



Appeal Decision

Site visit made on 29 November 2022

by Helen Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2022

Appeal Ref: APP/D1835/W/22/3302765

Aldi, Tybridge Street, Worcester WR2 5BA

- 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 Worcester City Council.
- The application Ref 21/01111/VARCO, dated 7 December 2021, was refused by notice dated 14 April 2022.
- The application sought planning permission for the 'erection of single retail warehouse building of 2,015 square metres gross and extension to existing retail warehouse with associated garden centre, additional parking spaces, customer and service access from Tybridge Street and works to provide independent curtilage to 52 Tybridge Street' without complying with a condition attached to planning permission Ref P01A0240, dated 24 July 2001.
- The condition in dispute is No 18 which states that: "No deliveries shall be taken or dispatched from the site outside the hours of 0700 to 2300, nor at any time on Sundays, Bank or Public Holidays."
- The reasons given for the condition is: "To maintain the residential amenity of the surrounding residential development."

Decision

1. The appeal is allowed and planning permission is granted for the 'erection of single retail warehouse building of 2,015 square metres gross and extension to existing retail warehouse with associated garden centre, additional parking spaces, customer and service access from Tybridge Street and works to provide independent curtilage to 52 Tybridge Street' in accordance with the application Ref 21/01111/VARCO, dated 7 December 2021, without compliance with condition number 7 previously imposed on planning permission Ref P01A0240, dated 24 July 2001.

Preliminary Matters

2. The building was originally granted planning permission on 24 July 2001 (ref: P01A0240) with a condition imposed to control its permitted delivery times (condition 18).
3. On 21 August 2015, planning application ref: P15K0134 was approved for the removal of condition 2 attached to planning permission ref P01A0240, to enable occupation of the retail unit by a discount food retailer.
4. A temporary planning permission (ref: 21/00776/REM) was granted by the Council on 18 December 2020. This permission allowed a change to condition 7

of application P15K0134 to alter the delivery times from the approved 0700 to 2300 to 0600 to 2300 for a temporary period of 12 months.

5. Planning permission P15K0134 included Condition 10, which requested a Service Yard Management Plan. Condition 10 was discharged under application D16K0056. A revised Service Yard Management Plan has been submitted with the current application 21/01111/VARCO. This revised document retains all details relating to the management of the service yard but amends the delivery hours to ensure these safeguards are extended in line with the submitted application.
6. The condition in dispute was attached to the original planning permission ref: P01A0240 as condition 18. It was then amended in planning permission ref: P15K0134 as condition 7, which states "No deliveries shall be taken or dispatched from the site outside the hours of 0700 to 2300." I have therefore dealt with the appeal on that basis, as planning permission ref: 21/00776/REM was only a temporary permission.

Main Issue

7. The main issue is whether or not there would be an adverse effect on the living conditions of neighbouring residential occupiers if condition No 18 of planning permission P01A0240 was to be deleted.

Reasons

8. The appeal site comprises an Aldi store with a loading bay to the rear of the building. Access to the loading bay for delivery vehicles is off Tybridge Street. The area surrounding the site is a mix of retail and residential properties.
9. There are no physical changes proposed to the Aldi store or its means of access for the deliveries. The proposed change to the condition would have the effect of allowing deliveries to the store to take place over a slightly greater timeslot throughout the week by adding one hour for deliveries to take place in the mornings. Deliveries could therefore take place from 0600 to 2300 on a permanent basis.
10. The proposed hours are the same as those used temporarily during the Covid-19 pandemic, following the approval of ref 21/00776/REM. This temporary permission which allowed deliveries at the store to take place from 0600, has effectively been a trial period. This temporary period also covered the warmer summer months when neighbouring residents would have been more likely to open their windows. It is noted that during this temporary period there were no noise complaints made to either the store or the local authority.
11. The residential properties most likely to be affected by any noise generated by the movements of delivery vehicles to and from the loading bay are those situated in St Clement's Gardens and Dancox House. These residential properties are positioned to the north/northwest of the store.
12. The appellant has submitted a noise assessment (dated 2021), which draws on the guidance set out in the National Planning Policy Framework (Framework). This noise assessment is a revised version of the one produced for the previous temporary planning permission ref 21/00776/REM. Furthermore, Worcestershire Regulatory Services (WRS) have confirmed that the

- methodology used to assess the noise impacts was in line with relevant British Standards and Industry Guidance.
13. The noise assessment carried out baseline surveys during May 2020 and again in November 2021. The assessment identified the dwellings in St Clement's Gardens to the north of the Aldi service yard as being the most sensitive for noise disturbance emanating from the delivery operations to the store. In respect of noise levels from delivery events, the assessment indicated that delivery noise from 0600 hours would be of low impact at these sensitive receptor locations.
 14. The noise assessment concluded that the predicted noise levels from the delivery activity occurring from 0600 hours would not give rise to significant adverse impact and hence would comply with the requirements of the Framework. This evidence is robust and attracts substantial weight in this appeal. No counter evidence has been submitted to refute it.
 15. The appellant has been operating a service yard management plan that provides specific measures to ensure the Aldi store deliveries are carried out in a manner to minimise noise. Such measures include drivers arriving on site without excessive engine breaking noise, with the throttle and break only being used when necessary. In addition, reversing alarms are not used during the early morning deliveries at this store.
 16. Furthermore, the store does not use produce cages or forklifts at the appeal site. Deliveries are made using a dock loading arrangement with palletised goods moved directly off the delivery wagon onto a scissor lift and into the store. The noise associated with the movement of pallets and with the vehicle manoeuvring within the service yard have been included within the source noise levels contained within the noise assessment. Therefore, mitigation measures are already present to limit noise from the loading activities. Moreover, there is a sufficient separation distance between the loading port and the neighbouring residential properties.
 17. The appellant's evidence has confirmed that the centre of the delivery vehicle turning circle would be around 20 metres from the rear of 45 St Clement's Gardens, which is the closest residential property to the loading bay. This distance was used in the noise assessment and is an adequate distance to avoid significant adverse impacts on neighbouring occupants.
 18. I note the objection received from a local resident. However, the temporary planning permission has been in place since 18 December 2020 and WRS have confirmed that no complaints regarding noise have been received in relation to deliveries to the Aldi store. Furthermore, the submitted noise impact assessment indicates that the extended delivery hour (from 0600) would not pose an adverse impact on neighbouring living conditions.
 19. Consequently, I conclude that the extended delivery hour sought would have no adverse effect on the living conditions of adjoining neighbouring residents in terms of disturbance by noise intrusion.
 20. For the reasons above, the proposal accords with Policy SWDP21 of the South Worcestershire Development Plan (2016), which seeks to ensure, amongst other things, that development does not have a significant adverse effect on neighbouring amenity. The proposal would also be consistent with the aims and

objectives of the Framework, in particular paragraph 185 which seeks to ensure development is appropriate for its location taking into account the likely effects of pollution (including noise) on health and living conditions.

Other Matters

21. The Council has raised concern about light pollution. I acknowledge that delivery vehicles manoeuvring within the service yard could cause light pollution. However, there is no evidence before me to indicate that this has previously caused a disturbance to local residents. Furthermore, I find that the existing boundary enclosure to the service yard would help to mitigate such a disturbance. Therefore, light pollution associated with the delivery vehicles would not harmfully impact upon the living conditions of the neighbouring occupants.

Conditions

22. I have deleted the disputed condition as indicated above and replaced it with an amended one which specifies the new delivery times as 0600 to 2300.
23. The Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.
24. Due to the previous permission D16K0056, condition 10 has already been discharged. Accordingly, I do not need to re-impose this condition.
25. With the exception of the development time limit, which is no longer required as the development is already implemented, I have no information before me to suggest that any of the other conditions attached to planning permission P15K0134 are no longer necessary or relevant. I have therefore imposed all of these other conditions with only minor drafting modifications where this has been necessary.
26. The Council has suggested an additional condition. However, the appellant has already demonstrated that no complaints were made in terms of noise during the 12-month period and the evidence indicates that the service yard management plan was adhered to. Given the temporary period was a reasonable amount of time to monitor whether the extended hours of the delivery would have an adverse impact upon the living conditions of neighbouring occupiers, I find this suggested condition to be unnecessary.

Conclusion

27. For the reasons set out above, I conclude that the appeal is allowed.

Helen Smith

INSPECTOR

Schedule of Conditions

- 1) No deliveries shall be taken or dispatched from the site outside the hours of 0600 to 2300 and in practices set out in the updated Service Yard Management Plan.

Reason: To maintain the residential amenity of the surrounding residential development.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and associated documents and the specifications and recommendations contained therein, except where otherwise stipulated by conditions attached to this permission.
 - Site Location Plan, Drawing No: 190451-1110-P2
 - Accoustic Report by Sharps Redmore for Aldi, Tybridge Street, dated 23/11/2021
 - Service Yard Management Plan, dated February 2022

Reason: To ensure compliance with the approved scheme.

- 3) The net sales area of the permitted retail unit will not exceed 1,424sqm, which shall include checkouts, aisles and circulation space but not any lobby area. No more than 20% of the net sales area shall be used for the sale of comparison retail goods. The net sales area shall be restricted to 'limited product line deep discount retailing', and shall be used for no other purpose falling within Class A1 of the Town and Country Planning (Use Classes) Order 1987. 'Limited product line deep discount retailing' shall be taken to mean the sale of no more than 2,000 individual product lines. No increase in the number of product lines shall be permitted without the prior written approval of the Local Planning Authority.

Reason: To define the terms of this permission and in order to protect the vitality and viability of existing centres and to ensure the store retains its status as a deep discount retail food-store and in accordance with the provisions of policy SWDP10 of the South Worcestershire Development Plan and the aims and interests that the National Planning Policy seeks to protect and promote with regard to retail development.

- 4) No retail unit shall be sub-divided into two or more units without the submission and approval of a separate application for planning permission.

Reason: To restrict the retail impact of the development in accordance with the policy SWDP10 of the South Worcestershire Development Plan and the aims and interests that the National Planning Policy seeks to protect and promote with regard to retail development.

- 5) The development hereby permitted shall not be brought into use until the access, turning area and parking facilities shown on the approved plans have been properly consolidated, surfaced, drained and otherwise constructed in accordance with details to be submitted to and approved in writing by the local planning authority and these areas shall thereafter be retained and kept available for those uses at all times.

Reason: In the interests of highway safety.

- 6) Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, vessel or the combined capacity of interconnected tanks, or vessels plus 10%. All filling points, associated pipework, vents, gauges and sight glasses must be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank/vessels overflow pipe outlets shall be detailed to discharge into the bund.

Reason: To prevent pollution of the water environment.

- 7) Prior to being discharged into any watercourse, surface water or sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through an oil interceptor designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the inceptor.

Reason: To prevent pollution of the water environment.

- 8) Noise emitted from the site shall not exceed LAeqT = 40dBA measured 1 metre from the façade of any residential unit between the hours of 2300 to 0700 on any day (where T is a minimum of 15 minutes, or if a series of measurement time is a minimum of 15 minutes), unless otherwise agreed in writing by the local planning authority.

Reason: To maintain the residential amenity of the surrounding residential development.

- 9) No materials, goods, plant or machinery, including motor vehicles shall be stored and/or displayed for sale in the open without the prior written consent of the local planning authority.

Reason: To maintain the character of the property and the quality of the street scene.

- 10) Notwithstanding the submitted details, the premises shall not be occupied until details of any external plant, including extract ventilation facilities, air conditioning equipment and their noise generation levels, and any noise attenuation measures shall be submitted to and approved by the local planning authority. Thereafter, these works shall be carried out in accordance with the approved details.

Reason: To safeguard the amenities of neighbouring residents in accordance with the aims and objectives that the National Planning Policy seeks to protect and promote with regard to amenity.

*****End of Conditions*****