



Appeal Decision

Site visit made on 8 February 2022

by Diane Cragg Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2022

Appeal Ref: APP/N4720/W/21/3284076

Aldi Stores Ltd, Marsh Street, Rothwell, Leeds, LS26 0AG

- 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 Leeds City Council.
 - The application Ref 20/03820/FU, dated 25 June 2020, was refused by notice dated 7 April 2021.
 - The application sought planning permission for demolition of existing buildings and construction of single storey supermarket with associated works, car parking, landscaping without complying with a condition attached to planning permission Ref 14/04467/FU, dated 30 July 2015.
 - The condition in dispute is No 4 which states that: Delivery hours to the Aldi store by HGV vehicles, other non HGV vehicles and refuse vehicles shall be restricted to between the hours of 7.30am and 9pm Mondays to Saturdays and between 9am and 6pm on Sundays and Bank Holidays.
 - The reason given for the condition is: In the interests of residential amenity in accordance with adopted Leeds UDP Review (2006) policy GP5 and the National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission was granted for the erection of an Aldi supermarket at the appeal site. The permission has been implemented and the supermarket is trading.
3. The appellant wishes to extend the delivery times from those originally imposed (set out in the banner heading above). There is some confusion in the submissions as to the exact variation sought. The appellant references the covering letter on the application form, but the extended times are not consistent in this document and are different to those specified on the appeal form. The appeal form refers to bank holidays not being changed but the original covering letter includes the removal of reference to bank holidays from the condition.
4. The appeal form description reflects that on the decision notice. This description was used for public consultation and therefore I have determined the appeal on this basis.

5. Having regard to the above, the proposed delivery hours sought are Monday to Saturday 0700 to 2200, 0800 to 2000 on Sundays and 0730 to 2100 on bank holidays.

Main Issue

6. The main issue is the effect that varying the delivery hours would have on the living conditions of neighbouring residential properties, with particular regard to noise and disturbance.

Reasons

7. The Aldi Supermarket is located on Marsh Street/Carlton Lane, in an area of Rothwell that is largely residential in character. The appeal site is accessed from Marsh Street via a signalised junction. The supermarket building is to the eastern side of the plot with the car park, turning area and access to the servicing and loading bay accommodated to the rear and side of the building.
8. Residential properties facing Marsh Street, Carlton Lane, Swithen's Street Maple Rise, and Windmill Green/Lane border the appeal site. Those properties at the rear of the site are at a higher level with landscaping and fencing adjacent to the boundaries. Those residential properties that face Carlton Lane are broadly at a level with the Aldi car park and separated from it by existing fencing.
9. Although I visited the site at about 0930, I also visited at 0700 before the delivery hours on a mid-week morning. The lights were on in the store and a small number of cars were parked in the car park. The roads around the site were lightly trafficked, pedestrian activity was limited and the surrounding residential streets were quiet.
10. The appellant refers to a noise impact assessment and the Council's Environmental Health Officer refers to an original noise report. I have not been provided with a copy of these reports or any other noise report which analyses the existing noise environment or the effect of deliveries on it. Although only a snapshot in time, I observed at my visit that the background noise levels in the car park are low reflecting the residential environment of the surrounding streets.
11. The site layout plan indicates that delivery lorries enter the appeal site via Marsh Street, manoeuvring in forward gear into the main car park area and reversing into the loading bay. Therefore, to access the service bay vehicles will be turning and manoeuvring within the car park near residential properties.
12. I have not been provided with details of how earlier and later deliveries would affect the times staff members arrive and leave the site, but the appellant indicates that it is neither commercially practical, nor desirable, that shelves are stocked when customers are in the store. Therefore, it is likely that to service earlier and later deliveries staff would also need to arrive earlier and leave later. Thus, it can be anticipated that the activity within the car park of staff vehicles entering and leaving the site may also be increased and the site would operate more generally earlier in the morning and later at night.
13. The area where vehicles would be manoeuvring is set back from the road frontage and away from the street. Manoeuvring and other activities within the car park would be close to gardens and rear facing windows of residential

- properties. The shorter delivery times in force reflects the close proximity of the site to residential boundaries and the need to provide acceptable living conditions for these properties. There is no evidence before me that the turning and manoeuvring of vehicles and the general increase of activity at the site can be accommodated without disturbing residents.
14. Indeed, the letters of objection indicate that when hours of deliveries have been relaxed during the covid pandemic, neighbouring residents have been disturbed by the extended delivery times.
 15. I accept that a delivery management plan could be sought which may restrict certain operations including turning off refrigerator units, reducing the times when lorry engines are running and restricting the use of reversing beepers on site. However, I do have concerns about the practicalities of enforcing such measures and whether restricting the use of reversing beepers would be advisable given their safety purpose.
 16. I also acknowledge that the proposed extended hours are not significant extensions of the permitted delivery times. However, these times are at either end of the day when residents of surrounding properties are more likely to be at home, may be in bed or may wish to use their gardens in the summer months. Residents should be able to rely on a period when these activities can be undertaken without being unduly disturbed by the operation of the appeal site, and I have not been provided with any reassurance that the extended delivery times would not be a disturbance. Therefore, I consider the delivery hours reflect the proximity of the site to residential properties and are reasonable and necessary in this case.
 17. Overall, I conclude that the proposal would detract from the living conditions of neighbouring properties in conflict with Policy GP5 of the Leeds Unitary Development Plan Review 2006, where this policy seeks to avoid problems of environmental intrusion and loss of amenity. It would also conflict with the National Planning Policy Framework which seeks to ensure that development create places with a high standard of amenity for existing users and where it seeks to ensure that development is appropriate to its location by amongst other things, mitigating, and reducing to a minimum, potential adverse impacts resulting from noise.

Other Matters

18. The Planning Practice Guidance states that a temporary permission may be appropriate in circumstances, including where a trial run is needed in order to assess the effect of the development on the area. Given my conclusions above I can see no basis to grant a temporary permission in this case.
19. Although based on the description the reference to bank holidays is not sought to be removed from condition 4, the appellant refers to the restriction during bank holidays being out of date and indicates that this approach is an accepted principle. However, there is no evidence to support this statement. Whilst in many occupations working over the bank holiday period will be the norm, it is nevertheless a holiday. Children would not be at school and parents are more likely to be at home. Many other people will also not be at work. At these times a more restrictive approach to delivery times, would accord with my conclusions above.

20. I note the appellant's view that the extended opening hours may be beneficial for the optimum site operation, but there is no indication that the site is not operating satisfactorily now or that the restrictions placed on the original planning permission were a barrier to the development of the site as a supermarket.
21. I appreciate that the appellant took a proactive approach to the application submission. However, this does not alter my conclusions on the main issue.

Conclusion

22. For the reasons given above I conclude that Condition 4 should not be varied, and the appeal is dismissed.

Diane Cragg,

INSPECTOR