



Appeal Decision

Site visits made on 12 December 2023 and 20 December 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th February 2024

Appeal Ref: APP/M3455/W/23/3321848

McDonald's Restaurants Ltd, 634 High Street, Tunstall, Stoke-on-Trent ST6 5PH

- 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 McDonald's Restaurants Limited against the decision of Stoke-on-Trent City Council.
 - The application Ref 68671, dated 24 November 2022, was refused by notice dated 6 March 2023.
 - The application sought planning permission for the demolition of existing public house and construction of Class A3 restaurant together with landscaping and car parking at former "Dog & Partridge" P.H. High Street, Tunstall, Stoke-on-Trent without complying with a condition attached to planning permission Ref SOT/36676, dated 23 September 1999.
 - The condition in dispute is No 7 which states that: *"The premises shall not be used for the serving of food or drink either to visiting members of the public or by means of a home delivery service between 2300 hours and 0700 hours on any day."*
 - The reason given for the condition is: *"In order to protect the amenity of occupiers of residential properties in the locality."*
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing public house and construction of Class A3 restaurant together with landscaping and car parking at former "Dog & Partridge" P.H. High Street, Tunstall, Stoke-on-Trent in accordance with the application Ref 68671, dated 24 November 2022, without compliance with condition number 7 previously imposed on planning permission Ref SOT/36676, dated 23 September 1999, and subject to the conditions set out in the schedule to this decision.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) came into force on the 19 December 2023 with a further change published on 20 December. The revised Framework is a material consideration which should be taken into account from the day of publication. The paragraphs most pertinent to this appeal are unchanged, other than their numbering. Having considered the revisions and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework.
3. The site address in the banner heading above is taken from the application form. It differs from the address in the decision notice which refers to the

address of the site prior to the construction of the McDonalds restaurant. Given the proposal relates to a condition on the original permission, I shall use the "Dog & Partridge" address in my decision.

Background and Main Issue

4. The demolition of the public house and construction of the restaurant has been carried out and the restaurant is trading from 0700 to 2300 hours, which are the hours specified in condition 7. The proposal is to vary the condition to allow opening between 0700 hours and 0200 hours the following morning, 7 days a week. This amounts to an additional 3 hours daily. No changes are proposed to the delivery hours for the appeal site as these are controlled under a separate condition.
5. The Planning Practice Guidance (PPG) makes it clear that the Local Planning Authority (and by extension, the Inspector) 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. To enable a proper assessment of the issues, I undertook two site visits, one during the day and one after closing time. The main issue is the effect that varying the opening hours would have on the living conditions of the occupiers of nearby residential properties on High Street, Wignall Road and Shelford Road, with particular regard to noise and disturbance.

Reasons

6. The appeal site consists of a purpose-built, single storey, McDonald's restaurant and drive thru facility which fronts onto High Street (A50) near the junction with Shelford Road.
7. The immediate area is mainly residential with dwellings on High Street, adjacent to the vehicle access and drive thru lane, and on Wignall Road, to the rear of the restaurant, adjacent to the drive thru. On the opposite side of Shelford Road is a retail unit and dwellings. The opposite side of High Street is mixed residential and commercial uses.
8. The site is close to the roundabout of High Street with James Brindley Way and Reginald Mitchell Way where there are other commercial, and food uses including a KFC, Tesco, and Costa and a large industrial unit.
9. Vehicular access to the site is off High Street and leads to car parking to the front and side of the restaurant. There are two drive thru lanes to the side of the building where drivers stop to place orders via a communication operating device system (COD). The lanes then converge and route around the building to the serveries at the rear of the building, where customers pay for and collect their orders. The COD systems and drive thru lane are immediately adjacent to existing residential properties and, although there is a close boarded fence on the boundary, I noted that this is not an acoustic fence. The boundary includes some vegetation, but this is not dense planting as contended by the appellant. As such there is the potential for the occupiers of nearby residential properties to be adversely affected by noise and disturbance.
10. Policy CSP1 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy (2006-2026) (CSS), requires, amongst other matters, for development to ensure a balanced mix of uses that work together and contribute to healthy lifestyles.

11. The Framework states that, amongst other matters, planning decisions should take into account the likely effects, including cumulative effects, of pollution on health and living conditions. The Framework advises that development should mitigate and reduce potential adverse impacts from noise and avoid significant adverse impacts on health and the quality of life.
12. The application is accompanied by a Noise Impact Assessment (NIA) which considers the potential effect of noise from the proposed additional hours. The NIA provides information on four noise sources: people, vehicles (including deliveries), the COD and roof plant. An attended survey was conducted between 2200 and 2300 hours on a weekday evening. In addition to the attended survey, an unattended survey was conducted between 2100 and 0700 on a weekday which measured the noise levels at 15-minute intervals. The survey was conducted to establish the background ambient noise levels in the current last hour of opening and overnight.
13. The survey results indicate that road traffic is the dominant noise source, and that background noise level is already high. Moreover, the surveys demonstrate that there is no significant reduction in background noise levels throughout the night, including during the proposed extended opening hours.
14. The NIA also provides predicted customer numbers using recording from other McDonald's which already have late night trading hours. I acknowledge that I do not have any details of the other restaurants referred to. Nevertheless, this information is included in the NIA for the benefit of predicting potential customer flow rather than predicting the effect of noise on residents.
15. The NIA concludes that the impact of people noise, vehicle noise and roof plant would be unlikely to have an adverse effect on residential living conditions and that there would not be a perceivable change in ambient noise level. The three noise types have been assessed at No Observable Adverse Effect Level (NOAEL) and No Observable Effect Level (NOEL)¹. Overall, the NIA concludes that the proposed extended opening hours would be unlikely to cause any measurable effect on residential living conditions, other than in respect of the COD.
16. Noise from the COD is detailed in the NIA as being moderate to loud at the measured position. The NIA accepts that voices are easily discernible to the human ear, even when below background noise levels. Nonetheless, the NIA classes the COD noise as at Lowest Observable Adverse Effect Level (LOAEL)¹ and advises that noise would not adversely affect the living conditions of the occupiers of the nearby properties. Notwithstanding the LOAEL assessment, additional mitigation is proposed to limit the maximum output level of the COD at night to reduce the noise level.
17. With regard to customer behaviour, the NIA did not record any noise incidents such as car doors being slammed during the survey period. Therefore, the NIA has used data from other McDonald's restaurants and assessed this against the appeal site conditions and relationship to neighbouring properties. Taking account of guidance set out in BS 8233:2014 and the World Health Organisation guidelines, the NIA suggests that the maximum external noise level at the nearest residential property should not exceed 60 dB L_{max}. The NIA predicts that the noise level, for the worst-case scenario, would be 61 dB

¹ These categories relate to the Noise Exposure Hierarchy set out in the Planning Practice Guidance

Lamax, but advises that the unattended survey shows background noise levels are already above this level.

18. The appellant states that, based on experience at other restaurants, customers during the extended hours are typically taxi drivers, shift workers, delivery drivers and emergency services operatives. The appellant states that the visits would be short in duration and such customer groups are not prone to causing antisocial behaviour or significant noise. Although this is questioned by the interested parties and I have no means to control the type of customer using the restaurant, I also have no evidence to show that any customer use would result in adverse noise effects.
19. The NIA assessment is based on a worst-case scenario with vehicle noise added to the existing ambient noise levels and predicted vehicle movements between 2300 and 0200 being the same recorded vehicle movements as between 2200 and 2300. In my judgement, the NIA has considered the cumulative effect of the potential vehicle noise appropriately.
20. The Council has not disputed the contents of the NIA and does not provide any technical evidence of its own. Despite the considerable local concern, including from the ward councillor, there is no substantive evidence to counter the submissions from the appellant's acoustic consultant.
21. Notwithstanding this, I note that the noise survey was conducted over a single, weekday night. The period covered by the survey was short and therefore I cannot be certain that the results are representative of a typical day. The NIA also overstates the amount of planting on the site boundaries, although this in itself would not affect the overall findings of the report.
22. Even taking account of these weaknesses, it seems unlikely, based on the evidence, that the proposal would lead to significant disturbance for neighbouring residents. The appellant sets out pro-active measures within a Premises Noise Management Plan (PNMP) including the use of CCTV and conflict avoidance training for managers. This would minimise the potential for anti-social behaviour.
23. To conclude, although the NIA methodology is generally robust, there are uncertainties and assumptions within its analysis. A 12-month trial would therefore be appropriate to enable the impacts, and the effectiveness of the PNMP, to be assessed. The appellant is satisfied with this approach which I note was suggested by the Environmental Health Officer and Staffordshire Police. Consequently, there is no conflict with Policy CSP1 of the CSS or the aims of the Framework.

Other Matters

24. Local residents have referred to another McDonald's restaurant within 5 minutes of the appeal site which operates 24 hours and argue that there is not a need for the additional hours at the appeal site. However, it is not my role, in the context of this appeal, to determine the commercial need for the appeal proposal, to consider alternative sites for the existing restaurant or to influence customer choice.
25. That the proposed opening hours would extend beyond the opening hours of other nearby similar uses, including the KFC, Tesco, and Costa, is not determinative in this appeal. I have based my decision on the evidence before

me and any applications for changes to the operating hours of other premises would need to be considered separately by the Council and supported by suitable noise impact assessments.

26. The Council did not raise any issues regarding highway safety, notwithstanding the concerns raised by local residents and Councillors. I have no reason to question the appellant's submission that the traffic generated by the proposal during the extended hours is expected to be low and generally from people who are already using the road network. Based on the information before me, and my own observations at the site visits, highway matters would not justify dismissal of the appeal.
27. There is no substantive evidence to demonstrate that the additional operating hours would result in increased risk of crime or anti-social behaviour, including in relation to littering, parking outside neighbouring properties, groups gathering or drunken behaviour. I note from its consultation response that Staffordshire Police did not object to the proposal.
28. I am not convinced that the additional opening hours would increase pollution, especially given that the customer vehicles are likely to be already on the road network, or that the additional hours would increase risk to health and obesity, given that the restaurant is already operating.

Conditions

29. The guidance in the PPG makes it clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original permission unless they have already been discharged. I also have power to impose new conditions that I consider to be necessary.
30. The conditions on the original planning permission have been considered in light of the advice contained in the PPG. Given the restaurant has been established for some time, fewer conditions are necessary.
31. I have therefore granted a new permission, removed the disputed condition, and replaced it with one that limits the use of the revised opening hours to a 12-month period. I have also imposed a condition requiring operation in accordance with the Premises Noise Management Plan, which includes limiting the volume of the COD system. These conditions are necessary to ensure the restaurant is managed in accordance with the terms of the application, to protect the living conditions of nearby residents.

Conclusion

32. For the reasons set out above, I conclude that the appeal should be allowed subject to conditions.

K Townend

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The premises shall not be used for the serving of food or drink either to visiting members of the public or by means of a home delivery service between 0200 hours and 0700 hours on any day for a limited period of one calendar year. This limited period must be commenced within three years of the date of this decision and the applicant must provide the local planning authority with written notification of the start and end date 10 days prior to first commencement. Thereafter, the premises shall not be used for the serving of food or drink to visiting members of the public or by means of a home delivery service between 2300 hours and 0700 hours on any day.
- 2) Deliveries shall only be taken or dispatched from the site between 0800 hours and 1900 hours Mondays to Saturdays. There shall be no deliveries taken or dispatched from the site at any time on Sundays, Bank or Public Holidays.
- 3) The car parking area and cycle parking facilities as laid out shall not be used for any purpose other than the parking of vehicles and cycles.
- 4) The servicing area as laid out shall not be used for any purpose other than for servicing.
- 5) The premises shall operate in complete accordance with the recommendations made within Appendix C of the (Premises Noise Management Plan) of the submitted Noise Impact Assessment, (Savills (UK) Limited: McDonald's, Tunstall #1021 Noise Impact Assessment: Report No. 14-0167-85 R01 Dated 27 June 2022).

*** END OF CONDITIONS ***