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# Appeal Decision

Site visit made on 6 December 2022

**by Elaine Moulton BA (Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23<sup>rd</sup> February 2023**

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**Appeal Ref: APP/B4215/W/22/3304464**

**10 Queens Road, Manchester M8 8UF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A 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 Limited against the decision of Manchester City Council.
  - The application Ref 132796/JO/2022, dated 27 January 2022, was refused by notice dated 29 April 2022.
  - The application sought planning permission for the erection of a two-storey (Use Classes A3/A5) drive-through restaurant facing Queens Road and erection of single-storey (Use Class A3) restaurant, together with formation of link road to connect proposed development sites, and associated car parking, landscaping, boundary treatment and other associated works, following demolition of former Irish World Heritage Centre without complying with a condition attached to planning permission Ref 104616/FO/2014/N1, dated 12 February 2014.
  - The condition in dispute is No 3 which states that: The A3/A5 premises and the A3 premises shall not be open outside the following unit specific hours: A3/A5 McDonalds Unit only 6:00 to 23:00 daily; A5 Frankie and Benny's Unit only 9:00 to 23:00 daily.
  - The reason given for the condition is: In interests of the amenities of the occupiers of neighbouring residential properties, in order to reduce noise and general disturbance, in accordance with policy DM1 of Manchester's Core Strategy, and policies DC26 and DC10 of the saved Unitary Development Plan for the City of Manchester.
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## Decision

1. The appeal is allowed and the planning permission is granted for the erection of a two-storey (Use Classes A3/A5) drive-through restaurant facing Queens Road and erection of single-storey (Use Class A3) restaurant, together with formation of link road to connect proposed development sites, and associated car parking, landscaping, boundary treatment and other associated works, following demolition of former Irish World Heritage Centre at 10 Queens Road, Manchester M8 8UF in accordance with application Ref 132796/JO/2022, without compliance of condition No 3 previously imposed on planning permission Ref 104616/FO/2014/N1 dated 12 February 2014 and subject to the conditions identified in the attached Schedule.

## Preliminary Matter

2. The date of the decision, set out in the fourth bullet point above, is taken from the decision notice for planning permission Ref 104616/FO/2014/N1, which differs from the date of the decision as stated in the application form to vary the condition.

## Background and Main Issue

3. The appellant has operated a restaurant and 'drive-thru' at the appeal site following the granting of planning permission in 2014. The appellant seeks to extend the opening hours so that it can trade 24 hours a day, seven days a week, by varying a condition on the original planning permission. Currently the restaurant and 'drive-thru' operate between 06:00 and 23:00 daily.
4. The Council have concerns that the longer opening hours would have a detrimental impact on the amenity of neighbouring residents due to the increase in activity and associated noise and disturbance.
5. The Government's *Planning Practice Guidance* (PPG) makes it clear that the decision taker shall consider only the question of the conditions subject to which planning permission should be granted. It is not a complete re-consideration of the original application.
6. Therefore, I consider the main issue in this case is the effect that the variation of the condition would have on the living conditions of the occupiers of nearby residential properties on Queens Road and Signet Walk, with particular regard to noise and other disturbance.

## Reasons

7. The appeal site is adjacent to Queens Road (A6010), a busy arterial route close to a junction with Cheetham Hill Road (A665). Traffic is a significant contributor to the established noise environment surrounding the appeal site. Manchester Fort Shopping Park adjoins the appeal site to the rear. Residential properties, on Signet Walk, adjoin the site to the side behind a close boarded timber fence, with further residential properties opposite on Queens Road. The site is also close to Cheetham Hill Retail Park.
8. Vehicles enter and leave the appeal site via Queens Road. The 'drive-thru' lane circulates around the restaurant in a clockwise direction, with orders being taken via Customer Order Displays (COD) alongside the rear elevation and collections taking place on the front elevation facing Queens Road.
9. The appellant has provided a comprehensive Noise Impact Assessment (NIA)<sup>1</sup>. Using a combination of attended and unattended noise survey measurements, the NIA considers potential noise impacts of the proposed extension of opening hours arising from people, vehicles, COD and roof plant. The NIA concludes that the noise impact for the proposed extension of the opening hours other than in respect of the COD, would be unlikely to cause any measurable impact on residential amenity and that such activity should therefore be considered to be at the No Observable Effect Level (NOEL).
10. The appellant indicates that most visits to the restaurant and 'drive-thru' during the proposed extended hours of operation would arise from passing trade rather than due to a dedicated trip. Given the location of the site on a busy arterial road within a built-up area it is reasonable to conclude that most of such vehicles will already be on the local road network. Whilst there will be some dedicated trips, I am satisfied that the proposal will not materially increase vehicular traffic in the area even late at night.

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<sup>1</sup> Noise Impact Assessment Savills (UK) Ltd, 17 November 2021

11. The Council do not accept that the NIA appropriately assesses the impact of individual noise events on the living conditions of neighbouring occupants. The NIA assessment states that it is based on a worst-case scenario with all customers for the worst-case hour arriving at once, using the closest parking space to the receptor and half of them raising their voices. On this basis the NIA assesses that the impact of such activity would be at the NOEL.
12. Whilst I acknowledge the Council's concerns, in the absence of any technical evidence from them that disputes the findings of the NIA, I have no basis to disagree with its conclusions. Moreover, I note that a condition of planning permission Ref 104616/FO/2014/N1 requires patrons to park in spaces to the south of the unit, furthest away from the nearest residential properties, between 06:00 and 07:00 in the interests of the amenities of the occupiers of such properties. Such a condition could be adjusted to cover the entire night-time period to avoid the parking spaces closest to residential properties being used, thereby reducing any noise and disturbance associated with their use.
13. The appellant states that customers are typically taxi drivers, shift workers, delivery drivers and emergency services operatives. The appellant states that these trips would be largely short in duration and such customer groups are not prone to causing antisocial behaviour or significant noise. This is not disputed by the Council. However, local residents have raised concerns about issues of antisocial behaviour, and the Greater Manchester Police (GMP) have highlighted such issues occurring at the premises semi-regularly where people refuse to leave the premises which resulted in them being called out.
14. The appellant sets out pro-active measures to control antisocial behaviour within the submitted Site Management Plan (SMP) and Premises Noise Management Plan (PNMP) including use of CCTV and conflict avoidance training for managers. A condition could be imposed to ensure the implementation of such plans and I am satisfied that this would overcome many of the concerns relating to these matters.
15. The NIA predicts that ordering using the COD would have a low impact if the setting were lowered during night-time trade. The Council accept that the COD could be suitably controlled during the proposed additional hours by conditions and does not find the setting identified in the PNMP for the night-time period to be unacceptable. The NIA confirms that the change to the COD setting can be done automatically.
16. The Council have highlighted that the SMP does not also specify that the COD unit will be set at a lower level during the night-time period. However, I do not consider this to be necessary because the SMP, as worded, does not undermine or conflict with the requirements of the PNMP, which can be secured through the imposition of condition. Overall, I am satisfied that through conditions the use of the COD would be suitably controlled.
17. Environmental Health and the GMP have suggested that only the 'drive-thru' should operate under the proposed extended hours. However, the NIA provides technical evidence that the use of the restaurant at those times would not have an unacceptable impact on the living conditions of nearby residents. Furthermore, I consider that the proactive approach taken by the appellant as set out in the PNMP and SMP is sufficient to address issues of antisocial behaviour associated with the restaurant. I do not consider, therefore, that

there is justification to prevent the restaurant being used during the proposed extended hours.

18. In light of the above, I consider that the proposed variation to allow 24 hours trading would not result in significantly increased noise and disturbance to nearby residents, or levels of antisocial behaviour, subject to the imposition of the various mitigation measures set out in the SMP and PNMP, including restrictions on the volume of the COD system. In addition, the part of the car park that could be used during night-time hours could also be controlled. Such measures could reasonably be secured by condition.
19. Consequently, I find that the proposed variation of the condition would not give rise to significant adverse impacts upon the living conditions of the occupiers of nearby residential properties on Queens Road and Signet Walk, with particular regard to noise and other disturbance. The proposal would comply with Policies SP1, DM1 and C10 of Manchester's Local Development Framework Core Strategy Development Plan Document, and Policies DC10 and DC26 of The Unitary Development Plan. Such policies, amongst other things, seek to ensure that development has regard to, and does not result in an unacceptable impact on, neighbouring uses in terms of noise and disturbance.

### **Other Matters**

20. I note the concerns that have been raised regarding air pollution and loss of privacy. However, there is no specific evidence that demonstrates that the proposed extension of opening hours will materially increase air pollution. Furthermore, due to the distance between the parking spaces and the dwellings, and the existence of a boundary fence the proposal would not result in a material loss of privacy to the extent that the impact on living conditions would be unacceptable.

### **Conditions**

21. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The appellant has suggested adjustments to the wording of original conditions to take account of the current position. However, in the absence of any of the details that appear to have been approved, I have limited information before me about the status of the other conditions imposed on the original planning permission. I shall, therefore, impose all those conditions that I consider remain relevant. That some conditions may have been discharged is a matter which can be addressed by the parties.
22. In light of my findings above I consider that it is not necessary to comply with condition 6 of the planning permission. I have therefore replaced it with a new condition reflecting the wording suggested by the appellant. This includes removal of reference to Frankie and Benny's, as I noted they do not occupy a unit at Manchester Fort Shopping Park.
23. The development has already taken place, therefore a condition specifying the time limit for commencement and that the development is carried out in accordance with approved plans, including the materials annotated upon the plans, are not necessary. The time limits for other conditions have been

adjusted to require the submission of details within 3 months from the date of this permission.

24. In the absence of confirmation to the contrary, there is uncertainty as to whether the landscaping scheme required by planning permission Ref 104616/FO/2014/N1 has been implemented. I have therefore imposed a condition that, as well as requiring the submission of details within 3 months of the date of this permission also sets the period for implementation of the approved scheme to not later than 12 months from this permission.
25. The appellant has agreed to the imposition of a condition to require the restaurant and 'drive-thru' to operate in accordance with the provisions of the submitted PNMP and SMP. This condition is attached for the reasons set out above. It replaces condition 18 of planning permission Ref 104616/FO/2014/N1. I have also amended the condition which restricts which part of the car park could be used during specified hours for the reasons set out above.
26. I have not reimposed conditions 24, 25 and 30 of planning permission Ref 104616/FO/2014/N1 as construction has been completed and the matters covered by such conditions are no longer necessary.

### **Conclusion**

27. For the reasons given above, having regard to the development plan as a whole and all relevant material considerations, I conclude that the appeal should be allowed.

*Elaine Moulton*

INSPECTOR

### **Schedule of Conditions**

- 1) The restaurant and associated 'drive-thru' facility shall be operated in accordance with the Premises Noise Management Plan, set out as Appendix B of the Noise Impact Assessment Report No 14-0167-82 R01 dated 17 November 2021 and the Site Management Plan.
- 2) The A3 premises shall not be open outside of the hours of 09:00 to 23:00 daily. For the avoidance of doubt, the A3/A5 restaurant (McDonald's) may operate 24 hours a day, seven days a week.
- 3) Deliveries, servicing and collections, including waste collections, shall not be carried out other than during the following hours:  
07:30 to 20:00 Monday to Saturday  
No deliveries/waste collections on Sundays/Bank Holidays
- 4) External areas designated for the consumption of products purchased from the premises shall only be available/open during the following hours of operation:  
Mondays to Fridays 07:00 to 21:00  
Saturdays 07:00 to 21:00

Sundays and Bank Holidays 10:00 to 21:00

No amplified sound or any music shall be played in these external areas at any time.

- 5) Within 3 months from the date of this permission, in relation to the A3 unit, a scheme for the storage (including segregated waste recycling) and disposal of refuse for the A3 unit shall be submitted to and approved in writing by the City Council as local planning authority. The details of the approved scheme shall be implemented as part of the development and shall remain in situ whilst the use is in operation.
- 6) Within 3 months from the date of this permission, in relation to the A3 unit, a scheme for the extraction and discharge of fumes, vapours and odours from the premises shall be submitted to the City Council as local planning authority for prior approval in writing. The approved scheme shall be implemented prior to the commencement of the operation of the use, and shall be so maintained whilst the use is in operation.
- 7) Within 3 months from the date of this permission, in relation to the A3/A5 use, a scheme for the extraction and discharge of fumes, vapours and odours from the premises shall be submitted to the City Council as local planning authority for prior approval in writing. The approved scheme shall be implemented prior to the commencement of the operation of the use, and shall be so maintained whilst the use is in operation.
- 8) Within 3 months from the date of this permission, in relation to the A3 use, a scheme for externally mounted ancillary plant, equipment and servicing shall be submitted to the City Council as local planning authority for approval in writing in order to secure a reduction in the level of noise emanating from the site.

Externally mounted ancillary plant, equipment and servicing shall be selected and/or acoustically treated in accordance with a scheme designed so as to achieve a noise level of 5dB below the existing background (LA90) in each octave band at the nearest noise sensitive location.

- 9) Within 3 months from the date of this permission, in relation to the A3/A5 use, a scheme for externally mounted ancillary plant, equipment and servicing shall be submitted to the City Council as local planning authority for approval in writing in order to secure a reduction in the level of noise emanating from the site.

Externally mounted ancillary plant, equipment and servicing shall be selected and/or acoustically treated in accordance with a scheme designed so as to achieve a noise level of 5dB below the existing background (LA90) in each octave band at the nearest noise sensitive location.

- 10) Within 3 months from the date of this permission, in relation to the A3 unit, a local labour agreement addressing initiatives to employ at the development, people residing in the vicinity of the development, shall be submitted to and agreed in writing with the City Council as local planning authority. The approved scheme shall be in place prior to occupation of the development, and shall be kept in place thereafter, or such minor variation to that agreement as may be agreed between the Developer and the Council.



- 11) Within 3 months from the date of this permission, in relation to the A5/A3 unit, a local labour agreement addressing initiatives to employ at the development, people residing in the vicinity of the development, shall be submitted to and agreed in writing with the City Council as local planning authority. The approved scheme shall be in place prior to occupation of the development, and shall be kept in place thereafter, or such minor variation to that agreement as may be agreed between the Developer and the Council.
- 12) Within 3 months from the date of this permission, full details of a 'Box-junction' or similar and/or advisory signs, designed to warn motorists of the wide manoeuvring space required by delivery vehicles making the left-turn within The Fort, adjacent to Halfords, shall be submitted to the City Council as local planning authority for approval in writing. The approved details shall be implemented prior to the first operation of the units, and shall be so maintained.
- 13) Within 3 months from the date of this permission, full details of the cycle link, including road markings and precise location, shall be submitted to the City Council as local planning authority for approval in writing. The approved details shall be implemented prior to the first operation of the units, and shall be so maintained.
- 14) Within 3 months from the date of this permission, full details of the off-site highways works shall be submitted to the City Council as local planning authority for approval in writing. Off-site highway works include the proposed new vehicle access onto Queens Road; the reinstatement of the Queens Road footway across the existing vehicle access; pedestrian crossing facilities across the proposed vehicle access, comprising of dropped kerbs, tactile pavers and a central pedestrian refuge; and confirmation of the boundary between the adopted and unadopted highway and how this boundary will be demarcated. The approved details shall be implemented prior to the first operation of the units, and shall be so maintained.
- 15) Within 3 months from the date of this permission, full details of the signage measures to discourage the new access road from becoming a 'rat run' or 'short cut' shall be submitted to the City Council as local planning authority for approval in writing. The approved details shall be implemented prior to the first operation of the units, and shall be so maintained.
- 16) Within 3 months from the date of this permission, full details of the proposed location for cash in transit vans to park whilst servicing the units, shall be submitted to the City Council as local planning authority for approval in writing. The approved details shall be implemented prior to the first operation of the units, and shall be so maintained.
- 17) The additional opening hours approved as part of this permission shall not be commenced until full details of measures to direct patrons driving to the restaurant/drive through unit, between the hours of 23:00-07:00 hours, to utilise the parking bays to the south of the unit, shall be submitted to and approved in writing by the City Council as local planning authority prior to the occupation of the unit. The agreed measures to direct patrons shall be implemented at all times whilst the use is in operation on this site.

- 18) Within 3 months from the date of this permission, in relation to the A3/A5 unit, full details of the exact proposed acoustic boundary treatment to be installed between Signet Walk and the A3/A5 site, including exact location, appearance and technical specification, shall be submitted to the City Council as local planning authority for approval in writing. The approved acoustic treatment shall be implemented in full prior to the first use of the unit, and shall be so maintained whilst the unit is in operation.
- 19) No development shall commence until a hard and soft landscaping treatment scheme has been submitted to and approved in writing by the City Council as local planning authority. The approved scheme shall be implemented not later than 12 months from the date of this permission. If within a period of 5 years from the date of the planting of any tree or shrub, that tree or shrub or any tree or shrub planted in replacement for it, 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 at the same place.
- 20) a) Within 3 months from the date of this permission, a report (the Preliminary Risk Assessment) to identify and evaluate all potential sources and impacts of any ground contamination, groundwater contamination and/or ground gas relevant to the site shall be submitted to and approved in writing by the City Council as local planning authority. The Preliminary Risk Assessment shall conform to City Council's current guidance document (Planning Guidance in Relation to Ground Contamination).

In the event of the Preliminary Risk Assessment identifying risks which in the written opinion of the Local Planning Authority require further investigation, the development shall not commence until a scheme for the investigation of the site and the identification of remediation measures (the Site Investigation Proposal) has been submitted to and approved in writing by the City Council as local planning authority.

The measures for investigating the site identified in the Site Investigation Proposal shall be carried out, before development commences and a report prepared outlining what measures, if any, are required to remediate the land (the Site Investigation Report and/or Remediation Strategy) which shall be submitted to and approved in writing by the City Council as local planning authority.

b) When the development commences, the development shall be carried out in accordance with the previously agreed Remediation Strategy and a Completion/Verification Report shall be submitted to and approved in writing by the City with the Revised Remediation Strategy, which shall take precedence over any Remediation Strategy or earlier Revised Remediation Strategy.

- 21) Within 3 months from the date of this permission accreditation confirming the achievement of the Secured by Design standards has been issued by Greater Manchester Police shall be submitted for each respective unit.
- 21) Within 3 months from the date of this permission, in relation to the A3/A5 use, full details of a scheme to achieve a 50% surface water flow reduction shall be submitted to the City Council as local planning authority for approval in writing. The approved measures shall be fully



implemented prior to the commencement of the use, and shall be so maintained.

- 22) No surface water from this development shall be discharged either directly or indirectly to the combined sewer network. The site shall be drained on a separate system, with only foul drainage connected into the foul sewer. Surface water shall discharge to a Sustainable Drainage System. Food outlets shall have grease traps installed and maintained.
- 23) The A3 and A3/A5 units hereby approved shall each achieve a post-construction Building Research Establishment Environmental Assessment Method (BREEAM) rating of at least a 'very good' rating. Post construction review certificate(s) shall be submitted to, and approved in writing by the City Council as local planning authority, within 3 months from the date of this permission.
- 24) Within 3 months from the date of this permission, in relation to the A3 development, full details of where the proposed A3 unit will be serviced from and the procedure for managing deliveries, shall be submitted to the City Council as local planning authority for approval in writing. The approved servicing scheme shall be implemented and shall be so maintained whilst the use is in operation.

#### **End of Schedule**