



Appeal Decision

Site visit made on 8 August 2017

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 30th August 2017

Appeal Ref: APP/Z3445/W/17/3174717

Aldi Store, Glascote Road, Glascote, Tamworth, B77 2BS.

- 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 Ltd. against the decision of Tamworth Borough Council.
 - The application Ref. 0351/2016, dated 11 August 2016, was refused by notice dated 6 December 2016.
 - The application sought planning permission for the variation of condition 17 of planning permission 0285/2015 (delivery hours), (which itself was a variation of conditions 2, 17 and 19 imposed on planning permission 0271/2014 for the erection of a retail food store and redeveloped social club), without complying with a condition attached to the planning permission.
 - The condition in dispute is No. 17 which states that: "No deliveries shall be taken at or despatched from the site outside of the hours of 07:00 -20:00 hrs Mondays to Fridays, 0700 - 1230 Saturdays and 0900-1230 Sundays."
 - The reason given for the condition is: "In the interests of the amenities of the adjoining residential properties as recommended by Environmental Protection in accordance with the requirements of the NPPF."
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Decision

1. The appeal is allowed and the planning permission Ref 0285/2015 for the variation of condition 17 on permission 0271/2014 at the Glascote Road, Glascote, Tamworth, B77 2BS, granted on the 12 October 2015 by Tamworth Borough Council, is varied by deleting condition No. 17 and substituting for it the following new condition No. 17:

No deliveries shall be taken at or despatched from the site outside of the hours of 07:00 - 20:00 hrs Mondays to Fridays, 0700 - 2000 hrs on Saturdays and 0900 - 1700 hrs on Sundays.

Main Issue

2. The main issue is whether the condition limiting deliveries to the store to between 0700 and 1230 on Saturdays and between 0900 and 1230 on Sundays is necessary in the interests of protecting the living conditions of the occupiers of the adjoining residential properties.

Reasons

Background

3. The appeal site comprises a supermarket and its associated area of parking and manoeuvring space, together with a social club and bowling green in the southern part of the overall site, which share an access off Glascote Road. The site is laid out in a linear form where the store lies towards the centre of the site and there are parking areas to the north and south of it and along the western side of the access road. The service yard is situated to the south of the store building and the loading bay is designed so that service lorries can reverse into a bay at a lower level and the lorry's cargo can be offloaded at the same height as the floor of the store through the doors of the storage area. The appellant says that store receives 4 to 5 deliveries a day. I am advised that the store opened on the 1st December 2016.
4. At the site visit I noted that there are detached houses on land to the west of the site including the properties of Camden House, Avalon, The Limes (off Camden Drive) and 376 Glascote Road and residential development to the west of the site to the rear of Cotford and The Daries. The latter appears to be relatively new as the form of the development is not as shown on the submitted Location Plan. I also noted that the site has also been extensively landscaped particularly along the western boundary opposite the service yard.
5. An application to vary conditions 2, 17 and 19 imposed on the original permission was approved with further conditions in December 2015 under ref. 0285/2015. The original scheme for the mitigation of noise, as now amended, proposed various acoustic fences/ and or landscaping along the western and eastern boundaries of the site.
6. In summary, the current limitation restricts deliveries to or despatches from the store outside of the hours of 0700-2000 hrs Mondays to Fridays; 0700-1230 on Saturdays and 0900-1230 on Sundays. The proposal seeks to extend delivery hours to 2000 on Saturdays and 1700 on Sundays. No amendments are proposed to delivery hours on Monday to Friday or Saturday and Sunday mornings. I also note that the store trades to the public between 0800 and 2200 Monday to Saturday and between 1000 and 1600 on Sundays.

Effect on living conditions

7. The sole issue is whether the variation in the condition to allow deliveries until 2000 on Saturdays and 1700 on Sundays would have a harmful effect on the living conditions of those residents living close to the site.
8. In assessing this issue I have had regard to the objections raised by local people. The ones from the occupiers of No's 401, 402 and 429 Glascote Road raise more general concerns about the principle of development and the traffic generation on local roads rather than the timing of deliveries at the weekend and any additional noise activity that is claimed to arise within the extra period sought. I am therefore not able to place much weight on these representations as they do not relate specifically to the proposal.
9. I have also had regard to the representations made to the Council at application stage. However, again, in the main, these relate to concerns about the principle of the store development which is not a matter before me. Nevertheless, I have borne in mind that the particular extension of time sought

would be at a time where residents expect to be able to spend the afternoons relaxing in their properties and gardens and enjoying family life.

10. The effect of noise associated with the delivery of goods is assessed in a Noise Impact Assessment prepared by the consultants *Noise Solutions* on behalf of the appellant. Further, in response to the Council's representations about the methodology of the Assessment, an additional Technical Note has been submitted. The Assessment (undertaken in accordance with BS4142:2014) concludes that the noise impact associated with the proposed increase in the time of deliveries to the store will not exceed the 'lowest observable adverse effect level' (LOAEL) as described in paragraph 005 [Reference ID: 30-005-20140306] of the Planning Practice Guidance (PPG). That means that it was assessed that noise from deliveries at this time of day will not have a noticeable intrusive effect to the extent of causing a perceived change in the quality of life currently enjoyed by local residents.
11. Initially the Council's planning officer was satisfied with the conclusions of the Assessment but the recommendation of approval was not accepted by the Planning Committee. In support of this decision the Council raises queries about the methodology of the Assessment and the way in which deliveries have been carried out. The Council submits that the main source of noise is from delivery lorries waiting, parking and manoeuvring within the site and this needs to be assessed against the background noise levels. Specifically, the Council says that corrections (penalties) for 'tonality, impulsivity Intermittency' were not applied to the data. If such corrections had been properly applied then a difference of over 10dB above background level could have been shown and this would have indicated a significant adverse impact on neighbours.
12. The acoustic consultants have submitted a further Technical Note (4 August 2017) which deals with the penalties to be added to the assessment and shows that these were taken into account in the Assessment or provides reasons for the 'penalties' which were not applied based on noise readings taken on site, representative of the garden of Camden House. The Note concludes that with those factors applied the increase over background noise is +1dB which equates to 'low impact' and not the significant adverse impact suggested by the Council.
13. In assessing the main technical evidence put forward by the parties I am satisfied that the appellant's evidence is comprehensive and robust and gives me greater certainty that the effect of the increase in the hours of delivery would not have a harmful effect on the living conditions of neighbours compared to the doubts raised by the Council's evidence.
14. Further, the Council says that when two service lorries are on site at the same time this may compound the noise problem. However I consider that there is substance to the appellant's argument that the presence of two delivery lorries on site at the one time on a Saturday or Sunday is likely to be as a result of the present restriction on delivery times and the increase in hours as proposed would be likely to result in less occasions where there are two lorries on site together. I have also taken account of the fact that the extended hours of delivery are mainly within the time when the store is open to the public, (other than a relatively short period late on a Sunday afternoon between 1600 and 1700), when there will be general activity within the site.

15. Based on the balance of technical evidence submitted and my observations on site of the physical relationship between the store site and the loading bay and neighbouring housing; together with the acoustic fence that has been installed and landscaping that has been carried out, I am satisfied that it has been reasonably demonstrated by the appellant that the proposed increase in the hours of delivery will not result in a material adverse impact on the living conditions of neighbours even at a time when there is a general expectation of a quiet residential environment. On this basis, I find that the proposal accords with the requirements of Policy EN5(g) of the Tamworth Local Plan as it would not cause an unacceptable noise impact, and meets the general guidance in the second bullet point of paragraph 123 of the National Planning Policy Framework.
16. Further, there is no planning justification for the imposition of an alternative condition specifying a maximum number of deliveries within the extended period, as this would be difficult to monitor or enforce, nor is there a clear need for a temporary 'trial' period restriction as recommended by the Council.
17. Overall I conclude that there are no other considerations which outweigh the accord with the development plan and I will allow the appeal

Conclusions

18. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the existing condition No.17 and substituting a new condition 17 with the increased time for deliveries on Saturdays and Sundays as proposed in the application.

David Murray

INSPECTOR