



Appeal Decision

Hearing Held on 11 and 12 February 2020

Site visits made on 11 and 12 February 2020

by R J Jackson BA MPhil DMS MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 19 March 2020

Appeal Ref: APP/F5540/W/19/3234945

Land off Apex Corner (A316), Twickenham Road, Feltham, London

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by SME Corporation (2) Ltd against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 01252/Z/P4, dated 23 October 2017, was refused by notice dated 30 April 2019.
 - The development proposed is erection of drive-thru KFC (Use Class A5/A3) with associated seating, access, car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for erection of drive-thru KFC (Use Class A5/A3) with associated seating, access, car parking and landscaping at Land off Apex Corner (A316), Twickenham Road, Feltham, London in accordance with the terms of the application, Ref 01252/Z/P4, dated 23 October 2017 subject to the conditions in the Schedule to this decision.

Procedural matters

2. Prior to the Hearing I visited the locality of the appeal site on an unaccompanied basis and viewed it from public land. At the conclusion of the first day I visited the rear garden of one of the properties in Stourton Road to hear and smell from that location. This was because the owner of that property would have been unable to provide access on the second day. The main site visit took place following the closure of the Hearing and, following that, I visited the locations of various takeaways which were discussed at the Hearing on an unaccompanied basis.
3. At the Hearing the appellant sought to submit a revised location plan which excluded a small area of land between the garden of 172 Stourton Road and a block of garages to the west. This excluded area did not involve any proposed development, either built or otherwise, and there were no objections to this change from either the Council or interested parties. As this change would make no material difference, I accepted this plan in substitution for the location plan which the Council had used in making its decision.
4. A Planning Obligation by Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) dated 11 February 2020 was provided with the appeal. I will discuss this below.

5. In post-Hearing comments on the Planning Obligation the Council indicated that the amended site included a small area of land which was in a different ownership to the remainder, and was, in fact, owned by the Council. The Council indicated it considered that this area was not material to the consideration of the appeal and, if permission were to be granted, then an amended landscaping condition might be appropriate. I will discuss this in the section on planning conditions.
6. The emerging London Plan (the eLP) has reached Intention to Publish stage, although the Secretary of State has exercised his power under Section 337 of the Greater London Authority Act 1999 to direct that the Mayor of London cannot publish the final version London Plan without incorporating various alterations. However, none of these alterations affect the main issues applicable to this appeal, and consequently I do not consider it necessary to revert to the parties on this.
7. The eLP is well advanced in the process towards publication. At this stage it does not form part of the development plan but is a material consideration. Various policies were discussed at the Hearing. In line with paragraph 48 of the National Planning Policy Framework (the Framework) weight may be given to relevant policies in emerging plans according to the stage of preparation, the extent that there are unresolved objections and the degree of consistency with the policies in the Framework. The policies referred to below dealing with Improving Air Quality, Agent of Change and Noise, insofar as they are relevant to the consideration of this appeal, are all consistent with the Framework and have been considered by the Panel, Mayor and Secretary of State. It is therefore reasonable to assume that relevant objections have been dealt with. I am therefore able to give these policies significant weight.

Main Issues

8. The main issues are:
 - whether the proposal would be located in a suitable location with a choice and appropriate environment for those wishing to use non-car based modes of transport; and
 - the effect on the living conditions of adjoining occupiers in terms of air quality, noise and disturbance, and smells.

Reasons

The appeal site, surroundings and proposal

9. The appeal site lies to the south of the Apex Corner Roundabout. This is the junction of the A316 with the A312 and A305, although the main A316 carriageway is on a fly-over bypassing the roundabout. The west bound on-slip road to the A316 also provides access to the residential area to the south, diverging a short distance to the west of the appeal site, and this is known as Swan Road.
10. The appeal site is an area of open land which local residents indicated was created when the A316 flyover and the roundabout were created. This open area extends further to the southwest. It currently consists of rough grassland and some self-seeded vegetation and rises on its northern side in conjunction with Swan Road as that road level gains height to join the A316 to the west.

11. To the south of the appeal site is an area of residential development in Stourton Road. Immediately adjacent to the site from the eastern end there is an open area, then there are four terraced properties with their gardens backing on to the appeal site. There is then an informal access and a block of garages. Next is a four storey residential building that looks out over the appeal site (79 to 173 Stourton Road) set a short distance back from the appeal site boundary. Finally, a second garage block.
12. From the appeal site clockwise around the Apex Corner Roundabout on the south side of the A312 Hampton Road West is a retail park, and a set of shops, including takeaways, set behind a service road. On the northern side is an area of housing separate from the main roads, and some open areas. Between the A316 and the A305 is a McDonald's restaurant/takeaway and drive-through with a retail unit to the rear. The segment between the A305 and A312 Hampton Road East is predominantly residential, although there are commercial units on the corner. A large supermarket with its own café lies a short distance to the east along the A312 Hampton Road East.
13. Pedestrian and cycle access around the Apex Corner Roundabout are via a series of zebra-style pedestrian crossings set at various distances from the junctions. Some are very close to the junctions with others a short distance back. Where the zebra-crossings are set back, in some locations, crossing of the carriageway islands can also be undertaken at some of the junctions facilitated by dropped kerbs. Unsurprisingly the environment under the fly-over itself is very hard, with a sub-station and its access under the western abutment.
14. The appeal proposal is for the erection of a fast-food restaurant/takeaway with dedicated drive-through lane. A one-way system through the site would provide access from Swan Road before diverging into the drive-through lane and access to the car park. Egress would be at the eastern end of the site close to the junction of the A312 Hampton Road East and the roundabout, and motorised vehicle users would be required to go on to the roundabout. This junction would be reconfigured to move the two traffic lanes further to the north reducing the width of the central island, a cycle lane created and the zebra-crossing realigned. A dedicated cycle crossing would be located to the east of this zebra-crossing and also on the north side of Hampton Road East. Two additional cycle crossings to the east of the existing zebra-crossings on the two slip roads to/from the A316 to the west are also proposed.
15. The building would be single storey and located in the western half of the site but to the northern side, with pedestrian access at the building's eastern end where there would be an external seating area. The appellant indicated that customer cycle parking would be provided in this location. The drive-through ordering point would be to the western end of the building and the collection point to the north. There would be landscaping provided around the site and an acoustic fence installed on the southern boundary, although the height is not specified.
16. By the time of the opening of the Hearing, the intended operational hours of the site were proposed to be 05:00 hours to 02:00 hours seven days a week.

Locational suitability

17. The Council notes that the site is located with a low Public Transport Accessibility Level (PTAL of 2) and considers that the proposal would not encourage travel by non-car modes. Further the environment is such that local residents visiting the site would not be encouraged to do so by non-car modes. This would not assist in improving air quality. I will consider the air quality issues themselves later in this decision. The Council was also concerned that the proposal would become a destination in its own right. It therefore considered that the proposal would not represent sustainable development.
18. The appellant, on the other hand, considered that the Council fundamentally misunderstood the nature of the proposal considering that it would predominantly cater for those already on the highway network and would thus involve "linked trips".
19. There was discussion at the Hearing as to what alternative, but similar, facilities there were in the area on the basis that customers of the premises would be less likely to visit it if they had similar options closer to them. In this regard, while the proposal is for a specific operator, it must be remembered that allowing this appeal would permit a generic restaurant/takeaway and drive-through to operate from the site.
20. From having visited the area it seems to me that it is unlikely that there would be a significant number of visits by users of non-motorised vehicle modes except from those living to the south, with the exception of delivery drivers which I will discuss below principally in relation to their effects on living conditions. There are other similar catering options to the west and northeast of the Apex Corner Roundabout, so that I consider the pedestrians and cyclists from these areas would predominantly use existing facilities in those locations.
21. From using data from other sites elsewhere the appellant was able to estimate the split between those using the drive-through and walk-in elements of the facilities. However, it was unable to provide information on the split between walk-in customers who would use the site as a takeaway and those who would use it as a restaurant.
22. The Framework emphasises in paragraph 103 that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. However, this paragraph goes on to note that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making.
23. In relation to the Council's point about whether the proposal would represent sustainable development, the Courts have made clear¹ that the presumption in favour of sustainable development found in paragraph 11 of the Framework only applies within the context of that paragraph. There is no presumption that "non-sustainable development" should be refused. The term "sustainable transport solutions" is referring to a different matter and can often be better understood as referring to the site being accessible, in the widest sense, to those using non-car modes. It must be remembered that paragraphs 103 and

¹ Barwood Strategic Land v East Staffordshire BC and SSCLG [2017] EWCA Civ 893.

104 of the Framework are dealing predominantly with policy-making rather than decision-making, which is considered in paragraph 108.

24. Paragraph 108 of the Framework makes clear that it should be ensured that appropriate opportunities to promote sustainable transport modes can be taken up, given the type of development and its location. This is an urban area, and while there will be some diversion to the site from the primary road network, principally the A316, given the size and nature of the facility it will predominantly serve a more local community. The proposal physically allows for access by non-car modes, and facilities for cyclists would be enhanced through the provision of the dedicated cycle crossings around the Apex Corner roundabout. This would promote the use of these modes.
25. The Council has requested that additional cycle crossings of the remaining arms to the roundabout be provided to enhance these facilities. However, it seems to me that these arms would be very unlikely to be used by those visiting the appeal site given alternative facilities in the area. As such I consider such crossings would not be necessary and they would therefore not meet the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations) and paragraph 56 of the Framework. I do, however, consider that the crossings on the A312 Hampton Road East and on the western slip roads to and from the A316 are necessary so as to facilitate the use of the site by non-car modes by those living and working in those directions. These elements, secured in the Planning Obligation, therefore meet these tests.
26. While the site has only a relatively low Public Transport Accessibility Level, it must be remembered that relatively few journeys to this type of operation would be made by public transport and the use of other non-car modes are facilitated. A low PTAL rating does not mean that a site is not accessible by non-car modes, it is just less accessible by public transport as one potential non-car mode.
27. I therefore conclude that the proposal would be accessibly located with a choice and appropriate environment for those wishing to use non-car based modes of transport. It would therefore comply with Policy EC2 of the Hounslow Local Plan (the HLP) which seeks to maximise opportunities for walking and cycling and improve the public realm. It would also comply with paragraphs 108 and 110 of the Framework as set out above, and which require priority to be first given to pedestrian and cycle movements.

Living conditions

28. The Council's objections relate to the effect of the development on air quality and noise and disturbance. Local residents also objected to the effect of cooking odours on their living conditions.

Air Quality

29. The whole of the London Borough of Hounslow is the subject of an Air Quality Management Area (AQMA) originally dating from 2002 and this relates to Nitrogen Dioxide (NO₂). NO₂ derives principally from vehicle emissions.
30. Policy EQ4 of the HLP deals with air quality and seeks to reduce the potential air quality impacts of development and promote improved air quality in line with the Air Quality Action Plan. It is explained that this will be achieved by

- ensuring that development does not exacerbate existing air pollution and wherever possible improves air quality. It continues that development should incorporate mitigation measures where air quality assessments show that development could cause or exacerbate air pollution.
31. Policy 7.14 of the London Plan (the LonP) is also material. This indicates that development proposals should be at least 'air quality neutral' and not lead to a further deterioration of existing poor air quality in areas which are designated as AQMAs. The policy also states that where provision needs to be made to reduce emissions from a development this is usually made on-site.
 32. Policy SI 1 of the eLP deals with Improving Air Quality. This states that development proposals should not lead to further deterioration of existing poor air quality, and to achieve this, development proposals must be at least Air Quality Neutral. This policy specifically applies to minor developments, which is a change from the LonP policies.
 33. In support of the appeal the appellant submitted an Air Quality Technical Note (the AQ Note), and the Council agreed that the figures therein are "about right". The appellant pointed out that the submission of the AQ Note was voluntary as Policy EQ4 of the HLP only requires them to be submitted for major developments and this proposal falls below the relevant criteria. However, whether provided voluntarily or otherwise, the AQ Note provides evidence which should properly be taken into account.
 34. The AQ Note looked at NO₂ emissions based on 2018 Emissions Data (the latest available) and concluded that of the identified receptors there would be a minor adverse effect at one location. This was at the rear of the garden of 172 Stourton Road. The effects at the other modelled receptor locations in the vicinity, principally on the north side of the four storey block, 73 to 173 Stourton Road, were negligible, although negligibly worse.
 35. The AQ Note shows that with emissions from the site, principally from customers cars using the site, including potentially with idling engines in the drive-through lane, that none of the receptor locations would experience levels above the 40 microgram per cubic metre (μgm^{-3}) annual mean set as the UK annual air quality objective. The data also indicates that NO₂ concentrations at the appeal site are unlikely to exceed the 1-hour objective limit of $200\mu\text{gm}^{-3}$. For completeness the AQ Note also looked at particulate matter and concluded that these effects would also be negligible and, in numerical terms with appropriate rounding, neutral.
 36. To be at least neutral requires development not to make matters worse. Whether the effects are minor adverse or negligibly worse the proposal would make air quality worse in relation to NO₂. The appellant appeared to accept this, but then pointed to mitigation measures that were anticipated to be secured by conditions. In this regard, I would accept that the provision of electric charging points would provide some mitigation. However, I have no evidence in front of me as to how effective this would be so as to quantify whether the overall development would be air quality neutral. In particular the lack of information as to the 'split' between takeaway and restaurant customers is particularly relevant since it is the latter who are more likely to utilise charging facilities on the basis that they would be on site for longer.

37. Overall, I can only conclude on the evidence in front of me that the proposal would not be air quality neutral and thus it would be contrary to Policy EQ4 of the HLP and Policy 7.14 of the LonP as set out above. It would also be contrary to emerging Policy SI 1 of the eLP. It should also be noted that the calculated assessments increase the concentrations of NO₂ between 0.2 and 0.8µgm⁻³ depending on location. This puts the level at worst at 35.9µgm⁻³ which is below the 40µgm⁻³ threshold. These figures should also be seen in the context of an AQMA where there is an improving background environment which has seen emissions drop below this threshold in recent years. As paragraph 181 of the Framework makes clear planning decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants and in AQMAs should ensure that any new development is consistent with the local air quality action plan. I will discuss the weight I give to this harm below.

Noise and disturbance

38. Policy EQ5 of the HLP seeks to require the location and design of new development to have considered the impact of noise, and mitigation of those impacts on surrounding users according to their sensitivity.
39. Policy 7.15 of the LonP indicates that development proposals should seek to manage noise by avoiding significant noise impacts on health and quality of life.
40. Policy D13 of the eLP would bring the Agent of Change principle into development plan policy. This states that new noise and other nuisance-generating development close to residential users should put in place measures to mitigate and manage any noise impacts for neighbouring residents and businesses. The Policy continues that boroughs should not normally permit development proposals that have not clearly demonstrated how noise and other nuisances will be mitigated and managed.
41. Policy D14 of the eLP states that in order to reduce, manage and mitigate noise to improve health and quality of life, residential and other non-aviation development proposals should manage noise by avoiding significant adverse noise impacts on health and quality of life.
42. The appellant also submitted a voluntary Noise Impact Assessment (the NIA) at the appeal state. As a result of the discussions at the Hearing the appellant requested that amended hours of operation be considered with the restaurant operating 07:00 hours to 22:00 hours and the drive-through 07:00 hours to 23:00 hours both seven days a week. Staff would additionally be allowed on site for one hour before opening and after closing for opening and closing procedures.
43. Local residents were very concerned that the comparators used to assess noise levels in the NIA should not be utilised as they considered the comparator locations were materially different. This was because they were not adjacent to residential areas. However, it seems to me that the noise levels generated by the operation are likely to be similar whatever the location, it is the effects of those operations on the existing environment that will be different. Here road noise, particularly from traffic on the A316 flyover, is prevalent in the locality.

44. The NIA did tentatively suggest that local residents should consider closing bedroom windows overlooking the appeal site, but firstly, this is contrary to the Agent of Change principle, and secondly would not give appropriate living conditions to the occupiers of those flats, and I do not consider it appropriate.
45. Because of the topography and height of the noise sources the main noise effects were to second and third floor windows. Erecting an acoustic fence to this height would equally not be appropriate since it would be visually intrusive and would create an oppressive environment for those living within the flats.
46. Even with the revised opening hours proposed the Council and local residents were still concerned about the noise levels that would be created, looking at the average noise level, peak noise levels, and background comparison.
47. The NIA provided noise levels for one weekend (Friday morning to Monday morning) in January 2020. This shows the acoustic environment measured through a number of different industry-standard indicators. The NIA indicates that the existing noise environment is significantly above the World Health Organisation Level for sleep disturbance. With the proposed change to the operational hours identified above, based on the evidence in front of me, I am satisfied that the proposal would not make matters significantly worse.
48. The NIA also showed background noise levels reducing in the evenings and significantly so in the night (23:00 hours to 07:00 hours) period. On the Sunday morning increasing noise levels 'lagged' behind those experienced on the Saturday and Monday mornings which is not surprising. This report only provided information on a single weekend which may or may not be typical. Having said that this is the only written evidence I have in front of me.
49. As regards peak noise events, which have greater propensity to disturb sleep, if the hours are restricted to non-night hours only then there is a lesser likelihood that this will occur. However, they can affect living conditions during the day and into the evenings.
50. There was discussion at the Hearing about delivery drivers with local residents expressing concerns that existing delivery drivers for other premises in the area created anti-social effects as they drove and cycled through the area. The planning system cannot control these matters, but clearly the location of premises could lead to increased activity in certain localities exacerbating effects. The appellant indicated that it wished to have the option of undertaking deliveries from the site.
51. It seems to me that it would not be possible to control delivery drivers on a site such as this. It would be practically difficult, if not impossible, to distinguish between a delivery driver and a non-commercial visitor attending the site for a takeaway, whether for themselves or another. It would be better to ensure that there is appropriate access for all modes and parking facilities, both for cars and bicycles, to ensure delivery operations did not have a harmful effect.
52. I fully appreciate the point made by local residents about the effects on those sleeping during the day because of shift patterns and the like. However, it must be remembered that what is of concern is the change between the current situation and what would be the position if the development was to take place. During the non-night hours existing background and peak noise levels are

significantly above those at night and the introduction of the proposed use, with the restricted proposed hours, would have less of a change effect at night.

53. I was referred to BS4142:2014² and BS8233:2014³ which provide best practice guidance, and these are particularly useful for providing objective evidence as to matters such as sound reduction from structures and through windows, whether open or closed.
54. Taking everything together, it is clear that the proposal would increase the noise environment for those living adjacent to the site. However, the relevant development plan policy test is that development proposals should manage noise by avoiding significant adverse noise impacts. This is reiterated in paragraph 180 of the Framework and in the Noise Policy Statement for England.
55. With this in mind, I am satisfied that, subject to the hours being restricted to that proposed at the Hearing, with an exception that on Sunday and Public Holiday mornings opening shall not be before 08:00 hours, that the proposal would not have a significant adverse noise impact on those living in adjoining dwellings. There are implications for on-site operations which I will discuss in relation to planning conditions.
56. Consequently, I can conclude that the proposal would not give rise to a significant adverse noise impact. It would therefore comply with Policy EQ5 of the HLP, Policy 7.15 of the LonP, paragraph 180 of the Framework and the Noise Policy Statement for England, all as set out above. It would also comply with emerging Policies D13 and D14 of the eLP.

Smells

57. Local residents were concerned about cooking odours from the site, citing smells emanating, they believed, from the McDonalds on the junction of the A305 and A316. They indicated that they could detect these smells when the wind is in an appropriate direction and at other times.
58. At the time of my site visits there was a keen wind blowing from the prevailing southwest away from the McDonalds and other takeaways/restaurants in the area and I did not detect cooking odours when I was on site. I do appreciate that this may not be the situation at all times.
59. It seems to me that provided that appropriate measures are put in place to control odours and that these measures are maintained, then smells from the appeal site should not adversely affect the living conditions of the occupiers of the adjoining dwellings. This can be secured by condition and complementary legislation.
60. Consequently, as regards odours the proposal would comply with emerging Policy D13 of the eLP as referred to above and with paragraph 127 of the Framework which indicates that planning decisions should ensure developments create places with a high standard of amenity for existing users.

² Methods for rating and assessing industrial and commercial sound

³ Guidance on sound insulation and noise reduction for buildings

Other matters

61. Local residents expressed concerns about the highway implications of the proposal. In particular, they referred to accidents, including fatalities, on the Apex Corner roundabout and its slip roads including on the pedestrian crossing on Swan Road adjacent to the proposed vehicular entrance location. Concerns were also expressed about making worse the occasions when the highways are already highly congested so that there are significant delays on the network, particularly in the area around the McDonald's restaurant.
62. I note that there have been extensive discussions between the appellant and the highway authority, Transport for London, on the proposal which led to the off-site proposals described above. As the relevant authority on this matter I am able to give Transport for London's views, where it raised no objection subject to the planning condition and obligation, significant weight.
63. In relation to queuing, I saw that the drive-through lane for the McDonalds was notably shorter than in the appeal proposal and it has to cross the takeaway/ restaurant traffic rather than being generally separate. In that regard, given the evidence as to the number of customers likely to be in the various queues I am satisfied that the proposed layout would be unlikely to result in tailbacks on to the main carriageway.
64. Furthermore, the change to the angle of the egress from the A312 Hampton Road East onto the Apex Corner roundabout is likely to reduce speeds. The proposal would also be highly visible which would mean that motorists and other road users would be aware that movements to and from the site would be likely to occur. I therefore conclude that the proposal would not be prejudicial to highway safety. Consequently, the proposal would comply with paragraphs 108 and 109 of the Framework.
65. Concerns were also expressed about litter. In walking around the area, I noted packaging and discarded food purchased from a number of operators. I can appreciate that as well as looking unsightly this can also encourage pests. The Planning Obligation requires litter to be collected three times a day from within the site. It seems to me that the issue of litter is more of a societal problem than a planning issue, and that by ensuring litter collection on site the appellant would be making appropriate and proportionate provision to deal with this issue.
66. Apart from the highway works discussed above, the Planning Obligation also makes provision for a contribution towards Construction Training and Employment Skills and to implementing local employment opportunities. Additionally, it also makes provision for a Travel Plan, implementation of the Considerate Contractor Scheme, and a Site Management Plan to deal with litter collections, and the minimisation of noise and disturbance on site. In each case, in light of the Council's Planning Obligations and CIL Supplementary Planning Document, I am satisfied that the provisions of the Obligation meet the tests set out in Regulation 122 of the CIL Regulations and paragraph 56 of the Framework.

Planning Balance

67. I have concluded that the proposal would be in an accessible location, and that, subject to conditions, the proposal would not give rise to significant noise

- impacts or unacceptable odours. However, there would be a small worsening in air quality where mitigation is uncertain. I do however note that there has been a consistent improvement in air quality in recent years in the local area as evidenced by the data from nearby recording stations. I therefore give this harm moderate weight.
68. Set against this harm are the benefits of this proposal, and in particular the employment opportunities. While restricting the operating hours to those set out above may reduce this from the numbers identified in the appellant's Design and Access Statement, I give this significant weight in line with paragraph 80 of the Framework.
69. I also give weight to the beneficial use of an otherwise unremarkable piece of open land. While I understand the importance of open land in a highly urban area, there is no authorised public access and the unkempt nature of the site and graffiti on the adjoining walls, which would be covered by the proposal, currently detracts from the wider area. Allowing land to deteriorate should not be given credit but in the circumstances of this case I give the beneficial use moderate weight.
70. While the appellant identified other benefits, such as design features and solar panels, it seems to me that these are matters any well-considered design should incorporate, and therefore consider them to be neutral in the final balance. Similarly, the access changes are principally to allow the site to operate safely and therefore I give the benefits to the wider community for the enhancements to the non-car network only limited weight.
71. While the proposal is contrary to that part of the development plan and the eLP relating to air quality, for the reasons set out above this should only be given moderate weight. Otherwise it complies with the policies of the development plan and the benefits of the proposal, in employment and in the beneficial use of land, outweigh this harm. Consequently, I conclude that the proposal, as a whole, complies with the development plan and there are insufficient other material considerations to indicate that the decision should be made otherwise than in accordance with the terms of the development plan. Therefore, the appeal will be allowed and planning permission granted.

Conditions

72. I have considered the conditions put forward by the Council and agreed in the Statement of Common Ground by the appellant against the requirements of the national Planning Practice Guidance and the Framework. The numbers given in brackets (X) refer to the condition being imposed, with the order being prescribed by the time when the condition needs to be complied with.
73. In addition to the standard timescale conditions (1), I have imposed a condition specifying the relevant drawings as this provides certainty (2).
74. In order to ensure that highway safety and the living conditions of nearby occupiers are protected during construction I have imposed a condition requiring the submission and approval of a Construction Environment Management Plan. This combines both the Construction Logistics Plan and the Construction Environment Management Plan so as to avoid duplication (3). I have not included some elements requested where they would duplicate other powers.

75. In order to ensure highway safety from the outset of development the access and egress need to be completed. This should be to base course before any other works take place and fully completed prior to first occupation (4). To ensure that the proposal does not increase the risk of flooding on or off site I have imposed a condition requiring details of drainage to be submitted, approved and implemented (5). In order to deal with any previous contamination of the site a scheme for investigation and remediation needs to be secured and delivered (6).
76. Conditions 3 to 6 are all pre-commencement conditions as they are required to be delivered prior to construction works on site due to the nature of their subject matter and the need to ensure that they are in place before development commences. The appellant was notified of this and did not respond and therefore its consent is deemed under Regulation 2(1)(b) of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018.
77. In order to ensure that the materials to be used in the external surfaces of the building are appropriate for the character and appearance of the area samples need to be submitted and approved (7).
78. To ensure that the development makes the fullest contribution to minimising carbon dioxide emissions, in line with development plan policies, a condition requiring details of an energy strategy and its implementation and reporting are required (8).
79. As discussed above, the opening hours need to be restricted. In order to prevent access to the site when it is closed to the public, which may otherwise create unacceptable and unnecessary noise and disturbance for those living nearby, details of gates on the access and egress need to be submitted and provided before the site is first used (9). The gates then need to be kept shut and locked when the site is not open to the public.
80. As noted above, after the Hearing the Council indicated that there was a small area of land to the south of the vehicular egress of the site and within the appeal site which was in the Council's ownership. The Council specifically indicated that it made no point on this but suggested that the landscaping condition may need to be amended. Whether this area is positively landscaped or left as at present would make no material difference as to the effects of the proposal. I am satisfied that the landscape condition as discussed at the Hearing would sufficiently deal with this matter. Consequently, in the interests of biodiversity, sustainability, and to ensure that a satisfactory standard of visual amenity is provided, a landscaping scheme is required along with a management plan to ensure its long term maintenance (10, 11).
81. To ensure that the site functions as intended so as to protect highway safety and the living conditions of adjoining occupiers I have imposed a condition requiring the approval and implementation of a Delivery, Servicing and Car Parking Management Plan. This combines the two plans set out in the Statement of Common Ground so as to avoid duplication (12).
82. In order to ensure that those attending the site by bicycle, be they customers, employees or delivery drivers, are able to park, I have imposed a condition requiring provision of cycle parking (13).

83. In order to protect the living conditions of the occupiers of neighbouring properties I have imposed conditions relating to the provision of mechanical servicing, extraction systems, and noise and air quality monitoring (14, 15, 16 and 17). I have included a night-time limit, which extends beyond the opening hours of the premises, in order to ensure that staff on site at either end of the working day do not cause unacceptable effects.
84. Finally, in order to protect the living conditions of the occupiers of neighbouring properties, I have defined the use of the premises and the hours when it can operate and have deliveries of goods for sale and collections of refuse (18, 19 and 20). Servicing deliveries and collections should start slightly later and finish earlier than the opening hours discussed above because of the potential for greater noise effects from these activities.
85. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

Conclusion

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

RJ Jackson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

401/26/1_SLP03	Site Location Plan
TSP/SME/P3198/008 Rev F	Proposed Access and Egress Arrangements
KFC/2342/16/A200 Rev A	General Layout Plan
KFC/2342/16/A101 Rev A	Elevations

- 3) No development shall take place until a Construction Environment Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
 - i) provision for the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials including details of access to the site and means to control and manage access and egress of vehicles to and from the site for the duration of construction;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing;
 - v) measures to control the emission of dust and dirt during construction including wheel washing facilities and arrangements for the sweeping of adjacent roads;
 - vi) a scheme for recycling/disposing of waste resulting from construction works;
 - vii) delivery and construction working hours, including details of a booking system to avoid vehicles waiting on the public highway;
 - viii) the use of operators that are members of Transport for London's Freight Operator Recognition Scheme (FORS);
 - ix) any external illumination of the site during the construction period; and
 - x) measures to minimise noise emissions and nuisance caused by the operations.

The approved Construction Environment Method Statement shall be adhered to throughout the construction period of the development.

- 4) No other development shall take place until details of the vehicular accesses have been submitted to and approved in writing by the local planning authority and the approved scheme constructed to base course. The development shall not be brought into use until the access road has been completed in accordance with the approved details and so maintained at all times thereafter.
- 5) No development shall take place until detailed drainage designs, together with a detailed management plan for the lifetime of the development, have been submitted to and approved in writing by the local planning authority. The scheme shall demonstrate that the proposal will achieve a greenfield run-off rate and provide enough storage to attenuate for up to and including the 1 in 100 year plus climate change allowance event. The development shall take

place in accordance with the approved details and shall thereafter be maintained in accordance with the approved management plan.

- 6) Before the development hereby permitted commences:
- i) a contaminated land Phase 1 Desk Study Report shall be submitted to and approved in writing by the local planning authority. Should the Phase 1 Report recommend that a Phase 2 site investigation is required, then this shall be carried out and submitted to, and approved in writing by the local planning authority. The site shall be investigated to identify the extent and nature of contamination. The Report should include a tiered risk assessment of the contamination based on the approved use of the site. Additional investigation may be required where it is deemed necessary;
 - ii) if required, a scheme for decontamination of the site shall be submitted to the local planning authority, for written approval.

During the course of the development:

- iii) the local planning authority shall be notified immediately if additional contamination is discovered. The additional contamination shall be assessed and appropriate amendments to the scheme for decontamination submitted in writing to the local planning authority for approval before any work on that aspect of development continues.

Before the development is first brought into use:

- iv) the agreed scheme for decontamination referred to in clauses (ii) and (iii) above, including amendments, shall be fully implemented and a written validation (closure) report submitted to the local planning authority.
- 7) No above ground development shall take place until samples of all materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 8) No above ground development shall take place until an Energy Strategy has been submitted to and approved in writing by the local planning authority. This shall include full Design Stage calculations under the National Calculation Method to achieve a 35% reduction in emissions on Part L 2013 of the Building Regulations. The approved scheme shall be fully implemented prior to the first occupation of the building.

Prior to final commencement of operation of the solar photovoltaic (PV) panels, suitable devices for the monitoring of the solar PV panels shall be installed, and the monitored data shall be submitted automatically to a monitoring web-platform at daily intervals for a period of three years from the point of full operation.

Prior to first occupation of the building evidence (e.g. photographs, installation contracts and As-Built certificates under the National Calculation Method) shall be submitted to the local planning authority in writing to show that the development has been constructed in accordance with the approved Energy Strategy, along with details of the web-platform.

- 9) Before the development hereby permitted is first used, details of gates preventing vehicular access to and from the site shall be submitted to and

approved in writing by the local planning authority. The gates shall be installed prior to the first use and shall be closed and locked so as to prevent access to the site when the site is not open to the public in accordance with the hours specified in condition 19.

- 10) No above ground works shall take place until full details of both hard and soft landscape works of the site have been submitted to and approved in writing by the local planning authority.

Hard landscaping details shall include:

- proposed finished levels or contours;
- car parking layouts;
- other vehicle and pedestrian access and circulation areas;
- hard surfacing material;
- the positions, design, materials and type of boundary treatments and other means of enclosure, including details of acoustic fencing along the southern boundary around the access and car parking areas;
- minor artefacts and structures; and
- proposed and existing functional services above and below ground.

Soft landscape works shall include:

- planting plans;
- written specifications (including cultivation and other operations associated with plant and grass establishment);
- schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and
- an implementation programme.

All hard landscaping comprised in the approved details shall be carried out prior to the first use the building and all soft landscaping shall be carried out during the first planting and seeding seasons following completion of construction works. Any trees or shrubs planted (including any such replacements) which die within five years from the date of planting shall be replaced in the next planting season with the same species, and of comparable maturity.

- 11) Before the development is first brought into use a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved.
- 12) Notwithstanding the approved plans and prior to the first use of the development hereby approved, and a Delivery, Servicing and Car Parking Management Plan shall be submitted to and approved by the local planning authority. The Plan shall include:
- i) active management of the car park at busy times and to ensure the delivery and servicing bay is kept clear of any other vehicles;
 - ii) the proposed management of parking spaces including disabled parking bays serving the development;
 - iii) the location and design of speed bumps within the site;
 - iv) the provision of Electric Vehicle Charging Points including both active and passive provision.

The car parking shall be provided and managed in accordance with the approved Management Plan for the life of the development.

- 13) Prior to first occupation of the development hereby approved full details (including manufacturers' specifications) of cycle parking facilities for employees and visitors shall be submitted to and approved in writing by the local planning authority. The approved facilities shall be fully implemented and made available for use before the first occupation of the development and thereafter retained for use at all times without obstruction.
- 14) The cumulative measured or calculated rating level of noise emitted from the mechanical services plant, including heating, ventilation and air conditioning, shall be 10dB(A) below the existing background noise level, at all times that the mechanical system etc. operates. The measured or calculated noise levels shall be determined at free field locations representing 1 metre from the northern façade of 79 to 173 Stourton Road.

The plant shall be isolated on adequate proprietary anti-vibration mounts to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter.

Following installation of any mechanical services plant, a post completion noise assessment shall be submitted to the local planning authority which demonstrates the actual measured rating level of plant operating under normal conditions. The post completion report shall be submitted to the local planning authority within 28 days of completion of the installation.

- 15) No development above ground level shall take place until details of the extraction duct system has been submitted to and approved in writing by the local planning authority. This shall be designed so that odour from the site should not be detectable at any boundary of the site. The development shall be carried out and maintained in accordance with the approved details. No fans, louvres, ducts or other external plant, other than those approved, shall be installed on the appeal site.
- 16) No development above ground level shall take place until a Noise Management Plan has been submitted and approved by the local planning authority. This shall provide for real time continuous noise monitoring at the boundary of the site to be undertaken to ensure that noise levels in nearby dwellinghouses do not exceed the levels shown in the following table as a result of the development.

Hours Location	07:00 hours to 23:00 hours	23:00 hours to 07:00 hours
Living room	35 dB $L_{Aeq, 16 \text{ hour}}$	n/a
Dining room/area	40 dB $L_{Aeq, 16 \text{ hour}}$	n/a
Bedroom	35 dB $L_{Aeq, 16 \text{ hour}}$	30 dB $L_{Aeq, 8 \text{ hour}}$

Monitoring shall include sound recordings triggered at levels above 60dBA. The results of the monitoring shall be submitted to the local planning authority on a monthly basis by the fifteenth day of the succeeding month for the data in question for a period of 12 months.

Where noise monitoring indicates that exceedances above 60dBA are as a result of activities on the site, a scheme for mitigation shall be submitted to the local planning authority for approval at the same time. Once approved the mitigation measures shall be implemented and thereafter maintained.

- 17) No above ground works shall take place until a scheme for the continuous passive monitoring of air quality on the appeal site has been submitted to and approved by the local planning authority. The scheme shall include provision of diffusion tubes and shall be installed prior to the first opening to the public and shall be monitored and maintained for 12 months from that date.

From the date of first opening to the public, the results of the monitoring shall be submitted to the local planning authority on a monthly basis.

In the event that monitoring shows that Nitrogen Dioxide levels exceed 40 micrograms per cubic metre, a scheme to improve air quality (the mitigation scheme) shall be submitted for approval by the local planning authority. Upon approval the mitigation scheme shall be fully implemented and further monitoring shall take place for a further period of 12 months and the results submitted to the local planning authority on a monthly basis.

- 18) The premises shall only be used as a mixed use of restaurant and café and for the sale of hot food for consumption off the premises and for no other purpose.

- 19) The premises shall only be open for customers between the following hours:

- i) Use of the drive-through:
07:00 hours to 23:00 hours Mondays to Saturdays
08:00 hours to 23:00 hours Sundays and Public Holidays
- ii) Use of the restaurant and café and takeaway:
07:00 hours to 22:00 hours Mondays to Saturdays
08:00 hours to 22:00 hours Sundays and Public Holidays

In addition, staff may be within the building for one hour prior to opening and for one hour following closing.

- 20) No deliveries of goods to or collections of refuse from the site shall take place outside of 08:00 hours to 20:00 hours seven days a week.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT:

Duncan Parr	Partner, Rapleys
Christopher Vaughan	Patrick Parsons
Michael Birch	Rapleys

FOR THE LOCAL PLANNING AUTHORITY:

Tom Bradfield	LB Hounslow
Nigel Mann	LB Hounslow
Melvin Andrews	LB Hounslow

INTERESTED PERSONS:

Keith Winchester	Local Landowner
Cllr Richard Foote	Ward Councillor and Local Resident
Mary Douglas	Local Resident
Christine Hennessey	Local Resident
Carole O'Connor	Local Resident
Diana Stone	Local Resident

HEARING DOCUMENTS

HD1	Revised Location Plan (Plan No 401/26/1_SLP03)
HD2	Signed Statement of Common Ground between the appellant and the Council
HD3	Petition opposing the proposal
HD4	Satellite image with locations of nearby KFC establishments annotated
HD5	Google map extract annotated to show nearby takeaway establishments and accompanying note
HD6	Planning Obligation

POST HEARING DOCUMENTS

PHD1	London Borough of Hounslow Planning Obligations and CIL SPD
PHD2	Letter on behalf of the Council commenting on the Planning Obligation