

Appeal Decision

Site visit made on 11 April 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 April 2017

Appeal Ref: APP/L5810/W/16/3166075

McDonald's Drive Thru, Twickenham Road, Feltham TW13 6HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Paul Donlevey of McDonald's Restaurants Ltd against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 16/3089/VRC, dated 29 July 2016, was refused by notice dated 11 October 2016.
 - The application sought planning permission for: "Demolition of Existing Public House and Erection of McDonald's Restaurant with Ancillary Staff, Storage and Office Accommodation together with 'Drive-Thru' Facility and Car Parking" without complying with a condition attached to planning permission Ref 94/1632/FUL, dated 1 December 1994.
 - The condition in dispute is No RS01 which states that: "Customers shall not be present on the premises, nor shall there be preparation, sale or delivery of food for consumption off the premises during the following times: before 7am and after 11pm all week. A notice to this effect shall be displayed at all times on the premises so as to be visible from outside in a manner satisfactory to the Local Planning Authority".
 - The reason given for the condition is: "To ensure that the proposed development does not prejudice the amenities of nearby occupiers, or the area generally".
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Decision

1. The appeal is allowed and planning permission is granted for "Demolition of Existing Public House and Erection of McDonald's Restaurant with Ancillary Staff, Storage and Office Accommodation together with 'Drive-Thru' Facility and Car Parking" at McDonald's Drive Thru, Twickenham Road, Feltham TW13 6HB in accordance with the application, Ref 16/3089/VRC, dated 29 July 2016 and subject to the following conditions:
 - 1) The premises shall not be open for customers, nor shall there be preparation, sale or delivery of food for consumption off the premises, between the following hours: 02:00 and 05:00 daily. A notice to this effect shall be displayed at all times on the premises so as to be visible from the outside.
 - 2) The private servicing of the restaurant hereby permitted by the operator shall not take place other than between the hours of 07:00 and 23:00 hours daily.
 - 3) Within one calendar month of the date of this permission, a site management plan shall be submitted to and approved in writing by the
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Local Planning Authority. The site management plan shall include details of management responsibilities, monitoring of activities, signage, litter patrols and methods to deter anti-social behaviour. The approved site management plan shall be adhered to at all times during the restaurant's operation.

Procedural Matter

2. The description of the proposal given on the application form referred to condition RS01 of planning permission Ref 94/1632/FUL, dated 1 December 1994, which restricted the opening hours of the restaurant to between 07:00 and 23:00 hours daily. The Council has since approved a Section 73 application to vary the opening hours.¹ The effect of this decision has been to create a second permission. However, this approval only refers to amending the original permission by varying the condition and there is no description of the original development. For clarity, I have used the description of development from the 1994 permission in the banner heading above. Nonetheless, I have determined the appeal having regard to the opening hours approved through the 2005 permission.

Background and Main Issue

3. The restaurant is trading at the appeal site. The appellant wishes to extend the opening hours from those originally imposed, and subsequently extended, to between 05:00 and 02:00 hours every day of the week. The proposed hours represent an additional hour of trade in the morning (currently opening at 6am) and two additional hours in the evening (currently closing at midnight).
4. The Planning Practice Guidance (PPG) makes it clear that the Local Planning Authority (and, therefore, the Inspector) shall consider only the question of the conditions subject to which planning permission should be granted. It is not a complete re-consideration of the original application. Therefore, the main issue is the effect that varying the opening hours would have on the living conditions of nearby residents with regard to anti-social behaviour and noise and disturbance.

Reasons

5. The restaurant is located at the junction of Twickenham Road (A305) with Hampton Road East (A312) and Great Chertsey Road (A316). The site adjoins a retail warehouse (Homebase) and there is a tyre depot and other commercial uses opposite. There is residential development in the vicinity and the closest houses on Twickenham Road lie directly opposite the entrance to the drive-thru and car park. The road intersection close to the site is characterised by relatively high levels of traffic.
6. The Council is concerned that the longer opening times would exacerbate problems already experienced by the residents and cites the consultation responses as evidence. The existing problems that are described include vehicles racing around the local road network in the evenings and late at night, misuse of the Homebase car park, litter, disruption from revellers in the early hours, odour, noise from restaurant customers, traffic associated with the

¹ Ref 04/3610/FUL dated 15 March 2005 "Variation of Condition No 6 (Opening Hours) of Planning Permission 94/1632/FUL Dated 29 April 1994 To Allow An Additional Two Hours Of Opening; Extended Hours of Opening From 7am – 11pm To 6am – 12 Midnight On Any Day"

- restaurant and vandalism. Residents are concerned that the extended opening hours will encourage further antisocial behaviour in the vicinity of the restaurant.
7. The proposal seeks longer opening hours during the time when nearby residents are likely to be asleep. Therefore, there is a risk that any noise and disturbance associated with the operation of the restaurant would adversely affect living conditions. The appellant has, therefore, submitted a Noise Impact Assessment (NIA),² which has been informed by noise surveys undertaken at the premises. The noise surveys were carried out in February, April and June and consisted of attended and unattended surveys conducted at various times, including during the proposed hours of opening. The NIA identifies three different noise sources; plant, vehicles and staff/customers.
 8. The NIA measured the existing noise levels in the area. Traffic noise was observed to be fairly continuous on Twickenham Road, Great Chertsey Road and around the interchange, and this is contributing to the ambient and background noise at the residential properties. The NIA also showed that, at a position in front of the nearest house, vehicles on Twickenham Road or the interchange gave similar if not louder noise levels than vehicles going into the restaurant car park, which is attributed to their relative speeds.
 9. The first surveys found that plant noise was particularly noticeable above the ambient noise levels. As a result, mitigation has been implemented to reduce noise levels from the extraction units. A further survey was undertaken that demonstrated that plant noise had decreased significantly in comparison with the earlier surveys. As there is no evidence to dispute this assertion, I consider that any noise from the restaurant operation is likely to be from vehicle movements and people.
 10. According to the projected customer numbers, between 10 and 30 customers are expected to enter the restaurant during the proposed extended hours, and the majority of sales are likely to be from customers using the carpark or drive-thru. It was observed and measured during the survey that the only noise from the drive-thru customers is vehicles idling between payment and collection points. This noise source was masked by the ambient noise in the area, which was dominated by surrounding traffic.
 11. The main noise from customers using the car park is likely to be the short spike caused by car doors being closed. The NIA concludes that the maximum noise caused by vehicle doors is well below noise levels already occurring in the area. Although car doors would be audible in traffic lulls, it is considered unlikely to cause residents significant disturbance given the relatively consistent ambient noise levels that were measured.
 12. The greatest risk is that raised voices from customers could occur, especially during the later closure. Although this is difficult to predict and quantify, the appellant has submitted an amended Noise Management Plan (NMP) to actively encourage customers to respect the neighbours. With this in place, the NIA concludes that the effect of people noise would be within acceptable limits. The implementation of the NMP could be secured through the use of a planning condition, which would mitigate the risk.

² Report No 14-0167-18 R01 v3 dated 29 July 2016

13. Overall, the NIA provides technical evidence that the proposal will not have an unacceptable impact on the living conditions of nearby residents, in terms of noise and disturbance from plant, vehicles and people. There is very limited evidence from the Council to dispute these findings. The Council has not raised odour as an issue of concern.
14. The appellant has submitted management plans to minimise antisocial behaviour, including a litter patrol. It is likely that some of the issues experienced in the area would occur irrespective of the restaurant, due to its location on a major road network, the bus stops and the nearby commercial uses. There is limited evidence of a causal link between the restaurant and the antisocial behaviour identified by the residents. Nevertheless, I am satisfied that the appellant is taking a proactive approach to the neighbours' concerns through the submission of the management plans, which are likely to alleviate some of the problems being experienced.

Conditions

15. The guidance in the PPG makes it clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original permission, unless they have already been discharged. I also have power to impose new conditions that I consider to be necessary.
16. The appellant has agreed to the imposition of conditions to require the restaurant to operate in accordance with the provisions of a site management plan, and restrictions to the servicing and opening hours. This is necessary to ensure the restaurant is managed in accordance with the terms of the application, having regard to the living conditions of residents.
17. I have not imposed the Council's more restrictive servicing times, or the requirement for staff to leave the premises, as it has not been demonstrated that this is necessary, and there are no such controls at present. I have not imposed the suggested condition relating to the extraction equipment as mitigation has already been implemented and, therefore, the condition is not necessary. The condition relating to the commencement of development is not necessary as the original permission has already been implemented.

Conclusion

18. I conclude that the proposal would not have a significant adverse impact on the living conditions of nearby residents with regard to late-night noise and disturbance, and anti-social behaviour. It would comply with Policies CP7 of the Core Strategy³ and DM TC5 and DM DC5 of the Development Management Plan,⁴ which, in combination, seek to protect residential uses from noise and disturbance.
19. For the reasons given above, the appeal is allowed.

Debbie Moore

Inspector

³ London Borough of Richmond Upon Thames Local Development Framework: Core Strategy, adopted April 2009

⁴ London Borough of Richmond Upon Thames Local Development Framework: Development Management Plan, adopted November 2011