

Planning and Rights of Way Panel 16th July 2019
Planning Application Report of the Service Lead - Infrastructure, Planning & Development

Application address: 224 Portswood Road			
Proposed development: Change of use of first floor from D1 use to a 24 hour gym (class D2) with erection of link corridor at roof level and use of the car park by the D2 use between 05:00 - 23:00 Monday-Saturday and 08:00 - 20:00 Sunday			
Application number:	19/00137/FUL	Application type:	FUL
Case officer:	Stuart Brooks	Public speaking time:	5 minutes
Last date for determination:	22.07.19	Ward:	Portswood
Reason for Panel Referral:	Request by Ward Member/ Five or more letters of objection have been received	Ward Councillors:	Cllr Gordon Cooper Cllr John Savage Cllr Lisa Mitchell
Referred to Panel by:	Cllr Mitchell Cllr Claise (former cllr pre-elections May 2019)	Reason:	Loss of community space; Lack of parking; night time disturbance to local residents
Applicant: Sainsbury's		Agent: WYG	

Recommendation Summary	Delegate to Service Lead – Infrastructure Planning & Development to refuse planning permission subject to criteria listed in report
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Community Infrastructure Levy Liable	Not applicable
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Reason for granting Permission

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 39-42 and 46 of the National Planning Policy Framework (2019). Policies –CS3, CS6, CS13, CS18, CS19 of the of the Local Development Framework Core Strategy Development Plan Document (Amended 2015). Policies – SDP1, SDP4, SDP5, SDP7, SDP9, SDP10, SDP11, SDP15, SDP16, SDP17, REI5 of the City of Southampton Local Plan Review (Amended 2015).

Appendix attached			
1	Development Plan Policies	2	Relevant Planning History
3	Appeal decision – Supermarket hours	4	Graph of gym attendance

Recommendation in Full

1. Delegate to the Service Lead – Infrastructure, Planning & Development to grant conditional planning permission subject to no fresh issues regarding the extended car parking hours being received by 16.07.19 when the notification period expires.
2. That the Service Lead – Infrastructure, Planning & Development be given delegated powers to add, vary and /or delete conditions as necessary.

1. Background & Introduction

- 1.1 A hybrid planning permission was granted full planning permission for the redevelopment of the former Portswood Bus Depot into the current Sainsbury's supermarket in 2010, combined with an outline permission for housing on the remaining parcels of land. These parcels of land have been recently built out as a retirement persons home and student accommodation. In October 2012, the Planning Inspectorate allowed the extension of the opening hours between 07:00 to 23:00 (see the appeal decision in **Appendix 3**). The current operating hours of the basement car park is allowed to open and close 30 minutes before and after the store trading hours (as agreed under car parking management plan pursuant to the section 106 agreement for the supermarket development). Deliveries to the store are restricted to between 07:00 to 23:00 Mondays to Saturdays and 08:00 to 18:00 Sundays and Public Holidays.
- 1.2 A 1000sqm space for a D1 community facility (facing the service road leading to the car park) has been provided within the supermarket building on the first floor and fitted out to 'second fix' (specified as a full finish to walls and ceilings including connection of electrical cables and any gas pipes to the electrical or gas fixtures and all pipes connected to sinks and toilets and doors fitted to doorframes). The reason why the Council only specified a fit out to 'second fix' standard was because the specification need of the end user was unknown at the time and, therefore, the interior could be adapted at a later time depending on the nature of the end user. The obligation required the Council or partner service to be given reasonable opportunity for first and continued use and occupation of the community space. Since the community space was offered to the Council and partner services after the building completion, the local Health Service and Portswood Library both declined using the space, whilst the Council's Early years and childcare team have no active interest in using the space. Separate to the designated community facility, the supermarket at present has an informal arrangement with local community groups to make use of the meeting room space adjacent to the in-store café on the first floor.

2. The site and its context

- 2.1 The Sainsbury's superstore is located immediately outside the edge of the Portswood District Shopping Area (designated under policy REI5: District Centres) on the corner of St Denys Road. The surrounding area is characterised by a vibrant mix of commercial uses fronting Portswood Road to the west and suburban residential streets within close walking distance from the edge of the designated shopping area. The supermarket became operational in 2011 and currently operates under the permitted hours of 07.00 to 23.00 hours Monday to Saturday and 09.00 to 17.00 hours on Sundays. The hours of the underground car park (336 parking spaces with up to maximum of 2 hours stay) are allowed to open and close

30 minutes before and after the permitted trading hours. Access between the food store and basement car park is provided by means of a traveller and lifts.

- 2.2 The area subject to the proposed change of use itself, is located in the north east part of the building, comprising a 1000sqm floor area on the first floor fitted out to 'second fix'. Immediately adjacent to the site is the student accommodation building (facing onto the site itself) and an elderly person housing complex recently completed. There are residential properties nearby on the opposite side of Portswood Road and Belmont Road to the east. The parking for the site is accessed from a mini roundabout junction on Portswood Road and pedestrian access from a ground floor entrance on the Portswood Road frontage.
- 2.3 Parking on Belmont Road is partly unrestricted, with restrictions at either end in the vicinity of its junctions with Portswood Road and St Denys Road and adjacent to the entrance of the student accommodation. St Denys Road has double yellow lines running along its full length from the Portswood Road junction to the Thomas Lewis Way junction, and thus parking is not permitted along this stretch. Parking is not permitted on the spur of St Denys Road either, with the exception of a small number of parking bays on the south-west side of this road.

3. Proposal

- 3.1 It is proposed to change the use of the first floor space from the permitted class D1 community facility to a 24 hour gym (class D2) with the erection of a link corridor at roof level and use of the car park by the D2 use between 05:00 - 23:00 Monday-Saturday and 08:00 - 20:00 Sunday. The applicant is not seeking a 24 hour use of the car park or an extension of the supermarket trading hours. Under the supermarket permission, the basement car park is currently required to dedicate 10 parking spaces to be solely used by the permitted class D1 community use. There are no dedicated parking spaces for the gym, and the 10 spaces will continue to be used as short stay car park to be managed by Sainsbury and dedicated for both customers and staff to the foodstore, the proposed gym and visitors to the district centre. There are 42 cycle parking spaces (21 sheffield stands) provided in the basement car park. There are also 11 sheffield stands (22 spaces) at ground level under the store's canopy and along the store's frontage on Portswood Road.
- 3.2 The car parking hours for the proposed D2 gym use have been extended to 1 hour earlier on Monday to Friday only (i.e. 5am start). This has been requested since the validation of the application in response to concerns about disturbance from traffic and displacement of parking affecting local residential streets.
- 3.3 Furthermore, the applicant will formalise the meeting room space adjacent to the in-store café on the first floor for community users (same times as the café opening hours – 08:00 to 19:00 Monday to Saturday and 10:30 to 16:30 Sundays).

4. Relevant Planning Policy

- 4.1 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out at **Appendix 1**.

- 4.2 The National Planning Policy Framework (NPPF) was revised in 2019. Paragraph 213 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.
- 4.3 Paragraph 92(c) of the NPPF recognises that planning decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship). There is a presumption against the loss of the community facilities if it has not been demonstrated that the use is no longer viable or the continued operation as another form of community use. Policy CS3 confirms that commercially operated buildings fall within the scope of community uses. Policy CS3 does not support the loss of a community facility if it is viable for the commercial, public or community sector to operate it and if there is no similar or replacement facility in the same neighbourhood.
- 4.4 Although the site lies on the edge of the designation it is still in close proximity to Portswood District Centre. Policy RE15 (District Centres) seeks to protect the vitality and viability of the Portswood District Centre. Furthermore, policy CS3 seeks to protect existing centres by controlling retail and leisure development in locations on the edge of the centre through a sequential test approach for development above 750sqm.

5. Relevant Planning History

- 5.1 A schedule of the relevant planning history for the site is set out in **Appendix 2** of this report.

6. Consultation Responses and Notification Representations

- 6.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, erecting a site notice on **19.02.2019 and 25.06.19**. Following the amendment to the car park opening hours, a second publicity exercise was undertaken which closes on **16.07.2019**, and any additional material comments will be verbally updated at the panel meeting. At the time of writing the report **15** objections have been received from surrounding residents, including objections from a Ward Cllr (and former Ward Cllr pre-elections May 2019), the HRA, PRA, OARA. The following is a summary of the points raised:
- 6.2 **The 24 hour use of the premises in close proximity to local residential properties and increased comings and goings from parking in local streets (with no dedicated parking in the store car park) will cause light spill, noise and disturbance to the detriment of the amenity of nearby residents. Increased amenity impact from extending the opening hours of the supermarket car park with the exception of the weekends. Increased potential for anti-social and criminal behaviour by extending car park opening hours including joyriders and skateboarders abusing the car park unless security is increased.**

Response

The Environmental Health Officer is satisfied that the proposal would not have significant adverse impact with regards to noise impact from the proposed gym use, whilst a condition can be applied to ensure that suitable acoustic measures are put in place to control the noise generated from amplified music systems and equipment/classes inside the building so it is kept to a insignificant level for nearby residents. Furthermore, the noise impact from extending the car park hours will be mostly apparent within the basement car park itself where the cars are parked. A condition can be applied to agree further details of darkening the windows fronting the student accommodation to ensure that no artificial lighting can penetrate from the inside of the building (some natural surveillance/activity is positive so some windows left untreated would be beneficial across the street). The noise disturbance to residents from car users parking in nearby residential streets outside the car park hours would not be harmful given the projected small amount of visitors during the late night and early hours of the morning (**see Appendix 4**). The car park management plan confirms that Sainsbury's has its own security measures to control the use of the car park, whilst the car park has been vetted under a risk assessment conducted by the Police in relation to the 'Park Mark Award Scheme'.

- 6.3 **The community space was not fitted out for use as required by the section 106 agreement and is not fit for purpose. Loss of community space including the informal meeting room area adjacent to the in-store café. It is not understood why there has not been a demand for the use of the space. The large sized community space would be ideal for larger groups and for more active use such as youth clubs, sports, fitness clubs, martial arts, scouts and guides, dance & drama, and general recreational activities beneficial for the public. There is a lack of marketing by Sainsbury's for use of the D1 community space, and the unfinished space could be taken on by a management committee with the appropriate funding. The provision of the community space/medical centre and a swimming pool was a requirement of the original planning permission for redeveloping the bus depot into a supermarket. Booking the informal meeting space is not easy to book and is unavailable in the evenings.**

Response

The reason for only specifying a fit out to 'second fix' standard was because the specification required for the end user was unknown at the time. Therefore, it was only reasonable to impose a 'second fix' requirement so the interior could be adapted at a later time depending on the nature of the end user. The obligation required the Council or partner service to be given reasonable opportunity for first and continued use and occupation of the community space. Although there is limited evidence to demonstrate compliance with policy CS3 (Community uses) and the relevant section of the NPPF, after 8 years of having the opportunity to find a suitable user the Council's community development team and the applicant have both advised that there is not any active interest in taking up the community facility. The applicant will formalise the meeting room space adjacent to the in-store café on the first floor for community users and this can be secured by a planning condition for perpetuity while the store is trading. A condition can be used to secure a management plan to improve the booking system and advertising for this community space.

- 6.4 **The gym would not be a benefit for the whole community. There should be a community access/concession for local residents secured by condition.**

Response

The gym use being applied for is a private commercial operation and not a community use within class D1, so it would be unreasonable of the Council to require the applicant to make special concessions for the local community in relation to access and use.

- 6.5 **Increased traffic negatively impacting on the flow of traffic at peak times and worsen air quality. Poor safety access from car park to gym via the access road when the store is closed. No dedicated space is to be provided for the gym, unlike the community use, where this was required (condition 58 of original consent). Staff and gymgoers would, therefore, park in nearby roads, even when the car park is open- especially at peak times e.g. in the evenings, which is a peak time for the gym and customers at the store.**

Response

The Highway's Officer has raised no objection to the impact on highway's safety with the regards to access, parking and traffic flow in relation to the proposed use. The application site is located near the Bevois Valley Road Air Quality Management Area (terminates at the junction of Portswood Road and St Denys Road). Typical trip rates from a gym of this location and size do not generate a significant amount of impact on the road traffic network when compared to D1 use with the same footprint, so as a fallback position the potential impact to air quality would be neutral.

- 6.6 **The 24 hour use is out of keeping with the character of the area and general trading hours of Portswood District Centre and, therefore, set a precedent for other businesses to apply for later closing hours. Sainsbury's will potentially apply for 24 hour use.**

Response

Sainsbury's are not applying for a 24 hour use of the supermarket and the car park, so the 24 hour gym use should be considered on its own individual merits. That said, the scale and nature of the gym use and its users is significantly different to the impact from the supermarket and nearby late night uses having 24 hours trading and therefore would hold limited weight in setting a precedent for further extension of its own hours and other businesses. The proposed gym use is located on the edge of the Portswood District Centre (PDC) within the existing Sainsbury building itself and, therefore, would not be out of character with the commercial nature of the nearby shopping area. It is acknowledged that the trading hours of the late night economy in PDC is generally limited to closing at midnight. Although there are no equivalent 24 hours uses already operating within PDC, 24 hour gyms are not uncommon in Southampton shopping areas, including Shirley High Street, Bitterne Local Centre, and Winchester Road.

Consultation Responses

- 6.7 **SCC Highways – No objection**
- 6.8 **SCC City of Southampton Society – No objection in principle as no tenants have been found in the last 8 years for the community facility. A 24 hour gym use would not be harmful to the character and amenity of the area and is unlikely to cause parking difficulties when the supermarket is closed. Recognises the benefits of a gym to the local community, however, not fully satisfied that the applicant has done all it could to find suitable D1 users.**
- 6.9 **SCC Environmental Health (Pollution & Safety) – No objection**

7.0 Planning Consideration Key Issues

7.1 The key issues for consideration in the determination of this planning application are:

- The principle of development;
- Design and effect on character, including vitality and viability of District Centre;
- Residential amenity and;
- Parking highways and transport.

7.2 Principle of Development

7.2.1 The community facility has been fitted out to 'second fix' with a permitted class D1 use. Policy CS3 confirms that commercially operated buildings fall within the scope of community uses. Policy CS3 does not support the loss of a community facility if it is viable for the commercial, public or community sector to operate it and if there is no similar or replacement facility in the same neighbourhood. Despite a request by Officers the applicant has not come forth with any supporting evidence to demonstrate that the loss of the community facility would meet the tests of policy CS3 by providing a reasonable level of marketing evidence to show the interest from other community users and an investigation to show whether or not there are any similar or replacement facilities in the same neighbourhood. The applicant considers that there is no loss of a community facility in land use terms because the space has never been occupied for community use and has been vacant for 8 years.

7.2.2 Since the community facility was offered 8 years ago to the Council and partner services through the obligation of the section 106 agreement, the local health service and Portswood Library both declined taking over the space, whilst the Council's Early years and childcare team have no active interest in using the space. Without the supporting evidence from the applicant, the proposal does not strictly meet the tests of policy CS3 as stated above, however, it is evident that the Council or partner services do not currently have an active interest in using the community facility. Given the space has never been occupied for community use it cannot be considered a valued community facility and its loss would not undermine the community's ability to meet its day to day needs (NPPF tests). Furthermore, given the significant passage of time since the community facility has not been used, it is therefore reasonable to conclude that there is no local demand for the facility.

7.2.3 As such, there is no policy objection against the principle of development to re-use the existing commercial premises (albeit a community facility) for a D2 gym use subject to meeting the sequential test and community needs as set out in policy CS3. Although there is limited evidence to demonstrate compliance with policy CS3 and the NPPF, the principle of development can be broadly accepted given that after 8 years of having the opportunity to find a suitable user, the applicant and the Council's community development team have both advised that there is not any active interest in using the community facility, whilst the applicant has shown that there are no sequentially preferable sites within the Portswood District Centre and the gym business would not negatively impact on the trading of the centre by taking the place of another valuable gym facility that is essential to the vitality and viability of the centre.

- 7.2.4 Furthermore, in weighing up the 'planning balance' against the loss of the community facilities, significant weight should be applied to the socio-economic benefits of bringing a vacant unit into use with regards to employment generation and the provision of health related facilities (albeit commercially operated). Whilst not being a direct replacement and neutralising the loss of the existing community facility, the existing meeting room being used by community groups will be made available in perpetuity and this can be secured by the recommended condition. This space measures 39sqm.
- 7.3 Design and effect on character, including vitality and viability of District Centre
- 7.3.1 With the exception of the link corridor to be built, there would be minimal changes to the appearance of the building to facilitate the change of use on the first floor. The views of the proposed link corridor structure would be limited from public vantage points given its substantial set back on the roof top of the first floor level. A condition can be applied to prevent the use of the flat roof area being used for any ancillary related activity or storage use.
- 7.3.2 The proposed gym use is located on the edge of the Portswood District Centre (PDC) within the existing Sainsbury building itself and, therefore, would not be out of character with the commercial nature of the nearby shopping area. It is acknowledged that the trading hours of the late night economy in PDC is generally limited to closing at midnight. Although there are no equivalent 24 hours uses already operating within PDC, 24 hour gyms are not uncommon in Southampton shopping areas, including Shirley High Street, Bitterne Local Centre, and Winchester Road.
- 7.3.3 The proposed commercial use itself is not considered to negatively affect the vitality and viability of the PDC as there are positive and complimentary economic benefits from the gym users linking their trips and spending with other shops and services offered by PDC, especially for businesses open late evening and early morning. The applicant has shown that edge of centre location does not adversely affect the vitality and viability of the PDC given that there are no sequentially preferable sites to equivalently host the gym use of this size.
- 7.4 Residential amenity
- 7.4.1 Based on the average number of gym attendees for other Pure Gyms operations in Southampton, it is projected that per hour there would be a range of between 20 to 98 customers during the daytime, with peak numbers ranging between 52 to 65 during 16:00 to 21:00 (see the graph appended to **Appendix 4**). The gym use will take place above the existing supermarket use which is already established as a significant commercial operation in the local area with a significant amount of visitor footfall and car traffic and, therefore, the additional impact from the proposed gym use during the day would be neutral. This building is not physically attached to any other uses, whilst the pedestrian entrance for the building is from the Portswood Road frontage. The nature of the gym use in relation to its associated activities are not significantly noisy, whilst the Environmental Health Officer has no objection with regards to noise disturbance from the gym use. A condition can be applied to require details of a noise management plan to mitigate the impact from amplified music particularly during the night time. This will ensure that the volume and other associated noise can be acoustically controlled below a significantly adverse level affecting nearby residential properties including the adjacent student accommodation and the retirement home. Furthermore, a condition can be applied

to agree further details of darkening the windows to ensure that no artificial lighting can penetrate from the inside of the building.

7.4.2 Once the car park is closed outside the hours of 05:00 - 23:00 Monday-Saturday and 08:00 - 20:00 Sunday, customers travelling by car to the gym will have to rely on parking in nearby streets. There are no trip figures shown for these periods in the applicant's Transport Statement, however, the projection of customers does give an indication of visitors during the period when the car park is closed. The number of customers expected during the Monday to Saturday periods per hour are a maximum of 10 (lowest 2). There will be potentially more customers relying on local street parking on Sundays when car park is open less, with the number of customers ranging from 52 at 20:00 to 33 at 07:00, whilst the number of customers significantly reduce during the period 23:00 to 04:00 (ranging from 7 to 10 customers per hour) when residents are expected to enjoy peace and quiet in their homes. As such, the noise disturbance to residents from car users parking in nearby residential streets outside the car park hours would not be harmful given the projected small amount of visitors during the late night and early hours of the morning (*see Appendix 4*).

7.4.3 Sainsbury's are not applying for a 24 hour use of the supermarket and the car park, so the application should be considered on its own individual merits specifically for the gym use. That said, the scale and nature of the gym use with regards to the activities taking place and the behaviour/dispersion movements of its users would be significantly different to the impact from the supermarket and nearby late night uses (food and drink/entertainment) having 24 hours trading and, therefore, would hold limited weight in setting a precedent for further extension of its own hours and these other businesses.

7.5 Parking highways and transport

7.5.1 The proposed gym will be accessed via the existing car park entrance for vehicles and pedestrians from the existing entrance fronting Portswood Road (lifts to first floor). The customers of the gym are able to make use of the existing travellers from the basement car park to gain ground floor access during the store trading hours. The car park ramp would be the only available pedestrian access to the Portswood Road street entrance outside the opening hours of the store. However, given the minimal levels of traffic using the ramp outside the store trading hours, this is not considered to be an unsafe route for the pedestrians.

7.5.2 The representative figures provided in the applicant's Transport Statement are in part questionable and the limitations of TRICs data available for Saturdays for the proposed use are, however, based on assessments of other gym applications in the city and trips rates gathered from other transport assessments, the Highway's Officer is satisfied that the issues regarding trip rates are not of significant concern. Reason being that on a couple of visits at this car park during peak hours, the car park was not near full capacity with only approximately 60%-70% occupied. This leaves a large amount of unoccupied space which that the car park would be able to accommodate the gym use and its parking demand. Likewise, typical trip rates from a gym of this location and size do not generate a significant amount of impact on the road traffic network when compared to D1 use with the same footprint.

7.5.3 The competition for local street parking with local residents would be an amenity issue rather than a highway's safety issue. With regards to the displacement of street parking for local residents and competition from the gym users during the

closure times of the car park, the Highway's Officer has acknowledged that there is unrestricted on-street parking available in the local area that can provide parking for these customers. Furthermore, the impact from the inconvenience of parking displacement will be minimalised given that by the time the car park does close, the local residents in nearby streets are likely to have been parked up for the night.

- 7.5.4 To avoid servicing taking place from the Portswood Road frontage a condition can be applied to restrict any servicing to only take place in the basement car park and during the same hours permitted for the supermarket. Taking into the modal split for the proportion of cyclists from the TRICs trip rate data for the proposed use, there will be a requirement for a minimum of 10 cycle spaces. A condition can be imposed to require further details of secure cycle parking to be secured.

8. Summary

- 8.1 In summary, the re-use of the vacant community facility as a 24 hour gym would not be harmful to the character and amenity of the area, and highway's safety, and would maintain the vitality and viability of the nearby Portswood District Centre. The loss of the vacant community facility has been accepted given the significant passage of time that the Council and its partners have not taken up the facility with community user. Furthermore, in weighing up the 'planning balance' in relation to the socio-economic objectives of the development plan, the proposed gym use and re-use of the vacant premises would bring significant positive socio-economic benefits to the local community and economy through job creation and opportunities for health related activities (albeit commercially driven by private organisation).

9. Conclusion

- 9.1 It is recommended that planning permission be granted subject to the conditions set out below.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1. (a) (b) (c) (d) 2. (b) (c) (d) 4. (g) (vv) 6. (a) (b)

SB for 16/07/19 PROW Panel

PLANNING CONDITIONS

1. Full Permission Timing Condition (Performance)

The development hereby permitted shall begin no later than three years from the date on which this planning permission was granted.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

2. Materials to match (Performance Condition)

The materials and finishes to be used for the external walls, windows (including recesses), drainage goods and roof in the construction of the extension hereby permitted shall match in all respects the type, size, colour, texture, form, composition, manufacture and finish of those on the existing building.

Reason: To enable the Local Planning Authority to control the development in detail in the interest of the visual amenities of the locality and to endeavour to achieve a building of high visual quality and satisfactory visual relationship of the new development to the existing.

3. Restricted Use (Performance)

Notwithstanding the Town and Country Planning (Use Classes) Order 1987 (as amended) or any Order revoking, amending, or re-enacting that Order, the development hereby approved shall be used only for the purposes indicated in the submitted details and not for any other purpose, including any other use within Use Class D2.

Reason: In the interest of the amenities of neighbouring occupiers and highways safety.

4. Refuse & Recycling (Pre-Occupation)

Prior to the occupation of the development, details of storage for refuse and recycling, together with the access to it, shall be submitted to and approved in writing by the Local Planning Authority. The storage shall be provided in accordance with the agreed details before the development is first occupied and thereafter retained as approved.

Reason: In the interests of visual amenity, the amenities of future occupiers of the development and the occupiers of nearby properties and in the interests of highway safety.

5. Extract Ventilation - control of noise, fumes and odour (Pre-Operational Use)

The first operational use of any external extract equipment to be installed in connection with the approved D2 use shall not commence until a written scheme for the control of noise, from extractor fans have been submitted to and approved in writing by the Local Planning Authority. The written scheme shall be implemented as approved prior to the first operational use of the extract equipment and thereafter retained as approved.

Reason: To protect the amenities of the occupiers of existing nearby properties

6. Amplified music (Pre-occupation)

The D2 use hereby approved shall not commence operating until a written scheme for the control of noise, from equipment in association with the gym use including the playing of amplified music have been submitted to and approved in writing by the Local Planning Authority. The written scheme shall be implemented as approved prior to the use operating during the extended hours and thereafter retained as approved.

Reason: To protect the amenity of the neighbouring residential properties from noise disturbance.

7. Light spill (Pre-occupation)

The use hereby approved shall not commence operating, until a specification is submitted to and agreed in writing with the Local Planning Authority to tint or black out the first floor windows fronting the student accommodation. The agreed specification shall be installed in accordance with the agreed details prior to the extension of hours commencing and thereafter retained.

Reason: To protect the amenity of the neighbouring residential properties from light spill during the night time hours.

8. Restricted use of flat roof area (Performance Condition)

The roof top area adjacent to the floor area of the use hereby approved, which incorporates a flat roof surface, shall not be used as a balcony, terrace, roof garden, storage or other ancillary activities in association with the approved D2 use without the grant of further specific permission from the Local Planning Authority.

Reason: In order to protect the amenity of adjoining occupiers.

9. Servicing (Performance)

Unless otherwise agreed in writing by the Local Planning Authority, the servicing of the D2 use hereby approved shall only be undertaken in the basement car park of the existing supermarket building and shall not be serviced from the Portswood Road frontage at any time whatsoever. The servicing in association with the use hereby approved shall not be undertaken outside the hours of 07:00 – 23:00 Monday to Saturdays and 08:00 - 20:00 Sundays.

Reason: In the interests of amenity of nearby residential properties and to prevent obstruction to traffic in neighbouring roads and in the interests of highway safety.

10. Car Park Management (Performance)

The basement car park shall be used as a public car park for short-stay purposes for a maximum period of 2 hours or such other period as may be agreed in writing by the Local Planning Authority and shall be operated in accordance with the car management plan before the approved D2 use first commences. The car park shall not be available for the D2 use outside the following hours:-

05:00 - 23:00 Monday-Saturday and 08:00 - 20:00 Sunday

Reason: In the interests of public safety and to prevent obstruction to traffic in neighbouring roads and in the interests of highway safety.

11. Use of Community Facility (Pre-occupation)

The D2 use hereby approved shall not commence until details of an operational management plan for community use of the meeting room adjacent to the in-store cafe has been submitted to and agreed in writing by the Local Planning Authority. This shall include details of a user booking system and access, pricing, and means of advertising to the local community. The meeting room shall thereafter be made available in accordance with the approved plans prior to the commencement of the D2 use hereby approved and operated in accordance with the approved operational management plan. The meeting room shall be operated during the following hours:-

08:00 to 19:00 Monday to Saturday and 10:30 to 16:30 Sundays

Reason: To define the consent for the avoidance of doubt and to contribute to secure a community use as part of the mixed use scheme under planning permission 10/01399/OUT.

12. Bicycle Storage (Pre-Occupation)

The retail building shall not be occupied until secure, covered and enclosed space has been laid out within the site for a minimum of 10 cycles to be stored for the benefit of customers and staff in accordance with plans to be submitted to and approved in writing by the Local

Planning Authority. The approved cycle storage arrangement shall thereafter be retained on site for that purpose.

Reason: To encourage cycling as an alternative form of transport.

13. Approved Plans

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason: For the avoidance of doubt and in the interests of proper planning.

POLICY CONTEXT

Core Strategy - (as amended 2015)

CS3	Promoting Successful Places
CS6	Economic Growth
CS13	Fundamentals of Design
CS18	Transport
CS19	Parking

City of Southampton Local Plan Review – (as amended 2015)

SDP1	Quality of Development
SDP4	Access
SDP5	Parking
SDP7	Urban Design Context
SDP9	Scale, Massing & Appearance
SDP10	Safety & Security
SDP11	Accessibility & Movement
SDP15	Air Quality
SDP16	Noise
SDP17	Lighting
REI5	District Centres

Supplementary Planning Guidance

Parking Standards SPD (September 2011)

Other Relevant Guidance

The National Planning Policy Framework (2019)

Relevant Planning History

16/01778/MMA - Conditionally Approved 13.01.2017

Development to provide purpose built student residential accommodation (435 bedspaces) in three buildings of between 3-storeys and 6-storeys plus lower ground floor level with vehicle access from Belmont Road and associated landscaping (amendment to previous planning permission reference 15/01510/FUL - changes relate to the type of accommodation and changes to elevations).

15/02468/FUL – Conditionally Approved 21.09.2016

Erection of a part 3-storey and part 4-storey building to provide 73 sheltered housing flats for the elderly (49 x one bedroom and 24 x two bedroom) including lodge manager, communal facilities, access, car parking and landscaping.

15/01510/FUL – Conditionally Approved 25.11.2015

Development of the site to provide 252 Purpose Built Student Accommodation flats (435 bed spaces) in three buildings of between 3-storey's and 6-storey's plus lower ground floor level with vehicle access from Belmont Road and associated landscaping.

11/01877/FUL – Refused and allowed at appeal 10.10.2012 (*see Appendix 3* for appeal decision)

Variation or removal of the following conditions of planning permission ref 10/01399/OUT to provide a new supermarket. Variation of condition 20 to allow opening hours of 07:00 to 23:00 Monday to Saturday and 09:00 to 17:00 on Sundays and imposition of restrictions on the use of the car park by the public to prevent access earlier than 30 minutes prior to the store opening and 60 minutes after the store closing time. Variation of condition 41-delivery hours, to allow no more than 3 deliveries to be received or items despatched from the retail building between the hours of 2300 to 0700 Monday to Saturday. On Sundays no deliveries to be take place before 0800 and no more than two deliveries to take place after 6pm. Variation of condition 58 to restrict the allocation of the parking spaces for the D1 use to between the hours of 0900 and 17.30 Monday to Friday.

10/01399/OUT – Conditionally approved 02.11.2011

Redevelopment of the site to provide a new supermarket (Class A1 retail 9,730 square metres gross floorspace with associated 344 space car park, new community use (Class D1 1,166 square metres gross floorspace) and public play area (no matters reserved for later approval) and 59 residential units (29 houses and 30 flats) with 49 associated car parking spaces (details of landscaping and appearance reserved for later approval)

Appeal Decision

Hearing held on 14 August 2012

Site visits made on 13 and 14 August 2012

by **M T O'Rourke BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 October 2012

Appeal Ref: APP/D1780/A/12/2175464

224 Portswood Road, Southampton SO17 2AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Sainsbury's Supermarkets Ltd (SSL) against the decision of Southampton City Council.
 - The application Ref 10/01399/OUT, dated 25 October 2010, was approved on 2 November 2011 and planning permission was granted subject to conditions.
 - The development permitted is redevelopment of the site to provide a new supermarket (Class A1 retail 9,730 square metres gross floorspace) with associated 344 space car park, new community use (Class D1 1,166 square metres) and public play area (no matters reserved for later approval) and 59 residential units (29 houses and 30 flats) with 49 associated car parking spaces (details of landscaping and appearance reserved for later approval).
 - The condition in dispute is No 20 which states that: Unless otherwise agreed in writing by the Local Planning Authority, the retail building, its car park and associated travelators shall not be open for business outside of the hours of 0800 to 2100 Monday to Saturday and 0900 to 1700 on Sundays.
 - The reason given for the condition is: To protect the health and vitality of the existing district centre.
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Procedural Matters

1. In the grounds of appeal the appellants (SSL) disputed Condition 19 (no sub-division of the retail unit) as well as Condition 20. By letter dated 26 June 2012 to The Planning Inspectorate and copied to the City Council, SSL's agent withdrew the appeal against Condition 19. This was confirmed at the hearing.
2. The appellants seek to vary the times when the store is open to 07.00 to 23.00 hours Mondays to Saturdays with no change to operating hours on Sundays. At the hearing SSL also asked for the inclusion of additional wording to allow the car park to remain open for 60 minutes after the store's closing time and to open 30 minutes prior to the store opening.
3. Unaccompanied visits were made to the store, to the Portswood district centre and to the surrounding area on the evening of 13 August, just before and after the store closed at 21.00 hours, on the following morning from 07.00 hours and again after the hearing.

Decision

4. The appeal is allowed and the planning permission Ref 10/01399/OUT for redevelopment of the site to provide a new supermarket (Class A1 retail 9,730

square metres gross floorspace) with associated 344 space car park, new community use (Class D1 1,166 square metres) and public play area (no matters reserved for later approval) and 59 residential units (29 houses and 30 flats) with 49 associated car parking spaces (details of landscaping and appearance reserved for later approval) at 224 Portswood Road, Southampton SO17 2AD granted on 2 November 2011 by Southampton City Council, is varied by deleting condition 20 and substituting for it the following condition:

20. Unless otherwise agreed in writing by the Local Planning Authority, the retail building and associated travelators shall not be open for business outside of the hours of 07.00 to 23.00 hours Monday to Saturday and 09.00 to 17.00 hours on Sundays.

Main Issues

5. Advice on the use of conditions is given in Circular 11/95 and in paragraphs 203 and 206 of the National Planning Policy Framework (the Framework). They should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Having regard to the reason given for the disputed condition and to the representations made by local residents, the main issues in this case are the effect that varying the disputed condition to extend the operating hours of the store would have; first on the vitality and viability of Portswood district centre and secondly, on those living around the store.

Reasons

6. The store is built on the site of the former Portswood Bus Depot and opened for trading in April this year. The recent planning history is relevant in that permissions have been granted by the Council, albeit for slightly less net retail floorspace, which allowed for longer weekday evening operating hours than those imposed on the store that has now been built.
7. Although permission was refused in 2007 for two called in applications for a Sainsbury's store and housing on the site, in advising on potential conditions, that Inspector considered that operating hours of 08.00 to 23.00 hours Monday to Saturday would '*protect local residents' living conditions*'. Subsequent permissions granted by the Council in 2008 and 2009 for mixed use schemes on the site similarly controlled the operating hours of the store to 08.00 to 23.00 hours Monday to Saturday '*to protect the amenities of the occupiers of existing nearby residential properties*'.
8. In recommending permission for a larger store in 2011 (the subject of the current appeal), officers again recommended that permission be granted subject to operating hours of 08.00 to 23.00 hours Monday to Saturday. However members amended the operating hours to only allow the store to open between 08.00 to 21.00 hours Monday to Saturday. The reason given for the condition is '*to protect the health and vitality of the existing district centre*', and not, as before, to protect the amenities of local residents.
9. In November 2011 SSL made an application under Section 73 of the 1990 Act to vary 4 of the conditions including the operating hours condition. That application is not before me for consideration. However I understand that the variation sought to Condition 19 to allow an in-house pharmacy was withdrawn by SSL and in determining the application the Council resolved that Conditions 20 and 58 should remain.

The vitality and viability of the district centre

10. The development plan includes the saved policies of the Local Plan Review (March 2009) (LPR) and the Core Strategy, adopted in 2010 (CS). Saved LPR policy RE5 seeks to strengthen and enhance the vitality and viability of the defined district centres which include Portswood. CS policy CS3 similarly supports the role of the district centres and requires new development to make a positive contribution to the centre's vitality and viability. Aims for Portswood include maintaining the health of the centre, improving the street scene and successfully integrating local facilities. Paragraph 4.5.3 of the CS describes Portswood as being '*currently in good health, with low vacancy rates and a distinctive local form*' and refers to the potential for a new superstore on the bus depot site. In that the retail policies of the LPR and CS support the vitality and viability of town centres they are consistent with the Framework and can be given full weight.
11. The Framework has replaced all previous Planning Policy Statements including PPS4 on Sustainable Economic Growth although the accompanying practice guidance remains extant. The store is in an edge of centre location and the appeal application was accompanied by a detailed retail impact assessment including a health check of the centre, consistent with the methodology identified in the practice guidance. In granting permission the Council would have had regard to the predicted impacts on existing trade in the centre and found that these were acceptable when balanced with the benefits of clawing back expenditure that was being spent outside the centre and the potential for shoppers linking their trips to the store with a visit to the district centre.
12. Evidence was presented at the hearing of various changes in Portswood that were said to be directly attributable to the opening of the Sainsbury's store, including the Co-op reducing its opening hours, shops becoming vacant and the likely closure of the Halal butcher. However the store has been trading for less than 6 months. It takes time for any changes in shopping patterns to become established and the impact assessment was based on a design year of 2013.
13. The Council in its statement describes the health of the centre as '*reasonably good*'. Of the 5 units that are currently vacant, one is being refurbished and others result from the demise of national chains, rather than because of local events. There may be a number of charity shops in Portswood but in many centres these are seen as established retail outlets and a permanent presence in the High Street and I do not think they are necessarily indicative of Portswood's vulnerability.
14. SSL are seeking to open one hour earlier in the mornings and for an additional two hours in the late evening. Neither party referred to any accepted methodology for assessing the potential for impact as a result of additional trading hours. When making the appeal application in 2010, it was reasonable for SSL to expect that the Council would consider operating hours up to 23.00 hours to be acceptable, as it had done for the earlier schemes. In recommending permission officers also considered opening till 23.00 hours to be acceptable for the larger store and maintained this view in the report to committee on the Section 73 application.
15. It was suggested by the Council that logically having longer opening hours must increase the store's turnover and figures were offered based on estimates of hourly sales figures derived from the retail impact assessment. However the

Council provided no other evidence to support that argument which contrasted with SSL's view that any effect from extending opening hours would be shoppers 'time shifting' their expenditure.

16. The new store is larger than that previously permitted. However the convenience elements of both schemes are broadly the same, and in both cases substantially larger than any of the other convenience stores in Portswood. The key difference is the additional floorspace for comparison goods and the depth of non-food ranges on sale.
17. Portswood has an active evening economy with take-aways, restaurants and pub/bars. There are convenience stores that stay open after 21.00 hours but there are few, if any, non-food goods being sold in the centre at that time. Thus the SSL store opening for two extra hours would not have the potential to divert any comparison goods trade from the centre. Of course someone purchasing non-food goods in the store between 21.00 and 23.00 hours might, if the store had not been open, otherwise have returned to Portswood another time to make their purchase, assuming that they could in fact buy the required item in one of the shops in the centre.
18. However what seems to me to be more probable is that if the SSL store is not open between 21.00 and 23.00 hours they would return another time to the store to make their purchase or, if urgent, drive to one of the out of centre stores that open late. I conclude that any potential to divert comparison goods trade from the centre to the store as a consequence of opening between 21.00 and 23.00 hours is likely to be so small such as to have no significant adverse impact on the centre.
19. The Council refers to the lack of potential for linked trips as during the period 21.00 to 23.00 hours any shopping trip to the SSL store would be unlikely to be linked to trips to the shops in the centre as most shops (other than the Co-op) will be closed. The same could be said for the period between 17.00/18.00 hours (when most of the non-food shops close) and 21.00 hours yet the Council is content for the store to trade until 21.00 hours. Further from what I saw on my visits it seems to me that some shoppers in the store after 21.00 hours could well make a linked trip to the centre to collect a take-away or have a drink or meal, all of which would contribute positively to the centre's overall vitality and viability, in accord with CS policy CS3.
20. There are other convenience stores in the centre that currently open later than 21.00 hours. However as advised in the practice guidance '*in all cases ... it is important that the impacts are considered on the vitality and viability of the whole of the centre or centres, not simply on individual facilities which may be similar to the proposed development*' (paragraph D.38). Whilst there would be some diversion of trade between those late opening convenience stores and SSL store, this was considered by the Council in terms of the impacts identified in SSL's retail impact assessment (which was not operating hours specific), and which were found to be acceptable in terms of the overall impact on the district centre. It is not the purpose of the planning system to prevent competition between retailers and I am not persuaded on the case put by the Council that condition 20 is necessary or reasonable to offer an opportunity for other retailers to retain trade by opening when SSL is closed.
21. SSL is also seeking to open the store one hour earlier in the morning. Similar arguments prevail to those put forward in terms of opening later in the

evening. There are few shops open in the centre at 07.00 hours and Waitrose, at the southern end of the centre, does not open until 08.00 hours. Evidence from other SSL stores is that only 1.5% of the store's total trade takes place in that first hour. Again there could be some diversion of trade from the Co-op and other convenience stores between 07.00 and 08.00 hours. However some of that diversion would be from out of centre stores that open 24 hours, bringing expenditure back to the district centre. I do not consider that the store opening earlier is likely to result in a significant adverse impact on the district centre as a whole.

22. Thus I conclude on my first issue that varying the condition to allow longer operating hours would not have a significant adverse impact on the vitality and viability of Portswood district centre and thus would not conflict with the Framework or with the objectives of LPR policy RE5 and CS policy CS3.

The effect on those living around the site

23. The reason for the disputed condition does not refer to the effect on the amenity of residents. However concerns were expressed in writing and at the hearing about the impact of extended hours on those living around the site and the Council sought to use those objections to add weight to its arguments. Saved LPR policy SDP16 requires that development should not have an unacceptable noise impact. The impact on residential amenity was addressed in SSL's statement and identified as an issue at the hearing.
24. The store is now trading. It has an underground car park with access onto Portswood Road at a mini-roundabout. Concerns were expressed about problems of traffic queuing back at the re-phased traffic lights and shoppers and staff parking in the residential streets around. I appreciate that my visits were during the university recess and school holidays when traffic will be lighter. Also that the store car park is open to the public. Nonetheless given the size of the car park, it's observed light use in the evening and the early morning, and with many of the surrounding streets subject to parking controls, I do not consider that the extended opening times would be likely to materially exacerbate parking pressure on the residential streets around the store.
25. The site was formerly in use as a bus depot with early morning vehicular activity. The experience at other similar SSL stores is that only a small proportion of the store's trade takes place before 08.00 hours and after 21.00 hours. I am satisfied that the additional traffic movements that might be generated here could be accommodated on the network without detriment to highway safety or the free flow of traffic.
26. The store is located at a busy junction on one of the main arterial routes into and out of the city centre. Although there are residential properties opposite the car park entrance, most activity and noise takes place in the car park under the store which is relatively well contained. The appellants' noise statement indicates that worst case noise levels associated with customers visiting the store if open till 23.00 hours and at 07.00 hours, would be within the World Health Organisation's recommended criteria to avoid sleep disturbance, for both the Portswood Road properties and the new housing. With respect to headlight glare, mentioned at the hearing, the appellants' agent referred to officers' detailed consideration of the gradient of the approach road at the application stage who were satisfied that there would not be unacceptable disturbance to those living opposite the exit.

27. The store is on the edge of the Portswood district centre, one of the focuses of commercial activity in the city and where residents must expect there to be a level of activity commensurate with the nature and function of the district centre. Extending the operating hours to 23.00 hours would be consistent with other uses in the centre. Having regard to the layout of the store, the surrounding uses and the general level of traffic and activity in the area, I do not consider that the extended operating hours sought would give rise to noise and disturbance such as to cause unacceptable harm to those living around the site. Thus I find no conflict with the objective of saved LPR policy SDP16.

Conclusion

28. The Council has been inconsistent in the restrictions it has applied to the operating hours of the stores it has permitted on the site. It has also been inconsistent as to the reasons for applying conditions. On the basis of the evidence, I am satisfied that there would be no significant adverse impact on the vitality and viability of Portswood district centre as result of the extended operating hours sought. Further the longer operating hours of the store would not give rise to any unacceptable disturbance to those living around the site. Accordingly varying condition 20 would not conflict with national or local policy, would be reasonable and would meet the tests of Circular 11/05.

29. However in that the Council has recently agreed a car parking management plan pursuant to the Section 106 agreement which provides for the car park to open 30 minutes before the store and to close 30 minutes after the store trading hours, it appears to me unnecessary to control the hours when the car park is open through condition 20 and I will vary the condition accordingly.

30. The appeal is made pursuant to Section 79 of the 1990 Act (as amended). The effect of allowing the appeal is to modify the original permission by the variation of the disputed condition. As a new planning permission is not created, no amendment or variation is required to the Section 106 agreement dated 21 October 2011.

Overall conclusion

31. For the reasons given above I conclude that the appeal should succeed. I am varying the planning permission by deleting the disputed condition 20 and substituting a new operating hours condition.

Mary O'Rourke

Inspector

