



Appeal Decision

Site visit made on 26 June 2024

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 9 August 2024

Appeal Ref: APP/N4720/W/24/3338921

Nando's, 1 St Michaels Court, Shire Oak Street, Headingley, Leeds LS6 2AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Nando's Chickenland Ltd against the decision of Leeds City Council.
 - The application Ref is 23/00708/FU.
 - The application sought planning permission for removal of condition no 12 (delivery service) of planning permission 13/05581/FU in order to allow to continue to offer takeaway sales via third party collection services.
 - The condition in dispute is No 12 which states that: *There shall be no take away delivery service operated from the site.*
 - The reasons given for the condition is: *In the interest of protecting the amenity of nearby residents in accordance with Policy GP5 of the adopted Leeds UDP.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An updated Transport Note¹ has been submitted by the appellants which the Council has been consulted on. As there has been no prejudice to the Council, I have proceeded to determine the appeal based on this document, as well as the plans and information as originally submitted.

Background and Main Issues

3. Planning permission was granted² for the change of use of part of the ground floor and extension to side of part of a medical centre to form a restaurant. Condition 12 of that permission stated that there should be no takeaway delivery service operated from the site. A subsequent grant of planning permission³ for a variation of conditions 10 and 18 was also subject to condition 12 regarding the take-away delivery service.
4. The reason given for condition 12 was for the protection of the amenity of neighbouring residents. The evidence is that a takeaway delivery service has operated from the site since 2015. However, the Council has expressed concerns that by removing the condition, the delivery service, which is

¹ ttp consulting, 13 February 2024

² Ref 13/03169/FU

³ Ref 13/05581/FU

operated by a third party, would increase parking demand which would have an unacceptable effect on highway safety.

5. Therefore, the main issue is whether condition 12 is necessary and reasonable with regards to the effect on highway safety.

Reasons

6. The appeal site occupies part of the ground floor of a modern, mixed-use building and operates as a restaurant. The site is within the main commercial area of Headingley. To the front of the building is a private car park. To the side, next to an outdoor seating area, is Wood Lane.
7. The restaurant is occupied by Nando's who had considered that condition 12 restricted themselves from running a delivery service, as opposed to one run by a third party. There is no dispute, however, that the condition does not prevent takeaway food being collected by customers themselves. Moreover, Use Class E(b) allows restaurants to carry out a takeaway service as long as most of the sales relate to food and drink consumed on the premises.
8. Evidence has been submitted to show average takeaway sales for a period of twelve weeks⁴. This indicates that an average of 42.32% of sales during this period were off the premises, with 29.14% being through the delivery service. Whilst the delivery service no longer operates on Mondays and Tuesdays and is only available after 17.00 hours Wednesday to Friday, takeaway sales are a sizeable part of the business, with most of this being through the delivery service. Details of the average orders per working hour of the day have been submitted. This indicates that most orders are between 17.00 and 19.00 hours Wednesday to Sunday, with the highest number on Thursday and Friday evenings at 18.00 hours.
9. To see if there was adequate capacity for delivery vehicles to park when collecting food, the Council requested, and agreed, the parameters of parking surveys of the local road network. The surveys⁵ were undertaken when the delivery service was operating. This showed that whilst vehicles were stopping on Wood Lane, the width of the road prevented cars parking on both sides and that the kerbside provided room for between 8 and 9 cars.
10. The surveys also identified that a maximum of 35 vehicles were stopped on yellow lines within 300 metres of the site, with the peak being at 21.00 hours on the Friday. There was capacity for another 72 vehicles within the area. At 17.00 hours on the Sunday, the survey identified two articulated heavy goods vehicles blocking Wood Lane who were undertaking work at a supermarket in the Arndale Centre.
11. The main parties disagree on the survey results and whether Wood Lane reaches capacity, although the survey identified that the average number of vehicles parked was three. The evidence is that one in three takeaway orders are stacked. However, even though the parking survey identified further parking spaces within the specified area, the operation of a delivery service requiring quick turnaround times, would result in delivery pickups being as close to the site as possible. Moreover, Nando's is stated as being one of over 24 different food outlets that provide delivery/collection services within 0.1-

⁴ December 2022-March 2023.

⁵ Friday 9th – Sunday 11th June 2023

mile radius of the appeal site. Riders and drivers picking up and delivering for these, as well as Nando's, often use Wood Lane to park when picking up orders.

12. Wood Lane, when approached from the centre of Headingley, is blocked off by bollards just beyond the appeal site. This stretch of the road has single yellow lines and is subject to a Traffic Regulation Order (TRO) which state, 'No waiting Monday – Saturday 8.00-18.30'. The appellants reference that vehicles can stop to load or unload on single yellow lines for a period of up to 20 minutes.
13. Whilst one-minute collections are targeted by the delivery service, and drivers are told to not remain on the premises if orders are held up, there could be periods where several vehicles are waiting for orders. The pavements are narrow, and I saw that it is in constant use by pedestrians. Whilst Crashmap data shows no traffic injuries on Wood Lane, it provides access from the centre of Headingley to university accommodation and to Shire Oak Primary School, as well as to other residential properties. It also provides the access point for vehicle deliveries to the shops in the Arndale centre on Otley Road.
14. Whilst delivery vehicles for Nando's would not coincide with school opening and closing times, I saw when I visited the site a large delivery vehicle straddling the pavement opposite the site, and other private vehicles parked up on the pavement. There is no turning area or substantive evidence as to how vehicles safely turn around when there are many vehicles parked on the road. Therefore, there is already some congestion on this stretch of road and conflict between vehicles and pedestrians.
15. The appellants have provided an Operational Management Plan (OMP) which they use in a number of their premises. They have suggested that using a condition that the takeaway service accords with the OMP, would prevent delivery drivers congregating around the restaurant and parking irresponsibly. However, the delivery drivers and service are operated by a third party and are not managed by the appellant. Therefore, the use of such a condition would not be enforceable. Whilst the appellants state that they work closely with the delivery service, there is little substantiated evidence as to how this operates in practice, including any control on orders if there are too many for the facility to process, or on the number of delivery vehicles coming to the site which might exceed what the local area can accommodate.
16. The appellants consider that if a delivery service did not operate, there would be an increase in customers travelling to the restaurant to pick up food, which would have a greater impact on the local highway network. However, customers picking up a takeaway may be familiar with the wider parking in the area and avoid Wood Lane, as they would not have the same time pressures of a delivery service driver.
17. The delivery service has operated since 2015 which the appellants consider has not had a detrimental effect on surrounding amenities or the local highway network. Takeaway services from restaurants, particularly since the covid pandemic, have become an important part of the restaurant trade. There is no substantive evidence to suggest, however, that without this service, the restaurant would close. Condition 12 does not prevent takeaway services, only that the premises cannot operate a delivery service. As the service is operated by a third party, any condition requiring compliance with the OMP, would therefore not be enforceable or reasonable. Without the condition, there would

be no control over the delivery services from the site, which has limited access and no dedicated parking for pick-ups.

18. I therefore conclude that the removal of condition 12 would have an unacceptable effect on highway safety.
19. The proposal would conflict with Policy T2 of the Leeds Local Plan Core Strategy⁶, 2014, which requires development to not add to problems of safety or efficiency on the highway network and that parking provision will be required. It would also conflict with Policy GP5 of Leeds Unitary Development Plan, Review 2006, which states that proposals should seek to avoid loss of amenity, highway congestion and maximise highway safety.

Other Matters

20. The site is within the Headingley Conservation Area (CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. Paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
21. The significance of the CA stems from the development of Headingley in the 19th century when residents of Leeds moved out of the city to villas, such as those found on Wood Lane in large plots with mature trees and stone boundary walls. A commercial area later developed along Otley Road and terraced housing was built in the area. Headingley also has a history of university residences being built in the 20th century. Removing condition 12 would not, however, harm the significance of the CA and the character or appearance of the CA would be preserved.
22. The appellants refer to a planning permission in 2020⁷ at 17 Headingley Central, Otley Road, Headingley, for change of use from retail to restaurant/takeaway. However, no substantive evidence has been provided as to whether the proposal is comparable to the appeal site. Therefore, it provides limited weight in this appeal.

Conclusion

23. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict.
24. For the reasons given above, I conclude that the appeal is dismissed.

M J Francis

INSPECTOR

⁶ As amended by the Core Strategy Selective Review 2019.

⁷ 20/02621/FU