

PINS REF: APP/W1905/W/22/3292367

LPA REF: 07/21/0519/F

APPEAL BY ALDI STORES LTD

LAND AT STURLAS WAY, WALTHAM CROSS, EN8 7BF

OPENING SUBMISSIONS ON BEHALF OF THE APPELLANT

Introduction

1. This appeal is made by Aldi Stores Ltd (“the Appellants”) against the refusal of full planning permission by Broxbourne Borough Council as Local Planning Authority (“the Council”) for:

“Refurbishment, extension and external alterations to existing non-food retail unit to enable it to trade as part foodstore and part non-food retail unit, alongside modifications to existing external garden centre, car parking layout, landscaping and other associated site works”.

2. This appeal does not involve demolition and rebuild, but rather proposes the refurbishment, extension and external alterations to an **existing** ‘Use Class E’ non-food retail unit currently occupied by Homebase, so as to enable it to be used more efficiently and to trade as part foodstore (Aldi) and part non-food retail unit (Homebase). Alongside works to the building itself, the scheme involves modifications to an existing external ‘garden centre’ (outdoor sales area), the current car parking layout, and other associated site works.

3. In locational terms, the proposal involves retail investment within the town centre, and is therefore wholly appropriate as a matter of principle. Thus, the planning application site is wholly within the northern boundary of 'Waltham Cross town centre'¹. The inquiry will be untroubled by arguments of sequential test and impact therefore.
4. The proposed Aldi foodstore will have a GIA of 1,756sq.m and a net trading area of 1,262sq.m. In policy terms it is patently located 'in the right place'.
5. It is however, important to understand the Aldi business model. Aldi operate as a Limited Assortment Discount ('LAD') retailer. The number of core food product lines stocked within each Aldi store is identical and deliberately restricted to around 2,000, (in contrast to the 20,000+ product lines in a UK 'mainstream' convenience retail store). The vast majority of products stocked are Aldi branded and through economies-of-scale these goods can be sold at heavily discounted prices without impacting upon quality. Aldi does not sell certain 'ancillary' lines (tobacco, for example). There is no staffed butchery, fishmonger, delicatessen or hot food-counter. There is no customer café/restaurant or in-store franchises such as a Post Office, dispensing pharmacy, dry-cleaning, opticians, betting office, travel agent or photo processing.
6. In common with a modern supermarket, the Aldi store will also stock a very limited range of non-food goods (approximately 20% of the net sales area). The potential for an Aldi foodstore to compete with high-street comparison goods retailers is therefore extremely limited.
7. Aldi's business model rests in part upon a significant volume of 'walk in' trade from nearby residential areas. There is a resident population of over twenty-seven thousand people within a 20-minute walk of the Site. In principle therefore the appeal proposals comprise an appropriate form of development in a locationally appropriate place.
8. The specifics of the development proposals are set out at SoCG [4.2].

Identification of Benefits/ Harms

9. Central to the Appellant's case is that the scheme has significant benefits in its favour:

¹ See the policies map which supports the Borough of Broxbourne Local Plan, June 2020.

- i. The proposed Aldi will provide a new retail anchor at the northern end of Waltham Cross town centre in a 'gateway location' visible to those on foot and using the highway network.
- ii. As an in-centre retail investment, Aldi's proposal is strongly supported by the Government's longstanding town centre first principle. Foodstores within town centres are obviously well placed to foster linked shopping trips which will in turn drive footfall and spin off trade for wider businesses in the town centre. Indeed, the Council themselves have consistently envisioned the delivery of a foodstore at the northern end of High Street through the draft Town Centre Strategy (2013). The draft Town Centre Planning Framework (2022) also shows a foodstore forming part of a residential-led development on the appeal site. The logical inference is that the Council recognises the value of such an offer to the vitality and viability of the town centre in this location. The Site is a short distance from other shops and services which comprise the pedestrianised heart of the town centre, fostering a considerable number of future linked shopping trips and spin-off trade for local businesses.
- iii. A new Aldi foodstore will help to reduce 'overtrading' in the two largest existing foodstores in Waltham Cross town centre (Sainsbury's and Lidl) and redistribute this expenditure to another, accessible town centre location.
- iv. Increasing consumer choice in the town centre, in the context of the 'cost of living crisis' in the UK with the addition to the town of the UK's lowest-priced supermarket: Aldi, is a significant benefit.
- v. As a popular brand, Aldi offers a new key attraction to the town centre, potentially attracting some new visitors to the town centre and boosting shoppers and day to day spend in the town centre.
- vi. Aldi's introduction will increase competition between the existing mainstream foodstores that already serve the local Waltham Cross catchment. This could involve fresh investment by these retailers in their existing town centres stores and / or more competitive local pricing structures to avoid losing market share to Aldi.

- vii. The sub-division of the existing retail unit and the introduction of an Aldi foodstore will provide new employment (40 to 50 jobs), the majority of which would be for local people. Aldi is the UK's highest paying supermarket with rates of pay that exceed the national and 'real' living wage. This is in addition to the retention of existing, important local jobs at the Homebase store (30 jobs). The scheme would also support construction jobs, albeit only for a temporary period, and there could well be other, wider economic benefits during construction associated with investment in local supply chains.
- viii. The overall economic value of Aldi's investment in Waltham Cross is anticipated to be in the order of £4.5m and the retailer's introduction will also facilitate a considerable investment by Homebase by relaunching their existing store.
- ix. The proposal is highly sustainable. It is consistent with NPPF principles supporting the use of suitable urban brownfield land and in promoting a more efficient use of land / buildings, particularly in a sustainable town centre location.
- x. The development will provide car parking spaces equipped with Electric Vehicle Charging Points and below ground infrastructure to accommodate further charging points.
- xi. The development will provide on and off-site enhancements that will improve links to the site and wider town centre via non-car modes and the opportunity for the proposed customer car park to operate as a town centre car park facilitating linked shopping trips.

10. S38(6) of the 2004 Act, requires an overall judgment regarding whether the proposal is in accordance with the development plan taken as a whole (s.38(2)(b)). The Appellant's position is that this scheme is in accordance with the development plan when read as a whole and that in accordance with para. 11(c) of NPPF that the appeal proposal should be approved without delay and the substantial planning benefits realised as soon as possible. However, even if contrary to the Appellant's case, a decision maker were to determine that the appeal proposals did not comply with the development plan taken as a whole, the substantial benefits offered by the appeal scheme are material considerations which would outweigh any conflict with the development plan and permission should be granted on this alternative basis.

Reasons for Refusal

11. Permission was refused for five reasons. The LPA now defends three reasons for refusal.
12. The LPA confirmed, prior to exchange and following submission of a revised noise impact assessment, that the noise impact upon the amenity of neighbouring occupants could be addressed by way of appropriately worded condition. This is documented in a signed Noise SoCG (CD4.5).
13. The LPA confirmed, following exchange of proofs of evidence, that it would no longer defend reason for refusal three.
14. The reasons for refusal are in the following terms:
 - i. The proposed development would undermine the Council's ability to pursue a comprehensive mixed-use development at the allocated site contrary to policies WC2, DS1, PM1, RTC2 and DSC7 of the Broxbourne Local Plan 2018 - 2033 and the Waltham Cross Town Centre Strategy (2015).
 - ii. The proposal presents a layout that is not considered to integrate with the town centre and fails to enhance the character and appearance of the wider area. The proposal would not support the Council's aim of improving the connectivity of the northern High Street area with the rest of the town centre. The proposal is considered contrary to policies WC2, PM1, DSC1, DSC3, DSC7 and DSC8 of the Broxbourne Local Plan 2018 - 2033 and the Waltham Cross Town Centre Strategy (2015).
 - ~~iii. [The proposed development would not provide sufficient connectivity improvements for cyclists and pedestrians and improvements to promote the use of public transport. The proposal is therefore contrary to policies TM1, TM2 and TM3 of the Broxbourne Local Plan 2018 - 2033 and the NPPF].~~
 - iv. The proposal does not adequately address the shortfall in car parking spaces at the site and is therefore contrary to policy TM5 of the Broxbourne Local Plan 2018 - 2033.

- v. Insufficient information has been submitted for the proposed roof plant equipment. Therefore, the noise impact upon the amenity of neighbouring occupants is not fully addressed contrary to policies EQ1 and EQ4 of the Broxbourne Local Plan 2018 – 2033.

15. The main issues (as identified by the Inspector at the CMC) are as follows:

- i. The effect on the potential for the comprehensive mixed use of the site;
- ii. Whether the proposal would integrate with the town centre and improve connectivity;
- iii. Whether the proposal would be acceptable in terms of connectivity for cyclists and pedestrians;
- iv. Whether the proposal includes adequate parking provision; and,
- v. Whether the proposal would cause harm for neighbouring occupiers in relation to noise.

16. Mr Tim Britton gives the Appellant's highways and transport evidence, Mr Justin Griffiths gives the architectural and design evidence. Mr Daniel Brown addresses the planning evidence and the overall planning balance.

Reason for Refusal 1/ Main Issue 1: Undermining Mixed Use Comprehensive Development

17. The Appellant considers that three interrelated headings arise under this main issue: the interpretation of policy WC2, whether the proposal would prejudice future development and the Council's vision for the Northern High Street Area.

18. Following the participation of Homebase in the Local Plan process, policy WC2 was modified, as DB's evidence explains. The resultant wording requires ongoing engagement with the landlord and longstanding tenant as well as alluding to potential barriers that may prevent redevelopment (long lease constraints, for example). This engagement has taken place.

19. Whilst WC2 states that the site is to be developed in accordance with a comprehensive masterplan, there is no adopted masterplan and so no conflict. The draft Town Centre Planning Framework cannot be afforded significant weight in this appeal determination as it is at a very

early stage and subject to several substantive significant objections. This draft was not subject to examination at the local plan and, taken at its highest, could only ever amount to a material consideration.

20. In any event, the appeal proposals involve the reconfiguration and more efficient use of an existing building. The proposal does not redevelop the entire site. The current building will continue to be beneficially occupied for retail purposes. The draft Town Centre Planning Framework recognises that the site is appropriate for a convenience store, this is identified in the 'preferred option' section. DB's evidence explains that the site is a complex longer-term opportunity which must logically follow the development of other town centre residential developments. The minor works to introduce the Aldi cannot realistically prejudice long term visions for the site or the development of the Waltham Cross Northern High Street. The Aldi store could trade for a decade or longer before the appeal site is in a position to be redeveloped in the manner preferred by the Council, if ever.
21. Overall, there is no conflict with WC2 as the policy promotes flexibility for future development options based on engagement with landlord and tenant. The appeal proposal sits comfortably with this approach.
22. If, contrary to the Appellant's case, one adopts the LPA's view that the Local Plan's objective is that the appeal site is redeveloped as a comprehensive residential led scheme, then even so introducing Aldi to the existing homebase building is not a breach of policy. The relatively minor works will not pre-determine or prevent long term redevelopment discussions and decisions any more than the present retail use does. And it is no part of retail policy to hold town centre investment in stasis if the LPA has an aspiration for bringing development forward one day.

Reason for Refusal 2/ Main Issue 2: Connectivity, Layout and Character and Appearance

23. Mr Griffith's evidence (JG) explains that the appeal site forms part of the town centre. The site and its proposals are integral to the town centre. The question is therefore the extent to which the proposals will enhance integration between the site and other parts of the town centre.
24. To be blunt, it is hard to see how the appeal proposals will do other than enhance the level of integration with other parts of the town centre compared to the existing position. The site is

already used as a town centre car park. JG's evidence explains that the appeal proposals will enhance integration between the appeal site and the rest of the town centre. The enhancement will provide a clearer and safer arrangement for visitors than the existing situation. Underpinning this argument is one robust premise: foodstores in town centre locations have a far greater propensity to generate linked trips and spin off trade than DIY operators.

25. JG's evidence also demonstrates that the application proposals enhance the building and wider site in almost every respect. The design modifications represent an improvement, as was agreed in the OR (para. 8.14, CD 3.1). The loss of embedded carbon in the built form of the building will be minimised and the repurposing and upgrading of the building will improve sustainability.

Reason for Refusal 3/ Main Issue 3: Insufficient Connectivity Improvements for Cyclists and Pedestrians

26. This reason for refusal is not being defended.
27. In any event, TB's evidence establishes that the appeal site is without doubt highly accessible for pedestrians, cyclists and those using public transport, given its town centre location and that the scheme enhances that connectivity. Data from recent surveys of pedestrian movements in and out of the existing Homebase site (TB PoE at 5.3.1- 5.3.10) clearly demonstrates that the site location and the existing internal and external connectivity appears to be attractive to pedestrian use.

Reason for Refusal 4/ Main Issue 4: failure to Address a Shortfall in Car Parking Spaces

28. The Council is no longer defending its RR3, which demonstrates that the Council is satisfied that the proposal does have the ability to encourage alternative modes of transport through enhancing connectivity to the wider town centre. RR4 is predicated on an alleged lack of non-car accessibility and connectivity, an allegation which has now been resolved following the compromise reached under RR3, the ability to defend RR4 must also fall away (TB RPoE at 2.2.9 – 2.2.13).

29. The Appellant considers that the proposed site layout Revision D and Revision F are accessible and connected to the rest of the town centre, a position based on Section 2 of the TA and on evidence from pedestrian surveys. The LPA and Appellant agree that proposed site layout Revision K is accessible and connected to the rest of the town centre. It is agreed at paragraph 3.1 of the SoCG with HCC that location of the site will be accessible by walking, cycling and bus travel on the basis that the southbound bus stop outside 250 and 252 High Street (north of the site), will be improved with raised kerbing, the existing public footway at the north-eastern corner of the site will be widened to 3 metres, and the remainder of the existing public footway along the site frontage onto Sturlas Way will be widened to 2 metres, as shown on site layout plan Revision K. The Appellant is willing to accept a planning condition based on Site Layout Plan Revision K.
30. Further, the Broxbourne Local Plan parking ratios are described as “Guidelines”, rather than “Standards”, and no mention is made of maxima or minima which are sometimes present in Parking Standards documents elsewhere. The fact that they are referenced within policy TM1 does not mean that they are to be treated as anything other than guidelines to inform the development management process.
31. The guidelines are a starting point, and variations supported by evidence are permissible. The proposed car park of 155 spaces will have spare capacity for at least 77 vehicles (TB RPoE at 2.3.15). Under Revision K there is spare capacity for at least 71 vehicles (TB RPoE at 2.3.16). The guideline is 98 spaces.
32. The evidence here demonstrates that a variation from the guidelines is justifiable for a multitude of reasons:
- I. the proposed reduction in floor area of the Homebase store will itself result in a subsequent reduction in car parking demand. A pro-rata reduction would mean that the proposed 155-space car park would accommodate the guideline 98 spaces for Aldi; the 151 spaces of Revision K would be 3 short of the guideline 98.
 - II. Adding the observed peak Homebase parking to the agreed TRICS-based peak Aldi parking results in a total well within the proposed parking provision.

- III. Adding the daily parking accumulation profiles of Homebase and Aldi results in a combined accumulation well within the proposed parking provision.
 - IV. More recent surveys indicate that the peak Homebase parking has reduced since the 2021 surveys on which the calculations are based; if this trend continues, there will be more spare capacity within the car park.
33. Overall, the data and analysis presented shows that a sensible balance of car and cycle parking spaces based on the nature of the proposal site context and wider surrounding area, and accessibility of shops, services and sustainable transport infrastructure, with the overall aim of reducing private car use has been proposed (as per Local Plan Policy TM 5).

Reason for Refusal 5/ Main Issue 5: Insufficient Information provided to address noise impact on neighbouring residents

34. The Council have accepted the findings of the revised NIA and has now determined that noise impact of the proposed development's mechanical plant would be acceptable on the residential amenity of surrounding occupiers, subject to the imposition of an appropriately worded condition. This condition has been agreed by both parties as part of a Noise SoCG which is before the Inquiry (CD4.5).

Overview of the RfR

35. This appeal should be allowed. The reasons for refusal do not stand up to scrutiny.

Conclusion

36. In conclusion, in favour of the appeal are the significant benefits which demonstrably outweigh any harm asserted by other parties. The scheme complies with the development plan and should be approved without delay.

37. The planning balance is clearly in favour of granting consent for this sustainable scheme and it is firmly submitted that this should be the outcome of this appeal.

Paul G Tucker QC

Constanze Bell

18th July 2022

KINGS CHAMBERS

MANCHESTER – BIRMINGHAM – LEEDS