

Appellant's Final Comments – Aldi, Hedge End Retail Park, Hedge End, Southampton, SO30 4RT



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

Background

The purpose of this Statement is to respond to the Local Planning Authority's (LPA) Statement of Case. We understand that a single third-party representation has been submitted, and their comments are addressed below.

The appeal is against the refusal of Planning Application ref. X/24/96772 by Eastleigh Borough Council, which sought the removal of Condition 17 (Delivery hours) of Planning Permission ref. 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.

Third-Party Representation

A single third-party representation has been made against this appeal. The comments made by the local resident have been carefully considered and the relevant planning matters raised within their comment have been appropriately addressed within the Appellant's response to the LPA's Statement of Case below.

Statement by the Local Planning Authority

The statement prepared and submitted by the LPA has been carefully considered and the following points are respectfully made in response.

Complaints Made by Neighbours

The initial point raised within the Council's Statement of Case concerns the complaints that have been made with regards to delivery noise and disturbance.

The LPA note that the Appellant considers that a statutory nuisance has not occurred and therefore the complaints received should not provide a basis for the refusal of the Section 73 application subject to this appeal. However, the LPA discuss within their statement that *"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."* The Appellant considers that the existence of a complaint does not necessarily mean that its content is accurate, nor that any noise produced would be of **significant** adverse impact, as in Paragraph 198 of the NPPF. Additionally, the Appellant submitted two Freedom of Information requests, including a request for an internal review due to the lack of reasonable evidence and response provided by the Council.

As detailed within the accompanying Appeal Rebuttal Statement (prepared by Sharps Redmore), complaints of noise would be investigated under the 'Statutory Nuisance' provisions of the Environmental Protection Act, 1990 (EPA). As it is a potential criminal offence not to comply with the requirements of a Noise Abatement Notice served under the EPA 1990, investigations of complaints are governed by the Police and Criminal Evidence Act 1984. Therefore, as part of any investigations into noise complaints, it would be expected that contemporaneous notes on the noise would be recorded.

All three responses provided by the Council showed no substantial evidence that these complaints were valid, or that the disturbance occurred solely as a result of Aldi deliveries. It is important to note that to date, no substantive qualitative or quantitative evidence has been provided by the Council to support these claims and complaints.

However, within the Noise Assessment produced by Sharps Redmore that accompanied Planning Application ref. X/24/96772 at the time of submission, it was highlighted that the store could receive unrestricted deliveries on a daily basis, without associated noise giving rise to **significant** adverse impact in accordance with Paragraph 198 of the NPPF. As described within Paragraph 98(a) of the NPPF, developments should *"avoid noise giving rise to **significant** adverse impacts on health and the quality of life"* [my emphasis]. Within the Appeal Rebuttal

Statement and Appeal Statement prepared by Sharps Redmore, it is demonstrated that predicted delivery activity noise levels at the properties in Goodlands Vale, when considered against three appropriate assessment methods are all indicative of low impact.

It is noted that almost all development associated with a retail park location such as the appeal site will lead to an impact in noise terms. However, it has been clearly and robustly demonstrated through the results gathered by Sharps Redmore, that the threshold of “*significant adverse impact*” described within the NPPF would not be breached and that no policy conflict arises.

Additionally, the LPA have made no acknowledgement or discussion of the quiet delivery scheme submitted within Application ref. X/24/96772 and included within Appendix 6 of the Appeal Statement. The quiet delivery scheme sets out the requirements and expectations for each Aldi store and delivery driver to ensure that noise is kept to a minimum and that deliveries do not result in any detriment to public amenity.

Economic Benefits

The LPA, in response to the points concerning economic benefits and Paragraph 85 of the NPPF, consider that no substantive evidence has been provided that the current delivery hours have led to difficulties in ensuring a consistent and sustainable supply of goods to the premises. They also note that the current delivery hours allow for deliveries one hour before the store opens to customers. As a result, the LPA does not consider the expansion of the delivery hours to be critical to efficient operation and note that while supporting economic growth is of importance, this should not be at the expense of the amenity of neighbouring residents.

However, the expansion of delivery hours will allow Aldi to plan delivery routes better, which will allow the process of deliveries to become more economic. This is because it will allow deliveries to be made on a route that is more logical, as opposed to delivery drivers having to divert routes in order to work within the delivery hours. Furthermore, Paragraph 135 of the NPPF states “*Planning policies and decisions should ensure that developments...are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*” [my emphasis]. Paragraph 135 of the NPPF, therefore, shows a need to balance any potential adverse impacts with the requirement to encourage innovation and change. In this case, extending delivery hours allows Aldi to innovate and change by improving the efficiency of its logistical operation and the foods available within the store for its customers.

Lastly, the Council have incorrectly identified the deliveries undertaken as ‘intensive’ when this is not accurate. The proposed removal of delivery hour restrictions would not result in an increase in number of deliveries to the store, instead, existing deliveries would be spread out over a more flexible period of time.

Within the Appeal Rebuttal Statement, Sharps Redmore confirm that “*predicted delivery activity noise levels at the properties in Goodlands Vale, when considered against three appropriate assessment methods are all indicative of low impact*”. No policy conflict with either the NPPF or the Eastleigh Borough Local Plan is therefore identified, and the LPA has not provided any evidence to substantiate their reasons for refusal.

Acoustic Fence Application

Finally, the LPA acknowledged the application for the installation of a 3 metre tall acoustic fence that will act as a noise attenuation feature to reduce noise from the service bay associated with delivery activities. They note that within the Environmental Noise Assessment accompanying Planning Application ref. X/24/96772 it was discussed that the associated noise of the deliveries would not give rise to significant adverse impact subject to the installation of a 3-metre acoustic fence. An application was subsequently made for an acoustic fence (F/24/98174), which was granted on the 10th of January 2025.

The LPA notes that, at the time of writing, the acoustic fence is yet to be constructed and highlight the existence of a pre-commencement condition attached to the approval. While this is accurate, this is not considered to be relevant to the consideration of this appeal. In the event this appeal is allowed, the Inspector is invited to impose a Grampian condition that requires the construction of the acoustic fence granted in Application ref. F/24/98174 prior to the commencement of deliveries during the extended permitted hours.

If the inspector is minded to allow this appeal, we invite the imposition of the following wording that could be used for any such condition:

Prior to deliveries occurring to the site in an unrestricted manner, the acoustic fence approved within Application ref. F/24/98174 shall be fully constructed in accordance with the approved plans and maintain in-situ thereafter.

Although the LPA state 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”* this conflicts with the comments of the Council's Environmental Health Officer who confirmed that they would be supportive of additional attenuation as proposed and secured by Permission ref. F/24/98174.

Summary

In summary, it is the Appellant's view that the matters raised by the LPA do not support their case that this appeal should be dismissed. The LPA have not provided any quantitative or qualitative evidence that demonstrates that the appeal proposal would give rise to significant adverse noise impact.

The Appellant has provided significant evidence that clearly and robustly demonstrates that the proposal will meet the NPPF test and that a Grampian Condition can be applied to any allowed appeal ensuring that the acoustic fence approved via Application ref. F/24/98174 is erected prior to the implementation of any extended delivery hours at the appeal site.