
Appeal Decisions

Site visit made on 16 January 2017

by Philip Lewis BA (Hons) MA MRTPI

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

Decision date: 09 February 2017

Appeal A: APP/V2825/W/16/3160378

Aldi Stores Limited, 582-592 Wellingborough Road, Weston Favell, Northampton, Northamptonshire NN3 3JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Aldi Stores Limited against the decision of Northampton Borough Council.
 - The application Ref N/2015/1393, dated 2 January 2016, was refused by notice dated 6 April 2016.
 - The application sought planning permission for development described as *variation of condition 8 of planning permission N/2011/0295 to allow opening from 8am until 9pm on Monday - Saturday* without complying with a condition attached to planning permission Ref N/2012/282, dated 28 May 2012.
 - The condition in dispute is No 1 which states that: *The development hereby permitted shall only be open to customers between the hours of 8am and 9pm in any one day on Mondays to Saturdays and 10am to 4pm on Sundays, Bank Holidays and Public Holidays.*
 - The reason given for the condition is: *In the interests of the amenities of the occupiers of surrounding properties in accordance with the requirements of the National Planning Policy Framework.*
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Appeal B: APP/V2825/W/16/3160711

Aldi Stores Limited, 582-592 Wellingborough Road, Weston Favell, Northampton, Northamptonshire NN3 3JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Aldi Stores Limited against the decision of Northampton Borough Council.
 - The application Ref N/2015/1370, dated 25 November 2015, was refused by notice dated 11 April 2016.
 - The application sought planning permission for development described as *variation of condition 1 of planning approval N/2012/282 to amend opening hours to 8am to 10pm Mondays to Saturdays and 10am to 4pm on Sundays, bank holidays and public holidays* without complying with a condition attached to planning permission Ref N/2013/1024, dated 3 December 2013.
 - The condition in dispute is No 2 which states that: *No deliveries or collections shall be made to or from the development hereby permitted before 7.30am and after 8pm on Mondays to Saturdays and before 10am and after 4pm on Sundays, Bank Holidays and Public Holidays.*
 - The reason given for the condition is: *In the interests of the amenities of the occupiers*
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of surrounding properties in accordance with the requirements of the National Planning Policy Framework.

Procedural matters

1. The applications subject to these appeals are made under Section 73 of the Planning Act and each seeks the development of land without complying with a condition subject to which a previous planning permission was granted. The respective permissions were also Section 73 proposals as reflected in the respective descriptions of development in the headers and decisions. For ease of reference I refer to the different cases as Appeals A and B in this decision letter as set out in the headers.
2. In respect of Appeal A, whilst the appellant has questioned whether the appeal should relate to planning permission N/2013/1024, the appeal proposal as set out in the application form clearly seeks to vary condition 1 of planning permission reference N/2012/282 regarding the opening hours of the store. The Council dealt with the scheme on this basis and so shall I. Although Appeal B seeks to vary a different planning permission, I have dealt with them together in this document in the interests of consistency and to avoid duplication. Whilst there are two appeals, I have used singular terms in places for ease of reading. For consistency, I have used the appeal site address as set out in Appeal A for both appeals.
3. I have considered the comments by the interested person regarding alleged breaches of the opening hours condition. Given the evidence before me and that the alleged breaches occurred after the application was made I have not dealt with the appeal on the basis that the proposal is to retain the development without complying with the disputed condition.

Decisions

Appeal A: APP/V2825/W/16/3160378

4. The appeal is allowed and planning permission is granted for the development described as variation of condition 8 of planning permission N/2011/0295 to allow opening from 8am until 9pm on Monday - Saturday without complying with a condition attached to planning permission Ref N/2012/282 at Aldi Stores Limited, 582-592 Wellingborough Road, Weston Favell, Northampton, Northamptonshire NN3 3JB in accordance with the application N/2015/1393 dated 2 January 2016 subject to the attached schedule of conditions.

Appeal B: APP/V2825/W/16/3160711

5. The appeal is allowed and planning permission is granted for the development described as variation of condition 1 of planning approval N/2012/282 to amend opening hours to 8am to 10pm Mondays to Saturdays and 10am to 4pm on Sundays, bank holidays and public holidays at Aldi Stores Limited, 582-592 Wellingborough Road, Weston Favell, Northampton, Northamptonshire NN3 3JB in accordance with the application Ref N/2015/1370 dated 25 November 2015 subject to the attached schedule of conditions.

Background and Main Issue

6. In Appeal A, the appellant is seeking amended store opening hours for Mondays to Saturdays and Bank and Public Holidays to 0800 to 2200. The

opening hours for the store approved under N/2012/282 allow opening on Mondays to Saturdays of 0800 to 2200. The Council refused the application on the basis that the proposed increase in opening hours would result in residents being exposed to noise and disturbance associated with the general activity generated by the store for a longer period on Bank and Public Holidays when there is an expectation for a more peaceful environment.

7. In Appeal B, the appellant is seeking amended delivery and collection times for the store to 0700 to 2000 Mondays to Saturdays and Bank and Public Holidays and 0900 to 1600 on Sundays. The Council refused the application on the basis it considered that insufficient evidence had been submitted to demonstrate that the proposed development would not cause an unacceptable impact on occupiers of the surrounding residential properties.
8. The main issue for the Appeals is therefore the effect that varying the opening and delivery and collections hours for the store would have on the living conditions of neighbouring residents.

Reasons

9. The store is situated on the A4500 Wellingborough Road. I saw at my site visit that the building is situated towards the rear of the appeal site with car parking to the front and side between the building and the adjacent residential building known as Westonia Court. To the other side of the appeal site is situated The Trumpet public house. To the rear of the appeal site are situated dwellings and gardens of properties on Church Way. The appeal site is separated from 11 Church Way what has been described as a 2.4 metre acoustic fence with a hedge beyond. I saw at my site visit that 11 and 11A Church Way are situated in reasonable close proximity to the store and its loading bay and noted the window openings at the dwellings visible from the street.
10. The appellant has provided Noise Impact Assessments (NIA) produced by K R Associates (UK) Ltd in respect of each appeal. For Appeal A, the NIA is dated 6 October 2016. For Appeal B, the NIA is dated 11 October 2016. The background noise levels referred to in the reports were measured between Saturday 17 and Monday 19 September 2016, with the noise source levels taken at the appeal site between Friday 16 and Saturday 17 September 2016. Noise levels were measured for a delivery to the store on 16 September 2016.
11. The NIAs indicate that Wellingborough Road dominates the existing noise climate of the surrounding area, which accords with what I experienced during my site visit. I also visited Church Way and stood outside 11 and 11A and noted that some traffic noise was audible in the street which concurs with the findings of the NIAs. However, I also observed the noise levels experienced at 11 and 11A appear to be influenced by a shielding effect from the store, when compared to other parts of Church Way.
12. In addition to a noise shielding effect which may not be fully reflected in the NIAs, I note that they do not include any assessment undertaken of background noise levels on a Bank or Public Holiday, though they include a Sunday. In respect of the NIA for Appeal B, there is disagreement between the parties regarding the application of corrections in the noise assessment as set out in BS 4142: 2014, however no alternative assessment has been provided. Therefore, whilst I have some reservations regarding the conclusions of the NIAs, they are however the only quantified technical evidence before me.

13. I also note that NIAs contains different figures to those set out in previous reports prepared for earlier proposals at the site. However, whilst I do not have all of those reports before me, the NIAs provided for these Appeals are based upon measured data taken at the store and in the surrounding area. I have also considered the comment regarding the use of weather data from Cranfield airport given its distance from the appeal site and note the comment that this is a standard procedure in preparing reports.

Opening hours

14. The extended open hours on Bank and Public Holidays would give rise to increased activity from customers and staff coming and going when compared to the existing situation. Whilst I note the appellants comment regarding there not being national or local policy that Bank and Public Holidays should be afforded greater protection than other days, I nevertheless consider it reasonable for nearby residents to have an expectation of a quieter environment on such days. In this regard, I have taken into account that the store adjoins domestic gardens including the vegetable garden of 11 Church Way and that as some Bank and Public holidays fall within spring and summer months, residents are more likely to be using their gardens and other outdoor spaces for greater periods than on other days.
15. Any additional associated noise and disturbance which may arise as a result of the appeal proposal must be considered in the context of the existing noise climate. The measured source levels for the store are appreciably below the background noise levels given for traffic noise in the NIA. Whilst I have some concerns regarding the NIA, on the balance of the technical evidence before me, given the difference between the identified source and background noise levels, I consider that the proposed extension of opening hours would not give rise to significant adverse effects upon the living conditions of the occupiers of nearby dwellings in terms of noise and disturbance. Additionally, it has not been demonstrated that the characteristics of the store are such that it is any more likely that people may congregate there and give rise to noise and disturbance than elsewhere. In any event, the store entrance is situated on the elevation of the building fronting Wellingborough Road, away from nearby residential properties.

Deliveries and collections

16. The store is arranged so that the enclosed delivery bay is situated to the rear of the building, near to the site boundary with 11 Church Way. Deliveries and collections are made by heavy goods vehicles, which reverse up to the loading bay, with the goods unloaded directly into the store. Noise is principally generated by a vehicle arriving and departing the loading bay and from the use of a pallet truck to unload the vehicle. The noise generated by the pallet truck is likely to be of an impulsive nature and I note that it increases in duration as the trailer is unloaded. The NIA for Appeal B sets out that the delivery noise levels at the nearby residential properties has a minor exceedance of the measured background noise levels.
17. Deliveries and collections from the store are presently permitted between 0730 to 2000 on Mondays to Saturdays and between 1000 and 1600 on Sundays, Bank Holidays and Public Holidays and I have taken into consideration the evidence regarding the numbers of deliveries made per day. The proposal is to change the delivery times to half an hour earlier on week day mornings, one

hour earlier on Sundays and 3 hours earlier and 4 hours later on Bank Holidays and Public Holidays. Although I have not been provided with any alternative technical assessment, I have taken into consideration the observations of the Councils Environmental Health Officer and the interested persons regarding the audibility of the delivery noise at properties on Church Way.

18. In respect of the earlier proposed delivery and collection times for weekdays and Saturdays, the limited evidence before me regarding traffic levels on the A4500 Wellingborough Road lends support to the argument that the noise environment is unlikely to be significantly different at 0700 than at 0730 when deliveries can commence currently. Whilst I consider that the proposal would give rise to some small increase in noise, I do not consider it to be so significant so as to be unacceptable at this time. In regards to the earlier Sunday hours proposed, on the balance of the evidence, I also do not consider that a delivery taking place at 0900 rather than at 1000 to give rise to unacceptable harm for the occupiers of 11 and 11A Church Way.
19. In respect of Bank and Public Holidays, the proposed delivery times sought are the same as those for weekdays and Saturdays. Whilst I have some reservations regarding the NIA, in the absence of any alternative technical assessment, I am satisfied that it has been demonstrated that the modest increase in noise which may arise for the longer hours proposed would not be so significant so as to be unacceptable in terms of the living conditions of the occupiers of nearby dwellings.
20. I am aware that the deliveries and collections may also give rise to noise from sources such as refrigeration units and the use of audible reversing warnings. The appellant has suggested that should I be minded to allow the appeal, a noise management plan for deliveries could be secured by way of a planning condition which could address such matters. Whilst I have considered the Councils comments regarding this, I nevertheless consider that such a condition would assist in mitigating some potential sources of noise arising from deliveries at the store for the longer periods permitted were I so minded to allow the appeal. I note the Councils concerns regarding the enforceability of such a condition, but I am satisfied that it would remain in place should the store operator change.
21. I have considered the suggestion by an interested person that I impose a condition to secure improvements to the acoustic fencing or enclosure of the delivery area. However, given the limited harm found, I do not consider this to be necessary.
22. Having reached the conclusions above, the extension to trading hours would therefore be consistent with West Northamptonshire Joint Core Strategy Local Plan (Part 1) 2014 (Local Plan) Policy S10 which is concerned with sustainable development principles including that development minimises pollution from noise. The proposal also does not conflict with the National Planning Policy Framework (the Framework) which in paragraph 17 includes that planning should always seek a good standard of amenity for all existing and future occupants of land and buildings and the noise related policies set out in paragraphs 109 and 123.
23. Furthermore, I find that the extension to delivery and collection hours would therefore be consistent with Local Plan Policy BN9 which is concerned with planning for pollution control including that adverse impacts of noise are

reduced. The proposal also does not conflict with the paragraphs 17, 109 and 123 of the Framework.

Other matters

24. I have considered that the appeal site was used differently prior to the store being developed but this does not lead me to different conclusions in respect of the Appeals.

Conclusions

25. For the reasons above and having considered all matters raised, I consider that both Appeal A and Appeal B should succeed. In respect of Appeal A, I replace the disputed opening hours condition with a new one, which also includes the already approved opening hours. For Appeal B, I also replace the disputed delivery or collections hours condition and in the interests of consistency, given my decision in respect of Appeal A, revise the opening hours condition to accord with those set out in my decision in regards to Appeal A. In addition, I have imposed a condition requiring the submission of a noise management plan in regards to Appeal B.
26. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose them all. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Philip Lewis

INSPECTOR

Appeal A: APP/V2825/W/16/3160378

Schedule of conditions

1. The development hereby permitted shall only be open to customers between the hours of 0800 and 2200 in any one day on Mondays to Saturdays and 1000 to 1600 on Sundays.
2. No deliveries or collections shall be made to or from the development hereby permitted before 0730 and after 2000 on Mondays to Saturdays and before 1000 and after 1600 on Sundays, Bank Holidays and Public Holidays.
3. Unless otherwise agreed in writing by the Local Planning Authority, the retail supermarket shall not be divided to form more than one retail unit.
4. Unless otherwise agreed in writing by the Local Planning Authority, the external lighting approved under the provisions of Condition 4 of Planning Permission N/2011/295 shall be retained at all times. For the avoidance of doubt, these lights should only be used between the hours of 7am and 9pm on any one day between Mondays to Saturdays and 9am to 5pm on Sundays.
5. Unless otherwise agreed in writing by the Local Planning Authority, the CCTV system approved under the provisions of Condition 5 of Planning Permission N/2012/0295 shall be retained at all times.
6. Unless otherwise agreed in writing by the Local Planning Authority, the drainage systems approved under the provisions of Condition 10 of Planning Permission N/2012/0295 shall be retained at all times.
7. The travel plan approved under the provisions of Condition 20 of Planning Permission N/2012/0295 shall be retained at all times.

Appeal B: APP/V2825/W/16/3160711

Schedule of conditions

1. The development hereby permitted shall only be open to customers between the hours of 0800 and 2200 in any one day on Mondays to Saturdays and 1000 to 1600 on Sundays.
2. No deliveries or collections shall be made to or from the development hereby permitted before 0700 and after 2000 on Mondays to Saturdays or on Bank Holidays and Public Holidays and before 0900 and after 1600 on Sundays.
3. The retail supermarket shall not be divided to form more than one retail unit.
4. The external lighting approved under the provisions of Condition 4 of Planning Permission N/2011/295 shall be retained at all times. For the avoidance of doubt, these lights should only be used between the hours of 7am and 9pm on any one day between Mondays to Saturdays and 9am to 5pm on Sundays.
5. The CCTV system approved under the provisions of Condition 5 of Planning Permission N/2011/0295 shall be retained at all times.
6. The drainage systems approved under the provisions of Condition 10 of Planning Permission N/2011/0295 shall be retained at all times.
7. The travel plan approved under the provisions of Condition 19 of Planning Permission N/2011/0295 shall be retained at all times.
8. Within 2 months of the date of this decision a scheme for the management of noise in the form of a noise management plan, arising from deliveries to the store, prepared by a suitably qualified person, shall be submitted in writing to the local planning authority for approval. The approved scheme shall be implemented in full within 1 month of the local planning authorities' approval and shall be thereafter retained.