



Appeal Decision

Site visit made on 17 January 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2023

Appeal Ref: APP/J3720/W/22/3305913

Aldi Stores Ltd, Birmingham Road, Studley B80 7BG

- 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 Stratford-on-Avon District Council.
 - The application Ref 21/03655/VARY, dated 16 November 2021, was refused by notice dated 3 March 2022.
 - The application sought planning permission for 'Variation of conditions 7, 8 and 14 of planning permission 13/02560/VARY dated 8 May 2014 to allow for amended delivery hours, opening hours and to extend the hours of use of external lighting. Planning permission 13/02560/VARY is an approved variation of condition application of planning application 12/00659/VARY, which is an approved variation of condition application 10/02620/VARY, which is an approved variation of condition application for planning permission 08/02716/FUL. Original description of development: Construction of Class A1 Food Retail Store and associated car parking' without complying with a condition attached to planning permission Ref 18/03405/VARY, dated 10 April 2019.
 - The condition in dispute is No 8 which states that: "No deliveries or collections shall be made outside of the hours of: 7am to 10pm Monday to Saturday 9am to 8pm – Sundays only."
 - The reason given for the condition is: "To ensure there is no detrimental effect upon the amenities of the area, having regard to Policy CS.9 of the Stratford-on-Avon District Core Strategy 2011-2031."
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The site address provided on the planning application form refers to both 'Birmingham Road' and 'Icknield Street'. It is clear from both my site visit and the information before me that the site is located on Birmingham Road, with there being no reference made to Icknield Street on the Council's decision notice or the appellant's appeal form. I have therefore omitted any reference to Icknield Street from the site address in the banner header and my formal decision above.

Background and Main Issue

3. Planning permission was originally granted for a food store in 2009. There have been several grants of planning permission since then in relation to conditions. The appellant now seeks to vary condition 8 of planning permission Ref: 18/03405/VARY to enable deliveries to start one hour earlier each day than

currently permitted. The delivery hours sought are 6am to 10pm on Monday to Saturday and 8am to 8pm on Sundays.

4. The main issue is therefore the effect that varying the delivery hours would have on the living conditions of occupiers of neighbouring residential properties, with regard to noise and light pollution.

Reasons

5. The site is situated in an area comprising a mix of uses including retail, commercial and residential. The store's loading bay is at the rear of the building with vehicular access to the loading bay off Birmingham Road through the customer car park. The closest residential properties are those immediately adjoining the appeal site along Birmingham Road, with Priory Farm located further away beyond the rear of the site.
6. The appellant states that the store receives one or two deliveries a day by heavy goods vehicle (HGV), with additional deliveries made by smaller vehicles for locally sourced products. HGVs would enter the site off Birmingham Road and travel through the front part of the car park which shares its boundary with the dwelling at 4 Birmingham Road. Vehicles would also have to reverse into the loading bay.
7. 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.
8. The planning application was accompanied by an "Environmental Noise Assessment of a proposal to extend store delivery hours" dated 10 August 2021 (ENA) by Sharps Redmore. This has been further supplemented by the submission of an appeal statement by Sharps Redmore dated 22 August 2022, which includes a summary of the outcomes of the ENA. The ENA used three assessment methods to determine the noise impact from deliveries on occupiers of No 4 and Priory Farm. These methods were the World Health Organisation Community Noise Guidelines (2000) (CNG), changes in noise level, and BS4142:2014+A1:201939 (BS).
9. The extended delivery times would see the store able to receive deliveries from the earlier time of 6am from Monday and Saturday. As the proposal would see deliveries start before 7am they would fall within what are considered night time hours rather than daytime hours. Night time hours are more sensitive and result in a requirement to assess peak noise levels in relation to sleep disturbance criteria, as opposed to a time averaged level during daytime hours.
10. The BS assessment is calculated by measuring the difference between the external background noise level at the receptor and the external rating level of the specific noise source. This assessment identified that the additional delivery hour between 6am and 7am on Monday to Saturday would have an impact on occupiers of No 4 which falls into the category of 'Adverse to significant adverse'. Despite the appellant's contention that when considered in context the overall assessment should be moderated to a low impact, given the proximity of the nearest dwellings, I find that the BS assessment is an indication that the proposal would have a significant adverse impact upon the

living conditions of occupiers of neighbouring residential properties on Birmingham Road.

11. The CNG assessment focuses on the absolute level of noise which is considered to be the critical factor in relation to sleep disturbance criteria, with the assessment identifying a 'low/adverse' impact to occupiers of No 4. The CNG guidelines sets out that the onset of sleep disturbance may occur for peak noise levels of 45dB L_{Amax} inside, which is 60dB L_{Amax} externally when windows are open, and for a good sleep these levels should not be exceeded more than 10-15 times per night.
12. The ENA includes the monitoring of an actual delivery event on the 30 June 2021 which is broken down into arrival, unloading, and departure. Measured noise levels were not taken at either of the nearest receptors, No 4 and Priory Farm, with noise levels during the event being measured externally from a point 10 metres from the loading bay. The highest peaks recorded were during the arrival and departure of the HGV, with levels exceeding 70dB. In addition, there were well in excess of a further 15 peaks above 65dB recorded during the unloading stage. Though it is accepted that the peak noise levels set out in the CNG guidelines are exceeded when HGVs enter or leave the site, the appellant predicts that during unloading noise levels at the nearest receptors would be below 60db. This however is predicted and not a measured figure.
13. I accept that exceedances of the CNG guidelines on noise levels does not automatically mean that there would be a significant adverse impact on neighbours. However, in the absence of any measured figures from the nearest receptors and given the frequency of peak noise levels during the delivery event which were above the 60dB level set out in the CNG guidelines, I find it highly probable that the noise associated with the delivery activity would have an adverse impact on the living conditions of neighbouring occupiers, including the potential for sleep disturbance.
14. There is some conflict between the BS assessment and the CNG assessment. However, the CNG is based upon sleep disturbance but I must also take into account reasonable expectations of residents of peace and quiet, not just direct impacts upon health.
15. With regards to the proposed extension to delivery times on Sundays, which would see deliveries received from 8am, all three assessments carried out in the ENA identified that there would be a 'low' impact on occupiers of both No 4 and Priory Farm. Deliveries to the site would involve the same or similar noise creating activities on a Sunday as they would on any other day of the week. The reason for the differing outcomes between the assessments carried out in respect of a 6am start and the 8am start proposed on Sundays is primarily due to 8am being considered to fall within daytime hours for the purposes of the assessment. This results in a time averaged level being used.
16. Whilst I acknowledge the findings of the assessments, I consider that there would be a reasonable expectation by neighbouring residents to be free of additional noise or disturbance at that time on a Sunday morning when many would be relaxing at home and getting up later than they would on a weekday. Although the time averaged noise level may be considered acceptable, the deliveries would still result in similar intermittent peaks in noise levels to those which resulted in a 6am start from Monday to Saturday being identified as having an 'adverse to significant adverse' impact upon occupiers of No 4.

17. These peak noise levels are also likely to be set apart from the more general background noise, including traffic on nearby roads, which would be expected to be at a lower level between 8am and 9am on a Sunday than at a similar time on a weekday. Accordingly, I find that the peak noise levels arising from deliveries would have an unacceptable impact upon the living conditions of occupiers of neighbouring residential properties.
18. 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 further measures including drivers arriving on site without excessive engine breaking noise, avoiding over revving, and accelerating gently until the vehicle is a reasonable distance away from the store. I acknowledge that these additional measures could be capable of reducing delivery-related noise impacts, however there is nothing before me to secure any control in respect of driver behaviour and habits.
19. The ENA primarily focuses deliveries made by HGVs, with no information provided regarding the number of deliveries that would be made by smaller vehicles or how these would be unloaded. It is unclear whether smaller vehicles would be able to use the loading dock used by HGVs, or at least able to use it fully and achieve 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.
20. The ENA assesses the impacts of the proposal on the occupiers of No 4 and Priory Farm, however at the time of my site visit No 4 appeared to be vacant. In any event, there is no evidence before me to suggest that the lawful use of this property has changed and therefore it could be occupied again as a residential dwelling at any point. Furthermore, whilst No 4 is the nearest dwelling to the appeal site, it is readily apparent from the objections received that noise and disturbance from deliveries to the store are already affecting occupiers of properties further afield, including those further north along Birmingham Road.
21. During the Covid 19 pandemic Government guidance led to delivery hours being relaxed to ensure supermarkets could restock safely. A further ministerial statement on 10 December 2021 extended this relaxation until the end of September 2022. The appellant has provided a list which shows that between May 2022 and July 2022 the store regularly received deliveries during the night, including several well before the 6am time sought in the appeal proposal. I am unaware of whether this continued after September 2022.
22. The Council has confirmed that in the last ten years only one complaint is on record relating to noise arising from deliveries at the store, with no such complaints being made during the past two years when delivery hour restrictions were relaxed. The appellant contends that this indicates that residents were not being disturbed by the night time deliveries. There may however be many reasons why no formal complaints were made during this period, including public knowledge that restrictions were relaxed during the pandemic and it would therefore be highly unlikely that any action would be

taken, or that they were unaware of where or how to formally express these concerns.

23. In any event the lack of formal complaints and objections during this period does not necessarily mean there is no harm. Indeed, the objections received from members of the public in relation to the appeal proposal highlights that the neighbouring occupiers consider that their living conditions are being adversely impacted by night time and early morning deliveries.
24. I note the appellant's comments that the proposed extended delivery times would give the supermarket greater operational and logistics flexibility and allow deliveries outside of peak morning traffic. However, no evidence has been provided which would lead me to conclude that the current delivery hours have led to difficulties in ensuring the consistent and sustainable supply of goods to the site. I also have no substantive evidence that the current hours have given rise to traffic congestion problems.
25. The Council's decision notice referred to concerns about light pollution. I acknowledge that delivery vehicles manoeuvring within the site could cause light pollution. However, there is no evidence before me to indicate that this has caused a significant disturbance to local residents. Furthermore, I find that the location of the loading bay to the rear of the store, and the existing boundary fence between the site and neighbouring residential properties 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.
26. For the above reasons, I conclude that varying the delivery hours would have an unacceptable impact on the living conditions of occupiers of neighbouring properties, with regard to noise and general disturbance. Therefore, the existing condition is reasonable and necessary. Consequently, the proposal is contrary to Policy CS.9 of the Stratford-on-Avon District Core Strategy 2011-2031 (adopted July 2016) which seeks to ensure proposals achieve a good standard of amenity for occupiers and that occupants of new and neighbouring buildings will be protected from unacceptable levels of noise.

Other Matters

27. 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.

Conclusion

28. For the reasons given above and taking into account the development plan as a whole and all other relevant materials considerations, I conclude that the appeal should be dismissed and condition 8 retained in its present form.

David Jones

INSPECTOR