



Appeal Decision

Site visits made on 11 and 15 May 2011

Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 June 2011

Appeal Ref: Q1445/A/11/2145260

Aldi Store, 2 Carlton Terrace, Portslade, East Sussex, BN41 1XF.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Aldi Stores Ltd against the decision of Brighton and Hove City Council.
 - The application Ref BH2010/01684, dated 26 May 2010, was approved on 30 December 2010 and planning permission was granted subject to conditions.
 - The development permitted is Application for variation and removal of conditions to application BH2006/00834 to vary condition 5 to allow an extended delivery period at the store, vary wording of condition 4 to allow the premises to trade to the public between 8.00 and 20.00 hours and for ancillary activities to take place outside of these hours when the store is closed to the public, vary condition 16 to reduce free car parking to all visitors of the Portslade Shopping Centre from 3 hours to 1 hour, removal of condition 15 in order not to provide 5 resident parking spaces.
 - The conditions in dispute are Nos. 1 & 3 which state that:
 - 1- The store shall not be open for trading to the public except between the hours of 08.00 and 20.00 hours on Monday to Saturday and 10.00 to 16.00 on Sundays and Bank Holidays. Staff may be within the premises between the hours of 7.30 and 21.30 on Monday to Saturday, and 9.30 to 17.30 on Sundays and Bank Holidays.
 - 3- No vehicular movements nor any loading or unloading of vehicles associated with the retail uses hereby permitted shall take place between 20.30 and 7.30, Monday to Saturday, and not at any time on Sundays and Bank Holidays.
 - The reasons given for the conditions are:
 - 1 – To allow satisfactory operation of the store and to protect the residential amenities of the occupiers of the flats above the store and to comply with policies QD27 and SU10 of the Brighton and Hove Local Plan.
 - 3 – To safeguard the residential amenities of the area and to comply with policies QD27 and SU10 of the Brighton and Hove Local Plan.
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Decision

1. I allow the appeal, and vary the planning permission Ref BH2010/1684 for variation and removal of conditions to application BH2006/00834 to vary condition 5 to allow an extended delivery period at the store, vary wording of condition 4 to allow the premises to trade to the public between 8.00 and 20.00 hours and for ancillary activities to take place outside of these hours when the store is closed to the public, vary condition 16 to reduce free car parking to all visitors of the Portslade Shopping Centre from 3 hours to 1 hour, removal of condition 15 in order not to provide 5 resident parking spaces, at Aldi Store, 2 Carlton Terrace, Portslade, East Sussex, BN41 1XF, granted on 30 December 2010 by Brighton & Hove City Council, deleting conditions 1 and 3 and substituting for them the following conditions:
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- 1) The store shall not be open for trading to the public except between the hours of 08.00 and 20.00 on Monday to Saturday, and 10.00 to 16.00 on Sundays and Bank Holidays. Staff may be within the premises between the hours of 07.00 and 21.30 hours on Mondays to Saturdays, and 09.30 to 17.30 on Sundays and Bank Holidays.
- 3) No HGV movements nor any loading or unloading of vehicles associated with the retail uses hereby permitted shall take place between the hours 20.30 and 7.30 Monday to Saturday. Deliveries on Sundays/Bank Holidays shall be limited to one main delivery and a milk delivery only between the hours of 09.30 and 17.30, with no deliveries outside these hours.

Preliminary matters

- 2) During the processing of the planning application the proposed revisions to condition 5 of permission BH2006/00834 were amended to relate solely to deliveries on Sundays and Bank Holidays and not to extended delivery hours during the week. The Appeal is dealt with on this basis. The planning application also sought the relaxation of conditions 16 and 17 of the original planning permission (BH2006/00834). However the Appellant has confirmed that no appeal is made against the retention of these conditions, in the form set out in conditions 11 & 12 of the Council's decision notice.
- 3) As well as the accompanied site visit on 11 May, an unaccompanied site visit was carried out on Sunday 15 May specifically to assess the level of activity in the area on a Sunday.

Main Issue

- 4) The main issue is the effect of the proposal on the living conditions of local residents with particular regard to noise and disturbance.

Reasons

- 5) The site is located in an urban area and within the Portslade Shopping Area where you would expect to find noise and activity associated with retail, commercial and residential uses. Boundary Road is a busy classified road which provides a direct link between the A270 and A259 and appears to be extensively used by HGV's and buses. There is a railway line crossing just to the south of the site and when the barriers are down the noise generated by waiting cars, HGV's and buses can be clearly heard, even at the southwest end of the car park which serves the Aldi store.
- 6) At National level policies EC2 and EC10 of Planning Policy Statement 4 (PPS4) – *Planning for Sustainable Economic Growth* state that local planning authorities should support existing businesses and adopt a positive and constructive approach towards planning applications for economic development. Policy EC13 goes on to state that when assessing planning applications affecting shops account should be taken of the importance of the shop to the local community and respond positively to proposals designed to improve their viability. Policy EC19.2 deals specifically with restrictions on deliveries and advises that account should be taken of all relevant factors.
- 7) Similarly PPS1 – *Delivering Sustainable Development* encourages economic development and states that local authorities should provide for improved productivity and recognise that economies are subject to change. At the same time it encourages high quality inclusive design and policies to deliver safe, healthy and attractive places to live.
- 8) This positive approach to economic development is echoed in the recent Ministerial Statement – *Planning for Growth* which advises that the Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs. With this in mind local planning authorities are advised to have regard to all relevant

considerations when determining applications and should ensure that appropriate weight is given to the need to support economic recovery, where relevant and consistent with their statutory obligations.

- 9) As required by policies SU10 and QD27 of the Brighton & Hove Local Plan 2005 proposals will be required to minimise the impact of noise on the occupiers of neighbouring properties and that permission will not be granted for proposals which would cause material nuisance.
- 10) Planning Policy Guidance Note 24 – *Planning and Noise* advises that the planning system should not place unjustifiable obstacles in the way of new development, nevertheless local planning authorities must ensure that development does not cause an unacceptable degree of disturbance. On the basis of the noise readings produced by the Appellant the levels are such that noise should be taken into account when assessing the merits of the proposals.
- 11) Having regard to this policy framework, the economic and other benefits of the proposal need to be weighed against any harm arising from the extended hours and deliveries proposed.

Condition 1

- 12) In relation to condition 1 the Appellant is seeking permission for staff to be able to work an additional half hour in the mornings Monday to Saturday. It is not stated on the planning application form or in the supporting planning statements the extended hours being sought for staff. However in an e-mail to the Council the Appellant confirmed that staff would be in the store for approximately 1.5 – 2 hours (max) either side of the trading hours. They then went on to cite 7.30am to 9.30pm as an example. At the same time the planning application originally sought to extend weekday delivery times to 07.00 to 21.00 hours Monday to Saturdays. Staff would need to be on the premises to receive any deliveries made at 07.00 hours. Accordingly there is nothing in the evidence which supports the Council's view that the application sought to extend the working hours of staff for a maximum of 1.5 hours as opposed to 1.5 to 2 hours at either end of the day.
- 13) For practical reasons it would be reasonable to expect certain staff/contractor duties to be undertaken outside store opening hours, for example cleaning, stocking shelves, stock taking, receiving deliveries and repairs, etc. Indeed it is in the interests of the efficient functioning of the store. In addition, if deliveries can be made at 07.30 hours Monday to Saturday staff would need to be present and ready to receive any deliveries. If staff and deliveries both arrived at 07.30 hours, the delivery vehicle driver would have to wait for staff to open the premises and prepare for the unloading. This would extend the length of time the delivery vehicle would be on the site, which would be both inefficient for the delivery operator and would result in additional vehicular noise for residents.
- 14) The two noise reports submitted at the application stage contain conflicting conclusions regarding the impact of such activities on the living conditions of the occupants of the flats above the store, although neither report includes any measured noise readings. Notwithstanding this, following consultations with residents the noise report prepared by Philip Acoustics Ltd states that residents are affected by noise generated by beeping of the tills, trolleys being pushed along the floor, the in-store public address system and the operation of the roller shutters.
- 15) The noise from the roller shutter at the rear is largely related to deliveries, which are controlled under condition 3 and the public address system and tills are likely to be used little, if at all outside store opening hours. Whilst stock may be moved by trolleys or pallets, for much of their time they would be stationary, whilst the stock is being

- transferred to the shelves. Conversely shoppers are likely to move their trolleys greater distances and more quickly and thus far more likely to generate noise. At the time of the accompanied site visit noise levels within the premises generated by staff and shoppers appeared low.
- 16) Given the amount of background noise generated by traffic, the railway crossing and other shops and activities along Boundary Road between 07.00 and 09.00 hours the operation of the front roller shutters between from 07.00 instead of 07.30 hours would be unlikely to have a material impact on the living conditions of the occupiers of the flats above the store.
 - 17) Concern has been expressed regarding external activities such as maintenance work either to the building or within the car park. However, external activities of this nature are not controlled by conditions 1 or 3.
 - 18) It is noted that the Environmental Health officer stated that in principle there is no Environmental Health objection to proposed extension of the hours the premises can be occupied. In addition, that any unreasonable disturbance to the residents of the flats above would be investigated under Environmental Health legislation.
 - 19) A further Noise report was prepared by Acoustic Consultancy Partnership Ltd on behalf of the Appellant in March this year, which specifically deals with noise generated by staff activities within the building between 07.00 and 09.00 hours. It outlines the activities taking place during this period, including a goods delivery and describes the internal finishes of the building. The report indicates that measured noise levels were recorded, although no readings were included within the report. The report concludes that the ancillary activities undertaken did not result in a perceptible change in the existing noise level.
 - 20) Having weighed up all of the above factors extending staff working hours by half an hour each Morning, Monday to Saturday would be unlikely to result in material nuisance for the occupiers of the flats above the store due to noise and disturbance. It would therefore comply with the National and Local policies referred to above concerning economic and environmental considerations.

Condition 3

- 21) The proposal is to allow for one large and one smaller milk delivery between the hours of 09.30 and 16.30 hours on Sundays and Bank Holidays. As outlined by the Appellant without such deliveries the store is unable to consistently offer a full range of produce to customers, due to the limitations of their storage facilities. If shoppers are unable to purchase the goods they want they will shop elsewhere, which would have a negative impact on the viability of the store. It would also compromise the ability of the store to continue to trade and could impact on the vitality and viability of the Portslade Shopping Area.
- 22) Again the findings of the two acoustic reports differ although as stated by the Environmental Health Officer both appear to have been carried out using methods set out in BS4142. This current standard is used for convenience in the absence of a more tailored method, rather than for its proven accuracy.
- 23) From the findings of the reports, an unaccompanied Sunday site visit and the observation of the unloading of a refrigerated HGV at a food-store elsewhere it is clear that any deliveries to the Appeal premises will be heard in the flats above the store and within the immediate area. However, given the small number of deliveries proposed; the fact that they would take place during the most active times of the day; the location of the site within the established Portslade Shopping Area; and the undoubted economic benefits for the store, the proposal would not result in an unacceptable degree of disturbance for local residents.

- 24) It is noted that this conclusion accords with those of the Council's Environmental Health Officer and the Planning Officers involved.
- 25) It is recognised that the level of disturbance could be greater for shift workers who often sleep during the day. However the overall number of deliveries likely to be made are unlikely to materially change and the existing/proposed delivery hours are reasonably designed around traditional working hours which cater for the majority of residents.
- 26) Finally, concern has been expressed by residents that store employees have been working within the premises and deliveries have been made outside the existing approved and the proposed hours. This is a separate matter which it is understood that the Council is investigating under both planning and Environmental Health legislation.
- 27) I conclude that changes proposed to conditions 1 and 3 would not cause a material nuisance for local residents, including the residents of the flats above the Appeal store, due to noise and disturbance. The hours imposed by the proposed new conditions would minimise the impact of noise and disturbance caused by activities associated with the use of the store. Accordingly the proposal would comply with policies QD27 and SU10 of the Local Plan as well as the policies and advice referred to in PPG24, PPS1 and PPS4.

Elizabeth Lawrence

INSPECTOR

