

Planning Reference No:	10/1983C
Application Address:	Land at West Heath Shopping Centre, Congleton
Proposal:	Application for a removal or variation of a condition following planning permission – construction of new food store
Applicant:	Hollins Murray Group & Aldi Stores Ltd.
Application Type:	Full Planning Permission
Grid Reference:	384373 363113
Ward:	Congleton Town West
Earliest Determination Date:	8 th July 2010
Expiry Dated:	24 th August 2010
Constraints:	Settlement Boundary Air Quality Management Area

SUMMARY RECOMMENDATION:

Approve

MAIN ISSUES:

- **Compliance with the tests in Circular 11/95**

1. REASON FOR REFERRAL

The application has been referred to committee because the original decision was made by Planning Committee.

2. DESCRIPTION OF SITE AND CONTEXT

The application site comprises a flat, hard surfaced parcel of land at the eastern end of West Heath Shopping Centre measuring approximately 0.42ha which is currently used as car parking for the shopping centre.

The shopping centre itself comprises one large single storey, flat roofed block subdivided into a series of smaller retail units. Co-op occupies the largest unit, located at the western end of the block, with the remaining units occupied by a mix of small retailers, service providers and restaurants.

The shopping centre has recently been the subject to refurbishment and the exterior is now finished in white render with large sections of glazing giving the centre a refreshed, contemporary appearance.

The main vehicular access to the shopping centre lies to the south, directly off the A534 Sandbach Road. However a further secondary access also exists from the north onto the A54 Holmes Chapel Road.

The application site is bounded to the north by the A54 Holmes Chapel Road, residential properties to the east, the A534 Sandbach Road to the south and by existing retail units within the centre to the west.

3. DETAILS OF PROPOSAL

The applicants have recently obtained planning permission for the erection of a new supermarket. The proposed unit would have a net trading area of 940m² with the remaining floorspace given over to ancillary uses including storage and office accommodation and the like.

The permission was subject to a condition limiting the occupation of the new development to Aldi Stores. The applicant seeks to remove or vary that condition to allow other operators to occupy the premises.

4. RELEVANT HISTORY

The site has an extensive planning history amounting to 42 previous planning applications. The most relevant applications are listed below.

10/0010C Construction of new food store with associated servicing facilities and alterations to existing car park. – Approved 19.04.10

37627/1 Outline planning permission for 'Retail unit (with part first floor) and associated external works and car parking' on the 31.08.2004. This permission related to the current planning application site but has now lapsed.

37620/3 Part demolition of existing shopping centre, part extension of existing shop frontage, part new build including landscaping and car parking. Approved 01.11.2004.

36158/3 Extension to existing shop units and new shop fronts. Two-storey leisure unit with shops beneath. Part demolition to existing units including new landscaping and parking scheme. Approved 11.11.2003

34659/1 Part demolition, extension and alterations of existing shopping centre, including new landscaping and parking scheme. Uses are retail with one unit at first floor level which is proposed as a health/leisure use. Approved 14.07.2003

30899/1 Erection of retail development, associated car parking, access and landscaping. Outline permission approved 08.11.1999

5. POLICIES

National Policy

PPS4 'Planning for Sustainable Economic Growth'

Local Plan Policy

PS4 'Towns'

S2 'Shopping and Commercial Development Outside Town Centres'

Other Material Considerations

Cheshire Town Centre Study 2007 (CTCS)

PPS4 Planning for Sustainable Economic Growth

Supplement to PPS4 – Planning for Town Centres, Practice Guidance on Need, Impact and Sequential Approach December 2009

Circular 11/95 Use of Conditions in Planning Permission

6. CONSULTATIONS (External to Planning)

None received at the time of report preparation

7. VIEWS OF THE PARISH / TOWN COUNCIL:

Objection – Members felt that the original conditions should remain

8. OTHER REPRESENTATIONS:

A letter of objection has been received from the occupants of 6 Ash Grove, West Heath stating that the original application was granted to Aldi based on their comprehensive application. Changing the restriction from this retailer changes the entire application, which is based on Aldi's retail forecast, car parking predictions, traffic flows, delivery schedules and environmental impacts. Contrary to their specific offering, as per the original application, opening up this store to other retailers will change the dynamics of retail in West Heath, with possible detriment to users and loss of amenity to Ash Grove residents.

9. APPLICANTS' SUPPORTING INFORMATION:

- Such a condition is not supported by the guidance in PPS4 or the practice note and is also contrary to the tests in Circular 11/95. Restricting occupancy to Aldi in perpetuity is unreasonable and there are no exceptional circumstances.
- Alternatively the conditions should be carried to read: "Occupation of the food store hereby approved shall be restricted for 5 years from the date of the permission to Aldi Stores Ltd. and not by any other retail operator."

10. OFFICER APPRAISAL

Advice on the use of conditions can be found in "Circular 11/95: Use of Conditions in Planning Permission". According to the Circular, "*Secretaries of State take the view that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. As a matter of policy, conditions should only be imposed where they satisfy all of the tests described in paragraphs 14-42. In brief, these explain that conditions should be:*

- i. necessary;*
- ii. relevant to planning;*
- iii. relevant to the development to be permitted;*
- iv. enforceable;*
- v. precise; and*
- vi. reasonable in all other respects."*

The Circular continues by stating at para.15 that *“the same principles, of course, must be applied in dealing with applications for the removal of a condition under section 73 or section 73A: a condition should not be retained unless there are sound and clear-cut reasons for doing so.”*

Therefore, in order to determine whether the condition serves a useful purpose it is necessary to examine it in the light of these tests.

Necessary

In considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification. Therefore the starting point is usually the relevant Development Plan policies. However, in this case, they have been largely superseded by more recent guidance provided by PPS4.

PPS4 sets out the Central Government Planning Policy in respect of new retail development. Paragraph EC19.1 of PPS4 deals with the effective use of conditions for main town centre uses, and states that *“Local planning authorities should make effective use of planning conditions to implement their policies and proactively manage the impacts of development by imposing planning conditions to:*

- 1. prevent developments from being sub-divided into a number of smaller shops or units, or to secure the provision of units suitable for smaller business, by specifying the maximum size of units*
- 2. ensure that ancillary elements remain ancillary to the main development*
- 3. limit any internal alterations to increase the amount of gross floorspace by specifying the maximum floorspace permitted*
- 4. limit the range of goods sold, and to control the mix of convenience and comparison goods and resolve issues relating to the impact of the development on traffic and the amenity of neighbouring residents, such as the timing of the delivery of goods to shops and the adequate provision for loading and unloading”*

There is nothing within the advice to suggest that limiting the permission to a particular operator is a suitable means of managing the impact of the development. In this particular case other conditions have been imposed which deal with the size of the unit and the range of goods which can be sold.

Further advice on the use of planning conditions can be found in the Government’s “Planning for Town Centres”. Paragraph 8.1 reiterates the guidance contained within PPS4 set out above. It goes on to state, however, that planning conditions should only be used where they are necessary, particularly given the dynamic nature of the retail and other key town centre sectors, and the need for retailers and leisure operators to be able to adapt and respond to market conditions and enhance their productivity and efficiency. However, the use of conditions will be appropriate where the consequences of certain types of development could lead to unacceptable impacts or have not been fully tested. The limitation of a permission to a particular operator, would clearly reduce the flexibility of the unit, contrary to this advice.

However, at Paragraph 8.8 the document does state that *“in some cases, it may be appropriate to support particular types of operation, based on their contribution to meeting a specific well defined need. One example is the role of the discount food retailers, which have particular characteristics, and which can compliment other types of local convenience retailing and provide a positive contribution in areas of social deprivation by providing accessible low cost convenience goods. In such circumstances, where the case to support specific proposals is predicated on a particular type of operation, it may be appropriate to impose conditions to ensure the character of such units do not subsequently change.”*

The application currently under consideration does relate to a discount food retailer, and the case to support the original application was heavily reliant on arguments relating to the particular characteristics of that type of operation which, it was considered, would not adversely affect the town centre or other retailers within West Heath. It was considered that the majority of trade would be drawn from the existing edge of centre Tesco and Aldi stores. However, it is important to note that the guidance does not offer any support for restricting the development to a single operator, merely the imposition of conditions *“to ensure the character of such units do not subsequently change.”* A condition limiting the occupation of the unit to a “discount food operator” would serve the same purpose.

According to paragraph 91 of Circular 11/95, *“since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy premises for which permission is to be granted will normally be irrelevant.”* This is because the impact of a discount food store will be the same regardless of whether it is operated by Aldi, Lidl, Netto or any other company.

The Circular continues to say that “Conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated, and where the alternative would normally be refusal of permission.” Based on the advice contained within “Planning for Town Centres” there are planning grounds to restrict the use of the site to a particular “class of occupier” but not specifically Aldi.

Relevant to Planning.

Given that the reason for the imposition of the condition was to ensure that the development was only occupied by a specific type of operation, which following careful assessment, it had been determined would not impact on the vitality and viability of the town centre, the condition is considered to be relevant to planning, as it is intended to meet broader planning objectives.

Relevant to the development to be permitted;

According to paragraph 25, of Circular 11/95 to meet this test, the need for the condition must be created by the new development. It must not be imposed to deal with an existing problem. Given that the condition in question has been written specifically to restrict the new development only, it is considered to meet this objective.

Enforceable;

It would be easy to determine whether or not the premises were being occupied by Aldi and therefore the condition is considered to be enforceable.

Precise

The condition is specific and clear in its requirements and it is therefore considered to be in accordance with the precision test.

Reasonable in all other respects

According to paragraph 35 of Circular 11 / 95 *“a condition may be unreasonable because it is unduly restrictive”*, for example where it would put a severe limitation on the freedom of owners to dispose of their property. Restricting the occupation of the site to Aldi would severely restrict the abilities of the site owners to lease or sell the unit and it is therefore considered to be unreasonable.

Personal Permissions

Further guidance on the use of “personal” permissions is provided at paragraph 93 of Circular 11/95 which states that *“unless the permission otherwise provides, planning permission runs with the land and it is seldom desirable to provide otherwise. There are occasions, however, where it is proposed exceptionally to grant permission for the use of a building or land for some purpose which would not normally be allowed at the site, simply because there are strong compassionate or other personal grounds for doing so. In such a case the permission should normally be made subject to a condition that it shall enure only for the benefit of a named person-usually the applicant: a permission personal to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company. This condition will scarcely ever be justified in the case of a permission for the erection of a permanent building.”*

Therefore the condition is also contrary to advice in Circular 11/95 on the grounds that it is related to both a permanent building and a company, and there are no compassionate or other personal grounds for making the permission specific to an individual operator.

Other matters

The third party letter of objection that has been received makes reference to a number of other issues, in addition to retail impacts, most of which relate to car parking, traffic flows and deliveries. It is not considered that the impact of any other discount food operator would be any greater in this respect than that of Aldi, and in the absence of any objection from the Highway Engineer, it is not considered that a refusal on these grounds could be sustained.

11. CONCLUSIONS

The case to support the original permission was based on a particular type of operation, and in accordance with guidance contained within *“Planning for Town Centres,”* it is considered to be necessary to impose conditions to ensure the character of the unit does not subsequently change, by limiting the occupation of the unit to a discount food operator. However, restricting the use of the unit to a specific company is considered to be unnecessarily and unreasonably restrictive and there is no support for this approach within PPS4, Planning for Town Centres or Circular 11/95. The latter specifically discourages the use of so called “personal” permissions as the impact of one discount operator will be no

different to the impact of another. The condition as it stands, therefore, is unnecessary and unreasonable. Consequently, it is considered to be appropriate to vary the condition to restrict the occupancy of the store to a “discount food operator”, instead of referring specifically to Aldi.

12. RECOMMENDATIONS

APPROVE subject to the following condition:

1. Restriction to a discount food operator

