

**Report to:** PLANNING COMMITTEE

**Date:** 23 December 2015

**Report from:** Assistant Director of Housing and Built Environment

**Application Address:** Aldi, Rye Road, Hastings, TN35 5DG  
**Proposal:** Variation of condition 18 (delivery hours) of planning permission HS/FA/13/00414 - proposed hours 0600-2200 Monday to Saturday. Sunday & Bank holidays to remain unchanged.

**Application No:** HS/FA/15/00824

**Recommendation:** Grant Full Planning Permission

Ward: ORE  
File No: RY30000T  
Applicant: ALDI Stores Ltd. per Planning Potential Ltd.  
Magdalen House 148 Tooley Street London SE1 2TU

Interest: Freeholder  
Existing Use: Supermarket

**Policies**

Conservation Area: No  
National Planning Policy Framework: Section 11  
Hastings Local Plan -  
The Hastings Planning Strategy: SC1  
Hastings Local Plan -  
Development Management Plan: DM6

**Public Consultation**

Adj. Properties: Yes  
Advertisement: Yes - General Interest  
Letters of Objection: 6  
Petitions Received: 0

Application Status: Not delegated - More than 2 letters of objection received

## **Summary**

The application site relates to the relatively new (2014) Aldi supermarket located in the north-east area of Hastings. The applicant wishes to extend the permitted delivery times of the supermarket from between 07:00 and 22:00 to between 06:00 and 22:00 - allowing deliveries to occur an hour earlier.

The main issue with this change is the possible impact on neighbouring residential amenities and, in particular, noise disturbance. The application has been accompanied by a noise report which explains that, compared with existing background noise levels and with certain noise control measures, the proposed change in hours will not result in harm to neighbouring residents.

I appreciate that there has been objection to this proposal but the conditions proposed to control delivery hours and noise (conditions 18 and 23) are considered enforceable and are reasonable in all other respects. If there are any breaches, Planning Enforcement can take appropriate action.

Taking into account the impact on neighbouring residents, the proposed change in delivery hours is considered to be acceptable. The proposal is compliant with policy DM6 of the Hastings Local Plan: Development Management Plan and Section 11 of the National Planning Policy Framework. I therefore recommend approval.

## **The Site and its Location**

The application site relates to the relatively new (2014) Aldi supermarket located in the northeast area of Hastings. The site is located off Rye Road which is a busy main road forming part of the A259 coastal highway. The site is predominantly surrounded by residential development including an adjacent residential care home.

## **Details of the Proposal and Other Background Information**

Planning permission, reference HS/FA/13/00414, was granted in 2013 for the demolition of an existing hardware store (B&Q) and the erection of a new supermarket (Aldi). The planning application was accompanied by a noise report explaining the potential impact on local residents and, as a result of this, a condition was placed on the planning permission that deliveries could only be made between the hours of 07:00 and 22:00.

Now that the supermarket has been operational, the owners consider that deliveries need to occur slightly earlier in order to ensure the store is sufficiently stocked by opening time. As such, they have applied to extend the delivery times by an hour earlier from 06:00 to 22:00. The application has been accompanied by another noise report to explain the impact of this change.

## **Previous Site History**

HS/FA/13/00414 Demolition of existing store and provision of replacement supermarket, together with associated landscaping and car parking.  
Granted subject to conditions and a legal agreement 27 November 2013

## Details of Consultations

The **Local Highway Authority** has raised no objection to the proposed changes.

The **Environmental Protection Officer** has raised no objection subject to strict adherence of the noise prevention measures outlined in the submitted noise report.

There have been **six objections** to the application. Concerns include:

- non-compliance with existing permitted opening hours: and
- noise from delivery vehicles including reversing alarms and cabin radios.

One of the objections also relates to use of lighting at the site. This is not something that is being considered as part of this application as it does not relate to the proposed change in delivery hours.

## Planning Considerations

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

The main policy that applies is policy DM6 of the Hastings Local Plan: Development Management Plan (DMP). The main issue to consider is whether allowing deliveries to occur an hour earlier in the morning will have a detrimental impact on neighbouring residential amenities.

### Noise:

To aid in the consideration of this matter the applicant has submitted a noise report. The report explains that the noise was assessed against existing background noise levels and that when comparing the existing levels with those predicted between 06:00 and 07:00 there would be an imperceptible difference to local residents. Part of this is because of the busy nature of Rye Road even at those earlier hours. Of course there will be peaks in sound due to the way in which the vehicle has to enter the site, but to ensure that noise levels will be kept to a minimum, the applicant proposes a number of noise control measures, some of which I consider can be controlled by condition (conditions 18 and 23). These control measures include:

- no goods pallets or roll cages to be moved in open areas;
- no reversing beepers to be used;
- refrigeration units to be switched off when the vehicle is in the loading bay; and
- delivery scheduling to ensure that no more than one delivery will be present in the service yard.

The Environmental Protection Officer has reviewed the noise report and considered the noise control measures. They raise no objection.

I have some sympathy with the residents who have objected to the application but it is clear to me that the main issues are enforcement related - deliveries outside of permitted hours and noise from the delivery vehicles. The proposed conditions will help control these matters and, should there be any breaches an appropriate investigation can be carried out by

Planning Enforcement, which can ultimately lead to court proceedings.

The applicant has evidenced that this approach is considered acceptable based on a recent appeal decision for a similar proposal.

**Other:**

I note that one of the objectors has complained in the past and may not consider the recommendation or the recommended conditions sufficient. From our records, it appears that the complainant was made aware of the current conditions in place and that they should report further breaches to Planning Enforcement so the matter can be investigated further. No further complaints were made. The same applies and should there be any breaches of conditions residents should complain to Planning Enforcement who will be able to enforce the recommended conditions.

**Conclusion:**

Considering the above these proposals comply with the development plan in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004 and I recommend that planning permission be granted subject to conditions.

The Human Rights considerations have been taken into account fully in balancing the planning issues.

**Recommendation**

**Grant Full Planning Permission subject to the following conditions:**

1. The development hereby permitted shall be begun before the expiration of three years from the date of planning permission HS/FA/13/00414.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:  
  
0882-CHE -100, 101, 102, 110B, 111C, 112B, 113C, 114B, 115B, 116B and 117
3. The new access shall be in the position shown on the submitted plan (drawing no. 0882-CHE-110B) and laid out and constructed in accordance with the attached HT407 form/diagram. All works undertaken shall be executed and completed by the applicant to the satisfaction of the Local Planning Authority prior to occupation of the development hereby permitted.
4. The development shall not be brought into use until the existing access shown on submitted drawings has been stopped up and the kerb & footway reinstated in accordance with details submitted to and approved in writing by the Local Planning Authority.
5. The access hereby permitted shall not be used until a turning space for vehicles has been provided and constructed in accordance with the approved plan (drawing no. 0882-CHE-110B) and the turning space shall thereafter be maintained in a suitable condition for that use and shall not be used for any other purpose.

6. Prior to the commencement of development details of the proposed surface water drainage to prevent the discharge of surface water from the proposed site onto the public highway and, similarly, to prevent the discharge of surface water from the highway onto the site shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority. The development shall be carried out in accordance with the approved details.
7. Prior to demolition works commencing on site a Traffic Management Scheme shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority. This shall include the size of vehicles, routing of vehicles and hours of operation. (Given the restrictions of the access and/or the approach road the hours of delivery/ collection should avoid peak traffic flow times). The development shall be carried out in accordance with the approved scheme.
8. During any form of earthworks and/or excavations that are carried out as part of the development, suitable vehicle wheel washing equipment should be provided within the site, to the approval of the Planning Authority, to prevent contamination and damage to the adjacent roads.
9. The development shall not be brought into use until parking areas have been provided in accordance with the approved plans and the areas shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles.
10. The development shall not be brought into use until the cycle parking area has been provided in accordance with the approved plans and the area shall thereafter be retained for that use and shall not be used other than for the parking of cycles.
11. The development shall not be brought into use until a scheme has been submitted and approved in writing by the Local Planning Authority in consultation with the Highway Authority for the construction of the traffic island in Rye Road including associated dropped kerbs and tactile paving as well as the removal of the existing and has been implemented. This scheme shall include the alterations to the road markings.
12.
  - (i) Construction of the development shall not commence until details of the proposed means of foul sewerage and surface water disposal/management have been submitted to and approved in writing by the Local Planning Authority.
  - (ii) Development shall be carried out in accordance with the details approved under (i) and the development shall not be brought into use until those works have been completed.
  - (iii) The development shall not be brought into use until the Local Planning Authority has confirmed in writing that it is satisfied, that the necessary drainage infrastructure capacity is now available to adequately service the development.

13. No development shall take place until the measures outlined in the submitted ecological statements and reports (Badger Method Statement by The Ecology Consultancy), dated August 2013 have been fully implemented, unless:
- (i) the programme for such measures is otherwise specified within that document (for example with regard to measures related to monitoring, further survey work, the erection of bird boxes on buildings or other conservation enhancements), in which case the works shall be carried out in accordance with the timescales contained therein or;
  - (ii) unless the scheme(s), or programme(s) of measures contained within the ecological statements and reports is otherwise first varied, by way of prior written approval from the Local Planning Authority.
14. No development shall commence until a scheme for the provision of public art has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be installed prior to the approved building being brought into use.
15. With the exception of internal works the building works required to carry out the development allowed by this permission must only be carried out within the following times:-
- 08.00 - 18.00 Monday to Friday  
08.00 - 13.00 on Saturdays  
No working on Sundays or Public Holidays.
16. No fixed plant and/or machinery shall come into operation until details of the fixed plant and machinery serving the development hereby permitted, and any mitigation measures to achieve this condition, are submitted to and approved in writing by the Local Planning Authority. The rating level of noise emitted from all fixed plant and machinery should not exceed 36 dBA between 2300 and 0700 hours and 42dBA between 0700 and 2300 hours when measured or calculated at 1m from the facade of the nearest noise sensitive property. The measurements and assessments shall be made according to BS 4142:1997. The plant and machinery shall be installed in accordance with the approved details.
17. The premises shall not be used for trading except between the following hours:-
- 0800 to 2200 Monday - Saturday,  
1000 to 1800 Sundays, and  
0900 to 1800 on Bank Holidays.
18. The premises shall not accept deliveries except between the following hours:-
- 0600 to 2200 Monday - Saturday,  
0900 to 2200 Sundays, and  
0700 to 2200 on Bank Holidays.

19. All planting seeding or turfing comprised in the approved soft landscaping scheme shown on drawing no. V0882L01A shall be carried out prior to the occupation of any part of the development, or with the written agreement of the Local Planning Authority, in the first planting and seeding seasons following the occupation of any buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
20. No development shall take place until tree protection measures of the *Arboricultural Impact Assessment and Method Statement* by David Cashman dated 31 May 2013 and the accompanying plan (drawing no. 13095-BT2) to safeguard the trees and/or hedges to be retained on the site have been erected. All such protection measures shall be kept in a sound, upright and complete condition until the development has been completed and/or the Local Planning Authority confirm in writing that the works have been sufficiently completed for the fencing to be removed.
21. Notwithstanding that shown on drawing no D22155/JB/A and prior to their installation, details of the proposed external lighting and external lighting columns shall be submitted to an approved in writing by the Local Planning Authority. The installation shall be carried out in accordance with the approved details.
22. The glazed shopfront doors and windows hereby approved shall at all times be maintained in clear glass throughout and shall not be obscured, laminated, screened or otherwise blocked so as to prevent substantial direct vision into the unit from outside, other than that specifically annotated on the approved drawings or with the prior written approval of the Local Planning Authority and shall be maintained as such thereafter to the satisfaction of the Local Planning Authority.
23. Between the hours of 2200 and 0700 deliveries shall be carried out strictly in accordance with the noise control measures listed at paragraph 4.15 of the submitted *Environmental Noise Report - Variation of delivery hours* by Sharps Redmore Acoustic Consultants (dated 24 September 2015, project no. 1515352) and in addition delivery vehicle engines shall be switched off when not manoeuvring and no horns sounded or radios/stereo players used.

**Reasons:**

1. This condition is imposed in accordance with the provisions of Section 91 of the Town and Country Planning Act 1990.
2. For the avoidance of doubt and in the interests of proper planning.
3. To ensure the safety of persons and vehicles entering and leaving the access and proceeding along the highway.
4. In the interests of highway safety.

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6. In the interests of highway safety.
7. In the interests of highway safety and for the benefit and convenience of the public at large.
8. In the interests of highway safety and for the benefit and convenience of the public at large.
9. To ensure the safety of persons and vehicles entering and leaving the access and proceeding along the highway.
10. In order that the development site is accessible by non car modes and to meet the objectives of sustainable development.
11. In the interests of highway safety.
12. To prevent increased risk of flooding.
13. To protect features of recognised nature conservation importance.
14. To provide public art in accordance with policy DG20 of the Hastings Local Plan 2004.
15. To safeguard the amenity of adjoining residents.
16. To safeguard the amenity of adjoining residents.
17. To safeguard the amenity of adjoining residents.
18. To safeguard the amenity of adjoining residents.
19. In the interests of the visual amenity.
20. In the interests of the health of the trees and to protect the visual amenity.
21. In the interests of the character and appearance of the area and to protect neighbouring residential amenities.
22. In the interests of the visual amenity of the area.
23. In the interests of the amenity of the neighbouring residential occupiers.

### **Notes to the Applicant**

1. Failure to comply with any condition imposed on this permission may result in enforcement action without further warning.
2. Statement of positive engagement: In dealing with this application Hastings Borough Council has actively sought to work with the applicant in a positive and proactive manner, in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.



3. This planning permission has been issued as a variation to planning permission HS/FA/13/00414. The pre-commencement conditions listed above are copied from the previous permissions and may have already been discharged. If the conditions have been dealt with previously you will not be required to deal with those conditions again, unless matters associated with those conditions have changed. Any outstanding matters required by condition should be submitted to the Local Planning Authority as soon as possible. There may also be informatives from the previous permissions which still apply.
4. The applicant is advised that signage should be erected in the delivery area to remind delivery drivers and staff of the need to protect neighbours from noise and disturbance. It would also be helpful for a clear line of communication with the manager of the store to be made available to local residents should they have concerns about noise and disturbance.

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### **Officer to Contact**

Mr S Batchelor, Telephone 01424 783254

### **Background Papers**

Application No: HS/FA/15/00824 including all letters and documents