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## Appeal Decision

Site visit made on 18 October 2016

**by Grahame Gould BA MPhil MRTPI**

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

**Decision date: 21<sup>st</sup> November 2016**

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**Appeal Ref: APP/P3610/W/16/3150854**

**Aldi Stores Limited, Kingston Road, Ewell, Surrey KT19 0BS**

- 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 Limited against the decision of Epsom and Ewell Borough Council.
  - The application Ref 15/00993/REM, dated 30 September 2015, was approved on 23 November 2015 and planning permission was granted subject to conditions.
  - The development permitted is described as 'Variation of Condition 11 of (Delivery hours) of planning permission Ref 13/00520/FUL to allow the store to be serviced from 06:00 – 23:00 (Mon – Sat) and 08:00 – 19:00 (Sun)'.
  - The condition in dispute is No 1 which states that: No service vehicles shall arrive or depart from the retail unit outside the hours of 06:00 to 21:00 on Mondays to Saturdays or 08:00 to 17:00 on Sundays.
  - The reason given for the condition is: To prevent service deliveries at night, thereby protecting the amenity of nearby residential properties and to reduce the number of large service vehicles in the Ruxley Lane Secondary Town Centre during the busiest peak hours, to comply with Policy DM10 of the Development Management Policies Document 2015 and CS16 of the Core Strategy 2007.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Aldi Stores Limited against Epsom and Ewell Borough Council. This application is the subject of a separate Decision.

### Background and Main Issue

3. The appellant sought permission to vary the terms of condition 11 imposed on planning permission 13/00520/FUL (the original permission) to vary the hours during which service (delivery) vehicles may arrive or depart from its store from 0700 to 2100 on Mondays to Saturdays and 0900 to 1700 on Sundays to 0600 to 2300 on Mondays to Saturdays and 0800 to 1900 on Sundays.
  4. However, the new permission (reference 15/00993/REM) granted by the Council did not relax the delivery hours to the full extent sought by the appellant. In particular, Condition 1 of that permission maintains the evening restriction of deliveries until 2100 on Mondays to Saturdays and 1700 on Sundays. The appellant seeks to undertake deliveries up until 2300 on Mondays to Saturdays and 1900 on Sundays, as per the application it made to the Council.
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## Reasons

5. The appeal premises comprise a freestanding, part single and part two storey building, of recent construction, which comprises an Aldi supermarket on the ground floor and flats above, the latter being known as Kingston Court. The store has a dedicated loading bay, which is located on the southern side of the building and this provides access to the store's fully enclosed warehouse. The loading bay is accessed via a ramp leading down from the store's car park. Numbers 7 and 8 Kingston Court (Nos 7 and 8) are sited directly above the loading bay and have a mixture of living room and bedroom windows that face towards the loading bay<sup>1</sup>.
6. The store forms part of the Ruxley Lane shopping area and there are commercial premises with residential accommodation above to the north of the store. Apart from the flats at Kingston Court, the closest residential properties are at 377 Kingston Road (No 377 - a house) and 395 Kingston Road (No 395 - a flat). The store immediately adjoins Kingston Road (the A240), which at this point is a dual carriageway.
7. As part of my site visit the store's staff demonstrated how the loading bay's platform leveller operates. The leveller is a metallic platform that is lowered and raised manually, using a lever system, to enable pallets to be transferred between delivery vehicles and the warehouse. The lowering and raising of the leveller generates a distinctive and impulsive heavy clanking sound that lasts a short while and arises at the beginning of a delivery cycle (arrival, unloading and departure) and then again at the end of one of these cycles.
8. Given the loudness of the noise associated with lowering or raising the leveller, I would expect this noise to be audible to the occupiers of Nos 7 and 8. That would especially be the case if the side windows of Flats 7 and 8 were open in the later evening period, when the store is closed to customers<sup>2</sup> and the volume of traffic on Kingston Road is likely to be at a reduced level. The intensity of the noise associated with the leveller's use is one that I consider would be capable of causing sleep disturbance and my opinion would seem to be consistent with the representations that have been made by an occupier of Flat 7, which postdate the Council's determination of the appealed application.
9. The impact of extending the store's delivery hours has been assessed in the Sharps Redmore acoustic report (the acoustic report) and that assessment has been informed by a combination of on-site noise monitoring and monitoring at other premises operated by the appellant. Section 4 of the acoustic report identifies predictions for the noise impact on the occupiers of Nos 377 and 395, and I shall return to those impacts later in my reasoning. However, the assessment of the noise impact on the occupiers of Flats 7 and 8 is much briefer, notwithstanding the fact that these residents would be the most likely to be affected.
10. As the times when the on-site noise surveying was undertaken were limited to those coinciding with the intended extended delivery times that monitoring does not include the times when deliveries are currently being undertaken. It

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<sup>1</sup> As explained in the Acoustic Statement prepared by Acoustic Consultancy Partnership Ltd which forms Appendix C to the Sharps Redmore report accompanying the appealed application

<sup>2</sup> Ie after 2200 Mondays to Saturdays and 1600 on Sundays as per the permitted trading hours

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would therefore seem that the recorded noise levels, most particularly the  $L_{Amax}$  level, do not include the leveller's use. The acoustic report does not explain how the operation of the leveller has been taken into account and it would appear that the acoustic assessment has not been informed by a noise source that is central to delivery activity at this store. In this respect it appears that the acoustic report has only focused on the noise associated with delivery vehicle arrivals/departures and the movement of pallets between the vehicles and the warehouse. I find support for that view in the descriptive text of the delivery activity that is set out in the tables in Appendix E of the acoustic report and Appendix 1 to the Acoustic Consultancy Partnership Limited report appended to the acoustic report.

11. I am of the opinion that the  $L_{Amax}$  level is of particular significance in this instance, given the impulsive nature and loudness of the noise associated with the leveller's use and its potential to interrupt sleep and affect the quality of life and/or the health of nearby residents. While reference is made to measurements being made at other sites operated by the appellant, it is unclear whether levellers of the type present at the Ewell store are also in use at those other locations.
12. Paragraphs 4.2 to 4.6 of the acoustic report assess the implications of extending the delivery hours upon the living conditions for the occupiers of Kingston Court. However, that assessment primarily addresses the implications of deliveries occurring between 0600 and 0700, with a comparison being made with a noise level of 79 dB  $L_{Amax}$  at 10 metres that has been recorded at '... similar sites ...'.
13. It is a significant omission that the acoustic report makes no reference to what the anticipated  $L_{Amax}$  level at the premises would be between 2100 and 2300, given that the noise associated with leveller's use has the potential to be very intrusive, during the more noise sensitive evening period. Emphasis instead is placed on the performance of the acoustic glazing that has been installed at Nos 7 and 8, as the means for providing attenuation against any noise generated during delivery cycles whenever they might arise. That glazing has been designed to provide an internal noise level of no more than 47dB  $L_{Amax}$  between 0600 and 0700 when the flats' windows are closed.
14. However, it is evident from the representations made by an occupier of No 7 that the thermal efficiency of that flat is such that on warmer nights it is necessary to have some windows open to provide a more tolerable living environment. I therefore consider it unrealistic for it to be assumed that the side windows at Nos 7 and 8 would always be kept closed when deliveries are being made. With the windows of Nos 7 and 8 open I cannot accept the conclusion in the acoustic report that the noise arising during the extended evening delivery times would '... not cause significant impact on the amenity of occupants of [the] apartments'.
15. I recognise that the occupiers of Kingston Court will have been aware prior to moving into their flats that they will be living within a mixed use development, with the store being a potential source of noise. However, those residents will have an expectation that they will not be unreasonably disturbed by the operation of the store. I am therefore not persuaded that the operational wishes of the appellant should usurp the safeguarding of the living conditions for the occupiers of Flats 7 and 8.

16. On the available evidence and having observed the leveller in use I find it likely that permitting later delivery times would cause unacceptable noise disturbance for the occupiers of Nos 7 and 8 and that that disturbance would come within the category of being a 'Significant observed adverse effect level' that should be avoided, as per the provisions of the Noise Policy Statement for England of March 2010 and the noise section of the Planning Practice Guidance. In coming to this conclusion I am mindful of the limited number of deliveries that might be made during the evening period, given the way the appellant's stores trade and are serviced. However, I consider that even at the potential frequencies involved the occupiers of Nos 7 and 8 could be subject to regular nightly levels of unacceptable disturbance.
17. While the appellant has indicated a willingness to implement a delivery management plan (DMP), which would include control measures such as avoiding engines being left idling, turning reversing alarms off, disabling delivery vehicles' refrigeration plant and managing staff conduct, this plan would not address the noise emanating from the lowering or raising of the leveller. I therefore find that the operation of the DMP would not address a potentially significant source of noise disturbance and imposing a planning condition requiring the implementation of this plan would be ineffective.
18. I appreciate that the Council's environmental health officer (EHO) raised no objection to the extension of the store delivery hours, but that does not alter my assessment that extending the delivery times further into the evening period would be harmful, for the reasons I have given.
19. The acoustic report includes a more detailed assessment of the effect of extending the delivery hours upon the living conditions for the occupiers of Nos 377 and 395. I am content that this evidence demonstrates that the occupiers of Nos 377 and 395 would not be unacceptably disturbed by extending the delivery times later into the evening period because of the distances involved and the barrier attenuation effect provided by the store and flat building.
20. The appellant contends that being unable to receive deliveries at later times would place the store at a competitive disadvantage, however, it is submitted that typically the store receives one or two main deliveries per day, doubling in busier times, along with other deliveries for milk and bread. At those delivery levels I am not persuaded on the evidence before me that it has been demonstrated that this store's operation would be placed at any particular competitive disadvantage or that significant increases in delivery vehicle movements would arise by not extending the evening delivery times.
21. For the reasons given above I conclude that varying the delivery hours later into the evening period would have an unacceptable effect on the living conditions for the occupiers of Nos 7 and 8. There would therefore be conflict with Policy DM10 of the Council's Development Management Policies Document of 2015<sup>3</sup>, insofar as unacceptable noise disturbance would be experienced by the occupiers of neighbouring dwellings. Given the nature of the harm that I have identified I do not consider the various paragraphs of the National Planning Policy Framework (the Framework) relied upon by the appellant, most particularly paragraphs 14, 18, 20, 30 and 123, provide any particular support for the appeal development. In this respect I find that

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<sup>3</sup> Which has replaced Policy DC1 of the Council's Local Plan of 2000

there would be conflict with the fourth core planning principle (paragraph 17 of the Framework) in that a good standard of amenity for all existing and future occupants of a building would not be secured.

22. While the reason for imposing Condition 1 refers to Policy CS16 of the Council's Core Strategy of 2007, I find this policy not to be relevant because it essentially addresses the management of traffic rather than the protection of living conditions.

**Conclusion**

23. For the reasons given above the appeal is dismissed.

*Grahame Gould*

INSPECTOR