



## Appeal Decision

Site visit made on 9 December 2020

by **Darren Hendley BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

13<sup>th</sup> January 2021

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**Appeal Ref: APP/X3025/W/20/3250525**

**Land at Asda, Old Mill Lane, Forest Town NG19 0HA**

- 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 McDonald's Restaurants Limited against the decision of Mansfield District Council.
  - The application Ref: 2019/0151/FUL, dated 8 March 2019, was refused by notice dated 8 October 2019.
  - The development proposed is the erection of a freestanding two storey McDonald's restaurant with drive thru, car parking, landscaping and associated works, including customer order displays (cod) and play area.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of a freestanding two storey McDonald's restaurant with drive thru, car parking, landscaping and associated works, including customer order displays (cod) and play area at land at Asda, Old Mill Lane, Forest Town NG19 0HA in accordance with the terms of the application, Ref: 2019/0151/FUL, dated 8 March 2019, subject to the conditions in the attached schedule.

### Application for Costs

2. An application for costs was made by McDonald's Restaurants Limited against Mansfield District Council. This application is the subject of a separate Decision.

### Procedural Matters

3. Since the Council determined the planning application, the Mansfield District Local Plan 2013 - 2033 (2020) (Local Plan) has been adopted. The main parties have drawn my attention to Policy RT10 which concerns hot food takeaways and exclusion zones. I have considered this policy in my decision.
4. Interested parties have queried whether the appeal is valid by way of whether it was submitted in time. The appeal was submitted within 6 months of the date of the Council's decision. The appeal is therefore valid and can proceed to a determination.

### Main Issue

5. The main issue is the effect of the proposal on public health, in particular that of children and food consumption.

## Reasons

6. The site forms part of the car park of a large supermarket. As well as containing car parking spaces and access routes, it also includes a grocery collection point and modest amounts of landscaping. It is located some distance from the main supermarket building itself, but is closer to the petrol filling station and the main access route into the supermarket car park.
7. There are also a number of other commercial uses close by, including existing hot food takeaways and a coffee shop, as well as a children's nursery and a play centre. The rest of the area is largely residential in nature. From a roundabout on the A6117 close to the site, a road leads up to a local primary school. Other schools, including secondaries, are more distant.
8. Policy RT10 states that proposals for hot food takeaways (Use Class A5) will be supported provided that they are not within a hot food takeaway exclusion zone as shown on the policies map (within a 400 metres (m) radius from the main access point to any secondary school or college), amongst other considerations.
9. Policy RT10 forms part of a very recently adopted development plan. It is consistent with the promoting healthy and safe communities objectives of the National Planning Policy Framework (Framework). It carries very significant weight in my decision, including how it deals with proposals for hot food takeaways.
10. The proposal lies outside of the hot food takeaway exclusion zones as shown on the policies map. It is not located within a 400m radius from the main access point to any secondary school or college that has been drawn to my attention. As a consequence, the proposal would accord with the approach that Policy RT10 applies to proposals for hot food takeaways. Accordingly, it receives support under the policy.
11. The site is located a fairly short distance from the local primary school and the Council has indicated that the proposal would be within a 400m radius of it. There are also other primary schools in the wider area. Whilst I can understand the concerns that have been expressed, primary schools are not included within the exclusion zones under Policy RT10. This approach is understandable because there would be some expectation that children of a primary school age would be accompanied by a parent or guardian who would be reasonably expected to have a child's health in mind when selecting meal choices.
12. The same would apply in relation to children of a nursery school age, and those using playcentres. Children of a secondary school age would be more likely to be unaccompanied but, as I have set out above, the site lies outside the exclusion zone for such schools.
13. The Council has referred me to public health matters over child obesity, proximity to primary schools, density of outlets to schools and life expectancy, and the associated concerns of the County's Public Health team. Much of this evidence did inform the preparation of Policy RT10 and is set out in the supporting text to the policy. As such, it is already inherent with how the policy deals with hot food takeaways. Such evidence does not preclude the proposal.

14. I accept that local evidence continues to demonstrate that these areas of public health remain a concern in Mansfield and that fast food outlets are a contributory factor towards obesity, amongst other factors. This is borne out by the findings of the Healthy Mansfield – Committed to Change (2019) and the extracts of the Mansfield Local Area Health Profile (2020). Whilst the appellant offers healthier options and supports initiatives which seek to combat obesity, customers still have the option of meal choices which may run contrary to the public health agenda. Such factors are an important consideration.
15. However, the planning system is plan led and policy RT10 sets out a clear path as regards how proposals for hot food takeaways are to be dealt with as a result of public health issues. Policy RT10 has been prepared in the context of national policy, namely the Framework. This includes with regard to paragraphs 91c) and 92b) which set out to enable and support healthy lifestyles, especially where this would address identified local health and well-being needs, and take into account and support the delivery of local strategies to improve health. This also leads me to find that the proposal is in compliance with the Framework in this respect.
16. Nor would the proximity to similar outlets change my view. Whilst the density of outlets is apparent in the vicinity of the site and is referred to in the supporting text to Policy RT10, the policy itself does not follow such an approach because it takes the exclusion zone tact. Similarly, the residential nature of an area is not how this part of the policy operates. The Covid-19 pandemic also has a limited bearing as there is not persuasive evidence before me on what the implications of this may be on public health in the longer term, and what role the proposal may play in this.
17. The Team Valley Retail World appeal decision<sup>1</sup> that I have been referred to raises similar public health issues. However, the approach taken in that Council area differs from what is for my consideration because a Supplementary Planning Document (SPD) is utilised as at least part of the local planning policy response. The SPD was clearly afforded significant weight in that Inspector's decision. I am reliant on Policy RT10 and the Framework where I find that the proposal would be in accordance. I am satisfied that the circumstances are sufficiently different so as to not alter my conclusion.
18. In taking these factors together, this is not a situation that indicates that a determination should be made other than in accordance with the development plan.
19. I conclude that the proposal would not have an unacceptable effect on public health, in particular that of children and food consumption. It would accord with the approach that Policy RT10 takes as regards hot food takeaways and with paragraphs 91c) and 92b) of the Framework in relation to promoting healthy and safe communities, for the reasons that I have already set out.

### **Other Matters**

20. The proposal would be sited a not insignificant distance from the vehicular access into the supermarket site and with the likely traffic generation, it would be unlikely to impede the free flow of traffic on the public highway. The car park for the supermarket is considerable in size in terms of the number of

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<sup>1</sup> Appeal ref: APP/H4505/W/19/3221736

spaces. The loss of spaces would not be decisive, not least as they are located furthest from the store. It would not be unacceptable in highway safety terms.

21. The proposal would be found in the vicinity of the nearest residential properties. Those which are on the opposite side of the A6117 face directly towards the site and there are further residential properties to the east of this part of the supermarket car park. The proposed building, whilst it would be 2 storey, would be positioned at a lower land level than these properties. It would be viewed within the context of the supermarket site and landscaping is proposed that would, to a degree, soften its impact. The effects as regards visual impact would not be unacceptable.
22. The submitted noise and odour impact assessments also contain a number of mitigation measures that would adequately protect living conditions. Conditions can be imposed in relation to the opening hours for customers to limit noise and disturbance during the quieter night time periods, as well as from deliveries. The effects from noise and odour would not be unacceptable, and I reach the same conclusion as regards the proposed lighting. Existing street lighting apparatus is already apparent in the area.
23. There is also not substantive evidence that the proposal would give rise to anti-social behaviour to any notable degree. As regards littering, the submitted plans show bin provision and a litter management plan has also been submitted which sets out how the appellant intends to deal with this issue after opening. As I have considered the proposal not to be unacceptable in its own right, I do not have cause to consider the merits of the alternative sites that have been put to me.
24. A plan was submitted during the course of the application which shows electric vehicle (EV) charging points in a different part of the supermarket car park to the proposed restaurant building. Hence, it is for my consideration. It is a modest feature and not unacceptable in its location.

### **Conditions**

25. I have imposed a condition which concerns the statutory time limit for implementation. In the interests of certainty, I have also imposed a condition by way of the approved plans. A Construction Method Statement (CMS) condition is also imposed in the interests of protecting the living conditions of the occupiers of the nearest residential properties. This includes details of construction hours, and so this does not warrant a separate condition. I have also imposed a condition to provide for satisfactory drainage. This is in the interests of minimising flood risk and providing adequate foul sewage provision.
26. Conditions are imposed with regard to the implementation of the parking and servicing areas, roads layout, markings and car parking bays as shown on the submitted details. This is in the interests of highway safety and the free flow of traffic.
27. A condition is also imposed concerning the customer opening hours. These hours are necessary with the proximity of the nearest residential properties and as the proposal would be considerably closer to some of those properties than the existing supermarket, notwithstanding the operations and national opening hours of the restaurant operator. Conditions are also imposed concerning the delivery hours and the mitigation measures set out in the submitted noise

impact assessment. These conditions are applied in the interests of protecting the living conditions of the occupiers of the nearest residential properties by way of noise and general disturbance.

28. For similar reasons, a condition is imposed concerning the control measures that are set out in the submitted odour control assessment. In the interests of protecting the character and appearance of the area, conditions are imposed with regard to levels, and the implementation of both the submitted landscaping and the details of the external materials. A condition is also imposed by way of land contamination in the interests of protecting public health.
29. I have not imposed a condition concerning lighting hours as this would not be reasonable and necessary with the amount of existing lighting apparatus in the vicinity of the site. I have also not imposed a condition requiring the implementation of the EV charging points. These would be located some distance from where the proposed building would be sited and so would not be related to the development to be permitted. There is not a requirement that every aspect of a development is to be implemented simply because it is proposed. I have also omitted the need for a staff member to control the car park in relation to noise mitigation as this would seem to duplicate the function of the required signage. Hence, it would not be reasonable and necessary.
30. I have imposed pre-commencement conditions in relation to the CMS, the drainage details and levels as these matters will need to be attended to either before or at the start of the commencement of development. Where I have altered the wording of the remaining planning conditions, as set out in the Council Planning Officer Report and repeated in the appellant's submissions, I have done so in the interests of precision and without changing their overall intention.

### **Conclusion**

31. For the reasons set out above and having regard to all matters that have been raised, the appeal should be allowed subject to the conditions.

*Darren Hendley*

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: 6658-AEW-8549-0004 Rev E Proposed Site Plan, 6658-AEW-8549-0005 Proposed Elevations, 6658-AEW-8549-0006 Proposed Floor and Roof Plan, 6658-AEW-8549-0403 Block Plan (EVCP Bays), V15991 L01 Rev A Landscape Plan, 01 HVAC Roof Layout, Dwg 01 0a Proposed Lighting Layout and LiAS Design Notes & Luminaire Schedule, Philips Stela+gen2 dated 2016 July 11, MCD/SCH/1001 Kitchen Extract Schematic, E11-003 Rev.2017 PlayLand Outdoor Climb 2x2, Standard Patio Area Supporting Specifications (unreferenced), Goal Height Restrictor and COD/Canopy (unreferenced), McDonalds Litter Management Plan (unreferenced).
- 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - 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, where appropriate;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - viii) the positioning of site offices and cabins; and
  - ix) delivery, demolition and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 4) Prior to the commencement of the development hereby permitted, details of the surface water and sewage disposal proposals serving the site shall be submitted to and approved in writing by the local planning authority. The development thereafter shall be undertaken in accordance with the approved details and thereafter be maintained for the lifetime of the development.
- 5) The development hereby permitted shall not commence until details of the existing and proposed ground levels and proposed finished floor levels of the building have been submitted to and approved in writing by the local planning authority. The development thereafter shall be undertaken in accordance with the approved details.
- 6) No part of the development hereby permitted shall be brought into use until the parking and servicing areas are provided in accordance with the approved Transport Assessment Appendix 9.1 plan, entitled Delivery

Vehicle 16.5m Artic. The parking and servicing areas shall not be used for any purpose other than parking, loading and unloading of vehicles, and shall thereafter be retained for the lifetime of the development.

- 7) No part of the development hereby permitted shall be brought into use until the revised access roads layout, markings and car parking bays are provided in accordance with the approved drawing No.6658-AEW-8549-0004, Rev. E, Proposed Site Plan and shall thereafter be retained for the lifetime of the development.
- 8) Customers shall only be permitted on the premises between the following hours:  
0600 - 2300 Mondays to Saturdays  
0800 - 2300 Sundays and Bank and Public Holidays
- 9) Deliveries shall be taken at or despatched from the site only between 0800 - 2100 on Mondays to Saturdays, 0800 - 2000 on Sundays or on Bank or Public Holidays.
- 10) No part of the development hereby permitted shall be brought into use until the noise mitigation measures as detailed in Section 7.4 of the Noise Impact Assessment Ref. LA/1631/01R/ML, dated 19/11/18, namely:-
  - i. Installation of a bespoke in-line post-fan silencer to the extract flue. The silencer must attenuate discharge noise by approximately 10dB.
  - ii. Encasing the fan and motor assembly in an acoustic enclosure, consisting of a steel case with absorbing material lining the interior, whilst allowing sufficient airflow for the unit's ventilation requirements. The enclosure must attenuate the noise breakout by the fan and motors of between 8-15dB, depending on the orientation of the necessary air vents.
  - iii. Installation of an inverter to the extract system to limit the power use to demand only. This may reduce fan/motor noise by 2-3dB during periods of low load, which are more likely to occur during the low-use overnight period.have been installed / implemented and thereafter maintained in working order for the lifetime of the development and, that the 'good practice' measures, as detailed within Section 7.11 of the Noise Impact Assessment, namely :-
  - Installation of clear signage in the car park asking customers to respect the amenity of the neighbouring receptors and not shout or play loud music in cars.
  - By configuration of the external plant control systems, minimise the use of any air-handling units and air-conditioning condensers when not specifically needed for the comfort of customers and staff, especially during the quietest and most sensitive overnight periods.
  - Ensure that the 'night-time' volume levels on the COD speakers are set from 21:00 to 07:00, so as to reduce the volume of the speakers in line with the reducing ambient noise level, to maintain audibility without the potential to disturb neighbours during particularly quiet ambient conditions.

have been implemented and thereafter maintained for the lifetime of the development.

- 11) No part of the development hereby permitted shall be brought into use until the odour control measures as detailed in Sections 8.2; 8.3; 8.4; 8.5 & 9.0 of the CDM Partnership Odour Control Assessment, dated May 2019 have been fully installed / implemented and so maintained in working order for the lifetime of the development.
- 12) No part of the development hereby permitted shall be brought into use until the landscaping scheme is provided in accordance with the approved drawing V15991 L01 Rev A Landscape Plan.

Notwithstanding the reference within the approved Landscape Plan that the maintenance period is for the first 12 months, if within a period of five years from the date of the planting of any tree or shrub, that tree or shrub or any tree or shrub planted in replacement, is removed, uprooted or destroyed or dies (or becomes, in the opinion of the local planning authority, seriously damaged or defective) another tree or shrub of the same species and size as that originally planted shall be planted in the same place.

- 13) The external surfaces of the development hereby permitted shall be constructed in accordance with the materials and detailing shown on the approved drawing 6658-AEW-8549-0005 Proposed Elevations.
- 14) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken, and where remediation is necessary a remediation scheme must be prepared and shall be submitted to and approved in writing by the local planning authority. Following completion of the measures identified in the approved remediation scheme, a verification report must be prepared which shall be submitted to and approved in writing by the local planning authority.