



Appeal Decision

Site visit made on 24 January 2022

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2022

Appeal Ref: APP/P1750/W/21/3278383

1 North Close, Aldershot, Hampshire GU12 4HA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Mark Schweizer of McDonald's Restaurants Limited against the decision of Rushmoor Borough Council.
 - The application Ref 21/00048/REVPP, dated 29 December 2020, was refused by notice dated 23 April 2021.
 - The application sought planning permission for the erection of restaurant with drive-through and takeaway facility (Use Class A3/A5) with associated structures, fencing, parking, landscaping and vehicular access from North Close (following demolition of existing buildings and closure of access onto North Lane) without complying with a condition attached to planning permission Ref 17/00344/REVPP, dated 22 June 2017.
 - The condition in dispute is No 15 which states that: The restaurant/takeaway/drive through uses hereby permitted shall not be open to customers outside the hours of 07:00 to 23:00.
 - The reason given for the condition is: To safeguard the amenities of existing and future neighbouring occupiers.
-

Preliminary Matters

1. The site address in the banner heading above is taken from the application form. However, the original decision notice refers to the site as 225 Ash Road, Aldershot, Hampshire GU12 4DD. Given that the proposal relates back to a condition on that permission, I shall use the Ash Road address in my decision.
2. The original permission restricts customer opening hours to between 0700 and 2300. The application seeks to extend these, to enable opening one hour earlier from 0600 and closing one hour later until midnight. These hours would relate to all parts of the business including the restaurant, takeaway and drive-through.

Decision

3. The appeal is allowed and planning permission is granted for the erection of restaurant with drive-through and takeaway facility (Use Class A3/A5) with associated structures, fencing, parking, landscaping and vehicular access from North Close (following demolition of existing buildings and closure of access onto North Lane) at 225 Ash Road, Aldershot, Hampshire GU12 4DD in accordance with the application Ref 21/00048/REVPP dated 29 December 2020, without compliance with condition No 15 previously imposed on planning permission Ref 17/00344/REVPP dated 22 June 2017, subject to the conditions set out in the attached schedule.

Main Issue

4. The decision notice alleges that the proposed variation in opening hours would give rise to unneighbourly nuisance impacts on neighbouring residential properties due to lighting and activity early in the morning and late at night. Having regard to the Council's statement of case, I consider the main issue to be the effect of the proposal on the living conditions of adjoining residents, with reference to noise and light.

Reasons

5. The appeal site is located at a busy road junction, with frontages onto Ash Road and North Lane. It is occupied by a two-storey McDonalds takeaway and restaurant building with drive-through facility. Vehicles enter and exit the car park from North Close which runs parallel to the northern site boundary. The drive-through lane circulates around the western side of the building, adjacent to North Lane, with orders being taken via Customer Order Displays (COD) to the north of the building and collections taking place on the east side.
6. The local area contains a range of commercial uses, including a KFC restaurant, takeaway and drive-through further to the east. There is housing fronting Ash Road beyond North Lane, and along Lower Newport Road. However, the closest residents are those living within Clyde Court directly adjoining the McDonalds car park. Nos 1 to 6 Clyde Court are contained within a building fronting onto Ash Road, whereas Nos 7 and 8 are located in a separate block at the rear.

Lighting impacts

7. The Council is concerned that car headlights on the McDonalds site may disturb sleep for the residents at Clyde Court. However, there is a 3.5 m high solid fence along the eastern boundary and it is difficult to see how headlights would have a material adverse effect on anyone asleep on the first floor, given that vehicles in the car park and drive-through are not generally oriented towards the windows of properties in Clyde Court.
8. The Council's Environmental Health team has received complaints of lights left on in the restaurant all night and the McDonalds sign being left on. However, there is no technical evidence before me to demonstrate that lighting within the building and signage over the 2 hour extended opening period would have an unacceptable effect on the amenities of local residents. I note that the luminance of the totem is controlled under a separate advertisement consent.
9. The Council has not substantiated its allegation that the proposal would cause harm to living conditions through light disturbance. There would be no conflict with Policies DE1 and DE10 of the Rushmoor Local Plan 2014-2032 (RLP) insofar as these seek to avoid harm to adjacent users through light pollution.

Noise impacts

10. The application is accompanied by a Noise Impact Assessment (NIA) which investigates the potential noise impacts arising from the proposal. The NIA examines the four principal noise sources: people, vehicles, COD and roof plant. Surveys were undertaken to determine ambient noise levels over the night-time period and noise levels for the extended opening period were estimated using readings from other McDonalds outlets and measurements taken on the site between the hours of 2200 and 2300 when the drive-through facility was open.

11. The NIA concludes that people noise would be unlikely to have an adverse impact on residential amenity and this has been assessed at No Observable Effect Level¹. Noise from roof plant and COD has been placed into the same noise exposure category, subject to both being placed on night-time settings. Plant noise is controlled by a condition of the original permission in any event.
12. The acoustic consultants have modelled the impact of vehicle movements on ambient noise, and have concluded that the worst-case scenario would be a 2.2dB increase between the hours of 2300 and midnight. It is generally considered that +3dB is the level at which change would be perceptible. The Council points out that since no background noise monitoring was carried out at 7 and 8 Clyde Court, the NIA may underestimate the impact of passing vehicles at these properties. However, this may be offset by the fact that the assessment uses a number of worst-case assumptions in the analysis.
13. Impulsive sounds from car doors being slammed is another potential source of nuisance. The World Health Organisation guideline value for the onset of sleep disturbance could be exceeded in worst-case scenarios, were the residents of Clyde Court to leave their windows open whilst customers park their cars in the spaces closest to the boundary. The NIA has therefore recommended mitigation in the form of cordoning off those parking spaces within 25 m of Clyde Court. This would reduce the impact from Lowest Observed Adverse Effect Level to No Observable Effect Level. The Council contends that the mitigation would be impractical and unenforceable, but it has been offered within the NIA and there is no reason why it should not be secured by means of a planning condition.
14. The methodology within the NIA is robust. However, there are uncertainties within the analysis. It seems unlikely that the proposal would result in significant disturbance for neighbouring residents, given the ambient noise from nearby roads and relatively high maximum noise levels. Nevertheless, I consider that it would be appropriate to grant the extended hours for a temporary period in order that the impacts can be reviewed. The Council could then determine whether the mitigation measures set out within Section 9 and Appendix C of the NIA had been successful. This approach would accord with the objective of RLP Policies DE1 and DE10 to avoid harm to adjacent users through noise.

Other Matters

15. I have taken into account the representations and petitions from residents. These raise a wide range of concerns in relation to matters such as traffic, litter, odours and anti-social behaviour. Whilst I acknowledge that the opening of McDonalds will have affected the local community, I do not consider that the extended opening hours being proposed would lead to such additional impacts as to justify dismissal of the appeal.

Conditions and Conclusion

16. For the reasons set out above and having regard to all other matters raised, including the Inspector's decision for the nearby KFC development, I conclude that the appeal should be allowed on a temporary basis. The effect would be to create a new planning permission and therefore I have reimposed those conditions from the original permission insofar as they are still relevant and

¹ This category relates to the Noise Exposure Hierarchy set out in the Planning Practice Guidance

capable of subsisting, with the wording amended to reflect the fact that the development has been brought into use.

17. I have worded the relevant condition to ensure that the extended hours enure for a period of 1 year beginning with the date on which the appellant gives notice of their commencement. This will enable the appellant to prepare for the change in hours and provide an opportunity for the Council to monitor the impact, including the efficacy of the appellant's proffered mitigation measures.

Robert Parker

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The restaurant/takeaway/drive-through uses hereby permitted may operate between the hours of 0600 to 0000 (midnight) for a temporary period of one year and only on the condition that all noise mitigation measures included in the submitted Noise Impact Assessment report 'McDonalds Ash Road Aldershot 14-0167-79 RO2' carried out by Sustainable Acoustics are implemented. During the temporary period the restaurant/takeaway/drive-through uses shall not be open to customers outside the hours of 0600 to 0000 (midnight).

The Local Planning Authority shall be notified in writing within five days of the extended hours of operation commencing. Upon the expiry of the one year temporary period, the permitted hours of operation for the restaurant, takeaway and drive-through shall revert back to 0700 to 2300. Thereafter, the restaurant/takeaway/drive-through uses shall not be open to customers outside the hours of 0700 to 2300 without a fresh grant of planning permission.

For the avoidance of doubt, the mitigation measures referenced above include:

- Adjusting plant and kitchen extract to night-time settings;
 - Cordoning off those parking spaces closest to Clyde Court; and
 - Compliance with the Premises Noise Management Plan set out within Appendix C of the Noise Impact Assessment.
- 2) With the exception of the proposed acoustic fencing, the boundary treatment as shown in the approved plans shall be implemented in full and thereafter retained/maintained.
 - 3) Provision shall be made for services to be placed underground. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no overhead electricity, telecommunications or service lines shall be erected or placed above the ground of the site without the express written consent of the Local Planning Authority.
 - 4) The landscaping scheme hereby approved shall be implemented in full. Any tree/shrub removed, dying or becoming seriously diseased within five years of planting shall be replaced by trees/shrubs of similar size and species to those originally required to be planted.
 - 5) The drainage strategy for this site shall be implemented in accordance with the details shown on drawing number 161444-DR-0002 rev P04 and thereafter retained in perpetuity.
 - 6) The lighting strategy for this site shall be implemented in accordance with drawing number D-195408 rev 3 and the details of streetlighting columns and LUMA luminaires and thereafter maintained/retained.

- 7) The plant and machinery hereby approved shall be installed in accordance with the noise levels and mitigation measures as set out in the Environment Noise Assessment and supplementary Environment Noise Information prepared by Peter Ashford of Acoustic Associates South West Ltd dated 13 October 2015 and 4 April 2016 and thereafter retained in accordance with these approved details.
- 8) Means of suppressing and directing fumes and smells from the premises shall be installed in accordance with the details approved under application reference 16/00738/CONDPP dated 14 December 2016 and thereafter maintained/retained.
- 9) Deliveries and refuse collections to/from the premises shall only take place between the hours of 8am to 9pm.
- 10) Unless shown on the approved plans no display or storage of goods, materials, plant, or equipment shall take place other than within the buildings.
- 11) The vehicle and cycle parking facilities shown on the approved plans shall be completed and made ready for use and shall be thereafter retained solely for parking purposes (to be used by the occupiers of, and visitors to, the development).
- 12) Notwithstanding the details shown on drawing number 6485-SA-8986-P205 B, the first floor windows in the east elevation shall be obscurely glazed to a minimum height of 1.7 metres above the internal floor level and so retained thereafter.
- 13) The acoustic fencing shown on the approved plans shall be retained and maintained in accordance with these details and as approved under application reference 16/00745/CONDPP dated 2 December 2016 for the duration of the operational life of the premises.
- 14) The permission hereby granted shall be carried out in accordance with the following approved drawings – 6485-SA-8085-P302A, P304 C, 6485-SA8986-P205 B and 206 A, Sign type 8, 161444-DR-0002 rev P04, 0003 rev P06 and 0004 rev P03, MK MCD ALD 01 (Rev D), 161444-HYD-XX-XX-DR-TP-001 Rev P2 and 0200 rev P2 and D195408 rev 3.

*** END ***