

20 March 2017

By post and e-mail

FAO Richard Stewart
Area Planning Officer
Community and Planning Services
South Derbyshire District Council
Civic Offices, Civic Way
Swadlincote
Derbyshire
DE11 0AH

Dear Mr Stewart,

ALDI STORES LTD, LAND OFF SWARKESTONE ROAD, CHELLASTON. APPLICATION REF 9/2016/1208.

We write on behalf of ALDI Stores Ltd in respect of the above planning application. The purpose of this letter is to respond to a letter of objection to the ALDI application sent by Plan A on behalf of Lidl UK GmbH, dated 3 March 2017.

It is alleged by Plan A that ALDI's approach to the sequential test generally fails to take into account the implications of the Aldergate Properties Ltd vs Mansfield District Council High Court Judgment (2016 EWHC 1670 Admin).

Plan A also alleges that there is an alternative, sequentially preferable, site considered to be available in the Chellaston District Centre to accommodate the type of development proposed by ALDI – that being the land occupied by Rose and Crown Public House and St Ralph Sherwin Centre which is currently the subject of a planning application (ref 12/15/01570) to Derby City Council by Lidl UK Ltd. Application ref 12/15/0157 has yet to be determined. In their letter Plan A acknowledge that the applicant for the above proposal is Lidl and that Lidl is proposing to make the investment within the District Centre. A review of the submitted application documents confirms that the proposed development has been designed to accommodate the requirements of Lidl as the occupier of the proposed foodstore

Plan A also allege that the ALDI proposal fails to take into account the potential for it to have an impact on the investment represented by the Lidl scheme and that the approach to retail impact adopted by ALDI is flawed and fails to accurately assess the full extent of potential impact on Chellaston District Centre.

We address those matters in the remainder of this letter.

In respect of the High Court judgment referred to above (the Mansfield Case) we are fully aware of the circumstances of that case. It relates to a case where the developer sought to argue that there was no requirement to carry out a sequential test within a particular geographical area of the town (the Town

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Centre), since the intended occupier of the proposal in question already had an operational store adjacent to the Town Centre, serving that catchment population. The LPA accepted that case. However, the owner of a potential alternative site within the excluded area successfully challenged the LPA's decision to allow the development in the High Court on the grounds that the limits of the sequential assessment area should not be determined on the basis of the requirements of a particular retailer.

Clearly, the same circumstance does not pertain here since Turley did review the Lidl site in Chellaston District Centre (subject of application ref 12/15/01570) and reached a conclusion that there are doubts about the suitability of the site for a foodstore development (the existence of various unresolved issues many months following the submission of the application is evidence of this). Moreover, Turley concluded that the site is not available for ALDI to develop because it is under contract to Lidl. Should that proposal be permitted (ie the suitability constraints be overcome), it will be built out by Lidl and operated as a Lidl store. Thus, there is no realistic prospect that the Rose and Crown PH/St Ralph Sherwin Centre site will be occupied by ALDI.

We are mindful of the findings of Mr Justice Ouseley in the Mansfield Case which are of general applicability to the sequential test, including those relating to land ownership and the concept of availability. However, again there are particular circumstances in this case that distinguish it from those pertaining at Mansfield. At Mansfield, the proposed retail development was a standalone, unplanned out of centre development. In this case, the ALDI application site forms part of permitted, and now partially implemented mixed use development that accords with adopted South Derbyshire Local Plan Part 1 Core Strategy Housing Policy 14. Under that Policy (and in Policies S4 and S7) retail development was accepted in principle as part of the mixed use site allocation.

The extant planning permission allows a larger quantum of retail floorspace than now proposed in the ALDI scheme within the site area of application ref 9/2016/1208. The extant permission also incorporates a foodstore with a permitted larger net sales area than that proposed by ALDI. The only reason ALDI has submitted a new full application for the retail development rather than achieving approval via reserved matters is due to a request by the LPA that it be dealt with in that manner. In fact, the gross internal area of the ALDI foodstore exceeds that allowed under the planning permission by 94 sq. m, a modest amount which has no material bearing on matters relating to retail impact since it relates to the backup area of the store rather than retail sales floorspace.

It is a highly material consideration that the permitted retail development at this site could be implemented. We consider that the ALDI retail application is the mechanism for delivering the planned retail development envisaged as part of the Chellaston Fields SUE under Housing Policy 14. As such, taking into account Paragraph 24 of the NPPF, it can be reasonably argued that the proposal is in accordance with an up to date Local Plan and that no sequential assessment is required.

Turning to impact related matters, Plan A suggest that ALDI has failed to take account of impact of the proposed development on new investment in Chellaston District Centre. That assessment has, in fact, been undertaken, as shown at Table 3 of the submitted Planning and Retail Statement. In that analysis we consider the trade draw of the ALDI proposal from the proposed Lidl store at the Rose and Crown Public House site (on the assumption that it will go ahead) and we conclude that the net impact on the centre as a whole will be a positive gain for the District Centre as a whole (since the overall turnover of the District Centre will be substantially bolstered by the new Lidl store). There is nothing in the Plan A letter to suggest that the advent of planning permission for the ALDI store at Chellaston Fields would result in the Lidl investment failing to materialise (assuming planning permission is granted for that development). Given the close physical proximity and overlap of trade between existing ALDI and Lidl stores in many locations within the UK, it would be highly surprising if that was the outcome.

Given that the scale of the proposed foodstore in the ALDI application is, in terms of sales floorspace, smaller than that which is already permitted, we have been very robust by providing any form of retail assessment to the LPA. In our view one is not required. In terms of the approach adopted, it is common practice to assess only the impact of the uplift in turnover from a given proposal when there is an extant permission for a certain quantum of floorspace on the relevant site.

Plan A's comment that the potential impact on the Chellaston District Centre could be double the -15% level that was considered to arise in the WYG RIA is not based on Lidl's own analysis. It is a somewhat simplistic assertion in that it fails to take into account the various changes to committed and proposed development within the PCA following the WYG RIA that are listed at para 3.2 of our Planning and Retail Statement. These changes meant the adoption of different trade draw and diversion assumptions in our assessment. A significant change in circumstances is the Lidl application in the District Centre, which, assuming planning permission is granted, will substantially boost the turnover of the District Centre as a whole. We therefore stand by our retail assessment, which, contrary to the assertions by Plan A, does in fact take into account all relevant matters in a robust way.

In summary, we conclude that the circumstances of the ALDI application are materially different to those that pertained in the Mansfield Case, particularly since in effect the ALDI proposals at Chellaston Fields are intended to fulfil the retail component of a permitted mixed use development at this location which allows the provision of a larger quantum of retail floorspace than that sought by ALDI. Moreover that mixed use planning permission delivers the requirements of an adopted and up to date development plan allocation at Chellaston Fields. Turley has also carried out a robust impact assessment that considers the effect of their proposal on potential investment by Lidl in Chellaston District Centre.

In the light of those conclusions we find no justification for the claim made by Plan A that the grant of planning permission for the ALDI application "will be liable to successful Judicial Review". Indeed we find it extraordinary that Plan A should imply such a pre-ordained outcome to such a complex legal process.

We trust you will take the information contained in this letter into account in your consideration of the merits of the ALDI application.

Yours Sincerely



Neil Denison
Director

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