

Application No: 15/4629M

Location: BROOKFIELD HYDRO MOTORS LIMITED, 10, LONDON ROAD SOUTH, POYNTON, SK12 1NJ

Proposal: Application For The Variation Of Conditions 2 (Approved Plans) and 10 (Window Tinting) on Planning Permission Reference 14/5368M.

Applicant: Aldi Stores Limited

Expiry Date: 11-Jan-2016

Date report prepared: 18.11.2015

SUMMARY

The proposed amendments to the plans are considered to be minor material amendments and therefore a variation of condition 2, plans, is deemed to be acceptable. The variation of condition 10, i.e. to remove the requirement for the frontage windows on the eastern elevations to be tinted, is considered to be an acceptable and reasonable request. The proposed development is considered not to be substantially different to the approved scheme (14/5368M). The proposed changes are considered to be a sustainable form of development in accordance with relevant local and national planning policies, guidance and other material considerations.

RECOMMENDATION

Approve, subject to conditions, informatives and a deed of variation to the s106 agreement.

REASON FOR REPORT

Previous applications on the site were determined by the Northern Planning Committee. The recently agreed changes to the constitution state that, where an application is to vary or remove a condition that was imposed by the Planning Committee the application will not be delegated. As certain conditions on the original application originated from committee, it is considered appropriate for the current variation of conditions application to be determined by committee.

PROPOSAL

The application seeks to vary condition 2 (approved plans) and condition 10 (tinting windows) on approved application 14/5368M, which itself was a variation of condition application to vary plans on 14/1904M, which gave approval for *"a Class A1 foodstore of 1,579 sq.m gross internal floorspace, additional retail floorspace (use class A1 to A5 inclusive) of 743 sq.m*

gross internal floorspace, new public realm, boundary treatments, car parking, access arrangements and ancillary development”.

It is noted that, during the course of the application, the applicant has amended the requested variations, in response to concerns raised by the Parish Council, Environmental Protection Team and neighbours in representations. The application originally sought to also vary conditions 16 and 18, which related to hours of operation and delivery. In response to the concerns raised, the applicant does not now wish to change the hours of operation or delivery. The applicant has also amended the plans by reducing the height of the acoustic enclosure by nearly 0.7m.

Information submitted with the application outlines the background to the variations sought. In summary the proposed alterations to the approved plans consist of enclosing the service area to the rear of the site in order to mitigate against any noise impact on neighbouring properties and installing clear windows on the eastern elevations rather than tinted ones.

Two of the conditions on approved application 14/5368M (conditions 26 and 41) required a Noise Impact Assessment to be undertaken and submitted to the LPA for approval; this was to include details of an acoustic boundary treatment as mitigation. An initial Noise Impact Assessment undertaken by the applicant was based on a 3m high boundary fence along the western boundary with Abbey Court (as indicated on the approved site plan for application 14/5368M). The results of this assessment concluded that there would be some adverse noise impacts to some of the properties on Abby Court at certain times of the day. To overcome this issue the report recommended a full acoustic enclosure to the service area/loading bay. A follow-up Noise Impact Assessment modelled the acoustic enclosure along with a) a 3.1m high acoustic fence around the plant within the site and b) a 2.1m high acoustic fence to the site's western boundary with Abbey Court. The results of this assessment met the required standards and therefore this is the option that is in the process of being implemented on site.

As the inclusion of the enclosure does not accord with the approved plans (as required by condition 2 of the approved application) this variation of conditions application has been submitted to address the matter by seeking to vary the approved plans accordingly.

The application also seeks to vary condition 10 on approved application 14/5368M, which states that

All windows in the northern and eastern elevations of the proposed development shall be tinted to reduce light spillage and shall be retained thereafter unless agreed in writing by the Local Planning Authority. Reason: To ensure the external appearance of the building/structure is acceptable in accordance with policy BE1 of the Macclesfield Borough Local Plan 2004.

The applicant wishes to vary this condition to remove the requirement for the windows in the eastern elevations of the approved units to be tinted, as this is the active frontage of the units.

SITE DESCRIPTION

The site to which the application relates was known as Brookfield Hydro Motors, London Rd South, Poynton. The site previously consisted of a vacant car showroom, a petrol filling station with associated kiosks and canopy, a vehicle repair centre, a former cinema building (locally listed) and an area of hard-standing to the front of the car showroom. The site is located within a Secondary Shopping Area, as defined in the Local Plan.

PRINCIPLE OF DEVELOPMENT

It is permissible, under section 73 of the Town and Country Planning Act 1990, for an application to be made to the Local Planning Authority to vary the conditions of a planning permission, where the aim is to make a 'minor material amendment' to the approved plans.

A 'minor material amendment' is one whose scale and nature results in a development which is not substantially different from the one which has been approved.

The principle of the development has already been accepted. Any changes in national policy/guidance or other material considerations since approval of the original application should be taken into account during appraisal. It is noted that there have not been any significant policy/guidance changes or other significant material considerations since determination of application 14/5368M.

RELEVANT HISTORY

The applications of most relevance are the ones approved most recently, i.e. 14/5368M, variation of plans condition on 14/1904M, and 14/1904M, a Class A1 foodstore of 1,579 sq.m gross internal floorspace, additional retail floorspace (use class A1 to A5 inclusive) of 743 sq.m gross internal floorspace, new public realm, boundary treatments, car parking, access arrangements and ancillary development. Approved, August 2014.

NATIONAL & LOCAL POLICY

By virtue of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the application should be determined in accordance with the Development Plan, unless material considerations indicate otherwise (this statement is repeated in the NPPF, para 2).

The Development Plan for Cheshire East currently comprises the saved policies from the Congleton Borough (January 2005), Crewe and Nantwich (February 2005) and Macclesfield Local Plans (January 2004).

National Policy/Guidance

National Planning Policy Framework (NPPF)

Para 6 of the NPPF states that

The purpose of the planning system is to contribute to the achievement of sustainable development.

Para 14 states that at the heart of the NPPF

...is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

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:

- 1) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or*
- 2) specific policies in the Framework indicate development should be restricted.*

Sustainable development includes economic, social and environmental roles (NPPF para 7)

Macclesfield Borough Local Plan, saved policies

BE1 (Design Guidance)
BE2 (Preservation of Historic Fabric)
BE20 (Locally Important Buildings)
DC1 (New Build)
DC2 (Design Quality of Extensions and Alterations)
DC3 (Protection of the Amenities of Neighbouring Properties)
DC6 (Circulation and Access)
DC8 (Landscaping)
DC9 (Trees)
DC38 (Spacing Standards)
NE11 (Nature Conservation)
S1 (Town Centre Shopping Development)
S2 (New Shopping Development)
PDC3 (Secondary Shopping Area)

Other Material Considerations

Ministerial Statement – Planning for Growth
National Planning Practice Guidance
Locally Listed Buildings SPD
Poynton Town Strategy
SPD for Poynton
Planning Obligations SPG
Article 12 (1) of the EC Habitats Directive 1992
The Conservation of Habitats and Species Regulations 2010
Nature Conservation Strategy (SPD) – 2006
Trees & Development Guidelines (SPG) - 2004

CE Local Plan Strategy – Submission Version

CONSULTATIONS

Environmental Protection Team:

1) Support the enclosure of the service area, to reduce noise impact on neighbouring residential properties. 2) Recommend refusal of the request to change the hours of operation and delivery (as these restrictions were imposed previously to protect the amenities of neighbouring properties).

Head of Strategic Infrastructure (Highways):

No objections

Heritage & Design - Forestry:

No objections

Heritage & Design - Landscape:

No comments received as of 18.11.15

United Utilities:

No comments received as of 18.11.15

VIEWS OF THE PARISH/TOWN COUNCIL

Poynton Town Council:

- 1) No objection to variation to tinting windows
- 2) Recommend refusal to vary the hours of opening and delivery on the basis that the variation is un-neighbourly
- 3) No objection to the enclosed loading bay cover in principle, but request that the height is reduced by one metre to reduce impact on neighbours.

REPRESENTATIONS

Representations have been received from the occupants of 4 No. neighbouring properties, details of which can be read on file. A summary of the issues raised is provided below:

- Disappointing that the noise attenuation measures cannot be implemented without significant changes to the plans (service area/loading bay); information should have been required at the outset, before approving plans
- Concerns about the methodology of the acoustic report (as assessments undertaken whilst vehicles at rest and not delivery vehicles to the site, bleeping whilst reversing into the loading bay, etc.)

- Proposed building will be 2m closer to residential properties, with a greater visually imposing impact/overbearing and possibly less room for landscaping
- Request parapet of enclosure is removed to reduce height; Agree with Town Council request to reduce height (but don't want this benefit to visual impact if it compromises the sound-proofing)
- Outlook from our property is unappealing and depressing
- Suggest applicant commissions an independent report outlining all the options, thereafter consulting with residents to reach a mutually acceptable solution
- Materials should be as stated, i.e. brick and render, not cladding
- Strongly object to variation of opening and delivery hours; these changes are unacceptable (due to impact on residential amenity); should refuse this variation
- No objection to variation of window tinting condition
- Believe that the Council and the applicant have not given due consideration to local residents throughout
- The building in its incomplete state represents an oppressive and unnecessarily overbearing structure
- Already numerous supermarkets and convenience stores in the area
- Should the application be approved, suggest that the service area/loading bay should be conditioned to remain as such

In addition to the above representations a Cllr has raised questions regarding the operating hours, i.e. what restrictions were imposed? What is being adhered to? Are there any reasons to change them?

ADDITIONAL INFORMATION

The applicant has submitted the following documents, details of which can be read on file:

- 2 No Noise Impact Assessments
- A Covering Letter outlining the background and rational behind the proposed variations
- An up-dated letter outlining the amendments made during the course of the application (i.e. removal of request to vary conditions 16 and 18)

APPRAISAL

The key questions are essentially 1) whether or not the proposed changes are considered to be minor material changes, such that the scale and nature of the proposed development is not substantially different to the approved application 14/5368M; 2) whether these changes have any material impact that would result in a different decision being reached to that previously reached.

The issues raised in representations are noted and have been borne in mind as part of the appraisal. The case presented by the applicant to support the proposed variations has also been borne in mind.

Extent of changes to plans/design/impact on the character and appearance of the area

The differences between the approved plans and the proposed plans relate mainly to the service area, along with the request not to have to tint the frontage windows on the eastern elevations of the units.

Enclosing the service area introduces a wall measuring approx. 4.8m high and 20m long sited at a distance approx. 7m closer to the western boundary and the residential properties beyond the western boundary on Abby Court. The enclosure has a flat roof, behind a parapet, with sky-lights. The materials are in keeping with the rest of the building, i.e. brick and render. The design of the enclosure is considered to be acceptable and to have an acceptable impact on the area. Having non tinted windows is also considered to be acceptable. The extent of the changes are considered to be minor material and not to have any detrimental impact on the street-scene or character of the area.

Impact on residential amenity

The variation to the plans in respect of the enclosed service area has been undertaken to ensure any noise generated from the service area is of an acceptable level. As well as the enclosure, the noise mitigation measures also include a 2.1m high acoustic fence along the western boundary. Based on the results of the Noise Impact Assessments and the support for the enclosure from the Environmental Protection Team, it is considered that the amenities of the occupants of the neighbouring residential properties to the west of the site on Abbey Court will not be significantly impacted due to noise from the site. Indeed, the enclosure is deemed to be the most suitable option to prevent any detrimental noise impact on neighbouring properties.

As regards issues of outlook, space, light and whether or not the proposed enclosure is overbearing, it is acknowledged at the outset that the western wall of the enclosure is approx. 7m nearer to the residential properties on Abbey Court than the western wall of the foodstore as was on the plans previously approved. However, it is also noted a) that the distance between the enclosure wall and the front elevations of dwellings on Abbey Court (which have habitable room windows in them) is approx. 21m at the nearest point. Policy DC38 recommends a distance of 14m between habitable room windows and blank elevations for residential development. Although the relationship between dwellings and a commercial property is different, the distance of 21m, for a wall approx.4.8 high, is considered to be a sufficient distance not to be overbearing or significantly reduce light or change outlook; b) a 2.1m high acoustic fence is to be erected along the site's western boundary, in between the dwellings on Abbey Court and the wall of the enclosure; c) there are some existing trees and hedges along the western boundary (outside the site edged red but adjacent to it) and it is recommended that additional screening planting (eg. appropriate trees) be planted within the site on the area of land between the wall of the enclosure and the site's western boundary to screen the outlook from the dwellings into the site. With the boundary treatment and additional appropriate landscape screening it is considered that the enclosure has a limited and acceptable degree of impact on the amenities of neighbouring properties. As regards non-tinted windows, it is considered that it is not necessary or reasonable to require the frontage windows on the eastern elevations of the approved units to be tinted for the purposes of design or neighbour amenity. Indeed as there are only 2 No. small windows at ground-floor level on the northern elevation of the foodstore unit and 'dummy glazed' windows at the upper level, it is considered that there is no need for any tinted windows to be installed.

Arboricultural, landscaping and ecological issues

The Arboricultural Officer is satisfied that the proposed changes do not have any additional impact from an arboricultural point of view. Although comments from the Landscape Officer have not yet been received, it is noted that the Landscape Officer has been satisfied with information previously submitted to discharge landscaping conditions on the approved application and therefore it is anticipated that no objections will be raised. However, the screening required to reduce the visual impact of the wall of the enclosure is something that differs to what has previously been accepted. Therefore, it is considered that appropriate landscaping/screening conditions be attached, should the application be approved. Conditions attached to the previous approval to protect ecological matters of interest can be re-attached to the current application, should the application be approved. As such, there are no ecological issues.

Highways safety

The requested variations do not alter highways matters or generate any highways safety concerns.

Drainage and flood risk

The requested variations do not alter any drainage or flood risk matters.

OTHER MATERIAL CONSIDERATIONS

Heads of Terms, CIL Regulations & S106

It is noted that the original approved application, i.e. 14/1904M, was subject to a s106 Agreement. This Agreement has been signed and the commuted sums have been received by the Council. The previously approved amended application, i.e. 14/5368 had a deed of variation completed to tie the new permission to the s106. It has been confirmed by the Council's Planning Lawyer that a further deed of variation to the s106 will be required to tie the current proposal to the s106.

SUMMARY, CONCLUSION, PLANNING BALANCE & RECOMMENDATION

All consultations and representations have been borne in mind. Bearing all the above points in mind, given the size, scale and nature of the proposed variations, it is considered that the proposed changes constitute minor material amendments and therefore the resultant development is not substantially different to the approved scheme.

It is considered that the variations do not result in any additional, significant, impact over and above the approved scheme, in respect of the key issues considered and that there is no justifiable, sustainable reason why a different decision to that already arrived at on application 14/5368M should be reached. The proposed changes accord with relevant local plan policies, national policy and guidance and other material considerations.

Hence, it is recommend the application to vary conditions 2 and 10 on application 14/5368M be approved, subject to outstanding consultations, conditions, informatives and completion of a deed of variation to the s106.

In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add conditions / informatives / planning obligations or reasons for approval/refusal) prior to the decision being issued, the Planning & Enforcement Manager has delegated authority to do so in consultation with the Chairman of the Northern Planning Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.

Application for Variation of Condition

RECOMMENDATION:

1. A01AP - Development to be completed in accordance with approved plans
2. A02EX - Building materials for external surfaces to be as previously approved
3. A01TR - Trees shown as being retained are to be retained
4. A02TR - Trees shall be protected in accordance with approved tree protection measures
5. A02LS - Prior to occupation, landscaping and boundary treatment details, including additional screening along the western boundary, to be submitted/approved
6. A04LS - Landscaping (implementation)
7. A22GR - Protection from noise during demolition and/or construction
8. A23GR - Protection during pile driving (if required) - details to be submitted
9. A02HA - Construction of access to be completed before occupation
10. A30HA - Protection of highway from mud and debris during development
11. A08MC - External lighting to be implemented as approved
12. A10LS - Public realm/public art to be installed in accordance with details submitted
13. A13GR - Business operation hours
14. A01HP - Car and cycle parking to be provided before occupation
15. A20GR - Hours of deliveries
16. A17MC - Decontamination of land shall be completed in accordance with the approved details
17. A19MC - Refuse storage facilities to be installed and retained in accordance with details submitted
18. A24HA - Provision and retention of service area facilities
19. A04NC - Drainage to be completed in accordance with approved details

- 20.A02NC - Implementation of recommendations in ecological report
- 21.A23MC - Ground and floor levels to be completed in accordance with plans submitted/approved
- 22.A06NC - Protection for breeding birds
- 23.A01MC - Noise mitigation to be in accordance with noise impact assessment
- 24.A03MC - Details of cooking odour extraction equipment to be submitted if required for users of Unit 'B'
- 25.A12HA - Closure of old access points to be in accordance with details approved
- 26.Dust to be controlled in accordance with approved details
- 27.Bird boxes to be provided as approved
- 28.The renewable energy measures shall be fully implemented as approved
- 29.Ghost island to be constructed as approved
- 30.Floor floating details to be submitted if undertaken
- 31.Environmental management to be in accordance with approved details
- 32.Existing hedge to be retained
- 33.Bat features incorporated into the scheme as approved
- 34.Junction to be completed in accordance with approved timetable
- 35.Consult landowner re any works to protected trees
- 36.NPPF - working with applicants to secure suitable development

