



Appeal Decision

Inquiry Opened on 3 October 2017

Accompanied Site Visit made on 10 October 2017

by Ken Barton BSc(Hons) DipArch DipArb RIBA FCI Arb

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

Decision date: 12 December 2017

Appeal Ref: APP/P3610/W/16/3160370

Former Dairy Crest site, Alexandra Road, Epsom, Surrey KT17 4BJ

- The appeal is made under section 78 of the *Town and Country Planning Act 1990* against a refusal to grant planning permission.
 - The appeal is made by Aldi Stores Limited against the decision of Epsom & Ewell Borough Council.
 - The application Ref 15/01346/FUL, dated 11 December 2015, was refused by notice dated 12 December 2016.
 - The development proposed is "Demolition of existing buildings on site. Redevelopment of site to provide a mixed use development comprising a retail foodstore with 6 residential units above, with associated car parking, landscaping and access arrangements".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Inquiry sat for 5 days opening on 3 October and closing on 10 October 2017. An accompanied visit to the site and its surroundings was carried out on 10 October and unaccompanied visits were made to the site and its surroundings on the afternoon of 3 October and on 11 October in the morning peak period. An unaccompanied visit was also made to Aldi's Ewell store on 11 October.
3. The original site location plan (0837-CHE-115 A) incorrectly included an electricity sub-station within the red line area, in the south-west corner of the site fronting Church Road, although the other application drawings correctly excluded it. As part of the appeal submission this error was corrected by a revised drawing (0837-CHE-115 B) and I have determined this appeal on the basis of that amended drawing.
4. The Council's decision notice cites 8 reasons for refusal. However, the Council confirmed that reasons for refusal 3 (external amenity space) and 7 (housing mix) are no longer pursued, and that in addition reason for refusal 6 has been resolved by Aldi's agreement to provide a footpath along the frontage of the sub-station on Church Road. The provision of affordable housing, reason for refusal 4, could be ensured by the use of a Section 106 Obligation.

Main Issues

5. It was agreed that the remaining main issues are: firstly, the effect of the proposal on the character and appearance of the surrounding area, including the adjacent Pikes Hill Conservation Area; secondly, the effect of the proposal on highway safety in terms of parking provision and traffic flows; and lastly, whether there is sufficient analysis to demonstrate there is not a sequentially preferable site.

The Site and Its Surroundings

6. The appeal site, which has an area of approximately 0.45 hectare, lies to the south of Alexandra Road and east of Church Road. Its last use was as a dairy and the site was occupied by several buildings associated with that use. These varied in scale and design reflecting the historic commercial use of the site. Since the Council made its decision on the appeal scheme the commercial buildings have been demolished leaving a vacant brownfield site.
7. Alexandra Road rises from west to east. On the south side of the road, to the east of the site, is an old Cottage Hospital building which houses a doctor's surgery and a Lloyds Pharmacy. The main building, which is two-storeys high, has surface level parking that wraps around it. On the north side of Alexandra Road are residential properties in a variety of ages and architectural styles ranging from two-storey detached dwellings to three-storey flats. No 3 has recently been redeveloped introducing a contemporary design.
8. North-west of the site is a junction known as 'Fiveways'. On the north side of the junction, at the apex of Church Road and Mill Road, is a single-storey building that forms part of a Jewson builder's merchants. The *Statement of Common Ground* (SCG) refers to 102 Alexandra Road at the corner with Church Road being three-storeys high. This same building is referred to in the Conservation Area *Character Appraisal* as 102 Upper High Street.¹
9. There are residential properties on the west side of Church Road and further south Nos 20-26 are a terrace of two-storey Victorian properties. The south-west corner of the site adjoins a sub-station adjacent to which are the two-storey Nos 5 and 5A Church Road. The south-eastern boundary adjoins the rear gardens of two-storey terraced houses in Wyeth's Road.
10. The appeal site lies outside the Pikes Hill Conservation Area and its western boundary wall defines the eastern boundary of the Conservation Area. All the properties to the west side of Church Road lie within the Conservation Area as do Nos 9-35 (odd) in Wyeth's Road whose rear gardens back onto the south-eastern boundary of the appeal site. Nos 5 and 5A Church Road to the south-west of the appeal site and the old Cottage Hospital adjoining the eastern site boundary lie outside the Conservation Area as do the residential properties on the north side of Alexandra Road.
11. Epsom town centre lies to the west of the appeal site and Alexandra Road and Upper High Street form a main route into the town centre. The site is some 120 metres outside the town centre boundary when the most direct pedestrian route is taken, and around 308 metres from the nearest point of the defined Secondary Shopping Frontage and Primary Shopping Area. The appeal site is in the region of 220 metres from the Upper High Street Development site,

¹ CD19 p14, Sect 5.1

which is owned by Lidl. Following the close of this Inquiry the Council resolved, on 9 November 2017, to grant planning permission for a mixed use development, including a foodstore on the Lidl site. The parties were given an opportunity to comment on this resolution but no additional comments were received.

Effect of the Proposal on the Character and Appearance of the Surrounding Area, including the adjacent Pikes Hill Conservation Area

12. *National Planning Policy Framework* (NPPF) paragraph 64 states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. This is echoed in Policy CS 5 of the *Epsom and Ewell Core Strategy 2007* (CS) and Policy DM 9 of the *Epsom and Ewell Development Management Policies 2015* (DM). Policies CS 5 and DM 8 set out the objective of protecting and enhancing the setting of heritage assets. Design requirements for new developments are set out in Policy DM 10 whilst Policy DM 14 highlights criteria to guide shopfront design.
13. The proposal would lie outside the Pikes Hill Conservation Area and so would not directly affect its character or appearance. However, the Conservation Area abuts the boundary of the appeal site on the east side of Church Road and at the rear of properties in Wyeth's Road. The setting of the Conservation Area is, therefore, an important factor. Its significance is as an example of a late 19th/early 20th century residential suburb.
14. Church Road, running north/south, is the spine of the Conservation Area which predominantly consists of a quiet enclave of two-storey houses. The Council's *Character Appraisal & Management Proposals (March 2010)* for the Pikes Hill Conservation Area identifies that it has a suburban setting with residential uses immediately to the west but increasing commercial/office/retail uses as the town centre is approached. The Jewson's site and the Cottage Hospital both contribute to the more commercial character of the setting to the north and east of the appeal site. The suburban setting of the Conservation Area is weakest in the vicinity of the appeal site, which I consider makes it sensitive to uncharacteristic development.
15. The footprint of the store would cover some 28% of the site and much of the remainder would be car parking. Whilst the Surgery and Pharmacy in the Cottage Hospital have parking around them, it is of a significantly smaller quantity and is broken up by the building in the centre of the site. In contrast, the parking for the proposed store would cover a large area between the store building and the Church Road boundary of the Conservation Area. The existing boundary wall would be retained and some landscaping would be provided to mitigate the impact of the development. However, any new planting would be minimal where the site adjoins the rear of the Wyeth's Road properties in the Conservation Area, indeed it would be almost non-existent where it adjoins the Church Road boundary of the Conservation Area.
16. The *Townscape Appraisal Map* in the *Character Appraisal* identifies significant views along Wyeth's Road and at the south of Church Road but it is accepted that other views might merit consideration. The north end of Church Street south of Alexandra Road is a 'gateway' to the Conservation Area and allows views of the smaller terraces that contribute to the character of the area. The

- buildings along the north section of Church Street, with the exception of 102 Upper High Street on the corner, are identified as positive buildings.
17. In terms of design, the starting point is acknowledged, not unsurprisingly, to be the requirements of Aldi. The store design has been developed through an iterative process. The height of the building would be in compliance with Policy DM 13 but would also need to respect the local character. The store would be located at the high point of the site but would be 'dug in' which would to some extent mitigate the bulk of the building when viewed from Alexandra Road.
 18. The elevation to Alexandra Road would include a terrace of houses above the store. However, rather than step down the slope towards the Church Road 'gateway', the building would appear to 'grow' out of the ground before dropping to form the store's entrance canopy with the gable end of the residential buildings set back above the store. I consider that the elevation would have a marked presence as it grows out of the ground when approaching from the west. The domestic upper parts of the building would appear alien sitting above the store building. The domestic scale of the proposed houses located above the store would not be readily apparent when approached from the west or up Church Street. On the contrary, the view would be of the retail entrance and parked cars.
 19. There are some three storey buildings nearby. The most prominent is 102 Upper High Street at the corner on the opposite side of Church Road within the Conservation Area. The proposal would sit 2.7 metres higher than No 102. The *Character Appraisal* states of No 102 that it "has recently been much altered and extended. With large dormers in the front roofslope and a three-storey extension to the rear, it is quite out of scale with the prevalent two-storey height that typifies the residential surroundings and the conservation area". I agree with that assessment and consider that the development on the appeal site on the opposite side of Church Road would have a similar impact.
 20. The palette of materials would be appropriate, as noted by the Council's Conservation and Urban Design Officer. The key characteristics of the Conservation Area are identified in the *Character Appraisal* and include architectural details and features that add a richness to the character and appearance of the surroundings, both inside and outside the Conservation Area. This richness is missing in the proposed building. Expansive glazing is not a feature of the area and I concur with the Conservation and Urban Design Officer that the ground floor elevation of the store would be 'austerely commercial'.
 21. Based on visits to the site and its surroundings, rather than computer generated images, the proposal would occupy a prominent position when approaching from the town centre and, together with the extended No102 Upper High Street, it would frame the entrance to Church Road and detract from the character of the surrounding area and the setting of the Conservation Area. Consequently the proposal would not sit comfortably on the site or successfully integrate into the local context. The proposal would be contrary to the aims of *National Planning Policy Framework* (NPPF) paragraph 64, Policy CS5 of the *Core Strategy 2007* (CS) and policies DM 8, DM 9, DM 10 and DM 14 of the *Development Management Policies Document (September 2015)*(DMP).

22. Although the proposal would be detrimental to the character and appearance of the surrounding area, I consider that it would cause less than substantial harm to the significance of the designated heritage asset. In accordance with paragraph 134 of the NPPF the less than substantial harm should be weighed against the public benefits of the proposal. I return to that later.
23. Reference has been made to the possibility of a different form of development on the appeal site. However, what might happen under another developer is purely speculation. The issue in this case is the impact of this proposal on the character and appearance of the surrounding area.

Effect of the Proposal on Highway Safety in terms of Parking Provision and Traffic Flow

24. The most recent development plan policy relating to parking standards is DMP Policy DM 37. This requires "an appropriate level of off-street parking to avoid an unacceptable impact on on-street parking conditions and local traffic conditions". The policy also requires proposals to meet the objectives of the *Epsom and Ewell Borough Parking Strategy*. The *Strategy* "will seek to prevent situations where new developments result in on-street parking demand outstripping availability. The *Strategy's* overriding objective is that new development proposals have either a positive or neutral impact on parking availability and do not make things worse". The *Surrey Standards* predate the NPPF and are out of date in that they address *Planning Policy Guidance 13: Transport* which sought maximum parking levels but is now withdrawn.
25. The development plan policies should be looked at in terms of the NPPF and any unacceptable impact from Policy DM 37 would equate to a severe residual impact on on-street parking and traffic conditions.
26. Surrey County Council (SCC) has signed a *Statement of Common Ground* (SOCG) with Aldi. However, it does not refer to the latest policy and is based on 2015 parking accumulation survey data showing a maximum of 68 vehicles on a weekday and 73 at the weekends. SCC seem not to have been provided with May 2016 figures showing a maximum ranging from 73 to 89 or the Council's figures showing 96+ wanting to use the Aldi Ewell car park on a Sunday. Relatively little weight should, therefore, be given to the Highway SOCG.

On-Street Parking

27. On-street parking in the area around the appeal site is subject to high demand. Research produced in connection with a possible Resident's Parking Zone (RPZ) indicates that 78% of residents believe there is already a parking problem. A survey for the Council found that on Wednesday 28 September 2016 there were only 4 available unrestricted spaces and on Saturday 1 October there were only 5. On Thursday 22 September, in the middle of the night, there were only 8 vacant spaces for residents. At the Sunday 2 October peak the survey records 23 available spaces of which 6 are restricted spaces, but the restrictions do not apply on a Sunday.
28. This evidence for the Council identifies every space recorded and its location, and is based on the Lambeth methodology which uses 200 metres or 2 minutes walk as the distance residents are prepared to walk from a parking space to home. The capacity in the Appellant's evidence is less certain. Some on-street

- parking spaces would be lost, 5 on Alexandra Road due to access works and one on Church Road to allow a footpath in front of the sub-station to be provided.
29. The Council argues that any loss of on-street parking available to users of the surgery in the old Cottage Hospital would justify refusal. However, the on-street spaces are for use by anyone, and the Cottage Hospital has around 40 spaces within its own curtilage that are not regulated in any way. In addition, Aldi has indicated that patients for the surgery would be able to park in the Aldi car park for free outside peak periods.
30. In terms of staff, the Appellant stated there would be 40-50 overall with 59% driving, which might reduce to 54% after 5 years. Oral evidence was given that generally there would be about 10 staff at any one time, although there might be more at busier times. Unlike at Aldi Ewell, there would be no dedicated staff parking. However, a draft *Car Park Management Plan* states that staff would be encouraged to use nearby off-street parking and that Aldi would pay the full cost of staff parking in the nearest pay and display car park which is only 120 metres away on Upper High Street.
31. Introducing a large store in the residential area without adequate on-site parking would decrease the capacity of on-street parking and increase demand making the parking stress worse. However, the overall stress levels support the case for on-street parking controls that would resolve peak period parking conflicts and increase on-street parking availability.
32. There are already 15 short term on-street spaces within 200 metres. The peak occupancy within 400 metres was 85%. A further factor, albeit attracting little weight at this stage, is that there might shortly be a RPZ or similar parking mechanism to meet residents' demands. This could also provide mitigation by altering on-street regulation. Short stay on-street parking could displace longer stay commuters and staff, to off-street parking. I conclude that there would be an appropriate level of on-street parking and no unacceptable impact on on-street parking in accordance with DMP Policy DM 37. The proposals would have a relatively small impact on parking availability and need not make matters materially worse, in line with the aim of the Borough's *Parking Strategy*.

Store Car Park

33. Turning to the store car park, the out of date SCC *Standard* supports a pragmatic and flexible approach and treats out of centre (OOC) and edge of centre (EOC) sites differently indicating the provision of 72 and 48 parking spaces respectively. The Council maintains that the site is out of centre so that the higher starting point would apply.
34. However, the NPPF definition of EOC for retail purposes is "a location that is well connected and up to 300 metres from the primary shopping area". It also states that in determining whether a site falls within the definition of EOC, account should be taken of local circumstances. In this case, the site is 308 metres from the centre of the Epsom TC PSA. The characterisation of the site as OOC due to an extra 8 metres walk would be inconsistent with the Council's case on parking stress. In any event, DMP Policy DM 37 would allow some flexibility of impact.

35. SCC applied the EOC figure of 48 and used it as a guide as it exceeded the number of proposed parking spaces by 17. On the basis of the *Standard*, SCC considers that 65 parking spaces would be suitable.
36. In terms of car park size it is agreed that Aldi Ewell is a relevant comparison to Epsom being the closest in terms of affluence and car ownership. However, at times Ewell experiences queuing of up to 22 vehicles on a dual carriageway trying to access the store car park. Survey figures indicate that on a Sunday there are in excess of 96 cars in, or trying to get in, to the car park which has only 59 spaces. This would be more traffic than could be accommodated in the proposed 65 space car park that is also supposed to be accommodating the 6 on-street parking spaces that would be lost in the appeal scheme.
37. The Appellant maintains that not all the vehicles queueing outside Aldi Ewell are queuing for the store. Video runs of the car park queue confirm a number are waiting for a chance to peel off to the next lane. Consequently simply adding queue lengths to accumulation figures would over estimate demand for the Ewell car park.
38. The Council argues that 72 spaces should be provided in the light of experience of discount retailers in Leatherhead, Chessington and Ewell. The out of date SCC *Standard* uses a ratio of parking spaces to retail floor area. On that basis the Council considers that Aldi Ewell, at a ratio of 1.28m², and Lidl Chessington, at a ratio of 1.25m², both have inadequate parking provision. Leatherhead is considered 'more satisfactory' at 1.19 m² whilst the proposal would have a ratio of 1:21m². This is not dissimilar to the 'more satisfactory' Leatherhead. On this basis the Aldi Epsom would provide 16 more parking spaces than a Ewell equivalent which I consider would be adequate. Indeed, even allowing for the car park queues at Ewell, both the Appellant and the Highway Authority (HA) consider the proposed car park capacity to be adequate.
39. Predictions at Aldi Ewell have proved to be drastically wrong. The Appellant's Transport Assessment (TA) states "for smaller stores increasing area does not really impact trip rate and that trip rate is only related to size over a certain threshold". There is no justification to depart from that approach. One reason why predictions have been wrong is that Aldi has grown its trade more than expected, a trend that is expected to continue and which should be factored into the demand at Epsom.
40. In terms of a 'two store' effect Aldi Ewell has already been in competition with a Lidl at Chessington since around 2008 which is only some 3.9km from Ewell. That is closer than Aldi Epsom which would be around 4.6km via the quickest route. An even longer route is quicker when traffic is bad. Reference was made to a store at Romford but the only verifiable fact is that the two Aldi stores are not as far away as first thought. Any effects at Romford would be less pronounced as they would be over twice as far away as Epsom. However, the 'two store' effect could be increased by a third store, the Lidl scheme in Epsom. Common sense suggests that Aldi Epsom would draw trade from Aldi Ewell, Lidl Epsom and then other retailers such as Sainsbury Kiln Lane.
41. Catchment is another factor that has not been considered widely. Aldi Ewell is more likely to have a greater number of pass-by trips due to its location on a dual carriageway. Epsom has a larger population within 800 metres of the store site than Ewell has, 5,839 compared to 3,734. More people in close

- proximity would generally lead to more using the store by all modes including cars.
42. The design of the Ewell store car park is slightly better than the Epsom store car park would be as Epsom would have more conflicts between cars entering and customers pushing trolleys across the access way to their cars. Deliveries would also be close to the entrance. However, this would have little effect on trade draw.
 43. On-site parking would be managed by Parking Eye, as it is at many Aldi stores, and if there were overspill there is some on-street parking capacity, even under existing conditions, which could be improved by the implementation of a RPZ or similar. Taking all these factors into account I consider that they would lead to a lower demand for on-site parking spaces than at Ewell and the capacity of the proposed car park would be adequate, a view reinforced by the Highway Authority and comparison with other stores.

The Flow of Traffic

44. The Council, and local residents, maintain that the 'Fiveways' junction, where Alexandra Road, Mill Road, Church Road north and south, and Upper High Street meet is complex and problematical and that its proximity to the site access would exacerbate matters. The County Highway Authority originally held the same view and required an independent conflict study, including consideration of accident data. The recommendations of an independent safety audit have also been incorporated, including raised tables, tactile paving, dropped kerbs and a new traffic island to slow traffic heading towards the town centre.
45. As a result the HA concluded in a SOCG with the Council that "the existing Fiveways Junction is not uncharacteristic of a low complexity cross-roads type priority traffic junction" with no 5-year collision pattern. This is despite the Council maintaining that accident records do not capture all the problems that would be likely to be caused by around 3,000 extra daily customer turning movements predicted for Saturdays.
46. The parking demand at Ewell, peaking at 96+ on Sundays, is not short lived. The car park operates at over capacity for every 15 minute time slot from 10:00 to 15:45 on Sunday. If this were repeated at Epsom there would be around 35 cars that could not get into the car park. If these were apportioned at 73% from the west as anticipated, there would be 25 cars that the Council maintain would stop the Fiveways junction working.
47. The Council maintains that the right turn into the access would not comply with the only guidance on right turn lanes in the Design Manual for Roads and Bridges (DMRB). However, these are guidelines for motorway and trunk roads whereas Alexandra Road is a 30mph street. Manual for Streets 2 (MfS2), which is more recent guidance, states that "the strict application of DMRB to non-trunk routes is rarely appropriate for highway design in built-up areas, regardless of traffic volume". In any event DMRB permits deviations even from its own mandatory elements.
48. Paragraph 7.35 of DMRB advises a right turn lane should be 3.0 to 3.5 metres wide. What would be provided is a lane with a width of 2.5-3.0 metres. MfS2 advises that "2-2.5m wide lanes would be sufficient for most vehicles..... Lanes

wider than 3m are not necessary in most urban areas carrying mixed traffic". DMRB provides for relaxation to 2.5 metres. The proposal exceeds this minimum and tapers from 2.5-3.0 metres ensuring that lorries could wait within the right turn lane without impeding the free flow of traffic along Alexandra Road.

49. In terms of length, paragraph 7.35 of DMRB advises a right turn lane should be 35 metres long. For a 30mph road DMRB advocates a deceleration length of 25 metres. What would be provided is a 15 metre deceleration length and a 10 metre turning length giving a total length of 25 metres. DMRB assumes a deceleration rate of 0.375g whilst the more recent MfS2 states a deceleration rate for private cars of 0.45g. HGV deceleration has improved since DMRB but there has been no change to the DMRB guidance. Applying 0.45g would provide HGVs with a 15 metre deceleration length and a 10 metre turning length totalling 25 metres whilst private cars would have the full 15 metre deceleration length plus an additional 10 metres. I consider that the design of the access proposed would be safe and suitable and note that the HA has now reached the same conclusion'.
50. In respect of the Fiveways junction, the difference between the parties relates to the use of PICADY with modified inputs to enable an experienced engineer to gain a reliable understanding of the functioning of the site access and the existing junction. PICADY requires the Fiveways junction to be modelled as a four way crossroads. The Mill Road arm is a lightly trafficked one-way exit and its flows were added to those of an adjacent arm. The model takes full account of the impact of each of the Mill Road manoeuvres on the overall capacity of the junction. The Appellant acknowledges the limitations of PICADY but having interpreted the data and being aware of the limitations of the model and the results of the stress test concludes that there would be no problematical interaction. This is a view shared by the Highway Authority.
51. The Council's criticism is based on the experience at Aldi Ewell where store traffic regularly backs up onto the dual carriageway that provides access to the store. Criticism arises from the Council's 'purist' view that various identified turning movements in the Fiveways junction were misrepresented by the Appellant's inputs to the model. The Council also maintains that PICADY is incapable of modelling a car park entrance due to the interruption to free flowing traffic on site close to the entrance.
52. There is advice from TRL that "implies that PICADY is not the correct tool to model the T junction access to the proposed supermarket". However, this advice was clarified to say that microsimulation would only be needed on the basis that "the modelling of the interaction was a required output, considering the complexity of all the possible manoeuvres on the exit and within the car park PICADY would not be the most suitable platform. For modelling the T-junction in itself then the PICADY model should be more than appropriate".
53. Stress-tested PICADY models show significant residual capacity, even where traffic flows for Aldi Ewell and Lidl Epsom are added to the base flow without any deduction for pass-by traffic demonstrating the robust nature of the modelling. A series of pictorial representations of the modified model showed that the Borough's concerns were unfounded leading to the County Highway Authority accepting that there would not be a severe residual impact and that

there would be no conflict with NPPF paragraph 32 and CS Policy CS16. I agree with this conclusion.

Whether there is Sufficient Analysis to Demonstrate that there is no Sequentially Preferable Site

54. It is common ground that the sequential test should be applied in this case. NPPF paragraph 27 states "Where an application fails to satisfy the sequential testit should be refused". When the Inquiry closed there were three main candidate sequential sites, the 'Lidl site', and the town centre car parks at Upper High Street and Depot Road. These three sites are closer to the town centre, and roughly about 140 metres closer to the Primary Shopping Area (PSA), than the appeal site and therefore have a degree of preference in terms of the sequential test.
55. The key test in NPPF paragraph 24 is "only if suitable sites are not available should out of centre sites be considered". The Lidl site is obviously suitable as it now has planning permission for a store on the site. The Appellant identifies the sole question as "whether the site is available and if so, what weight should be given to that fact in the final planning balance".
56. At paragraph 35 of *Tesco v Dundee* [2012] UKSC 13 the meanings of 'suitable' and 'available' are set out. "Suitable" and "available" generally mean "suitable" and "available" for the broad type of development which is proposed in the application by approximate size, type, and range of goods. This incorporates the requirement for flexibility in paragraph 24 of the NPPF, and excludes, generally, the identity and personal or corporate attitudes of an individual retailer".
57. This is clarified by Ouseley J in paragraph 42 of the Tesco judgement. "A town centre site may be owned by a retailer already, to use itself for retailing, who is not going to make it available to another retailer. It is plainly available for retailing though only to one retailer. That does not mean that another retailer can thus satisfy the sequential test and so go straight to sites outside the town centre. Available cannot mean available to a particular retailer but must mean available for the type of retail use for which permission is sought".
58. The Appellant maintains that to refuse the appeal on the basis of the Lidl site remaining available would be to stretch the ordinary common sense meaning of language, and the commercial reality of the situation. However, rather than being artificially or excessively legalistic Ouseley J could not be clearer. The appeal site is plainly available for retailing, although only to Lidl, but that would not justify Aldi 'by-passing' the sequential test. I conclude that the Lidl site is sequentially preferable and available in accordance with NPPF paragraph 27. The sequential test is failed and the appeal should be dismissed.
59. Notwithstanding this, the Appellant suggests that any breach of the sequential test would be purely technical arising from applying an extended definition of availability and that on the balance of probability no harm would result and dismissing the appeal would not be justified. I return to this matter when considering the planning balance.
60. Turning to the Upper High Street and Depot Road sites, both are constrained by the presence of Low Voltage, High Voltage and Ultra High Voltage cables that need to be protected or relocated, the proximity of residential properties,

and the need to replace existing car parking with larger modern parking spaces. In respect of Depot Road there is also a problem with access that would need to be overcome. Correspondence with UK Power Networks highlights that dealing with the cables would be a monumental task and could cost as much as £900k on a site that in total cost £10.8 million. Notwithstanding whether or not this would be viable, matters arising from the requirements to resolve problems with infrastructure would lead to delays of 18-24 months. Neither car park site could therefore be described as available and so would not be sequentially preferable.

61. Reference has been made to appeal decisions in Exeter (APP/Y11110/W/15/3005333) and Rushden (APP/G2815/V/12/290175). Exeter differs from this case as the sequentially preferable site had not been bought by a retailer and was not in a ready to go state like the Lidl site in this case. In respect of the Rushden judgement the Appellant maintains that, having now received planning permission for development on the Lidl site, it is likely that there will soon be a discount store there and the site would, therefore, no longer be available.

Other Matters

62. A section 106 unilateral undertaking was submitted at the close of the Inquiry. This makes provision for Affordable Housing and would address the Council's reason for refusal 4. The provision would be in accordance with, or slightly more than, required by Core Strategy Policy CS 9 and a *Revised Developer Contributions Supplementary Planning Document* September 2014, Part 2. The Affordable Housing would meet the tests set out in Community Infrastructure Levy Regulation 122.
63. In addition to the matters raised by the Council, local residents maintain that the site is identified in the Local Plan for housing and that is what is needed. However, it was clarified that housing on the site was promoted in the emerging plan and was not adopted policy. They maintain the retail development could be provided on the Upper High Street/Depot Road site that is nearer to the town centre allowing significantly more housing on the appeal site. I accept that although there are three storey-buildings in the area these would not on their own justify allowing the appeal.
64. I note the residents' comments that: there is only one bus an hour serving the site; the Fiveways junction is dangerous; that Aldi's traffic survey was not carried out at a representative time, and that the provision for pedestrians crossing the north side of Church Road would be inadequate as no central refuge is planned.
65. Whilst all these matters have been considered, none are such that they would either on their own or together justify dismissing the appeal.

Planning Balance

66. Notwithstanding that the proposal would have little impact on highway safety in terms of parking provision and the flow of traffic, it would be detrimental to the character and appearance of the surrounding area, as well as causing 'less than substantial' harm to the significance of the Conservation Area. NPPF paragraph 134 indicates this less than substantial harm should be weighed against the public benefits of the proposal.

67. In terms of benefits, 6 residential units would be provided and a unilateral undertaking would ensure that 2 of these were Affordable. This would be generally in line with policy requirements but would have little impact on meeting the overall local housing requirement and so carries little weight. The main highways/pedestrian improvement would be the provision of a relatively short length of footway on the eastern side of Church Road along the appeal site frontage to the road. Due to the short length this would have only a slight improvement on safety.
68. It was accepted that if the appeal is refused one outcome could be that the site would be sold and residential development undertaken. In any event some form of investment would be likely to regenerate this brownfield site. The most up-to-date evidence from Lidl is that if Aldi is allowed it would re-evaluate its planned investment. However, a number of real life locations were highlighted where the two brands trade in close proximity and I see no reason why the two could not both trade in close proximity in Epsom and Ewell. It is claimed that jobs would be created but convenience stores generally alter patterns of trade and may lead to job losses where the trade is diverted from.
69. Even if the Appellant's case in relation to availability of the Lidl site is accepted, and Lidl quickly develops the store for which it now has planning permission, the two retailers are so similar that it would be inevitable that Aldi would take some trade from the sequentially better positioned Lidl. Aldi would not help improve the draw of the town centre but would extend it diverting some turnover to an EOC/OOC store, contrary to town centre objectives. The harm caused by the development, including the detrimental impact on the character and appearance of the surrounding area and the less than substantial harm to the setting of the Conservation Area, would outweigh the public benefits identified. The harm would not be capable of mitigation by conditions attached to any permission or any Section 106 Obligation.

Conclusion

70. I conclude that the appeal should be dismissed.

Ken Barton

Inspector

APPEARANCES

FOR EPSOM AND EWELL BOROUGH COUNCIL:

Richard Ground QC and Ruchi Parekh of Counsel Instructed by the Solicitor to the Council

They called

Kathryn Backhouse MSc, BTec HNC, Dip Pollution Control, CMILT, MCIHT Transport Director, Yes Engineering Group Limited

Eimear Murphy BSc(Hons), DipUD, Dip Historic Buildings, MRTPI, MIHBC Planning and Heritage Consultant, Murphy Associates

Matthew Morris BSc(Hons), DipTP, MRTPI Director, GVA Grimley

Mark Berry BA(Hons), DMS, DipDBE, MRTPI Head of Place Development, Epsom and Ewell Borough Council

FOR ALDI STORES LIMITED:

Mark Lowe QC Instructed by Planning Potential

He called

Nick Bradshaw CMILT MCIHT Director and Principal, Connect Consultants

Justin Griffiths BA(Hons), DipArch, ARB, RIBA Senior Architect, The Harris Partnership

Dr Jonathan Edis BA, MA, PhD, MCIfA, IHBC Director, Heritage Collective

Rob Scadding BA(Hons), DipTP, MRTPI Associate, Planning Potential Limited

INTERESTED PERSONS:

Andrew Marratt Local Resident

Joan Barwick Local Resident

Barbara Warwick Local Resident

Cllr Neil Dallen	Local Resident
Mr Childs	Local Resident
Mrs Stevens	Local Resident
Mrs Mary Hunt	Local Resident
Valerie Sanger	Local Resident
Roz McLeod	Local Resident
D W Stevenson	Local Resident
Deborah Sparham	Local Resident

DOCUMENTS

EPSOM AND EWELL BOROUGH COUNCIL'S DOCUMENTS

EEBC/1	Statement of Case
EEBC/2	Not Used
EEBC/3	Mrs Backhouse's Proof of Evidence and Appendices
EEBC/4	Mrs Murphy's Proof of Evidence
EEBC/5A	Mr Morris's Proof of Evidence
EEBC/5B	Appendices to Mr Morris's Proof of Evidence
EEBC/6	Mr Berry's Proof of Evidence and Appendices
EEBC/7A	EEBC's Closing Submissions
EEBC/7B	Extract from Halsbury's Laws of England – Judicial Decisions as Authorities

ALDI'S DOCUMENTS

ALDI/1	Statement of Case
ALDI/2	Opening Statement in behalf of Aldi
ALDI/3A	Mr Bradshaw's Proof of Evidence
ALDI/3B	Appendices to Mr Bradshaw's Proof of Evidence
ALDI/3C	Mr Bradshaw's Rebuttal Proof of Evidence
ALDI/3D	Appendices to Mr Bradshaw's Rebuttal Proof of Evidence
ALDI/3E	Drawings submitted by Mr Bradshaw NPB/01-03 7 09-13
ALDI/4A	Mr Griffiths's Proof of Evidence
ALDI/4B	Appendix A to Mr Griffiths's Proof of Evidence
ALDI/5A	Dr Edis's Summary Proof of Evidence
ALDI/5B	Dr Edis's Proof of Evidence
ALDI/6A	Mr Scadding's Proof of Evidence
ALDI/6B	Appendices to Mr Scadding's Proof of Evidence
ALDI/6C	Mr Scadding's Rebuttal Proof of Evidence and Appendices
ALDI/7	Closing Submissions on behalf of Aldi

INQUIRY DOCUMENTS

ID/1	Pre Inquiry Note
ID/2	Statement read by Mr Marratt (Local Resident)
ID/3	Planning Statement of Common Ground

ID/4	Highways Statement of Common Ground between Aldi and Surrey County Council
ID/5	Highways Statement of Common Ground between Aldi and EEBC
ID/6A	Schedule of suggested conditions
ID/6B	Amended wording Conditions 7-9
ID/7	Bundle inc Car Park Management Plan and suggested amendments
ID/8	Unilateral Undertaking in respect of Affordable Housing provision
ID/9	S106 Agreement between Surrey County Council and Aldi
ID/10	Note on compliance with CIL Regulation 122.

CORE DOCUMENTS

CD1	<p>Full Planning Submission (Application Reference 15/01346/FUL) – List of Documents as Agreed within Section 6 of Planning SoCG, incorporating minor amendments, and which appeal to be determined on:</p> <p>a) Application Drawings (see schedule)</p> <ul style="list-style-type: none"> • 0837-CHE-115 B – Location Plan • 0837-CHE-100 F – Proposed Site Plan – Ground Floor • 0837-CHE-101 B – Proposed Site Plan – First Floor • 0837-CHE-102 A – Proposed Ground Floor Plan • 0837-CHE-103 A – Proposed First Floor Plan • 0837-CHE-104 A – Proposed Second Floor Plan • 0837-CHE-105 B – Proposed Elevations • 0837-CHE-106 B – Proposed Elevations • 0837-CHE-107 A – Proposed Elevations • 0837-CHE-108 A – Proposed Roof Plan • 0837-CHE-109 A – Proposed Sections • 0837-CHE-110 A – Existing Sections • 0837-CHE-111 – Proposed Daylight Sections • 0837-CHE-112 – Shadow Impacts • 0837-CHE-117 – Street Scene. • 0837-CHE-CGI-01 B • 0837-CHE-CGI-02 B • 0837-CHE-CGI-14 • 0837A-CHE-CGI-014 A • 0837-CHE-CGI-15 B • 0837-CHE-CGI-16 A • V0837 L01 – Landscape Scheme • V0837 D01 - Tree Planting Detail - Car Park Trees • V0837 D02 - Tree Planting Detail - Soft Landscape Areas • MJA-P105-4204 – External Lighting Assessment • 12040-010 revision J – Proposed Site Access <p>b) Planning & Retail Statement (December 2015), incorporating Affordable Housing Statement</p> <p>c) Design & Access Statement (03/12/2015);</p> <p>d) Statement of Community Involvement (December 2015);</p> <p>e) Transport Assessment (November 2015), in addition to subsequent highway submissions issued 15th January 2016, 20th January 2016, 10th February 2016, and 9th March 2016;</p> <p>f) Framework Travel Plan (October 2015);</p> <p>g) Archaeological Assessment – Desk Based Assessment (October 2015)</p> <p>h) Sustainability Statement (November 2015);</p> <p>i) Construction Management Plan (December 2015);</p> <p>j) Preliminary Ecological Appraisal and Initial Bat Report (October 2015);</p> <p>k) Bat & Reptile Survey Report (October 2015);</p> <p>l) Contamination – Desk Study Assessment Report (August 2012);</p> <p>m) Environmental Noise Assessment (December 2015);</p> <p>n) Sustainable Drainage Statement (November 2015), in addition to subsequent submissions issued on 29th January 2016;</p> <ul style="list-style-type: none"> • SUDS Proforma • 3787/105/301 – Proposed Drainage Layout • 3787/105/302 – Manhole Schedules • 3787/105/303 – Drainage Construction Details
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CD2	EEBC Pre-Application Response – 13 th February 2015
CD3	EEBC EIA Screening Opinion – 26 th August 2015
CD4	Email Correspondence from EEBC Officers during determination stage (in date order): a) 15 th January 2016 – Highway comments b) 1 st February 2016 – Design comments c) 4 th March 2016 – Including extracts from YES Engineering letter
CD5	Additional Application Submissions and Correspondence with EEBC (in date order): a) 13th January 2016 – Email from PP regarding S.106 Agreement b) 20th January 2016 – Detailed highway response. c) 21st January 2016 – Response to various consultation comments d) 21st January 2016 – Response issued to Conservation & Design Officer e) 27th January 2016 – Response to EHO comments f) 29th January 2016 – Response to SCC Sustainable Drainage & Consenting Team and Connect Transport Note (15th January 2016). g) 8th February 2016 – Response to design details as requested by Case Officer h) 10th February 2016 – Further detailed highway response i) 15th February 2016 – Response agreeing to extension of time j) 9th March 2016 – Response to all consultation responses k) 4 th April 2016 – Response to Committee Report, including legal opinion
CD6	Statutory Consultation Responses to Application: a) SCC Highways – 18th February 2016; b) SCC Heritage Conservation Team: Archaeology – 7th January 2016; c) EEBC Conservation & Urban Design Officer – 7th January 2016; d) EEBC Ecology Officer – 8th January 2016; e) Environment Agency – 12th January 2016; f) SCC Sustainable Drainage and Consenting Team – 14th January 2016 and 17th February 2016; g) EEBC Environmental Health Officer – 15th January and 12th February 2016;
CD7	Selected Third Party Responses to Application: Marrons Planning on behalf of Lidl UK GmbH (with Gateway TSP Highways letter attached) – 9 th February 2016
CD8	Officer's Report to Committee – 7 th April 2016
CD9	Planning Potential Minutes of Committee Meeting – 7th April 2016
CD10	Decision Notice (Ref: 15/01346/FUL) – 12 th April 2016
CD11	Prior Notification of Proposed Demolition Decision Notice (Ref: 16/00791/DEM) – 20 th October 2016
CD12	NPPF (Relevant Paragraphs and Sections) <ul style="list-style-type: none"> • 11 • 12 • 13 • 14 • Section 2 – Ensuring the vitality of town centres • Section 4 – Promoting sustainable transport • Section 7 – Requiring good design • Section 12 – Conserving and enhancing the historic environment • 186 • 187 • 196 • 197 • 203 • 204 • 206 • 215 • 217 • Annex 2: Glossary
CD13	National Planning Practice Guidance (NPPG) – (Relevant Sections/Paragraph) Decision-taking: historic environment <ul style="list-style-type: none"> • Paragraphs: 008 to 023 The importance of good design <ul style="list-style-type: none"> • Paragraphs 001 to 012

	<p>Ensuring the vitality of town centres</p> <ul style="list-style-type: none"> • Paragraphs: 001 to 018
CD14	<p>EEBC Core Strategy – 2007 (Relevant Extracts)</p> <ul style="list-style-type: none"> • CS1 • CS5 • CS14 • CS16
CD15	<p>EEBC Local Plan Review Programme – June 2017</p>
CD16	<p>EEBC Development Management Policies – 2015 (Relevant Extracts)</p> <ul style="list-style-type: none"> • DM8 • DM9 • DM10 • DM13 • DM14 • DM29 • DM36 • DM37 • DM38
CD17	<p>EEBC Epsom Town Centre Area Action Plan 'Plan E' – 2011</p>
CD18	<p>EEBC Upper High Street, Depot Road and Church Street Development Brief – 2012</p>
CD19	<p>EEBC Pikes Hill Conservation Area Character Appraisal & Management Proposals, including Map – 2010</p>
CD20	<p>EEBC Epsom Town Centre Retail Study & Healthcheck – 2009 (Relevant Extracts)</p>
CD21	<p>EEBC Retail Study Update – August 2015 (Relevant Extracts)</p>
CD22	<p>EEBC SPD - Parking Standards for Residential Development (2015)</p>
CD23	<p>EEBC SPD – Revised Developer Contributions (2014)</p>
CD24	<p>Surrey County Council Transport Plan: Parking Strategy (2011)</p>
CD25	<p>Surrey County Council – Vehicle and Cycle Parking Guidance (2012)</p>
CD26	<p>Surrey County Council – Transportation Development Control Good Practice Guide (July 2016)</p>
CD27	<p>Surrey County Council Road Safety Audit (March 2016)</p>
CD28	<p>EEBC Parking Strategy (2012)</p>
CD29	<p>Supreme Court Judgment – Suffolk Coastal District Council v Hopkins Homes Ltd - UKSC 2016/0076 (May 2017)</p>
CD30	<p>Supreme Court Judgment - Tesco Stores Limited v Dundee City Council – UKSC 2011/0079 (March 2012)</p>
CD31	<p>High Court Judgment - Aldergate Properties Ltd v Mansfield District Council - Case No: CO/6256/2015 (July 2016)</p>
CD32	<p>SoS/Appeal Decision (Exeter) – APP/Y1110/W/15/3005333</p>
CD33	<p>SoS/Appeal Decision (Rushden) – APP/G2815/V/12/190175</p>
CD34	<p>YES Engineering Transport Review Letter (on behalf of EEBC) – 22nd February 2016</p>
CD35	<p>YES Engineering On-Street Parking Surveys (on behalf of EEBC) – September/October 2016</p>
CD36	<p>Ian Gittens Associates – Stage 1 Road Safety Audit letter (on behalf of EEBC) – 31st August 2016</p>
CD37	<p>Speed Survey (on behalf of EEBC) – 23rd August 2016</p>
CD38	<p>Department for Transport – Manual for Streets (2007) (Relevant Extracts)</p>

CD39	Department for Transport – Manual for Streets 2 (2010) (Relevant Extracts)
CD40	Upper High Street Development Site Planning History Details: a) 17/00001/FUL – Lidl UK GmbH – Pending b) 08/1246/REN – Renewal of 03/00748/FUL – Refused c) 05/01263/FUL – Tesco - Refused d) 03/00748/FUL – Original retail scheme
CD41	Lambeth Council Parking Survey Guidance Note
CD42	Connect Consultant Transport Assessment for planning application reference 14/00471/FUL for the extension to the Aldi Ewell store
CD43	The TRL information about PICADY 9 software features used for traffic modelling
CD44	SPD – Shopfront Design Guide 2012
CD45	Historic England Good Practice Advice in Planning Note 3 2015
CD46	Conservation Principles, Policies and Guidance – Historic England 2008
CD47	DoT Design Manual for Roads and Bridges TD42/95
CD48	TRICS Research Report 14/1
CD49	DoT Inclusive Mobility 2005 – extract
CD50	CGI Church Road
CD51	Epsom and Ewell Local Plan – Housing Annual Monitoring Report 2015/16
CD52	Agreed Driving Distances