

Item No: 5.4
Application No: 16/01455/FUL Author: Julia Dawson
Date valid: 7 September 2016 ☎: 0191 643 6314
Target decision date: 7 December 2016 Ward: Battle Hill

Application type: full planning application

Location: Lidl Foodstore, Battle Hill Drive, Wallsend, Tyne And Wear, NE28 9EN

Proposal: Variation of Condition 27 (opening hours) to allow the store to open from 8am - 10pm Monday - Saturday (including Bank Holidays) and 10am - 4pm on Sundays of planning approval 06/01404/FUL (revised proposal 09.12.2016)

Applicant: Lidl UK GmbH, C/O Agent

Agent: Rapleys LLP, FAO Tillie Baker Rapleys LLP 4th Floor 55 Spring Gardens Manchester M2 2BY

RECOMMENDATION: Application Permitted

INFORMATION

1.0 Summary Of Key Issues & Conclusions

1.0 Main Issues

1.1 The main issue for Members to consider is the impact of the proposal upon neighbours living conditions with particular regard to noise and disturbance.

2.0 Description of the Site

2.1 The site to which the application relates is the Lidl supermarket, which is situated at the western end of the Coastway Shopping Centre in Battle Hill. The application site is situated in close proximity to a residential area with dwellings to the north and to the west and the remainder of the shopping centre to the east. The Coast Road (A1058) runs along the southern boundary of the site.

3.0 Description of the Proposal

3.1 This application seeks consent for the variation of Condition 27 (opening hours) to allow the store to open from 8am - 10pm Monday - Saturday (including

Bank Holidays) and 10am to 4pm on Sundays of planning approval 06/01404/FUL. Condition 27 is set out as follows:

3.2 The premises shall not be open for business outside the hours of 08:00 to 20:00 Mondays to Saturdays and 10:00 to 16:00 Sundays and Bank Holidays.
Reason: To safeguard the occupiers of adjacent premises from undue noise or other associated disturbance having regard to policy E4 and DCPS 7 of the North Tyneside Unitary Development Plan 2002.

4.0 Relevant Planning History

4.1 06/01404/FUL - Construction of supermarket building with associated service yard and parking. Construction of an access to a highway, alteration of an existing access to a highway and closure/ diversion of existing highways – Approved 03.07.2006

4.2 Aldi Foodstore Ltd, Great Lime Road. Forest Hall:

14/01233/FUL - Variation of condition 13 of planning application 12/00270/FUL: to amend opening hours to bring the store opening hours of their existing portfolio in to line with the opening hours sought for all new stores. To be changed from Monday to Sunday 0800-2100 hours to Monday to Sunday 0800-2200 hours. The condition to be varied to read: "The opening hours of the store hereby approved shall be limited from 0800-2200 Monday to Sundays – Allowed on Appeal (APP/W4515/W/15/3004508) 15.06.2015

5.0 Development Plan

5.1 North Tyneside Council Unitary Development Plan (adopted March 2002)

5.2 Direction from Secretary of State under Paragraph 1(3) of Schedule 8 to Town and Country Planning and Compulsory Purchase Act 2004 in respect of Policies in the North Tyneside UDP (August 2007)

6.0 Government Policy

6.1 National Planning Policy Framework (March 2012)

6.2 National Planning Practice Guidance (As Amended)

6.3 Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration in the determination of all applications. It requires LPAs to apply a presumption in favour of sustainable development in determining development proposals. Due weight should still be attached to Development Plan policies according to the degree to which any policy is consistent with the NPPF.

PLANNING OFFICERS REPORT

7. Main Issues

7.1 The main issue for Members to consider is the impact of the proposal upon neighbours living conditions with particular regard to noise and disturbance.

7.2 Consultation responses and representations received as a result of the publicity given to this application are set out in the appendix to this report.

8.0 Detailed Planning Considerations

8.2 Paragraph 14 of NPPF states that there is a presumption in favour of sustainable development. For decision taking this means approving development proposals that accord with the development plan without delay and where the development plan is absent, silent or relevant policies are out-of-date granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole or specific policies in the Framework indicate that development should be restricted.

8.3 Paragraph 19 of NPPF states that The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.

8.4 Paragraph 123 of NPPF states that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development.

8.5 Policy H13 states that applications for non residential development within or adjacent to residential areas will be approved only where the local planning authority consider that they would not adversely affect residential amenity. Uses that generate excessive noise will not be allowed.

8.6 Policy H13 is broadly in accordance with NPPF. The only difference being that NPPF states that planning decisions should avoid noise giving rise to significant adverse impacts whereas policy H13 has a lower threshold that proposals should not adversely affect residential amenity. However, both NPPF and policy H13 have the same broad aim which is that development should avoid noise from adversely affecting nearby residents.

8.7 The applicant originally applied to remove condition no.26 of approval 06/01404/FUL so that deliveries could take place at any time, and also to vary condition no.27 to allow the store to open from 7am to 11pm Monday to Saturday (including bank holidays), and 10am to 4pm on Sundays. However, after

feedback from the Council's Environmental Health Officer, the applicant has amended the description of the proposal so that it relates solely to condition no.27 and is now seeking reduced opening hours of 8am – 10pm Monday to Saturday (including bank holidays), and 10am to 4pm on Sundays.

8.8 The applicant has advised that reason for seeking to vary condition no.27 is that Lidl are currently undertaking a strategic review of their property portfolio in the UK and are improving their existing stores to enhance the shopping experience and better meet the needs of customers. In parallel with this initiative, Lidl are reviewing the operating hours of their stores with a view to providing more flexible shopping hours in accordance with customer demand.,

8.9 The applicant has advised that the proposed variation of condition no.27 of 06/01404/FUL will better meet the needs of Lidl's customers and accommodate Lidl's operational requirements as the company seeks to improve the functionality of its existing stores across the UK.

8.10 Notwithstanding the above, each site is different and therefore each application must be determined on its own merits.

8.11 The Environmental Health Officer has considered the submitted Noise Assessment (Version 2) and has noted that the proposed increase in opening hours will result in a change of less than 3dB in the background. Whilst she notes that any extension of hours will result in additional noise in the vicinity of the supermarket, when reviewed in relation to the advice set out in the National Planning Policy Framework, a 3dB change is considered negligible and will not result in a significant adverse effect.

8.12 Seven objections have been submitted from local residents, and the concerns raised in connection regarding increased noise and disturbance in relation to the proposed increase in opening hours are noted.

8.13 The proposal to extend the opening hours by two hours in the evening Monday to Saturday, and to allow opening between 8am and 10pm on bank holidays, will result in some limited additional noise and disturbance. However it is officer advice that this would not be adverse. Paragraph 19 NPPF advises that significant weight should be placed on the need to support sustainable economic growth through the planning system. The proposal would contribute towards sustainable economic growth and therefore this is a consideration of significant weight in favour of the proposal. Paragraph 123 states that planning decisions should aim to avoid giving rise to significant adverse impacts on health and quality of life. It is officer advice that although there would be an increase in activity, the proposal for the reasons above would not give rise to significant adverse impacts and therefore the proposal accords with NPPF and policy H13 of the UDP.

8.14 Members will also recall a Planning Inspector's appeal decision in 2015 in relation to the Aldi Foodstore on Great Lime Road in Forest Hall (planning application 14/01233/FUL). The applicant sought to amend the hours to allow the shop to remain open until 10pm. Planning Committee refused the application. The Planning Inspector allowed the appeal.

8.15 The Planning Inspector concluded that the proposed extension of opening hours until 10pm would not lead to unacceptable late evening noise for nearby residents and would not conflict with the objectives of policy H13 or the advice in the Government's Planning Policy Guidance on Noise. He also stated that the NPPF's support for sustainable economic growth reinforces this conclusion.

10. Local Financial Considerations

10.1 The proposal would allow the foodstore to be open an additional 2 hours during Mondays to Saturdays, which would provide an additional 2 hours of work for staff serving customers.

11.0 Conclusions

11.1 NPPF states that the planning system should do everything it can to support sustainable economic growth. This carries significant weight in the consideration of this planning application.

11.2 Whilst there would be some limited additional noise and disturbance through the opening of the store for a further two hours each evening, and between 8am and 10pm on bank holidays, it is officer advice that this would not give rise to significant adverse impacts upon health and quality of life. The proposal would therefore accord with NPPF and policy H13 of North Tyneside Unitary Development Plan 2002.

9.3 In conclusion and subject to conditions, it is recommended on balance that the application to vary the opening hours should be approved.

RECOMMENDATION: Application Permitted

Conditions/Reasons

1. The development to which the permission relates shall be carried out in complete accordance with the following approved plans and specifications.
 - Site Location (drawing no.A (90) EXP010, Rev.01, 26.10.15)
 - Noise Assessment Version 2 (December 2016, Ref: 1029/15/1)

Reason: To ensure that the development as carried out does not vary from the approved details.

2. Standard Time Limit 3 Years FUL MAN02 *

3. All screen and boundary walls, fences and any other means of enclosure shall be provided and retained in accordance with the details approved via 09/00507/COND on 16.11.2009.

Reason: To ensure that the proposed development does not adversely effect the privacy and visual amenities at present enjoyed by the occupiers of neighbouring properties, and to ensure a satisfactory environment within the development having regard to policy S2 of the North Tyneside Unitary Development Plan 2002.

4. All building and surfacing materials and finishes for the development shall be retained in accordance with the details approved via 09/00507/COND on 16.11.2009.

Reason: To secure a satisfactory external appearance having regard to policy S2 of the North Tyneside Unitary Development Plan 2002.

5. All landscaping within the application site, and the off site planting to the southern boundary of the site, shall be retained in accordance with the fully detailed scheme approved via 09/00507/COND on 16.11.2009.

Reason: In the interests of amenity and to ensure a satisfactory standard of landscaping having regard to policy S2 and S6 of the North Tyneside Unitary Development Plan 2002.

6. The scheme for parking, garaging and manoeuvring shall be provided and retained in accordance with the details approved via 09/00507/COND on 16.11.2009.

Reason: To enable vehicles to draw off, park and turn clear of the highway to minimise danger, obstruction and inconvenience to users of the adjoining highway having regard to policy DCPS 4 of the North Tyneside Unitary Development Plan 2002.

7. The facilities for the storage of refuse at the premises shall be provided and retained in accordance with the details approved via 09/00507/COND on 16.11.2009.

Reason: In order to safeguard the amenities of the area having regard to policy S2 of the North Tyneside Unitary Development Plan 2002.

8. All refrigeration plant installed in connection with the development shall be in retained and maintained in accordance with the details approved via 09/00507/COND on 16.11.2009.

Reason: To protect the amenities of the occupiers of residential accommodation in the vicinity having regard to policy H13 of the North Tyneside Unitary Development Plan 2002.

9. The odour suppression system for the arrestment of cooking odours shall be in retained and maintained in accordance with the details approved via 09/00507/COND on 16.11.2009.

Reason: To protect the amenities of the occupiers of residential accommodation in the vicinity having regard to policy H13 of the North Tyneside Unitary Development Plan 2002.

10. No sound reproduction equipment which is audible outside the curtilage of the premises shall be operated on the site.

Reason: In order to protect the amenities of occupiers of nearby properties having regard to policy H13 of the North Tyneside Unitary Development Plan 2002.

11. All sound insulation in the building shall be retained in accordance with the detailed scheme approved via 09/00507/COND on 16.11.2009.

Reason: To protect the occupants of nearby residential properties from noise disturbance having regard to policy H13 of the North Tyneside Unitary Development Plan 2002.

12. All plant and machinery shall be enclosed with sound insulation materials in accordance with the details approved via 09/00507/COND on 16.11.2009.

Reason: To protect the occupants of nearby residential properties from noise and disturbance having regard to policy H13 of the North Tyneside Unitary Development Plan 2002.

13. All floodlighting, or other form of external lighting, shall be retained and maintained in accordance with the details approved via 09/00507/COND on 16.11.2009.

Reason: In the interest of visual amenity and/or highway safety having regard to policy H13 of the North Tyneside Unitary Development Plan 2002.

14. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through an oil interceptor installed in accordance with a scheme previously submitted to and approved by the Local Planning Authority. Roof water shall not pass through the interceptor.

Reason: To prevent pollution of the water environment, having regard to Policy E3 of the North Tyneside Unitary Development Plan.

15. Deliveries to the service yard are only permitted between the hours of 07:30 and 19:30 on Monday to Saturday and 09:00 to 16:00 on Sundays and Bank Holidays.

Reason: In the interests of residential amenity having regard to Policy E4 and DCPS 7 of the North Tyneside Unitary Development Plan.

16. The premises shall not be open for business outside the hours of 08:00 to 22:00 Mondays to Saturdays (and Bank Holidays) and 10:00 to 16:00 Sundays
Reason: To safeguard the occupiers of adjacent premises from undue noise or other associated disturbance having regard to policy E4 and DCPS 7 of the North Tyneside Unitary Development Plan 2002.

17. The means of noise attenuation to the western boundary of the site shall be retained in accordance with the detailed scheme approved via 09/00507/COND on 16.11.2009.

Reason: In the interests of the amenity of near by residential occupiers, having regard to policy H13 of the North Tyneside Unitary Development Plan 2002.

18. Disposal of surface water from the highway shall be in accordance with the details approved via 09/00507/COND on 16.11.2009.

Reason: To minimise danger and inconvenience to highway users having regard to policy S2 of the North Tyneside Unitary Development Plan 2002.

19. Undercover cycle parking shall be provided and retained in accordance with the details approved via 09/00507/COND on 16.11.2009.

Reason: To accord with the Council's cycle parking standards, having regard to DCPS 4 of the North Tyneside Unitary Development Plan.

20. The unit shall be for A1 food retail use only and shall not be used for non food retail without the prior consent of the Local Planning Authority.

Reason: To ensure an appropriate food retail store use appropriate to a local centre in accordance with the NPPF and to comply with policy S6 of the Unitary Development Plan.

21. No display or storage of goods, materials, plant or equipment shall take place other than within the buildings, unless agreed in writing with the local planning authority.

Reason: In the interests of amenity and to ensure that external areas are retained for the purposes indicated on the approved plans having regard to policy S2 of the North Tyneside Unitary Development Plan 2002.

22. The servicing areas shall be enclosed in accordance with the details approved via 09/00507/COND on 16.11.2009.

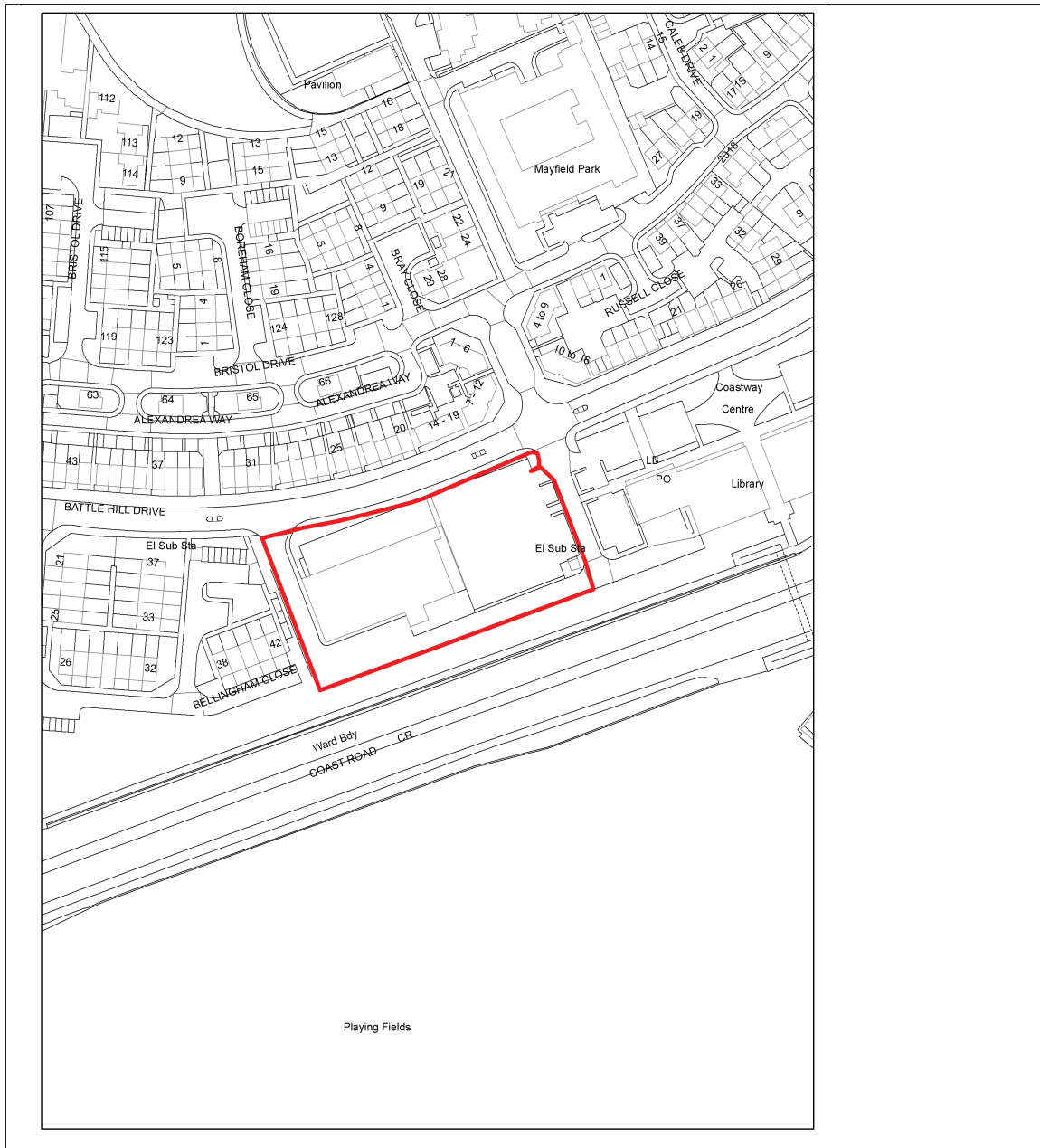
Reason: In the interests of visual amenity, having regard to Policy S2 of the North Tyneside Unitary Development Plan.

23. No activities that are audible beyond the site boundary shall be carried out in the service yard outside the hours of 07:30 and 19:30 Monday to Saturday and 09:00 and 16:00 Sundays and Bank Holidays.

Reason: To safeguard the occupiers of adjacent premises from undue noise or other associated disturbance, having regard to policy H13 of the North Tyneside Unitary Development Plan 2002.

Statement under Article 35 of the Town & Country (Development Management Procedure) (England) Order 2015):

The Local Planning Authority worked proactively and positively with the applicant to identify various solutions during the application process to ensure that the proposal comprised sustainable development and would improve the economic, social and environmental conditions of the area and would accord with the development plan. These were incorporated into the scheme and/or have been secured by planning condition. The Local Planning Authority has therefore implemented the requirements in Paragraphs 186-187 of the National Planning Policy Framework.



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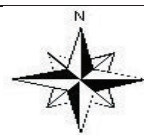
Location: Lidl Foodstore, Battle Hill Drive, Wallsend, Tyne And Wear

Proposal: Variation of Condition 27 (opening hours) to allow the store to open from 8am - 10pm Monday - Saturday (including Bank Holidays) and 10am - 4pm on Sundays of planning approval 06/01404/FUL (revised proposal 09.12.2016)

Not to scale

Date: 21.12.2016

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Appendix 1 – 16/01455/FUL
Item 4

Consultations/representations

1.0 Internal Consultees

1.1 Highway Network Manager

1.2 Recommendation – Approval. No objections in principle to this proposal.

1.3 Environmental Health (Pollution)

1.4 I have reviewed the revised noise assessment that now assesses the proposed impact from a change of opening hours and deliveries to 8am until 10pm Monday to Saturday (including bank holidays) and 10am until 4pm on Sundays. The site is located in a small shopping complex with residential properties adjacent to the site.

1.5 The noise assessment has considered the use of the car park and delivery noise and the impact of the proposed change of hours for deliveries and opening hours in relation to the nearest noise sensitive receptors. However, the applicant on the 16th December has now indicated that the delivery times will remain unchanged and has requested only to vary condition 27 for the store opening hours.

1.6 With regard to the proposed store opening hours, the noise assessment has considered the potential impact and determined that this will result in a change of less than 3dB in the background. Any extension of hours will result in additional noise in the vicinity of the supermarket and potentially impact on residents amenity during the late evening when residents have partially open window and when residents will want quiet and relaxation. However, when reviewed in relation to the NPPF a 3 dB change is considered negligible and will not result in a significant adverse effect when taking into account the NPPF guidance on noise as the proposed times are considered to be daytime hours.

1.7 Therefore, if planning approval is to be given I would recommend a condition to restrict the hours to the revised times proposed in the application:

1.8 HOU03 08:00 – 22:00 hours Monday to Saturday and Bank Holidays, and 10:00 – 16:00 hours on Sundays.

1.9 Representations

1.10 Seven objections have been submitted, these are summarised below:

- Increase in traffic will result in increased noise and disturbance to residents..
- Increase in noise and nuisance will impact directly on nearby residents.

- Increased opening hours will mean that the car park is would be lit up so would be very bright late at night, which makes habitable rooms of nearby dwellings too light.
- Strongly object to increase in opening hours, especially on bank holidays. This will also attract noisy shopper/revellers late at night as they purchase alcohol etc. This already happens at Tesco. There are enough shops opening early and closing late, and the increase in Lidl's opening hours is completely unwanted by residents. We would like our evenings and holidays quieter not noisier.

1.11 Councillor Lesley Spillard (Battle Hill Ward)

1.12 I would like to request the application go to planning committee should you be minded to agree the application. The store is in a residential area with houses within a few yards. I have already been contacted by a resident complaining as they do on occasion break the conditions and she has been woken at 1.30am by deliveries due to the noise of what are very large articulated lorries. I consider that the existing hours reasonable allow the store to carry out their business and residents to get the rest they need to live their lives.