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## Appeal Decision

Site visit made on 27 January 2021

**by H Miles BA(hons), MA, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18<sup>th</sup> February 2021**

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**Appeal Ref: APP/D3830/W/20/3248795**

**Aldi East Grinstead, London Road, East Grinstead RH19 1HA**

- 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 Mid Sussex District Council.
  - The application Ref DM/19/3982, dated 12 September 2019, was refused by notice dated 20 December 2019.
  - The application sought planning permission for variation of condition 1 of planning permission DM/15/3283, to extend the permitted delivery times to 08:00 to 21:00 hours on Sunday and Bank Holidays without complying with a condition attached to planning permission Ref DM/18/3803, dated 1 November.
  - The condition in dispute is No 1 which states that: No loading or unloading shall take place outside the hours 06:00 and 23:00 on Monday to Saturday and 08:00 and 21:00 on Sundays and Bank Holidays.
  - The reason given for the condition is: To safeguard the amenities of the neighbouring residential properties and to accord with Policy DP26 of the Mid Sussex District Plan.
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### Decision

1. The appeal is allowed and planning permission is granted for variation of condition 1 of planning permission DM/15/3283, to extend the permitted delivery times to 08:00 to 21:00 hours on Sunday and Bank Holidays without complying with a condition attached to planning permission Ref DM/18/3803, dated 1 November at Aldi East Grinstead, London Road, East Grinstead RH19 1HA in accordance with the application Ref DM/19/3982, dated 12 September 2019, without compliance with condition number 1 previously imposed on planning permission Ref DM/18/3803 dated 1 November 2018 and subject to the conditions set out in the schedule at the end of this decision.

### Procedural Matters

2. Planning permission was granted subject to conditions for construction of a new A1 food retail unit (09/01038/FUL). Condition 5 stated 'No loading or unloading shall take place outside the hours of 7.00am and 10.00pm Monday to Saturday and 9.00am and 6.00pm Sundays.
3. Permission was then granted which had the effect of extending these permitted loading times from 0600 to 2300 Monday to Saturday (DM/15/3283). Subsequently a further application (DM/18/3803) extended the permitted delivery times to 08:00 to 21:00 hours on Sundays and Bank Holidays.

4. This appeal is to extend the delivery times by 1 hour on a Sunday and Bank Holiday morning, with deliveries 0700 and 2100 hours on Sundays and Bank Holidays and no change on Monday to Saturday.

### **Main Issue**

5. The main issue is whether the condition permitting delivery hours between 0800 and 2100 on Sundays and Bank Holidays is reasonable and necessary having regard to the living conditions of nearby occupiers.

### **Reasons**

6. A covered loading bay is located in the corner of the Aldi building. At its closest point it is stated by the Council to be approximately 3m away from the nearest residential properties at 1-11 Tower Close. There are other residential properties in Tower Close, however the submission show that the noise from deliveries would be greatest at 1-11 Tower Close.
7. The evidence submitted states that the predicted delivery activity noise level would be 48dB LA<sub>eq 1hour</sub> at 1-11 Tower Close. The noise measurements included in the evidence were taken with the actions set out in the Delivery Management Plan including no reversing beepers, switching off refrigeration equipment amongst other things, in use. Therefore, such measures are necessary to achieve the noise levels on which this appeal is assessed. The submitted evidence relates to external noise values.
8. I am also presented with evidence that the noise generated during deliveries during the extra period sought will be 7dB above the background noise level. This is above the level where an adverse effect is predicted, but below the level of a significant adverse effect. There is dispute as to the correction factor applied to the impulsive sound of pallets being unloaded based on the EHO's site visit. It is clear from the Delivery Management Plan that deliveries during the 'most sensitive period' are subject to extra care. As I am not provided with the time of the site visit, I cannot be certain that such measures were in place. Consequently, I am not persuaded that the correction factor applied is unreasonable.
9. There is dispute as to whether 0700-0800 hours on Sunday should be assessed as 'daytime' or 'night-time' hours. If this appeal were allowed, deliveries would not be permitted between 2300 on Saturday and 0700 on Sunday – an 8 hour period. I have considered the anecdotal evidence that sleeping times on a Sunday are often longer. However, I am not persuaded that 8 hours is an unreasonable length for night time hours. As such, based on the evidence before me, I have assessed the proposed development against the criteria for daytime hours.
10. The WHO guideline daytime noise value for an outside living area is between 50-55db. Therefore during daytime hours the overall noise level would not cause significant harm to living conditions. Taking all the above into account the proposed development would not be likely to result in premature awakening or unreasonable sleep disturbance.
11. I accept that the condition does not control the hours for vehicle movements. However, I am not persuaded that it would be likely that vehicles would attend the site before a delivery could take place.

12. Consequently, the condition permitting delivery hours between 0800 and 2100 on Sundays and Bank Holidays is not reasonable and necessary having regard to the living conditions of nearby occupiers. However, it would be necessary to restrict delivery hours to between 0700 and 2100 on Sundays and Bank Holidays and this would be secured by condition. As such, the proposed development would be in accordance with Policy DP26 of the Mid Sussex District Plan 2014-2031, Adopted March 2018, which includes a criterion that development should not cause significant harm to the amenities of existing nearby residents, taking into account noise pollution, amongst other things.

### **Conditions and conclusion**

13. I have had regard to the planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents.
14. I have attached a condition relating to the hours of delivery and compliance with the Delivery Management Plan for the reasons set out in my main report.
15. A condition setting out the opening hours is necessary in the interests of the living conditions of neighbouring occupiers.
16. Conditions relating to external lighting, car parking, turning areas and cycle parking have been suggested. I saw that external lighting, car and cycle parking have been implemented and therefore I have amended this wording to refer to the retention of these items only. These conditions are required in the interests of the living conditions of neighbouring occupiers, highway safety and sustainable transport options respectively.
17. Landscaping works have been carried out and I have no reason to believe that the period of 5 years from the completion of development has not passed. Also, the travel plan submitted relates to the construction period. Therefore, conditions controlling these matters are not necessary and are not included.
18. The Council have also indicated that a condition restricting the permission to a temporary 1 year period should be considered. However, I am not presented with any detail as to how this condition would meet the tests and given my findings that the proposed development would not be significantly harmful, a temporary consent would not be necessary.
19. Therefore, for the reasons set out above, and subject to the conditions listed, this appeal should be allowed.

*H Miles*

INSPECTOR

### **Schedule of Conditions**

- 1) No loading or unloading shall take place outside the hours of 0600 and 2300 on Monday to Saturday and 0700 and 2100 on Sundays and Bank Holidays.
- 2) Loading and unloading between 0600-0700, and 2200-2300 on Monday to Saturday and 0700-0900 and 1800-2100 on Sundays and Bank Holidays shall operate in accordance with the measures set out in chapters 3, 4, 5 and 6 of the Aldi Delivery Management Plan dated October 2015 (other than the delivery hours outlined in that document).
- 3) The premises shall not be open for trade or business except between the hours of 0800 to 2200 Monday to Saturday (including Bank Holidays) and 1000 to 1600 Sundays (and there shall be no external illumination on the premises except between the above-mentioned hours).
- 4) The car parking and turning areas provided shall be retained at all times for their designated use.
- 5) The covered secure cycle parking spaces provided shall be retained at all times for their designated use.
- 6) The external lighting scheme as detailed on drawing number MJA-P105-2414-C shall be retained at all times.