

RE: ALDI STORE, LLAY, WREXHAM

A D V I C E

1. I have been asked to advise as a matter of utmost urgency. The issue that arises is the decision of members to resolve to approve the Aldi application but in doing so to resolve to approve on the basis of a revised Condition No.17. Condition 17 as set out in the Addendum Report and supported by the Highway Authority reads as follows:

“Condition 17

No development shall commence until details of the zebra crossing, bus stop, all footways and signage within the public highway have been submitted to the Local Planning Authority. The scheme shall be approved and fully implemented prior to the first use of the development.

However, on 7 December 2020 members resolved to amend the condition so as to require the provision of a pelican crossing. There was very limited debate about the issue and at no point were my clients invited to comment upon the proposed change.

2. While I fully understand that members will have wished to achieve the safest possible outcome and hence have sought a “belt and braces” approach by requiring a pelican crossing, it is highly likely that they have achieved the reverse of that intended and that a pelican crossing will be less safe than a zebra crossing for the reasons set out in technical detail by Mr Iain Miller in the note accompanying this Advice. The proper course in these circumstances is for officers to hold back from issuing the planning permission and to return the matter to the next Planning Committee (either 4 January 2021 or 11 January 2021).

3. It is trite law that if matters come to light prior to the issue of a planning permission that officers recognise may have caused members to reach a different decision then the application should be returned to Committee (this is an extension of the well-established principle that so far as reasonably practicable up-to-date or correct information must be taken into account prior to the issue of a planning decision/permission: see R (Chiltern PC v. Babergh DC [2019] EWHC 280 (Admin)). In the present case the issue of the permission is not imminent and therefore a return to Committee is practicable and sensible. In this case another principle is also engaged. The issue of fairness arises in many forms but it is an overriding principle of decision-making, whether by a Planning Committee or an Inspector, that an applicant should have “a fair crack of the whip”. So, for example, if a decision-maker takes a point that is not contained within the papers/evidence, then the adversely affected party is given an opportunity to address it: see Thorpe-Smith v. SoSCLG [2017] EWHC 312 or R (on the application of Kerr) v. Cambridge CC [2011] EWHC 1623. In the present case, the issue of a pelican crossing never formed any part of the application, the Highway Authority response or the Committee Report, but rather it appeared, without any warning, from a member motion. In these circumstances, my client should have been permitted a comment, if only to request a deferral of the decision to seek technical advice. However, no opportunity was offered. This was prima facie procedurally unfair. Again, a flaw in the process of this kind can be remedied by returning the matter before Committee.
4. The substantive difficulty in this case is fourfold:
- The Design Manual for Roads and Bridges in this case recommends a zebra rather than a pelican crossing. So the members were not aware that in requiring a pelican crossing they were going beyond the requirements of national technical guidance. It is doubtful that they would have resolved as they did had they known of this.
 - It is a matter of fact that zebra crossings have a lower accident rate than pelican crossings given certain environmental criteria surrounding its proposed location. Again, this is a matter that was not brought to members’ attention.

- It is probable that the delay occasioned by the signalised crossing, ie the pelican, could result in traffic backing up into the Crown Crossroads (there is room for only ten vehicles between the crossing point and the junction). This scenario is undesirable for the reasons explained by Mr Miller. Again, there is not a shred of evidence that members were alive to this.
- The introduction of a pelican crossing brings with it an increased cost burden by reference to maintenance and as envisaged that would fall upon the budget of the Highway Authority. The Highway Authority were content with a zebra crossing in accordance with DMRB advice. I cannot think for one moment that they will be content to take on additional an unnecessary expense. Such an outcome is not in the public interest. Again, members were not alive to this.

5. As I have noted, I have no doubt at all that members have striven to achieve the best and therefore safest outcome. However, in doing this they have not been alive to a series of matters which they should have had brought to their attention and in the ordinary course of events would have been brought to their attention. In all of these circumstances, the proper course of action is to return the matter to the next available Committee. Should flexibility on this issue be required, a condition could provide as follows:

“No development shall take place until details of a pedestrian crossing on Gresford Road have been submitted to the LPA. The scheme shall be approved and fully implemented prior to the first use of the development.”

I so advise.

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9th December 2020

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ADVICE
