



Appeal Decision

Site visit made on 15 September 2020

by Jonathon Parsons MSc BSc(Hons) DipTP Cert (Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

Appeal Ref: APP/N0410/W/20/3253252

McDonalds Restaurant, 37 Oxford Road, New Denham, Denham UB9 4DA

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Appt Corporation Ltd T/A McDonald's against the decision of Buckinghamshire Council - South Bucks Area.
 - The application Ref PL/20/0161/VRC, dated 11 January 2020, was refused by notice dated 9 April 2020.
 - The application sought planning permission for the demolition of an existing building and the erection of a Class A3 building to provide a McDonalds restaurant (incorporating a drive thru element) with associated car parking without complying with a condition attached to planning permission Ref 00/00675/FUL, dated 29 March 2001.
 - The condition in dispute is No 8 which states that: The premises shall not be open for the serving of customers before 7.00 a.m. or after 11 p.m. Mondays to Saturdays or before 9 a.m. or after 10.30 p.m. on Sundays and Bank Holidays, and all activities shall cease 30 minutes after closing.
 - The reason given for the condition is: To protect the amenities of adjoining occupiers. (Policy EP3 of the South Bucks District Local Plan (adopted March 1999) refers.)
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of an existing building and the erection of a Class A3 building to provide a McDonalds restaurant (incorporating a drive thru element) with associated car parking at McDonalds Restaurant, 37 Oxford Road, New Denham, Denham UB9 4DA in accordance with the application Ref PL/20/0161/VRC dated 11 January 2020, without compliance with condition number 8 previously imposed on planning permission Ref 00/00675/FUL dated 29 March 2001 and subject to the following conditions on the attached schedule A.

Procedural Matter

2. This application would enable the restaurant to trade 24 hours a day, seven days a week, by removing a condition, that restricts opening hours, on the existing planning permission.

Main Issue

3. The main issue is the effect that removing this condition would have on the living conditions of neighbours, having regard to noise and disturbance, anti-social behaviour, lighting and smell/odour.

Reasons

4. The appeal site comprises a restaurant, with drive thru element, and a forecourt vehicle parking area facing onto Oxford Road. The vehicular access for the drive thru is directed around the sides and rear of the building. Adjacent to the site, there is a 24 hour opening petrol filling station (PFS) at the corner of Oxford Road and Newtown Road. There are dwellings with rear gardens on Newtown Road which back onto the appeal site. On the other side of the appeal site, there is a recreational space. There are a range of commercial outlets, including another PFS on the opposite side of Oxford Road.
5. The appellant's Noise Impact Assessment (NIA) has undertaken empirical measurements of ambient noise levels which show that the principal contributor is road traffic from Oxford Road. The A4020 Oxford Road is a major route which connects to the A40, linking Oxford to Uxbridge.
6. In terms of additional vehicle movements and associated noise, the highway authority has indicated additional vehicle movements during the proposed extended hours of operation. However, the appellant indicates that most visits to the restaurant would be of a 'pass by' nature from the surrounding road network and not visits by people making a dedicated trip to the restaurant. Significant weight is attached to the appellant's view given their experience of managing other restaurants in roadside locations and because the restaurant is located on an arterial route within a built-up area. There are motorways within the wider area but the location of the restaurant is not close enough to be attractive for most customers to make diversionary trips off it. For all these reasons, the extended hours of operation would not cause any significant additional vehicle movement and associated noise within the area.
7. In relation to residential property, the NIA has assessed noise from drive thru vehicles for the extended opening hours. Such an assessment is based on a worst case scenario because it has taken into account maximum decibel levels for vehicles recorded at other similar facilities and minimum ambient noise levels recorded around the site as part of the NIA. It has also not made an allowance for attenuation provided by an existing barrier and vegetation around the drive thru lane. On this basis, it demonstrates that additional drive thru vehicular noise would be low impact in relation to the nearest residential dwelling in Newtown Road.
8. For vehicle door closing noise, the assessment has also been undertaken on a worst case scenario, taking the closest car park space in line of sight of a Newtown Road residential property. The NIA concludes that the guideline value for the onset of sleep disturbance, given in World Health Guidelines, would not be exceeded and noise from this source can be classified as no impact. The NIA is based on established practice, policy and reasoned professional judgement and there is very little technical evidence to the contrary to dispute its findings.
9. The Council and third parties have indicated the occurrence of 'highly probable events', such as activation/accidental vehicle alarms, motorbikes, reversing alarms and vehicle music/stereo which the NIA does not take into account. Such one-off occurrences can disrupt sleep and be detrimental to residential amenity, if occurring on a regular basis. However, there is no substantiated evidence that proposed extended hours would result in such events at the restaurant, being regular enough to adversely impact upon residential amenity.

10. In this regard, the appellant would additionally implement a Premises Noise Management Plan (PNMP) whereby loud vehicle music/stereos would be discouraged. The PNMP sets out a procedure of recording such events and the reporting of this to the relevant authorities. Furthermore, 24 hour opening of the premises would actually be likely to prevent alarms sounding off at the premises because staff would be on the site and the business would not be able to operate otherwise.
11. Under the NIA, site attended sound measurements were taken between 22:00 - 00:00 on the night of Friday 29th November 2019 and 06:00 - 08:00 on Saturday 30th November 2019, and unattended measurements, additionally covering the period above, the intervening hours, and throughout the weekend until Tuesday 3rd December 2019. These measurements were carried out in the winter. Nevertheless, no reasoned rationale has been put forward to show that the ambient noise levels would be any different at other times of year and therefore additional survey work is not justified.
12. The NIA has also assessed the noise impact of the Communications Operations Device used for outside communication for the drive thru. The NIA has recommended maximum lower volume settings which are detailed within the PNMP. Noise from the kitchen and refrigeration units was also shown to have no observable impact effect level for the extended opening period. Such findings are again based on established practice, policy and reasoned professional justification. There is no reason to dispute these findings and indeed, the Council has raised no objections to these aspects of the proposal. Taking all these factors into account, the proposal would not result in excessive noise and disturbance.
13. Anti-social behaviour has occurred at the restaurant premises. There has been a criminal incident arising from a break-in of a residential property from people having visited the nearby PFS and there is also concern over drug dealers meeting at the appeal premises during the night. However, a high proportion of customers who visit McDonalds restaurants during these hours would be linked to their employment based on the appellant's experience. These customers include taxi drivers, shift workers, delivery vehicles and emergency services operatives. These trips are largely of shorter duration than daytime customers and the purpose of their visits functional rather than social. These customer groups would not be prone to causing anti-social behaviour or significant noise.
14. The appellant also sets out pro-active measures to control anti-social behaviour within the PNMP. The PNMP lists procedures to identify, mitigate and address instances of anti-social behaviour including staff recording incidents, increased use of CCTV, additional signage requesting customers to keep noise to a minimum, careful monitoring of the use of the car park and the reporting to the relevant authorities if anti-social behaviour persists.
15. A condition could be imposed to ensure the PNMP implementation. Such measures would overcome many of the concerns relating to these matters. Importantly, extended opening will also mean that there will no longer be an empty car park where people can congregate, without being monitored, and managed by staff on the site. This is likely to be a deterrent in itself and should reduce and minimise the risk of such anti-social behaviour occurring for the extended hours sought.

16. Turning to lighting, the alignment of the drive thru lane would be set back from the boundary of the site and the nearest residential properties. There would also be intervening vegetation, barrier, fencing and in some instances, outbuildings/garages to the rear of properties, which would minimise significant light intrusion from vehicle lights and also the building itself.
17. Currently, there are litter control practices operated by the appellant that aim to keep the appeal site and surrounds free of litter. However, a Site Management Plan (SMP) is proposed to formalise these arrangements, including patrol routes and frequency. Subject to the implementation of satisfactory details, there is no reason before me to object on litter disposal grounds.
18. The Council has objected to the effect of food smells within the area but in the original planning permission, ventilation and filtration equipment had to be installed to the satisfaction of the local planning authority. The Council's Environmental Health Officer has not demonstrated any existing problem and indeed, the Council's Statement of Case confirms no negative effects on this issue within the restaurant's existing hours of operation. As the same equipment is likely to be used, the Council has not proven that the 24 hour operation of the premises would lead to harmful smell or odour.
19. In conclusion, there would be no harm to the living conditions of the occupiers of neighbouring properties and the proposal would comply with Policy EP3 of South Bucks District Local Plan 1999 which amongst other matters, states that permission will be granted if there is no potential for detrimental impact on amenities of nearby properties or the locality by reason of noise, vibration, smell, pollution, disturbance, visual intrusion, loss of privacy, the impact of traffic or other nuisance.

Other matters

20. On Oxford Road, traffic queues occur at busy times for the restaurant. However, such issues would be unlikely to occur during the extended hours of operation late at night and early morning when the traffic movements would be much lower. There have been no safety or capacity objections from the highway authority. For the reasons given, customers would be already on the highway network and be classified as 'pass bys'. Therefore, the increased risk of pollution would not be significant. Individually and collectively, these considerations would not outweigh the acceptability of the proposal.

Conditions

21. The conditions on the original planning permission have been considered in light of the advice contained in Planning Practice Guidance (PPG). The PPG makes clear that decision notices for the grant of planning permission under section 73 should repeat relevant conditions from the original planning permission. Given the restaurant has been established for some time, not so many conditions are necessary. In the interests of the living conditions of residents, conditions are necessary to control the hours of refuse collection and deliveries. A SMP, including a PNMP, is similarly necessary in the interests of living conditions.

Conclusion

22. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Jonathon Parsons

INSPECTOR

Schedule A.

- 1) No refuse shall be collected from the premises before 0700 hours or after 1900 hours Monday to Sunday.
- 2) No deliveries shall take place at the premises before 0600 hours or after 2200 hours on any day.
- 3) The additional opening hours approved as part of this permission shall not be commenced until a Site Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan must include the mitigation measures included within the Premises Noise Management Plan, attached at Appendix B of the Noise Impact Assessment prepared by Ref 14-0167-75- RO1 3 January 2020 (Savills UK Ltd) and details of on-site and off-site litter patrol (routes and their frequency). The restaurant and associated drive-thru facility shall thereafter be operated in accordance with the approved details.