

<b><u>No:</u></b>	<b>BH2010/03717</b>	<b><u>Ward:</u></b>	<b>QUEEN'S PARK</b>
<b><u>App Type:</u></b>	<b>Removal or Variation of Condition</b>		
<b><u>Address:</u></b>	<b>6 - 8 St James's Street, Brighton</b>		
<b><u>Proposal:</u></b>	<b>Variation of condition 5 of permission BN84/0222/F (Erection of supermarket complex comprising of 1no floor of retail space with 1no level of open car parking for 96 cars) for delivery hours to be extended to 07.00 to 20.30 on Monday to Saturday (including Bank Holidays) and 09.00 to 16.00 on Sunday. (Part retrospective).</b>		
<b><u>Officer:</u></b>	<b>Chris Swain, tel: 292178</b>	<b><u>Valid Date:</u></b>	<b>17/02/2011</b>
<b><u>Con Area:</u></b>	<b>East Cliff and adjoining Valley Gardens</b>	<b><u>Expiry Date:</u></b>	<b>14 April 2011</b>
<b><u>Listed Building Grade:</u></b>	<b>N/A</b>		
<b><u>Agent:</u></b>	<b>P W Davis Architects, Estate Yard, Harewood, Leeds</b>		
<b><u>Applicant:</u></b>	<b>Wm Morrisons Supermarket PLC, Hilmore House, Gain Lane, Bradford</b>		

This application was deferred on 14/03/12 for a Planning Committee site visit.

## 1 RECOMMENDATION

That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and the policies and guidance in section 7 of this report and resolves to **GRANT** planning permission subject to the following Conditions and Informatives.

### Regulatory Conditions:

- Deliveries shall not be made except between the hours of 07.00 and 20.30 Monday to Saturday and between 09.00 and 16.00 on Sunday.  
**Reason:** To safeguard the amenities of the occupiers of adjoining properties and to comply with policies SU9, SU10 and QD27 of the Brighton & Hove Local Plan.
- The delivery bay (including freezer unit and bin store) shall only be accessed by members of staff or vehicles between the hours of 07.00-20.30 on Mondays to Saturdays and Bank Holidays and between the hours of 09.00-16.00 on Sundays. The gates to the delivery bay hereby approved shall only be open during these hours.  
**Reason:** To safeguard the amenities of the locality and to comply with policies QD27, SU9 and SU10 of the Brighton & Hove Local Plan.
- There shall be no more than four deliveries on a Sunday.  
**Reason:** To safeguard the amenities of the occupiers of adjoining properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
- The development hereby permitted shall be carried out in accordance with drawing No. 09109-PL105 received on 26 November 2010, an acoustic report (dated 14 April 2011) received on 18 April 2011, an email

from the planning agent outlining details of existing deliveries received on 18 July 2011, a Quiet Delivery Statement received on 17 January 2012 and an email from the planning agent outlining justification for the extended delivery hours received on 18 January 2012.

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

5. The proposed car park shall be kept open for use by the public at all hours as may be reasonably be required by the Local Authority having regard to its parking policy and to the level of demand for the car parking out of shopping hours.

**Reason:** To accord with policies TR1, TR2 and TR7 of the Brighton & Hove Local Plan.

6. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) or any subsequent amending Order, the retail space shall be used primarily for the sale of foodstuff and other convenience goods.

**Reason:** To ensure that the use of the premises accords with the principle use of the area and policy SR1 of the Brighton & Hove Local Plan.

7. Delivery vehicles shall not be parked within the service area overnight.

**Reason:** To protect the amenities of the locality and comply with policies QD27, SU9 and SU10 of the Brighton & Hove Local Plan.

8. Noise associated with plant and machinery incorporated within the development shall be controlled such that the Rating Level, measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, shall not exceed a level 5dB below the existing LA90 background noise level. Rating Level and existing background noise levels to be determined as per the guidance provided in BS 4142:1997. In addition, having reference to BS7445:2003, there should be no significant low frequency tones produced by the plant.

**Reason:** To safeguard the amenities of the locality and to comply with policies QD27, SU9 and SU10 of the Brighton & Hove Local Plan.

Informatives:

1. This decision to grant Planning Permission has been taken:

- (i) having regard to the policies and proposals in the Brighton & Hove Local Plan set out below, including Supplementary Planning Guidance and Supplementary Planning Documents:  
(Please see section 7 of the report for the full list); and

- (ii) for the following reasons:-

The extended delivery hours, as proposed, are not considered to result in any significant increased harm to the residential amenity of the neighbouring occupiers.

## 2 THE SITE

This application relates to the unloading bays/service area located in the

north-west corner of Morrisons car park, which is accessible via Dorset Street to the north. The car park is an open tarmaced area and is situated above the retail floorspace of the store. The rear service yard is flanked to the west by St James's Place and Parochial Terrace/Parochial Mews, to the north by Dorset Mews and Dorset Street and to the east by George Street. The supermarket and wider car park site are located within the East Cliff Conservation Area and immediately adjacent to the Valley Gardens Conservation Area.

### 3 RELEVANT HISTORY

**BH2010/03696:** Installation of storage containers incorporating sound insulated panelling. Removal of existing palisade fencing and erection of new fencing and gates to service yard. Currently under consideration and reported elsewhere on the agenda.

**BH2009/02764:** Removal of existing palisade fencing and erection of new fencing and gates to service yard. Withdrawn 5 July 2010.

**BH2009/02750:** Installation of 2No. storage containers and 2no. chiller units in rear storage yard (retrospective). Withdrawn 5 July 2010.

**BH2001/02097/FP:** Variation of Condition 5 to allow permanent use of site for deliveries and use of unloading bays. Granted 22/11/01 for a temporary period of 7 months to assess the effects on a newly built residential development located adjacent to the loading bays and to assess if Safeways could adhere to their specified time.

**BH2001/001763FP:** Variation of Condition 5 of planning permission BN84/0222/F to allow deliveries to the store on Sundays between the hours of 09.00am and 16.00pm. Approved 30 April 2003.

**BH1998/02590/FP:** Variation of Condition 5 of permission BN84/0222/F to allow for service deliveries and use of the unloading bays on Sundays and Bank Holidays between 09.00am and 16.00pm. Granted 16/02/99 for a temporary period of 6 months.

**BN84/0222/F:** Erection of supermarket, approved in April 1984, with Condition 5 attached relating to deliveries and the use of the unloading bays to take place between the hours of 07.00am and 19.00pm Monday – Saturday, and at no other time.

### 4 THE APPLICATION

Permission is sought to vary condition 5 of permission BN84/022F to extend the delivery hours to 07.00 to 22.30 on Monday to Saturday (including Bank Holidays) and 09.00 to 16.00 on Sunday.

### 5 CONSULTATIONS

**External:**

Original Consultation

**Neighbours:** Letters of representation have been received **No.15 Dorset Mews, Nos.18, 19, 22 and 26 George Street and one unspecified address** objecting to the proposed extension of the delivery hours due to the potential for increased noise disturbance.

**Cllr Fryer** objected to the proposal (comments attached).

Reconsultations

The application was re-advertised with amended delivery hours on 23 November 2011. **No. 15 Dorset Mews** and **Nos.18 and 22 George Street** reaffirmed their objection, and there was an additional objection from **No.12 Dorset Mews**, both stating that the proposed delivery hours would result in increased noise disturbance.

There were no retractions of previous objections.

Whilst Cllr Fryer is no longer a ward councillor for Queen's Park the three current ward councillors, **Cllrs Bowden, Duncan and Powell** have agreed to uphold the original comments and have requested that the application should be heard at Planning Committee if the recommendation is for approval.

**Environmental Health:** The comments made on these applications have been reviewed having regard to the National Planning Policy Framework published on 27 March 2012. It is not considered that any amendments to comments and recommendations are necessary in light of the new legislation.

This application requested a variation to the current condition relating to permitted delivery times.

Delivery noise consists of vehicle noise as lorries arrive and leave, vehicle reversing alarms, noise from chiller compressors fitted to the lorries to keep the goods cold or frozen, noise from radios, noise from lorry drivers talking, noise from the tail gate dropping on the floor, noise from delivery cages being rolled across the ground and noise from goods and pallets being dropped. These intermittent noises of varying character and duration may be intrusive and annoying and may attract attention.

Since the original condition for deliveries was applied in 1984 shopping patterns and supermarket opening hours have changed. At this store the warehousing and storage facilities are very limited so the majority of stock is unloaded straight on to the shelves and shop floor. When Morrison's took over the site they placed a portable chiller unit, portable freezer unit and two additional ambient storage containers in the car park adjacent to residential accommodation. Complaints were then received about noise from employees accessing the units late at night and noise from compressors serving the chiller and freezer. These units did not have planning permission.

If additional delivery times are permitted then it is proposed to remove the two ambient storage containers and the chiller storage container both currently in the car park.

The delivery area remains in the same place, which is part of a bigger public car park. The car park is not for sole use of Morrison's shoppers and is available for public use 24 hours / 7days a week. Application BH2010/03696 includes the details of a scheme for fencing off the delivery bay area and

making it secure and separate from the car park.

The applicant has provided background noise levels for the site and there appears to be consistently lower levels from 8.30 pm to 9pm so any additional delivery noise will be more evident.

Deliveries are currently happening 7am to 7pm Monday to Saturday. Having regard to the lower background from 8.30pm it is suggested that the condition be varied to extend deliveries 7am to 8.30pm Monday to Saturday.

Note that the background noise survey includes observations of deliveries already taking place on Sundays. The noise levels 8.30 -8.45 before the delivery started are consistently low. After that the survey is routinely interrupted by delivery noise. It is understood that some goods will be needed on Sundays, but it is believed that the delivery window could be started later in the morning and for a shorter period. With perhaps a restriction on the number of deliveries.

**Sustainable Transport:** No comments to make.

## 6 MATERIAL CONSIDERATIONS

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that “if regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

The development plan is the Regional Spatial Strategy, The South East Plan (6 May 2009); East Sussex and Brighton & Hove Minerals Local Plan (1999); East Sussex and Brighton & Hove Waste Local Plan (February 2006); Brighton & Hove Local Plan (21 July 2005).

## 7 RELEVANT POLICIES & GUIDANCE

The National Planning Policy Framework (NPPF)

Section 11: Conserving and enhancing the natural environment

Brighton & Hove Local Plan:

TR1	Development and the demand for travel
TR2	Public transport accessibility and parking
TR7	Safe development
QD27	Protection of Amenity
SU9	Pollution and noise control
SU10	Noise nuisance; and
SR1	New retail development within or on the edge of existing defined shopping centres

## 8 CONSIDERATIONS

The main consideration in the determination of this application relates to the

impact of the increased delivery hours upon the amenity of neighbouring occupiers.

**Planning Policy:**

Policies SU9, SU10 and QD27 of the Brighton & Hove Plan also seek to ensure that development does not cause noise nuisance and does not cause harm to neighbouring amenity. This is reaffirmed by paragraph 123 of the National Planning Policy Framework.

**Impact on Amenity:**

Condition 5 of the original application (BN84/0222/F) stated:

*Delivery of goods and use of the unloading bay shall take place only at certain times between the hours of 07.00 and 19.00 from Monday to Saturdays in accordance with a scheme to be agreed by the Borough Engineer and at no time on Sundays. The aforesaid scheme shall be submitted to the Borough Engineer before the completion of the development and no part of the development shall be brought into the use until such times as the scheme shall have been approved. The approved scheme shall be strictly adhered to all times except with the prior approval in writing of the Borough Engineer.*

The applicant originally applied for an extension of delivery hours from 19.00-21.00 from Monday to Saturday, an increase to the delivery window of an additional 2 hours each evening. There are currently no deliveries permitted on Sunday. The application originally also proposed to introduce deliveries from 08.00 to 17.00 on Sundays.

Three temporary permissions have previously been granted for delivery hours on Sunday though there have not been any previous applications to extend the delivery hours on Monday to Saturday. The last of the temporary applications (BH2002/01763/FP – approved 1 May 2003) permitted deliveries to take place from 9.00 to 16.00 on Sundays. The application was granted for a temporary period of 9 months to access potential noise disturbance with rubber flooring to the delivery area and rubber wheels to be installed on all delivery hardware (cages, pump-trucks etc).

Since that temporary permission lapsed there have been no further applications regarding delivery times and the original delivery times remain extant.

There are currently unauthorised deliveries on a Sunday. It appears likely that these have been ongoing since the last temporary permission expired and the supermarket was operated by the previous owner. This application, including Sunday deliveries, is an attempt to regularise the existing delivery times and follows an enforcement investigation into the site. It has also resulted in another application (BH2010/03696) for further alterations to the delivery yard being submitted.

Justification for the extension of delivery hours has been submitted by the applicant. It is stated by the applicant that the original permission was approved before the store traded on a Sunday. It is further stated that the limited storage space on the site makes it impossible to hold enough stock to be able to service the levels of trade on a Sunday which have increased since Morrisons took over the store. Furthermore, it is stated that the removal of the Dawson's chiller from the service yard will reduce the level of storage on the site which will make regular deliveries critical to the operation of the store.

Whilst part of the existing shop floor could be converted for use as additional storage it is acknowledged that there is limited storage space within the existing store and a certain numbers of deliveries of fresh produce on a Sunday may be justified. The Dawson's chiller has been the subject of a noise nuisance investigation by the Environmental Health Team and the removal of this unit would mitigate for the potential for increased noise disturbance of later weekday or Sunday deliveries for adjoining occupiers.

A noise assessment report was submitted by the applicant outlining various noise levels at different times of the day. The report states that the soundscape readings were similar for weekday evenings and Sundays. The report concludes that between 19.00 and 21.00 on weekday evenings and during Sundays that the soundscape readings were fairly consistent and that there appears to be little difference in sensitivity between the proposed extended hours and the existing delivery times.

The Environmental Health Team refuted these conclusions to a degree. They state that there appears to be a quieter level of background noise after 20.30 on weekdays and before 9.00 on Sundays.

Revised hours were therefore sought to ensure that deliveries were not made in these quieter periods, with the weekday times reduced to 20.30 (from 21.00) and Sunday deliveries from 09.00 to 16.00 (from 08.00 to 17.00). These revised hours have been agreed by the applicant.

The applicant has also submitted a document titled "Instructions for Receipt of Deliveries" outlining measures that the staff will use to limit the amount of noise from deliveries and the service yard. The document states that measures will be put in place to reduce the noise disturbance from reversing delivery trucks and also the unloading process. Whilst these measures are welcomed and may mitigate for some of the delivery noise it is acknowledged that these cannot be conditioned satisfactorily and notwithstanding these measures it is likely there will always be some level of noise disturbance during deliveries of goods.

It is not considered that the extension of the delivery window by an additional hour and a half on weekday evenings would result in any significantly increased noise disturbance. It is noted that the wider site is in use as car park open to both Morrisons customers and the general public and there is a

high level of vehicular and pedestrian movements throughout the day. Whilst the extension of the delivery window would result in some level of increased noise disturbance, on balance, it is not considered to be significantly detrimental to the residential amenity of neighbouring properties. It is further noted that the supermarket has been in operation for a significant period of time and, whilst the number of deliveries may have increased during this time, the supermarket use is well established on the site. The Environmental Health Team is satisfied with the proposed extension of delivery hours to weekday evenings.

Regarding Sunday deliveries, whilst it is acknowledged that a number of deliveries are currently taking place in contravention of the original planning permission there is not considered to be an “in principle” objection to some deliveries on a Sunday. No planning enforcement notice has been served on the site as regarding Sunday deliveries. Since the original condition for deliveries was applied in 1984, shopping patterns and supermarket opening hours have changed and it is considered reasonable to allow a limited number of deliveries on a Sunday.

The proposed delivery hours on Sunday (9.00 to 16.00) would ensure that neighbouring occupiers are not disturbed too early on Sunday mornings and the delivery hours are considered acceptable in this regard. The planning agent stated in correspondence dated 18 July 2011 that there are three deliveries expected on Sundays. A condition to limit deliveries to a maximum of four per Sunday is considered reasonable to further restrict disturbance on Sundays.

The Environmental Health Team are satisfied that the Sunday delivery hours are acceptable in principle given that some fresh goods will be required on Sundays. The revised delivery times in conjunction with the condition limiting the number of deliveries proposed should ensure that there is no significant adverse impact to residential amenity.

To help mitigate for additional vehicular movements and to address concerns raised by residents, a condition is recommended to ensure that the use of the delivery yard area is also not used outside the delivery hours.

**Sustainable Transport:** Delivery vehicles currently access the delivery yard via Dorset Gardens and the customer car park. It is not considered that the extended delivery hours would result in any significant increase in deliveries over and above existing levels and it is not considered that there would be any intensification of the use. The Sustainable Transport team has no objection to the proposal and there is not considered to be any significant impact on highway safety.

## 9 CONCLUSION

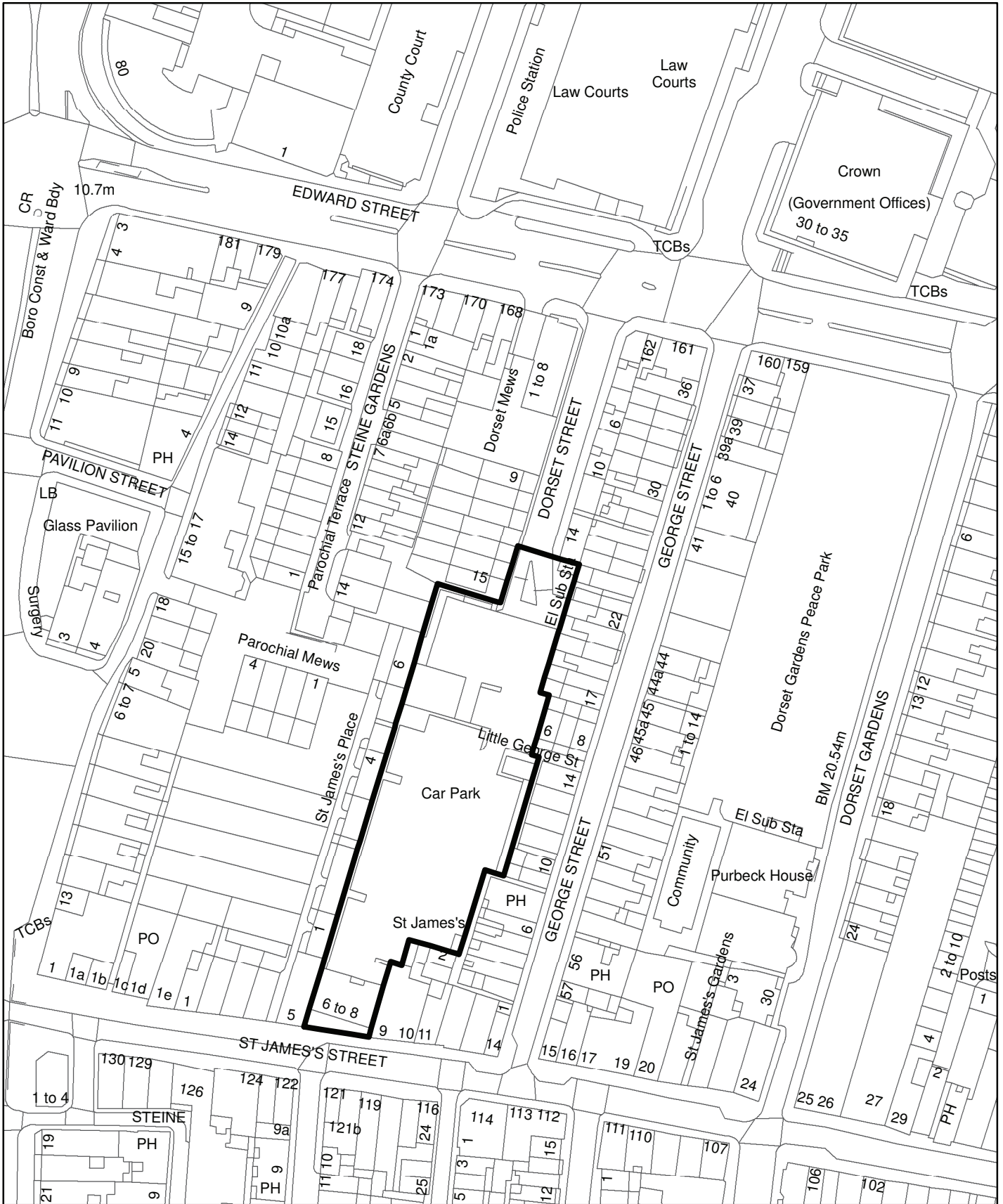
The extended delivery hours, as proposed, are not considered to result in any significant increased harm to the residential amenity of the neighbouring



occupiers.

**10 EQUALITIES IMPLICATIONS**  
None.

# BH2010/03717 6 - 8 St James's Street , Brighton.



**Brighton & Hove  
City Council**



**Scale: 1:1,250**



PLANS LIST – 25 APRIL 2012

**Brighton & Hove** COUNCILLOR REPRESENTATION  
**City Council**

**From:** Geoffrey Bowden  
**Sent:** 14 January 2012 11:14  
**To:** Chris Swain  
**Cc:** Ben Duncan; Stephanie Powell  
**Subject:** Re: Objections

Dear Chris

Good to speak to you yesterday. This message is to confirm that ward councillors would like these two matters to come the planning committee for determination. As you correctly pointed out they are related and should be considered together.

Best wishes  
Geoffrey

*Cllr Geoffrey Bowden  
Green Party Councillor Queen's Park Ward  
Cabinet Member Culture Recreation & Tourism  
Email: [geoffrey.bowden@brighton-hove.gov.uk](mailto:geoffrey.bowden@brighton-hove.gov.uk)  
Mobile: 07557 197601*

**From:** Geoffrey Bowden  
**Sent:** 06 January 2012 18:03  
**To:** Chris Swain  
**Cc:** Ben Duncan; Stephanie Powell  
**Subject:** Re: Objections  
**Importance:** High

Dear Chris

Firstly happy new year and apologies that your message got swept up in the pre-Christmas rush and was consequently overlooked by me. Having seen the original comments from former Cllr Fryer, my inclination is to trust her judgement and ask for the applications to be referred to the Planning Committee. However, I would like to discuss this with my ward colleagues first before getting back to you with a definitive response in time for your deadline.

Best wishes  
Geoffrey

*Cllr Geoffrey Bowden  
Green Party Councillor Queen's Park Ward  
Cabinet Member Culture Recreation & Tourism  
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Mobile: 07557 197601*



PLANS LIST – 25 APRIL 2012

**Brighton & Hove** COUNCILLOR REPRESENTATION  
**City Council**

**From:** Rachel Fryer  
**Sent:** 24 February 2011 00:43  
**To:** Chris Swain; Rachel Fryer; Ben Duncan  
**Subject:** Objections

**Hi Chris**

**I'm writing to register my objections to the two applications from Morrisons below and request that if you are minded to grant that the decision be referred to the Planning Committee for consideration:**

**BH2010/03696 : On the grounds that it has caused visual problems for residents of Dorset Mews**

**BH2010/03717:** On the grounds that residents have complained about noise problems created by delivery which will only be made worse by widening the hours of delivery

Best wishes

Councillor Rachel Fryer  
Green Party, Queens Park ward  
Spokesperson for Children, Families and Schools  
Brighton and Hove City Council  
Telephone: 01273 296442