
Appeal Decision

Site visit made on 15 May 2017

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 5 June 2017

Appeal Ref: APP/N4720/W/17/3169737
60 Aberford Road, Oulton, Leeds LS26 8HP

- 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 Mr James Hanna (Lidl UK GmbH) against the decision of Leeds City Council.
 - The application Ref 16/03694/FU, dated 9 June 2016, was refused by notice dated 19 August 2016.
 - The application sought planning permission for a new detached supermarket and detached block of 3 retail units with 10 flats over without complying with a condition attached to planning permission Ref P/22/376/05/FU, dated 20 September 2006.
 - The condition in dispute is No 26 which states that: "Prior to occupation of the development hereby approved, full details of the retention of the existing recycling facilities for glass, cans, paper and textiles shall be submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be installed on site ready for general use prior to the development being brought into use."
 - The reason given for the condition is: "In order to ensure adequate facilities in the interests of general amenity and n (sic) the interests of energy efficiency."
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Decision

1. The appeal is allowed and planning permission is granted for a new detached supermarket and detached block of 3 retail units with 10 flats over at 60 Aberford Road, Oulton, Leeds LS26 8HP in accordance with the application Ref 16/03694/FU dated 9 June 2016 without compliance with the conditions previously imposed on the planning permission Ref P/22/376/05/FU dated 20 September 2006, and subject to the new conditions set out in Annex A.

Background and Main Issue

2. Permission was granted in 2006 for the redevelopment of the appeal site for a supermarket and a detached block of retail units with flats above them. This was subject to a number of conditions including the one in contention in this appeal which required the retention of the existing recycling facilities on the site. The appellant considers that the recycling facilities are an unsightly and unpleasant part of the car park as they are emptied infrequently and that they detract from the amenity of the area. Consequently, in this appeal they are seeking the removal of the condition.
 3. Therefore, the main issue in the appeal is whether the condition is necessary, relevant and reasonable.
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Reasons

4. The *National Planning Policy Framework* (the Framework) sets out in paragraph 206 six tests with which planning conditions must comply. These are that conditions must be necessary, relevant to planning and the development permitted, enforceable, precise and reasonable in all other respects. In this regard further guidance is provided in the Planning Policy Guidance (PPG).
5. The recycling facilities on the appeal site consist of 6 containers, 5 for the recycling of glass and the other for clothing. They are located in a corner of the car park furthest away from the store entrance, and occupy 3 parking spaces. Despite the suggestion of the appellant that the facility is unsightly and subject to vandalism, at the time of my visit it was clean and well maintained, with no litter or other debris in the area. This finding is supported by evidence from the Council that the facility is emptied and cleaned on a weekly basis, and from comments by local people.
6. The recycling facility is provided for use by the general public and enables them to recycle material that is not collected by the roadside service, and is managed by the Council and not the store. It is not utilised by the store for the recycling or disposal of any waste generated by its own operation. Whilst the facility may be utilised to recycle some materials purchased by residents at the store, it is not exclusively used for this purpose. As such, the facility is not directly related to the store itself.
7. However, the Council has indicated that at the time the application for the store was made, recycling facilities already existed on the site. Therefore, without this condition, the redevelopment of the site would have resulted in this loss of this facility. As such, the imposition of the condition mitigated an adverse impact that would have resulted from the development. Consequently, the condition is directly related to the development itself.
8. In addition, the provision of recycling facilities, and the recycling that they enable, contributes to sustainable resource management and carbon reduction. Therefore, the condition is related to wider planning objectives.
9. Policy P9 of the *Leeds Core Strategy (adopted November 2014)* (LCS) seeks to ensure that satisfactory alternative provision is made where a development would result in the loss of an existing community facility or service. In addition paragraph 70 of the Framework indicates that to help deliver facilities and services the community needs, planning decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs. It is clear from the Council's evidence and from the letters from local residents that this is a valued and well used facility that serves the local community.
10. Although the Council have indicated that the nearest facility is in Rothwell, approximately 2.5km away, the appellant has highlighted that there are alternative recycling facilities on the car parks of a number of public houses in Oulton, which are all within close proximity to the site. During my site visit I observed this to be the case. I accept that some people may prefer the facility at this store or may find it more convenient. However, in the absence of any evidence from the Council as to why these other nearby locations are not acceptable alternatives, although no new replacement facility may be being proposed, I consider that satisfactory alternative facilities do already exist in

the area. As such, I am not persuaded that the loss of the facility would be contrary to this policy, and in this regard the condition is not necessary to make the development acceptable.

11. The Council have also referred to Policy EN6(ii) of the LCS and Policy Waste 1 of the Natural Resources and Waste Local Plan (adopted January 2013) (NRWLP). However these are strategic waste management policies. I consider that criterion (ii) of EN6 relates to developments providing sufficient space for the recycling of their own waste, and cannot reasonably be taken to mean that all developments should provide independent recycling facilities for the general public. Similarly the high level strategic nature of Waste 1 cannot be interpreted as referring to individual recycling facilities. Given this, I do not consider that either of these policies support the imposition of this condition.
12. The appellant has suggested that the condition is not precise as it does not say it needs to be retained once it has been provided. Be that as it may, the condition is precise in that it requires the details of the facility to be submitted and approved before the store is occupied, and also that the facility should be installed and ready for use before the development is brought into use. It is therefore quite clear what needs to be done and when. To this end, both these requirements are also clearly enforceable.
13. I have considered the Council's concern that the removal of the condition could lead to other appeals in respect of similar conditions on other permissions. However, each appeal must be determined on its individual merits, and I cannot be sure that the circumstances in other appeals would be same. Thus, whilst the Council's concern is understandable, it does not alter my conclusion.
14. My attention has been drawn to an appeal¹ at another Lidl store in Leeds, where it was concluded that a similar condition did not meet the 6 tests in the Framework. However, the disputed condition in that appeal was not attached to the original permission for the store, but to a permission for an extension to the store and the car park which did not affect the location of the recycling facility that had been previously removed from the site. As such the circumstances are not directly comparable to those which apply in this case.

Conclusion

15. Overall, although I consider that the condition is relevant, given that there is satisfactory alternative provision in the immediate area, I consider the condition is not necessary. The development without the condition would still comply with Policies P9 and EN6(ii) of the LCS and Policy Waste 1 of the NRWLP. In addition, the disputed condition does not pass the tests for conditions set out in the Framework. Consequently, I conclude that the appeal should be allowed.
16. 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

¹ Appeal Ref : APP/N4720/W/16/3150020

other conditions imposed on the original planning permission, 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.

Alison Partington

INSPECTOR

Annex A

Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from 20 September 2006.
- 2) No building works shall take place until details and samples of all external walling and roofing materials have been submitted to, and approved in writing by, the local planning authority. Such materials shall be made available on site prior to the commencement of their use, for the inspection of the local planning authority who shall be notified in writing of their availability. The building works shall be constructed from the materials thereby approved.
- 3) No building works shall take place until details and samples of all surfacing materials have been submitted to, and approved in writing by, the local planning authority. Such materials shall be made available on site prior to the commencement of their use, for the inspection of the local planning authority who shall be notified in writing of their availability. The surfacing works shall be constructed from the materials thereby approved.
- 4) No development shall take place until details of the position, design, materials and type of all walls and/or fences or permanent boundary treatment, whether or not shown to be erected on the approved plans, have been submitted to, and approved in writing by, the local planning authority. Such walls and fences shall be erected in accordance with the approved details, before the land/buildings to which they relate are occupied, and shall thereafter be retained and shall not be altered or removed without the written consent of the local planning authority.
- 5) The development shall not be occupied or brought into use until that part of the site shown to be used by vehicles on the approved plans, has been laid out, drained, surfaced and sealed, as approved, and that area shall not thereafter be used for any other purpose other than the vehicle related use approved.
- 6) The development shall not be occupied or brought into use until visibility splays of 4.5m x 84m to the north east of the proposed access have been provided. Such visibility splays shall be cleared of all obstructions to visibility greater than 1m in height above the level of the adjacent carriageway. The visibility splays shall thereafter be retained.
- 7) Prior to the commencement of development, details of the facilities to be provided for the parking of cycles which belong to members of the public shall be submitted to, and approved in writing by, the local planning authority. These details shall include the method of securing the cycles and their location within the site. The approved facilities shall then be provided on site prior to the building being brought into use and thereafter retained on site.
- 8) Prior to the commencement of development full details (including siting, materials and means of enclosure) of the proposed bin store(s) shall be submitted to, and approved in writing by, the local planning authority. The development shall not be brought into use until the bin store(s) thereby approved have been provided. The bin store(s) shall thereafter

- be retained and maintained as such in accordance with the approved details.
- 9) No external storage of plant, materials and/or products shall take place on the site.
 - 10) No development shall take place until full details of hard and soft landscaping works have been submitted to, and approved in writing by, the local planning authority. These details shall include (a) proposed finished levels and/or contours, (b) means of enclosure, (c) car park layouts, (d) other vehicles and pedestrian access and circulation areas, (e) hard surfacing areas, (f) minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc), (g) proposed and existing functional services above and below ground (e.g. drainage, power cables, communication cables, pipelines etc indicating lines, manholes, supports etc). Soft landscape works shall include (h) planting plans, (i) written specifications (including cultivation and other operations associated with plant and grass establishment), (j) schedules of plans noting species, planting sizes and proposed numbers/densities, (k) implementation programme.
 - 11) Hard and soft landscaping works shall be carried out in accordance with the approved details. The hard landscape works shall be completed prior to the occupation of any part of the development. The soft landscape works shall be completed by no later than the end of the planting season following the substantial completion of the development. The landscape works shall be implemented to a reasonable standard in accordance with the relevant provisions of appropriate British Standards or other recognised codes of good practice.
 - 12) Prior to the commencement of works on site, details of the proposed means of interception, collection, treatment and discharge of surface and ground water shall be submitted to, and approved in writing by, the local planning authority. Thereafter work shall be carried out in accordance with the approved plans.
 - 13) The development shall not be occupied until an oil interceptor, designed to intercept all surface water from areas to be used by vehicles, and any other areas likely to be subject to contamination, has been provided. The oil interceptor shall thereafter be retained and maintained in a satisfactory condition.
 - 14) The opening hours of all the retail premises shall be restricted to 08.00 hours to 20.00 hours Monday to Saturday and 11.00 hours to 17.00 hours on Sundays.
 - 15) No plant and/or machinery shall be used on the premises unless it is enclosed in sound-insulating material in accordance with a scheme which has been submitted to, and approved in writing by, the local planning authority.
 - 16) No lighting fitment shall be installed on the site in such a way that the source light is directly visible from nearby residential properties or is a hazard to users of the adjoining or nearby highways.
 - 17) All external lighting shall be positioned and operated or screened so that a light reading of 5 lux or less is achieved at the light sensitive facades of

- affected neighbouring residential properties, or at a level no greater than the existing ambient level at such properties if it is higher than 5 lux.
- 18) Development shall not commence until potential land contamination at the site has been investigated and appropriate reports have been submitted to, and approved in writing by, the local planning authority. Such investigations shall include as a minimum the preparation of a desktop study. The desktop study shall address the historical use and development of the site and its surroundings, the environmental setting, the potential for contamination to be present and the possible environmental risks it presents. If potentially significant risks are identified then an intrusive investigation involving characterisation of contamination and site ground conditions shall be undertaken. The site investigation report shall explain the methodology employed, an interpretative discussion of the results and findings, a conceptual site model, a risk assessment and recommendations for further investigation/remediation.
 - 19) Development shall not commence until a remediation statement has been submitted to, and approved in writing by, the local planning authority. If it concluded in the remediation statement that remedial works are necessary, then the remediation statement shall demonstrate how the works will render the site 'suitable for use' and shall describe the works in relation to the development hereby permitted. It shall include full details of the works to be undertaken, proposed site clean-up criteria, site management procedures, contingencies and how the works will be validated.
 - 20) Prior to the commencement of any part of the development other than works required by this condition, any remediation works required by an approved remediation statement shall be fully carried out in accordance with that statement (or any subsequent revision to it required by condition 22).
 - 21) Any works required by an approved remediation statement, including any additional intrusive investigation works or monitoring activities, shall not commence unless the local planning authority has received three working days prior written notification of the date of the commencement of such works.
 - 22) In the event that remediation is unable to proceed in accordance with an approved remediation statement by, for example, reason of increased quantities of material moved or treated or contamination being more extensive than expected or other unforeseen circumstances, the local planning authority shall be notified immediately. A revised remediation statement shall forthwith be submitted for approval in writing by the local planning authority. Works shall thereafter be carried out in accordance with the approved revised remediation statement.
 - 23) In the event that unexpected significant contamination is encountered during any development works, including works required by an approved remediation statement, works on the affected part of the site must cease and the local planning authority shall be notified in writing immediately. The local planning authority may at this stage request that a remediation statement, outlining plans for further investigation and the proposed method by dealing with the contamination, be submitted for written

approval prior to development works continuing in the affected part of the site.

- 24) Within 3 months of the completion of the remediation works detailed in the approved remediation statement or prior to the start of the development hereby permitted, whichever is the earlier, a validation report shall be submitted to, and approved in writing by, the local planning authority. This report shall:-
- i) Describe the remediation works carried out and any significant variations from the works set down in the approved remediation statement;
 - ii) Include and discuss substantiating data (analytical or otherwise); and
 - iii) Confirm that the remediation objectives set down in the remediation statement have been achieved.
- 25) Notwithstanding the details shown on the approved plan, no trees shall be removed, lopped or topped or suffer root severance other than in accordance with a scheme which shall first submitted to, and approved in writing by, the local planning authority.
- 26) The hours of delivery to and from all the retail premises, together with loading and unloading within the premises shall be restricted to 07.00 hours to 21.00 hours Monday to Saturday with no such operations taking place on Sundays and Bank Holidays.
- 27) The development shall not be occupied until a scheme detailing the proposed means of access to all the buildings for the needs of employees and members of the public who are disabled, has been submitted to, and approved in writing by, the local planning authority. The development shall not be occupied until the approved details have been completed and shall thereafter be retained and made available for use.