

## WEST AREA PLANNING COMMITTEE

12<sup>th</sup> November 2014.

**Application Number:** 14/01766/VAR

**Decision Due by:** 26th September 2014

**Proposal:** Variation of condition 11 (opening hours) of planning permission 07/01187/FUL (Erection of supermarket) granted on appeal to allow for the extension of opening hours.

**Site Address:** Aldi, Botley Road, Oxford.

**Ward:** Jericho And Osney Ward

**Agent:** Miss Charlotte Taylor

**Applicant:**

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**Recommendation:** West Area Planning Committee are recommended to approve the application subject to conditions:

### Reasons for approval:

- 1 It is considered that the extended opening hours Monday to Saturday (excluding Bank and Public Holidays) would allow more flexible retailing hours for the application site without having a detrimental impact upon the amenities of local residents in accordance with policies CP19 and CP21 of the Oxford Local Plan 2001-2016.
- 2 The Council considers that the proposal accords with the policies of the development plan as summarised below. It has taken into consideration all other material matters, including matters raised in response to consultation and publicity. Any material harm that the development would otherwise give rise to can be offset by the conditions imposed.

### Conditions

- 1 Development begun within time limit
- 2 Deemed in accordance with approved plans
- 3 Opening hours

### Principal Planning Policies:

Oxford Local Plan 2001-2016

**CP1** - Development Proposals

**CP19** - Nuisance

**CP21** - Noise

### Other Planning Documents.

- National Planning Policy Framework

### **Public Consultation and Statutory Consultees.**

- Environment Agency Thames Region-have assessed the application as having low environmental risk and have no objections to the proposal.
- Thames Water Utilities Limited-have no comments to make on the proposal.

### **Relevant Site History.**

87/00762/NOY-(Wickes & Toys R Us) Planning permission was granted for demolition of garage and showroom and erection of 11,587m<sup>2</sup> of non-food retail including garden centre of 390m<sup>2</sup> with 550 car parking spaces and access to Botley Road. Extension of light industrial premises by 74m<sup>2</sup> sq ft. Approved 5/6/89.

Outline Planning permission (98/00409/NO) (including details of siting and means of access) was granted in 1998 for the erection of a building on the application site to provide 895m<sup>2</sup> non-food retail, with use of remaining car park (435 spaces) shared with the adjacent units at Wickes & Toys' R' Us.

The application for reserved matters (99/01905/NR) was approved in February 2000, and as a result, the development formally commenced in 2004. However, an occupier was not secured at that time and work ceased on site.

In 2005, an application (05/02191/VAR) was approved for a variation to condition 12 of the outline permission for alterations and sub-division of previously approved non-food retail units totalling 895m<sup>2</sup>. The sub-division created 2 smaller retail units plus consequential works which took the form of 1) an amended customer entrance along the front elevation to create two doors and 2) the provision of an additional service door on the rear elevation to accommodate delivery vehicles.

In April 2007, planning permission was refused for a similar proposal (06/01608/FUL) on the grounds of flood risk, and traffic impact on Botley Road. Whilst officers recommended the application for approval, members overturned this recommendation and resolved to refuse the application.

07/01187/FUL-proposed exactly the same development as above. Although the highways concerns were resolved, the matter of flooding remained, and planning permission was refused for this reason alone. A subsequently lodged appeal was allowed by the Inspector.

## Officers Assessment:

### Site Description.

1. The application site is located approximately 1.5km west of Oxford City Centre in an established retail park off Botley Road. Other businesses on the retail park comprise Wickes, Toys'R'Us, Comet, Argos, Curry's and Jewson's. A number of 1930's style residential properties face onto Botley Road and back onto the retail park.
2. The application site itself comprises 0.35ha and is positioned on a triangular infill plot between Toys'R'Us and Wickes, with a plot frontage of 35 metres wide and car parking to the side. The Toys'R'Us building provides the southern boundary of the site. Car parking on the north-western boundary abuts mature landscaping adjacent to the Seacourt Stream, whilst the eastern boundary abuts Wickes.

### Proposal.

3. The store was granted on appeal in 2008 and Condition 11 of that decision states that *"No retail sales shall take place from the premises other than between 08.00 and 21.00 hours Monday – Saturday, between 09.00 hours and 18.00 hours on Sundays, and between 09.00 and 20.00 hours on public holidays"*.
4. The applicant now wishes to extend these opening hours to allow retail sales between 0800-2200 Monday to Saturday (including public holidays). The opening hours for Sunday remain unaltered.

### Principle of extending hours and potential impact upon neighbouring properties.

5. Policy CP19 of the Oxford Local Plan 2001-2016 indicates that planning permission will be refused for development proposals that cause unacceptable nuisance. Where such nuisance is controllable, appropriate planning conditions will be imposed. In addition to this, policy CP21 indicates that planning permission will be refused for developments which will cause unacceptable noise. Particular attention will be given to noise levels close to noise-sensitive developments and the City Council will impose easily enforceable conditions to control the operation of the development as a result of noise and its transmission.
6. No objections are raised to the store proposing to open an extra hour on normal days Monday to Saturday (0800-2200), however concern is expressed regarding the proposed extended opening hours on public and bank Holidays. The store is currently restricted to opening only between 0900 to 2000 on public and bank holidays, and it is considered that the additional three hours (one at the beginning of the day and two at the end of the day) requested by the agent could potentially have a detrimental effect upon the amenities of local residential properties on these holiday days. Whilst it does not appear that any complaints have been raised regarding current operations at the

store, clearly the absence of complaints does not provide support for the change in hours. It may be that existing trading restrictions adequately protect the amenity of local residents and trading within those limits does not result in complaints.

7. The Inspectors appeal decision clearly provided a formal determination as to the need for a condition covering operating hours. As a result of lengthy discussions the agent has now agreed to a compromise accepting the extended hours Monday to Saturday (excluding public and bank holidays) and retaining the current hours on Sundays and public and bank holidays as imposed by the Planning Inspector in order to protect residential amenity in this location.

### **Conclusion:**

It is recommended that extended opening hours be approved but subject to a condition which only accepts extended opening hours on a Monday to Saturday (excluding Public and Bank Holidays).

### Human Rights Act 1998

Officers have considered the Human Rights Act 1998 in reaching a recommendation to grant planning permission, subject to conditions. Officers have considered the potential interference with the rights of the owners/occupiers of surrounding properties under Article 8 and/or Article 1 of the First Protocol of the Act and consider that it is proportionate.

Officers have also considered the interference with the human rights of the applicant under Article 8 and/or Article 1 of the First Protocol caused by imposing conditions. Officers consider that the conditions are necessary to protect the rights and freedoms of others and to control the use of property in accordance with the general interest. The interference is therefore justifiable and proportionate.

### Section 17 of the Crime and Disorder Act 1998.

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to approve subject to conditions, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

**Background Papers:** Applications 07/01187/FUL, `4/01766/VAR

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**Extension:** 2477

**Date:** 3<sup>rd</sup> November 2014