



Appeal Decision

Site visit made on 20 December 2022

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2023

Appeal Ref: APP/F5540/W/22/3303770

322 High Street, Hounslow, Brentford TW8 0JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the 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 McDonald's Restaurants Ltd against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00607/B/P22 is dated 4 March 2022 was refused by notice dated 28 April 2022.
 - The application sought planning permission for "*the variation of condition 3 (hours of opening) of permission 00607/B/P16 approved 16/08/2012 for the variation of condition 1 (hours of opening) of permission 00607/B/P13 approved 08/02/2005 for the variation of condition 5 (opening and closing hours) of planning permission 00607/B/P11 approved 19/09/1996*" without complying with a condition attached to planning permission Ref 00607/B/P16, dated 16 August 2012.
 - The condition in dispute is No 3 which states that:
The use hereby permitted shall not be carried on outside the hours of 05:00 to 2400hrs Monday to Sunday.
 - The reason given for the condition is:
To safeguard the amenities of residential properties.
-

Decision

1. The appeal is allowed and planning permission ref 00607/B/P22 for the variation of condition 3 (hours of opening) of permission 00607/B/P16 approved 16/08/2012 for the variation of condition 1 (hours of opening) of permission 00607/B/P13 approved 08/02/2005 for the variation of condition 5 (opening and closing hours) of planning permission 00607/B/P11 approved 19/09/1996 at 322 High Street, Hounslow, Brentford TW8 0JS dated 4 March 2022 without compliance with condition No. 3 previously imposed on planning permission 00607/B/P16 dated 16 August 2012 and subject to the following conditions:
 - 1) The premises shall be used only for restaurant purposes with or without take-away facilities and for no other purpose (including any other purpose in Class E of the schedule to the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 or an order revoking or re-enacting that order.
 - 2) The use hereby permitted shall not be carried on outside the hours of 0500 to 0000 (midnight) Monday to Sunday.
 - 3) No deliveries shall be taken to or dispatched from the site outside the hours of 0830 to 1900 Monday to Saturday, nor at any time on Sundays or Bank Holidays.

- 4) The car parking, loading and turning spaces shown on the drawing 940443/12a shall not be used for any other purpose.
- 5) The details of the landscaping previously approved shall be permanently maintained for the lifetime of the development.

Procedural Matter

2. The description of the development on the planning application form refers to 'planning permission 00607/B/P16 approved 15/08/2012' however the decision notice I have been provided with is dated 16 August 2012. I have corrected the date in the banner and in my decision above.

Background and Main Issue

3. The appeal site is a drive-through restaurant. It was granted planning permission in 1996¹, subject to a condition limiting the opening hours to 0700 – 2300 Monday to Friday, 0800 – 2300 on Saturdays and 0830 – 2300 on Sundays and Bank Holidays. Two subsequent planning permissions have been granted by the Council to extend the opening hours of the restaurant. The current permitted² opening hours of the premises are 0500 to 2400hrs [*sic*] Monday to Sunday. The appellant now wishes to extend the opening hours to 0500 to 0200 Monday to Sunday.
4. The main issue is the effect of varying the opening hours on the living conditions of neighbouring residents with particular regard to noise and disturbance.

Reasons

5. The appeal site is situated on the corner of Brentford High Street (A315) and Ealing Road (B455). Vehicular access to the site is from both Brentford High Street and Ealing Road. The drive-through service points are to the rear of the site. A high brick wall separates the appeal site from adjacent blocks of residential flats. Habitable rooms and open balconies are close to the boundary of the site and exposed above the height of the wall. There also residential flats close by on Ealing Road.
6. The appellant has submitted a Noise Impact Assessment (NIA) which demonstrates that background noise during the day and into the evening is high, the principal contributors being road traffic from Brentford High Street and Ealing Road and plant equipment on the roof of the appeal building. This is supported by observations and representations made by the Council that plant noise from the premises, amongst other things, has been a source of previous complaints relating to the operation of the restaurant.
7. The NIA also shows background noise levels drop during the hours which the restaurant is closed. The NIA does not explain whether this is due to lower levels of traffic or is directly related to the closure of the restaurant site. Although the location experiences high levels of noise from traffic and aircraft noise, during these hours residents could have a reasonable expectation that their living environment would be quieter. Moreover, any additional noise and disturbance arising from extended opening hours would be more readily

¹ Planning Permission ref: 00607/B/P11 dated 19 September 1996

² Planning permission ref: 00607/B/P16 dated 16 August 2012

appreciated by residents as a result of relatively lower background noise levels from the road.

8. Noise and general disturbance generated from the comings and goings of customers to the restaurant would be likely to include noise from car engines, car doors slamming, people talking and possibly congregating in groups in the car park outside. It would also be likely to arise from the mechanical noise of the rooftop plant and equipment as well as staff legitimately engaged in activities such as clearing away and locking up the premises at closing time which would all impact on occupiers of the properties close by.
9. The drive-through operation is 12m from the nearest residential property. The appellant states that the premises do not have a history of anti-social behaviour problems. Nevertheless, the Council state that they receive regular complaints regarding noise from the premises, associated with customers and delivery drivers waiting outside and a representation made indicates that noise from the restaurant is a matter of concern for residents close by.
10. The NIA's noise monitoring exercise was limited to just one occasion on a Thursday night / Friday morning in November 2021. Furthermore, no observed NIA was carried out on a weekend evening when activity levels are likely to be higher. From my observations on site most commercial premises in the area advertise that they close prior to midnight. The premises therefore are likely to be a focus for late night activity, especially at weekends. Furthermore, the plant was not switched off until over 30 minutes after the restaurant had closed.
11. I note that NIA monitoring location MP3 is some distance further away from the appeal site than the nearest noise sensitive receptor. The NIA states that noise readings were taken at a height of 1.2-1.5m above ground level. However, the majority of residential units in this location are above the height of the boundary wall and therefore the monitoring location is not indicative of the noise levels that a significant number of occupiers would experience in proximity to the appeal site over and above the height of the boundary wall.
12. The appellant admits, and the NIA acknowledges, that the rooftop plant is operating at a noise level above the significant observable adverse effect threshold (SOAEL). I have no information before me as to whether this is because the equipment was faulty at the time of the NIA. However, the appellant suggests that this could be reduced by the installation of a silencer which could be requested by the imposition of planning condition.
13. No details of the type or specification of the proposed silencer has been submitted with the appeal. I do not have sufficient information before me in order to reasonably impose an enforceable condition for the installation of appropriate mitigation and future operation of the equipment. Without these details I cannot be sure that the imposition of a condition would be able to sufficiently address the matter. Furthermore, the need for the plant equipment to be kept in good working order to ensure noise levels to be acceptable does cause me to have concerns for future noise levels. The condition would be required in order to make the extended hours of opening acceptable.
14. I acknowledge that the appellant considers themselves to be a good neighbour and have a series of management measures in place to try and achieve this. However, the measures are largely reactive and would not provide a fail-safe

mechanism to ensure that the living conditions of the occupiers of nearby residential properties would be unaffected by the extended opening hours.

15. For the above reasons, it has not been robustly and compellingly demonstrated that the proposal to extend opening hours would not cause harm to the living conditions of occupiers of neighbouring properties. As such, the condition as previously imposed is necessary in the interests of living conditions, and its variation to extend hours would be harmful thereto, contrary to London Borough of Hounslow Local Plan 2015-2030 Volume One (the Local Plan) Policy EQ5 and London Plan Policy D14 which seeks to minimise noise disturbance from adjoining uses is minimised to ensure that the health and quality of life of the occupiers of neighbouring properties is protected. The Council decision notice also refers to Local Plan Policies CC1 and CC2 which relate to design matters and have not been determinative in the appeal.
16. However, I note that the condition in dispute is written using 2400 denoting midnight. As this is an inappropriate use of the 24-hour clock system I shall vary the condition to regularise the wording of the condition to read 0000 (midnight).

Other Matters

17. The appellant has referred to a number of other McDonald's outlets which operate with similar opening hours to those proposed in the appeal before me. I do not have the details of these cases before me, nor am I aware of their locational context or the details surrounding the granting of these permissions. Therefore, I cannot be certain that there are any direct comparisons between these and the proposal before me that would weigh in its favour. In any event I have considered this appeal on its own merits.

Conditions

18. The Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. I have, however, updated condition 1 to reflect the current Use Classes classification of the premises, however this condition otherwise remains as imposed in previous planning permissions for the premises.

Conclusion

19. The appeal fails in respect of the desire to vary condition No. 3 to extend the opening hours. For the reasons given above, I shall vary the planning permission by deleting the disputed condition and substituting it for an amended condition No. 3 as indicated in my decision.

KL Robbie

INSPECTOR