



Appeal Decision

Site visit made on 13 January 2020

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2020

Appeal Ref: APP/R1010/W/19/3237017

2 Tallys End, Barlborough, Chesterfield S43 4WP

- 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 McDonalds Restaurants Ltd against the decision of Bolsover District Council.
 - The application Ref 19/00181/VAR, dated 21 March 2019, was refused by notice dated 3 July 2019.
 - The application sought permission for 'application for the variation of condition 4 of planning permission 17/00153/FUL'.
 - The condition in dispute is No 4 which states that: The trading hours of the restaurant / hot food takeaway shall only be between 06.00hrs and 23.00hrs daily. Deliveries and other service functions (such as refuse collection) shall only take place between 06.30hrs and 23.00hrs daily.
 - The reason given for the condition is : For the avoidance of doubt and to be consistent with extant planning permissions for the site, to protect the amenity of occupants of nearby dwellings and in compliance with policy GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan.
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Decision

1. The appeal is allowed and planning permission is granted for 'application for the variation of condition 4 of planning permission 17/00153/FUL' at 2 Tallys End, Barlborough, Chesterfield S43 4WP without complying with condition number 4 previously imposed on planning permission Ref 17/00153/FUL dated 26 May 2017 and subject to the conditions set out in the schedule to this decision.

Background and Main Issue

2. The restaurant is operational at the appeal site. The appellant seeks to extend the opening hours to between 05:00 and 00:00 hours seven days a week. That would represent an additional hour of trade in the morning and evening.
3. Planning Practice Guidance (the PPG) is clear that the decision maker shall consider only the question of the conditions subject to which planning permission should be granted. It is not a re-consideration of the original application. Therefore, the main issue is the effect that the variation of opening hours would have on the living conditions of the occupiers of nearby residential properties, with particular regard to noise and disturbance.

Reasons

4. The restaurant is located at the junction of Tallys End and Chesterfield Road (A619). A number of commercial units also utilise the same access, including other restaurant/drive through outlets, business offices, a public house and a hotel. At the opposite side of the junction are residential properties. The location of the area is close to a busy roundabout and a junction of the M1, and as a result, traffic levels are relatively high.
5. Policy GEN2 of the Bolsover District Local Plan (2000) (the LP) states that consideration should be given to the character and sensitivity of the land and uses in relation to the type of development proposed, and planning permission will not normally be granted for development which creates materially harmful impacts on the local environment.
6. The Council have concerns that longer opening times would exacerbate existing problems experienced by the residents during the hours of darkness, which cover a number of issues, but focus on the right turning of vehicles out of Tallys End which shines vehicle headlamps into residential properties, as well as the parking of vehicles in the layby adjacent to the properties, in order to eat purchased products. In addition, residents are concerned that the extended opening hours would cause further anti-social behaviour in the vicinity of the restaurant.
7. In response to concerns, a Noise Impact Assessment (NIA) was submitted, which carried out noise surveys at the premises. These took place in August 2018 and consisted of attended and unattended surveys including surveys taken in the additional opening hours sought. The NIA considered four different sources of noise (people, vehicles, COD (Communications Operation Device) and plant). The NIA concludes that on these four sources, there is no observable effect level.
8. Notwithstanding the overall conclusions of the NIA that further mitigation is not needed, the appellant has submitted a Premises Noise Management Plan (PNMP) is suggested to reduce noise emissions from the restaurant, and 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 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 plan, which is likely to alleviate some of the problems being experienced.
9. The Council have raised no objections to the NIA, but have concerns that the NIA does not take into account the impact of traffic exiting Tallys End, nor whether more significant noise reductions could be achieved.
10. Whilst acknowledging the NIA, I find that the Council consider that more weight should be placed on a more holistic assessment and the weight of opinion of local residents, some of whom raise concern regarding both existing and potential for increased noise levels (among other matters) associated with the proposal due to anti-social behaviour, noise from people and cars and noise from the COD. However, whilst I do acknowledge the considerable local feeling,

these are all matters which were assessed within the NIA. There is very limited technical evidence from the Council to dispute the findings of the NIA.

11. In relation to the concerns relating to vehicles exiting Tallys End, I note that the Council's Highway consultee has raised no objections to the proposal. I am satisfied that the any disturbance from additional customers turning onto Chesterfield Road would not be of a level to cause significant additional harm to the living conditions of nearby residents.
12. In relation to the parking of vehicles on the lay-by opposite, I note that there is official highway signage restricting access for residents only on the access to the lay-by. This is a civil matter, and not within the scope of this appeal to determine any harm caused by drivers ignoring highway road signs in order to park vehicles, irrespective of whether they are consuming products.
13. With regard to noise and disturbance from delivery vehicles, deliveries to the site would continue to be controlled by conditions attached to the original permission and no alteration to the approved delivery regime is indicated as part of this proposal.
14. Overall, and although a carefully balanced decision, I am satisfied that the proposed extended opening hours would not result in significantly increased levels of noise and disturbance to nearby residents, subject to the imposition of appropriate conditions.
15. I therefore conclude that the disputed condition is neither necessary nor reasonable in order to safeguard the living conditions of nearby residents, with particular reference to noise and disturbance. I find that it would not conflict with policy GEN2 of the LP or the guidance set out in the National Planning Policy Framework when taken as a whole.

Other Matters

16. I have had regard to interested parties' comments, in reaching this decision. A number of other issues are raised in addition to noise, including anti-social behaviour and litter. With regard to litter, the appellant has expressed a willingness to accept a planning condition which would require the acceptance of the PNMP, to include details of litter patrol, both on and off site. Such measures would help to alleviate concerns regarding litter and anti-social behaviour.
17. There is no evidence before me to suggest that the existing operation results in significant air pollution or nuisance arising from cooking odours or that this would be a problem resulting from extended opening hours. In any event, such matters would be controlled by other legislation.
18. With regard to comments that there are other McDonald's restaurants close by, it is not within the scope of the appeal to determine the commercial need for the facility. Matters relating to the licence for the premises would be subject to consideration under separate legislation.
19. Objections have also been made on the basis that the proposal will bring no benefits to the local economy, although the appellant has indicated that the increased opening hours would create new job opportunities and additional working hours for existing employees. Whilst by no means determinative, these economic benefits weigh in favour of the proposal.

20. Taken together these and other concerns all demonstrate considerable local feeling. However, for the reasons given above none is sufficient to alter the conclusions that have led to my decision.

Conditions

21. 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.
22. The appellant has agreed to the imposition of conditions to require the restaurant to operate in accordance with the provisions of a management plan. 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.
23. Conditions 1,2 and 3 are not necessary as the permission has been implemented and all construction and development works have been carried out.

Conclusion

24. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed.

Paul Cooper

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The trading hours of the restaurant/hot food takeaway shall only be between 05.00hrs and 00.00hrs daily. Delivery and other service functions (such as refuse collection) shall only take place between 06.30hrs and 23.00hrs daily.
- 2) The restaurant and associated 'drive-thru' facility shall be operated in accordance with the Premises Noise Management Plan, set out as Appendix B included in the Noise Impact Assessment Report No. 14-0167-66 RO2 dated 19 March 2019 and the Site Management Plan