

Appeal Ref	APP/W1715/W/24/3357650
LPA Ref	X/24/96772
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The Planning Inspectorate
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11 February 2025

Town and Country Planning Act 1990

Appeal By: Aldi Stores Limited

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

Appeal Reference: APP/W1715/W/24/3357650

LPA Reference: X/24/96772

With reference to the above planning appeal, the Local Planning Authority (LPA) are of the opinion that the majority of the issues raised are covered in the Reasons for Refusal contained within the LPA's Decision Notice dated 17 June 2024 and the Case Officer's Delegated Report, and would therefore ask that the appointed Inspector take these documents, which have been forwarded to the Planning Inspectorate as part of the completed questionnaire, as the LPA's Statement of Case, together with the following comments which provide responses to matters raised within the Appellant's Statement of Case, where this is considered to be necessary and appropriate.

For the avoidance of doubt, having reviewed the Appeal Statement provided by the Appellant's Acoustic Consultant (dated 6 November 2024 Ref: 2120326/AS1) which forms Appendix 3 of the Appellant's Statement of Case, the Council maintain the concerns regarding the findings and methodology used within the Environmental Noise Assessment (ENA) which accompanied the planning application (Ref. 2120326/R03, 7th December 2023) which were set out within the consultation responses of the Council's Environmental Health Officer dated 18 March 2024 and 13 May 2024. These responses have been provided to the Planning Inspectorate with the Council's Questionnaire and are also repeated in full within the Case Officer's Delegated Report within the section entitled 'Consultation Responses'.

Response to the Appellant's Statement of Case

Complaints arising from neighbouring residents in relation to delivery noise and disturbance

The aforementioned consultation response provided by the Council's Environmental Health Officer referred to the service having been contacted by the residents of

Goodlands Vale, which is situated to the south of the appeal site, in connection with excessive noise, including allegations that the deliveries to the Aldi store sometimes occur at times outside of the current permitted hours.

The Appellant alludes to this matter within their Statement of Case, with information obtained via a Freedom of Information (FOI) Request made to the Council, which is appended to their statement, providing the foundation for their conclusion that “a Statutory nuisance was not deemed to have occurred and therefore the complaints received do not provide a basis for the refusal of the Section 73 application that forms the application in question within this appeal” (paragraph 5.12).

The Council would highlight, however in this regard, that the conclusion of the Environmental Health Team’s investigation does not in itself indicate that there was no impact upon the amenity of residents or disturbance being caused, nor does it automatically follow that the Section 73 application the subject of this appeal should therefore be granted, it simply denotes that the threshold for the issuing of a Noise Abatement Notice, in line with the provisions of the relevant legislation, had not been reached in relation to that particular investigation at that particular point in time. The fact that complaints were being received at all clearly highlights, in the view of the LPA, that neighbouring occupiers consider that their living conditions are adversely impacted by night time and early morning deliveries at the site.

It should further be noted in this respect that the matter was also being investigated by the Council’s Planning Enforcement Team (as noted within the response included within the Appellant’s Appendix 7 and quoted in paragraph 5.12 of their Statement of Case), as any deliveries being undertaken outside of the hours permitted by condition 17 of planning permission F/21/91821 (see Appendix 1) would be in breach of this condition. The enforcement case ultimately led to the application that is the subject of this appeal being submitted and it is, in the view of the LPA, considered to be a possibility that the pattern of deliveries may have changed as a result of the involvement of the Council’s Enforcement Team which may, accordingly, have impacted upon the level of any complaints being made.

The Appellant also, within paragraph 5.7, refers to it not being possible to ascertain whether complaints made were in relation to delivery activity solely undertaken by Aldi, as the service yard area at the rear of the building is also used by Oak Furniture Land and SCS, the occupiers of the adjoining retail units. For clarity, and as set out within the Council’s second response to the FOI, the complaints received were associated with the property’s (being Aldi’s) operation. For the Inspector’s information, the adjacent units occupied by SCS and Oak Furniture Land, are subject to tighter restrictions on deliveries as per condition 12 of planning approval F/20/87203 (see Decision Notice for this application in Appendix 2), than those which apply to the Aldi store, and which were imposed on the subsequent consent Ref. F/21/91821.

Economic and environmental benefits arising from the proposals

The Appellant, within paragraph 6.7 of their Statement of Case, highlights the provisions of Paragraph 85 of the NPPF which states that, amongst other things,

planning decisions “should help create the conditions in which businesses can invest, expand, and adapt. Significant weight should be placed on the need to support economic growth”, with the subsequent paragraphs of their Statement of Case highlighting the benefits of having unrestricted delivery hours to the operation of the Aldi business, including improving the efficiency of its logistical operations and the foods available within the store for its customers. The Appellant further contends that the expanded delivery hours would, in addition, have sustainability benefits including a reduction in the number of miles travelled, emissions and overall carbon footprint, as well as having positive highway implications including helping to lower congestion (paragraph 6.12).

There is, however, no substantive evidence presented that the current permitted hours for deliveries to the store have given rise to traffic congestion problems, nor has any information been provided which demonstrates that these hours have led to any difficulties in ensuring a consistent and sustainable supply of goods to the premises. The information supplied by the Appellant states that Aldi stores only receive one or two deliveries a day from its HGVs, with smaller vehicles being used to bring in locally sourced goods, and that early morning or night-time deliveries might not even necessarily need to take place on a daily basis in the event that the hours restriction was removed (paragraphs 6.11 and 6.12).

Further, the current permitted hours allow for deliveries 1 hour before the store opens to customers every day of the week, as well as 1 hour after the store closes on Sundays. The Appellant has confirmed within their Statement of Case (paragraph 6.15) that delivery unloading on average takes only 45-60 minutes and, as such, an HGV delivery could already take place on a daily basis prior to the store opening. Whilst acknowledging that it may not be desirable to, on occasion, have to stock shelves whilst customers are in the store, such activities are not considered to be entirely unusual nor are they unreasonable.

Given the above considerations, the LPA would contend that the proposed removal of the current restriction on the delivery hours to the store is not particularly critical to its efficient operation, nor would the desire to have flexibility for the Appellant in this regard justify the allowing of deliveries to take place at any time, particularly during the night time period when nearby neighbouring residents would be trying to sleep and have not an unreasonable expectation for some peace and quiet, particularly given that the application unit and the others that are adjacent to it would be closed and it wouldn't, therefore, be expected that intensive activity would be taking place on the retail park.

Whilst the LPA therefore recognise and acknowledge the provisions referenced in Paragraph 85 of the NPPF, these are not unqualified. The Framework is clear that it should be read as a whole and, as such, the support provided for businesses and innovation by Paragraph 85 should not be at the expense of compliance with development plan policy or the amenity of neighbouring residents. In any event and, for the reasons as set out above, the benefits are particularly modest and, in the view of the LPA, would not represent a material consideration of sufficient weight to outweigh the harm identified.

Acoustic fencing

Paragraph 4.13 of the Environmental Noise Assessment (ENA), which accompanied the planning application (Ref. 2120326/R03, 7th December 2023), set out that:

“Overall, when considering context, this updated assessment objectively demonstrates that when considered in context deliveries could be made during the night time to the Aldi loading bay at Hedge End Retail Park, without associated noise giving rise to significant adverse impact; which is the planning test in accordance with the NPPF. This is subject to the installation of a 3 metre high acoustic grade fence along the southern boundary of the service yard, as indicated in Appendix A.”

At the time of the consideration of the application, and as set out within the Case Officer's Delegated Report, the LPA had raised reservations in relation to the reliance on this fence for mitigation given that, in itself, the fence was operational development and, owing to its height, was considered to require express planning permission in its own right, with this, at the time, not having been obtained. Whilst being within the blue lined area, it was also outside the red line for planning application F/21/91821 (to which application X/24/96772 relates) and as it was not proposed as part of that application it was, accordingly, not included within the description of development.

Subsequent to the determination of application X/24/96772 and the submission of this current appeal, full planning permission has been granted for the installation of the acoustic fence. For the Inspector's reference, a copy of the Decision Notice (Ref. F/24/98174) and approved plan (Ref. 200698-1330 Revision P03) for that application are included within Appendix 3 and Appendix 4. At the time of writing, however, this fence had not been erected nor had an application been made for the approval of the details required by condition 3 of the planning permission, which is a pre-commencement requirement of that consent.

The Council will leave it to the judgement of the Inspector as to whether it is considered that the installation of this fence could be secured by way of a condition in the event that this appeal was to be allowed, having regard to the relevant legislative provisions, including the scope of Section 73 of the Town and Country Planning Act 1990. In any event, the LPA maintain that it has not been suitably demonstrated that the fence would provide for sufficient mitigation to allow unrestricted deliveries to the site without adverse harm to amenity, given that the above referenced conclusion within paragraph 4.13 of the ENA is based upon an acoustic assessment which the LPA raise concerns in respect of the robustness and suitability of in terms of both its findings and methodology, as set within the Case Officer's Delegated Report and explained in detail within the consultation responses of the Council's Environmental Health Officer dated 18 March 2024 and 13 May 2024.

Conclusion:

For the reasons as set out within this Statement, along with the LPA's Decision Notice and the accompanying Case Officer's Delegated Report, the LPA consider that the removal of the restriction on the hours when deliveries can take place to the appeal

site would, in the absence of sufficient information to demonstrate otherwise, have an unacceptable impact on the amenity of the occupiers of neighbouring residential properties by way of noise and disturbance. Therefore, the existing condition is considered to be both reasonable and necessary.

In light of this, there is a clear conflict between the proposals and the Policies within the adopted Eastleigh Borough Local Plan 2016-2036 (in particular DM1 and DM8), as a result of which it is clear that the proposals do not accord with the development plan for the purposes of Section 70(2) and 79(4) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004. Planning permission should therefore be refused unless material considerations indicate otherwise. The LPA consider that there are no such material considerations and, accordingly, respectfully request that the Inspector dismisses this appeal.

Should the Inspector, however, be minded to grant planning permission, the LPA would request that the conditions set out in Appendix 5 be included as part of the approval.

Yours faithfully

A handwritten signature in black ink that reads "N Parker".

Nicholas Parker
Planning Manager

List of Appendices:

APPENDIX 1:	Planning Permission F/21/91821 (dated 12 September 2022)
APPENDIX 2:	Planning Permission F/20/87203 (dated 4 June 2021)
APPENDIX 3:	Planning Permission F/24/98174 (dated 10 January 2025)
APPENDIX 4:	Approved Drawing Ref: 200698-1330 Revision P03
APPENDIX 5:	Local Authority Suggested List of Planning Conditions
APPENDIX 6:	Decision Notice Ref: DC/22/93944 (dated 30 November 2022)
APPENDIX 7:	Non-Material Amendment Decision Notice (dated 11 April 2023)
APPENDIX 8:	Decision Notice DC/22/93997 (dated 29 November 2022)