



Appeal Decision

Site Visit made on 19 January 2021

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 21 April 2021

Appeal Ref: APP/N1160/W/20/3261471

1 Galileo Close, Plymouth, PL7 4JW

- 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 Limited against the decision of Plymouth City Council.
 - The application Ref 20/00622/S73, dated 1 May 2020, was refused by notice dated 9 July 2020.
 - The application sought planning permission for 'demolition of existing buildings and erection of discount foodstore (Class A1) with associated access, car parking & landscaping' without complying with a condition attached to planning permission Ref 18/01234/FUL, dated 29 October 2019.
 - The condition in dispute is No 24 which states that: 'No deliveries shall be taken at or dispatched from the site outside the hours of 05:00 until 24:00'.
 - The reason given for the condition is: 'To safeguard the amenities of the occupiers of nearby residential properties and to comply with policies DEV1 and DEV2 of the Plymouth and South West Devon Joint Local Plan'.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and erection of discount foodstore (Class A1) with associated access, car parking & landscaping at 1 Galileo Close, Plymouth, PL7 4JW in accordance with application Ref 20/00622/S73 without compliance with condition No 24 previously imposed on planning permission Ref 18/01234/FUL dated 29 October 2019, but subject to the conditions set out in the attached schedule.

Preliminary Matters and Main Issue

2. Planning permission was granted for the foodstore in 2019. The permission was issued with a condition that restricted delivery hours. The reason given by the Council for imposing the condition was to safeguard the amenities of the occupiers of nearby residential dwellings. The appeal seeks the removal of this condition to extend the permitted hours for delivery and refuse collection. At the time of my visit to the site the foodstore had been built and was in operation.
3. Accordingly, the main issue is the effect that varying the opening hours would have on the living conditions of the occupiers of nearby residential dwellings.

Reasons

4. The foodstore is located in a busy commercial environment. Residential dwellings are also located nearby, to the west and northwest of the site. An updated noise survey was submitted with the appeal, which is based on a

reading of delivery noise taken adjacent to the closest dwelling, during a live night time delivery.

5. Although night time operations at the site would have an impact on occupiers of the nearby dwellings, the updated noise survey submitted with the appeal sets out that the impact would not be significant. The Council is satisfied that this would be the case.
6. In weighing up the impacts I take into account the information in the updated noise report that states that noise levels identified were below the World Health Organisation peak noise guideline value. I also note that the condition that the Council imposed allows deliveries and collections up to midnight and after 05:00, which already has some impact on night time hours. Furthermore, I note that the area is otherwise affected by the nearby train line, which the report shows provides greater disturbance than the recorded delivery event.
7. The impact of sounds emitted from a tannoy system and the use of roll cages would be managed through a separate condition, and in any case the appellant confirms that an external tannoy system is not used at the site and a palletted goods system is used rather than roll cages. Therefore, taking these factors into account I am satisfied that the impacts of night time deliveries and collections on the occupiers of nearby residential dwellings would not be significant.
8. In summary, the proposal would not have an adverse or unacceptable impact on the living conditions of the occupiers of nearby dwellings. It would accord with Policies SO11, DEV1 and DEV2 of the Plymouth & Southwest Devon Joint Local Plan 2014-2034 and the National Planning Policy Framework (the Framework), which together seek to ensure that development proposals are of a high quality, safeguard the health and amenity of local communities and maintain and where appropriate improve the noise environment.

Legal Agreement

9. The original permission was subject to a planning obligation. A deed of variation pursuant to Section 106A of the Town and Country Planning Act 1990 has been submitted as part of the appeal. This would ensure that, in the event that the appeal is allowed and a new planning permission granted, the new permission would be bound by the terms of the principal agreement. The deed of variation submitted as part of the appeal process is signed and dated.
10. Paragraph 56 of the Framework states that planning obligations should only be sought where they meet three tests. I am satisfied that the legal agreement is necessary to make the development acceptable in planning terms as it secures necessary parking provision and a strategic transport financial contribution. Both provisions are directly related to the development and fairly and reasonably related in scale and kind to the development.

Conditions

11. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. In the event that the appeal is allowed the Council has suggested a set of revised conditions that take into account conditions imposed on the original permission that have already been discharged. The Appellant has had

opportunity to review these and has provided no observations. The information before me in relation to these is limited to the list provided by the Council. On this basis, without any evidence to the contrary, I shall impose all the revised conditions suggested by the Council that I consider remain relevant.

12. I have imposed a condition specifying the approved plans as this provides certainty and conditions relating to materials and landscaping to safeguard the character and appearance of the area.
13. I have imposed a condition relating to surface water drainage to manage flood risk and surface water.
14. I have imposed conditions relating to highway works, access, car park layout and management and retention of loading and unloading areas to ensure that the proposal does not have an adverse impact on the local highway network.
15. I have imposed conditions relating to cycle parking and a travel plan to promote alternative travel to the private car.
16. I have imposed a condition relating to ecological mitigation to ensure that wildlife habitats and biodiversity are protected.
17. I have imposed conditions relating to noise generating activities at the site including opening hours, to safeguard the living conditions of the occupiers of nearby dwellings.
18. I have imposed a condition relating to land contamination to ensure that risks from land contamination to the environment, future users and neighbouring land are minimised.
19. I have imposed conditions restricting retail sales to manage the impact of the proposal on other retail offers within the plan area.

Conclusion

20. For the reasons above, the appeal should be allowed.

A Tucker

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 161028 P(1)08 Rev B, 161028 P(1)06 Rev B, 161028 P(1)05 Rev B, 161028 P(1)04 Rev B, 161028 P(1)01 Rev B, 161028 P(1)03 Rev G and Legals Overlay 161028P(1)11 Rev A.
- 2) The development shall be carried out and maintained in accordance with details agreed by way of Condition Discharge Application ref: 19/01773/CDM. For clarity the approved details are:
- 3) The development shall be carried out and maintained in accordance with details agreed by way of Condition Discharge Application ref: 19/01773/CDM. For clarity the approved details are:

- 161028-SK11 PLANTING AND PEDESTRIAN ACCESS dated 23/04/2020.

- GULLY GUARDS PAYMENT DETAILS J A Burke Construction LTD

- Craddys Overland Flow routes 10856sk0004 C

- Craddys 10856-01 Storm Drainage Calculations - South West Water Email Ref:- WR 3220759

- CRADDYS ALDI STORE, GALILEO CLOSE, PLYMPTON DRAINAGE STRATEGY & FLOOD RISK ASSESSMENT July 2018 10856w0002

- NEW ALDI STORE, GALILEO CLOSE, PLYMPTON CONSTRUCTION & ENVIRONMENTAL MANAGEMENT PLAN Arc Bauen Document Amended by A Chapman, Construction Manager, Arc Bauen, 3/3/20

Prior to occupation of the site it shall be demonstrated to the satisfaction of the Local Planning Authority that relevant parts of the scheme have been completed in accordance with the details and timetable agreed. The scheme shall thereafter be managed and maintained in accordance with the approved details unless otherwise approved in writing by the Local Planning Authority.

- 4) The development shall be carried out and maintained in accordance with details agreed by way of Condition Discharge Application ref: 20/00840/CDM. For clarity the approved details are:

- Traffic Regulation Order Plan 10856 10856-0008 C

- External Works Torbridge Road Private Bollards & Signage A1 - 10856-0012-Rev E

In relation to the Double Yellow lines these should be installed if deemed necessary following the consultation and completion of the TRO process. Should this process conclude that the Double Yellow Lines are not required then there is no requirement for the works to be undertaken. In terms of the responsibility on the applicant in relation to the double yellow lines given the S278 agreement and Bond are in place the installation of the works now rests with the Local Highway Authority if required.

- 5) The development shall be carried out and maintained in accordance with details agreed by way of Condition Discharge Application ref: 19/01773/CDM. For clarity the approved details are:

- 161028-SK11 PLANTING AND PEDESTRIAN ACCESS dated 23/04/2020
 - 161028 P(1)06 REV B PROPOSED ELEVATIONS
- 6) The development shall be carried out and maintained in accordance with details agreed by way of Condition Discharge Application ref: 20/00840/CDM. For clarity the approved details are:
- 1295-01 Rev M Soft Landscape Proposals
 - Landscape Management Plan Rev E
- 7) The development shall be carried out and maintained in accordance with details agreed by way of Condition Discharge Application ref: 20/00840/CDM. For clarity the approved details are:
- 10856-0010 Rev K General Arrangement
- 8) Car Parking Provision shall be carried out and maintained in accordance with details agreed by way of Condition Discharge Application ref: 19/01773/CDM. For clarity the approved details are:
- 161028-SK11 PLANTING AND PEDESTRIAN ACCESS dated 23/04/2020
 - Newmotion charge sheet, Charge points overview sheet, Business Line 2.1
- 9) The development shall be carried out and maintained in accordance with details agreed by way of Condition Discharge Application ref: 20/00840/CDM. For clarity the approved details are:
- Aldi Car Park Management and Servicing Strategy Galileo Close, Plympton, PL7 4JW Entran submitted 6th August 2020
 - B3334/E3 Rev F External Services Layout
- 10) Cycle provision shall be carried out and maintained in accordance with details agreed by way of Condition Discharge Application ref: 20/00840/CDM. For clarity the approved details are:
- 161028-W200 Rev G Proposed GA Plan
 - 100000-AD5901 Rev A Cycle Stand Detail
 - Sheffield Cycle Stand
 - P 1 03 Rev J Proposed Site Plan
- 11) The land indicated on the approved plans for the loading and unloading of vehicles shall not be used for any other purposes unless an alternative and equivalent area of land within the curtilage of the site is provided for loading and unloading with the prior consent in writing of the Local Planning Authority.
- 12) The development shall be carried out and maintained in accordance with details agreed by way of Condition Discharge Application ref: 20/00840/CDM. For clarity the approved details are:
- Proposed ALDI Food Store Land Adjacent to Chaplins Store, Galileo Close, Plympton, PL7 4JW Staff Travel Plan Entran

- 13) Development shall be undertaken in full accordance with the approved 11904_R01_Ecological Mitigation and Enhancement Strategy and maintained in accordance with details agreed by way of Condition Discharge Application ref: 20/00840/CDM. For clarity the approved details are:

- ALDI, 1 Galileo Close, Plympton, Plymouth PL74JW 11904_R02a_Briefing Note - Bat and Bird Box Locations

- 14) The development shall be carried out and maintained in accordance with details agreed by way of Condition Discharge Application ref: 20/00840/CDM. For clarity the approved details are:

- Aldi Car Park Management and Servicing Strategy Galileo Close, Plympton, PL7 4JW Entran submitted 6th August 2020.

In addition the development shall be carried out in accordance with following restrictions:

- A tannoy is not to be used between 23.00hrs and 07.00hrs

- The movement of roll cages outside in the service yard shall be prohibited between 23.00hrs and 06.00hrs Monday - Sunday unless otherwise agreed previously in writing with the Local Planning Authority.

All measures necessary to limit and control noise generating activities from the servicing of the unit and deliveries identified within the SYMP shall be implemented on site prior to the operation of the unit and shall thereafter be so retained and maintained unless otherwise agreed in writing with the Local Planning Authority.

- 15) 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. Development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until this condition has been complied with in relation to that contamination. An investigation and risk assessment shall be undertaken subject to the approval in writing of the Local Planning Authority, and where remediation is necessary a remediation scheme shall be prepared subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared, which is subject to the approval in writing of the Local Planning Authority.
- 16) Notwithstanding the permitted use falling within Class A1 of the Town and Country Planning (Use Classes) (amendment) (England) Order 2015 (or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification), the premises shall only be used for the sale of convenience goods with an ancillary amount of not more than 263sqm GIA of comparison goods.
- 17) Notwithstanding the permitted use falling within Class A1 of the Town and Country Planning (Use Classes) (amendment) (England) Order 2015 (or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) the discount food retail

unit hereby permitted shall not be used for the retail sale of any of the following goods and services:

- Tobacco and smoking products
- Lottery tickets
- Fresh meat and fresh fish (excluding pre-packed meat and fish)
- Delicatessen
- Pharmacy (dispensary)
- Dry cleaning
- Photo-shop
- Post office services
- Cash machine
- In-store bakery (other than the use of reheating of part baked rolls/bread and similar products)
- In-store café

18) The development hereby permitted shall only be open to customers between the following hours:

- 0800-2200 Mondays-Saturdays.
- 1000-1800 on Sundays (with trading limited to a 6 hour period).
- 0800-2000 on public holidays.

19) The development shall be carried out and maintained in accordance with details agreed by way of Condition Discharge Application ref: 20/00840/CDM. For clarity the approved details are:

- B3334/E3 Rev F External Services Layout
- MJA-P105-4751-A Revised External Lighting
- Email 11.08.2020 Aldi Plympton - 'Confirmation of Bat Lighting'

20) All planting, seeding or turfing comprised in the approved Landscape Plan secured by condition 11 shall be carried out in accordance with the approved Landscape Maintenance and Management Plan and carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The site shall thereafter be managed and retained in accordance with the approved detail and Landscape Maintenance and Management Plan.

END OF SCHEDULE