



Appeal Decision

Site visit made on 20 December 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2020

Appeal Ref: APP/E2001/W/19/3237626

Site of Needler Hall, Northgate, Cottingham HU16 5QN

- 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 East Riding of Yorkshire Council.
 - The application Ref 19/01300/STVAR, dated 15 April 2019, was refused by notice dated 12 July 2019.
 - The application sought planning permission for Variation of Condition 39 (King Street Improvements) to remove the requirement for a Zebra Crossing following approved application 16/00075/STPLF Erection of a retail foodstore (Use Class A1) and erection of 22 no. dwellings and 1 no. apartment block containing 4 no. 1 bedroom apartments along with change of use of part of existing building from university halls of residence (Use Class C2) to 8 no. 1 bedroom apartments (Use Class C3a) following demolition of part of existing building, with car parking, landscaping and associated works, without complying with a condition attached to planning permission Ref DC/18/00940/STVAR dated 19 July 2018.
 - The condition in dispute is No 9 which states that:
There shall be no deliveries to the retail store hereby approved outside of the hours of 07.00am to 23:00pm on any day Monday to Saturday or 09.00am to 18.00pm on any Sunday.
 - The reason given for the condition is to protect the amenities of surrounding residents.
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Decision

1. The appeal is allowed and planning permission is granted for Variation of Condition 39 (King Street Improvements) to remove the requirement for a Zebra Crossing following approved application 16/00075/STPLF Erection of a retail foodstore (Use Class A1) and erection of 22 no. dwellings and 1 no. apartment block containing 4 no. 1 bedroom apartments along with change of use of part of existing building from university halls of residence (Use Class C2) to 8 no. 1 bedroom apartments (Use Class C3a) following demolition of part of existing building, with car parking, landscaping and associated works at Site of Needler Hall, Northgate, Cottingham HU16 5QN in accordance with the application Ref 19/01300/STVAR dated 15 April 2019, without compliance with condition number 9 previously imposed on planning permission Ref DC/18/00940/STVAR dated 19 July 2018 and subject to the conditions in the attached schedule.

Main Issue

2. The site is within the Cottingham Conservation Area and close to listed buildings on King Street. There is no suggestion that the proposal has any effect on the significance of these designated heritage assets.
3. The appellant company (the appellant) has sought a variation in the hours during which deliveries may be made at the Aldi foodstore (the foodstore). The extended hours would permit deliveries between 0600 and 0700 on Monday to Saturdays. and 0800 – 0900 and 1800 – 2000 on Sundays. The main issue is therefore the effect of the proposed extension of delivery hours on the living conditions of the occupiers of dwellings close to the site.

Reasons

4. The foodstore, the operation of which forms the subject of the appeal, is located within Cottingham, at the junction of Northgate and King Street. It is close to residential properties on King Street and Northgate and an area to the east of the site is currently under development for housing, including retirement accommodation. A building located close to the entrance to the store from Northgate has planning permission for conversion to residential use. There are other residential properties to the south of the site.
5. Given the proximity of the foodstore to existing and future housing, the effect that the proposed delivery times (the proposal) would have on residents is the crux of the dispute between the parties. There are strong representations from interested parties living near to the site who oppose the proposal, who are concerned at the possibility of noise and disturbance, especially during the early morning periods.
6. The appeal is not supported by an acoustic report relating to the proposed increase in delivery times and the appellant refers to the Noise Impact Assessment submitted at the time of the original planning application for the foodstore. In considering the current proposal the Council's Public Protection Team noted concerns about heavy goods vehicles arriving at the site, especially in the early morning, and potential effects on residents' living conditions. Since the previous noise assessment was based on the existing delivery times, they suggested that any variation of the current condition on delivery times should be for a 12 month temporary period only, to enable any impacts to be assessed and to establish the effectiveness of existing mitigation measures, which could be secured by condition. These include switching off reversing beepers; no use of refrigeration units in the service yard; lorry engines not to be left running for long periods; and all unloading to take place internally. The appellant has indicated agreement with this, and I have dealt with the appeal on that basis.
7. On my site visit I observed a delivery lorry arriving at the site just after 7am. The level of noise and general disturbance caused by the parking of the vehicle in the servicing bay and its unloading did not give rise to a pronounced level of disturbance to the local area at that time. The loading bay is located to the far side of the foodstore from properties on King Street and is screened to the west and east by the store and an acoustic fence. The loading bay is recessed and set at a level where the rear of the trailer meets the floor level of the store, therefore the noises associated with unloading were mainly localised in the area close to the bay.

8. At the time of my visit there was some activity from other vehicles arriving at the nearby construction site. However, there was also significant traffic noise in the general area, including buses. It seems likely that noise levels will be less an hour earlier, and in the longer term when construction activity ceases.
9. The appellant has supplied an extract from a Department of Transport document drawing on the findings of the Quiet Deliveries Demonstration Scheme (QDDS) 2010-11 which suggest that there can be significant benefits from some relaxation of delivery hours providing that disturbance is not caused to residents and communities. These benefits could include both the improved operation of the foodstore but also wider benefits such as increased road safety and less air pollution.
10. An appeal decision has also been supplied¹ in which an increase in delivery hours, similar to the proposal, was allowed subject to the agreement of a delivery management plan which the Inspector noted would address specific noise issues which could lead to disturbance such as opening/closing doors, reversing alarms, loud chatter, and movement of goods in the delivery area. An additional noise assessment was submitted in support of that case and the permission granted was conditional on the submission of an acceptable delivery management plan.
11. It has not been suggested that the switching off of reversing beepers early in the morning or late evening, in the context of the site layout, would give rise to any public safety concerns.
12. Bringing all of the above together, the appellant's desire to improve the day to day operation of the foodstore, and the economic benefits associated with that, must be balanced against any disturbance to local residents. Based on my observations I am satisfied that the balance lies in favour of allowing the additional flexibility in delivery hours sought in the proposal, but only subject to a 1 year temporary permission to enable the effectiveness of the mitigation measures to be assessed. After that period a further application to vary the condition would be required to establish the additional hours on a permanent basis. The Planning Practice Guidance² advises that there can be 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, the situation which will apply in this case should the appellant implement the permission.

Conditions

13. The Council suggests that in the event of the appeal being allowed, all previous planning conditions attached to the current permission should be attached, with the exception of the limit for the commencement of development which is redundant. I have carried out some minor editing and have left out some parts which are clearly informative only. Condition 9 therefore becomes no 8 in the new permission and for the reasons given is for a 12 month temporary period. The Council's preferred wording is not disputed by the appellant and is necessary to safeguard the future living conditions of the occupiers of houses close to the site and would otherwise meet the Framework tests³.

¹ Appeal ref. APP/K0235/W/16/3146074 Aldi, Church Lane, Bedford dated MK41 0PW dated 31 August 2016

² Planning Practice Guidance Paragraph: 013 Reference ID: 21a-013-20140306 Revision date: 06 03 2014

³ National Planning Policy Framework February 2019 paragraph 55

14. I have given some consideration as to whether I should require the submission of a delivery management plan for approval prior to the implementation of the extra delivery hours. However, it is clear that appropriate mitigation measures have been discussed between the appellant and Council officers, set out in the email from the appellant to the Council dated 5 June 2019. I have made the implementation of these measures the subject of the final planning condition and is a benefit which I give some weight in my decision.

Conclusion

15. For the reasons given I am satisfied that condition no 9 should be varied for a temporary one year period, to enable the effectiveness of the mitigation measures in preventing significant adverse effects on the living conditions of residents living close to the site to be assessed, in compliance with Policy ENV1 of the East Riding Local Plan 2016 – 2029 Strategy Document (2016) which requires, amongst other things, that development should protect the living conditions of the occupiers existing properties and the Framework which has similar aims.

Tim Wheeler

INSPECTOR

Schedule of Conditions

- 1 No residential development above damp proof course level shall take place until details of the materials to be used in the construction of the external surfaces of that part of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 2 The retail store hereby approved shall not be used for any use other than one falling within the definition of Class A1 of the Town and Country Planning Use Classes Order 1987 (or any order revoking and re-enacting that Order with or without modification).
- 3 The net sales area of the retail store shall not exceed 1,254 square metres, and no more than 600 square metres of the net sales area shall be used for the sale of comparison goods.
- 4 At no time shall the retail store hereby approved include a delicatessen counter, in house bakery, fish counter, meat counter, hot food counter, pharmacy, dry cleaning service, post office, photographic shop or café/restaurant.
- 5 No more than 2500 product lines shall be on sale at the retail store hereby approved at any time.
- 6 The retail store hereby approved shall not be sub-divided into separate Use Class A1 retail units.
- 7 The retail store hereby approved shall not be open to members of the public outside of the hours of 0800 to 2200 on any day Monday to Saturday or 1000 to 1700 on any Sunday.
- 8 For a period of 12 months from the date of this permission there shall be no deliveries to the retail store hereby approved outside of the hours of 0600 to 2300 on any day Monday to Saturday or 0800 to 2000 on any Sunday.

Thereafter there shall be no deliveries to the retail store outside of the hours of 0700 to 2300 on any day Monday to Saturday or 0900 to 1800 on any Sunday.

- 9 The soft landscaped areas shall be maintained in accordance with the details contained within the '5 Year Landscape Maintenance and Management Plan' prepared by Vector Design Concepts submitted on the 20th January 2017.
- 10 No residential development shall take place until full details of soft landscape maintenance for the residential area have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved prior to the occupation of any part of the development or as may be otherwise agreed in writing by the Local Planning Authority.

These details shall include:

A programme of maintenance and aftercare of the soft landscaping for a period of 5 years from commencement. These details shall include, weed control in the planted area, mulching, watering regime, protection against accidental damage during construction work and maintenance.

- 11 In this condition "retained trees/hedge/shrubs" means an existing planting of trees, shrubs and hedge plants which are to be retained, in accordance with the

Brooks Arboricultural Report and conforming to British Standard 5837: 2012 (British Standard for Trees in Relation to Design, Demolition and Construction Recommendations, 2012) and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the date of the occupation of the site for its permitted use.

- a) No retained tree/hedge/shrub shall be cut down, uprooted or destroyed, nor shall any retained tree/hedge/shrub be topped or lopped in such a manner so as to destroy its screening value to the site, without the written approval of the Local Planning Authority.
- b) If any retained tree/hedge/shrub is removed, uprooted or destroyed or dies, another tree/hedge/shrub shall be planted at the same place and that tree/hedge/shrub shall be of such size, species and maturity, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.

- 12 Development or other operations shall be carried out in accordance with the details submitted in 'Approved External Materials Plan' Dwg no. 12976-206 submitted 5th May 2017; 'Arboricultural Method Statement' report ref: R-2449-05 prepared by Brooks Ecological submitted 5th May 2017; 'Arboricultural Method Statement - Appendix 4 - Tree Protection Plan' prepared by Brooks Ecological submitted 5th May 2017; 'Arboricultural Method Statement - Appendix 1 - Tree List' prepared by Brooks Ecological submitted 28th February 2017.

No development or other operations shall commence until the protection works required by the "Approved Tree Protection Scheme" are in place. The approved tree protection works shall remain in place throughout the development of the site and until all temporary buildings, plant, machinery and surplus construction materials have been removed from the site.

Protective fencing or any other approved protective measures installed pursuant to the Approved Tree Protection Scheme shall be retained intact throughout the period referred to above and shall not be breached, removed or repositioned without the prior written approval of the Local Planning Authority.

No excavations for services, storage of materials, plant or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of waste or surplus construction materials or liquids, shall take place within any area designated as being fenced off or otherwise protected pursuant to the "Approved Tree Protection Scheme".

For the purposes of this Condition "other operations" means any site preparation works, demolition, clearance of the site, soil moving, temporary access construction, widening or alterations to any existing access, delivery to the site of materials, plant or machinery, erection of hoarding or screening on or around the site, use of motorised vehicles, plant or machinery, installation of temporary buildings in connection with the development, felling, pruning or removal of any tree, shrub or hedge

- 13 No residential development shall take place on the site until details of the services for the residential properties have been submitted to and been approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

- 14 No residential development shall take place until details of the materials and methods to be used in the construction of the hard surfaces within the residential development area hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Any construction within the root protection area of any retained tree is required to be 'non dig' as detailed in British Standard 5837:2012 (British Standard for Trees in Relation to Design, Demolition and Construction Recommendations).

- 15 The development shall be carried out in accordance with the submitted flood risk assessment (ref. 15565/FRA, rev. A) and the following mitigation measures it details:

i) Finished floor levels for residential development are set no lower than 8.70m above Ordnance Datum (AOD).

ii) Finished floor levels for retail unit(s) are set no lower than 7.85m above Ordnance Datum (AOD).

iii) No ground raising within flood zone 3. No ground shall be raised in the areas identified as flood zone 3 without agreement from the Environment Agency.

iv) Surface water from the site to discharge into Broadlane Beck at a rate not exceeding 14.3 l/s, as per the additional note dated 12th May 2016 (ref.AG/15565).

The letter dated 12th May 2016 indicates that the allowable discharge will be split between the residential and retail units. The detailed surface water design should be agreed with the lead local flood authority.

These measures shall be fully implemented prior to occupation, and according to the scheme's phasing arrangements (or with any other period, as agreed in writing, by the Local Planning Authority).

- 16 Prior to the commencement of the residential development a hydrogeological risk assessment shall be submitted to and approved in writing by the Local Planning Authority. The risk assessment shall identify potential groundwater hazards associated with the construction and operational phases of the development and shall evaluate the likelihood and consequences of each hazard.

The assessment shall include the following components:

i) A conceptual model for the site based on site specific geological and hydrogeological information;

ii) Identification of sources of pollution, potential pathways for the movement of contaminants and identification of receptors;

iii) A qualitative assessment of risk progressing to numeric assessments where risks are greater;

iv) An evaluation of the uncertainties in the assessment, and;

v) An appraisal of options for dealing with the identified risks;

- 17 Prior to the commencement of the residential development a Construction Environment Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be constructed in accordance with the approved CEMP.

The CEMP should include implementation of mitigation measures designed to protect the groundwater, and these details shall not be altered in any way without the prior written approval of the Local Planning Authority.

- 18 Prior to the commencement of the residential development, a scheme for the disposal of both foul and surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed and operated in accordance with the details approved by the Local Planning Authority, including implementation of mitigation measures designed to protect the groundwater, and these details shall not be altered in any way without the prior written approval of the Local Planning Authority.

- 19 No residential development shall commence until a scheme for the construction of foul sewers within the residential development area has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following measures for foul sewers

i. All shared foul sewer sections shall be constructed with a secondary Cured in Place Plastic (CIPP) liner or with an equivalent lining technology;

ii. Any foul sewer chambers/manholes shall be constructed with a full concrete surround;

iii. Any pumping stations shall be constructed with a full concrete surround incorporating internal benching, and;

iv. Details of how any lining measures will be constructed and how they will tie into any new or existing sewers;

The approved scheme shall be implemented in full and certification that the liners have been installed to the correct standard submitted to and approved in writing by the Local Planning Authority, prior to any part of the development being first brought into use.

- 20 No residential development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:

i. A preliminary risk assessment which has identified: all previous uses; potential contaminants associated with those uses; a conceptual model of the site indicating sources, pathways and receptors, and; potentially unacceptable risks arising from contamination at the site.

ii. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

iii. The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy

giving full details of the remediation measures required and how they are to be undertaken.

iv. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

- 21 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the Local Planning Authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the Local Planning Authority. The remediation strategy shall be implemented as approved.
- 22 No residential development, excluding demolition shall commence until foundation designs within the residential development area, including a risk assessment to demonstrate the risk posed to groundwater and how these will be addressed through appropriate mitigation measures, have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed and operated in accordance with the approved details, including implementation of mitigation measures designed to protect the groundwater, and these details shall not be altered in any way without the prior written approval of the Local Planning Authority.
- 23 There shall be no discharge of contaminated drainage from the site into the groundwater, whether direct or via soakaways, during both the construction and final development phases.
- 24 Unless otherwise agreed in writing by the Local Planning Authority, no part of the residential development shall be occupied (or the site first brought into use) until the approved scheme of remediation has been completed, and a verification report demonstrating the effectiveness of the remediation carried out has been submitted to and approved in writing by the Local Planning Authority. The verification report shall include a description of the works undertaken and a photographic record where appropriate, the results of any additional monitoring or sampling, evidence that any imported soil is from a suitable source, and copies of relevant waste documentation for any contaminated material removed from the site.
- 25 In the event that contamination is found at any time when carrying out any part of the approved development, that was not previously identified, it must be reported immediately to the Local Planning Authority. An appropriate investigation and risk assessment must be undertaken, and where remediation is necessary, a remediation scheme must be prepared by competent persons and submitted to the Local Planning Authority for approval. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

- 26 The acoustic timber fence adjacent to the retail store shall be of close boarded construction, be free from holes and gaps (with cover strips to prevent gaps or holes forming over time), sealed at the base and have a minimum mass per unit area of 10kg/m², unless otherwise agreed in writing by the Local Planning Authority. The development shall not be first occupied until the acoustic timber fence has been provided and the fence shall thereafter be maintained throughout the life of the development.
- 27 Prior to the commencement of the residential development details shall be submitted to and approved in writing by the Planning Authority showing the provision of the temporary vehicle parking, loading, off-loading and manoeuvring facilities for the contractors carrying out building and construction works on the development and no other building or construction works shall be commenced until the temporary vehicle parking, loading, off-loading and manoeuvring facilities have been provided and used by contractors in accordance with the approved details. The approved vehicle parking, loading, off-loading and manoeuvring facilities shall be retained and used by contractors during the construction of the buildings and associated infrastructure on the development.
- 28 No development shall take place unless in strict accordance with all of the recommendations for mitigation set out in section 68 and Table 4 of the Preliminary Ecological Appraisal (Brooks Ecological, dated January 2016) and section 20 of the Bat Emergence Survey (Brooks Ecological, May 2016) as submitted with the application in all respects. Any variation thereto shall be approved in writing by the Local Planning Authority before such change is made.
- 29 No part of the residential development hereby permitted shall be commenced until a Wildlife Enhancement Plan (WEP) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall incorporate the biodiversity enhancements detailed in sections 80 - 82 of the Preliminary Ecological Appraisal (Brooks Ecological, dated January 2016) and section 23 of the Bat Emergence Survey, (Brooks Ecological, May 2016). The Plan shall also ensure that a 25% box to building ratio to enhance nesting opportunities for birds across the site, and a 25% box/tube/adapted roof tile to building ratio to enhance bat roosting provision within the development is provided. The WEP shall be compiled by a suitably qualified ecologist, include a timetable for implementation and a detailed plan. The scheme shall provide full details of all ecological mitigation, enhancement and management measures and a programme for the implementation.

All aspects of the approved Wildlife Enhancement Plan shall be implemented in full in accordance with the approved measures and timetable unless otherwise agreed in writing by the Local Planning Authority.

- 30 No residential development (excluding demolition) shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority.

The Scheme shall provide for:

- i) The proper identification and evaluation of the extent, character and significance of archaeological remains within the application area;
- ii) An assessment of the impact of the proposed development on the archaeological remains;
- iii) proposals for the preservation in situ, or for the investigation, recording and recovery of archaeological remains and the publishing of the findings, it being understood that there shall be a presumption in favour of their preservation in situ wherever feasible;
- iv) Sufficient notification and allowance of time to archaeological contractors nominated by the developer to ensure that archaeological fieldwork as proposed in pursuance of (i);
- v) (iii) Above is completed prior to the commencement the approved development in the area of archaeological interest; and
- vi) Notification in writing to the Curatorial Officer of the Humber Archaeology Partnership of the commencement of archaeological works and the opportunity to monitor such works.

- 31 The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing Numbers:

Site:

12976-50 Location Plan - 08/01/2016

12976-100 E Overall Proposed Site Layout - 24/06/2016

12976-101 D Proposed Site Layout - 24/06/2016

12976-105 C Proposed Site Sections - 24/06/2016

V12976 L01 A Landscape Plan - 25/04/2016

T145P Rev P Proposed Highway Plan 21/03/2018

Retail:

12976-102 A Proposed Food store GA Layout - 25/04/2016

12976-106 A Proposed Food store Roof Plan - 25/04/2016

12976-113 B Proposed Aldi Elevations - 24/06/2016

Residential:

12976-107 A Proposed Elevations, Floor Plan and Roof Plan (Apartments) -
26/01/2016

12976-108 C Proposed Elevations, Floor Plan and Roof Plan (1 Bed Dwelling) -
25/04/2016

12976-109 B Proposed Elevations, Floor Plan, Roof Plan (2 Bed Dwelling) -
19/02/2016

12976-110 B Proposed Elevations, Floor Plans and Roof Plan (3 Bed Dwelling) -
19/02/2016

12976-111 A Proposed Elevations, Floor Plan and Roof Plan (3-4 Bed Dwelling)
- 26/01/2016

12976-112 B Proposed Elevations, Floor Plans and Roof Plan (2 Bed Dwelling) -
27/04/2016

Needler Hall:

12976-115 A Proposed Floor Plans (Flats) - 25/02/2016

12976-117 Proposed Elevations (Flats) - 25/02/2016

- 32 The noise mitigation measures as set out in the email from the agent, Mr Rogers of Planning Potential, dated 05/06/2019 and sent at 14:47 shall be implemented at the site.

ENDS