on a Sunday is one of the busiest trading times for a convenience store as the supermarkets close at 16:00hrs and the convenience store offers a local service to residents for last minute provisions for the week ahead.
- 6.1.3 The application was supported by officers, although members refused the application at committee as it was considered that the variation of hours were considered unsociable and inappropriate within a predominantly residential area and would be detrimental to the health and wellbeing of local residents by virtue of noise from customers, lighting and vehicle movements late at night and early on Sunday mornings.
- 6.1.4 This application was subject to an appeal in which the inspector indicated that significant weight should be placed on the need to support economic growth as indicated in paragraph 19 of the National Planning Policy Framework, whilst paragraph 17 seeks to secure a good standard of amenity for all existing and future occupants of land and buildings. The inspector indicated that there is a balance between economic interests including local employment and sustainability with residential amenity.
- 6.1.5 The inspector indicated that it was reasonable to assume, given the local context, that traffic during the evening would diminish progressively, and extraneous traffic is likely to become correspondingly more noticeable. In terms of Sundays it was indicated that early morning traffic can be expected to be generally lighter than on other days of the week with local residents having a greater expectation of peace and quiet. Similarly the evening time on Sunday is likely to be valued for increasing comparative tranquillity.
- 6.1.6 The inspector indicated that although Nos. 32 and 34 Newtown are set back from the road, behind tall hedges (at that time), the additional level of activity during the proposed extended opening hours as a whole would increase the degree of general noise and disturbance experienced by these residents by a significant margin. In

addition the inspector indicated that Newtown Farmhouse has side facing windows which look over the proposed car park only a driveways width away and the noise and disturbance and headlight glare would be a material consideration.

6.1.7 In conclusion the inspector indicated that the extended opening hours would be unduly harmful to the living conditions of nearby local residents arising from general noise and disturbance.

## 6.2 Impact of current proposal on residential amenity

6.2.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy indicates that development should safeguard the residential and local amenity. Concerns have been raised by local residents indicating that the extended hours will lead to an increase in noise and disturbance especially from car doors slamming and vehicles accelerating away from the store. Concern is also raised regarding the accuracy of the Noise Impact Assessment and that the previous appeal to extend the hours was refused.

6.2.2 The planning inspector who considered the appeal for the previous extension of hours application indicated that although there had been widespread opposition to the appeal, the main impacts of the proposal were against the nearest dwellings, Nos. 32 and 34 Newton directly opposite the site and Newtown Farmhouse directly adjacent to the southern boundary of the store and its car park. This appeal considered an extension of hours to allow the store to be open an additional hour from 22:00hrs to 23:00hrs (Monday to Saturday), together with an extension to the opening hours for Sunday from 10:00hrs - 16:00hrs to 07:00hrs - 23:00hrs. As indicated above the planning inspector considered that this increase in hours would be unduly harmful to the living conditions of nearby local residents.

6.2.3 The appeal was not supported by a noise impact assessment and this current application does not seek any extension to the hours previously approved for Monday to Saturday. A detailed Noise Impact Assessment has been undertaken with this application which has indicated that there is no change to the mechanical services provided by plant equipment or deliveries, with the only potential noise impact from the increase in trading hours on Sunday (2 hours in the morning and 6 hours in the evening). Existing noise levels have been surveyed at locations representative of the nearest residential properties to the store. The survey concentrated on the earliest and latest existing trading hours whilst the store was open as well as the proposed extension of hours when the store ceased trading. The results and observations taken from the noise assessment indicate that the noise impact associated with extending the store's trading hours to 08:00-22:00 on Sundays would be low, providing no significant effect and was recommend that no mitigation measures are considered necessary in relation to the extended hours.

6.2.4 The Public Protection Team are aware of the neighbour concerns and have visited the site to ensure that there were no site specific acoustic issues that would influence any information submitted with the Noise Impact Assessment. The noise report highlights that there is a significant difference in noise between the current opening hours and the current situation outside of the current opening hours which have been proposed as opening hours in this application in Tables Two and Three. It is important to note that the noise level difference noted in these tables is not the

expected noise difference from the proposed change in opening hours.

6.2.5 Although an increase in noise at certain residential premises has been suggested by the noise assessment, having witnessed on site the general character of noise from vehicles visiting the SPAR and those passing on the Shrewsbury Road it is not considered that the noise from vehicles in the car park will have a significant detrimental impact on nearby residential receptors. Noise from vehicles in the car park at all residential receptors to the front of the SPAR was noticeably less than that produced by the traffic on the Shrewsbury Road. It is appreciated that vehicle numbers on the Shrewsbury Road may be less on Sundays, however road traffic noise will still be the dominant noise source in the area. As the noise created by cars visiting the SPAR at the proposed opening hours is the same as the dominant noise source it is unlikely that any extra vehicles visiting the SPAR would have a significant impact on the area.

6.2.6 Furthermore vehicles are in the car park for around 20 seconds with the engine on. As a result the amount of time any noise will be on site in the extended hours period will be small, again suggesting no significant detrimental impact which would result in refusal of this application. Only two car doors were noted to be shut forcefully causing a noise which may be heard as a distinct noise above background at residential properties. It should also be noted that not all visits to the SPAR will be by motorised vehicle. While on site 15% of visits were on foot or by push bike which resulted in no significant noise.

6.2.7 It is considered that there will not be any significant detrimental impact from noise to proposed additional opening hours and no mitigation is necessary.

### 6.3 Highways

6.3.1 Concerns have been raised from local residents regarding the existing congestion and unauthorised parking along the roadside, together with staff parking in the loading bay and delivery vehicles having to park on the roadside. Concerns have also been raised regarding HGV's reversing into the site stopping traffic in both directions.

6.3.2 Detailed discussions were undertaken prior to the application for the convenience store being approved in relation to HGV deliveries and customer car parking. The layout of the site was designed to provide a delivery bay which should remain unobstructed and was indicated purely for servicing purposes. HGV's would pull into the car park and reverse into the bay for unloading. This would then enable HGV's to leave the site in a forward gear with clear visibility onto the road. The site manager has been informed of the arrangement for keeping the loading bay clear and to advise the HGV drivers of the manoeuvring procedure.

6.3.3 The customer car park provides 16 spaces, together with cycle stands and was considered acceptable for the size of the store and within the parking standard as indicated in Policy D7 of the North Shropshire Local Plan. Unfortunately, it appears that some customers are parking on the roadside which is acceptable subject to them not parking on the double yellow lines around the junction. Should customers be parking on the yellow lines then they would be causing a highway offence.

6.3.4 It is considered that the proposed store would provide adequate off street car parking for the proposed extension of hours on Sunday and with close management of the staff car parking and HGV deliveries by the store manager then the store should not result in any highway safety issues.

#### 6.4 **Crime and Disorder**

6.4.1 Policy 8 'Promoting Health Communities' of the National Planning Policy Framework indicates that development should provide safe and accessible environment where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. This is reiterated in policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy which indicates that proposals are expected to be designed to reduce opportunities for criminal activity and antisocial behaviour.

6.4.2 Concerns have been raised regarding the increase in opening hours will lead to antisocial behaviour and increase in alcohol sales. However, the design of the building prevents the possibility of creating an area for people to gather and the sale of alcohol is strictly controlled under UK legislation and the proposed operators of the store are a responsible trader. The building is fitted with CCTV cameras to prevent any antisocial behaviour or criminal damage.

#### 6.5 **Other Matters**

6.5.1 Concern has been raised that no site notice has been erected, although it was confirmed that the notice was displayed on the 26<sup>th</sup> January 2015 allowing members of the public to comment within 21 days. The application has also been advertised in the Shropshire Star and residential properties adjoining and directly opposite the site was consulted with a formal letter.

6.5.2 Concerns have also been raised regarding an increase in litter, although the convenience store provides a litter bin at the store for customer waste and there are designated commercial waste bins. It is in the interest of the store to keep the premises and car park clear of rubbish. Unfortunately, any litter caused by customers who leave the premises is not a matter that the Spar store can be held responsible for.

### 7.0 **CONCLUSION**

7.1 The proposed increase in opening hours would not result in any significant detrimental impact from noise or disturbance which local residents would reasonable expect.

### 8.0 **RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL**

#### 8.1 **Risk Management**

There are two principal risks associated with this recommendation as follows:

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be



awarded irrespective of the mechanism for hearing the appeal - written representations, a hearing or inquiry.

- The decision is challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be a) promptly and b) in any event not later than 6 weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

## 8.2 Human Rights

Article 8 give the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

## 8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in planning committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

## 9.0 FINANCIAL IMPLICATIONS

- 9.1 There are likely financial implications of the decision and/or imposition of conditions if challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependant on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – in so far as they are material to the application. The weight given to this issue is a matter for the decision maker.

## 10.0 BACKGROUND

### 10.1 Relevant Planning Policies

Policies material to the determination of the Application. In determining this application the Local Planning Authority gave consideration to the following policies:-

**National Planning Policy Framework:**

Core Planning Principles (paragraph 17)

1 : Building a Strong, Competitive Economy (paragraph 19)

**Shropshire Council Core Strategy (February 2011):**

CS6 : Sustainable Design and Development Principles

**North Shropshire Local Plan (December 2005):**

D7 : Parking Standards

**10.2 Relevant Planning History**

12/01149/VAR - Variation of condition no.23 (opening hours) attached to planning permission 11/04795/FUL to allow the premises to open between 07:00 hours to 23:00 hours Monday to Sunday and reduction in the delivery times for HGV to 07:00 hours to 18:00 hours Monday to Saturday (Amended Description). Refused 1<sup>st</sup> June 2012. Appeal Dismissed 15<sup>th</sup> November 2012.

11/04795/FUL - Erection of a single storey convenience store with associated car parking; formation of new vehicular and pedestrian access; demolition of existing bungalow. Granted 14<sup>th</sup> March 2012.

**11.0 ADDITIONAL INFORMATION**

List of Background Papers - Planning Application reference 14/05767/VAR

Cabinet Member (Portfolio Holder) - Cllr M. Price

Local Member - Cllr Nick Bardsley

Appendices

APPENDIX 1 - Conditions

**APPENDIX 1****Conditions****CONDITION(S) THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT**

1. The premises shall only be used as a local convenience store and for no other purpose including any other purpose in Class A1; of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

Reason: In order to restrict the use of the premises in the interest of the amenities of the area.

2. The premises shall not be open for customers outside of the following hours:-

07:00 hours - 22:00 hours (Mondays to Saturday)

08:00 hours - 22:00 hours (Sunday)

No deliveries to the store should arrive outside of the following hours:-

07:00 hours - 22:00 hours (Mondays to Saturday)

Reason: In order to maintain the amenities of the area.

3. The proposed delivery bay as indicated on drawing no. 1121-PL-05 Rev.A under application reference 11/04795/FUL shall be kept clear at all times other than loading and unloading of delivery vehicles.

Reason: To allow adequate off street parking provision for delivery vehicles.