



## Appeal Decision

Site visit made on 30 April 2015

by **N McGurk BSc (Hons) MCD MBA MRTPI**

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

Decision date: **02 June 2015**

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### **Appeal Ref: APP/H0738/W/15/3003673**

### **Aldi Foodstore Ltd, Darlington Lane, Stockton-on-Tees, Cleveland, TS20 1BW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Aldi Stores Ltd against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 14/2164/VARY, dated 6 August 2014, was refused by notice dated 7 November 2014.
  - The application sought planning permission for the erection of a food store and associated car parking, without complying with a condition attached to planning permission Ref 12/1746/VARY, dated 2 October 2012.
  - The condition in dispute is No 2 which states that: The opening hours of the store shall be limited from 08.00-21.00hrs Monday to Saturday, and from 10.00-18.00hrs Sundays and Bank Holidays with only 6 hours trading on Sundays and Bank Holidays. The Store shall not be open for business outside of these hours.
  - The reason given for the condition is: To ensure that adjacent premises are not adversely affected by customers using the premises, in accordance with the requirements of Stockton-on-Tees Core Strategy policy CS3.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the erection of a foodstore and associated car parking at Aldi Foodstore Ltd, Darlington Lane, Stockton-on-Tees, Cleveland, TS20 1BW in accordance with the application Ref 14/2164/VARY dated 6 August 2014, without compliance with condition number 2 previously imposed on planning permission Ref 12/1746/VARY dated 2 October 2012 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new conditions:
    - 1) The opening hours of the store hereby approved shall be limited from 0800–2200 hours Monday to Saturday, and from 1000-1800 hours Sundays and Bank Holidays, with only 6 hours trading on Sundays and Bank Holidays. The store shall not be open for business outside these hours.
    - 2) This approval in no way discharges or revokes any requirements to comply with conditions imposed on application 08/0900/ARC or 98/0450/P other than to affect the stores available opening times as defined by condition 1) above.
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## **Procedural Matters**

2. The condition the subject of this appeal was itself varied. Planning permission Ref 12/1746/Vary referred to above relates to an application to vary condition no.4 of planning approval 08/0900/ARC to allow the store to be open between the hours of 0800 and 2100hrs Monday to Saturday, and between 1000 and 1800hrs on Sundays and Bank Holidays (6hrs trading only).
3. Thus, whilst the original act of development was the erection of a food store and associated parking<sup>1</sup>, the appeal relates to the variation of an already varied condition. For clarity, the application the subject of this appeal sought to extend the opening hours of an existing supermarket, the opening hours of which had already been extended as a result of the previous variation of a condition.
4. The proposed variation the subject of this appeal would extend the opening hours by one hour in the evening, to 2200 hours, Monday to Saturday.

## **Main Issue**

5. The main issue in this case is the effect of the proposed variation of the condition the subject of this appeal on the living conditions of neighbours, with regards to noise and disturbance.

## **Reasons**

6. The appeal property is a supermarket. It is located at a prominent junction of the A1027, Norton Avenue and Darlington Lane. It is situated in a largely residential area.
7. During my site visit, I observed that housing separated from the supermarket by Norton Avenue to the south and by the A1027 to the west, is some considerable distance away, with open land, wide roads and gardens providing significant buffer zones between the appeal property and dwellings.
8. I also observed that there are houses on Kennedy Close, to the north east of the appeal site, which back on to the rear of the supermarket, some considerable distance away from its entrance. The nearest of these also backs on to the rear of a small parade of commercial premises along Darlington Lane, including a convenience store, the opening times of which I noted to be 0600-2300 hours.
9. The supermarket car park is accessed directly from Darlington Lane. The service area of the supermarket faces Darlington Lane and the store entrance is on the opposite side of the building. During my site visit, I observed there to be semi detached houses, set back behind gardens and/or parking areas, on the opposite side of road to the supermarket. The supermarket and car park/service area is set back from Darlington Lane by a grass verge and pavement.
10. Taking all of the above into account, I find that the location of the supermarket is such that there is a considerable degree of separation between it and the surrounding houses in the neighbouring area. The distances are such that the general noises associated with the comings and goings of customers and staff,

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<sup>1</sup> Reference: 98/0450/P.

and the daily closing of the supermarket, would not be so intrusive as to cause undue noise and disturbance.

11. In the above regard, I am mindful that the appellant has carried out noise monitoring and has submitted a Noise Impact Assessment. This provides evidence to demonstrate that there would be no observed adverse effect on health and quality of life as a result of extending the opening hours of the supermarket to 2200 hours.
12. During my site visit, I noted that the A1027 is a relatively busy road and observed ambient noise levels associated with this road to be audible in the surrounding area. I find that this would be little different later in the evening. The Noise Impact Assessment confirms that road traffic is the dominant noise source in the area.
13. As noted above, there is a nearby convenience store. This is located adjacent to the supermarket on Darlington Lane. The convenience store opens considerably earlier than the supermarket and stays open until 2300 hours, beyond the extended opening period sought by the appellant. There would inevitably be some, low-level, noise and disturbance associated with activity relating to the convenience store.
14. I find that any noise or disturbance arising from extending the supermarket's opening hours to 2200 Monday to Saturday would be so minimal as to lead to little or no increase over that which already exists, due in the main to the presence of the A1027 and the local convenience store. The Noise Impact Assessment confirms this to be the case.
15. Thus, whilst there may be some, minor levels of noise and disturbance as a result of extending the supermarket's opening hours, I am satisfied that these would be in keeping with existing ambient noise levels. Whilst I acknowledge that the slamming of car doors or general noise may occasionally be heard, I find that this would be little or no different to the existing situation and would not result in harm. There is no substantive evidence before me to demonstrate otherwise.
16. Taking my own observations and the findings of the Noise Impact Assessment into account, I find that the variation of the condition the subject of this appeal would not harm the living conditions of neighbours, with regards to noise and disturbance. The proposal would not be contrary to the Framework, which protects residential amenity.

### **Other Matters**

17. The Council, in support of its case, refers to anti-social behaviour and the gathering of youths. No evidence has been presented to demonstrate that this is an existing issue or is one that would arise from the variation of the condition the subject of this appeal.
18. The Council, also in support of its case, states that activities relating to the supermarket could extend until 2300 hours. There is no evidence to demonstrate that this would be the case.

**Conclusion**

19. For the reasons given above, the appeal succeeds.

*N McGurk*

INSPECTOR