

**Town and Country Planning Act 1990
Section 78 Appeal**

**Land at Home Farm, Gresford Road, Llay, Wrexham, LL12
0NW**

COUNCIL'S STATEMENT OF CASE

PINS Ref: APP/H6955/A/20/3253988

LPA Ref: P/2019/0525

1.0 INTRODUCTION

- 1.1 This document forms the Council's Appeal Statement in relation to the non-determination appeal lodged by Aldi Stores Ltd on land at Home Farm, Gresford Road, Llay.
- 1.2 The Council respectfully requests that the appeal be dismissed for the reasons set out in the Appeal Statement.

2.0 THE SITE



- 2.1 The site is flat and comprises an open field. A Tree Preservation Order runs along the site frontage with Gresford Road (shaded green in the above plan).
- 2.2 Existing dwellings lie immediately south east of the site and to the west, on the opposite side of Gresford Road.
- 2.3 Construction of new dwellings is underway on land to the north east of the site, of which were allowed on appeal as part of outline planning permission P/2014/0905.
- 2.4 There is a cross roads which lies immediately north west of the site and which provides access to the B5102 which runs to the north of the site.

3.0 THE PROPOSAL

- 3.1 The proposal is for the erection of a food store (Use Class A1), along with car parking, access and landscaping.



- 3.2 2 no. access points into the site are proposed. One is via Gresford Road and another (which is a left turn in only access) via the B5102 (Straight Mile).
- 3.3 The access point off Gresford Road is proposed would be used by customers as well as service/delivery vehicles.
- 3.4 The store itself would be located in the south eastern corner of the site, with parking provision to the north and north west. The service yard would be located directly south of the store.
- 3.5 Landscaping is proposed along the north east, south east and western boundaries of the site.
- 3.6 An internal footpath would be provided within the western part of the site. The footpath would link to a proposed zebra crossing and the bus stop, both located along Gresford Road.

4.0 HISTORY

- 4.1 Outline planning permission for 365 dwellings and the erection of a 300 square meter retail unit was originally allowed on appeal under the Council's application reference number P/2014/0905 (Appeal Ref: APP/H6955/A/16/3147116).
- 4.2 The Inspector's report dated 11th January 2017 allowed the appeal. However, given the proposal was for more than 150 no. dwellings, under the provisions of the Government of Wales Act 2006, the power to determine the application was transferred to the Welsh Ministers. The appeal was allowed by the Welsh Ministers on 26th June 2017.



- 4.2 The Site Location Plan submitted and determined as part of application P/2014/0905 (above) shows the extent of the site edged in red.
- 4.3 The reserved matters application which was submitted and approved under application P/2017/1054 omitted the site, subject of this appeal. An approved Site Layout for the reserved matters proposal (below) shows the appeal site is not included within the red edge.

6.0 COUNCIL'S CASE

Local Plan

- 6.1 The proposal would be classed as large scale retail development. The site is located within designated open countryside as defined in the UDP.
- 6.2 When viewed simply in this context, the proposal does not accord with the criteria set out in Policy S7 that permits retail sales in the countryside or Policy S4 which directs large scale retail development to within settlement limits. There is a policy presumption against the development.

Material Considerations

- 6.3 S.38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications should be determined in accordance with the development plan in force in the area unless material considerations indicate otherwise.

Planning History, Site Location, LDP

- 6.4 The application site has extant outline planning permission for retail use, granted on appeal by the Welsh Ministers under Council application reference number P/2014/0905 on 26th June 2017.
- 6.5 The principle of development for retail use on this site has already been accepted. In the Inspector's report (dated 11th January 2017), the Inspector was of the view that the retail unit would not be viewed in isolation given the context of the outline application as a whole, which also allowed for the construction of up to 365 no. dwellings.
- 6.6 There is existing built development to the south and west of the site and construction is currently under way for the residential development allowed as part of the appeal to the east of the site. On this basis, the retail unit would be viewed in its context within a built up area as opposed to in an isolated location in open countryside. The Inspector accepted that UDP Policy S6 was triggered in this respect and that the development accorded with the policy.
- 6.7 The amount of sales area allowed under the outline permission was up to 300m². The sales area proposed as part of this application is 1,315m². The key consideration is whether the 1,015m² increase in sales area is considered to be acceptable.
- 6.8 It has been established that the application site is located in a built up area.
- 6.9 This would be further reinforced by the fact that the site and the associated residential development are proposed to be included within the settlement limit for Llay in the forthcoming LDP.

- 6.10 Whilst only limited weight can be attributed to the LDP given at the time of writing, the Inspector's binding report has not yet been received, on the basis of the site location and surrounding built form, as well as the Inspector's acceptance that the site could be assessed having regard to UDP Policy S6 which relates to small scale shopping developments within settlement limits, given the scale of this proposal, it is considered that UDP Policy S4 would be relevant in the assessment of this application.

Local Plan UDP Policy S4

- 6.11 UDP Policy S4 states that where a need is identified for large-scale retail development and it is demonstrated that there is no site available within Wrexham Town Centre Shopping Area or within District Shopping Centres, then a sequential approach to site selection will be taken. The next preference will be for sites on the edge of Wrexham Town Centre or District Shopping Centres. If there are no suitable sites here, out-of-centre sites will be considered. The development should where possible, use vacant land, be accessible by a choice of transport and not result in adverse impacts to highway safety.

Planning Policy Wales (PPW)

- 6.12 PPW directs new retail development to within defined retail and commercial centres. If this cannot be achieved, then edge-of-centre sites should be looked at and only if edge-of-centre sites are unavailable, should out-of-centre sites be considered.
- 6.13 Developers should demonstrate that all potential retail and commercial centre options and then edge-of-centre options have been thoroughly assessed using the Sequential Test, before out-of-centre sites are considered.

Retail Need

- 6.14 The tests of retail need are the starting point for new retail development as set out in Technical Advice Note (TAN) 4.
- 6.15 If out-of-centre sites are proposed, both quantitative and qualitative need for the development has to firstly be demonstrated, prior to triggering the Sequential Test.
- 6.16 At the time of the planning application preparation and submission, as well as this appeal statement submission, the Council's most up to date evidence base is the Wrexham Retail Assessment (August 2019 update). The Retail Assessment outlines in Section 1 that it should be read alongside the 2014 Study.
- 6.17 The 2019 update takes into account retail convenience planning permissions which have expired, as well as those which have extant permissions. To my knowledge, I am not aware that any further retail convenience store applications have been granted planning permission.

- 6.18 Table 4.2 in the Assessment demonstrates that after taking into account the extant retail convenience commitments, the remaining floorspace capacity between the period 2018-2023 is 1,390m² whilst the remaining capacity between the period 2018-2028 is 2,369m².
- 6.19 This proposal would have a floor space of 1,315m² falling within the remaining capacity for both periods mentioned above.
- 6.20 A Planning and Retail Statement were submitted to accompany the application, as well as a further update (submitted 02/03/2020), which takes into account the impact of the recently approved Lidl in Wrexham (P/21018/0675) on the need for additional retail floorspace in Llay. The results of these are outlined briefly below.
- 6.21 It should be noted that at the time of the planning application submission, the applicants' submitted Retail Statement was based on the Council's 2014 Retail Assessment. However, the Council's updated Retail Assessment (August 2019) confirms in Section 2 that the study area remains unchanged from the 2014 Assessment. Therefore, it is considered that the applicants originally submitted Retail Statement, as well as the update referred to above, remain relevant to the determination of this appeal.

Quantitative Need

- 6.22 The catchment area has been based on the post code sector areas surrounding the settlements to the north of Wrexham, (Zone 2) within Figure 5.1 of the Council's 2014 Retail Assessment. This is considered to be appropriate, given the settlements within the other nearest zones (Zones 1, 4 and 5) are for the majority, located closed to Wrexham Town Centre.
- 6.23 The Council's Retail Assessment (2014) identified that locally within the catchment area of Zone 2, the localised convenience goods retention rate was low at 18.9%. This meant that there was an approximate 80% of expenditure leakage, which was spent in centres and stores outside Zone 2, suggesting that there was a local need for an additional retail use selling convenience goods.
- 6.24 The applicants' Assessment was based on a household survey within the post code sector of Zone 2 (the Study Area) and population and spending data provided by CACI. The evidence provided suggests that one third of all local expenditure (main and top-up) is spent in shops within the Study Area. The remaining two thirds is spent outside the Study Area.
- 6.25 A list of stores within the Study Area has been provided and indicates that the vast majority of this one third expenditure is at Lidl within Gwersyllt Centre. Based on the list of stores/centres provided, the evidence would suggest that the main reason for the majority of expenditure being outside the Study Area is the lack of choice of convenience goods stores within the catchment, which

includes the lack of supermarkets, further indicating a local need for additional convenience goods stores in the Study Area.

- 6.26 Section 5 of the Council's 2019 Retail Assessment states that convenience retail floorspace requirements should be directed to areas of potential under-provision.
- 6.27 On the basis of the Council's 2014 and 2019 Retail Assessments, as well as the submitted evidence which accompanied the planning application (subject of this appeal), there appears to be an identified quantitative need for the proposal, which would meet this test as set out in PPW.

Qualitative Need

- 6.28 The proposal would be within walking distance of existing properties as well as those currently under construction, immediately to the east of the site. Nearest bus stops are located approximately 150m south of the site, as well as there being a proposed bus stop along the site frontage with Gresford Road.
- 6.29 The proposal offers an opportunity to reduce reliance on the car, meeting the aims of the Sustainable Transport Hierarchy as set out in PPW.
- 6.30 The sites sustainable location is reinforced by its planned inclusion within the settlement limit of Llay in the forthcoming LDP.
- 6.31 Based on the evidence submitted by the appellant, approximately 22% of expenditure leaking out of the catchment area is spent in discount supermarkets, the nearest being Aldi and Lidl stores in Wrexham, Broughton and Buckley.
- 6.32 On this basis, there would appear to be demand for the proposal in this location which would assist in providing consumer goods at discount prices whilst simultaneously reducing travel costs for shoppers currently having to shop elsewhere within or outside the county. This would further reinforce the qualitative demand for the proposal, in supporting the local and immediate surrounding communities.
- 6.33 It is considered that a qualitative need for the proposal has also been demonstrated.

Sequential Test

- 6.34 PPW paragraph 4.3.19 states that all new retail and commercial development should be located within a defined retail or commercial centre, before edge-of-centre and finally out-of-centre locations are considered. PPW is consistent with UDP Policy S4. The appellant has submitted a Sequential Test to demonstrate that this out-of-centre location is the most appropriate.

- 6.35 The defined retail/commercial centres within Zone 2 are Gresford Local Centre and Gwersyllt District Centre. Llay does not have a defined centre within the UDP, however the retail parade at Fifth Avenue is proposed to be defined within the LDP. The appellant has therefore included this centre within its assessment.
- 6.36 The evidence submitted by the appellant demonstrates that there are no suitable sites within the retail/commercial centres mentioned above or edge-of-centre, which fulfil the applicants' requirements in terms of site size and location.
- 6.37 The results of the Sequential Test, by virtue of the out-of-centre site subject of this appeal, are considered to have been met.

Retail Impact Assessment

- 6.38 PPW paragraph 4.3.27 states that for smaller retail planning applications (sites below 2,500m²), the LPA will need to determine whether a Retail Impact Assessment is necessary. Assessments should be proportionate to potential impacts.
- 6.39 The Retail Impact Assessment concludes that given the limited range of products in an Aldi store, typically 1,800 compared with between 20,000 and 40,000 in larger supermarket stores, shoppers are likely would be encouraged to continue to use local, independent and specialist retailers.
- 6.40 Aldi stores do not have pharmacies, bakeries, fish, meat or deli counters and do not sell tobacco products. Neither do they have cafes or concessions. This would further suggest that shoppers are generally encouraged to use their local and district centres which do supply these goods and would link their trip to Aldi with other shops and services.
- 6.41 The evidence put forward by the appellant indicates that diversion impacts on the majority of stores within the Study Area would be less than 1%, given these stores are mainly top-up shopping destinations and do not compete with Aldi direct. The impact on stores within Llay would be 2.3%, which is still considered to be relatively low.
- 6.42 The highest impact within the Study Zone is within Gwersyllt Centre, which would result in a 5.96% diversion impact. This coincides with the existing Lidl store in the Gwersyllt Centre and given this is the only main food shopping destination in the Centre, is anticipated would experience the majority of this impact. However at below 6%, this is not considered to be a significant impact.
- 6.43 Outside the Study Area, the largest impact the proposal would have, would be on the Aldi store at Plas Coch Retail Park, having a 4.95% impact. Impact to Wrexham Town Centre would be 1.63%, which is considered to be low. Furthermore, given that onward trips to purchase other types of goods not offered by Aldi, as well as the use of various other facilities, such as banks, public houses and cafes would still be likely, it is considered that the impact of

the development to local retail centres or Wrexham Town Centre would not be so significant, as to divert shoppers away from using other businesses or detrimentally impact on these centres.

- 6.44 On the basis of the above, it is considered that the proposal would comply with UDP Policy S4 and the relevant policies set out in PPW. The principle of development is considered to be acceptable.

Design and Layout

- 6.45 The proposal has been designed to achieve the siting of the building and associated landscaping along with the required parking provision and servicing access within the site parameters, whilst maximising site visibility from the road network.
- 6.46 The scale of the building is typical of other Aldi stores and supermarkets and the site is capable of accommodating the proposed development without appearing cramped or overly developed.
- 6.47 A palette of materials drawing on locally used materials is proposed to be used for the building itself, which is considered to be appropriate.
- 6.48 The site layout is considered to be easily legible. A pedestrian footpath is proposed would extend around the western part of the site, as well as extending southwards from the north, linking the site to the residential development to the east, whilst provision of a zebra crossing and internal pedestrian crossings would provide links to existing residential dwellings to the west.
- 6.49 The submitted Site Plan shows all of the site boundaries would consist of soft landscaping, which would help to integrate the proposal with the surrounding area and help to break up views of hardstanding and car parking within the site, when viewed from the street scene.
- 6.50 The vast majority of the trees along the site frontage would be retained, which would further help to assimilate the proposal with the local context.
- 6.51 Whilst a 3m and 3.5m high acoustic fence is proposed along part of the south west and south eastern boundaries, its set back from the main road and proposed planting in front is considered would help to reduce its dominance and soften its overall appearance when viewed from the street scene. The proposed 4m high acoustic fence would be located towards the rear of the site within the service yard area, which is considered would have a limited impact on the visual amenity of the street scene.
- 6.52 A condition to secure the finish of all timber fencing is considered reasonable to help to ensure the fencing is recessive in appearance.
- 6.53 The proposal is considered to be acceptable in terms of design and layout and would not adversely impact on visual amenities of the surrounding area.

Residential Amenity

- 6.54 Public Protection raises no objection subject to conditions to secure a dust management scheme, restriction on delivery times and levels of noise generated by the development. A condition to secure submission of a dust management scheme is not considered reasonable given this can be controlled under separate legislation.
- 6.55 The north eastern and south eastern boundaries would be softly landscaped and planted, helping to provide a buffer between the neighbouring properties adjacent to these boundaries.
- 6.56 Spacing standards between the proposed building and neighbouring properties to the north east would be at their nearest, 15m between the rear of the building and the rear elevations of the nearest properties. LPG 21 states that a minimum distance of 13m should be achieved between habitable windows in residential properties and blank facing walls, where that wall exceeds the height of the window. The proposal would comply with the guidance.
- 6.57 The site and its pedestrian access points are generally well overlooked by surrounding neighbouring properties, achieving adequate natural surveillance.
- 6.58 On the basis of the above, the proposal is not considered would adversely impact on existing or proposed levels of residential amenities of neighbouring occupiers sufficient to warrant refusal of the scheme and would comply with UDP Policy GDP1.

Drainage

- 6.59 Flood Officer advises that an informative is attached to any grant of planning permission outlining the need for the development to meet SAB approval.
- 6.60 Welsh Water raises no objection subject to a condition to secure a drainage scheme.

Trees

- 6.61 Whilst 3 no. TPO trees are proposed for removal from the Gresford Road frontage to allow provision of the access and its associated visibility splays, 2 no. replacement trees are proposed within the site curtilage to mitigate against this loss.
- 6.62 The Tree Officer comments that the successful installation of the planting pits and the subsequent establishment of these trees have been a key factor in addressing arboricultural concerns.
- 6.63 On balance, given the remainder of the trees subject to the TPO along the site frontage would be retained, as well as the additional tree planting within the landscaping scheme and proposed 2 no. trees for mitigation, the Tree Officer

raises no objection subject to conditions to secure submission of an Arboricultural Method Statement, work to be carried out in accordance with the approved tree reports, Arboricultural supervision, tree protection measurements and submission of planting pit details.

Ecology

- 6.64 NRW raise no objection subject to conditions to secure avoidance and mitigation measures relating to Great Crested Newts and bats and submission of a Biosecurity Risk Assessment.
- 6.65 Wrexham Ecology raises no objection.

Highway Safety

- 6.66 Mott Macdonald (MM) are acting on behalf of the Council's Highway Authority.
- 6.67 Formal consultation responses, dated 16th April 2020 and 24th June 2020, were received by the LPA from MM. Both responses are attached as Appendix 2.
- 6.68 The response dated 16th April 2020 requested that further information was submitted by the appellant to establish whether the additional traffic to / from the Aldi store would impact on the operation of the Crown Crossroads junction. More information can be found within the Summary, numbered page 6 of the 'Review of TA' response. The detailed review of the Transport Assessment is set out within pages 1 – 5.
- 6.69 The April response also undertook a road safety review of the submitted Transport Assessment and requested further information in the form of a Road Safety Audit, relating to the points raised on the page numbered 4 of the 'Road Safety Review of TA'.
- 6.70 Additional information in response to the above comments was provided by the appellant in the form of a letter dated 29th April 2020.
- 6.71 MM provided a further response on 24th June 2020 in relation to the additional information provided, attached as Appendix 2.
- 6.72 The proposal, in relation to its impact on the operation of the Crown Crossroads junction was considered to be acceptable by MM. The assessment carried out by MM is set out on pages 1 – 4 of the consultation response.
- 6.73 The Road Safety Review, set out on pages 4 – 6 of the document required further information to be submitted relating to:-
- Visibility of pedestrians at the zebra crossing
 - Details of Active Travel to the site
 - Pedestrian footway along Gresford Road

- Uncontrolled crossing at Llay Road
- Details of signage, the layout and safety audit of the left turn in only off Straight Mile
- Detailed design drawings of the zebra crossing
- Swept Path Analysis for HGV's within the service yard
- Delivery times of service vehicles

6.74 Following the consultation response from MM dated 24th June 2020, further information was submitted by the appellant on 1st and 2nd July 2020, which comprised the following:-

- Dwg No. 486-01/GA-09 Rev A (Proposed Pedestrian Crossing Vis Splays)
- Dwg No. 486-01/GA-08 Rev B (Off-Site Highway Works in Spatial Context)
- Dwg No. 486-01/ATR-02 Rev B (Site Access Arrangement Track Plot Analysis Entry & Exit Manoeuvre)

6.75 Given the dual jurisdiction period ended on 07th July 2020, no further formal comments were received by MM before this date.

6.76 The highway safety issues raised by MM in the response dated 24th June 2020 are the outstanding matters relating to this appeal. The matters are currently unresolved.

7.0 CONCLUSION

7.1 For the reasons set out in paragraph 6.73 of this document, as well as the consultation responses received by Mott MacDonald dated 16th April 2020 and 24th June 2020, the Council respectfully requests that the appeal be dismissed.

8.0 CONDITIONS

8.1 In the event of the appeal being allowed the Council respectfully requests that the planning permission be subject to the conditions set out in the Appendix 3.

9.0 OTHER MATTERS

9.1 Please note, in the list of plans which were considered by the Local Planning Authority and sent over to the Planning Inspectorate on 22nd October 2020, 2 no. plans were not included in the list. This is an error and it is requested that both plans are included in the list of plans specified in the email. The plans are attached at Appendix 4 and comprise the following:-

- Dwg No. 2636NESW-103 Rev D 'Proposed General Arrangement Plan'
- Dwg No. V6236 DO1 (Rev A) (Tree Pit Details)