



Appeal Decision

Site visit made on 5 November 2025

by **E Heron MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5th January 2026

Appeal Ref: APP/W4223/W/25/3372683

Asda Supermarket, Greenfield Lane, Shaw, Oldham OL2 8QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr S Roberts, Asda Stores Limited against the decision of Oldham Council.
 - The application Ref is VAR/353936/25.
 - The application sought planning permission for 'variation of condition 10 of PA/054343/07 as follows: "No service vehicles shall enter, leave, be loaded or unloaded within the site boundary of the retail unit outside the hours of 06.00 and 22.00 Monday to Saturday and 09.00 and 17.00 hours on Sunday, Bank and Public Holidays"', without complying with conditions attached to planning permission Ref PA/336191/14, dated 11 February 2015.
 - The conditions in dispute are Nos 1, 9 and 10 which state that:
 1. No service vehicles shall enter, leave, be loaded or unloaded within the site boundary of the retail unit outside the hours of 06.00 and 22.00 Monday to Saturday and 09.00 and 17.00 hours on Sunday, Bank and Public Holidays.
 9. No bulk headed mounted diesel vehicles refrigeration units shall be operated within the site boundary of the retail unit outside the hours of 07.00 and 22.00 Monday to Saturday and 10.00 and 17.00 on Sunday, Bank and Public Holidays.
 10. No service vehicles shall enter, leave, be loaded or unloaded within the site boundary of the retail unit outside the hours of 06.00 and 22.00 Monday to Saturday and 09.00 and 17.00 hours on Sunday, Bank and Public Holidays.
 - The reasons given for the conditions are: 1. To protect the amenities of the occupiers of nearby properties in accordance with Policy 9 of the LDF-SPD; 9. To protect the amenities of nearby residential properties; and 10. To protect the amenities of the occupiers of nearby properties.
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Decision

1. The appeal is allowed and planning permission is granted for Demolition of existing building and development of supermarket with associated car parking, service area and associated works, and erection of workshop, at Asda Supermarket, Greenfield Lane, Shaw, Oldham OL2 8QP, in accordance with the application Ref VAR/353936/25, without compliance with condition numbers 1, 9 and 10, previously imposed on planning permission Ref PA/336191/14 dated 11 February 2015, and subject to the conditions set out in the attached schedule.

Applications for costs

2. An application for costs has been made by Asda Stores Ltd, against Oldham Metropolitan Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. Allowing an appeal under Section 73 results in the creation of a new permission, as such, I have used the wording of the original act of development in my decision, in

place of that in the application form, as the description provided by the appellant and Council does not describe a form of development.

Background and Main Issues

4. The appeal site is a supermarket which was originally granted planning permission in 2005¹. In 2014, an application to alter the delivery times, through the substitution of a planning condition, was granted². This limited delivery times to 06.00 – 22.00 Monday to Saturday, and 09.00 and 17.00 Sundays, Bank and Public Holidays. It also restricted the use of diesel vehicle mounted refrigeration units between 07.00 and 22.00 Monday to Saturday and 10.00 and 17.00 on Sunday, Bank and Public Holidays. The conditions were imposed in the interests of protecting the living conditions of neighbouring occupiers.
5. The appellant seeks the removal of these conditions. Their stance is that the delivery restrictions impact fresh deliveries causing issues with process, availability and colleague hours. The Council is concerned that the effect of removing the conditions would be harmful to the living conditions of nearby neighbouring occupiers, with particular regard to night-time noise and disturbance.
6. The main issue is therefore whether conditions 1, 9 and 10 are reasonable and necessary to secure acceptable living conditions for nearby occupiers, in respect of noise and disturbance.

Reasons

7. The site delivery yard is at the north side of the supermarket, and is accessed from Dawn Street, separate to the main car park. The area in the vicinity of the delivery yard has a mix of uses including residential properties and car workshops. The loading bays are at the far end of the yard.
8. A Noise Impact Assessment (NIA) prepared by a suitably qualified expert, and dated 2nd December 2024, was submitted with the application. It has had regard to requirements of British Standards, the National Planning Policy Framework (the Framework), and relevant guidance set out in the Planning Practice Guidance. The NIA identifies the nearest residential receptors as those closest to the delivery route and gates, and it includes a baseline noise survey which captures existing background noise levels at relevant times, including night-time, incorporating weather conditions. The baseline noise survey established the representative background sound level to be 40dB LA90 between 23.00 – 06.00, and 49 dB LA90 between 06.00 and 07.00, and daytime.
9. The closest residential properties are terrace rows on Duke Street, Dawn Street and Eastway. During my site visit, I observed that in the vicinity of the houses, there was daytime background noise typical of a mixed use area. This included vehicle movements within the supermarket car park and delivery yard, general continuous traffic sounds, and bursts of louder noises and conversation from the open doors of the car workshops. The effect of removing the restriction on hours of delivery would be that delivery movements could also take place at night, when these background sounds would be much lower. Sounds that are generated from deliveries include vehicles manoeuvring, loading and unloading goods, rolling of cages, vehicle refrigeration units, amongst other things.

¹ PA/048578/04

² PA/336191/14

10. World Health Organization Guidelines for Community Noise 1999 (WHO guidance) gives guidance on suitable internal and external noise levels. For steady sounds in and around residential properties it recommends 45 dB LAeq outside bedrooms with an open window over 8 hours at night. It also cites research indicating that for a good sleep, indoor sound pressure levels should not exceed approximately 45 dB LAmax more than 10-15 times per night.
11. The NIA adopts worst-case assumptions. This includes maximum number of deliveries and slower vehicle speeds (meaning longer exposure time to noise, whilst vehicles pass the residential receptor). This approach accords with BS4142³. The NIA also incorporates noise from vehicles approaching along Dawn Street, and derived sound levels when deliveries occur at the service yard.
12. The NIA states that activities within the service yard itself would be below 45 dB LAeq during night-time hours, measured from the nearest residential receptors. Vehicle movements passing the nearest residential receptors would have a noise rating of 57 dB LAmax, assuming an open window for ventilation. Whilst this is in excess of 45 dB LAmax, the number of exceedances would be no more than 4 HGV movement (2 deliveries), between 23.00 – 06.00, and a total of eight movements during the entire night-time period of 23.00 – 07.00. The NIA also identifies that the opening and closing of the gate would marginally exceed 45 dB LAmax, but this would occur 1-2 times per night. The HGV movements and gate opening/closing would therefore be below the recommended WHO guidance threshold, of 10-15 times per night. On this basis, the NIA concludes that noise impacts would be below Lowest Observed Adverse Effect Levels, and that no mitigation is needed for this reason.
13. The Council asserts that night-time deliveries would exceed Significant Observed Adverse Effect Level, particularly during unloading and vehicle manoeuvring, however this is not supported with evidence. Neither is the Council's mention of acoustic screening and mitigation measures. The Environment Health officer consultee raises an objection with regards to noise, but their comments do not refer to the NIA, and as such it is not apparent that this technical information was taken into account by them.
14. Overall, there is no substantive evidence before me to indicate that the calculations in the NIA measured against technical guidance are incorrect, and therefore I have no clear reasons to disagree with its conclusions. I consider it to be robust for the purposes of demonstrating that the proposal would not have an unacceptable adverse impact on the living conditions of neighbouring residents by virtue of noise from a limited number of deliveries.
15. The effect of the removal of the relevant conditions would be unrestricted night-time deliveries. The NIA clearly refers to a limited number of sound events, relating to the WHO thresholds for a good sleep, and the appellant has stated that the likelihood would be that only one fresh delivery would be required overnight. A condition limiting the number of deliveries during night-time hours would therefore be necessary and relevant to the development, and I note the Council has suggested this.

³ British Standard 4142: 2014+A1:2019, "Methods for rating and assessing industrial and commercial sound"

16. The Council and interested parties cite issues with vehicles idling in the highway with engines running. It is not clear to me if this takes place regularly, or particularly during early morning hours, and there is nothing before me to counter these concerns. A noise generating occurrence such as this, falls outside of the scope of the NIA. As such, without conditions to restrict vehicles waiting outside the site with engines idling, I cannot be certain that such events would not cause undue noise and disturbance to neighbouring occupiers' living conditions.
17. The Delivery Management Plan (DMP), sets out a range of procedures aimed at ensuring deliveries are made with the least possible noise. It includes a requirement for delivery drivers to switch engines off immediately when not manoeuvring, and for warehouse colleagues to ensure gates are open before vehicles arrive. Given the limit on the number of night-time deliveries, this would negate the need for any vehicles to wait on the highway. Furthermore, the DMP includes protocols relating to other potential noise and disturbance scenarios, which are not scoped into the NIA. This includes shouting, internal noise if doors are left open, and noisy gates if not maintained.
18. The wording of the DMP is such that whilst the general protocols are appropriate and proportionate, there would be areas of discretion and judgment. There is reference to an internal complaints procedure, however the onus for its enforcement lies entirely with the store manager. There is no requirement within the DMP for the appellant to report on complaints received or allow for a review or adjustment of practice if it transpires that there are regular concerns. If there is a failure to manage deliveries effectively, the Council would or could, be asked to enforce the DMP, but in its current form, it is not precise or enforceable. As such, I am not persuaded that the DMP as worded would effectively negate potential noise and disturbance issues that may arise from matters not referred to in the NIA. Nonetheless, I do not consider it unreasonable to require the development to operate in accordance with a revised delivery management plan, that broadly relates to the protocols in the DMP but should include provisions to allow it to be robustly enforced. Whilst regulating night-time deliveries can be challenging due to unsociable hours and nature of the noises, a suitably worded condition could enforce the required restrictions. I will return to this later in my decision.
19. Accordingly, and in the absence of evidence to the contrary, I consider that the removal of conditions 1, 9 and 10 would not cause harm to the living conditions of nearby occupiers in respect of noise and disturbance, subject to other conditions limiting the number of night-time deliveries and a Delivery Management Plan. This would be in accordance with the relevant provisions of Policy JP-P1 of Places for Everyone Joint Development Plan Document for Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Tameside, Trafford and Wigan 2022 – 2039, and Policy 9 of the Oldham Local Development Framework, Development Plan Document – Joint Core Strategy and Development Management Policies. Amongst other things these policies seek to ensure development does not cause significant harm through impacts including noise.

Other Matters

20. I have taken account of concerns raised by interested parties regarding the potential for extended opening hours, including 24 hour store operation. However, I must consider the appeal on its merits having regard to the information before me.

21. Interested parties have also referenced highway safety, parking congestion and vibration. However, I am mindful that the proposal solely relates to extending delivery hours with a limit on delivery frequency, into times when highway use in the vicinity would be significantly less than daytime commuting hours. There is also limited evidence before me in respect of structural vibration, and as such I can only attribute limited weight to this matter.

Conditions

22. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also restate the conditions imposed on earlier permissions that continue to have that effect. In the absence of any information from either main party concerning the status of the other conditions imposed by the substantive planning permission, I shall impose all those that I consider remain relevant. The conditions and the reason for the imposition of those reimposed conditions are set out in the Schedule below. In the event that some have in fact been discharged or part-discharged, that is a matter which can be addressed by the parties. Conditions 3 to 6 are required to protect the viability and vitality of nearby town and district centres. Condition 7 is required in the interests of highway safety. Conditions 8 to 11 are required to protect neighbouring occupiers living conditions.
23. I have imposed a condition restricting the number of night-time deliveries to no more than five in the interests of safeguarding the living conditions of local residents, and both parties have agreed to this. I have also conditioned the requirement for a Delivery Management Plan, for the reasons set out in my decision. The parties have had the opportunity to comment. Even though the appellant would have preferred to submit a revised Delivery Management Plan as part of the appeal process, I am satisfied that this is a matter for the Council taking account of any local issues.
24. I have not imposed a condition requiring a Noise Mitigation Measures Protocol, as there is no substantive evidence that additional mitigation measures would be needed. Nor have I imposed a condition restricting the service area use, as there is nothing before me to indicate that the delivery yard is, or would be used for any other purpose, other than for deliveries.

Conclusion

25. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

E Heron

INSPECTOR

Schedule of conditions

- 1) The service yard shall be restricted to no more than five deliveries (by either HGV or LGV) during the night-time period of 23.00 to 06.00.
- 2) Prior to any deliveries taking place between the hours of 23.00 to 06.00, a Delivery Management Plan (DMP) shall first be submitted to and approved in writing by the Local Planning Authority. The DMP shall include:
 - a schedule of protocols directly relating to minimising noise and disturbance to nearby residential occupiers;
 - a procedure for ongoing monitoring, reviewing and updating of protocols and a timetable for such;
 - details of those responsible for its enforcement;
 - a log of complaints to be kept and made available to the local planning authority upon request, in accordance with a timetable included within the DMP.

The deliveries between the hours of 23.00 to 06.00 shall take place at all times, in complete accordance with the provisions of the DMP.

- 3) The gross floorspace of the retail unit shall be limited to a maximum of 6,473 square metres.
- 4) The net retail floorspace of the retail unit shall be limited to a maximum of 3,252 square metres. The retail sale of convenience and non-convenience goods shall be limited to a maximum of 2,044 and 1,208 square metres respectively of the total net retail floorspace at all times.
- 5) No mezzanine floors shall be created within the retail unit other than the customer café shown on the drawing referenced drawing number 6251 [10] 01 Revision D received by the Local Planning Authority on 2nd February 2007. Thereafter, the mezzanine shall be used as a customer café only and not for the retail sale of convenience or comparison goods.
- 6) The retail unit shall be occupied by a single retail operator at all times and shall not be sub-divided into separate retail units without the prior written approval of the Local Planning Authority.
- 7) A sight line measuring 4.5 metres by 90 metres to the western side of the junction of the car park access with Greenfield Lane shall be provided and maintained free of all obstruction exceeding 0.6 metre in height within the splay area so formed on land under the applicant's control.
- 8) All loading and unloading activities to the retail unit shall take place in a dedicated dock. The docking bay(s) shall be constructed in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.

- 9) The cumulative noise levels from all fixed plant, equipment and machinery shall not exceed a rated noise level of 34dB(A) 5 minutes. The rated noise level shall be determined at a distance of 3 metres from the nearest noise sensitive premises.
- 10) The use of the retail store shall not be open to customers outside the following times:-
- Monday to Saturday – 08.00 to 22.00 each day
- Sunday and Bank/Public Holidays – 11.00 to 17.00 each day
- 11) The door and external staircase to the mezzanine floor as shown on the drawing referenced 130M and received by the Local Planning Authority on 2nd February 2007 shall be used for emergency purposes only.

**** END OF SCHEDULE ****