
Appeal Decision

Site visit made on 28 March 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 03 April 2017

Appeal Ref: APP/Z4718/W/16/3162904

Lidl UK Gmbh, Huddersfield Road, Holmfirth, Kirklees HD9 7AG

- 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 Lidl UK Gmbh against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2015/70/91832/W, dated 4 June 2015, was refused by notice dated 16 May 2016.
 - The application sought planning permission for the demolition of existing building and the erection of a food store with associated car park, landscaping, highway works and to relocate an existing sub-station without complying with conditions 27 and 39 attached to planning permission Ref 2011/65/92600/W, dated 13 March 2012.
 - The conditions in dispute are Nos 27 and 39 which state that:
 - (27) *"The store hereby permitted shall not be open to customers outside the hours of 0700 to 2000 Monday to Sunday inclusive, other than up to ten occasions per annum when the store is permitted to open until 2200 hrs"*.
 - (39) *"The floodlights hereby approved shall not be operated between the hours of 2100 to 0730 on any day of the week"*
 - The reasons given for the conditions are:
 - (27) *"In the interests of safeguarding the amenities of residents arising from noise, and to accord with Policies D2 and EP4 of the Unitary Development Plan, and national planning policy guidance in PPG 24"*
 - (39) *"In the interests of safeguarding the amenities of residents arising from stray light during unsociable hours / night time; and to accord with Policies D2 and EP4 of the Unitary Development Plan, and national planning policy guidance in PPS 23"*.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing building and for the erection of a food store with associated car park, landscaping, highway works and to relocate an existing sub-station in accordance with the application Ref 2015/70/91832/W dated 4 June 2015, without compliance with condition numbers 27 and 39 previously imposed on planning permission Ref 2011/65/92600/W dated 13 March 2012 and subject to the attached schedule of conditions.

Background and Main Issue

2. The appellant seeks to modify condition No 27 of planning permission Ref 2011/65/92600/W so that instead of reading *"the store hereby permitted shall not be open to customers outside the hours of 0700 to 2000 Monday to Sunday*
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inclusive, other than up to ten occasions per annum when the store is permitted to open until 2200 hrs" it reads "the store hereby permitted shall not be open to customers outside the hours of 0700 to 2200 Monday to Sunday inclusive".

3. The appellant also seeks to modify condition No 30 of 2011/65/92600/W so that instead of reading *"the floodlights hereby approved shall not be operated between the hours of 2100 to 0730 on any day of the week"* it reads *"the floodlights hereby approved shall not be operated between the hours of 2300 to 0730 on any day of the week"*.
4. In considering the Council's refusal notice, the main issues are whether or not the above proposals would cause harm to the living conditions of the occupiers of neighbouring residential properties in respect of (i) noise and disturbance from vehicular and pedestrian activity as a result of the proposed extended hours of customer use and (ii) light pollution from the proposed extended hours of use of the existing floodlights.

Reasons

Noise and disturbance

5. Planning permission No 2011/65/92600/W already permits customer visits to the Lidl store up to 22:00 hrs on up to ten occasions per annum. I do not know the background to the up to ten occasion's restriction, but, in any event, the appellant has submitted a noise assessment report which considers the noise effect of the proposed extended hours of customer use of the retail store. I have no reason to doubt the conclusions of the noise assessment report which states, with reference to the noise exposure hierarchy table in the National Planning Practice Guidance (PPG) on noise, that there would be *"no observed adverse effect"*, meaning that in respect of noise the site could operate within the *"lowest observed adverse effect level"* based on the proposed customer opening hours. Taking into account the PPG noise hierarchy table, no specific actions are required in respect of noise and the evidence indicates that there would not be a perceived change in the quality of life of surrounding residents. The Council's Environmental Services team were also consulted on the planning application and raised no objection to the proposed extension of the customer opening hours.
6. Given the findings of the noise report, the evidence before me indicates that in respect of noise the proposed extended hours would not result in a level of customer activity which would cause material harm to the living conditions of the occupiers of surrounding residential properties. I note that the Council has not received any noise complaints from members of the public based on the current customer opening hours which includes customer use of the store up to 22.00 hrs ten times per annum.
7. I do acknowledge that when compared to the current situation there would be additional customers coming and going (i.e. at all times of the year) between the hours of 20.00 hrs and 22.00 hrs. However, I do not consider that this would result in significant levels of disturbance and I consider that it is reasonable to conclude that customer visits/movements would likely tail off later into the evening. In any event, the noise assessment does not indicate that significant harm would be being caused as a result of customer activity during this period. Indeed, and based on the findings in the noise assessment

report, it is likely that noise associated with the A6024 Huddersfield Road would remain the dominant source of noise. I was able to hear this dominant noise source as part of my site visit.

8. I note that the Council officers recommended approval of planning permission subject to a temporary one year planning condition. I have not been provided with any reasonable evidence to substantiate why it would be necessary to opt for a trial run. This may have been necessary if, say, there was a need for some form of noise mitigation, but for the reasons outlined above this would not be required. In conclusion, the evidence before me indicates that the proposed extended customer opening hours would not cause material harm to the living conditions of the occupiers of surrounding residential properties in respect of noise and disturbance. I consider that a closing time of 22.00 hrs is reasonable as this would ensure that the residents would continue to benefit from a much quieter late evening/early morning environment (when most would sleep) and where there would be no comings and goings from customers. Therefore, the proposal would accord with the amenity aims of saved Policies BE1(iv) and D2(v) of the adopted Kirklees Unitary Development Plan 1999 (UDP); the National Planning Policy Framework (the Framework) and the PPG.

Floodlights

9. It is proposed to extend the operation of the car park floodlighting to facilitate the extended opening hours above. There would be a slight overlap in times, but this is reasonable in so far that it would allow a period of time for both staff and customers to leave the site, after the closing of the store, in a lit and therefore safe environment.
10. I note that the existing floodlights have been approved at lux level (10) with a uniformity of 0.25. Such floodlights are well within industry standards in terms of the lux level and based on the details submitted by the appellant they have been designed to minimise light spillage and glare to neighbouring land and properties. According to the Council, they have received no complaints in terms of the effect of the use of the lights upon the living conditions of the occupiers of surrounding residential properties.
11. It is proposed that the lights would not be on between the hours of 23.00 hrs and 07.30 hrs. I consider that these are reasonable times in so far that the lights would not be turned on during periods of the very late evening/early morning when most people would be asleep. The imposition of the proposed varied condition is, however, necessary as it is reasonable for the occupiers of surrounding residential properties (some dwellings face directly onto the car park) to have a reasonable period of time in the evening/early morning when there is relative darkness.
12. For the reasons outlined above, I conclude that proposed extended hours of operation for the floodlights would not cause significant harm to the occupiers of surrounding residential properties. Therefore, the proposal would accord with the amenity aims of saved Policies BE1(iv) and D2(v) of UDP and the Framework.

Other Matters

13. I have taken into account representations made by other interested parties. A number of the comments made have already been addressed in the reasoning above.
14. The use of the Lidl car park, perhaps by non-customers, is a matter to be considered/enforced by the land owner. The land owner may wish to consider the use of bollards and/or other security measures for the site, but this is not relevant to the determination of this appeal.
15. A comment has been made that the supermarket appears to be little used by 20.00 hrs. I do not have details of average visitor numbers by time/day, but I have no reason to doubt that the proposal would make the Lidl store more competitive in the area and that the proposal would have some economic advantages. I am satisfied that subject to the imposition of planning conditions, the appeal can be allowed without material harm being caused to the living conditions of the occupiers of surrounding residential properties.
16. The Neighbourhood Policing Team was consulted at planning application stage and raised no objection to the proposal. There is no evidence of existing problems of anti-social behaviour at the site. I do not consider that there is any evidence to suggest that the proposals would give rise to an increase in anti-social behaviour.
17. None of the other matters raised outweigh my conclusions on the main issue.

Conditions

18. 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 (notwithstanding the fact that the Lidl store is built), I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
19. I have amended condition No 40 of planning permission 2011/62/92600/W so that it refers to the more up to date Town and Country Planning (General Permitted Development) (England) Order 2015 including reference to the relevant part/classes of development. The appellant and the Council have agreed to the amended wording of this condition.

Conclusion

20. For the reasons outlined above, and the evidence before me, I conclude that the appeal should be allowed.

Daniel Hartley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in complete accordance with the approved plans and specifications except as may be required by other conditions.
- 2) The front and side elevations of the building shall be constructed of regular coursed natural stone. No development shall take place until a sample of coursed natural stone and the materials to be used for stone heads, cills and surrounds have been submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be constructed using the approved materials and maintained as such.
- 3) No development shall take place until samples of all facing, roofing, hard landscaping materials has been submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be constructed using the approved materials and maintained as such.
- 4) Notwithstanding the submitted details, no development shall take place until a revised soft landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a proportion of heavy standard / semi-mature trees. The approved scheme shall be carried out during the first planting, seeding or management season following the commencement of development, or as otherwise may be agreed in writing by the Local Planning Authority, and shall be maintained in accordance with the approved Landscape Management Plan referred to in Condition 5. All specimens which die within a five year period shall be replaced on a like for like basis.
- 5) Within three months of the development becoming operational, a Landscape Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The principal aims of the Plan shall be to optimise biodiversity interests and shall include a timescale for implementation. The measures contained in the Landscape Management Plan shall be implemented in accordance with the approved timescale and the vegetation shall be maintained in accordance with the principles of the Plan for the lifetime of the development.
- 6) No development shall take place until details of the siting, design and materials to be used in the construction of walls or fences for boundaries, screens or retaining walls have been approved in writing by the Local Planning Authority. The approved walls / fences shall be erected before the development hereby approved is occupied and shall thereafter be retained.
- 7) The development shall be carried out in accordance with the recommendations set out in the submitted Bat Method Statement Document 2 dated December 2011, unless otherwise directed by the Local Planning Authority or Natural England in connection with the Protected Species Licensing Process. In addition to the measures outlined in the Bat Method Statement, no development shall take place until an appendix Bat Method Statement to address works to the retaining wall adjacent to the River Holme and / or the Hebble Dike Culvert has been submitted to and approved in writing by the Local Planning Authority. Any subsequent demolition / rebuilding works to the culvert and / or retaining wall shall be completed in accordance with the appendix Bat Method Statement unless otherwise

directed by the Local Planning Authority or Natural England in connection with the Protected Species Licensing Process.

8) No development shall take place until details of bird boxes and / or cavities for Swifts to be incorporated into the build structures has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in full accordance with the approved details prior to the first occupation of the development, and thereafter maintained as such.

9) In the event that works on the retaining structures involve in-channel works on the river, a Mitigation Method Statement to take into account the possible presence of White-clawed Crayfish shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the works within the river shall be implemented in full accordance with the approved details.

10) Prior to any river bank works taking place, a search shall be carried out for Otter holts by a qualified Ecologist. In the event that Otter holts are discovered no river bank works shall take place until an Otter habitat Mitigation Strategy has been submitted to and approved in writing by the Local Planning Authority. Thereafter the works within the river bank shall be implemented in full accordance with the approved details.

11) Trees within or on the boundary of the site shall be neither felled, topped or lopped except with the prior written approval of the Local Planning Authority, nor shall they be damaged or killed by fire or by the application of toxic or injurious substances.

12) Unless otherwise agreed in writing by the Local Planning Authority, before any materials are brought onto site or development commences the developer shall erect protective chestnut paling or similar fencing around all trees, shrubs or hedges to be retained, to the branch spread of individual trees or groups of trees/shrubs. The fence shall be maintained and such fencing unaltered until the development is complete. No work shall be carried out within the protected area.

13) No development shall take place until details of a scheme to eradicate Japanese Knotweed have been submitted to and agreed in writing by the Local Planning Authority. All works to eradicate the species shall be completed prior to the store first opening.

14) Development shall not commence until a Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the Local Planning Authority.

15) Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to Condition 14 development shall not commence until a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.

16) Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to Condition 15. In the event that remediation is unable to proceed in accordance with the approved Remediation

Strategy or contamination not previously considered (in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report) is identified or encountered on site, all works on site (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within two working days. Unless otherwise agreed in writing with the Local Planning Authority, works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.

17) Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, no part of the site shall be brought into use until such time as the remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.

18) No development shall take place until a scheme detailing crime prevention measures to protect the store, car park, staff, customers and cash in transit operations has been submitted to and approved in writing by the Local Planning Authority. The development shall be operated in accordance with the approved scheme upon the store first being operated and retained as such for the life of the development thereafter unless otherwise agreed in writing by the Local Planning Authority.

19) No development shall take place until a scheme to upgrade the existing culvert as proposed within the submitted FRA by EJS Associates, dated December 2011 Ref 2011-1-3 rev05, has been submitted to and approved in writing by the local planning authority. Details must include appropriate access to the culvert for inspection, maintenance and repair, and confirmation that utilities will not be routed through the new culvert. The scheme shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed in writing by the Local Planning Authority.

20) Treatment of all surface water flows from parking areas and hardstandings shall be through the petrol / oil interceptors. Use of the parking areas/hardstandings shall not commence until the petrol / oil interceptors have been installed. Treatment shall take place prior to discharge from the petrol / oil interceptors. The treatment scheme shall be retained, maintained to ensure efficient working and used throughout the lifetime of the development. Roof water shall not pass through the interceptor.

21) The development hereby permitted shall not be commenced until such time as a scheme to improve the existing surface water disposal system (to a maximum of 70% of the existing pre-development flow rate) has been submitted to, and approved in writing by, the local planning authority. The drainage scheme shall be designed to attenuate flows generated by the critical 1 in 30 year storm event as a minimum requirement. Flows between the critical 1 in 30 and critical 1 in 100 year storm events shall be stored on site in areas to be approved in writing by the Local

Planning Authority unless it can be demonstrated that discharge from site does not cause an increased risk in flooding elsewhere. The scheme shall include a detailed maintenance and management regime for the storage facility including the flow restriction. The scheme shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

22) Development shall not commence until a scheme detailing foul, surface water and land drainage, (including outfalls, balancing works, plans and longitudinal sections, hydraulic calculations, existing drainage to be maintained / diverted / abandoned etc) has been submitted to and approved in writing by the Local Planning Authority. Sustainable systems of drainage (SuDS) shall be employed to manage flows and/or improve water quality of surface water where possible. There shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works and no buildings shall be occupied or brought into use prior to the completion of the approved foul drainage works. The completed works shall be retained thereafter.

23) The development shall not commence until an assessment of the effects of 1 in 100 year storm events, with an additional allowance for climate change, on drainage infrastructure and surface water run-off (overland flows) pre and post development between the development and the surrounding area, in both directions, has been submitted to and approved in writing by the Local Planning Authority. The assessment should include alterations to ground levels including at site boundaries, designing for exceedance and flow blockage scenarios and flood routing. Mitigation measures to reduce flood risk recommended by the approved assessment shall be implemented prior to the development being brought into use and retained thereafter.

24) Unless otherwise agreed in writing by the Local Planning Authority, no building or structure shall be located over or within 3m either side of the centre line of the water main, which enters the site.

25) Unless otherwise agreed in writing by the Local Planning Authority, no building or structure shall be located over or within 3m either side of the centre line of the 225mm public main sewer, which crosses the site.

26) The store hereby permitted shall not be open to customers outside the hours of 0700 to 2200 Monday to Sunday inclusive.

27) Unless otherwise agreed in writing by the Local Planning Authority, there shall be no deliveries to or dispatches from the store outside the hours of 0730 to 20.00 Monday to Saturday, and 1000 to 1600 Sundays and Bank Holidays inclusive.

28) The net sales area of the store hereby permitted shall not exceed 1,063m² and the floorspace devoted to the sale of comparison goods within this net sales area shall not exceed 213 m².

29) No development shall take place until a scheme detailing the proposed highway improvement works on Huddersfield Road/New Road, as shown for indicative purposes only on Sketch 10 has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include full sections, drainage works,

street lighting, signals, signing, surface finishes and the treatment of sight lines, together with an independent road safety audit covering all aspects of work. The approved scheme shall be implemented in full before the development is first brought into use.

30) The development shall not be brought in to use until the areas to be used by vehicles and/or pedestrians have been surfaced and drained in accordance with details that have previously been approved in writing by the Local Planning Authority.

31) Concurrently with the construction of the new access being brought into use, all existing redundant vehicular accesses shall be permanently closed off with a full kerb face, and the footway returned to full footway status.

32) Prior to development commencing details of the specification and location of a real time bus information display to be sited in the store entrance foyer shall be submitted to and approved by the Local Planning Authority. The real time bus information display shall be provided in accordance with the approved scheme before the store is brought into use and shall thereafter remain operational.

33) Unless otherwise agreed in writing by the Local Planning Authority, prior to development commencing a scheme shall be submitted to and approved in writing by the Local Planning Authority for the introduction of two car parking spaces reserved for use by Hybrid/Electric vehicles. The spaces shall be located in a convenient and visible location and provide fast charging points (Specification to be agreed). The approved scheme shall be implemented prior to development becoming operational and retained thereafter throughout the life of the development.

34) No development shall take place until the design and construction details of all temporary and permanent highway retaining structures within the site have been submitted to and approved in writing by the Local Planning Authority. The details shall include a design statement, all necessary ground investigations on which design assumptions are based, method statements for both temporary and permanent works and removal of any bulk excavations, structural calculations and all associated safety measures for the protection of adjacent public highways, footpaths, culverts, adjoining land and areas of public access. All highway retaining structures shall be constructed in accordance with the approved details and shall be so maintained throughout the life of the development unless otherwise agreed in writing by the Local Planning Authority.

35) In advance of the completion/implementation of the Full Travel Plan for the development, the development shall be operated in accordance with the details set out in the submitted Framework Travel Plan dated August 2011.

36) Within 3 months of the development becoming operational, a Full Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Full Travel Plan shall adhere to the criteria/content of the Framework Travel Plan and shall be operated from the time of approval for the lifetime of the development, unless otherwise approved in writing by the Local Planning Authority.

37) No development shall take place until a scheme detailing how a minimum of 10% of the energy to be utilised by the development hereby approved will be

secured from decentralised or renewable/low carbon sources. All works which form part of the approved scheme for each part of the development shall be completed prior to the occupation of the development, and shall thereafter be maintained.

38) The floodlights hereby approved shall not be operated between the hours of 2300 to 0730 on any day of the week.

39) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) no extensions to the store either on or projecting beyond the northern elevation included within Classes A, B, C and D of Part 7 of Schedule 2 to that Order shall be carried out without the prior written consent of the Local Planning Authority.

40) All new areas of retaining wall adjacent to the River Holme shall be a green 'living' wall design and details of the proposed planting of the outer surface shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out during the first planting, seeding or management season following the commencement of development, or as otherwise may be agreed in writing by the Local Planning Authority, and shall be maintained in accordance with the approved Landscape Management Plan referred to in Condition 5. All specimens which die within a five year period shall be replaced on a like for like basis.