

Appeal Decision

Site visit made on 8 May 2017

by C Jack BSc(Hons) MA MA(TP) MRTPI

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

Decision date: 22nd May 2017

Appeal Ref: APP/X1545/W/17/3168381

Land at Station Road/Fullbridge, Maldon, CM9 4LQ

- 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 Maldon District Council.
 - The application Ref FUL/MAL/16/00649, dated 7 June 2016, was refused by notice dated 28 September 2016.
 - The application sought planning permission for the demolition of existing buildings and the construction of a foodstore (Class A1) together with access, car parking (100 spaces), landscaping and associated engineering works without complying with a condition attached to planning permission Ref FUL/MAL/15/00567, dated 21 September 2015.
 - The condition in dispute is No 15 which states that: *Deliveries to and collections from the site shall only be undertaken between 06:00 hours and 20:00 hours on Monday to Fridays and between 07:30 hours and 19:00 hours on Saturdays and between 10:00 and 16:00 on Sundays and Public Holidays.*
 - The reason given for the condition is: *In order to ensure the appropriate use of the site and to protect nearby residential amenities in accordance with policies CON5 and BE1 of the adopted Maldon District Replacement Local Plan, the provisions and guidance of the National Planning Policy Framework and policy D1 and D2 of the Maldon District Submission Local Development Plan.*
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and the construction of a foodstore (Class A1) together with access, car parking (100 spaces), landscaping and associated engineering works at Land at Station Road/Fullbridge, Maldon, CM9 4LQ in accordance with the application Ref FUL/MAL/16/00649 dated 7 June 2016 without compliance with the conditions previously imposed on the planning permission Ref FUL/MAL/15/00567 dated 21 September 2015, and subject to the Schedule of Conditions to this decision.

Preliminary Matters

2. The Maldon District Replacement Local Plan 2005 (MDRLP) pre-dates the National Planning Policy Framework (the Framework) and the emerging Maldon District Local Development Plan 2014 – 2029 (LDP) is at an advanced stage of preparation but the examination is yet to be concluded. I have therefore ascribed weight to relevant saved and emerging policies for the purposes of this appeal in my reasoning on the main issues, having regard to Paragraphs 215 and 216 of the Framework.
-

3. The application form gave the site address as 'Land at Station Road' however by the time of my visit the Lidl store was complete and operational on the site.
4. The application originally sought the removal of condition 15 to allow 24 hour flexibility for deliveries. Following discussions with Council officers, the appellant has amended the proposal to a variation to condition 15 to restrict servicing hours to between 0600 – 2300 on Mondays to Saturdays and 0730 to 1900 on Sundays and Public Holidays.

Main Issue

5. The main issue is the effect that varying condition 15 would have on the living conditions of nearby residents, with particular regard to noise and disturbance.

Reasons

6. The delivery bay is situated at the side of the Lidl supermarket where there is a single lorry dock. Lorries access this via the main vehicular entrance to the customer car park from Station Road and then reverse down the ramp to the docking gate. The area is very varied in nature with a mixture of commercial premises, including a substantial Tesco Extra superstore, tool hire, tyre fitting, fast food premises, and a double glazing firm, together with some residential. The closest residential properties to the delivery bay and entrance to the site are Nos 1 – 17 Station Road, a terrace of houses of which No 17 is situated closest to the Lidl site. Opposite the terrace of houses, and adjacent to Lidl, lies a large site known as Carrs, which appears to be an operational flour mill.
7. The appellant sets out that deliveries are generally only received once per day, but that this may increase to twice a day at peak times, such as around Christmas, in order to keep the store fully stocked at all times. They make clear that the frequency of deliveries is not proposed to change only increased flexibility in the times of those deliveries is sought.
8. The Council's principle concerns relate to noise and disturbance arising from deliveries, including from vehicles reversing and headlights. The appellant has provided a specialist noise assessment with the appeal which confirms that any impacts arising from sounds associated with deliveries would be low at the nearest sensitive receptors at Nos 1 – 17 Station Road. The Council has not provided any significant counter evidence and, on the basis of my site visit and other evidence before me, I see no reason to conclude otherwise.
9. During my site visit a delivery was being made to Lidl. When standing nearby in the car park, I heard some bangs and rolling movements emanating from within the lorry as it was being unloaded but this was barely audible when standing outside No 17. I noted that the area was generally busy, including activities on a number of industrial estate uses and fairly high levels of traffic on nearby roads contributing to the ambient noise environment. I also noted a number of lorry movements at Carrs, albeit it is not clear whether this is subject to any operating hours restrictions.
10. Nonetheless, lorry movements form an element of the existing character of the area. It seems unlikely that one or two deliveries per day to Lidl within the hours now sought by the appellant, which exclude overnight deliveries, would significantly alter noise and disturbance levels in the vicinity. This is consistent with the findings of the technical assessment that delivery noise would be experienced below ambient noise levels at Nos 1 - 17 Station Road. Other

existing or permitted residential units are positioned further away or so that they would be separated from the delivery area by the existing store or other buildings. As a result, any effects would be less significant than at Nos 1 - 17.

11. Furthermore, I note that the appellant has agreed to implement a Delivery Management Statement, which includes internal stock handling, vehicle movements typically being no more than one minute each, and vehicle reversing alarms turned off for any deliveries after 2100. In addition, headlights and radios would be switched off when lorries are parked in the delivery bay. Moreover, disturbance from headlights during manoeuvres associated with deliveries at Lidl would be unlikely to be significant given that such manoeuvres would typically take no more than one minute and deliveries would typically be once a day.
12. In light of the above, I consider that the proposed variation to condition 15 would have no significant adverse effect on the living conditions of nearby residents, with particular regard to noise and disturbance. It would therefore be generally consistent with the requirements of the Framework, including that it would not be likely to give rise to significant adverse impacts on health and quality of life arising from noise, when restricted by condition to the amended servicing hours now sought as this would exclude overnight servicing and deliveries.
13. The proposal would therefore be consistent with saved Policy BE1 of the MDRLP, which among other things seeks to ensure that development is compatible with the surroundings, including in terms of the effect on the safety and or amenity of neighbouring properties or the occupiers therein. It would also be consistent with emerging Policy D1 of the LDP which sets out general design criteria such as the protection of the amenity of surrounding areas, including in regard to noise and light. In this regard, these policies are generally consistent with the Framework and I have afforded them significant weight in this appeal.

Other Matters

14. I am advised that part of the site lies within the Maldon Conservation Area (MCA), a designated heritage asset. Given that the proposal relates to an alteration to delivery hours in respect of existing delivery operations to the store, I consider that the effect on the MCA would be neutral.
15. I have considered the matters raised by interested parties, which principally relate to the originally-proposed unrestricted delivery hours, and especially in relation to potential night time deliveries. These concerns have been essentially addressed by the amended hours proposed to exclude deliveries during the night and the other measures proposed to limit or mitigate any noise or disturbance.
16. The Council considers that in the event of the appeal being allowed this should be temporary for 12 months to allow the impacts to be fully assessed. The Planning Practice Guidance (PPG) sets out circumstances where a temporary permission may be appropriate, including where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change at the end of the temporary period. No likely significant changes in planning circumstances have been put to me. Given that the foodstore is complete and operational, that the proposed

variation is modest in relation to the overall use of the site and the previously permitted delivery hours, the low number of deliveries, that other measures will be put in place to limit any effects, and that I have identified no significant harms arising or conflict with the development plan, I consider that a temporary 'trial run' is not justified or necessary.

17. I conclude that none of the matters discussed in this section of my decision add materially to the case for or against the appeal.

Conditions

18. I have considered the conditions suggested by the Council. I have imposed a condition to control the hours of operation for delivery and servicing in accordance with the amendment sought by the appellant. This condition is necessary in the interests of the living conditions of nearby residents. I have also imposed a condition requiring adherence to the appellant's Delivery Management Statement, for the same reason. I have not imposed conditions limiting consent to 12 months or the associated requirement for a 12 month vehicle log, for the reasons given above.
19. The PPG makes clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have little information about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. I have updated condition 5 to refer to the latest version of the general permitted development order. As the development has been completed, there is no need for me to impose a time limit for commencement of development. In the event that other conditions have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

20. For the reasons set out above I conclude that the appeal should be allowed.

Catherine Jack

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Servicing and delivering to and from the site shall only be undertaken between 0600 hours and 2300 hours on Mondays to Saturdays and between 0730 hours and 1900 hours on Sundays and Public Holidays.
- 2) The Lidl Foodstore Delivery Management Statement dated September 2016 shall be adhered to at all times.
- 3) The development hereby permitted shall be carried out in complete accordance with the approved details specifically referenced on decision notice FUL/MAL/15/00567, dated 21 September 2015, as well as the submitted detailed specifications unless otherwise superseded through the approval of details from the discharge of planning conditions attached to this permission.
- 4) The retail unit hereby permitted shall comprise of 1,391 sq m net sales floorspace, of which no more than 20% shall be used for the display and sale of comparison goods.
- 5) Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no extensions or separate buildings shall be erected within the site, and no sub-division of the retail building to form additional units, or to provide additional mezzanine floor space beyond that identified on the approved drawings, shall be carried out without planning permission having been granted.
- 6) No development shall take place until written details or samples of all materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. These details shall include an alternative design to the white render panel shown on the front elevation of the building. The development shall be carried out using the materials and details as approved.
- 7) No development shall commence until details of the siting, height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers have been submitted to and approved in writing by the local planning authority. The screening as approved shall be constructed prior to the first use/occupation of the development to which it relates and be retained as such thereafter.
- 8) No works or development shall take place until full details of both hard and soft landscape works to be carried out have been submitted to and approved in writing by the local planning authority. These details shall be substantially in accordance with the details shown on plan number 502 Rev A to include the layout of the hard landscaped areas with the materials and finishes to be used and details of the soft landscape works including schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers / densities and details of the planting scheme's implementation, aftercare and maintenance programme. The hard landscape works shall be carried out as approved prior to the beneficial occupation of the development hereby approved unless otherwise first agreed in writing by the local planning authority.

The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the commencement of the development, unless otherwise first agreed in writing by the local planning authority. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written consent to any variation.

- 9) No equipment, machinery or materials are brought to the site for the purposes of the development, until a written statement detailing the retention and protection of any trees on the site has been submitted to and approved in writing by the local planning authority. The submitted statement shall include a survey and assessment of all trees on the site and shall identify on a scaled drawing any trees to be retained and where arboricultural work is proposed. It shall also detail the measures and means of protecting any trees to be retained in accordance with British Standards 5837:2012 (Trees in Relation to Construction). The development shall be carried out in complete accordance with the agreed details unless otherwise first agreed in writing with the local planning authority. If within five years from the completion of the development any tree which is agreed to be retained is removed, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, a replacement tree shall be planted within the site of such species and size, and shall be planted at such time, as specified in writing by the local planning authority.
- 10) No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall provide for the following all clear of the highway: safe access into the site times during which all construction activities will take place; the parking of vehicles of site operatives and visitors loading and unloading of plant and materials storage of plant and materials used in constructing the development wheel and underbody washing facilities measures to manage noise and dust emissions during construction; protective fencing to secure the site. The approved Construction Management Plan shall be adhered to throughout the construction period.
- 11) Prior to the first occupation of the development the highway works shown on drawing no. SCP/15821/F0 shall be implemented in accordance with the details listed below, unless otherwise agreed in writing with the local planning authority: visibility splays as shown, maintained in perpetuity; extension of the existing footway on the south side of Station Rd from the roundabout into the site, with full height kerbing; the provision of 'No Waiting' restrictions along the south side of Station Road from the roundabout for approximately 160m (the approximate adopted length); the provision of a bus shelter to the southbound stop on the eastern side of Fullbridge between the roundabouts; and a pedestrian access into the development from the Fullbridge footway.

- 12) Prior to the first occupation of the development a comprehensive staff Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall be implemented as approved.
- 13) There shall be no discharge of surface water onto the Highway.
- 14) Prior to the first occupation of the development the parking layout and spaces as shown on drawing number 502 REV A shall be constructed, laid out and made available for use in accordance with the adopted Maldon Vehicle Parking Standards. This applies to all vehicular parking spaces including disabled requirements together with cycle parking and facilities for powered two wheelers.
- 15) The use of the development hereby permitted shall only be undertaken between 0700 hours and 2200 hours on Mondays to Saturdays and between 1000 hours and 1800 hours on Sundays and Public Holidays.
- 16) No external plant or machinery shall be used unless and until details of the equipment have been submitted to and approved by the local planning authority. Any measures required by the local planning authority to reduce noise from the plant or equipment shall be completed prior to the plant being operational and retained as such at all times thereafter.
- 17) No development shall commence until details of the external lighting strategy for the site including the luminance and spread of light and the design and specification of the light fittings shall be submitted to and approved in writing by the local planning authority. All illumination within the site shall be retained in accordance with the approved details. There shall be no other lighting of the external areas of the site unless otherwise agreed in writing by the local planning authority.
- 18) Prior to the commencement of development a scheme shall be submitted in writing for approval that details the measures aimed at mitigating or offsetting the impacts on local air quality resulting from increased road traffic generated by the development. The agreed measures shall be implanted prior to final completion of the development.
- 19) Notwithstanding the details submitted with this application, no development shall commence until an investigation and risk assessment has been submitted to and approved in writing by the local planning authority. The risk assessment shall assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The report of the findings must include: a survey of extent, scale and nature of contamination; an assessment of the potential risks to: Human health, Property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, Adjoining land, Ground waters and surface waters, Ecological systems, Archaeological sites and ancient monuments; an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination,

CLR 11'. The development hereby permitted shall not commence until the measures set out in the approved report have been implemented.

- 20) No development shall commence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The development hereby permitted shall not commence until the measures set out in the approved scheme have been implemented, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.
- 21) Following completion of remediation measures a verification report that demonstrates the effectiveness of the remediation carried out on the site shall be submitted and approved in writing of the local planning authority.
- 22) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition [17], and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition [18], which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with condition [19].
- 23) The development permitted shall be carried out according to the Surface Water Drainage Design (SWDD) prepared by Stroud Associates Ltd, reference SP321, 16 August 2015. The proposed design will only be acceptable if implemented according to the SWDD and the following mitigation measures within the drainage design: Surface water discharge from the downstream manhole (hydro-brake) to be limited to a maximum of 7l/s to Anglian Water surface water network. Provision of extra storage within the cabs and north-eastern boundary of the site, providing a storage volume of ~30m³ within the development, to avoid uncontrolled discharge of flood waters offsite. Provision of a written agreement with Anglian Water (AW) that they have enough capacity to accept a flow rate of 7l/s into their existing surface water network. In the event that AW do not have enough capacity for the 7l/s flow or that they can only accept a lower discharge rate; this design becomes invalid and a new drainage design has to be submitted to the local planning authority for consultation with the lead local flood authority. Provision of seasonal groundwater monitoring results to show that the site is not at risk of groundwater flooding. Provision of 1 level of treatment for surface water discharge from the roofs and concrete bases. Regardless of

discharge being to surface water sewers, similar treatment stages should still be provided to allow for future flexibility/improvements and such details shall include the use of bio-retention plants at manhole locations unless other alternative methods are submitted to and approved by the local planning authority. Provide details of adoption and maintenance of the SuDS scheme for the lifetime of the development.

The mitigation measures shall be fully implemented prior to occupation and subsequently 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.

- 24) The development shall not be occupied until a Flood Warning and Evacuation Plan has been submitted to and approved by the local planning authority. The Flood Warning and Evacuation Plan shall be made available for inspection by all occupiers and customers to the site and shall be displayed in a visible location all times thereafter in each unit hereby permitted.
- 25) No development including any site clearance or groundworks of any kind shall take place within the site until the applicant or their agents; the owner of the site or successors in title has submitted an archaeological assessment by an accredited archaeological consultant to establish the archaeological significance of the site. Such archaeological assessment shall be approved by the local planning authority and will inform the implementation of a programme of archaeological work. The development shall be carried out in a manner that accommodates such approved programme of archaeological work.
- 26) No development including any site clearance or groundworks of any kind shall take place within the site until the applicant or their agents; the owner of the site or successors in title has secured the implementation of a programme of archaeological work from an accredited archaeological contractor in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The development shall be carried out in a manner that accommodates the approved programme of archaeological work.