

**14/00365/FUL**

**MAKRO, RAWRETH LANE, RAYLEIGH**

**THE VARIATION OF CONDITION 4 ATTACHED TO PLANNING PERMISSION REFERENCE 06/00079/FUL TO EXTEND THE HOURS OF RECEIVING OR DISPATCHING OF GOODS OR STOCK, ALLOW THE PARKING OF GOODS/DELIVERY VEHICLES AND OPERATE ANY PLANT MACHINERY OUTSIDE THE BUILDING TO 0500 - 2200 HOURS, MONDAY TO SATURDAY AND 0700 – 1900 HOURS, SUNDAY**

**APPLICANT: MAKRO SELF SERVICE WHOLESALERS LIMITED**

**ZONING: EMPLOYMENT LAND**

**PARISH: RAWRETH PARISH COUNCIL**

**WARD: DOWNHALL AND RAWRETH**

In accordance with the agreed procedure this item is reported to this meeting for consideration.

This application was included in Weekly List No. 1256 requiring notification of referrals to the Head of Planning and Transportation by 1.00 pm on Wednesday, 22 October 2014 with any applications being referred to this meeting of the Committee. The item was referred by Cllr C I Black.

The item that was referred is appended as it appeared in the Weekly List, together with a plan.

## **1 NOTES**

- 1.1 Members may remember this application, which was originally circulated on Weekly List No. 1250 dated 5 September 2014 and was not referred to a Development Committee meeting. As this decision was subject to a Legal Agreement a decision cannot be issued before the legal requirement has been completed. The agent has indicated discontentment with condition 1 imposed on the original recommendation relating to the temporary nature of the consent, giving an 18-month trial period in which Makro could operate, receiving or dispatching goods or stock, allowing the parking of goods/delivery vehicles and operate any plant machinery outside the building under the

5.1.1

extended hours. Given the need to be in agreement to sign the voluntary Legal Agreement, the matter is brought back to Members for a decision.

- 1.2 The report below is largely the same as Members will have read previously, with the exception of the conclusion within the main body of the report having been altered and condition 1 having been revised, removing the temporary nature. Furthermore, it should be noted that conditions 3 and 5 have been amended from that circulated to Members previously to reflect what officers originally intended.
- 1.3 The site is located on the western edge of Rayleigh and is part of the built form, which forms the edge of the town abutting the Green Belt. The site is designated within the Local Plan as existing industrial land. The application site is located on the eastern side of the access road serving Rawreth Industrial Estate accessible from Rawreth Lane, a busy main road. On the site is an established cash and carry known as Makro.
- 1.4 The site is adjoined to the west by open arable farmland although this land has been allocated for future residential development in accordance with the Allocations Plan (adopted 25 February 2014) and bounded to the east by residential and primary school development. To the south exists industrial uses. To the north adjoining an intervening store car park exists housing.
- 1.5 The warehouse benefits from a vehicular access point used by customers seen close to the northern boundary and a separate access and egress for delivery vehicles was created under application reference 06/00079/FUL.

#### Planning Application Details

- 1.6 The proposal seeks consent to vary condition 4 to the permission granted on 24 May 2006 under application reference 06/00079/FUL. The applicant wishes to extend the delivery hours, dispatching of goods or stock, the parking of delivery vehicles and the use of plant machinery outside the building. The applicant has identified that these hours are needed as the existing hours 'prevent Makro from delivering fresh produce to the store in advance of the store opening.' Therefore the revised delivery hours would enable the store to address this operational issue.
- 1.7 Application 06/00079/FUL approved various alterations and the provision of a canopy to part of the car parking area and which has since been built. Condition 4 of that permission specified the hours as follows:-
- 1.8 The use of the site hereby permitted, shall not
  - be open to customers
  - receive or dispatch goods or stock
  - allow the parking of goods/delivery vehicles

- operate any plant machinery outside the building hereby approved outside the hours of:-

0730 hours – 2100 hours Monday to Friday

0730 hours – 1900 hours on Saturday and

0900 hours – 1730 hours on Sunday

Reason: To enable the Local Planning Authority to retain adequate control over such hours of use, in the interests of residential amenity.

The applicant seeks to vary the hours to the following:-

0500 – 2200 hours Monday - Saturday

0700 – 1900 hours Sunday

- 1.9 The proposed hours would result in an extension by two and half hours in the morning and one hour in the evening other than Saturdays, which would be three hours in the evenings and two hours in the morning and one and a half hours in the evening on a Sunday.

## **2 PLANNING HISTORY (SINCE THE 1990S)**

- 2.1 90/00637/OUT - Outline Application to Demolish Existing Buildings and Construct New Buildings for Business (B1) and General Industrial (B2) Uses Land North of Rawreth Industrial Estate Rawreth Lane Rawreth - Permitted 14 November 1990.
- 2.2 93/00354/FUL - Construction of a Building Together With Associated Out Buildings and Car Parking for Use as a Cash and Carry Warehouse and/or Other Uses Within Class B8 - Permitted 11 February 1994 and is subject to a 106 Legal Agreement.
- 2.3 95/00123/ADV - Erect Car Parking Directional Signage and Three Illuminated Fascia Signs on Front and Side Elevations - Permitted 16 August 1995.
- 2.4 97/00109/FUL - Use Land Adjacent to Existing Cash and Carry Warehouse as Garden Centre. Erect 4.8m High Perimeter Fence. - Withdrawn 22 April 1998.
- 2.5 98/00700/FUL - Use Land Adjacent to Existing Cash and Carry Warehouse as Garden Centre. Erect 4.8m High Perimeter Fence - Refused 8 April 1999.
- 2.6 04/00571/LDC - Application For A Certificate Of Lawfulness For A Hand Car Washing Service - Permitted 25 October 2004.
- 2.7 05/01032/FUL - Retain 14 No. Storage Containers and 2 No. Compactor Units to Service Yard Area in Variance to Condition 3 of Planning Permission F/0354/93/ROC. - Permitted 28 February 2006.

- 2.8 06/00079/FUL - Single Storey Side Extension Using Matching Materials, Erect Canopy to Front of Building Over Part of Car Park, Internal and External Alterations as Part of Modernisation. Amend Car Park Layout Including Changes to Customer and Delivery Accesses. Variation of Conditions 8 and 9 of Application F/0354/93/ROC to Allow Store Opening Times Between 0730 hours – 2100 hours Monday to Friday and 0730 hours – 1900 hours on Saturday and 0900 hours – 1730 hours on Sunday. Delivery Times are revised from 24 Hours Monday to Friday and Saturday and Sunday 0700 hours to 1700 hours to During Store Opening Times, Namely 0730 hours - 2100 hours Monday to Friday and 0730 hours – 1900 hours on Saturday and 0900 hours – 1730 hours on Sunday. Permitted 24 May 2006 and is subject to a Unilateral Planning Obligation Section 106 Town and Country Planning Act 1990 was made 24 May 2006.
- 2.9 06/00226/ADV - Illuminated Building Mounted Signage and Illuminated free Standing Entrance Sign and Illuminated Sign to Customer Car Park and Service Entrance. - Refused 8 May 2006.
- 2.10 06/00439/FUL - Erect Marquee to Front of Store (on Car Park) for a Temporary Period of 6 Months. Permitted 20 July 2006.
- 2.11 06/00588/ADV - Non Illuminated Building Mounted Sign, Externally Illuminated Free Standing Entrance Sign and Non Illuminated Signage at Access and Service Access. Permitted 29 August 2006.
- 2.12 06/00589/FUL - Subdivide Plot and Construct Two Storey Building to Provide 2 No. One Bedroomed Flats (Existing Garage to be Demolished). Refused 9 October 2006.
- 2.13 06/00903/FUL - Application to Vary Condition 4 of Permission 06/00079/FUL to Allow Pre Christmas Opening Hours Each Year as Follows: Monday - Friday 0630 to 2200 Hours, Saturday 0730 to 2000 Hours and Sunday 0930 to 1830 Hours.- Refused 21 December 2006.
- 2.14 08/00217/FUL - Application to Vary Condition 4 of Permission 06/00079/FUL to Allow Store Opening 0600 - 2200 Hours Monday to Friday, 0600 – 2100 Hours Saturday and 0930 - 1900 Hours Sundays and Bank Holidays. Refused 26 June 2008.

### **3 MATERIAL CONSIDERATIONS**

- 3.1 The original consent (93/00354/FUL) controlled many elements on the site by way of planning conditions and a 106 Agreement. This agreement controls the points summarised below.
- The buildings approved under application number F/0354/93/ROC shall be first occupied by Makro Self Service Wholesalers Limited.

- 
- No more than 30% (varied to 40% under 06/00079/FUL) of the gross floor space of the buildings approved under application F/0354/93/ROC shall be used for the sale, storage or display of food and drink items.
  - Ensuring heavy goods supply and delivery vehicles to and from the land are via the route of A129 and A130.
  - Not knowingly or negligently sell or cause, permit or allow the sale of any goods from the land otherwise than to a qualifying person.
  - Introduce and maintain systems and procedures the same or substantially similar to this, which are set in annex A (Membership).
  - Afford free and ready access to the land by authorised officers of the Council forthwith on demand during normal opening hours in order to permit them to monitor compliance with the covenants contained in clauses 3, 4, 5 and 6 above and provide officers such information and records.
- 3.2 A subsequent approved application (06/00079/FUL) was also subject to a Unilateral Agreement. If this Authority is minded to grant consent it is considered reasonable for the Legal Agreement to be amended to relate to this permission too.
- 3.3 As previously mentioned, the existing store is sited some 60m from dwellings to the south east and some 95m from those dwellings located to the north of the site. The dwellings to the south east, whilst they do not immediately adjoin the host site, are closest to the service yard used for deliveries, etc. Those dwellings to the north and north east adjoin the customer car park.
- 3.4 As previously stated, the proposal seeks to vary the hours for which the store can receive and dispatch goods or stock, allow the parking of goods/delivery vehicles and operate any plant machinery outside the building, as stated within the agreed description.
- 3.5 The proposed extended hours are:-  
0500 - 2200 Hours Monday - Saturday, 0700 - 1900 Hours Sunday.
- 3.6 As seen within the planning history section of this report, application reference 08/00217/FUL sought the variation of condition 4 to permission 06/00079/FUL to Allow Store Opening 0600 - 2200 Hours Monday to Friday, 0600 – 2100 Hours Saturday and 0930 - 1900 Hours Sundays and Bank Holidays. This application was refused for the following reason:-
- 3.7 The proposal, by way of the extension of increased trading hours into the quiet of the morning and evening Monday to Saturday, would give rise to further noise and disturbance by way of traffic and the movement of

customers to and from the store. No evidence has been provided to allow the Council to assess the ambient background noise levels for the extended hours proposed. In the absence of evidence to the contrary the proposal is likely to result in a loss of amenity to the occupiers of dwellings in the vicinity of the site detrimental to the expectations those occupiers ought reasonably expect to enjoy and contrary to parts (iii) and (iv) to policy PN 5 to the Rochford District Replacement Local Plan (2006).

- 3.8 Whilst this application is of some relevance it related to extension of customer opening times, rather than the current proposal, which relates to delivery, dispatching of goods and stock, the parking of delivery vehicles and the use of plant machinery outside the building, the impact of which is considered to be quite different.
- 3.9 The site has to be considered against the backdrop of the industrial activities to the south of the site and the relative distance between the building and adjoining residential properties. Account must also be taken of the activity within the service yard areas that would correspond to the delivery regime.
- 3.10 Concerns have been raised from a resident who lives close to the site, and states that Makro wish to re-apply for the store's opening times to be extended and that in 2006 this was unacceptable due to the noise and light pollution that this creates. Furthermore, the car park is used for racing and this will only be made worse if the barriers are open for longer periods.
- 3.11 As stated within the report, the application is only to vary the hours whereby the unit can receive and dispatch goods or stock, allow the parking of goods/delivery vehicles and operate any plant machinery outside the building hours and would not vary the customer opening hours, however the impact of vehicles coming and going from the site early in the morning and late evening is a consideration that needs to be taken.
- 3.12 It is acknowledged that due to the proposed delivery hours being extended into the early morning and later into the evening, the ambient background noise is likely to be much quieter at the times of day which the applicants now seek to extend the delivery hours.
- 3.13 It is noted that the extension of customer opening hours was refused based on noise and disturbance and that no evidence had been provided with regard to the ambient background noise levels for the extended hours in 2008.
- 3.14 Within the current application an environmental noise impact assessment report has been submitted dated 27 January 2014. The report concludes that the assessment indicates that 'proposed delivery and staff vehicle movement noise levels during the proposed extended hours are likely to produce an insignificant human response to the change in noise level. No mitigation measures are considered necessary'.

- 
- 3.15 RDC Environmental Health has been consulted in relation to this application and does not have any adverse comments to make, but has suggested a condition to introduce controls to prevent lorries idling on the industrial estate spine road prior to the proposed delivery hours to remove potential for disturbance to residents of Rowan Close and Laburnum Way.
- 3.16 It is considered that a robust noise impact assessment has been submitted and although an increase in noise and traffic earlier in the morning and later into the evening would occur, this would not result in disturbance that would detrimentally affect the amenity to residents living close to the application site.
- 3.17 Furthermore, a condition preventing lorries from idling on the industrial estate spine road is not considered necessary nor reasonable should permission be granted. This is due to the fact that vehicles can utilise this road without control and existing on street restrictions apply. Furthermore, it is not a problem that has actually been experienced in relation to this site. It should also be noted that delivery vehicles utilise a different access, as approved in the 2006 application to the customer car park and therefore the disturbance will be limited as vehicles will not be delivering nor waiting within the main car park affecting those residents on the Laburnum Estate.
- 3.18 Within the noise impact assessment a table showing a schedule of worst case vehicle movements during the proposed extended delivery hours has been provided. It has been clarified with the agent that the information submitted within the Noise Impact Assessment (Section 5 of this report) has taken into consideration the numbers of vehicles and the noise generated by all activities involved in the delivery and dispatch of goods from the site and include the use of machinery such as fork lift trucks.
- 3.19 This table shows that between 0500 – 0730 hours, Monday - Saturday a total of 5 delivery vehicles would arrive and leave the site and a total of 14 staff cars would arrive at the site.
- 3.20 No information has been submitted stating the vehicle movements between 1900 - 2200 hours Saturday and it is concluded that no vehicles are scheduled to attend the site.
- 3.21 Between 2100 – 2200 hours, Monday - Saturday a total of 1 delivery vehicles would arrive and leave the site and a total of 8 staff cars would arrive at the site and a total of 10 staff cars would leave the site.
- 3.22 Between 0700 - 0900 hours Sunday a total of 5 delivery vehicles would arrive and leave the site and a total of 10 staff cars would arrive at the site. No information has been provided relating to the numbers of vehicles entering and leaving the site from 1730 -1900 hours.
- 3.23 It has also been clarified by the agent that when servicing takes place, the vehicles reverse into the loading bays and the goods are either removed from or placed onto the vehicle using fork lifts operating within the building itself.

As such, this mitigates noise nuisance that could disturb residents. The noise of the operations has been accounted for as the Noise Assessment recorded the noise generated by current service operations.

- 3.24 It is considered that a robust noise impact assessment has been submitted and although an increase in noise and traffic earlier in the morning and later into an evening would occur, this would not result in disturbance that would detrimentally affect the amenity to residents living close to the application site and RDC Environmental Health has no comments to make.
- 3.25 Furthermore, a condition preventing lorries from idling on the industrial estate spine road is not considered necessary nor reasonable should permission be granted.
- 3.26 It was noted within the Noise Impact Assessment a number of mitigation measures, whilst the conclusion of the report was that no mitigation measures were needed, reference is made in order to reduce the resultant noise, that a planning condition to control the noise that a vehicle uses to warn people it is reversing could be imposed, but the report concludes this is not necessary.
- 3.27 All relevant conditions seen within the application 06/00079/FUL are to be imposed should consent be granted.
- 3.28 It should be noted that no documents can be found to demonstrate that conditions 6 and 10 have been discharged to planning approval 06/00079/FUL. A site visit has assessed that the parking layout relating to condition 6 does not appear as per the approved site plan, however this is not considered objectionable and therefore a condition shall be imposed requiring the existing layout to be maintained.
- 3.29 Furthermore, on site it appears that condition 10 has not been complied with, although two young trees can be seen, this is clearly not in accordance with the 10 trees as specified within the condition, and therefore this condition shall be re-imposed to any subsequent grant of consent.
- 3.30 In light of the applicant's discontentment and nature of the consultation responses received in relation to this application, the application is recommended for approval without an 18-month trial period.

#### **4 REPRESENTATIONS**

##### **4.1 RAWRETH PARISH COUNCIL:**

The Council strongly objects to the application, which has been submitted on the grounds that it will cause an increase in noise and disturbance to residents on the neighbouring Laburnum Way development and in Rawreth Lane. Council is also concerned that permitting the operating hours in respect of receiving and dispatching goods and stock will also cause an increase in



traffic, which again, will have a detrimental effect to the residents of the neighbouring houses and roads.

#### 4.2 RDC ENVIRONMENTAL HEALTH

The Head of Environmental Services has no adverse comments in respect of this application. However, if possible, it would be desirable to introduce controls to prevent lorries idling on the industrial estate spine road prior to the proposed delivery hours in order to remove the potential for disturbance to residents of Rowan Close and Laburnum Way.

#### 4.3 NEIGHBOUR CONTRIBUTOR

4.4 I currently reside at a property adjacent to Makro Wholesalers. I read with interest that Makro/Bookers wish to re-apply for their stores' opening times to be extended again! Back in 2006 I brought to your attention that this is totally unacceptable due to the noise and light pollution that this creates. My other fear is also that we still have a problem with the car park being used for racing and now the latest craze of drifting in the evenings, a situation that will only be made worse if the barriers are left open for longer periods.

4.5 In closing I would like to add that it is not my intention to be a person intent on complaining but I do feel that Makro has sufficient time to conduct its business at present and due to its geographical position it has a duty of care to its neighbours in this matter. Thank you for your considerations.

### 5 RECOMMENDATION

#### 5.1 It is proposed that the Committee **RESOLVES**

That planning permission be approved, subject to the completion of a Legal Obligation to repeat the relevant controls in the existing Legal Agreement and Unilateral Undertaking of the earlier permissions and subject to the following conditions:-

(1) The use of the site hereby permitted shall not:-

- receive or dispatch goods or stock
- allow the parking of goods/delivery vehicles
- operate any plant machinery outside the building hereby approved

outside the hours of

0500 - 2200 Monday - Saturday

0700 - 1900 Sunday

- 
- (2) The use of the site hereby permitted shall be restricted to a cash and carry warehouse and/or other uses within Class B8 of the Town and Country Planning (Use Classes) (Amended) Order 2005 (including any Order revoking or re-enacting that Order, with or without modification), or such uses ordinarily incidental to the use hereby permitted.
  - (3) The use of the site hereby permitted shall not be open to customers outside the hours of 0730 - 2100 Monday to Friday, 0730 - 1900 on Saturday and 0900 - 1730 on Sunday.
  - (4) If there is to be any flood lighting or other means of artificially illuminating the front car park and the proposed canopy extension, then prior to its implementation at the site, details of the illumination shall be submitted to and agreed in writing by the Local Planning Authority. The details as approved shall be implemented at the site and retained as such thereafter.
  - (5) Notwithstanding the car park layout seen within the approved application 06/00079/FUL, the existing car parking layout on site shall be retained and maintained in this form and used for no other purpose, which would impede the parking of vehicles.
  - (6) A travel plan shall be in place prior to the beneficial occupation of the extension. The proposed travel plan to be submitted to the Travel Plan Co-ordinator, telephone number 01245 437120.
  - (7) The car park canopy hereby approved shall be used for the parking of vehicles and shall not be used at any time for the storage, deposit or display of goods, articles, products or other materials, together with any plant, machinery or equipment, whether or not requisite for the permitted use of the site.
  - (8) No development shall commence before full details of a scheme of tree planting to take place within the site, which shall include the removal of T1 and T2 as labelled on the approved plan L (90)01 Rev A to planning reference 06/00079/FUL, the protective 'Herras' type fencing enclosing Area 'A' and planting of 10 trees (which shall include such species as silver birch, alder and hornbeam) in the area hatched area marked 'A' on the approved drawing L (90)01 Rev A to planning reference 06/00079/FUL, which shall be undertaken as part of the development hereby permitted (including times of planting), have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the protective fencing, as agreed in writing, enclosing Area 'A' shall be erected prior to the commencement of the development and all tree planting shall be carried out in accordance with the approved details and at the approved times. If within a period of five years from the date of the planting of any tree, that tree or any tree planted as a replacement for it, is removed, uprooted or destroyed, or becomes, in

the opinion of the Local Planning Authority, seriously damaged or defective, another tree of the same species and size as that originally planted, shall be planted at the same place, in the first available planting season following removal (October to March inclusive).

- (9) The existing hedgerow, as shown between the points X-Y-Z on the approved drawing L (90)01 Rev A to planning reference 06/00079/FUL, shall hereafter be retained and not pruned, removed or otherwise reduced in height, without the prior written agreement of the Local Planning Authority.
- (10) Details of any proposed system of ventilation, externally sited refrigeration plant shall be submitted to and approved in writing by the Local Planning Authority prior to installation. All such installations shall be carried out in accordance with the approved details and retained and maintained in their approved form.
- (11) The barriers installed shall be those agreed in accordance with plan reference 6450 SK19, seen within the discharge of condition letter dated 4 October 2006 and installed across the accesses and egresses to the car park (including the emergency entrance), to prevent unauthorised access to the car park outside the hours stipulated in condition 3 of this consent. Once implemented, the barriers shall be retained and used to prevent unauthorised access to the site outside the permitted opening hours.



Shaun Scrutton

Head of Planning and Transportation

---

### Relevant Development Plan Policies and Proposals

ED3, of the Rochford District Council Core Strategy 2011

For further information please contact Mike Stranks on:-

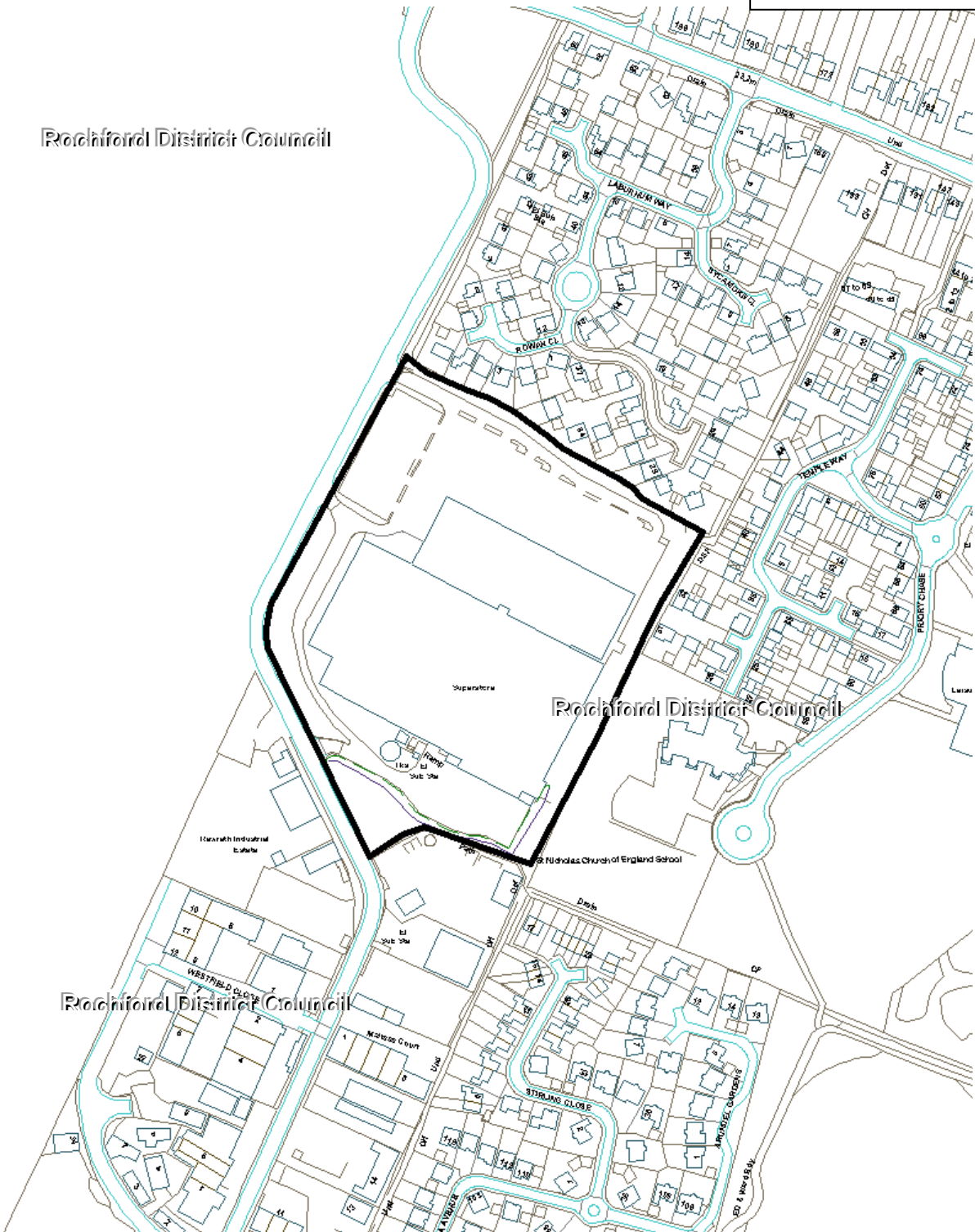
Phone: 01702 318092

Email: [mike.stranks@rochford.gov.uk](mailto:mike.stranks@rochford.gov.uk)

If you would like this report in large print, Braille or another language please contact 01702 318111.

14/0365/FUL

Rochford District Council



Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. This copy is believed to be correct.

Nevertheless Rochford District Council can accept no responsibility for any errors or omissions, changes in the details given or for any expense or loss thereby caused.

Rochford District Council, licence No.LA079138

5.1.12



NTS