MANCHESTER CITY COUNCIL

TOWN & COUNTRY PLANNING ACT 1990 (As Amended)

Statement of Case by Manchester City Council

Appeal by Mr Bryn Richards, Aldi Stores Limited

Against refusal of: Variation of condition 5 (Servicing Hours) attached to planning permission reference 110012/FO/2015/S2 to allow amended servicing hours as follows:
1. No more than two deliveries by Heavy Goods Vehicles (HGV) per day between the hours of 07:00 to 09:00 Monday to Saturday and 08:00 to 09:00 Sundays and no more than two deliveries by HGV per day between the hours of 09:01 to 21:00 Monday to Saturday and 09:01 to 18:00 on Sundays. No more than one HGV delivery present at the site at any one time;
2. No more than 4 refuse collections per week;
3. No reversing warning sounds, radios or revving of engines within the service yard;
4. All other servicing, other than by HGV and refuse collection, must be carried out within the curtilage of the store car park.
No loading or unloading, within both the service yard and at the front entrance of the store, shall be carried out on the site outside the hours: Monday to Saturday 07:00 to 21:00, Sunday 08:00 to 18:00 at:

Aldi, 580 Altrincham Road, Manchester,M23 9SR

Planning Inspectorate Ref: APP/B4215/W/24/3348940
Manchester City Council Planning Application Ref: 138866/JO/2023

1. LOCATION AND SITE

1.0 The application site relates to an existing Aldi supermarket store located within the Brookway retail park in Baguley District Centre accessed directly via a signal controlled junction from Altrincham Road, a major east west route connecting south Manchester, Stockport and Trafford. In addition to the Aldi store there are a number of other large format buildings in commercial/ retail use. The Aldi store is single storey and holds a road frontage to Altrincham Road on its southern elevation, with car parking (shared with the other retail park stores) to the east and north east. Two storey residential properties are located to the immediate north on Gateacre Walk with four storey maisonettes to the east on Arden Lodge Road.

1.1 The servicing area for the Aldi Store is located to its northern elevation with acoustic timber screen and boundary vegetation and trees separating this area from the residential properties located on Gateacre Walk.

2. PLANNING HISTORY

2.1 The following applications are considered to be of relevance to the current appeal.

137942/JO/2023 Application to vary condition number 5 (servicing hours) from planning approval reference 110012/FO/2015/S2 to allow extended delivery hours to allow: No more than two deliveries by Heavy Goods Vehicles (HGV) per day between the hours of 06:30 to 09:00 Monday to Saturday and 08:00 to 09:00 Sundays and no more than two deliveries by HGV per day between the hours of 09:01 to 23:00 Monday to Saturday and 09:01 to 19:00 on Sundays; and, No loading or unloading, within both the service yard and at the front entrance of the store, shall be carried out on the site outside the hours: Monday to Saturday 06:30 to 23:00, Sunday 08:00 to 19:00. The is application was refused 7th November 2023 for the following reason:

> *The proposed extension of the servicing hours to allow servicing to take place from 6.30am to 23:00hrs Monday to Saturday, and up to 19:00 hrs on Sunday, would, by reason of the close proximity of the servicing yard to residential properties, lead to an increase in noise nuisance and disturbance for the occupiers of residential properties, from the activities of vehicles and staff in the early morning and late at*

night, to the detriment of residential amenity, contrary to saved UDP policy DC26 and Core Strategy policies DM1 and SP1.

122237/JO/2018 Variation of condition number 5 (servicing hours) from planning permission 110012/FO/2015/S2 to allow the following servicing to take place:
1. No more than one HGV delivery present at the site at any one time;
2. No reversing warning sounds, radios or revving of engines within the service yard;
3. All other servicing, other than by HGV and refuse collection, must be carried out within the curtilage of the store car park;
4. No loading or unloading, within both the service yard and at the front entrance of the store, shall be carried out on the site outside the hours:
- Monday to Saturday 06:00 to 22:00hrs
- Sunday 08:00 to 18:00.

This application was refused on the 29th March 2019 for the following reason:

The proposed extension of the servicing hours to allow servicing to take place from 6am until 10pm Monday to Saturday, would, by reason of the close proximity of the servicing yard to residential properties, lead to an increase in noise nuisance and disturbance for the occupiers of residential properties, from the activities of vehicles and staff in the early morning and late at night, to the detriment of residential amenity, contrary to saved UDP policy DC26 and Core Strategy policies DM1 and SP1.

111287/NMC/2016/S2 Non-material amendment application to planning approval reference 094935/FO/2010/S2 to allow the insertion of an additional window: Approved on 17th March 2016.

110571/NMC/2015/S2 Non-material amendment to planning permission 050675/FO/SOUTH3/96 for the removal of existing landscaping and provision of 10 additional car parking spaces: Approved 24th November 2015.

110012/FO/2015/S2 Erection of a single storey front extension to the existing food store providing a total gross internal area of 1,522 sq m together with amendments to car parking layout to provide a total of 64 car parking spaces; Approved.

108734/FO/2015/S2 Erection of an acoustic fence 3.75 metres high to the north of the existing Aldi food store: Approved 5th June 2015.

099413/JO/2012/S2 variation of planning condition 13 attached to planning permission 094935/FO/2010/S2 to allow alterations to frequencies of deliveries from "No more than two deliveries by heavy goods vehicles (HGV) per day and no more than one HGV delivery present at the site at any one time" to "No more than two deliveries by HGV per day between the hours of 07:00 to 09:00 Monday to Saturday and 08:00 to 09:00 on Sundays and no more than two deliveries by HGV per day between the hours of 09:01 to 20:00 Monday to Saturday and 09:01 to 18:00 on Sundays and only one HGV present within the service yard": Approved 30th July 2012.

094935/FO/2010/S2 Erection of class A1 food store (1406sqm gross floor space) together with associated landscaping and car parking; Approved 24th February 2011.

3. DETERMINATION AND DECISION

3.1 The planning application 138866/JO/2023 was received by the Council on the 19th December 2023 and was supported by:

- Completed application forms with declaration dated 18th December 2023;
- Supporting cover letter from Avison Young dated 18th December 2023
- Delivery Noise Impact Assessment prepared by NSL Ltd dated 19th May 2023
- Decision Notice for existing consent reference 110012/FO/2015/S2

3.2 The application was advertised by means of neighbour notification, with the last date for representations given as the 14th January 2024, with other consultations taking place with Manchester City Council's Highway Services and Environmental Health services.

3.3 In reaching its decision to refuse planning permission the Local Planning Authority received comments from eight residents objecting to the proposals as well as comments from the Council's Highway and Environmental Health services. Objections have been previously forwarded to the Planning Inspectorate alongside the appeal questionnaire, and consultee responses.

3.4 Planning permission was refused under delegated powers on the 6th February 2024, for the following reason:

> 1) The proposed extension of the servicing and delivery hours to allow servicing to take place until 21:00hrs Monday to Saturday, would, by reason of the close proximity of the servicing yard to residential properties, lead to an increase in noise nuisance and disturbance for the occupiers of residential properties, from the comings and goings of vehicles and staff late at night, to the detriment of residential amenity, contrary to saved UDP policy DC26 and Core Strategy policies DM1 and SP1.

4 THE DEVELOPMENT PLAN

4.1 The Core Strategy Development Plan Document 2012 -2027 ("the Core Strategy") was adopted by the City Council on 11th July 2012. It is the key document in Manchester's Local Development Framework. The Core Strategy replaces significant elements of the Unitary Development Plan (UDP) as the document that sets out the long-term strategic planning policies for Manchester's future development.

4.2 A number of UDP policies have been saved until replaced by further development plan documents to accompany the Core Strategy. Planning applications in Manchester must be decided in accordance with the Core Strategy, saved UDP policies and other Local Development Documents unless material considerations indicate otherwise.

4.3 Since the issuing of the decision the ‘Places for Everyone’ Greater Manchester joint development plan document (PfE) has been formally adopted by 9 of the 10 boroughs which make up Greater Manchester. As it has now been adopted it forms part of Manchester's development plan.

4.4 Relevant policies in the Core Strategy, saved Unitary Development Plan and Places for Everyone Joint Development Plan are detailed below.

4.5 Core Strategy policy SP1 states that the key spatial principles which will guide the strategic development of Manchester to 2027 include: the emphasis is on the creation of neighbourhoods of choice, providing high quality and diverse housing around district centres which meet local needs, all in a distinct environment. Development in all parts of

the City are expected to make a positive contribution to neighbourhoods of choice including: creating well designed places that enhance or create character; making a positive contribution to the health, safety and wellbeing of residents considering the needs of all members of the community regardless of age, gender, disability, sexuality, religion, culture, ethnicity or income; protect and enhance the built and natural environment.

4.6 Core Strategy policy DM1, Development Management - This policy states that all development should have regard to, amongst other things, the following specific issues:-
- Appropriate siting, layout, scale, form, massing, materials and detail.
- Effects on amenity, including privacy, light, noise, vibration, air quality, odours, litter, vermin, birds, road safety and traffic generation. This could also include proposals which would be sensitive to existing environmental conditions, such as noise.

4.7 Core Strategy policy C7 identifies the Brookway retail park and food store provision to the south of Altrincham Road as within a newly defined District Centre suitable for an increase in retail provision including additional food stores. This recognises the centre as functioning as a significant retailing destination for a number of years.

4.8 Saved UDP policies DC26.1, DC26.2 and DC26.5 are concerned with the implications of proposed development and noise where new development proposals are likely to be generators of noise and the implications of new development being exposed to existing noise sources.

4.9 Places for Everyone policy JP-S1 is concerned with the delivery of sustainable development, minimising adverse impacts, and utilising sustainable construction techniques.

NPPF (December 2023)

4.10 National Planning Policy Framework (NPPF) - This Framework came into effect on 27th March 2012 and was amended and updated in December 2023. It sets out the Government's planning policies for England and how these are expected to be applied. Relevant sections of the framework are set out below.

4.11 Section 6 – Building a strong, competitive economy – Paragraph 85 states that policies and decisions should help create the condition in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity.

4.12 Section 15 – Conserving and enhancing the natural environment – paragraph 180 indicates planning policies and decisions should contribute to preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution. Paragraph 191 indicates that planning decisions should ensure that development is appropriate for its location and should: mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.

Planning Practice Guidance -Noise (July 2019)

4.13 Indicates that noise is relevant to planning and needs to be considered when development may create additional noise, or would be sensitive to the prevailing acoustic environment. The guidance indicates that decision making need to take account of the acoustic environment and in doing so consider:

- whether or not a significant adverse effect is occurring or likely to occur;
- whether or not an adverse effect is occurring or likely to occur; and
- whether or not a good standard of amenity can be achieved.

The guidance also sets out the noise exposure hierarchy based on the likely average response of those affected.

Response	Examples of outcomes	Increasing effect level	Action
No Observed Effect Level			
Not present	No Effect	No Observed Effect	No specific measures required
No Observed Adverse Effect Level			
Present and not intrusive	Noise can be heard, but does not cause any change in behaviour, attitude or other physiological response. Can slightly affect the acoustic character of the area but not such that there is a change in the quality of life.	No Observed Adverse Effect	No specific measures required
Lowest Observed Adverse Effect Level			
Present and intrusive	Noise can be heard and causes small changes in behaviour, attitude or other physiological response, e.g. turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a small actual or perceived change in the quality of life.	Observed Adverse Effect	Mitigate and reduce to a minimum
Significant Observed Adverse Effect Level			
Present and disruptive	The noise causes a material change in behaviour, attitude or other physiological response, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area.	Significant Observed Adverse Effect	Avoid
Present and very disruptive	Extensive and regular changes in behaviour, attitude or other physiological response and/or an inability to mitigate effect of noise leading to psychological stress, e.g. regular sleep deprivation/awakening; loss of appetite, significant, medically definable harm, e.g. auditory and non-auditory.	Unacceptable Adverse Effect	Prevent

Fig 1- Noise exposure hierarchy table PPG Noise 2019

Paragraph: 005 Reference ID: 30-005-20190722

5 STATEMENT OF CASE

5.1 In determining the application the Council was mindful of the need to support an existing business in respect of the NPPFs focus on supporting a strong and competitive economy but it is considered that in this instance, the harm arising from an increase in the servicing hours by one hour in the evening on adjacent residential occupiers outweighs the benefit arising from the applicants desire to service the store later into the evening. The restrictive nature of the conditions placed on the original planning approval 094935/FO/2010/S2 and as amended through planning approval 099413/JO/2012/S2 together with the imposition of these hours onto planning permission 110012/FO/2015/S2 which extended the store, are reflective of the balance the Council has previously placed on supporting the applicant's business operations at this location and to protecting the amenity of nearby residential occupiers.

5.2 In the intervening period from the granting of the planning permissions for the store and it being in operation, there have been difficulties arising from activities associated with the servicing of the store. These difficulties have manifested in several noise complaints both to the Council's planning enforcement team and the Council's public protection team. These have also been reported to the appellant, although these complaints are not acknowledged or addressed within the noise report that accompanied the application. As witnessed in the responses from residents to the planning application subject of this appeal there are continuing issues around the servicing of the store outside of the approved hours. These complaints are ongoing with the most recent being subject of current investigations by the Council.

5.3 Whilst the complaints currently appear to be arising due to earlier morning activities prior to 7am, which are acknowledged in the response of the Council's Environmental Health team, it is considered that activities associated with the use of the servicing bay do cause noise and disturbance to residents. The Council's Environmental Health Team within their response on the planning application (previously forwarded with the appeal questionnaire) confirm that the noise levels reported in the assessment taken from a similar store would be able to be heard by residents. The Council considers that there is already an appropriate balance in the servicing and delivery hours contained within condition 5 of planning approval 110012/FO/2015/S2 and this provides a suitable scope for deliveries and servicing of the store and are in this instance reflective of the site's adjacency to residential

properties. Whilst the proposals would add one hour into the early evening for deliveries and servicing to take place, a further extension to the delivery and servicing hours would increase the duration within a day when impacts would be heard by residents extending these impacts into the early evening when they would expect the general noise levels in the area to be reducing.

5.4 The submitted noise assessment has utilised noise level measurements from deliveries at a 'similar Aldi store' paragraphs 7.1 and 8.2 of the submitted Delivery Noise Impact Assessment prepared by NSL dated as revised 6th December 2023. It is unclear why, given the site is in operation and has generated complaints noise level measurements at the appeal site were not undertaken to inform the assessment. It is stated in the appellants Noise report at paragraph 5.20 that "BS 4142:2014 requires uncertainties in the assessment to be considered, and where the uncertainty is likely to affect the outcome of the assessment, steps should be taken to reduce the uncertainty". The Method implementation document (MID) for BS 4142 updated 22 December 2023 at paragraph 7.3 indicates that the "preferred method of BS4142 is to measure the ambient and residual sound levels at the assessment location and work out the specific sound level from these measurements." Given the store is in operation it is not clear why proxy noise level measurements have been used in this instance which would reduce uncertainties as required by BS4142:2014. Irrespective of this, deliveries to the store would be heard by residents as confirmed in the Councils assessment of the submitted Noise Impact Assessment and further erosion into the time when residents would expect some quietening of noise from the store was not considered acceptable by the Council.

6. RESPONSE TO THE APELLANTS STATEMENT OF CASE

6.1 The Council has not been provided with a statement of case by the appellant although a copy was requested from their agent via email on 13th September 2024. The Council, in preparing this statement, has therefore assumed that the appellant is relying on the materials submitted alongside the application. If this is not correct, the Council reserves the right to review and respond with an appropriate amount of time to any statement prepared by the applicant to support their appeal upon receipt of such a document.

7. CONCLUSION

6.1 As set out in this appeal statement, the City Council believes that the proposals would exacerbate and lead to harm to the residential amenity of existing residents through an extended time period where disturbance and noise impacts would be witnessed and experienced.

7.2 The NPPF states that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. As it has been demonstrated within this statement the proposal is considered to be contrary to policies DM1 and SP1 of the adopted Core Strategy, and saved Unitary Development Plan policy DC26 and there are no other material considerations to outweigh the harm identified, the Inspector is respectfully requested to dismiss the appeal.