

Agenda Item	A8
Application Number	20/01295/VCN
Proposal	Relevant Demolition of existing retail building (A1) and associated water tank and enclosure, and the erection of a food store (A1) with associated car parking, external plant and enclosure, servicing areas and hard and soft landscaping (pursuant to the variation of condition 18 on planning application 20/00371/VCN to extend the bank holiday opening hours)
Application site	Aldi, 48 Aldcliffe Road, Lancaster, Lancashire
Applicant	Aldi Stores Limited
Agent	Miss Lauren Neary
Case Officer	Mr Adam Ford
Departure	No
Summary of Recommendation	Approval

1.0 Application Site and Setting

- 1.1 This application relates to a 0.59-hectare site located approximately 120 metres southwest of the city centre (and Lancaster's primary shopping area), occupying an edge of centre location. Surrounding development is largely residential with some nearby commercial uses located along Queen Street and Aldcliffe Square whilst the rears of 25-49 Portland Street and the side of 50 Aldcliffe Road flank the western boundary of the site. 23 Portland Street and its rear garden, Speights warehouse (food suppliers) and 24 Queen Street and its garden border the northern boundary. Queen Street borders the north eastern corner of the site with Aldcliffe Road running along the south eastern boundary of the site.
- 1.2 Access/egress into the site is taken off Aldcliffe Road. The site has a triangular form and previously accommodated a B&Q DIY retail unit with associated car parking, serving and storage areas, water tank and landscaping. The building occupied most of the northern half of the site with the car parking dominating the southern part of the site. The former B&Q store and its associated external storage compound and garden centre enclosure have all been demolished. The Aldi building (as approved pursuant to 20/00371/VCN) has now been built out and it occupies the site in its completed form.
- 1.3 Neighbouring properties on Portland Street are elevated above the site and separated by a wooded embankment that has been retained as part of the site's redevelopment.
- 1.4 The site is situated within the Lancaster Conservation Area immediately adjacent to the Aldcliffe Road Conservation Area. There are a number of Listed buildings in relatively close proximity to the site with a number of non-designated heritage assets of local importance situated immediately adjacent to the site (e.g. Portland Street/Speights Warehouse building). Trees within the site not subject to individual Tree Preservation Orders but are protected by virtue of the Conservation Area designation.

2.0 Proposal

2.1 Pursuant to 18/01100/FUL, planning permission was granted for the relevant demolition of the existing retail building, water tank and enclosure, and the erection of a new food store building with associated parking, external plant, enclosures, service areas and landscaping. This permission was implemented through the construction of the Aldi building. An application to vary condition 2 of 18/01100/FUL was subsequently submitted and granted under 20/00371/VCN. The variation to condition 2 specifically sought to amend the layout of the plant equipment, the external plant area and its enclosure.

2.2 An application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied. Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.

2.3 Accordingly, approval 20/00371/VCN represents a fresh planning permission, albeit for a very similar development, which sits alongside the original planning permission. The permission granted under s.73 of the Act does not superseded nor replace the original consent. It is for this reason that the conditions attached to the most recent VCN application are worded to reflect the details which have been agreed via discharge of condition applications.

2.4 The current application seeks to vary condition 18 as imposed upon 20/00371/VCN insofar as it relates to the permissible opening hours on bank holidays. For clarity, condition 18 of 20/00371/VCN **currently** restricts the hours of trading as follows:

- Mondays – Saturday: 8am to 10pm
- Sundays and Bank Holidays: 9am to 5pm

The application under determination seeks to vary condition 18 so that the trading hours become:

- Mondays – Saturday: 8am to 10pm (**unchanged**)
- Sundays: 9am to 5pm (**unchanged**)
- Bank Holidays: 8am – 8pm (an increase of 4 trading hours per bank holiday)

2.5 The submitted application clarifies that the amendment in trading hours is required to ensure that the store is operating in accordance with the national directives of the business. The supporting cover letter further notes that increase in bank holiday hours is deemed necessary to further support the store in its ability to respond to the on-going Covid-19 pandemic.

3.0 Site History

3.1 The most relevant planning history is set out in the table below. This Section 73 application relates to planning permission reference 20/00371/VCN which in itself represents a variation of planning application 18/01100/FUL. The relevant pre-commencement conditions have been complied with under a number of discharge of condition applications:

Application Number	Proposal	Decision
20/00120/DIS	Discharge of condition 7 on approved application 18/01100/FUL	Approved
20/00103/DIS	Discharge of condition 5 on approved application 18/01100/FUL	Approved
20/00371/VCN	Relevant Demolition of existing retail building (A1) and associated water tank and enclosure, and the erection of a food store (A1) with associated car parking, external plant and enclosure, servicing areas and hard and soft landscaping (pursuant to the variation of condition 2 on	Approved

	planning application 18/01100/FUL to amend the location of plant equipment size and details of the external plant enclosure and acoustic fencing)	
19/00125/DIS	Discharge of conditions 6, 7, 8, 10, 12, 13, 14, 15, 16 and 18 on approved application 18/01100/FUL	Approved (safe for details of the enclosure fence)
19/00147/DIS	Discharge of conditions 17 and 20 on approved application 18/01100/FUL	Approved
19/00157/DIS	Discharge of conditions 3, 5 and 11 on approved application 18/01100/FUL	Approved
19/00166/DIS	Discharge of condition 9 on approved application 18/01100/FUL	Approved
19/00200/DIS	Discharge of condition 4 on approved application 18/01100/FUL	Approved
19/01357/ADV	Advertisement application for the display of 2 externally illuminated fascia signs, 1 non-illuminated totem sign and 1 non-illuminated window sign	Approved
19/01577/NMA	Non material amendment to planning permission 18/01100/FUL to reduce the size of the external plant enclosure	Withdrawn
18/01100/FUL	Relevant Demolition of existing retail building (A1) and associated water tank and enclosure and erection of a food store (A1) with associated external plant and enclosure, car parking, servicing areas with hard and soft landscaping	Approved and implemented
12/00917/PLDC	Lawful development certificate for proposed use as a food store	Certificate granted for unrestricted retail use.

4.0 Consultation Responses

4.1 The following responses have been received from statutory and internal consultees:

Consultee	Response
County Highways	No objection
Environmental Health	No objection - they have not identified any significant impacts with respect to noise or public health.

4.2 At the time of writing this report, 4 representations of objection have been submitted from members of the public and a summary of the relevant planning reasons offered within these letters are as follows:

- **Amenity concerns:** the reason for the original condition remains relevant and deliveries to the store will increase. Relaxing the bank holiday hours will be harmful to amenity due to the increased noise, traffic and disturbance generated through the additional trading hours.
- **Validity of noise data:** the noise data submitted is not accurate and should not be relied upon.
- **Alleged breach of condition 18:** the store has already operated in breach of the previously imposed hours.

Other concerns have been raised with respect to deliveries, but these are not relevant to the determination of this application because the condition which controls deliveries (19) will be re-imposed in its current form. This will restrict deliveries to between 9am – 5pm on Bank Holidays as is the current prevailing position.

5.0 Analysis

5.1 As noted above, this application seeks to vary condition 18 as previously imposed upon an implemented consent under 20/00371/VCN. Accordingly, it is not necessary to consider the application in the same degree of detail as a fresh application would be.

The key considerations in the assessment of this application are:

- **The principle of development and historical planning permissions**
(18/01100/FUL and 20/00371/VCN)
- **Noise impacts and amenity**
(NPPF paragraphs 127 and 180. Development Management DPD policy DM29)
- **Imposition of planning conditions**
(Section 73 of the Town and Country Planning Act 1990, paragraphs 014 and 015 of the PPG website)

5.2 The principle of development and historical planning permissions

5.2.1 Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is, ultimately, open to the applicant to decide whether to implement the new permission or the one originally granted.

5.2.2 This is a relevant point to note because the site in question already benefits from two recent planning permissions which have firmly established the principle and acceptability of the retail development which is proposed by this further application to vary condition 18. Originally, planning permission was granted, subject to conditions, under 18/01100/FUL for the relevant demolition of existing retail building (A1) and associated water tank and enclosure, and the erection of a food store (A1) with associated car parking, external plant and enclosure, servicing areas and hard and soft landscaping. This permission was implemented, and the granting of this application confirms and iterates the acceptability of the retail use of the site.

5.2.3 Following the granting of 18/01100/FUL, a further application (20/00371/VCN) to amend condition 2 was submitted and subsequently approved in June 2020. This application sought to amend the layout of the plant equipment, the external plant area and its enclosure. It also proposed to house some of the plant equipment inside the building on a mezzanine as well as retaining some plant equipment externally. In determining this application, an in-depth analysis of the potential noise and amenity implications was explored within the officer report. This application has been implemented and the Aldi store has been completed.

5.2.4 In light of the fact that the scheme benefits from two recently issued consents and owing to the implementation of 20/00371/VCN, the principle of development on the site, with respect to a retail offering, is considered to be established as something that the Local Planning Authority is able to support. Consequently, and subject to the impact upon amenity being acceptable, the principle of amending the opening hours of the approved store is judged to be something which can be supported by the Local Planning Authority.

5.2.5 In reaching this conclusion, it is noted that public objections refer to the 1994 Sundays Trading Act which stipulates the lawful opening hours for shops subject to their size. However, this application only seeks to amend the bank holiday restriction and retail units in excess of 280sqm must close on Christmas Day irrespective of which day it may fall upon. The Sunday hours as prescribed under condition 18 of 20/00371/VCN will *remain* as 9am – 5pm. As such, this means that if the current application is approved the store would open for one hour earlier and three hours later for a maximum of 7 bank holidays throughout the year. This, in total, amounts to an extra 28 hours trading throughout the entire calendar year.

5.2.6 It should, however, be noted that due to this application being made under S.73 of the Act and the fact that the previously approved scheme has been implemented, the standard condition which

requires a commencement within 3 years from the date of approval need not be imposed.

5.3 Noise impacts and amenity

5.3.1 In conjunction with paragraph 127 of the National Planning Policy Framework, policy DM29 of the Development Management DPD requires all proposals to preserve existing levels of amenity and to ensure that impacts such as noise are appropriately minimised.

5.3.2 The consideration of likely noise impacts emanating from the development and the relationship of such on neighbouring residential development was a key issue during the consideration of the original planning application. The main noise sources related to the general use and operation of the food store, deliveries and servicing, and noise emitting from the external fixed plant. Following detailed negotiation, the original planning permission was granted subject to several planning conditions controlling the use and operation of the food store and its associated infrastructure to minimise the noise effects on neighbouring residents. These conditions included the requirement for a Service Delivery Plan, opening times and delivery hours and a condition limiting the noise from external plant equipment. This application only seeks to amend the trading hours with respect to Bank Holidays. No other conditions which seek to control amenity impacts are to be altered.

5.3.3 It is not uncommon for new issues can arise after planning permission has been granted, which requires the modifications of the approved proposals. Planning legislation and guidance recognises this with several planning mechanisms available to applicants to try and to secure amendments to existing planning permissions. Section 73 of the Act deals with modifications to a scheme that are more than non-material but not fundamentally or substantially different from the approved scheme.

5.3.4 In this instance, the need to amend the hours of operation has, according to the applicant, arisen due to the requirement for the store to follow the Aldi's corporate national directive which prescribes the preferred bank holiday trading hours. The submitted information also suggests that the extra trading time is required to allow the store to support the community through the on-going Covid-19 pandemic. Whilst the business directive of Aldi is noted as being an internal policy that stores are likely to wish (and be required) to follow, given the very modest increase in trading hours that this application would provide, the Local Planning Authority can only ascribe minimal weight to the assertion with respect to Covid-19 on the basis that it does not represent a significant or material increase in trading hours within which to support the community. This in no way suggests that Aldi are not attempting to support and assist with the pandemic response but the minimal increase in trading hours that this variation will afford is such that it is difficult to accept that it will play a vital role in community support with regards to Covid-19.

5.3.5 At the time of original proposal being submitted, a detailed noise assessment was commissioned and included within the application. Amongst other relevant considerations, this report, which is BS:8233 compliant considered the likely noise arising from site specific vehicle movements and noise emanation from within the car park. The content of the submitted noise assessment was reviewed by the Council's Environmental Health Officer who raised no objections to its conclusions or methodology.

5.3.6 The same noise assessment has been submitted in support of this application without modification. To ensure that this is an acceptable approach, Officers have sought clarification from the Council's Environmental Health Officer who has confirmed that in this instance, such an approach is valid. As sound from the use of the car park and increased vehicle movements in the area have already been assessed within the previously submitted noise report, and determined as being acceptable, the main consideration would be the acceptability of the additional hour at the beginning of the day and 3 hours at the end of the day for just 7 bank holidays per annum. In considering the amenity impacts, it is important to note that the amended hours do not relate to every day of trading; they relate solely to 7 bank holidays per year.

5.3.7 Based on the below factors, the submitted noise assessment concludes that noise from the car park could give rise to internal noise levels, which would be below the guideline daytime internal noise level, as recommended in BS8233 during a peak hour with windows open:

- Data included within the previously submitted Transport Assessment (169 arrivals and 160 departures per hour on worst case scenario basis)

- The location of the nearest noise sensitive receptors (dwellings) to the west along Portland Street
- Assumption that all parking spaces could be used simultaneously

The operation of the car park is predicted to give rise to an internal noise level of 25db (Laeq, 1 hour) which is *lower* than the guideline internal daytime noise level prescribed by BS:8233 of 35db (Laeq, 1 hour). These results remain valid with respect to the proposed additional hours of trade and given that the store would be open for one hour earlier and three hours later for a maximum of 7 bank holidays, the additional noise likely to be generated is not deemed to be in excess of the levels previously reported. A conflict with policy DM29 is not therefore judged to arise in this regard.

5.3.8 In addition to the extra activity within the car park, albeit likely modest, regard must also be had to the extra operating hours of the external and internal plant equipment. If the store is open for a longer period, it stands to reason that the associated plant is also likely to be operational for longer too. The total increase would be four hours per bank holiday. The plant which is located internally is unlikely to generate any significant acoustic concerns due its positioning within the main building and the acoustic qualities of the store which have been designed such that disturbance is appropriately mitigated against.

5.3.9 With respect to the external plant, at the time of 20/00371/VCN being considered, the noise arising from this equipment was considered in detail. The changes to the levels within the enclosure and the effect that this had on the noise emanating from the fixed plant was remodelled as part of 20/00371/VCN and the noise report updated accordingly. The objective of the noise assessment, re-design of the plant and noise mitigation was to adhere to the noise limit set by condition 26 of the original planning permission. Taking the previously agreed mitigation into account, it was concluded that there should be no adverse noise impacts associated with the modifications to the external plant enclosure. This also demonstrated, at the time of determination, that the noise criteria detailed in the noise condition could be achieved. The Council's Environmental Health Officer reviewed this submission (as well as the concerns previously raised by residents) and cited no objections to the amendments.

5.3.10 With this in mind, given that amended plant arrangement was deemed acceptable at the time of granting 20/00371/VCN, due to the minimal increase in hours proposed by this application, there is no evidence which would suggest that the previously agreed mitigation measures regarding the external plant would now be rendered as ineffective or obsolete. Although it (plant) will potentially be operational for longer (to support the extra bank holiday hours), the external plant should still result in there being a 'no observed effect level' and this a level of noise exposure below which no effect at all on health or quality of life can be detected. This enables the development to remain compliant with the original objective of condition 26 despite the additional hours of trading which are proposed by the application.

5.3.11 Neighbouring residents are naturally concerned about the proposed modifications to the development and the effects the changes may have on noise and residential amenity. The objections online refer to an increase in noise as a result of the extra trading but with a focus upon deliveries.

5.3.12 This proposal to amend the bank holiday opening hours does not alter the approved hours for deliveries and this would remain controlled by planning condition; further deliveries outside of the current approved hours will not be authorised in the event that this application is granted. The proposal seeks a modest increase in opening hours of 4 hours per bank holiday. The Sunday hours and all other controls imposed by 20/00371/VCN would remain in place. Given the minimal increase in trading hours sought and with respect to the submitted noise report which objectively considers noise arising from trading, significant adverse audible disturbance is not judged to be a likely outcome. However, should the Local Authority receive justifiable complaints about unreasonable noise levels or that noise levels were giving rise to adverse impacts, the Council's Environmental Health team would investigate as part of their statutory function. The Council's Planning Enforcement team would also be responsible for investigating alleged breaches of the approved hours should complaints be submitted.

5.3.13 As clarified in paragraph 5.3.5 the Council's Environmental Health Officer has reviewed the submission and the concerns raised by residents and raises no objections to the proposals from a noise perspective. Therefore, having regard to the details of the submission, planning policy and

guidance and the comments raised by neighbouring residents, on balance the proposed amendment to the permitted trading hours is considered acceptable and does not conflict with the requirements of paragraphs 127 and 180 of the National Planning Policy Framework and DM29 of the Development Management DPD, which seeks to avoid adverse noise impacts and to secure an acceptable standard of amenity for all.

5.4 Imposition of planning conditions

5.4.1 An approval under Section 73 of the 1990 Act effectively results in the grant of a new stand-alone planning permission. Therefore, all the original planning conditions which were imposed upon the development have been reviewed to ensure they remain necessary and relevant.

5.4.2 Where the conditions continue to meet the tests set out within the NPPF, the conditions will be replicated and updated if necessary. Following the original grant of planning permission, the applicant has submitted various discharge of condition applications to satisfy a number of conditions which required details to be agreed. This application is a variation of condition 18 as imposed upon 20/00371/VCN. Since this permission was granted, two further applications to discharge details reserved by a condition (3 and 5) have been submitted and approved and the building has been completed. This means that a number of the conditions which controlled construction triggers need not be re-imposed and conditions which required the submission of details can be amended to simply require ongoing compliance. The recommended conditions are shown below.

5.5 Other matters

5.5.1 It is noted that public objections refer to the Aldi store operating in breach of the stipulated hours and that these concerns have been raised with the Council's Planning Enforcement team. The frustration and concern of local residents who wish to see the approved hours complied with is fully acknowledged and appreciated. The need to adhere to the approved hours has been clearly communicated with Aldi's planning agent who has in turn relayed the importance to the Store Manager.

5.5.2 In the present climate, however, given the ongoing pandemic and its resultant impact upon public health, confidence and interaction, it is understood that the Aldi store has, on occasion, opened before 8am to allow key workers and/or vulnerable groups time to shop. Public objections, however, suggest that the store was not openly exclusively for these segments of society. Given the current Covid-19 pressures that the community faces, pursuing enforcement action with respect to the slightly earlier opening time is not deemed to be in the public interest or expedient at this present time. The matter will however be kept under review and should the store continue to operate in breach of the approved hours once the Covid-19 situation has effectively been resolved, or is deemed to be at a risk too low to justify non-compliance with prescribed hours, the expediency of enforcement action will be considered further.

6.0 Conclusion and Planning Balance

6.1 This application seeks to amend the opening hours for an existing food-store so that it may open for an additional 4 hours for a maximum of 7 bank holidays. This, in total, amounts to an extra 28 hours' worth of trading per annum. Presently the store is able to open from 9am to 5pm on bank holidays whereas this variation to condition 18 of 20/00371/VCN seeks to adjust these hours so that the store may open at 8am and close at 8pm. With respect to paragraphs 127 and 180 of the NPPF and policy DM29 of the Development Management DPD, the additional 4 hours of trading per bank holiday is not considered to give rise to significant or adverse amenity impacts which would warrant the Local Planning Authority considering the refusal of the application. No additional noise disturbances are expected and the modest nature of the increase does not give rise to a situation in which significant audible emanation is likely to arise. Whilst the public objections are noted, the Local Planning Authority must consider the application objectively. Formal comments from the Council's Environmental Health Officer raise no objection from a noise perspective and the infrequency with which the store would be able to benefit from the increase hours further limits any potentially adverse impacts on amenity. Overall, in terms of principle and impacts upon amenity, the proposal is considered compliant with the Development Plan and the NPPF and can therefore be supported.

Recommendation

That this application to vary condition 18 on planning permission 20/00371/VCN **BE GRANTED** subject to the following conditions:

Condition no.	Description	Type
1	Compliance with approved plans	Control
2	Compliance with offsite highway details	Control
3	Compliance with offsite highway details	Control
4	Compliance with heating and ventilation details	Control
5	Compliance with agreed ecological enhancement measures	Control
6	Compliance with agreed material details	Control
7	Compliance with lighting details	Control
8	Retention of refuse area	Control
9	Compliance with agreed cycle details	Control
10	Compliance with car park management plan	Control
11	Compliance with waste management plan	Control
12	Compliance with car parking facilities	Control
13	Compliance with travel plan	Control
14	Net retail floor space	Control
15	Opening hours – (amended for extra bank holiday trading)	Control
16	Compliance with deliveries plan	Control
17	Compliance with approved landscaping details	Control
18	Compliance with approved noise details	Control
19	Permitted development rights restriction	Control

Article 35, Town and Country Planning (Development Management Procedure) (England) Order 2015

In accordance with the above legislation, Lancaster City Council has made the recommendation in a positive and proactive way to foster the delivery of sustainable development, working proactively with the applicant to secure development that improves the economic, social and environmental conditions of the area. The recommendation has been made having had regard to the impact of development, and in particular to the relevant policies contained in the Development Plan, as presented in full in the officer report, and to all relevant material planning considerations, including the National Planning Policy Framework, National Planning Practice Guidance and relevant Supplementary Planning Documents/ Guidance.

Background Papers

None