

KLSFL/18-02770

17<sup>th</sup> December 2019

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Dear Sir or Madam,

**Re: Application for Variation of Condition 1 Under Section 73 of the 1990 Town and Country Planning Act (as amended) pursuant to the planning application Ref. EPF/2015/19 at Lidl, 140-142 Church Hill, Loughton, Essex, IG10 1LJ.**

We are instructed to submit a variation of condition planning application on behalf of Lidl Great Britain ('Lidl') following the approval of a planning application (Ref. EPF/2015/19) for the variation of Planning Condition 1 attached to planning permission Ref. EPF/756/79, which was granted on 18<sup>th</sup> June 1979.

Condition 1 of Planning Permission Ref. EPF/2015/19 states:

*"No delivers or waste collections are made outside of the hours 08.00 and 20.00 hours Monday to Saturday. No deliveries or waste collections are to be made on Sundays and Bank Holidays."*

With the above delivery restrictions in place, Lidl would not be able to viably operate as a business. Therefore, this application seeks to vary the abovementioned planning condition to 07.00 and 21.00 on Mondays to Saturdays (including Bank Holidays) and include a window 16.30 to 18.30 on Sundays.

The proposed hours are vital to meet Lidl's operational requirements of the company which enable the company to operate viably, avoid any detrimental effect on customer experience and ensure safe manoeuvring of vehicles during deliveries.

**Site and Surroundings**

Located to the west of Church Hill, the site contains a large building with a prominent street scene. The building is currently vacant after the former Homebase retail store moved out. The immediate surrounding area along Church Hill consists of Class A1 Retail, Class A3 Restaurants and Cafes, Class A5 Hot Food Takeaways and Sui Generis Uses which serve the wider residential area.

**Relevant Site Planning History**

A search of Epping Forest District Council's online planning application portal reveals a few planning history associated with the site. Of relevance are the following applications summarised in the Table below:

Application Ref.	Description	Decision	Decision Date
EPF/2015/19	Application for the Variation of Condition 2	Approved	18 <sup>th</sup> October 2019

	'opening hours' for EPF/0756/79. (Amendments to proposed builders merchants as Do It Yourself Store).		
EPF/1917/19	Proposed installation of an external plant area comprising of x 3 no. 3-pipe heat recovery outdoor units, x 2 no. food refrigeration pump stations and x 2 no. food refrigeration dry coolers.	Approved	4 <sup>th</sup> October 2019
CLD/EPF/0575/98	Certificate of lawfulness for a proposed unrestricted A1 retail use	Approved	2 <sup>nd</sup> June 1998
EPF/0756/79	Use of premises without complying with Condition 2 of EPF/756/79	Refused	28 <sup>th</sup> November 1979
EPF/0756/79	Amendments to proposed builders merchants D.I.Y. store	Approved	18 <sup>th</sup> June 1979

### Lidl's Operational Requirements

The standard opening hours for Lidl stores are limited compared to the main convenience retailers and small independent convenience retailers. Generally, Lidl stores open for a core period of 07.00–23.00 on Mondays to Saturdays (including Bank Holidays) and 10.00–16.00 on Sundays (Sunday trading hours).

In light of this, Lidl sought for more flexible opening hours which were recently approved on 18<sup>th</sup> October 2019. The approved application enables Lidl to operate between the hours of 07.00 and 23.00 on Mondays to Saturdays (including Bank Holidays) and 10.00 and 16.00 on Sundays. However, delivery hours were restricted to between 08.00 and 20.00 hours and none on Sundays and Bank Holidays.

This restriction means that deliveries will have to be made during store opening hours which will result in a significant manoeuvring impact on delivery vehicles. Delivery drivers will need to reverse in a small and busy car park off Church Hill which is already a busy thoroughfare. Furthermore, the Planning Condition means that all deliveries will have to be done within the restricted timeframes. Consequently, deliveries will happen during the hours of school release and work rush hours of 18.00 to 19.00.

### The Proposal

The delivery hours at the Lidl store is restricted by Planning Condition 1 attached to Planning Permission Ref. EPF/2015/19. The proposed variation is sought:

*"No deliveries or waste collections are made outside of the hours 07.00 and 21.00 hours on Mondays to Saturdays (including bank holidays). No deliveries or waste collections are made outside of the hours 16.30 and 18.30 hours on Sunday."*

Prior to submitting the planning application, the Applicant has contacted the nearest residents (32 addresses), local Ward Councillors as well as the Loughton Residents Association Plans Group to inform them of the rationale for the proposal and seek feedback on the proposal.

### National and Local Planning Policy

#### National Planning Policy

The National Planning Policy Framework (NPPF) was adopted in February 2019. It sets out the purpose of the planning system of achieving sustainable development and how these are expected to be applied.

In achieving Sustainable development, Paragraph 11 of the Framework requires local planning authorities to apply a presumption in favour of sustainable development during decision-making which means:

- Approving development proposals that accord with an up-to-date development plan without delay; or
- Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
  - i. The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Paragraph 55 for Planning Conditions and Obligations, states that *“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.”*

Under Building a Strong, Competitive Economy, Paragraph 80 explains that *“Planning policies and decisions should help create the conditions in which business can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation, and in areas with high levels of productivity, which should be able to capitalise on their performance and potential.”*

Conserving and Enhancing the Natural Environment, Paragraph 170 states *“Planning policies and decisions should contribute to and enhance the natural and local environment by: ...*

- e) *Preventing new existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution. Development should, wherever possible, help to improve local environmental conditions.”*

## **National Planning Policy Guidance**

The National Planning Practice Guidance (NPPG) on Noise was published by the Government in March 2014, addressing noise and its relevance to planning. It states that noise must be considered where a new development may create additional noise. Decisions should take into consideration the opportunity to improve the acoustic environment.

The NPPG states that concerns raised on noise must be considered alongside the economic, social and environmental aspects of the proposed development. According to Paragraph 003 (Ref. ID: 30-003-20190722), decisions should take into account a combination of factors including:

- 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.

## **Local Planning Policy**

The Development Plan for Epping Forest District Council consists of the Combined Local Plan (1998) and Alterations (2006). Of relevance are the following policies:

**Policy DBE2 (Effect on Neighbouring Properties)** confirms planning permission will not be granted for new buildings which have a detrimental effect upon existing neighbouring or surrounding properties in either amenity or functional terms.

**Policy DBE9 (Loss of Amenity)** confirms the Council will require that a change or intensification of use, extension or new development does not result in an excessive loss of amenity for neighbouring properties. The factors which will be taken into account are: visual impact; overlooking; loss of daylight/sunlight; and noise, smell or other disturbance.

### **Emerging Local Planning policy**

Epping Forest District Council is currently in the process of developing a new Local Plan which was submitted to the Secretary of State for examination in September 2018. The Council have just responded to the Inspector following the publication of her Interim Findings in August 2019. The relevant policy from the emerging Epping Forest Local Plan (2011-2033) is below:

**DM21 (Local Environmental Impacts, Pollution and Land Contamination)** states that new development must not lead to unacceptable impacts on the health, safety, wellbeing and amenity of existing and new users or occupiers of the development site or the surrounding land.

### **Planning Assessment**

This section assesses whether the proposal is policy compliant on both national and local levels. As previously set out, Condition 1 attached to planning application Ref. EPF/2015/19 which restricts delivery hours states:

*“No delivers or waste collections are made outside of the hours 08.00 and 20.00 hours Monday to Saturday. No deliveries or waste collections are to be made on Sundays and Bank Holidays.”*

With regards to Monday to Saturday restrictions, it should be noted that the suggested 08:00 - 20:00 restriction will significantly impact the operations of the store and will have a detrimental effect on the customer experience and local community. The main concern with this restriction is Lidl’s delivery vehicles having access to the loading bay area for the store. At present deliveries will have to occur within store opening hours and will be significantly impacted by customer cars. Delivery drivers will need to reverse in a small and busy car park from Church Hill which is a busy thoroughfare. The 20:00 restriction means our deliveries need to be completed by this time and as such deliveries will arrive during the very busy after school / work rush hours of 18.00-19.00.

At present, Lidl have their standard form of vehicle servicing this store. However, given the size of the car park area, the manoeuvre the drivers must make requires as much space as possible. If customer cars are already on site then this manoeuvre is impacted greatly and will eliminate the possibility of deliveries. This can lead to delivery vehicles queuing on Church Hill and impacting on rush hour traffic.

Lidl’s logistics team have raised significant concerns if the above condition is to be implemented and therefore we would have no choice but consider servicing this store with a smaller vehicle. If this is the case, the number of deliveries within the allotted timescales would increase as we would not be able to service the stock requirements for the store in our smaller vehicles in one delivery.

In the context of the Sunday restrictions, this again will have a huge operational impact from logistics perspective. Naturally with no Sunday deliveries, customer experience and product availability will be adversely affected with increased deliveries being required on Saturday and Mondays. Again this will have a detrimental effect on customer experience with customers being greeted with stock on the sales floor

needing to be worked in the store. This can then have further impact on parents and disabled members of the local community who are unable to manoeuvre around the store.

Additionally, Lidl is committed to employing members of the local community for this store and with current restrictions, the working environment over the weekend and into Monday will be incredibly stressful and as such, sickness levels and mental health problems at this time will potentially be heightened. Lidl wants to ensure all staff are happy, healthy and their welfare is maintained, however the pressures of the store restrictions make this difficult.

With regards to the Bank Holidays, as you are well aware these are always either Monday or Fridays and from our retailers experience they are now treated as normal trading days, but much busier as a lot more people are not working. Therefore, not being able to deliver to the store on Bank Holidays will further impact on the shopping experience and successful ability to function as a store.

In regards to the second point on waste collections, Lidl are conscious that we have different types of refuse and waste. Recycling of refuse and waste is undertaken daily in all our stores. To reduce the amount of vehicles coming to the store, waste is loaded onto the empty delivery vehicles and taken back to our regional distribution centre for processing. This reduces the need for additional trips to store and ensures an efficient waste management process.

With the implementation of no waste collections on Sundays or Bank Holidays this has the potential to increase foxes or vermin to the area as food wastage could be stored for potentially two days before it is collected. Lidl are committed to maintaining the best possible hygiene standards and aim to mitigate poor hygiene as much as possible with daily collections of waste and recyclables.

For the reasons set out above, the proposal seeks permission for deliveries to be made between the hours of 07.00 and 21.00 on Mondays to Saturdays (including Bank Holidays) and 16.30 and 18.30 on Sundays.

In line with Policies DBE2 and DBE9 of the adopted Local Plan and Policy DM21 of the emerging Local Plan, a Noise Impact Assessment produced by Acoustic Consultants Ltd accompanies the application. The document concludes that the delivery noise associated to the proposed delivery hours, having regard to the context of the site, would be acceptable and the development noise will not cause any change in behaviour or attitude, maintaining residential amenities.

Notwithstanding the above, Lidl understand that the proposed store location is situated in a sensitive area and therefore our operations need to be suitably addressed not to have an adverse impact on the residential amenity of our neighbours.

Therefore, the Applicant plans to implement a number of mitigation measures to help reduce the noise produced from our deliveries, these include the following:

- Reverse warning sound to be a broadband reversing alarm.
- The use of a quiet electric pallet truck to unload and load stock and waste. These trucks have larger wheels and create less noise when moving full pallets.

The proposed delivery time extension is necessary to meet the store's operational requirements, avoid potential standing traffic and maintaining the safety of all road users during deliveries. The proposal is therefore in accordance with Paragraphs 80 and 170 of the NPPF.

## Conclusion

Overall, the condition as currently worded will not allow Lidl to function and therefore this application was made to extend the restriction by an hour in the morning and in the evening during the week, and allow for a 2-hour window on Sunday.

The Applicant has also liaised with the local community including residents and the residents association prior to the submission to obtain initial comments on the proposal. It was also deemed appropriate to be fully transparent with the residents and provide Lidl's full justification for their proposals.

After consideration of relevant national and local planning policies, it is considered that this application for the variation of condition is policy compliant will not result in an unacceptable impact on the amenity of neighbouring properties.

Please contact the undersigned in the first instance should you require any further information.

Yours sincerely,

*Samantha Lee*

Samantha Lee (Dec 17, 2019)

**Samantha Lee**

MTCP

Planner

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