

LOCAL MEMBER OBJECTION

COMMITTEE DATE: 18/09/2019

APPLICATION No. **19/01938/MNR** APPLICATION DATE: 10/07/2019

ED: **CATHAYS**

APP: TYPE: Variation of conditions

APPLICANT: Lidl Great Britain Limited

LOCATION: LIDL FOODSTORE, MAINDY ROAD, CATHAYS, CARDIFF, CF24 4HQ

PROPOSAL: VARIATION OF CONDITION 4 OF 12/01620/DCI TO VARY LOADING TIMES TO THE FOLLOWING:
THERE SHALL BE NO ARRIVAL, DEPARTURE, LOADING OR UNLOADING OF DELIVERY VEHICLES BETWEEN THE HOURS OF 2200 AND 0800 MONDAY TO SATURDAY.
DELIVERIES TO BE PERMITTED ON A SUNDAY ONLY BETWEEN 1000 AND 1600

RECOMMENDATION : That planning permission be **GRANTED** for the development in accordance with planning permission no. 12/01620/DCI, without compliance with the previously imposed condition 4, but subject to the following conditions:

1. C01 Statutory Time Limit
2. Members of the public shall only be admitted to or allowed to remain on the premises between the hours of 08:00 and 22:00 on Monday to Saturday and between the hours of 11:00 and 17:00 on Sunday.
Reason: To ensure that the amenities of other premises in the vicinity are protected, in accordance with policy KP5 of the Local Development Plan.
3. The arrival, departure, loading or unloading of delivery vehicles shall only occur between the hours of 08:00 and 22:00 Monday to Saturday, and on a Sunday between 10:00 and 16:00, and the number of vehicle deliveries on a Sunday shall be limited to two.
Reason: To ensure that the amenities of other premises in the vicinity are protected, in accordance with policy KP5 of the Local Development Plan.
4. The rating level of the noise emitted from fixed plant and equipment on the site shall not exceed the existing background noise level at any time by more than 5dB(A) at any residential property when measured and corrected in accordance with BS 4142: 1997.
Reason: To ensure that the amenities of other premises in the vicinity are protected, in accordance with policy KP5 of the Local Development

Plan.

5. The car parking and manoeuvring areas shall be maintained and retained in at all times for those purposes in accordance with the details approved by planning permission 12/01620/DCI.
Reason: To make provision for the parking of vehicles clear of the roads so as not to prejudice the safety, convenience and free flow of traffic, in accordance with policy T5 of the Local Development Plan.
6. The parking, delivery, manoeuvring areas and other external areas shown on the plans approved by planning permission 12/01620/DCI shall not be used for the sale of food and drink, or for the siting of mobile structures or vehicles used for sales, display or the provision of services.
Reason: To ensure that the parking, delivery and manoeuvring areas are available for such use at all times and in the interests of visual amenity, in accordance with policy T5 of the Local Development Plan.
7. The cycle parking spaces implemented in accordance with the details submitted in discharge of condition 9 of planning permission 03/01352/C shall be maintained and shall not be used for any other purpose, unless otherwise agreed in writing by the Local Planning Authority.
Reason: To ensure that adequate provision is made for the secure parking of cycles, in accordance with policy T5 of the Local Development Plan.
8. The retail sales area shall not exceed 1286 square metres.
Reason: In order to prevent a change in the size of retailing that would have unpredictable and unacceptable consequences in terms of retail policy, in accordance with policy R6 of the Local Development Plan.
9. No more than 10% of the floor space shall be used for the sale of non-convenience goods.
Reason: In order to prevent a change in the nature of retailing that would have unpredictable and unacceptable consequences in terms of retail policy, in accordance with policy R6 of the Local Development Plan.
10. Light into neighbouring residential windows generated from lights associated with the development shall not exceed 5 Ev (lux) (vertical illuminance in lux).
Reason: To ensure that the amenities of the occupiers of dwellings in Maindy Road are protected, in accordance with policy KP5 of the Local Development Plan.
11. The safety barrier implemented in accordance with the details submitted in discharge of condition 31 of 03/ 01352/C shall be maintained and retained, unless otherwise agreed in writing by the Local Planning Authority.
Reason: To protect the adjoining railway, in accordance with policy T6 of the Local Development Plan.

12. The retail unit shall not be sub-divided without the prior written approval of the Local Planning Authority.
Reason: The sub-division of the unit could be unacceptable with regard to the Council's shopping policies and to ensure that the Local Planning Authority retains control over the development, in accordance with policy R6 of the Local Development Plan.

1. **DESCRIPTION OF PROPOSED DEVELOPMENT**

- 1.1 The application seeks permission to vary condition 4 of planning permission 12/01620/DCI to allow deliveries to be permitted on Sundays.

- 1.2 Condition 4 was imposed as follows:

4) There shall be no arrival, departure, loading or unloading of delivery vehicles between the hours of 22:00 and 08:00 Monday to Saturday, and no deliveries shall take place on Sunday.

Reason: To ensure that the amenities of occupiers of other premises in the vicinity are protected.

2. **DESCRIPTION OF SITE**

- 2.1 The site comprises a class A1 food store premises which occupies a single storey detached building. The premises lies within on the south west side of Maindy Road set back from the highway adjoined by a university Optometry building to the north west.

3. **SITE HISTORY**

- 3.1 14/00242/DCI – temporary planning permission granted for variation of condition 4 of 12/01620/DCI to allow deliveries between the hours of 1000 and 1600 on Sunday.
- 3.2 12/01620/DCI – planning permission granted for proposed extension to include a freezer room and bakery preparation area and proposed change in opening hours from 08:00 – 22:00 Monday to Saturday and 10:00 - 16:00 on Sundays and bank holidays to 08:00 – 22:00 Monday to Saturday and 11:00 to 17:00 on Sundays and bank holidays.
- 3.3 12/00765/DCI – temporary planning permission granted for: variation of condition 1 of planning permission 10/00434/C to read "the arrival manoeuvring unloading and departure of delivery vehicles shall only take place between 0800 hrs and 2200 hrs Monday to Saturday and 1000 hrs and 1600 hrs Sundays.
- 3.4 10/00434/C – temporary planning permission allowed on appeal for: variation of conditions 17 and 23 of planning permission 03/1352C to allow the arrival, manoeuvring , unloading and departure of delivery vehicles between 1000 hours and 1600 hours on Sundays in addition to 0800 - 2200 on Mondays-Saturdays and to vary opening hours from 0800 - 2000 to: 0800 -

2200 hours on Mondays to Saturdays, and from: 1100 - 1700, to: 1000 - 1600 hours on Sundays.

- 3.5 03/01352/C – planning permission granted for erection of single storey foodstore with associated car parking.
- 3.6 00/02354/W – planning permission granted for erection of a single storey foodstore with 95 car parking spaces.

4. **POLICY FRAMEWORK**

4.1 Relevant National Planning Guidance:

Planning Policy Wales (Edition 10, 2018)

4.2 Relevant Cardiff Local Development Plan (2006-2026) policies:

Policy EN13 (Air, Noise, Light Pollution and Land Contamination)

5. **INTERNAL CONSULTEE RESPONSES**

- 5.1 Neighbourhood Services – I have reviewed the Noise Assessment submitted (dated 17th June 2019, by inacoustic). The report models the worst case scenario for a delivery to the store for one delivery lasting one hour. For this hour, broadly representative of one delivery, the predicted noise levels do not show a significant impact on the amenity of local receptors. I have reviewed the history of this premises and note that Sunday deliveries were permitted as part of a temporary consent in 2012 (ref. 12/00765/DCI). This service did not receive any complainants regarding deliveries during this temporary consent, however it should be noted that there was a condition that restricted the number of deliveries to two per Sunday. It is estimated based on the information presented in the recent report that there was a maximum of two hours of noise created from the deliveries during this time. I recommend that permission be granted but conditions should be placed to limit the duration of time or the number of deliveries to bring it in line with the situation during the temporary consent.

6. **EXTERNAL CONSULTEE RESPONSES**

- 7.1 None.

7. **REPRESENTATIONS**

- 7.1 The application was publicised by letter and site notice, objections were received from the owner/occupiers of nos. 14, 16, 18, 20, 22, 24, 26, 28, 30, 34, 40, 63 Maindy Road and three undisclosed addresses, summarised as follows:

- a) *Noise disturbance from deliveries;*
- b) *Disturbance from noise and traffic associated with recent construction of university buildings on Maindy Road;*

- c) *When the original planning permission was granted a restriction on Sunday deliveries was stipulated, the existing restriction on Sunday deliveries should be upheld.*

7.2 Cllrs Christopher Weaver, Sarah Merry and Norma Mackie object to the application, as follows:

Our objection is very straightforward – we are objecting to the request to allow deliveries to the store on a Sunday. It was a condition of the planning permission granted for the store that no deliveries would take place on Sunday's to protect the amenity of nearby residents. LIDL delivery lorries make a considerable and noticeable noise, audible to residents in their homes on Maindy Road. The purpose of the restriction on delivery times was to give residents some comfort that late at night, early in the morning, and on one weekend day they would be able to enjoy their homes without this disruption. The situation remains the same as when the original permission with this condition was granted – LIDL knew they were going to operate in a residential area and this condition reflects that.

LIDL has traded for many years with this minor restriction in place, a reasonable compromise between the site being used for commercial purposes and the amenity of nearby residents. The proposal would unreasonably remove the comfort this offers residents. It is wholly unnecessary – LIDL understood this restriction was a condition of opening a store there, and have operated with it in place for many years. The current condition causes no harm to customers, whilst protecting the amenity of their neighbours.

Background noise on Maindy Road is lower on Sundays, and the noise from lorries arriving, loading and unloading, often running their engines through the delivery, would cause noticeable and significant disruption. The report provided has very few details of the assessment they have done – and of course cannot have been carried out on a Sunday on Maindy Road. The “typical source noise levels” are taken from other lorries at other developments at other times, possibly with different layouts than the Maindy Road store. Delivery lorries on Maindy Road face directly onto residential properties, with noise reverberating against LIDL's building – they are noisy, and on a Sunday with lower background noise this would be an unacceptable intrusion. The attached documents from LIDL offer no justification in our view as to why the condition should be removed.

This planning authority placed a perfectly reasonable minor condition on the development when it was first granted. It is a fair compromise between trying to mitigate the noise and disruption that LIDL deliveries cause to residents, and the ability of LIDL to trade successfully on the site, as they have for many years. It is the one day a week residents do not experience lorries and noise on their quiet residential street, and we believe the condition must be maintained.

We expect this application will be rejected, using the same justification as the inclusion of the condition in the first place. If officers were proposing to grant the application in any way we request that the Committee consider a site visit to see

how close the residential properties are, and that this item is decided in committee, and is not under delegated powers – given the significant detriment to the amenity of residents this could cause, and the lack of site specific/relevant evidence provided, we believe that would be necessary.

8. **ANALYSIS**

8.1 Residential Amenity

It is noted that there is residential accommodation on the north west side of Maindy Road, and condition 4 was imposed to protect the residential of these dwellings. However, since the original permission was granted new Cardiff University buildings have been constructed on Maindy Road including the Optometry building, the south elevation of this building partially screens the loading bay of the food store from the north west. The nearest dwellings are located approximately 65m from the loading bay of the building, and their private rear gardens are approximately 75m from the loading bay. Furthermore, since permission 12/01620/DCI was granted, planning permissions have subsequently been granted for other Lidl food stores within Cardiff including stores at East Tyndall Street (permission 15/02760/MJR), Station Road, Llandaff (permission 14/01338/DCO) and 170 Maes-y-Coed Road (permission 14/00971/DCO) which are all nearer to residential dwellings than the Maindy Road store. In all cases deliveries were permitted on Sundays.

8.2 Neighbourhood Services have advised that the predicted noise levels do not show a significant impact on the amenity of local receptors and advised that the service did not receive any complaints regarding deliveries during previous temporary consent (12/00765/DCI). It is not considered unreasonable for loading/unloading to take place on Sundays, particularly as the premises is permitted to open during the hours of 11:00 – 17:00 on Sundays during which time there would be noise associated with vehicles entering and leaving the car park. The inspector who determined a previous appeal at this site also concluded that *'It is material that the store is currently permitted to open on Sundays between 1100-1700 hours. The variation of these opening times on Sundays to between 1000-1600 hours does not, in my judgement, result in a perceptible change that equates to harm to residents' living conditions. As a consequence, if the delivery times are aligned with the opening times of the store on Sundays, the general movement of vehicles parking, turning and exiting the site access associated with customers is a material factor, when comparing this with the activity connected with delivery'*.

8.3 As the previous temporary consent was subject to a condition that restricted the number of deliveries to two per Sunday Neighbourhood Services have recommended that the number of deliveries are limited in line with that temporary consent. Finally, it must also be noted that the site was used as a railway depot/workshop prior to construction of the store, which would have generated a significant level of noise unrestricted by planning. Having regard to the above it is not considered that the proposed delivery hours on Sundays would have any unreasonable amenity impact.

8.4 Other Considerations

It is noted that condition 2 was imposed upon permission 12/01620/dci requiring any aggregate (other than virgin quarry stone) or recycled aggregate material to be imported shall be assessed for chemical or other potential contaminants in accordance with a scheme to be submitted to and approved in writing by the local planning authority in advance of its importation. However, as the external works approved by that permission have been implemented it is not necessary for this condition to be re-imposed.

8.5 Representations

The representations received from the neighbouring residents and Cllrs Christopher Weaver, Sarah Merry and Norma Mackie are noted. Specific issues are addressed as follows:

- a) Noise. It is not considered that the proposal would result in adverse noise consequences as advised by Neighbourhood Services and detailed within the amenity analysis.
- b) Disturbance from construction of university buildings. Not a matter related to the current planning application.
- c) Conditional requirement of original permission granted. Whilst it is acknowledged that the condition was imposed at the time the original planning permission was granted, it is not considered that the current proposal would result in adverse noise consequences as advised by Neighbourhood Services and detailed within the amenity analysis.

8.6 Other Legal Considerations

Crime and Disorder Act 1998 – Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

Equality Act 2010 – The Equality Act 2010 identifies a number of ‘protected characteristics’, namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The Council’s duty under the above Act has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic.

Well-Being of Future Generations Act 2016 – Section 3 of this Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (Section 5). This duty has been

considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

8.7 Conclusion

It is concluded that the application is acceptable in accordance with the planning policies listed, and is recommended that planning permission be granted, subject to conditions.

