

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



16 December 2019

Ref: 002163/L001

Dear Mrs Leamey,

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

We write on behalf of Lidl Great Britain Ltd to object to planning application reference 2019/0366/FUL, which seeks full planning permission for the erection of an Aldi store on land at Westgate/High Street in Skelmersdale. The grounds of objection are presented below.

Principle of Development

Aldi operates an existing store within the Concourse Shopping Centre in Skelmersdale Town Centre. Aldi proposes to close down this existing in-centre store and deliver a replacement store 200m from the edge of Sandy Lane Local Centre. The relocation of a store from within a town centre to a site outside a town centre is contrary to the fundamental thrust of retail policy, which adopts a town centre first approach. Paragraph 85 of the NPPF states:

'Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaption'.

The applicant is clearly asking the Council to adopt an approach that is contrary to this fundamental policy objective. Accordingly, it should be expected that Aldi would be keen to present a clear and compelling case to demonstrate how the merits of the proposed development significantly and demonstrably outweigh the breach of national and local planning policies. However, as demonstrated below, a clear and compelling case is absent.

At paragraph 1.3 of the submitted Planning and Retail Statement (PRS), Aldi advises that it has *'out grown'* the existing store and that the location within a shopping mall has *'significantly impacted on sales at the store'*. For these reasons, Aldi states that it needs to deliver the proposed store so that *'it can better meet the community needs and enhance consumer choice and competition in the convenience retail sector'*. However, the case that Aldi subsequently presents is at odds with these objectives.

Whilst it is claimed that sales at the existing store are significantly below expectations, Aldi's retail impact assessment does not corroborate this. Aldi confirms that the existing store has 887m² sales

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floorspace, of which 80% or 710m² can be expected to comprise convenience sales. With Aldi indicating that the existing store achieves a total convenience turnover in the region of £9.4m in 2019, this equates to the store achieving a convenience goods sales density of £13,240/m². This figure significantly exceeds the £11,147/m² company average sales density adopted by Aldi to calculate the turnover of the proposed store. Therefore, on the basis of Aldi's own assessment, the existing store in the Concourse is over-performing, not under-performing.

The claimed poor performance of the existing store does not provide any justification for closing it down or relocating from an in-centre site to a site outside the town centre. Indeed, the evidence suggests that the existing store currently performs better than the proposed new store will.

Furthermore, if the existing store is over-trading, it can be robustly assumed that it is doing so because it is currently performing an important role in meeting the needs of the local community. Whilst Aldi claims that the new store will '*better meet community needs*', no evidence is presented to indicate how this will be achieved. On the contrary, by moving Aldi's offer from a highly accessible and central location in the heart of Skelmersdale Town Centre to a significantly less accessible location towards the fringe of the town, it is likely that the needs of the community will actually be less well served by the proposed store.

In addition, Aldi also suggest that the approved discount foodstore on Ingram Road/Northway '*will effectively be replacing the discount foodstore offer currently provided in the town centre by Aldi*' (paragraph 6.19 PRS). This confirms that the proposed Aldi store is, effectively, a new discount foodstore destination, not in any way a replacement for the existing store at the Concourse. Therefore, whilst Aldi suggests that the proposal seeks to upgrade and enhance its existing offer in Skelmersdale, the link to the existing store is tenuous.

Taking the above into account, it appears that Aldi simply requires a new, larger store to better meets its own corporate needs. This does not provide any justification whatsoever to require the Council to adopt an approach that is contrary to the fundamental policy tenet of '*town centre first*'.

Sequential Test

Aldi has submitted a sequential assessment in support of the proposals, which includes guidance on the application of the sequential test with reference made to a number of appeal decisions. However, Aldi then ignores the guidance offered by these appeal decisions when assessing alternative opportunities.

With regard to the site at Ingram Road/Northway, it is a matter of fact that planning permission reference 2018/0898/FUL grants consent for the '*erection of a retail foodstore and associated works*'. The planning approval has been secured by a developer and is not a personal consent for Lidl.

Whilst the approved plans specifically seek to deliver a Lidl discount foodstore, this is not material to the application of the sequential test. As Aldi knows from direct experience, it has been confirmed

on appeal and in the Courts (Aldergate vs Mansfield, Tesco vs Dundee etc) that 'available' means for the type of development proposed, not available to a particular retailer. Indeed, in the case of Aldergate Properties Ltd vs Mansfield District Council [2016] EWHC 1670 (Admin), which quashed consent for an Aldi store, Mr Justice Ousley concluded as follows:

'This case illustrates just why on the proper interpretation of NPPF [24], the identity of the applicant or proposed operator is generally irrelevant' (39).

'A town centre site may be owned by a retailer already, to use itself for retailing, who is not going to make it available to another retailer. It is plainly available for retailing, though only to one retailer. That does not mean that another retailer can thus satisfy the sequential test and so go straight to sites outside the town centre. "Available" cannot mean available to a particular retailer but must mean available for the type of retail use for which permission is sought' (42).

Therefore, there is no foundation to Aldi's claim that the approved 'retail foodstore' at Ingram Road/Northway is unavailable as a result of Lidl's interest in that site. Indeed, this claim is clearly contrary to the proper interpretation of the sequential test.

Further, Aldi's claim that the approved store at Ingram Road/Northway is unsuitable is equally unconvincing. The approved store extends to 2,008m² gross/1,265m² net and it is unimaginable how this quantum of floorspace could not be re-arranged to deliver a smaller store of 1,786m² gross/1,315m² net as required/proposed by Aldi. The fact that the approved store design/format is based on Lidl's corporate requirements does not in any way mean that it could not be altered to meet those of Aldi. Whilst planning permission would be required to revise the approved drawings, planning permission is also required for Aldi's proposed relocation away from the town centre to the application site, indicating that this cannot be a reasonable barrier to suitability.

A similar approach can be taken towards the other retail elements of the approved development at Ingram Road/Northway. It is not inconceivable that the extant planning permission could be revised in order to deliver a store that meets Aldi's requirements.

Until such time as each element of the approved development at Ingram Road/Northway has individually progressed to a stage when it is beyond doubt that it is not available to deliver an Aldi store, it is an inescapable fact that the in-centre Ingram Road/Northway site is a sequentially preferable location to the application site at Westgate/High Street. As the approved scheme is being delivered by a developer with tenants occupying individual units on a leasehold basis, the unavailability of each unit will only be confirmed on occupation of each unit.

Therefore, a determination of the Aldi application prior to such key events must be on the basis that it fails the sequential test. Given the very clear precedents set by previous appeals and Court judgements, any other approach would be at risk of legal challenge.

Impact on Town Centre Vitality and Viability

The closure of the existing Aldi store in the Concourse and development of the proposed store will inevitably result in a number of adverse impacts on Skelmersdale Town Centre, to include the following:

- The closure of a town centre retail unit, which will directly result in an increase in the town centre vacancy rate both in terms of the number of vacant units and the quantum of vacant floorspace (which will significantly increase). This will directly impact on the vitality and viability of the town centre;
- The loss of an anchor tenant and key shopper attraction, which is performing above company average expectations in spite of the range of constraints identified by Aldi. This will result in a direct reduction in footfall in the Concourse Shopping Centre and will, inevitably, result in a reduction in customer numbers at other shops and businesses in the Shopping Centre, thereby having an adverse impact on the vitality and viability of the town centre; and
- A reduction in the total turnover generated by the town centre as a direct result of the closure of the existing Aldi store, with further losses of trade to the proposed new Aldi store.

Overall, it is highly likely that the closure of Aldi will bring about significant direct impacts on Skelmersdale Town Centre. It is also likely that a range of significant indirect impacts will also result as the vitality and viability of the Concourse Shopping Centre declining.

The 2011 Retail and Leisure Study found that Skelmersdale Town Centre '*was underperforming and failing to function as a town centre*' (paragraph 3.5, 2018 Retail and Leisure Study). The 2018 Retail and Leisure Study has recently found that the town centre has declined further, with vacant floorspace now being the dominate use. The study also found that the areas of highest footfall were in the vicinity of the Aldi store.

The loss of Aldi from the Concourse will undoubtedly result in a significant adverse impact on the town centre. Whilst the town centre extension may, when built and occupied, go some way to mitigate this impact, the loss of Aldi as a key anchor for the existing centre will not assist. Indeed, the existing town centre function may fail further or be lost before the town centre extension is delivered. Instead of being a town centre extension, the Ingram Road/Northway scheme may become the town centre, with the focus shifting away from the Concourse.

Furthermore, the Ingram Road/Northway scheme was approved on the basis that Aldi remained in the Concourse, with the approved discount foodstore trading alongside the existing Aldi store, not as a replacement for it. Any claim to the contrary is incorrect.

As matters currently stand, Aldi forecasts that the proposed store will have a convenience goods trading impact of -14.4% on Skelmersdale Town Centre, including the Ingram Road/Northway town centre extension. Given the poor vitality and viability of the existing town centre and the potential

impact on investment in the town centre extension, this high level of impact can only be considered to be significant. Indeed, as the National Planning Practice Guidance on retail impact acknowledges, *'in areas where there are high levels of vacancy and limited retailer demand, even very modest trade diversion from a new development may lead to a significant adverse impact'*.

Based on the submitted impact assessment, it is evident that the proposed development will result in a significant adverse impact on Skelmersdale Town Centre. Planning permission must, therefore, be refused.

However, notwithstanding the above, we have a number of concerns with the robustness of the submitted retail impact assessment that suggest that the -14.4% impact is a significant under-estimate, as detailed below.

The retail impact methodology employed by Aldi seeks to re-distribute the turnover generated by the existing Aldi store to other town centre stores. We have a number of concerns with this approach:

1. no trade is re-apportioned to the approved discount foodstore at Ingram Road/Northway, despite Aldi's claim that this store will effectively replace the Aldi Concourse store;
2. no trade is re-apportioned to the proposed Aldi store at Westgate/High Street, despite Aldi's claim that the new store is needed to better meet the needs of its customers;
3. the re-apportionment of trade to town centre stores serves to artificially inflate their pre-impact turnover, thereby reducing the impact of the proposed development; and
4. the total trade diversion applied (£5.51m) is not equal to the turnover of the proposed development (£12.61m) or other commitments, resulting in a significant under-estimation of retail impact by over 56% (see Tale 10(b) at Appendix IV of the Aldi PRS).

The case presented by Aldi to justify the proposed store is not consistent and is not robust.

In addition, the evidence presented by Aldi indicates that all of its existing stores in West Lancashire trade at levels in excess of the Company Average, as detailed in the table below.

Store	Convenience Floorspace	2019 Convenience Turnover	2019 Convenience Sales Density
<i>Company Average</i>			<i>£11,147/m²</i>
Ringtail Retail Park	936m ²	£24.21m	£25,865/m ²
Two Saints Place	436m ²	£16.23m	£37,224/m ²
Concourse	710m ²	£9.4m	£13,240/m ²

*Convenience floorspace figures for Ringtail Retail Park and Two Saints Place from CBRE Retail Statement for Aldi at Ringtail Retail Park
Convenience Turnover of all stores from Aldi PRS for Westgate/High Street, Skelmersdale*

Aldi claims that the proposed store at Westgate/High Street will achieve a company average sales density. It is, therefore, questionable why an operator would seek to close down an existing store that over trades (i.e. the Concourse store) so that it can invest significant sums in delivering a new store that only achieves the company average. At face value, this decision does not make commercial sense. Indeed, it would seem more logical for Aldi to attempt to address the various constraints at the Concourse store to enable it to trade even better.

On the basis of the high performance of its existing stores, there is every prospect that the proposed Aldi store at Westgate/High Street will achieve a turnover significantly in excess of the company average. On this basis, the proposal is likely to have a significantly greater trading impact on Skelmersdale Town Centre than the -14.4% (under-estimate) already forecast.

It is, therefore, concluded that the proposed development will undoubtedly result in a significant adverse impact on Skelmersdale Town Centre, even on Aldi's inconsistent and unrobust assessment. It is highly likely that Aldi's intentions for Skelmersdale will bring about a trading impact on the town centre that is significantly in excess of the -14.4% estimated by Aldi and, therefore, must be resisted.

Impact on Town Centre Investment

Lidl can confirm that it committed to invest in the in-centre Ingram Road/Northway scheme on the basis of existing retailer representation in Skelmersdale, which includes the existing Aldi store at the Concourse. Lidl had no knowledge of the proposed Aldi store at Westgate/High Street and, therefore, it did not factor in its decision to invest in Skelmersdale Town Centre.

The proposed Aldi store is an entirely different proposition to the existing store. The proposed Aldi store must be expected to achieve a turnover well in excess of the existing store, otherwise the proposed investment would not make commercial sense. The increased turnover generated by the proposed Aldi store will be drawn away from existing stores, to include the Lidl commitment, in Skelmersdale Town Centre. Indeed, on the widely accepted principle that *'like competes with like'*, the Lidl store should be expected to suffer the greatest loss of trade to the proposal.

The closure of the Aldi store in the Concourse is also expected to have adverse implications upon the future of the Shopping Centre. Indeed, Lidl has committed to a town centre extension scheme, but there may be no existing town centre by the time the Lidl store commences trading.

Further, as detailed above, Aldi has significantly under-estimated the amount of trade that the proposal will draw away from the Lidl commitment and the Town Centre as a whole. The level of impact will exceed the -14.4% already forecast, which itself will be significant.

On this basis, in light of Aldi's proposals, Lidl will now be forced to re-appraise its position and will seriously reconsider its commitment to invest in Skelmersdale Town Centre.

Loss of Employment Land

Local Plan Policy GN4 advises that proposals for non-employment uses located on employment sites may be allowed if *'marketing of the land/property indicates that there is no demand for the land/property in its existing use.'*

Policy GN4 also provides the following further advice as to the scope of marketing evidence that will be required to satisfy criterion c):

'Where an application relies upon a marketing exercise to demonstrate that there is no demand for the land/premises in its current use, the applicant will be expected to submit evidence to demonstrate that the marketing was adequate and that no reasonable offers were refused. This will include evidence demonstrating that:

- i. The marketing has been undertaken by an appropriate agent of surveyor at a price which reflects the current market or rental value of the land/premises for its current use and that no reasonable offer has been refused;*
- ii. The land/premises has been marketed for an appropriate period of time, which will usually be 12 months, or 6 months for retail premises;*
- iii. The land/premises has been regularly advertised and targeted at the appropriate audience. Consideration will be given to the nature and frequency of advertisements in the local press, regional press, property press or specialist trade papers etc; whether the land/premises has been continuously included on the agent's website and agent's own property papers/lists of premises; the location of the advertisement boards; whether there have been any mail shots or contact with local property agents, specialist commercial agents and local businesses; and with regards to commercial/industrial property, whether it has been recorded on the Council's sites and premises search facility.'*

In response to these requirements, Aldi has submitted a letter from a commercial agent that confirms that a very limited amount of marketing activity has been undertaken. No specific details are provided to confirm what interest has been expressed in the site, by whom, what for or whether any reasonable offers have been refused. There is no evidence of the premises being advertised in the local press or on the Council's property database. The case submitted by Aldi is clearly insufficient to satisfy the requirements of Policy GN4.

It is noted that the application site is not currently being marketed on the agent's website or on any of the third party websites indicated by the agent. The site is also not being marketed, and potentially never has been, on the Council's property database. It is unclear when marketing activities ceased, so the requirement for a period of at least 12 months marketing has not been met. Details of marketing activities undertaken in 2016 are not up-to-date and will not sufficiently demonstrate that there is no reasonable prospect of the site being used for employment purposes.

Lidl has recent, first-hand experience of addressing the requirements of Policy GN4 and was required by the Council to provide detailed records of all marketing activities undertaken and interests received over a period well in excess of 12 months. The level of detail required by the Council vastly exceeded that which has been submitted by Aldi.

The Council is obliged to adopt a consistent approach to the determination of planning applications. It must, therefore, require the appropriate marketing of the Westgate/High Street suite for a period in excess of 12 months. As the site is not currently being marketed, that period of 12 months must restart to ensure that the available evidence is up to date and representative. An alternative approach would not be consistent with that taken by the Council when assessing other proposals that result in the loss of employment land or premises.

Need for Consistency

There is a distinct need for the Council to adopt a consistent approach towards the assessment of development proposals that engage with Local Plan Policy GN4 (and other policies). If a contrary approach is to be adopted by the Council, the High Court has confirmed on multiple occasions that clear reasoning must be given for the inconsistency. The case of *JJ Gallagher Ltd v Secretary of State* [2002] EWHC 1812 offers the following further guidance:

'In my judgment the need for an express explanation of an apparent inconsistency between the decision under consideration and an earlier decision will depend on the circumstances. If the explanation for the inconsistency is obvious, a formal statement of it will be unnecessary. Where the inconsistency is stark and fundamental, as it seems to me it is in the present case, it will in my judgment usually be insufficient to leave it to the reader to infer the explanation for the inconsistent decisions. The reason for this is that unless the decision-maker deals expressly with the earlier decision and gives reasons that are directed at explaining the apparent inconsistency, there is likely to be a doubt as to whether he has truly taken the earlier decision into account'(58).

Should the local planning authority determine this planning application without following a consistent approach in the application of Local Plan Policy GN4, or without providing clear reasons for adopting an inconsistent approach, a grant of planning consent could be challengeable.

Conclusions

It has been demonstrated that Aldi's proposals for Skelmersdale will undoubtedly result in a significant adverse impact on Skelmersdale Town Centre, even when accounting for the positive impact resulting from the town centre extension. A grant of consent for the proposed store at Westgate/High Street could seriously jeopardise the future of the Concourse Shopping Centre and also prejudice investment at Ingram Road/Northway. The retail impact test has been unequivocally failed.

Appeal decisions and Court judgements confirm that the approved town centre extension at Ingram Road/Northway currently represents a sequentially preferable site to the application site. Accordingly, the sequential test is failed.

Furthermore, the loss of employment land at Westgate/High Street has not been justified and the requirements of Local Plan Policy GN4 have not been satisfied. The Council has applied the requirements of this policy rigorously when assessing other development proposals and must adopt a consistent approach towards the proposed development. If the Council is to support the loss of employment land on the basis of the case currently presented, it must clearly explain why an inconsistent approach is justified in this instance.

Given the multiple, significant flaws in the case presented, the only conclusion that can be drawn is that planning application 2019/0366/FUL must be refused.

Yours sincerely,

