



Appeal Decision

Site visit made on 8 February 2022

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 14th February 2022

Appeal Ref: APP/C1760/W/21/3279607

Aldi Foodstores Limited, 278 Weyhill Road, Andover, SP10 3LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out 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 Test Valley Borough Council.
 - The application Ref 20/01824/VARN, dated 3 August 2020, was refused by notice dated 11 February 2021.
 - The application sought planning permission for demolition of existing car showroom, workshop and warehouse building to provide 1,596sqm gross Class A1 food store with associated access, parking and landscaping without complying with a condition attached to planning permission Ref 15/00374/FULLN, dated 22 September 2015.
 - The condition in dispute is No 23 which states that: No deliveries, unloading or loading activities shall take place on the site other than between 0700 – 2100hrs Monday - Saturday and 0900 - 1800hrs on Sundays and public holidays.
 - The reason given for the condition is: To safeguard the amenities of local residents from noise having regard to policy AME04 of the Test Valley Borough Local Plan 2006.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing car showroom, workshop and warehouse building to provide 1,596sqm gross Class A1 food store with associated access, parking and landscaping at Aldi Foodstores Limited, Andover, SP10 3LS in accordance with the terms of the application Ref 20/01824/VARN without compliance with Condition 23 previously imposed on planning permission Ref 15/00374/FULLN, dated 22 September 2015, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. In July 2021 a revised National Planning Policy Framework (the 2021 Framework) was published. The Parties have had the opportunity to comment on this. Both the Framework and the Planning Practice Guidance (PPG), which reflects and supports the Framework, can be material considerations for the purposes of deciding planning applications and appeals.
3. Since the decision on planning Ref 15/00374/FULLN (the original permission) the Test Valley Borough Revised Local Plan 2016 (the LP) has been adopted. This replaces the Test Valley Borough Local Plan 2006.
4. The appellant does not dispute that deliveries have been taking place outside the hours permitted by Condition No 23. However, in 2020 and 2021 Written Ministerial Statements made it clear that, due to the disruption caused by the

Covid-19 Pandemic, local planning authorities should take a positive approach to engagement with food retailers, distributors and the freight industry to ensure planning controls are not a barrier to the supply of all goods and services.

5. A subsequent Ministerial update on supply chains on 10 December 2021 recognises that restrictions imposed on delivery times to protect local residents from disturbance need to be balanced with the public interest of all residents, having access to well stocked shops. It was also recognised that it may be necessary for action to be taken by Councils to manage and mitigate disturbance to neighbours outside of conditioned hours, particularly where this affects sleep, taking into account the degree and longevity of amenity impacts.

Main Issue

6. The proposal seeks to allow deliveries between 0800hrs and 2100hrs on Sundays and Bank Holidays; that is an hour earlier in the morning and three hours later in the evening. The main issue is the effect of the proposed variation of hours for deliveries on the living conditions of occupiers of nearby residential properties, with regard to noise and disturbance.

Reasons

7. The covered loading bay is positioned to the side of the Aldi store which itself is at the back of the site with customer parking in front. There is a single access point to the site from Weyhill Road and there are houses opposite. The delivery bay is at the side of the building at the base of a sloping ramp directly adjoining the nearest residential property, No 276 Weyhill Road, which is separated from the bay by a timber acoustic fence.
8. Various types of noise are potentially generated during a delivery operation including engine noises from manoeuvring or idling vehicles, vehicle reversing alarms, doors slamming, refrigeration units, and clattering associated with the movement of pallets or stock cages. Other incidental noises may include vehicle radios or people talking or calling out.
9. The application was accompanied by the Sharps Redmore "Environmental Noise Assessment of a proposal to extend Sunday (and public holiday) delivery hours" 14 July 2020 (the original ENA)¹. Assessment has been made² in relation to the impact on occupiers of No 276. The Council accepts the calculations and I have no overriding reason to come to a different view.
10. The extended delivery times would fall within daytime hours rather than night time albeit during the evenings and early morning which are more sensitive times than peak daytime. The BS assessment identifies an impact on the occupiers of No 276 which falls into the category of 'an adverse impact'. This is less than the higher Significant Observed Adverse Effect level which the Framework indicates should be avoided. The Framework, the PPG, the WHO Noise Exposure Hierarchy and the BS require that all reasonable steps are taken to mitigate and minimise adverse effects whilst taking account of the guiding principles of sustainable development.

¹ This was supplemented by two Technical Notes and the Environmental Noise Assessment 12 May 2021

² BS4142:2014+A1:201939 – Methods for rating and assessing Industrial and Commercial Sound (the BS); the WHO Guidelines for Community Noise (the CNG)²; and changes in noise level

11. The context in which the adverse effects would be experienced is that of living conditions for residents. The loading bay and ramp sit directly beside the bungalow at No 276 and its garden.
12. Upon arrival delivery vehicles are driven into the car park and reverse to the bay. The vehicle docks onto the side of the building to create a seal meaning no noise should escape as delivery takes place internally. Goods are then offloaded into the building through a raised service door. The bay can accommodate one vehicle only at a time. The appellant indicates that the most up to date, quieter, vehicles are used and that drivers arrive without excessive throttle or braking noise and seek to accelerate gently until the vehicle is a reasonable distance from the store.
13. The 2.5m high acoustic fence provides some mitigation. Part 3 of the original ENA describes how palletised produce is off loaded via a dock leveller system, straight into the warehouse, and Part 5 sets out a number of proposed mitigation measures to further mitigate and minimise the effects on the living conditions of nearby residents. There are also conditions attached to the original permission controlling refrigeration and lighting. I consider these together go a long way towards ensuring the living conditions of occupiers of No 276 Weyhill Road would not be unacceptably compromised by the proposed variation. The houses on Danehurst Place are further away, and on the other side of Weyhill Road, so it is not unreasonable to conclude the impact would be less for the occupiers of those properties.
14. The Council considers that the original Condition ensured appropriate mitigation and minimisation and provided sufficient operational flexibility. However, circumstances change, and the PPG recognises noise should not be considered separately from the economic, social and other environmental dimensions of proposed development. I acknowledge the need to meet changes in consumer demand, including the desire for fresh produce, to respond efficiently in a competitive market, to provide the best service and safest shopping environment, and the environmental benefits of more efficient logistics and route planning. These would all be benefits which weigh in favour of the proposal.
15. On the basis of the evidence before me the proposed variation of hours for deliveries would not have a significantly harmful effect on the living conditions of occupiers of nearby residential properties, with regard to noise and disturbance. Added to this are the benefits identified above. Subject to the mitigation and management measures proposed, on balance I conclude that the proposed variation of hours of deliveries would not result in such an adverse effect to living conditions that would justify withholding permission. I find no significant conflict with Policy E8 of the LP which seeks to ensure development does not cause unacceptable noise disturbance for nearby residents. Nor do I find conflict with Paragraphs 130 and 185 of the 2021 Framework which, together, aim to create places which promote health and well-being, with a high standard of amenity for existing and future users, and which avoid noise giving rise to significant adverse impacts on health and the quality of life.

Other Matters

16. Breaches of the original Condition 23 later at night and earlier in the morning, including the inadvertent setting off of the store alarms, are for the Council to respond to and are not within the scope of this appeal.
17. Whilst different occupiers in the future might have different delivery systems they would be bound by the relevant conditions. Also I observed steps up to the loading dock and on this basis it seems unlikely to me that deliveries in the bay area could be other than via the dock leveller without significant alterations that would be likely to require planning permissions.
18. Neither of these matters outweigh my conclusion on the main issue.

Conditions

19. I have considered the conditions proposed by the Council in light of the advice set out in both the Framework and the PPG. It is necessary to restrict hours of delivery in the interests of safeguarding the living conditions of occupiers of nearby properties. It is also necessary to ensure the delivery activity noise reduction measures set out in the original ENA are implemented. For the avoidance of doubt Part 5 of the original ENA is set out in the attached Schedule.
20. To assist with clarity, decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original planning permission unless they have already been discharged. I have imposed all of the ones indicated by the Council as relevant on this permission and for the same reasons.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed. A new planning permission is granted subject to the schedule of conditions listed.

S Harley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers: SK03, P(1)01, P(1)03 B, P(1)04, P(0)05, P(0)06, P(0)08, 9761-0050 B and the details in the Sharps Redmore "Environmental Noise Assessment of a proposal to extend Sunday (and public holiday) delivery hours" 14 July 2020.
- 2) The Staff Travel Plan that was submitted to and approved in writing by the Local Planning Authority under application reference 15/00374/COND8 shall be implemented in accordance with the approved details and shall remain in place in perpetuity.
- 3) The acoustic barrier that has been installed at the site in accordance with the details submitted to and approved in writing by the Local Planning Authority under application reference 15/00374/COND10 shall be maintained in good condition at all times so as to preserve its effectiveness as a noise barrier.
- 4) The landscaping shall be managed in accordance with the landscape management plan that was submitted to and approved in writing by the Local Planning Authority under application reference 15/00374/COND12.
- 5) The car parking spaces that have been provided on site, in accordance with the approved plan, shall be retained and made available for the parking of vehicles associated with the development at all times.
- 6) 6 long stay and 8 short stay cycle parking spaces shall be provided on site. These spaces shall be retained and made available for the parking of bicycles associated with the development at all times.
- 7) The provision for the storage of refuse and recycling, in accordance with the approved plans, shall be permanently retained and made available for the storage of refuse.
- 8) No public recycling receptacles shall be located within the site unless in accordance with details of their position, orientation and type that have first been submitted to and approved by the Local Planning Authority.
- 9) All engines and vehicle mounted refrigeration units on vehicles within the site shall be switched off at all times when the vehicle is stationary and for the whole duration of unloading until the time of departure. Vehicle mounted refrigeration units shall be permitted to operate during deliveries only when connected to an alternative electrical power source, in accordance with the details that were submitted to and approved in writing by the Local Planning Authority under application reference 15/00374/COND19.
- 10) No external lighting shall be installed on the site unless in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. Such details shall include the location, appearance, number, luminance and direction of each luminaire and a plan showing light spill from each luminaire.
- 11) No external lighting shall be illuminated outside the hours of 0700 - 2300 hrs Monday - Saturday and public holidays and 0900 - 1800 hrs on Sundays.
- 12) The development hereby approved shall not be open for business to the public other than between the hours of 0800 - 2200 hrs Monday to Saturday and 1000 - 1700 hrs Sundays.

- 13) No deliveries, unloading or loading activities shall take place on the site other than between 0700 - 2100hrs Monday - Saturday and 0800 - 2100 hrs on Sundays and public holidays.
- 14) No refuse collections from the site shall take place other than between 0730 - 1800 hrs Monday to Saturday, with no collections on Sundays or public holidays.
- 15) No external or outdoor noise-generating fixed plant or machinery, (other than that specified in the designated plant compound, as set out in the Environmental Acoustic Test report by KR Associates dated June 2015), shall be installed on site unless in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority. Any new or replacement plant within the plant compound shall be designed such that the total sound level is not raised by more than 3 dB above either the daytime or night time levels specified in the above report.
- 16) The signage that has been installed to direct vehicles to turn left onto Weyhill Road on leaving the site, in accordance with the details submitted to and approved in writing by the Local Planning Authority under application 15/00374/COND26, shall be maintained and retained at all times.

End of Schedule of conditions

Schedule 2 Extract from Sharps Redmore "Environmental Noise Assessment of a proposal to extend Sunday (and public holiday) delivery hours" 14 July 2020 (*revised Condition number added*)

5.0 Delivery activity noise reduction measures

5.1 In addition to adherence to the requirement of planning condition 19 (*now number 9 as above*) relating to the use of delivery vehicle refrigeration units whilst stationary on site, the following noise minimisation measures shall be implemented at all times to reduce noise levels from delivery activity:

Instructions for store colleagues

- Ensure that the loading bay is clear of obstructions so vehicles can move easily
- Ensure staff do not communicate by shouting or whistling
- Colleagues will take extra care when transferring goods, being careful not to bump into walls / doors etc.

Instructions for drivers

- As you approach the site and manoeuvre in to position, remain aware of the effect that noise levels can have on local residents
- Engines should be switched off immediately when not manoeuvring
- Refrigeration equipment should be switched off once the vehicle is stationary and in the unloading position (as required by planning condition 19 (*now number 9 as above*))

- Switch the radio off before opening the vehicle doors
 - Minimise the frequency of opening and closing vehicle doors and do so quietly
 - No slamming doors
 - Lower flaps on tail lifts quietly and carefully
 - Do not whistle or shout to get the attention of store employees
 - When working in the vehicle load space avoid banging pallets into the vehicle walls
 - When finishing unloading/loading, close up the vehicle quietly
 - Drivers should avoid over revving and seek to accelerate gently until the vehicle is a reasonable distance from the store, minimising excessive air brake noise
 - Where possible, drivers should refrain from starting up vehicle refrigeration units until the vehicle is away from the store and residential properties.
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