

2.3 14/503850/FULL			
APPLICATION PROPOSAL			
Variation of conditions 4 and 5 of SW/12/1023 to allow sales and commercial activity in connection with the retail use of the site between 0700-2300 hrs Monday to Saturday and 0900-1800 hrs on Sundays and loading, offloading and delivery of goods in connection with the retail use of the site between 0600hrs and 2300hrs Monday to Saturday and 0700hrs and 2300hrs on Sundays and Bank Holidays.			
ADDRESS Aldi East Street Sittingbourne Kent ME10 4RX			
RECOMMENDATION - Permission			
SUMMARY OF REASONS FOR RECOMMENDATION			
The noise implications of the proposal are acceptable.			
REASON FOR REFERRAL TO COMMITTEE			
Ward Councillor Bennett has called the application in.			
WARD St Michaels	PARISH/TOWN COUNCIL	APPLICANT The Manager AGENT Planning Potential Ltd	
DECISION DUE DATE 15/1/15	PUBLICITY EXPIRY DATE 12/11/14	OFFICER SITE VISIT DATE 22/10/14	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
-SW/96/0544	Outline application for class a1 retail store, car park, service area, landscape and access works (including demolition of existing depot) and residential development on west lane frontage- approved.		
-SW/98/0797	Variation of Condition (xxi) of SW/96/544 to amend delivery hours to allow backing, off-loading or deliveries of goods to commence at 6:00am rather than 8:00am- refused.		
SW/00/0014	Variation of condition (xxi) of SW/96/544 to allow deliveries on Sundays between the hours of 8.00am and 9.00pm- approved.		
SW/12/1023	(Revised hours) Amendment of condition (xxi) appended to planning permission SW/95/544 and condition (xxi) appended to planning permission SW/00/0014 to enable loading, offloading and delivery of goods to take place between 0700hrs and 2200hrs Mon-Sat and 0900hrs and 1800hrs on Sundays and Bank Holidays in connection with use of the site as a retail store- approved.		
SW/14/0433	Lawful Development Certificate to apply white render to the existing brickwork panels between the brick piers on each elevation of the building from 150mm above finished floor level to eaves level (proposed)- approved.		

MAIN REPORT**1.0 DESCRIPTION OF SITE**

1.01 This Aldi store is located on East Street near the town centre. It has a car park to the rear that is adjacent to the A2 St Michael's Road, which provides a bypass to East Street. The Hall to the east of the site has been converted into a number of residential flats which are immediately adjacent to the loading bay area. There are also residential properties to the west of the site along East Street and West Lane. The site is within the built up area, area action plan 7, the East Street frontage is a secondary shopping area and there are housing allocations to the east of the site and on Aldi's own car park on the northern edge of the site. The site is also in flood zones 2 and 3.

2.0 PROPOSAL

2.01 To vary conditions 4 and 5 of planning permission SW/12/1023 which state;

4. Sales or commercial activity in connection with the retail use of the site shall only take place between 0800-2100 hrs Monday to Saturday and 0900-1800 hrs on Sundays.

5. Loading, offloading and delivery of goods in connection with the retail use of the site shall only take place between 0700hrs and 2200hrs Monday to Saturday and 0900hrs and 1800hrs on Sundays and Bank Holidays.

2.02 The application – which is supported by an explanatory covering letter and a dedicated Environmental Noise Report - seeks to allow the store to trade between 0700 and 2300 Monday to Saturday. There is no change proposed to Sunday opening hours. In addition, the application seeks to extend the permitted times, enabling the store to be serviced from 0600 to 2300 Monday to Saturday and 0700 to 2300 on Sundays and Bank Holidays.

3.0 PLANNING CONSTRAINTS

Potential Archaeological Importance

Environment Agency Flood Zone 2

Environment Agency Flood Zone 3 133470

Environment Agency Flood Zone 3

MOD Thurnham MOD Safeguarding Directive Thurnham

MOD Thurnham MOD Safeguarding Directive Thurnham

Section 106 or 52 Agreement SW/96/0544

Thurnham Exclusion Zone Thurnham, Kent

Thurnham Exclusion Zone Thurnham, Kent

Thurnham Wind Station tHURNHAM WIND SAFEGUARDING

4.0 POLICY AND OTHER CONSIDERATIONS

4.01 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) in terms of sustainable development, building a strong competitive economy and para 123 on noise. Development Plan: E1 (general development criteria), AAP7 (Area Action Plan for Sittingbourne Town Centre), B3 (maintaining the vitality and viability of town centres) and H2 (housing) of the Swale Borough Local Plan 2008.

5.0 LOCAL REPRESENTATIONS

5.01 A petition signed by 7 residents of Valmar apartments adjacent to the site and 2 further letters of objection from the landlord of said properties have been received which are summarised as follows;

- Opening hours not a problem.
- Longer delivery times will cause noise problem above recommended level. If an acoustic barrier was erected and a new noise survey carried out then the longer hours would not be a problem.
- The objector lists the methods of goods delivery to the store and believe none of the goods are delivered by cages.
- Refuse bins have been emptied at 2am-3am numerous times.
- It is wrong of Aldi to assume they will get permission as they have already changed their signage.
- The store renovations have been impressive and the recommended noise barrier would be welcome and make the lives of residents of Valmar apartments easier.
- 7am too early and 11pm too late for lorries to unload and harms quality of life for nearby residents.
- Noise complaints have been made to Environmental Health, contrary to the noise assessment. Lorries unload outside of permitted hours and the noise from bin collections in the early morning is unbearable.
- There is a problem with rats in the area climbing into open rubbish bins which Aldi was told to keep closed.
- I've been told Aldi needs more coolers on the outside which have been a problem in the past.
- My property was there before Aldi, my tenants use the store but we believe there should be neighbour co-operation.

6.0 CONSULTATIONS

6.01 Ward Councillor Bennett commented:

"Having considered this application I would like it to be reported to planning committee. It is the increase in servicing hours which I think will cause problems." Ward Councillor Conway is yet to reply to consultation.

6.02 Extensive correspondence between the agent and Environmental Health team is summarised below;

- EHO initially raised no objection to extended opening hours and objected to extended servicing hours because of the adverse noise pollution that would be experienced by the residents of adjacent dwellings. The noise assessment mitigation measures were considered unenforceable by the EHO and a reason given for the unacceptability of each measure proposed.
- Agent replied disputing noise pollution harm identified by EHO and stating that the conditions are enforceable. Agent recommended condition controlling reversing alarms and refrigeration units. Objectors' comments also addressed and it was confirmed that the applicant is happy to erect acoustic barrier (which will be required by condition (8) below, and will – I understand – need to be 2.5 metres in height). Agent confirmed external bins are collected by external contractor on a weekly basis and suggested a condition 'no goods pallets or roll cages to be moved on the open areas within the service yard.'
- EHO concluded that the conditions regarding noise from vehicles reversing alarms and refrigeration units during the early morning are acceptable. There will also be a requirement for a further condition requiring no waste collection by third parties before 7am. The acoustic barrier offered will also help prevent unreasonable disturbance to residents of the flats at 127 East Street.

6.03 Kent Highway Services- consider there will be no highway implications with the proposal.

6.04 Environment Agency- no comment to make.

6.05 KCC Archaeology- no comment.

7.0 APPRAISAL

7.01 The key issue is the impact on the aural amenity of residents abutting the site to the east.

7.02 Impact on aural amenity:

7.03 The applicant's case is that the proposal is required to enable the store to compete on an equal footing with less restricted larger stores.

7.04 The Council's environmental health officer raises no objection to the extended trading hours and in my opinion consider this element of the proposal to have an acceptable impact on the surrounding area. I note objectors raise no objection to this element also.

7.05 The extended servicing hours are more contentious. The noise implications have been addressed satisfactorily in the opinion of the environmental health officer. A series of further conditions are recommended below including the provision of an acoustic barrier between the loading bay and dwellings to the

east and restrictions on reversing beepers, refrigeration units, the number of deliveries at any one time etc. as set out in condition 6, 7 and 8.

7.06 The report for SW/12/1023 makes an important point which I repeat verbatim:

“An important point is that the Aldi supermarket and the siting of its delivery/loading area substantially predated the residential conversion of the adjoining hall which is also used for martial arts. The reasonable expectation must therefore be that consideration of these applications took into account the existence of the supermarket and its loading bay and the noise and disturbance arising from these. It certainly would have been unwise to grant planning permission for these uses without taking into account how this could potentially constrain the lawful activities taking place on an adjoining site.”

7.07 In the absence of objection from the environmental health officer it is considered that it would be difficult to justify refusal based on harm to the aural amenity.

7.08 Other matters:

7.09 The concerns of the objectors regarding non-compliance with the original delivery hours are noted. However advice makes clear that where it is possible to address concerns by condition this should be done rather than going down the route of refusal or via enforcement at that stage.

8.0 CONCLUSION

8.01 Notwithstanding the objections received from adjoining residential occupiers, given the need to support business set out in the NPPF and that the EHO no longer raises any objection based on harm to aural amenity, it is considered that there is good case for allowing amendments to the opening and delivery hours as proposed.

8.02 In addition, as what is being sought effectively seeks fresh planning permission for the use of the site all outstanding relevant conditions and those reflecting more recent best practice are imposed.

9.0 **RECOMMENDATION** – GRANT Subject to the following conditions:

CONDITIONS to include

(1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Grounds: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The premises shall be only be used for the purpose of a retail store falling within Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

Grounds: In the interests of the amenities of the area.

- (3) The areas currently used for the parking of vehicles and for the loading and off-loading of commercial vehicles shall be retained for this purpose and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved space and shall be used for or be available for use for the parking, loading and off-loading of vehicles at all times when the premises are in use.

Grounds: The development, without the provision of parking, loading and off-loading space, would be detrimental to amenity and likely to lead to inconvenience and danger to road users by virtue of vehicles parked on the public highway amenity.

- (4) Sales or commercial activity in connection with the retail use of the site shall only take place between 0700-2300 hrs Monday to Saturday and 0900 - 1800 hrs on Sundays.

Grounds: In the interests of the amenities of the area.

- (5) Loading, offloading and delivery of goods in connection with the retail use of the site shall only take place between 0600hrs and 2300hrs Monday to Saturday and 0700hrs and 2300hrs on Sundays and Bank Holidays.

Grounds: In the interests of the amenities of the area.

- (6) Any deliveries received outside store trading hours will be handled in accordance with the following noise management plan;

- No goods pallets or roll cages shall be moved on the open areas within the service yard.
- No reversing beepers to be used.
- Refrigeration units shall be switched off when the vehicle enters the loading bay.
- No more than one delivery vehicle will be present in the service yard.

Grounds: In the interests of preventing noise pollution to nearby residential properties.

- (7) No waste collection by any third party company shall take place within the loading bay prior to 0700 hours.

Grounds: In the interests of preventing noise pollution to nearby residential properties.

- (8) Prior to the commencement of the development hereby permitted, details of an acoustic grade barrier screen to be erected between the service bay and the residential properties to the east shall be submitted to and approved in writing by the Local Planning Authority. The agreed fence shall be erected prior to the commencement of the development hereby permitted and shall be retained in perpetuity.

Grounds: In the interests of preventing noise pollution to nearby residential properties.

INFORMATIVES

The Council's approach to this application:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The applicant/agent was advised of concerns regarding noise which were subsequently dealt with.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.