

ALDI 379-393 Kingston Road Ewell KT19 0BS

Variation of Condition 11 (Delivery hours) of planning permission 13/00520/FUL to allow delivery hours to be between 06:00-21:00 on Monday's to Saturday's and between 08:00-21:00 on Sundays and Bank Holidays

Ward:	Ewell Court Ward;
Contact Officer:	John Robinson

1 Plans and Representations

- 1.1 The Council now holds this information electronically. Please click on the following link to access the plans and representations relating to this application via the Council's website, which is provided by way of background information to the report. Please note that the link is current at the time of publication, and will not be updated.

Link: <http://eplanning.epsom-ewell.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=PGHADXGYL6A00>

2 Summary

- 2.1 This application seeks permission to extend the current delivery hours on Sunday's and Bank Holiday's to allow deliveries between 06:00-21:00 on Monday's to Saturday's and between 08:00-21:00 on Sundays and Bank Holidays.
- 2.2 The current planning permission allows for deliveries between 06:00 to 21:00 on Mondays to Saturdays, but limits deliveries on Sundays to 08:00 to 17:00. Bank Holiday deliveries are not permitted.
- 2.3 The proposed 4 hour extension to the Sunday "delivery window", and the inclusion of Bank Holidays, is considered to have a harmful impact on neighbour amenity contrary to residential policies contained in the Development Management Policies Document 2015, and **the application is therefore recommended for REFUSAL**

3 Site description

- 3.1 The application site is located on the south western side of Kingston Road.
- 3.2 The site is occupied by a mixed use development comprising a retail foodstore with 8 residential units above (known as Kingston Court) with associated access, car parking and landscaping.

- 3.3 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.
- 3.4 To the northwest of the site are two-storey commercial properties (with residential above) forming part of the Kingston Road-Ruxley Lane shopping centre. These properties front on to the slip road on the southwest side of Kingston Road. To the rear of these commercial properties are part of the application site and a rear servicing road accessed from Pinewood Place or directly from Ruxley Lane.
- 3.5 To the southeast of the site lies residential development comprising two-storey (c.1920-1930) semi-detached houses.

4 Proposal

- 4.1 This application seeks the variation of Condition No.11 (Delivery Hours) of planning permission 13/00520/FUL. The original condition was worded as follows:

(11) 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.

Reason: 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

- 4.2 The proposed amended wording is set out below (**changes underlined**):

(11) 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 21:00 on Sundays and Bank Holidays.

Reason: 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

- 4.3 The applicants submit that the given the arrangement at Aldi, where lorries share the car park with customers, it is a more efficient arrangement for delivery vehicles to visit the store outside of normal opening hours to avoid potential conflict. In particular, the extension of the delivery hours would allow for residual visits to the store, such as picking up waste bundles, or making deliveries that were unable to be made during the day.

5 Comments from third parties

- 5.1 The application was advertised by means of a press notice and letters of notification to 58 neighbouring properties. To date (19.12.2018) no letters of objection have been received.

6 Consultations

- 6.1 Highways: No objection
- 6.2 Environmental Health Officer: We have some reservations about the application given the fact that noise from deliveries will be clearly audible in flats 7 and 8 with the windows open. The delivery management plan held up as being the mitigation has not been submitted. I recommend therefore that the application be conditioned (should permission be granted) to require production of the plan and adherence to its terms.

7 Relevant planning history

Application number	Decision date	Application detail	Decision
13/00520/FUL	21.10.2013	Demolition of 2 dwellings and the erection of a mixed use development comprising a retail foodstore with 8 residential units above, with associated access, car parking and landscaping.	GRANTED
13/01360/COND	18.06.2014	Details pursuant to Condition 3 (hard and soft landscaping) 16 (refuse storage) 17 (lighting) of planning permission 13/00520/FUL.	DISCHARGED

Application number	Decision date	Application detail	Decision
13/01717/COND	18.06.2014	Details pursuant to Condition 2 (Materials), 4 (Tree Protection Measures), 19 (Car Park Signage), 25 (Construction Management Plan), 29 (Sustainability), 30 (Renewable energy), 31 (Travel Plan) of Planning Permission 13/00520/FUL.	DISCHARGED
14/00140/REM	20.06.2014	Variation of Condition 33 (Drawing numbers) to allow minor design changes including new entrance lobby, revisions to landscaping, changes to shopfront glazing, of planning permission 13/00520/FUL.	GRANTED
14/01727/COND	10.04.2015	Details pursuant to planning permission 13/00520/FUL (Demolition of 2 dwellings and the erection of a mixed use development comprising a retail foodstore with 8 residential units above, with associated access, car parking and landscaping) to discharge conditions 13, 14 (noise), 15 (waste management) and 20 (CCTV surveillance).	DISCHARGED
15/00993/REM	23.11.2015	Variation of Condition 11 (Delivery hours) of planning permission 13/00520/FUL to allow the store to be serviced from 06:00 - 23:00 (Mon -Sat) and 08:00 - 19:00 (Sun).	GRANTED: 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.

Application number	Decision date	Application detail	Decision
16/00003/COND	21.11.2016	The appellant sought to undertake deliveries up until 2300 on Mondays to Saturdays and 1900 on Sundays, as per the application it made to the Council.(15/00993/REM)	Appeal DISMISSED

8 Planning Policy

National Policy Planning Framework (NPPF) 2018

Chapter 15 para 180(a) Conserving and enhancing the natural environment

Core Strategy 2007

Policy CS5 The Built Environment
Policy CS6 Sustainability

Development Management Policies Document November 2018

Policy DM10 Design Requirements for New Developments

9 Planning considerations

Previous application and Appeal Decision

- 9.1 In September 2015 an application (15/00993/REM) was submitted to vary Condition 11 (Delivery hours) of planning permission 13/00520/FUL to allow the store to be serviced from 06:00 - 23:00 (Mon -Sat) and 08:00 - 19:00 (Sun).
- 9.2 An amended condition was granted, worded "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."
- 9.3 A subsequent appeal application (APP/P3619/W/16/3150854) against the refusal to grant an extension to the delivery hours in the late evening period was dismissed.
- 9.4 In her decision the Inspector stated: "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."

- 9.5 The Inspector concluded that 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
- 9.6 The Inspectors decision is therefore a material consideration in the determination of this application and is attached as **Annexe 1**.

Residential Amenity

- 9.7 Chapter 15 of the NPPF relates to the conservation and enhancement of the natural environment. Paragraph 180(a) sets out that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:
- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life⁶.
- 9.8 Policy CS5 of the Core Strategy and Development Management Policy DM10 seeks to safeguard residential amenities in terms of privacy, outlook, sunlight/daylight, avoidance of visual intrusion and noise and disturbances.
- 9.9 The applicants have submitted a Noise Assessment Report in support of this application.
- 9.10 The report states that the proposed variation of delivery hours is not to increase in number of deliveries but would increase flexibility to receive deliveries. The overall number of deliveries would remain the same. As a result whilst the proposal may result in the occupiers of Flats 7 and 8 to close the windows whilst a delivery takes place, this would be no greater or more frequent than the current situation where Sunday deliveries are restricted to between 0800 and 1700 hrs. The noise from deliveries would be heard and may cause slight changes in behaviour, such as closing windows for some of the time i.e., an observed adverse effect level. In this case the advice is to mitigate and reduce noise to a minimum.
- 9.11 To achieve this all deliveries received outside trading hours i.e. after 1700 hours on a Sunday would be carried out in accordance with a delivery management plan (DMP) which would include the following measures:
- No movement of goods pallets or roll cages on open areas of the service yard;

- No audible reversing beepers;
- Refrigeration units should be switched off when vehicles enter the service yard;
- No more than 1 delivery vehicle in service yard at a time.

9.12 It is considered that the occupiers of the flats above the foodstore, and to a lesser degree, the occupants of the residential units above 395 and 377 Kingston Road, had a not unreasonable expectation that deliveries to the store would not continue beyond the specified delivery hours and would in all likelihood have purchased their units on the basis of this information.

9.13 The mitigation of the additional noise generated by the proposed increase in delivery hours would rely on a delivery management plan which would be difficult to enforce and ensure staff and lorry drivers adhere to. In addition, it is unreasonable to expect the occupiers of Flats 7 and 8 to close their windows whilst or in anticipation of a delivery taking place, especially in summer, when windows are more likely to be open.

9.14 The proposed variation of the condition would fail to address the Inspector's grounds for refusal and would therefore be contrary to Policy DM10.

Community Infrastructure Levy

9.15 The scheme would not be CIL liable

10 Conclusion

10.1 The proposed increase in hours of delivery would lead to an unacceptable increase in noise and disturbance, which would prejudice the enjoyment of the occupiers of Flats No 7 and 8 Kingston Court.

11 Recommendation

11.1 The application is recommended for REFUSAL on the following ground:

- (1) The proposed increase in hours of delivery would lead to an unacceptable increase in noise and disturbance which would prejudice the enjoyment of the occupiers of Flats 7 and 8 Kingston Court, contrary to Policy DM10 of the Development Management Policies Document 2015 and Policy CS6 of the Core Strategy 2007**

Informatives:

- (1) In accordance with para 38 of the NPPF 2018, the Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied**

Planning Committee
17 January 2019

18/01018/REM

by a revision to the proposal. The Local Planning Authority is willing to meet with the Applicant to discuss the best course of action and is also willing to provide pre-application advice in respect of any future application for a revised development.