

Mrs H Leamey  
West Lancashire Borough Council  
52 Derby Street  
Ormskirk  
L39 2DF



16 June 2020

Ref: 002163/L002

Dear Mrs Leamey,

**PROPOSED ALDI STORE, WESTGATE/HIGH STREET, SKELMERSDALE – 2019/0366/FUL**

We write on behalf of Lidl Great Britain Ltd to maintain an objection to planning application 2019/0366/FUL, which seeks full planning permission for the erection of an Aldi store on land at Westgate/High Street in Skelmersdale. We respond to the letter submitted by Avison Young on behalf of Aldi dated 26 April 2020, which seeks to address selected concerns raised by multiple objectors. Regard is also paid to the Retail Critique of the Aldi scheme undertaken by Lichfields dated 29 May 2020.

**Sequential Test**

It remains the case that Aldi's case to dismiss the Ingram Road/Northway site as being does not align with the correct application of the sequential test.

With regard to the Mansfield case, it is a matter of fact that the High Court confirmed that the scope of a sequential assessment should not vary from one operator to another. Accordingly, the Ingram Road/Northway site, which has planning approval for a discount foodstore in an in-centre location, is the sequentially preferable location for the development of a foodstore in Skelmersdale. It is perverse for Aldi to suggest that, whilst the site may be suitable and available for a Lidl discount foodstore, it is not suitable and available for an Aldi discount foodstore.

In direct support of this conclusion, Aldi will be familiar with its proposal to deliver a store in Epsom, which was refused on appeal (APP/P3610/W/16/3160370). In this example, the Planning Inspectorate concluded that the proposed Aldi store failed the sequential test as a result of a recent planning approval for a Lidl store in a more preferable location. The Inspector resolved that, despite the alternative site being in Lidl's control, it was available for the development of a discount foodstore. Whilst this position was challenged by Aldi on very similar grounds to those that it now promotes in Skelmersdale, the Inspector offered the following reasoning at paragraph 58, which draws support from the Tesco vs Dundee Supreme Court Decision [2012] UKSC 13:

*'The Appellant maintains that to refuse the appeal on the basis of the Lidl site remaining available would be to stretch the ordinary common sense meaning of language, and the commercial reality of*

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Southport  
PR8 2AG

*the situation. However, rather than being artificially or excessively legalistic Ouseley J could not be clearer. The appeal site is plainly available for retailing, although only to Lidl, but that would not justify Aldi 'by-passing' the sequential test. I conclude that the Lidl site is sequentially preferable and available in accordance with NPPF paragraph 27. The sequential test is failed and the appeal should be dismissed'.*

Therefore, Aldi's claim that the Ingram Road/Northway site is 'no longer available' as a result of Lidl's interest in the site is wholly contrary to a substantial body of case law on this specific matter.

Notwithstanding this, it remains the case that Lidl is not legally contracted to occupy the Ingram Road/Northway store. Therefore, following the Mansfield and Epsom case law, Lidl's current association with the site cannot render the site unavailable to Aldi in terms of the correct application of the sequential test.

Moreover, the fact that Aldi was originally named as the occupier of the Ingram Road/Northway store cannot be ignored. Quite clearly, Aldi previously found the site to be suitable and available to deliver an Aldi store. Whilst it may have subsequently withdrawn from the scheme for commercial reasons, such reasons are of no relevance to the correct application of the sequential test.

It, therefore, remains the case that the Aldi's proposals for Westgate fail the sequential test. The independent critique of the Aldi case by Lichfields concurs with this conclusion.

### **Impact on Town Centre Investment**

The case presented by Aldi to rebut previously raised grounds of objection is simply based upon there being no overall increase in store numbers. This approach does not satisfy the requirements of the impact test or address the grounds of objection previously raised.

It remains Aldi's intention to close down a town centre store that anchors the Concourse Shopping Centre. This loss of a key retailer will have significant potential to result in an unacceptable impact on investment in the Shopping Centre, as confirmed in the objection made by the Shopping Centre owner. Whilst Aldi seeks to highlight that it will also invest in a new store, this is irrelevant as the new store is not located in a town centre so does not comprise town centre investment. Aldi's proposals comprise disinvestment in a town centre.

Notwithstanding this, Aldi fails to recognise the potential implications that its actions could have upon wider town centre investment, as detailed below.

Aldi's approach towards retail impact, which is clarified in the rebuttal, indicates that it intends to close down the Concourse store the short term, with the store's turnover (customers) being redistributed across existing stores in the local area. As the Ingram Road/Northway store will not be trading, Aldi does not redistribute any existing Aldi customers to it.

Accordingly, a new store at Ingram Road/Northway will have to attract customers away from existing foodstores, not from the existing Aldi in the Concourse. Indeed, whilst Lidl had expected a new store on Ingram Road/Northway to compete most directly with the existing Aldi store, Aldi now suggests that it will primarily compete with Asda. This is a very different proposition.

In addition, Aldi advises that the proposed store at Westgate could commence trading in 2021. This is a similar timescale to the potential opening of the approved store at Ingram Road/Northway, which has a longer than usual build timescale as a result of it being both developer-led and a leasehold store. Whilst the Ingram Road/Northway store may commence trading first, it will soon face direct competition from the proposed Aldi store and, as a result, a direct loss of trade. Lidl has not accounted for such a loss of trade when assessing the viability of a store at Ingram Road/Northway.

Furthermore, whilst Aldi claims that the existing store will close down, this cannot be guaranteed. Indeed, it is questionable whether it makes commercial sense for Aldi to close down the existing store given that it is currently trading at a level above the company average and performing an important role in meeting local shopping needs. The existing store also underpins the function of the Concourse Shopping Centre, and the centre owner appears keen to take steps to secure Aldi's continued representation. There is, therefore, a possibility that Aldi could continue to be represented in the Concourse. Investment in the Ingram Road/Northway store may, therefore, face significantly enhanced competition from two local Aldi stores.

Taking these factors individually and cumulatively into account, decisions to invest in Skelmersdale Town Centre, whether at Ingram Road/Northway or elsewhere, are not as simplistic as Aldi portrays. On the contrary, it is evident that a number of shifts in existing shopping patterns are forecast over the next few years that will have direct implications on the performance of existing foodstores and new store openings. As a result, it would be remiss for any foodstore operator that is considering investment in the Town Centre not to re-assess its position as a result of Aldi's proposals.

We note that Lichfields review of the Aldi proposals do not specifically address this aspect of the impact test, which is a separate test to the assessment of impact upon town centre vitality and viability. This is an omission that must be acknowledged or addressed to ensure that the decision-taker is fully aware of the proposals performance against all retail policy requirements.

### **Impact on Town Centre Vitality and Viability**

Planning permission for the delivery of new retail floorspace at Ingram Road/Northway was granted subject to conditions, with Condition 5 stating the following:

- (i) Otherwise than in the circumstances set out at (ii) below, for a period of five years from the date on which the development is first occupied, no retail floorspace hereby approved shall be occupied by any retailer who at the date of grant of this permission, or within a period of 12 months immediately prior to the occupation of the development hereby approved,*

*occupies retail floorspace which exceeds 250sqm [Gross External Area] within The Concourse Shopping Centre Skelmersdale*

- (ii) *Such occupation shall only be permitted where such retailer as identified in (i) above submits a scheme which commits to retaining their presence as a retailer within The Concourse Shopping Centre Skelmersdale for a minimum period of 5 years following the date of their proposed occupation of any retail floorspace hereby approved, and such scheme has been approved in writing by the Local Planning Authority.*

The stated reason for the imposition of this condition is:

*To ensure that those retailers which presently occupy the key units in The Concourse retain a presence in The Concourse for a reasonable period of time in order to protect the vitality and viability of The Concourse in accordance with Policy IF1 and SP2 of the West Lancashire Local Plan 2012-2027 Development Plan Document and the NPPF.*

It is quite clear that the Council was sufficiently concerned about the impact that other town centre development may have upon the Concourse that it prohibited Aldi (the originally named occupier of the Ingram Road scheme) from relocating from the shopping centre to an alternative town centre site. Accordingly, even development elsewhere in the town centre was considered by the Council to have potential to result in a significant adverse impact upon the Concourse and, therefore, the town centre as a whole.

This conclusion clearly identifies the impact of proposals upon the Concourse Shopping Centre as being of key importance. Whilst this approach may not directly align with a strict reading of the NPPF tests, the planning consent as a whole, and Condition 5 specifically, have not subsequently been the subject of challenge or any application for variation. The fundamental implications of Condition 5 have also been accepted by Aldi, who subsequently chose to withdraw from the Ingram Road/Northway scheme.

Therefore, there appears to be a longstanding level of acceptance that it is the impact of proposals upon the Concourse Shopping Centre that is fundamental to the assessment of the impact of proposals upon the vitality and viability of Skelmersdale Town Centre as a whole.

Relating this position to the proposals in hand, it must be the case that:

- I. if the relocation of Aldi within the town centre development was unacceptable, as a result of the significant adverse impact on the Concourse Shopping Centre, the proposed relocation of Aldi to a site outside the Town Centre must be considered to have an even more significant and unacceptable impact; and
- II. the Council must adopt a consistent approach towards the assessment of the current proposals for Westgate as it did towards the proposals for Ingram Road/Northway, or provide a clear explanation for a contrary approach.

Adopting a consistent approach means that, regardless of the detailed content of Aldi's retail impact assessment, planning permission must be refused as a result of the significant adverse impact on the Concourse Shopping Centre and, as a result, Skelmersdale Town Centre as a whole.

Notwithstanding this, our previous letter of objection raised concerns with the basic methodology employed by Aldi to assess trading impacts. With this position now clarified, we have undertaken a more thorough review of the detail of Aldi's case, which has highlighted a number of significant issues, as detailed below.

With regard to the redistribution of the turnover generated by the existing Aldi store, in the real world, the closure of the existing store is unlikely to result in an increase in the turnover of other foodstores in the Concourse Shopping Centre. The loss of the anchor store will significantly reduce the attraction of the Shopping Centre as a shopping destination and other retailers will no longer benefit from linked trips that the Aldi store currently generates. Accordingly, the re-apportionment of Aldi's existing turnover is not robust, with it being more likely that the turnover of existing stores will reduce, not increase, as a result of Aldi's closure.

With regard to trade draw, we share the concerns raised by Lichfields with regard to Aldi's assumption that the proposed store will draw just 60% of its trade from Zone 3b. This is wholly at odds with the trade draw pattern of the existing Aldi store and that of other Skelmersdale foodstores.

With regard to trade diversion, Aldi expects the proposed store to divert trade away from multiple stores dispersed across a wide area. This is not realistic and does not reflect the localised shopping patterns that Aldi suggests the proposed store will support. For example, its Table 3 demonstrates that Skelmersdale residents currently have a strong preference for shopping locally, with limited leakage to Ormskirk Town Centre, Burscough and stores in Wigan. However, the proposed store is expected to divert trade from a wide range of destinations. Aldi fails to explain why the proposed store will represent such an attraction that shoppers will cease visiting their local Aldi store, in Standish, Leyland or Southport for example, and start shopping at the proposal.

The assumptions about the relative attraction of the proposed store are considered more perverse given Aldi's recent expansion in the wider area, which includes a new store in Birkdale in Southport, a new store under construction in Leyland, an approval for a new store in Tarlton and new store proposals in Maghull. The presence of existing, committed and proposed new Aldi stores (and others) will serve to significantly reduce the ability of the proposal to draw trade from a wide area. Accordingly, the forecast trade diversion in 2024 is highly unrealistic.

The trade diversion assessment fails to acknowledge these new store openings, which also include the new Lidl in Ormskirk, and, therefore, does not robustly assess retail impact.

The overall approach that has been adopted by Aldi towards trade draw is to reduce the amount of local trade captured by the proposal. This subsequently serves to reduce the amount of trade

diverted from stores in Skelmersdale Town Centre and, therefore, reduce impact. The impact of the proposal upon the Concourse Shopping Centre and town centre as a whole is, therefore, significantly under-estimated, which is a concern also shared by Lichfields. Accordingly, the impact test has not been satisfied.

Whilst not specifically relied upon by Aldi, the assessment of trading impacts upon Sandy Lane Local Centre undertaken by Lichfield attaches material weight to the potential for linked trip generation to mitigate direct trading impacts. This matter must be approached with a significant degree of caution as a result of there being no submitted evidence on the potential for linked trips to be generated. Accordingly, in the absence of evidence, it would be unreasonable to adopt anything other than a cautious approach

### **Loss of Employment Land**

The Avison Young letter of 26 April 2020 does not provide any response to the previously raised grounds of objection with regard to the loss of employment land and we are not aware of any separate submissions. The proposals, therefore, continue to fail to meet the requirements of Local Plan Policy GN4.

### **Conclusions**

It has been demonstrated that Aldi's proposals continue to fail the sequential test and retail impact tests. There is at least one sequentially preferable site (Ingram Road/Northway) that is suitable and available to accommodate a discount foodstore. It has also been demonstrated that the proposals will have a significant impact on investment in Skelmersdale Town Centre and will unacceptably harm the vitality and viability of Skelmersdale Town Centre (and possibly others). The Council's appointed independent retail advisor concurs with these conclusions. Paragraph 90 of the NPPF supports the refusal of applications that fail to satisfy one of these tests, so a failure of both provides a strong indication of how the Council should approach the planning application.

The proposals also fail to satisfy the requirements of Policy GN4.

Adopting a consistent approach, it remains the case that planning application 2019/0366/FUL must be refused.

Yours sincerely,