
Appeal Decision

Site visit made on 23 August 2016

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 30 September 2016

Appeal Ref: APP/N4720/W/16/3150020

Lidl, 174 Selby Road, Leeds LS15 0DL

- 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 Lidl UK GmbH against the decision of Leeds City Council.
 - The application Ref 15/04656/FU, dated 3 August 2015, was approved on 11 January 2016 and planning permission was granted subject to conditions.
 - The development permitted is extension to foodstore and additional car parking spaces.
 - The condition in dispute is No 15 which states that: *"Unless otherwise first agreed in writing, the extension hereby approved shall not be brought into use until arrangements for the provision of glass re-cycling facilities (comprising of at least 4 x 2.500 Litres containers) to replace those recently removed from the site have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be installed at the site prior to the extension being first brought into use and shall remain available for general use thereafter for as long as the development remains."*
 - The reason given for the condition is: *"In order to ensure recycling facilities are available at this central site in the interests of sustainability and energy efficiency and in accordance with Core Strategy policies P9 and P10 and saved UDP Review policy GP5."*
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Decision

1. The appeal is allowed and the planning permission Ref 15/04656/FU for extension to foodstore and additional car parking spaces at Lidl, 174 Selby Road, Leeds LS15 0DL granted on 11 January 2016 by Leeds City Council, is varied by deleting condition 15.

Procedural Matter

2. The address given on the original application form differs slightly to that used by the Council on their decision notice. In the interests of consistency I have employed that used by the Council, which has also been cited by the appellant in Section D of their Appeal Form, in the heading above and in my decision.

Background and Main Issue

3. The condition in contention requires glass recycling containers to be provided on the site to replace those previously located there which have been removed. Their removal is indicated on one of the approved plans for the foodstore and car park extension permission.
 4. Those previously installed in 2011 under a licence agreement between the appellant and the Council consisted of a group of four containers, occupying a car parking space. The appellant considers that their siting did not require
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planning permission when first installed and were not required to be provided as part of the original planning permission for the foodstore.

5. The Council point out that glass recycling “bring sites”, such as that which was previously located on the site, are particularly important as glass is not collected from people’s homes as part of Leeds’ recycling scheme, relying instead on residents using such sites.
6. The National Planning Policy Framework (the Framework) supported by the Planning Practice Guidance (PPG) sets out the six tests with which planning conditions must comply, including that they are necessary, relevant to the development permitted and reasonable in all other respects.
7. Therefore, the main issue raised by this is appeal is whether the condition is reasonable, relevant and necessary.

Reasons

8. The glass recycling which would take place as a result of the condition’s requirements would serve a general purpose and not be directly related to the supermarket use of the site, to the extension which was the subject of the permission nor to exclusively recycling products purchased from it. It has not therefore been demonstrated that the recycling bins are necessary to make the extension proposal acceptable in planning terms. Furthermore, from the information available the area on which they were located would not appear to be affected by the proposed changes to the car park which were permitted, although it was within the ‘red line’ of the application site.
9. Whilst recycling and its contribution to sustainable resource management and carbon reduction does relate to wider planning objectives, there is little evidence to suggest that the requirement for siting recycling bins is fairly or reasonably related to the development permitted. Neither has it been demonstrated that their provision would mitigate any potentially adverse effects of the proposed development.
10. On the basis of the available evidence, the decision to terminate the licence permitting the Council or its contractors to use part of the car park to site the recycling bins is not directly related to the planning permission for the extension of the supermarket and car park. It would not be reasonable to require a planning permission for the extension to address an issue which is in effect one related to a landowner providing a licence for a recycling operator to site apparatus and carry out collection operations on their land. This is clearly distinct from the planning issues associated with the acceptability of the foodstore and car park extension which is the subject of the permission.
11. In particular the PPG is clear that a condition cannot be imposed in order to remedy a pre-existing problem or an issue not created by the proposed development. These are circumstances which have arisen in the appeal case. The PPG also asks the key question of whether it would be appropriate to refuse planning permission without the requirements imposed by the condition in terms of whether a condition is necessary. For the above reasons it would not be necessary to refuse permission for the foodstore and car park extension in the absence of the recycling facilities.
12. A prominent and accessible location in Halton Town Centre with ample parking such as the appeal site would clearly be convenient for both residents disposing

of glass for recycling and the operators of the recycling scheme. I can also appreciate that the absence of a "bring site" in the vicinity of the appeal site would mean that the distribution of such sites would be less comprehensive with the Council considering the nearest alternative site far less suitable as it is not always accessible. There is also the potential that unless suitable alternative sites could be provided that it may, to a limited degree, discourage recycling behaviour amongst residents. Nevertheless, these matters would not alter the necessity, relevance or reasonableness of the condition.

13. The Council's reasons for attaching the condition include reference to Core Strategy - Leeds Local Development Framework (2014) (CS) Policy P9 which supports accessible community facilities located in centres with other community uses. Although not the type of facility or service suggested in the examples the policy cites, recycling could potentially be considered as such a community facility or service. However, although no alternative provision is proposed, there is insufficient evidence to suggest that the absence of reinstatement of this single site would necessarily result in the loss of the overall facility or service given the presence of other recycling sites in the wider area.
14. CS Policy P10 requires recycling storage to be designed in a positive manner and integral to the development, amongst other design criteria, rather than requiring its provision in the first place or its subsequent retention. Leeds Unitary Development Plan (Review 2006) Policy GP5 seeks to ensure that development proposals resolve detailed planning considerations, avoid a range of adverse effects (including on amenity) and promote energy conservation, amongst other considerations. However, in doing so it reasonably reads as requiring such issues to be resolved or promoted which are related to the development proposed.
15. Although not provided in the Council's reason for attaching the condition, CS Policy EN6 is concerned with strategic waste management to meet the District's needs. Whilst this strategy includes safeguarding a range of existing "waste sites" this does not explicitly refer to the Council's "bring sites" which are materially different from household waste sites and the like. Criterion (ii) of CS Policy EN6 cannot be interpreted as requiring all developments to provide independent recycling facilities as opposed to ensuring that appropriate recycling facilities are provided in response to activities associated with the development proposed.
16. Therefore none of these policies can reasonably be considered to require the proposed development to provide public recycling facilities, either explicitly or implicitly, and therefore the imposition of the condition is not supported by the development plan in these respects. Nor is it certain that any material harm to the interests of sustainability and energy efficiency would directly arise as a result of a glass recycling collection point not being provided on the site.
17. Provision of glass recycling facilities would contribute to the Framework's recognition of the importance of minimising waste and pollution, the prudent use and reuse of existing resources, mitigating climate change and even, to a degree, that of delivering community facilities. However, there is little conclusive evidence that these important matters would be negated as a result of the condition not being attached.

18. I can appreciate the Council's concerns that a long standing recycling site would no longer be available to them or to the public with consequent inconvenience, however the condition requiring it to be provided would not pass the Framework tests. The history of the management and performance of the recycling containers at the site and the reasons for the supermarket operator wishing to remove them are therefore less pertinent to the consideration of the appeal.
19. I have considered the Council's concern that the removal of the condition could lead to other appeals in respect of similar conditions on permissions the appellant has recently obtained. However, I cannot be certain that the circumstances would be the same and in any event each appeal must be determined on its individual merits. Therefore this concern, whilst understandable, does not lead me to an alternative conclusion.

Conclusion

20. For the above reasons I conclude that the condition does not pass the Framework tests of necessity, relevance to the development permitted or reasonableness. As such the appeal succeeds and the planning permission is consequently varied as set out in the formal decision.

Geoff Underwood

INSPECTOR