

## **DARLINGTON BOROUGH COUNCIL**

### **PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE: 2nd March 2016**

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**APPLICATION REF. NO:** 15/01224/FUL

**STATUTORY DECISION DATE:** 8<sup>th</sup> February 2016

**WARD/PARISH:** Redhall and Lingfield

**LOCATION:** ALDI Yarm Road, Darlington

**DESCRIPTION:** Variation of condition to allow deliveries to take place on Monday to Saturday between 07:00 and 18:00 and on Sunday between 09:00 and 12:00.

**APPLICANT:** ALDI Stores Ltd.

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#### **CONTEXT**

Prior to this application being submitted Officers were in extended discussions with the applicants and local residents with a view to arriving at an acceptable solution to all that would avoid the need for a Public Inquiry to be held into the merits or otherwise of extending the delivery hours to the ALDI store in Yarm Road Darlington.

Meetings were held with local Members and residents and legal advice was sought in relation to the evidence submitted with the Certificate of Lawful Use application. The current application is the result of those discussions.

#### **APPLICATION AND SITE DESCRIPTION**

The ALDI store is one of three similarly sized shop units set back off Yarm Road and close to a small number of other shops fronting the road on the outskirts of Darlington.

There is a large car park to the front with a delivery area around the rear of the building close to the delivery area for the adjacent Iceland store. The whole retail area is surrounded by residential dwellings and there is an elderly persons' sheltered housing scheme to the rear of the application site.

The current planning application relates to the varying of the delivery hours that were imposed by condition on the original planning permission for the store in 1991.

## **PLANNING HISTORY**

91/00703/MISC – Erection of food store and outline permission for residential development to the rear – granted in December 1991.

Numerous miscellaneous applications submitted over time not relating to the current proposal until:

14/01265/FUL – Variation of delivery times on weekdays and Sundays – refused February 2015 see below for details. Appeal lodged –Inquiry set for May 2016.

15/00638/LU – Certificate of lawful use relating to making shop deliveries without adherence to the original condition – refused September 2015. See below for details. Appeal lodged –Inquiry set for May 2016.

## **PLANNING POLICY BACKGROUND**

*Darlington Core Strategy Development Plan Document Policies: -*

CS 16 – Protecting Environmental Resources, Human Health and Safety.

*Darlington Local Plan*

E 38 – Alterations to business premises

## **RESULTS OF CONSULTATION AND PUBLICITY**

Local residents were consulted and a site notice posted. Objections have been received from three local residents raising the following issues:

- No objections to the times of delivery but do object to engines running before and after delivery for the fridge units.
- Object to 07:00 deliveries – no objection to Sundays

**The Highways Engineer** – no objections subject to the proposals.

**Environmental Health Officer** – Comments as follows:

*In terms of weekdays this is no different to that in the previous planning application to vary the condition which was refused. In terms of Sundays the proposal asks for 09.00-12.00. This only effectively removes the hours of 12.00-17.00 from the previous application which was refused.*

*I have seen no real justification in any of the documentation to vary the weekday hours to allow deliveries at 07.00 and feel that this can only lead to disturbance for nearby residents.*

*The justification for allowing Sunday deliveries appears to be to allow the shop to be stocked with fresh goods prior to opening. As the store opens at 10.00 I cannot see any need to have permitted deliveries beyond 10.00.*

*I don't agree that a precedent would not be set with regard to both the Iceland store and the Lidl store. I accept that these premises are closer to Phoenix House and Heron Drive but Aldi is closer to The Byway. Complaints about noise from early morning deliveries have been received from both of these locations.*

*Complaints continue to be received regarding deliveries taking place outside of permitted hours and there is no confidence that this will not continue should approval be granted, thereby increasing the delivery window further and increasing the potential impact on residents.*

## **PLANNING ISSUES**

The main issues to be considered in the determination of this application are considered to be the impact on local residents of introducing Sunday lorry deliveries for three hours and extending the Monday to Saturday delivery times to an earlier 07:00.

The original delivery hours imposed by condition in 1991 were 08:00 to 18:00 Mondays to Saturdays with no deliveries on Sundays – the reasons for imposing that condition was in the interests of residential amenity. There was no pressure for Sunday deliveries at that time as there was no Sunday retailing at that time.

In 2014 a planning application was submitted to extend the delivery hours to 07:00 – 18:00 Mondays to Saturdays and 09:00 – 17:00 Sundays but this was refused permission because of the impact the Sunday delivery times would have on local residents, even though the shop was trading from 10:00 – 16:00.

In 2015 an application was submitted for a Lawful Development Certificate for an existing use or operation claiming that ALDI had breached the delivery times imposed by condition on the original planning permission for more than ten years and were thus exempt from enforcement action. At that time the Local Planning Authority decided that the submitted evidence was not conclusive and that on the balance of probabilities there had not been a continuous breach of the relevant condition.

The current application proposes hours of delivery less than that refused permission in 2014 in that the problematical Sunday hours are now reduced to three hours 09:00 – 12:00.

The applicants have made the following comments in support of their application:

*It is absolutely necessary to accept deliveries to its store on Sundays in order to ensure fresh produce on a daily basis and would be in line with other ALDI stores nationwide. Delivery at least one hour before opening ensures shelves are stocked in time for opening. Sundays are one of the busiest trading days and it is not feasible to stock shelves from crates once the store is open.*

Before submitting the current application the applicants were in discussion with Officers and it was agreed that the proposed delivery hours were the minimum that could be acceptable to the applicants.

In considering the merits of the current proposal, the following factors should be taken into account:

- There have only been three individual objections to the proposals, non are specifically for the Sunday hours.
- Additional evidence received leads Officers to believe that a new Certificate of Lawfulness application would be likely to be successful which would allow unrestricted deliveries– this opinion is supported by legal advice to Officers. This is effectively a “fall back” position should this application be refused – as well as the two appeals currently lodged for the earlier refusals referred to above.
- The additional Sunday hours are limited in duration – three hours – and 09:00 may not be considered to be excessively early in the day.
- The additional Monday to Saturday delivery hours are limited to a single hour: 07:00 rather than 08:00.
- There is already activity taking place on site on Sundays during trading hours 10:00 – 16:00.
- An appeal decision at the Darlington Sainsbury’s supermarket relating to extending the store, included conditions relating to delivery hours. Sunday deliveries were allowed by the Inspector between 10:00 and 17:00, and on a 24 hour basis on other days.

Taking all the above factors into account, and bearing in mind separate noise nuisance legislation available should there be regular and justifiable complaints made, it is considered that the requested extended delivery hours are reasonable and should be approved.

## **SECTION 17 OF THE CRIME AND DISORDER ACT 1998**

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

## **RECOMMENDATION**

**THAT APPROVAL BE GIVEN TO VARY CONDITION 13 OF PLANNING PERMISSION REFERENCE 8/91/703/DM TO READ AS FOLLOWS:**

“Deliveries to the ALDI retail store shaded in blue on submitted Plan Ref : 0376-PL(1)01 shall only take place on Monday to Saturday between 07:00 and 18:00 and Sundays 09:00 and 12:00. Deliveries to all other stores shall only take place on Monday to Saturday between 08:00 and 18:00”.

