

DELEGATED OFFICER REPORT

Application Ref: F/21/91821

Site Address: Unit 1, Hedge End Retail Park, Charles Watts Way, Hedge End, SO30 4RT

Case Officer: David Huckfield

Description: Removal of condition 17 (Delivery hours) of planning permission F/21/91821 for the use of existing retail unit as foodstore (Use Class E) with external building and layout alterations to include changes to car park.

Particular Site Constraints?	Yes ☒	No ☐
Within the Urban Edge Within an Out-of-Centre Location Existing Retail Park		

Relevant Planning History?	Yes ☒	No ☐
Z/19545/032 – Demolition of existing retail warehouse and garden centre of 4,827 square metres gross external area and replacement with three new retail warehouse units of 4,347 square metres gross external area. New entrance to courts retail unit, alterations to car park, associated external works, landscaping, and de-culverting and re-siting of existing watercourse including the removal of trees – PERMIT – 02/07/1998 U/12/70225 – Application for a lawful development certificate for a proposed unrestricted A1 retail use (removal of condition 9 of planning permission 19545/009) – UNIT 2 – Allowed on Appeal (18 September 2012) F/18/84198 – Minor alterations to the exterior of the building and adjacent public realm to facilitate the subdivision into 2no. retail units – PERMIT (04/12/2018) F/20/87203 – Partial demolition and subdivision of Unit 1, the subdivision of Unit 2 and the installation of mezzanine floors in Units 1 and 2 and related works, elevational alterations and refurbishment of Units 1, 1A, 1B and 2, and alterations to car parking layout – PERMIT (04/06/2021) F/21/91821 – Use of existing retail unit as foodstore (Use Class E) with external building and layout alterations to include changes to car park – PERMIT (12/09/2022)		

Site Visit:	Yes ☒	No ☐
Publicity:	Letters ☒	Site Notice ☒
		Newspaper ☐

Representations

58 Goodlands Vale, Hedge End

We have lodged a previous objection regarding the excessive noise generated by Aldi due to continuous fan noise and overnight deliveries (which is against current agreement). This application if successful will increase this noise further. This is affecting our sleep, peace of mind and causing stress and anxiety, not to mention the likelihood of affecting the resale value of our property (as when selling you must declare any previous or ongoing adverse issues against neighbours).

59 Goodlands Vale, Hedge End

Daily delivery hours / frequency need to be reduced, deliveries take place everyday, numerous times with the HGV engines or refrigeration units running for the duration of the deliveries, this is a constant drain on those of us that are residents behind Aldi. The drone of the engines can be heard within any room in the house, even with all doors and

windows closed. During the summer months where doors and windows are open this noise will be more audible and become unbearable. Aldi should install some kind of sound proofing along the rear perimeter of the store. There were no issues prior to Aldi being operational. We shouldn't have to be victim to unnecessary noise which could be easily resolved by Aldi.

Consultee Responses (Summarised)

Hedge End Town Council	Object on the basis of the proximity to residential areas. The restrictions were put in place for this reason.
HCC Highways	No objection.
National Highways	No objection.
Environmental Health	The application proposes the removal of all restrictions to delivery times. The current permission was issued to the present occupier, Aldi, in September 2022 it was agreed that deliveries be restricted to: 0700 and 2200 Mondays to Saturdays or 0900 to 1700 on Sundays and Bank Holidays. In the covering letter supporting the application among the reasons given for the required extension in hours include: operational flexibility; using staff in an efficient manner and to avoid rush hour traffic. Further, it is advised that there will be no increase in the number of deliveries, which are given as 1 or 2 Aldi HGV deliveries per day, with an unspecified number of smaller vehicles delivering locally sourced produce. It is further stated that all vehicles are controlled by Aldi logistics, except milk deliveries. Deliveries are identified as taking 45-60 minutes to occur and waste collections as 15 minutes. Though not stated explicitly in the covering letter, or introduction to the Noise Report, at section 4.5 of the report it is highlighted that the noise impact calculations have been carried out on the basis that a 3m high acoustic barrier is erected along the southern boundary of the service yard. The applicant goes on to say that the submitted Noise Report demonstrates; through prediction of likely noise impacts based on measurements at other Aldi stores, and on measurements carried out during a delivery to the store in question, that significant noise impacts on the neighbouring dwellings will not occur. To mitigate delivery noise the applicant proposes a Quiet Delivery Scheme, which specifies measures to minimise noise from Aldi operated deliveries. This does not address waste collections. Residential properties are located on Goodlands Vale with their rear facades facing roughly toward the service yard of the Aldi store. The existing delivery hours were agreed with the applicant so as to prevent noise disturbance from deliveries affecting the residents during night time hours, and provide some respite during Sundays. Given that the applicant advises that no increase in the number of deliveries is required, we would comment that the current permitted hours are such that they encompass the hours before and after the rush hour by some margin. In addition, this Service has been contacted by residents of Goodlands Vale in connection with excessive noise from deliveries,

including allegations that they sometimes occur at times outside of the currently permitted hours.

To assess the severity of noise impacts from deliveries the Noise Report has considered maximum noise events, L_{Amax}, compared to a level of 60 dBA, outside as these are related to sleep disturbance. It also considers the average noise level, L_{Aeq}, for the delivery, averaged over 1 hour. Surveys of ambient noise conditions have been carried out with the most recent in 2023 considered robust by the report's author. Measurements were also carried out during a delivery to the store adjacent to the delivery vehicle and near one of the dwellings on Goodlands Vale.

Measurements of maximum delivery noise adjacent to the residential dwelling is reported as being around 50 dBA, and subjectively only occasionally perceptible. The noise climate is described as being dominated by road traffic noise on the M27 and Upper Northam Road at the time.

Reviewing the comments in the report we do not believe that the applicant has satisfactorily demonstrated that significant adverse impacts will be avoided, or that noise impacts have been minimised, our reasons as follows:

- For the assessment of noise impacts the background noise level obtained during the 2023 survey has been chosen as the report's author considers it robust. We would highlight that the 2021 and 2023 surveys show similar levels, except at night, when the 2021 survey shows lower levels. Given the similarity in daytime levels, we are concerned that adopting the 2023 night time levels will underestimate noise impact during sleeping hours, by comparing delivery noise impact against these higher background levels.
- The survey location used in 2021 and 2023 is located closer to Upper Northam Road than the dwellings, and as such subject to higher traffic noise levels from the road, and higher L_{Amax} events. The short duration of the noise surveys means it is not possible to determine if the chosen background noise levels are truly robust and representative of noise conditions as experienced at the residents' dwellings.
- The BS4142 noise assessment assumes only one rating penalty for the delivery noise. The impact is also considered in terms of how average noise levels compare with World Health Organisation, WHO, advice. We would point out that the WHO standards referred to are for steady noise sources and not the type of irregular and impulsive noise that characterises deliveries. In our view adjustments should be applied to address the very different noise character under consideration here.
- A Quiet Delivery Scheme, QDS, is proposed. This provides advice for Aldi drivers, however it would not apply to drivers from waste collection companies (the noise impact of which is not assessed), nor is it possible to see how it would apply to other non Aldi employees e.g. hauliers / drivers.
- The report references a 'real world' delivery being monitored and concluded to not be significant. We would highlight that the delivery noise levels were measured 5 metres from the lorry, and it is likely that the driver / operator would have been aware that they

were being monitored. The measured noise levels are lower than those used previously to 'predict' noise impact, and which were reported at the time as being representative and based on real world measurements of several deliveries at other Aldi stores. In our view, we think it would be fair to conclude that the 'typical' levels used previously are more representative given they encompass a wider range of deliveries rather than a one off. Simultaneous measurements carried out in Goodlands Vale were in an open area and not at rear of the dwellings. The subjective remark that the delivery was not particularly audible needs to be taken in the context of the time, mid evening, when traffic noise levels from the M27 are still high.

- The acoustic environment at the location is noisy, being dominated by road traffic noise, and we would highlight the advice in Planning Practice Guidance Noise which states, '...In cases where existing noise sensitive locations already experience high noise levels, a development that is expected to cause even a small increase in the overall noise level may result in a significant adverse effect occurring even though little to no change in behaviour would be likely to occur...'.
- Similarly, where the reporter advises that a change of 3dB is 'imperceptible' we would highlight that Planning Practice Guidance Noise advises, 'The subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. ...Some types and level of noise will cause a greater adverse effect at night than if they occurred during the day – this is because people tend to be more sensitive to noise at night as they are trying to sleep...'. In this case we would point out that it is proposed to extend deliveries into the sleeping hours, and that the nature of the noise generated by a delivery lorry unloading is notably different in character to that of distant road traffic noise.
- The report references a 3 metre high acoustic barrier and includes the attenuation from this in its calculations of noise impact. Whilst we are supportive of additional attenuation, we are uncertain if this can be included as it may require planning permission in its own right. We would also always advise that the process by which the barrier was designed and selected be included in the report, so we can assess if it is the most practicable option. This is of course on the basis of all practical options having been considered in the round.

In conclusion, we do not support the application to extend delivery hours as we are concerned that the application has not shown robustly that significant adverse noise impacts at night will be avoided, and that adverse impacts will be otherwise minimised.

Following the receipt of updated information:

I've reviewed Sharp Redmore's response, dated 18.3.24 in respect of our previous comments and note that they stand by their previous reports and comments. In a similar fashion, I stand by my comments in respect of their report, and why I don't think it demonstrates the suitability of extended delivery hours.

From Eastleigh's perspective the key aspects to consider in terms of whether the operational hours should be extended are:

	• Have Aldi made a case for requiring the extended hours given the low number of deliveries and wide hours they already have and previously agreed with us? • Are three 1-day noise studies carried out over a number of years, including traffic flows likely altered by lockdown representative of the noise climate (variability) across the working week and weekend for the purposes of assessing impact? [Jon Pyke (the EHO at the time) did initially criticise their approach to obtaining background noise data however he didn't pursue this as he took a view that by limiting delivery hours we were striking an appropriate balance between operational flexibility and residential amenity] • Should reliance be placed on noise measurements from a single delivery monitoring event, when previously the data used was based on a range of deliveries at similar stores, and therefore is this 'one off' representative of the range of noise levels likely to be generated. (Is it a reasonable worst case?) • Planning policy advises that we consider noise change, i.e. the characteristics of the noise, and not just analysis by numbers. Is the intermittent and irregular noise of a delivery comparable or intrusive when compared the existing noise climate, distant road traffic, which is bland and featureless. This is more likely to be noticeable especially at night, when there will be fewer other noise occurring. • Has the report demonstrated that extending the deliveries into times when people would expect to be sleeping, or trying to sleep, is acceptable? I think not, given its reliance on the numbers' rather than the context / character.
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Policy:

Legislative Background:

Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise.

The Development Plan:

The Development Plan comprises of the policies of the Eastleigh Borough Local Plan 2016-2036 and the application must be assessed against those that are of relevance to the proposed development. The relevant policies in this case are: S1 (Delivering Sustainable Development), S2 (Approach to New Development), S4 (Employment Provision), DM1 (General Criteria for New Development), DM3 (Adaption to Climate Change), DM8 (Pollution), DM13 (General Development Criteria – Transport), DM14 (Parking).

National Planning Policy/Guidance:

The Revised National Planning Policy Framework (the NPPF or Framework) was published in December 2023 and as set out within paragraph 224 the policies contained within it are material considerations which should be taken into account in dealing with applications from the day of its publication. The Planning Practice Guidance provides additional guidance in support of the policies within the Framework and is also a material consideration in the determination of the application.

Assessment:

Summary of proposal:

Planning permission was granted in September 2022 for the use of the application unit as a foodstore (Use Class E) with external building and layout alterations to include changes to the car park (F/21/91821). This consent has been implemented with the store now being occupied and operated by the retailer Aldi. The permission was subject to a number of conditions, with these including a restriction on the times when deliveries could take place to or from the premises (Condition 17).

In imposing this condition, the Local Planning Authority had regard to the noise assessment which had accompanied the submission and the comments of the Council's Environmental Health Team who had been a consultee on the application, with the hours specified within the condition being considered to achieve a reasonable and necessary balance between not unduly restricting the economic activities of the end occupier and protecting residential amenity and, specifically, that of the occupiers of Goodlands Vale which lies in relatively close proximity to the south/south-east of the site.

The condition in full reads as follows:

(17) No deliveries to or from the retail units the subject of this permission shall be undertaken except between the hours of 0700 and 2200 Mondays to Saturdays or 0900 to 1700 on Sundays and Bank Holidays.

Reason: To protect the amenity of occupiers of nearby residential properties.

The current application seeks to remove this condition in full, the result of which would be that deliveries to and from the store could take place on an unrestricted basis (i.e. at any time of the day or night and on any day of the week). The information provided with the application states that this is sought in response to demand for greater operational flexibility in the delivery hours at the store to meet the needs of customers and thus allow for the restocking of shelves in a safe and efficient manner, and to provide the flexibility to deliver outside of peak hours to avoid traffic and congestion.

As the condition was imposed for amenity protection reasons, the implications of its removal upon the amenity of nearby occupiers forms the principal matter of consideration in assessing the acceptability of the proposals. This is covered below, along with thereafter the other material considerations of relevance to the application.

Impact on the amenity of the occupiers of nearby residential properties:

As noted above, the application premises lies within nearby proximity to residential properties in the form of the dwellings within Goodlands Vale which are situated to the south/south-east of the site. The store's service and delivery area, along with the vehicular access to it, lies to its southern side with this being separated from the properties within the northern part of Goodlands Vale by a modest area of woodland. Given this proximity and the site layout, there is potential for the removal of the time restrictions on deliveries to and from the store to impact on the amenity of neighbouring residents by way of noise and disturbance, especially during the night time period.

In this regard, the application is supported by an Environmental Noise Assessment (ENA) which seeks to determine the baseline conditions at the closest residential properties, predict the noise contribution from the proposals and assess the impacts on the occupiers of these dwellings based on the relevant British Standards and guidance, as well as suggest any mitigation measures where these are deemed to be required. The ENA concludes within Paragraph 6.2 that delivery activity noise levels from the store's loading bay would not at any time give rise to significant adverse impact in the aforementioned regards and it thereby considers that the proposals would comply with the requirements of national planning policy.

Following a review of this information by the Council's Environmental Health Officer (EHO) however, a range of concerns in terms of the impacts of the proposals and the robustness of the assessment that has been carried out in this respect have been raised. These are

set out in detail within the consultation response section of this report (see above) and include, but are not limited to, the robustness and suitability of the background noise levels used within the assessment, the appropriateness of the location and frequency of the surveys undertaken, the representativeness of the monitoring of a delivery event that was carried out on site, and the manner in which the noise impacts of deliveries have been categorised having regard to the irregular and impulsive noises that they can give rise to. Whilst noting the responses provided by the applicant's noise consultant within the subsequently submitted technical note, the Council's EHO has maintained their objection and the initial concerns that they had raised.

As highlighted above, the implications of the removal of the condition would be to allow for unrestricted deliveries to take place, including during the night time period when residents would be trying to sleep and have a not unreasonable expectation for some peace and quiet, particularly given that the application unit and the others adjacent to it would be closed and it wouldn't therefore be expected that intensive activity would be taking place on the retail park. It is also apparent from the comments of the Environmental Health Officer that their service has already received complaints regarding noise and disturbance arising from deliveries to this site, with this also being reflected within the third-party representations received in relation to the application. Allowing unrestricted delivery times is likely to notably exacerbate such issues, particularly in the absence of adequate evidence having been provided to the contrary in respect of the noise impacts of the proposals.

Taking account of the above factors, it is considered that insufficient information has been provided to demonstrate that the proposed removal of the restriction on the hours during which deliveries can take place to and from the store would not result in an acceptable impact upon the amenity of the occupiers of neighbouring residential properties by way of noise and disturbance. The proposals are therefore contrary to Policies DM1 and DM8 of the Eastleigh Borough Local Plan 2016-2036 and Paragraphs 135, 180 and 191 of the National Planning Policy Framework, which collectively require a high standard of amenity for existing and future occupiers of land and buildings to be secured and that development does not give rise to significant adverse impacts on health and quality of life through noise and disturbance.

In reaching this conclusion, regard has been had to the mitigation measures which have been proposed within the submission, which include a Quiet Delivery Scheme (QDS) and the provision of a 3-metre high acoustic barrier within the area between the site and Goodlands Vale. It is not considered however that these measures would sufficiently mitigate the harm identified and there are also reservations as to the enforceability of some of the measures within the QDS – for example, but not limited to, door shutting being kept to a minimum, the throttle and break within delivery vehicles only being used when necessary, and drivers seeking to accelerate gently until the vehicle is a reasonable distance from the store, etc...

As set out within Paragraph 4.13 of the submitted ENA, the acoustic fence would provide mitigation to avoid noise giving rise to significant adverse impacts (in line with the requirements of the NPPF). This is, however, on the basis of the findings of the assessment itself and the methodology employed which, as noted above, the Local Planning Authority (LPA) have a number of concerns in relation to the robustness and suitability of.

It is also a material consideration that the fencing proposed is, in itself, operational development and, owing to its height, requires express planning permission in its own right, with this having been neither sought nor obtained. The location where the fence is proposed to be sited, whilst within the blue lined area, also lies outside of the redline for the planning permission to which the original condition now being sought to be removed was subject to. Taking account of these factors, the LPA would raise notable reservations in respect of any reliance on the fence as mitigation and that this would be able to be appropriately secured under the auspices of the current application which seeks approval only for the removal of condition 17.

Other material considerations:

Economic sustainability:

Part 6 of the NPPF states that planning decisions should help create the conditions in which businesses can invest, expand and adapt, and that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development (Paragraph 85). This requirement is not however unqualified and the NPPF is clear that the Framework should be read as a whole (Paragraph 3).

Whilst noting therefore the information provided with the application which sets out that the removal of the restrictions on delivery hours would enable the store to have a greater level of flexibility and meet its operational needs and those of its customers more efficiently and effectively, it is not considered that any modest economic benefit that would arise from this would be such as to outweigh the harm identified to residential amenity and which, as noted above, would conflict with the provisions of Paragraphs 135, 180 and 191 of the NPPF.

Highway matters:

In terms of the highway related impacts of the application, no objection has been raised by the Highway Authority or by National Highways and it is not considered that the additional time period for deliveries would result in a significant material intensification in terms of the number of vehicle movements, such that this would unduly impact on the highway network. The access arrangements to the site would also remain unchanged with adequate on-site turning available to enable vehicles to access and egress the public highway in a forward gear. There is therefore no conflict with the relevant local and national planning policies in these particular respects.

Climate Change:

In July 2019, the Council declared a Climate Change and Environmental Emergency. In doing so it agreed, among other things, to: (a) put in place measures to ensure the Council's own operations and functions achieve carbon neutrality by 2025; (b) work with partners to aim for all projects and services delivered in the Borough to achieve carbon neutrality by 2030; (c) ensure that the Council's procurement policy recognises carbon neutrality as one of its primary considerations; and (d) recognise the urgency of action to mitigate and adapt to climate change in every decision taken by the Council. This is underpinned by the Climate and Environment Emergency Strategy 2020–2030 and the supporting Climate and Environmental Emergency Action Plan – Update June 2020.

The declaration of the Climate Change and Environmental Emergency demonstrates a strong commitment from the Council to achieve net zero. The NPPF, development plan and adopted local plan policy do not set this as a specific target, but it is a material consideration to be considered alongside all other material considerations. In any case addressing climate change is a core part of the NPPF and local plan policy. The need to support the economy is also part of the Strategic Environmental Assessment for the adopted local plan, as is an assessment of climate impacts. When considering the impact of climate change and taking account of the nature of the application, the proposed development raises no significant concerns.

Equalities Implications:

Section 149 of the Equalities Act 2010 created the public sector equality duty. Section 149 states:

- A public authority must, in the exercise of its functions, have due regard to the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

When making policy decisions, the Council must take account of the equality duty and in particular any potential impact on protected groups. It is considered that this application does not raise any equality implications.

Conclusion:	For the reasons set out above, it is considered that the proposals fail to sufficiently demonstrate that the removal of the restriction on the hours during which deliveries can take place to and from the store would not result in an unacceptable impact upon the amenity of the occupiers of neighbouring residential properties by way of noise and disturbance. The proposals are therefore contrary to Policies DM1 and DM8 of the Eastleigh Borough Local Plan 2016-2036 and Paragraphs 135, 180 and 191 of the National Planning Policy Framework. There are considered to be no material considerations to justify a decision otherwise than in accordance with the development plan and, accordingly, it is therefore recommended that planning permission be refused.
Recommendation:	PERMIT ☐ REFUSE ☒