



Appeal Decision

Site visit made on 4 February 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2022

Appeal Ref: APP/Z4718/W/21/3285518

**Land at Owl Lane, John Ormsby V C Way, Shaw Cross, Dewsbury
WF12 7RQ**

- 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 Ltd against the decision of Kirklees Metropolitan Council.
 - The application Ref 2020/62/90450/E, dated 10 February 2020, was refused by notice dated 27 April 2021.
 - The development proposed is described on the application form as: 'erection of a freestanding restaurant with drive-thru facility, car parking, landscaping, play frame, including Customer Order Displays (COD) and associated works'.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a freestanding restaurant with drive-thru facility, car parking, landscaping, play frame, including Customer Order Displays (COD) and associated works at Land at Owl Lane, John Ormsby V C Way, Shaw Cross, Dewsbury WF12 7RQ in accordance with the terms of the application, Ref 2020/62/90450/E, dated 10 February 2020, subject to the conditions as set out in the attached schedules.

Main Issue

2. The main issue is the effect of the proposal on public health.

Reasons

3. The appeal site is a vacant parcel of land located adjacent to John Ormsby VC Way. The site is predominantly rough grassland containing shrubs and trees. An office building and its car park adjoins the south of the site whilst to the east are residential properties accessed from Owl Lane. The site is located close to a roundabout which includes a junction with a large industrial area to the west. The Shaw Cross Infant and Nursery School is located approximately 110 metres to the north east of the appeal site¹.
4. Consistent with the general provisions of paragraph 92 of the National Planning Policy Framework (the Framework), Policy LP47 of the Kirklees Local Plan (2019) (KLP) seeks to create an environment which supports healthy, active and safe communities and reduces inequality. In doing so it seeks to enable healthy, active and safe lifestyles through multiple means such as, improving access to green space and recreation facilities, encouraging walking and cycling, protecting air quality, preserving and improving sports facilities,

¹ Based on measurements included in the Council's Committee Report.

supporting healthy eating, and working with partners to manage the location of hot food take-aways, particularly in areas of poor health. Policy LP47 and Framework paragraph 92 therefore recognise that promoting good health is multi-faceted.

5. Further advice is given in the Planning Practice Guidance (PPG) which indicates that planning can influence the built environment to improve health and reduce obesity and excess weight in local communities². Where the evidence demonstrates it is appropriate, the PPG indicates that planning can seek to limit the proliferation of particular uses. In doing so it indicates that, amongst other things, decision takers may have regard to the proximity to locations where children and young people congregate, evidence indicating high levels of obesity, deprivation, health inequalities and general poor health, and an over concentration of certain uses in an area.
6. On the matter of whether the appeal site lies within an area of poor health, the Council states that the appeal site has high levels of overweight or obese children and adults. In making this assessment, the Council has had regard to its Public Health Tool (PHT), the results of which have been provided by the Kirklees Public Health section. Sites are considered against a variety of indicators and score points where they are around the average or above based on set ranges. The greater the PHT score, the worse health inequality is said to be.
7. The Council states that the appeal site is within the 10 – 20% most deprived wards in Kirklees. That, as I understand it, reflects the Governments Indices of Deprivation for the lower super output level, which is in itself a combination of multiple further metrics rather than health specific indicators. That is also one of a number of indicators comprising the PHT, and I note that this is the only indicator in which the appeal site receives the maximum ('worst') score. This is also the only indicator in which the Council do not provide an exact figure, instead relying on a range. The appellant contends that this figure is 20% although similarly does not provide evidence for this. However, I note that were the site scored 4, as the appellant contends it should be, the location of the proposal would be deemed acceptable by the tool.
8. The remaining indicators comprising the PHT relate more specifically to health. In this regard, the percentage of obese adults, five year olds with excess weight and prevalence of coronary heart disease are above the average range for Kirklees. However, none of these indicators lie within the 'worst' category; they are therefore slightly elevated. I note the evidence is nuanced. For example, the percentage of eleven year olds with excess weight and prevalence of diabetes are within the range of the Kirklees average, whilst the proportion of adults overweight is below the average for Kirklees as a whole.
9. On the basis of the above evidence, obesity levels are slightly above average for Kirklees and the appeal site is located in a reasonably deprived area (notwithstanding the dispute between the parties). Incidences of poor health derived from lifestyle factors are, on the evidence before me, average or slightly above average. Whilst I have had regard to the Kirklees Health and Wellbeing Plan (2018-2023) and the Council's commitment to the Healthy Weight Declaration, I have not been provided with any other reasons why the particular location of the appeal site is not acceptable such as those contained

² Paragraph: 004 Reference ID:53-004-20190722

within the PPG. For example, the Council argues that this is an area of deprivation and fast-food outlets are more prevalent in such areas. Although supported by research in general terms, that is not evidenced in this particular location. I have not been provided with details of the number of fast-food outlets nearby, nor has the Council stated that there is a particular proliferation of such uses within this area. I was unable to identify other comparable uses in the immediate vicinity during my site visit.

10. The Council also does not raise concern with regard to the proximity of the appeal site to the aforementioned Infant School, whilst the distance to any other schools is not evidenced. It has not been stated that the appeal site lies within an area or close to an area where young people congregate. Indeed, I saw how the site is adjacent to an industrial area of the town and to Leeds Road (A653), an arterial route through Dewsbury, rather than in a location that would readily lend itself to individuals congregating.
11. Based on the information before me it appears that health levels in the vicinity of the appeal site are slightly lower than average for the District, but not significantly so. Therefore, whilst I accept that fast food outlets could be a contributory factor towards obesity, amongst many other factors, I have not been provided with convincing evidence that the proposal would represent a clear conflict with the aim of Policy LP47, namely, to create an environment which supports healthy, active and safe communities.
12. I therefore conclude that the proposal would not have an unacceptable effect on public health. It would not conflict with Policy LP47 of the KLP as reasoned above. There would also be no conflict with the aims of Chapter 8 of the Framework which seeks to ensure planning decisions achieve healthy, inclusive and safe places which, amongst other things, enable and support healthy lifestyles, especially where this would address identified local health and well-being needs, including through improving access to healthier food.

Other Matters

13. My attention has been drawn to an emerging SPD relating to hot food takeaways. However, both parties have agreed that it carries limited weight in the determination of this appeal, given that public consultation has only recently been completed. In any event, as set out in the Framework, an SPD should add further detail to, rather than amend, the policies within the development plan.
14. I have taken careful account of all the representations before me, including in respect of traffic generation, effects on property values, on local business and potential for anti-social behaviour. However, the appeal site lies within an area characterised by a mix of uses, and there is nothing to indicate that the volume of traffic that would be generated, or site access, would be likely to lead to adverse effects in that context. I also note the Highway Authority raised no objections in that regard. Effects on property values are multi-faceted, and essentially outside planning considerations. Similarly, competition between different similar uses is a matter outside of planning, and there is no substantive evidence before me as to the effect of the proposal in that respect either way (and it may have both advantages and disadvantages).
15. Likewise, provision exists outside of planning to deal with anti-social behaviour, and I note that the West Yorkshire Police Architectural Liaison officer has made

recommendations in respect of the proposal. In that context, whilst I understand the perspective of those nearby, no other matter is sufficient to outweigh my overall finding that the development proposed would be acceptable. I would furthermore note that many potential implications of the scheme are addressed through conditions, which I turn to below.

Conditions

16. I have considered the conditions suggested by the Council in the light of the tests and advice within the Framework and the Planning Practice Guidance. I have undertaken some minor editing and rationalisation of the conditions proposed by the Council in the interests of precision and clarity. I have also limited the number of pre-commencement clauses to those cases where this is essential for the condition to achieve its purpose.
17. Conditions are necessary in respect of commencement time and relating the development to the submitted plans. Details of external materials are required to ensure the proposal integrates acceptably with the character and appearance of the area. A condition relating to the implementation of the landscaping scheme shown on the approved plans is required for the same reason.
18. I have had regard to the Council's suggested condition in relation to drainage however this repeats condition 2. I have imposed a condition requiring the extraction system to be installed and operational prior to first use in the interests of environmental protection and the living conditions of nearby residents. With reference to the approach in the PPG that is a proportionate and necessary response to the nature of the site.
19. In the interests of the protection of public health and safety, I have imposed a condition requiring submission of a Phase II Intrusive Site Investigation Report and, if required, a Remediation Strategy and Validation Report with regard to contaminated land as recommended by the Council's Environmental Control Officer. With reference to the approach in the PPG that is a proportionate and necessary response to the nature of the site.
20. Conditions relating to opening hours and delivery times are necessary in the interests of living conditions of nearby residents. Similarly, conditions requiring the submission of a lighting scheme, provision of an acoustic fence and the development to be carried out in accordance with the Construction Management Plan are also required for that reason.
21. The proposed levels plan (drawing ref: 4190299-1000-P1) shows retaining structures and embankments that are not clear on the site layout plan. Therefore, it is reasonable to impose a condition requiring further details.
22. I have not imposed the Council's suggested condition securing the tactile paving and dropped kerbs identified in the Road Safety Audit as this would relate to land outside of the application site. Nonetheless, in line with the second part of the suggested condition, it is appropriate to ensure that the access and parking is laid out prior to the first use of the restaurant. I have also included a condition requiring details of the site access and arrangements for construction vehicles, given the proximity of the site to a busy road junction. In line with Policy LP20 of the KLP, it is further necessary to impose a condition requiring that electric vehicle charging point provision is made.

23. I am statutorily required to have regard to conserving biodiversity, and paragraph 174. d) of the Framework sets out how decisions should seek to minimise impacts in that regard. Condition 18 is therefore necessary in order to avoid disturbance arising from construction to nesting birds.

Conclusion

24. For the reasons given above, having considered the development plan along with all other relevant material considerations, I conclude that the appeal should be allowed.

Paul Martinson

INSPECTOR

SCHEDULE 1 - 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 approved plans listed in Schedule 2.
- 3) Samples of all facing and roofing materials shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of construction of any external walls of the freestanding restaurant building hereby approved. The development shall be carried out in accordance with the approved details and shall be thereafter retained as such.
- 4) Prior to the first use of the restaurant building hereby approved, the kitchen extract system shall be installed and made operational in accordance with the Odour Control Assessment by CDM Partnership, dated August 2020 (Ref: 200808 McD Dewsbury Odour control.docx Rev: 00). The kitchen extract system shall thereafter be retained, operated at all times during the preparation and cooking of food and maintained in accordance with the Odour Control Assessment.
- 5) Groundworks (other than those required for a site investigation report) shall not commence until a Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the Local Planning Authority.
- 6) Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to condition 5, further groundworks shall not commence until a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.
- 7) Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to condition 6. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered is identified or encountered on site, all groundworks in the affected area (except for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.
- 8) Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. No part of the site shall be brought into use until such time as the remediation measures have been completed for the site in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.

- 9) The use hereby permitted shall not be open to customers outside of the hours of between 05.00 and 00.00 on any day.
- 10) There shall be no deliveries to or dispatches from the premises hereby permitted outside of the hours of between 09:00 and 22:00 Monday to Saturdays.
- 11) The development shall be carried out in accordance with the noise and dust mitigation measures contained within the Construction Management Plan by Glanville (Ref:MD4190299/CP/013) (Dated 7th September 2020) which shall be maintained for the duration of the construction period.
- 12) Before the installation of external artificial lighting commences a lighting scheme shall be submitted to and approved in writing by the local planning authority. The scheme should include the following information:
 - a) The proposed hours of operation of the lighting;
 - b) The location and specification of all of the luminaires;
 - c) The proposed design level of maintained average horizontal illuminance for the areas that needs to be illuminated;
 - d) The predicted vertical illuminance that will be caused by the proposed lighting when measured at windows of any properties in the vicinity;
 - e) The measures that will be taken to minimise or eliminate glare and stray light arising from the use of the lighting that is caused beyond the boundary of the site;
 - f) The methods of switching and controlling the lighting so that it is only operated at the permitted times and at times when it is required.The external artificial lighting shall be installed, retained and operated thereafter in accordance with the approved scheme.
- 13) Prior to any construction vehicles entering the site, a schedule of the means of access to the site for construction traffic shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall include the point of access for construction traffic, details of the times of use of the access, the routing of construction traffic to and from the site, construction workers' parking facilities and the provision, use and retention of adequate wheel washing facilities within the site. All construction arrangements shall be carried out in accordance with the approved schedule throughout the period of construction.
- 14) The access and parking arrangements shown on drawing Proposed Site Layout 7866-SA-8587- P004 Rev D shall be laid out and completed prior to the first use of the development hereby permitted. The access and parking areas shall be retained as such thereafter and shall not be used for any other purpose.
- 15) Prior to the construction of any retaining walls or embankments at the site, full details of these including cross sectional drawings shall be submitted to and approved in writing by the local planning authority. The approved walls and embankments shall be installed prior to the first use of the development hereby approved and shall thereafter be maintained.
- 16) Prior to the first use of the development hereby permitted, 4 electric vehicle charging bays, fitted with electric vehicle charging points, as

shown on the approved plan 7866-SA-8587- P004 Rev D, shall have been installed and made available for use. The charging bays and charging points shall be retained as such thereafter and not be used for any other purpose.

- 17) All planting, seeding or turfing comprised in the approved details of landscaping as shown on drawing 16716-VL-MCD_L01 shall be carried out in the first planting and seeding seasons following the first use of the development, and any trees, shrubs, hedges or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 18) Before any demolition, vegetation clearance or groundworks associated with the development hereby permitted takes place between the bird breeding season of 1 March to 31 August in any year, a survey prepared by an appropriately qualified individual shall have been undertaken to check for nesting birds. Where any active nests are found details of a mitigation scheme shall be submitted to and approved in writing by the local planning authority prior to works affecting that area commencing. The works shall then be carried out in accordance with the approved mitigation scheme.
- 19) The 4.6m high Acoustic Fence shown on approved plan ref 7866-SA—8587-P004D shall be installed in accordance with the approved details prior to the first use of the development hereby approved. The fence shall be retained as such thereafter.

SCHEDULE 2 – APPROVED PLANS

Site Location Plan 7866-SA-8587- AL01 Rev C
Block Plan 7866-SA-8587- P002 Rev E
Proposed Site Layout 7866-SA-8587- P004 Rev D
Proposed Elevations and Sections 7866-SA-8587- P005 Rev C
Proposed Ground Floor and Roof Plans 7866-SA-8587- P006 Rev C
Site Layout Plan – Landscape 7866-SA-8587- P007 B
Elevations and Plan – Bin Store 7866-SA-8587- P028 B
Landscape Plan 16716-VLMCD_L01 B
Proposed Levels 4190299-1000-P1
Tree Survey and Constraints Plan 8054-D-CP
Site Feasibility Plan 7866-SA-8587- SK10 Rev A
3x3 Play Frame Plans and Elevations E09-0046227-SA-XXXX-OPL3
Supporting Statement Dewsbury 2(1)
EVCP-Page 1-Pod Point Data Sheet Twin (S Range)
EVCP-Page 2-Pod Point Data Sheet Twin (S Range)
Play Frame 3x3 Planning Leaflet E09-004
Standard Patio Area Supporting Specifications Booklet
Goal Post and McDigit COD Canopy Brochure
Refuse Storage and Recycling Statement
Cycle Locker Velo Box Locker
Litter Patrol Plan
Odour Control Standard Supporting Information
Owl Lane Dewsbury PEA Report January 2020
Travel Plan 39889 January 2020
Site Survey 8180507-410
Transport Statement February 2020
Noise Assessment 7281
Ground Investigation Report 19.05.014 August 2019
Dewsbury Drainage Statement February 2020
Landscape Maintenance and Management Plan 16716-VL_R01
Raised Planter Plan 16716-VLMCD_L02
Biodiversity Enhancement Plan 17616-VLMCD_V01 13th January 2021
Odour Control Assessment Rev 00
Construction Management Plan MD4190299/CP/013 7 September 2020
Fatstrippa Details FS150-01
Grease/Food Separation Tank T25368 03967_002 A
Grease Trap
Environmental Noise Assessment 7281 - Dewsbury Rev 12