



Appeal Decision

Site visit made on 13 September 2022

by Helen Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4TH October 2022

Appeal Ref: APP/Z0116/W/22/3298574

Aldi Foodstore Ltd, North Street, Bedminster, Bristol BS3 1JA

- 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 Bristol City Council.
 - The application Ref 21/04416/X, dated 12 August 2021, was refused by notice dated 11 November 2021.
 - The application sought planning permission for "Application for removal/variation of condition following the grant of planning permission on Application 1772X/94S relating to Condition 12 (Hours of operation) - to allow vehicular servicing deliveries between the hours of 7am to 10pm on Mondays to Saturdays and 9am to 6pm Sundays" without complying with condition 7 attached to planning permission 12/04305/X, dated 31 December 2012.
 - The condition in dispute is No 7 which states that "Vehicular servicing deliveries to the store, associated vehicle movement and other activities outside the building associated with delivery shall be restricted to the hours of 7:00 am to 10:00 pm Mondays to Saturdays and 9:00 am to 6:00 pm on Sundays, unless otherwise agreed in writing by the Council.
 - The reason given for the condition is "In the interests of protecting the amenities of nearby residential properties".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal seeks to vary existing condition 7 so that deliveries could take place between the hours of 5am to 10pm Mondays to Saturdays and 5am to 6pm on Sundays. The proposed additional delivery hours are therefore between 5am and 7am Mondays to Saturdays and 5am and 9am on Sundays. A previous proposal ref 21/01050/X to vary the delivery hours was also refused.
3. During the Covid 19 pandemic Government guidance led to delivery hours being relaxed to ensure supermarkets could restock safely. I have been provided with a list which shows that between November 2020 and February 2021 daily deliveries were made between the hours of 5am and 7am. I am unaware of whether this continued after February 2021.
4. Subsequently, and following a public complaint directly to the local planning authority, a Breach of Condition Notice was served on 24 November 2021. This required compliance with the delivery hours stated in the existing condition. This does not form part of my assessment under this appeal.

5. The existing permission also includes a condition (No 2) which stipulates that, in the interests of highway safety, the vehicular access on North Street is not to be used by service vehicles. Whether or not this has been complied with is not a matter for this appeal as it only relates to condition 7. However, to comply with current conditions, all deliveries would need to enter and leave the site via the access on Raleigh Road.

Main Issue

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

Reasons

7. Policy BCS21 of the Bristol Local Plan Core Strategy (2011) (CS) requires development to safeguard the amenity of existing development. Policy BCS23 of the CS requires development to be designed in a way that avoids adversely impacting on the amenity of the surrounding area by reason of noise. Policy DM35 of the Bristol Local Plan Site Allocations and Development Management Policies (2014) (SADMP) specifies that development which would have an unacceptable impact on amenity by reason of noise will be expected to provide appropriate mitigation, including restricting delivery hours, with development not permitted if mitigation cannot be provided to an appropriate standard.
8. Paragraph 185 of The National Planning Policy Framework (the Framework) sets out the need to mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and the quality of life. This reflects the aims set out in the Noise Policy Statement for England (2010) (NPSE).
9. I acknowledge that Policy BCS23 of the CS requires development to avoid 'adverse' impacts from noise, whereas the Framework, which post-dates the CS requires the avoidance of 'significant adverse' impacts. Despite this, as set out in Paragraph 219 of the Framework, existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. Due weight should be given to any conflict with existing policies, according to their degree of consistency with the Framework.
10. While the stated noise impact level which needs to be avoided are different, Policy BCS23, alongside Policy BCS21 of the CS and Policy DM35 of the SADMP are generally consistent with the Framework in seeking to both minimise and mitigate against noise impacts. I therefore afford substantial weight to any conflict with these policies. Planning policy does not set a threshold for 'adverse' or 'significant adverse' impacts from noise. However, guidance is provided within the Planning Practice Guidance (PPG) which I have taken account of.
11. The site is occupied by an Aldi supermarket building and car park. It is in an area with a variety of uses but with a lot of residential properties. It is directly bounded along the whole of one side by Amerind Grove, a large residential nursing home. North Street, Raleigh Road and Greenway Bush Lane run along the other three sides and contain residential uses as well as a school, a church, a theatre and shops.

12. I am informed that the site receives one or two deliveries a day by heavy goods vehicle (HGV), plus an unspecified number of deliveries by smaller vehicles for locally sourced products and milk. Once within the site, vehicles would have to manoeuvre within the car park and HGVs would need to reverse into the loading bay before unloading. This activity would create a range of noise and general disturbance including short duration irregular sound events, such as revving engines, air brakes, refrigeration units, reversing alarms, shutting of vehicle doors, the opening and closing of the store doors and loading dock and the movement of pallets and goods. It is also likely that the proposed change would require store workers to arrive earlier with the noise associated with that.
13. The supermarket building runs much of the length of the boundary with Greenway Bush Lane and there is a large building on the corner of North Street and Raleigh Road. These would provide some screening of delivery activity noise in those directions. However, the manoeuvring and unloading area is largely open to Amerind Grove, apart from a modest height standard wooden fence along the boundary. The access points on Raleigh Road and North Road are inevitably open, so provide no noise screening for the residential developments directly opposite.
14. The appellant has provided a number of reports, including an environmental noise assessment report dated July 2021, a technical note dated October 2021, and a subsequent noise report dated March 2022, the content of which I have considered. Although baseline and predicted delivery noise activity levels have been provided, given the episodic and variable nature of the likely noise from delivery activity, and the time at which noise would occur, The World Health Organisation (WHO) Guidelines for Community Noise provides an important benchmark. The parties agree in this regard. This sets out that the onset of sleep disturbance may occur for peak noise levels of 45dB LA_{max} inside, which is 60dB LA_{max} externally, and that for a good sleep, these levels should not be exceeded more than 10-15 times per night.
15. The noise reports break down the monitoring of actual delivery events into arrival, unloading and departure. Three delivery events have been monitored, one near each of the three closest residential properties.
16. The monitored delivery event near the boundary with Amerind Grove took place between 6.30am and 7.25am and shows around 20 short peaks above the WHO noise guideline level during unloading, including bangs and rumbling from moving pallets. In addition to this, longer and higher peaks were recorded during arrival and departure, with levels exceeding 75dB during arrival and manoeuvring into the loading bay.
17. The fence at the boundary between the site and Amerind Grove would provide some screening, with the noise report indicating a reduction of approximately 8 dBA on the arrival and departure noise and 12 dBA in relation to unloading activity. However, the calculations on which this is based¹ appear to mix up the source to barrier and receiver to barrier distances which may affect the results. Regardless of this and the comments from the Council Environmental Health Officer, the estimated 8 dBA reduction provided by the fence would not bring the measured peak arrival noise of 75dB LA_{max} down to the WHO recommended acceptable level of 60dB LA_{max} with regard to Amerind Grove.

¹ Set out in appendix D2.1 and D2.2 of the July 2021 report

18. Surveys of background noise levels between the hours of 5am and 7am near the accesses on North Street and Raleigh Road have been undertaken, with a delivery event monitored at each access just after 7am². This shows that noise levels during delivery events frequently hit 75dB L_{Amax}.
19. The appellant predicts that for the nearest residential property on North Road, peak noise levels during arrival would be 63dB, dropping to 55dB during manoeuvring within the site. However, the access on Raleigh Road would be the approved delivery access and is directly opposite a residential development that fronts onto the pavement. Although the appellant predicts that the delivery noise levels at this property would be just below 60db, this is predicted not a measured figure during the relevant time period.
20. I acknowledge that local road traffic noise hit similar peaks to delivery noise during the monitoring period. Despite this, the short-term intermittent incidences of noise associated with delivery activity would likely be set apart from the general background noise associated with traffic within the site vicinity and would arguably have a greater potential to disrupt sleep patterns than more regular, constant sources of background noise. Exceedances of the WHO guideline on noise levels does not automatically mean there will be a significant adverse impact on neighbours, and the duration of any exceedance is likely to be short. Despite this, such noise disturbance would potentially happen as early as 5am, every day, when most people would be sleeping.
21. The PPG³ also makes it clear that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on factors such as the source and absolute level of the noise together with the time of day it occurs. Some types and level of noise will cause a greater adverse effect when people are trying to sleep.
22. As a consequence of the delivery noise, particularly during arrival, and especially between the hours of 5am and 6am, neighbouring residents are likely to have to keep windows closed most of the time (while sleeping) and there is potential for sleep disturbance, including premature waking and difficulty getting back to sleep. This would lead to diminished quality of life. These outcomes are amongst those listed in the PPG as indicating a significant observed adverse effect level (SOAEL). This is backed up by comments received from neighbours who note they have been awoken before 7am by deliveries⁴, even with closed windows and resulted in the need to keep windows closed. The noise of vehicles backing into the loading bay is noted as a particular issue.
23. The noise reports provided by the appellant focus only on deliveries by HGVs. No information has been provided on how many deliveries would be made by smaller vehicles or how these would be unloaded. Given the height and size of the loading dock it seems likely that smaller vehicles would be unable to use the dock, or at least to use it in a manner that allowed secure docking to minimise noise escape during unloading. I therefore have insufficient information to be able to conclude that noise from deliveries by smaller vehicles would not have a significant adverse effect on neighbours.

² The Breach of Condition Notice was in place on the monitoring dates so prevented deliveries before 7am.

³ Paragraph: 006 Reference ID: 30-006-20190722.

⁴ When delivery times were unrestricted during the Covid 19 Pandemic.

24. Taken together, the above factors mean that on the basis of the evidence provided, I cannot rule out the possibility that noise associated with delivery activity between 5am and 7am, particularly arrival, on site manoeuvring and departure, might frequently exceed the WHO recommended 60dB on a number of occasions at the nearest residential properties. As confirmed in the NPSE, such noise exposure can cause annoyance and sleep disturbance, both of which impact on quality of life, and may give rise to adverse health effects.
25. With regard to noise mitigation, the appellant states that HGVs reverse into a dock which is then sealed to prevent noise escaping from unloading activity which takes place inside the building. This is in place already and accounted for in the noise reports. The appellant also suggests a range of delivery activity noise reduction measures could be put in place for the proposed new hours. I acknowledge that the proposed measures could be capable of reducing delivery-related noise impacts. However, as far as I am aware, the proposed measures have not yet been implemented at the appeal site, and there is no demonstrable evidence before me to confirm they would sufficiently reduce the delivery noise levels. Also, the successful implementation of the proposed measures would be reliant upon the individual actions of a number of employees. In addition, health and safety requirements may prevent reversing alarms being turned off. Therefore, I am unable to conclude that all reasonable steps have been taken to mitigate and minimise potential adverse impacts on health and quality of life resulting from noise from the proposal.
26. The proposal would give the supermarket greater operational and logistics flexibility and allow deliveries outside of peak morning traffic. However, I have been presented with no substantive evidence which would lead me to conclude that the current delivery hours lead to difficulties in ensuring the consistent and sustainable supply of goods to the site, particularly now Covid restrictions are not in place. I also have no substantive evidence that the current hours have given rise to traffic congestion problems.
27. For the above reasons, I conclude that varying the delivery hours would have an unacceptable impact on the living conditions of residents of neighbouring properties, with regard to noise and general disturbance. The impact would be insufficiently mitigated to avoid the proposal resulting in significant adverse impacts on health and quality of life. Therefore, the existing condition is reasonable and necessary. Consequently, the proposal is contrary to Policies BCS21 and BCS23 of the CS and Policy DM35 of the SADMP which seek to protect amenity and avoid adverse noise impacts. The proposal is also contrary to Paragraph 185 of the Framework which seeks to prevent significant adverse noise impacts.

Other Matters

28. The conduct of the council has not affected my assessment of the main issue.
29. While Paragraphs 81 and 130 of the Framework provide support for business and innovation, this is not at the expense of compliance with relevant development plan policies.
30. I note that a Written Ministerial Statement⁵ re-states the Government guidance that local planning authorities should ensure planning controls are not a barrier

⁵ UIN HLWS453, made on 10 Dec 2021 in response to the ongoing management of and recovery from the Covid 19 pandemic and in force until the end of September 2022.

to the supply of goods and services. However, it goes on to say that the Government recognises that it may be necessary for action to be taken in relation to the impacts of deliveries on neighbours, particularly where this affects sleep, and that local planning authorities should consider any efforts made to manage and mitigate such disturbance. As set out above, the current delivery hours are sufficient to not act as a barrier to the supply of goods and extending delivery hours would likely have a significant adverse impact on neighbours and the impact has been insufficiently mitigated.

31. Regardless of whether any noise complaints were made directly to Aldi or Environmental Health, at least one public complaint was made to the local planning authority, resulting in a Breach of Condition Notice being served. In addition, objections to the proposal on noise grounds have been made by neighbouring residents, a Councillor and a Member of Parliament. In addition, the relatively modest number of complaints and objections does not mean there is no harm, particularly given that the residents of Amerind Grove may have been unable to express concerns.

Conclusion

32. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed and condition number 7 retained in its present form.

Helen Davies

INSPECTOR