



Appeal Decision

Site visit made on 26 February 2025

by **S Dean MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5th March 2025

Appeal Ref: APP/F1040/W/24/3353518

Land at Junction of A38 and A5132, The Castle Way, Willington, Eggington, DE65 6GY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by McDonald's Restaurant Ltd against the decision of South Derbyshire District Council.
 - The application Ref is DMPA/2023/1350.
 - The development proposed is Erection of a freestanding restaurant with drive-thru facility, car parking, landscaping and associated works, including Customer Order Displays (COD) Play Frame and 4 Electric Vehicle Charging Points (EVCP).
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of a freestanding restaurant with drive-thru facility, car parking, landscaping and associated works, including Customer Order Displays (COD) Play Frame and 4 Electric Vehicle Charging Points (EVCP) on land at Junction of A38 and A5132, Willington Eggington, DE65 6GY in accordance with the terms of the application, Ref DMPA/2023/1350, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are:
 - Whether or not there are any sequentially preferable, suitable and available sites within the local area,
 - The effect of the proposal on the character and appearance of the area, and
 - The effect of the proposal on the living conditions of occupiers of nearby properties with specific regard to noise and disturbance.

Reasons

Whether any sequentially preferable sites

3. The appellant carried out, and then updated at the request of the Council, a sequential test which sought to assess whether or not there were any sequentially preferable suitable and available sites within the local area for the proposal. That assessment examined the suitability, availability and viability of sites within 7 settlements around the appeal site, and ultimately concluded that the appeal site remains the most sustainable and suitable location for what is, ultimately, a roadside restaurant facility.

4. The conclusions of that assessment were that there were not. There is nothing in that assessment, the representations, the original assessment by Officers, or indeed, the ultimate decision of the Council and their Statement of Case, to lead me to a different conclusion.
5. Whilst I note the position of the appellant that as a roadside facility, there are essentially no relevant development plan policies, the glossary to the National Planning Policy Framework (the Framework) is clear that proposals such as this are main town centre uses. As such, the provisions of both the Framework and Policy RTL1 apply.
6. Although found within the supporting text, rather than the policy itself, in applying the sequential test, the Council requires that opportunities of an appropriate scale to accommodate the proposal be assessed. They also require a degree of flexibility in terms of format and scale.
7. I am satisfied that the appellant has met these requirements, within the obvious, well-explained, and well-justified limits to the degree of flexibility they can apply given the particular requirements of the operator and the nature of the proposal. Their business appears to be a particularly well-refined one, in terms of floorspace requirements split between storage, preparation, staff welfare, customer seating, parking, manoeuvring space, outdoor space, vehicle-queueing, and the associated effects of all of that in terms of frequency of deliveries (and their associated effects), efficiency of operation and overall viability. For those reasons, I also consider that the appellant has satisfactorily demonstrated why attempts to adapt their proposal to a different model are not necessary or appropriate. They are also not what has been applied for.
8. Much has been made of the potential availability of the former KFC unit at the A38/A50 service area. Whilst that unit may be available, the evidence of the appellant is clear that it is not suitable for their proposal in terms of its size, servicing, interior and exterior arrangements and then the combined effect of all of those factors on the viability of their business. It was also clear from my site visit that accessing that unit, from the A38 was less convenient than the appeal site, requiring as it did, the use of the A38/A50 roundabout junction. The Council has also highlighted the local centre within the New House Farm allocation near to the site. However, the appellant is clear that this is unsuitable for several reasons, including its location, size and allocated use. As such, the existence of that vacant unit or the local centre at the New House Farm allocation does not affect my conclusions on this issue.
9. Given the evidence before me and all of the above reasons, I therefore find that the appellant has appropriately and robustly demonstrated that there are no sequentially preferable, suitable and available sites within the local area. As such, the proposal does not conflict with Policy RTL1 of the South Derbyshire Local Plan Part 2, adopted November 2017, or the guidance in the Framework.

Character and appearance

10. The proposed restaurant would be plainly visible, and that is, of course by design. However, I do not consider that it would, by virtue of its visibility, materials, height or overall size, be visually intrusive. The immediate setting to the site is largely characterised by similarly functional buildings which serve users of the A38; the diner, petrol filling stations, their associated shops and other buildings, parking and manoeuvring areas. The car sales building and associated area is similarly visible, somewhat functional and entirely typical of development one would expect to find in a location such as this. In terms of visual intrusion, I must also note the embankment to the south of the site carrying the A5132 over the A38, which would limit longer views from the south and to a certain extent, the west. In views from the north and east, the proposal would appear in the context of the existing petrol filling station, diner and other buildings, the A38 as well as the embankment and bridge carrying the A5132 over the A38. I also note that the proposed restaurant would be smaller than the previously approved, albeit now lapsed, approval for large buildings on the site.
11. I note the claim in the Council's Statement of Case that the proposal would be the only built elevation proposed looking in a southerly direction from the nearby dwellings. However, given the limited length of those views, before the existing pumping station and man-made embankment carrying the A5132, I cannot agree that this would cause significant harm to the landscape. Nor can I agree, given the proposed height, materials, and relatively limited amount of site to be covered by the building itself, and indeed, current appearance connected with the use of the site, that the proposal would give rise to harm to visual amenity.
12. Taking all of the above together, I find that the proposal would have an acceptable effect on the character and appearance of the area and would therefore comply with Policy SD1 or E7 of the South Derbyshire Local Plan Part 1, adopted June 2016 (the Local Plan Part 1) in that regard.
13. The appellant has provided details of previous appeal decisions on this site, and I note that my findings on character and appearance, although made on the merits of this proposal alone, are consistent with those previous decisions.

Living conditions

14. The appeal site is already a somewhat busy environment, with near-constant road noise from the A38, as well as noise and movement associated with vehicles using the junctions around the site, passing the proposed site access and crossing the embankment to the south of the site. The appeal proposal would almost certainly result in additional vehicle movements on The Castle Way. However, given the existing level of vehicle movements as well as the relatively minor additional level of movement associated with the proposal, I do not consider that this would cause unacceptable harm to living conditions.
15. Turning to noise, following the Council's decision on the proposal, the appellant has commissioned an updated environmental noise assessment, which concludes, following a much longer noise-monitoring period that noise associated with the proposal would, on the basis of robust evidence, experience and data, have a negligible impact on residential neighbours.

16. That updated assessment also committed the operator to ensuring that plant noise would be less than *any* background sound level recorded at *any* time during the noise survey.
17. Although the Council has expressed concern over the effect of 24-hour operation, the appellant has not sought this. They have however suggested, and agreed to, conditions which control both the opening hours and delivery hours to the proposal. The appellant has also submitted a Delivery Management Plan, which controls hours and method of site servicing.
18. Taking all of that together with my observations on site, the nation-wide experience of the proposed operator, the lack of objection from the Council's Environmental Health team and the proposed conditions, I am satisfied that the proposal would not cause unacceptable harm to the living conditions of occupiers of nearby properties with specific regard to noise and disturbance. As such, it would not conflict with Policy SD1 of the Local Plan Part 1 in that regard.

Other Matters

19. Whilst some third-parties have objected to the proposal on the grounds of need, citing the location of other similar restaurants and facilities nearby, the evidence of the proposed operator is that there is space in the market for the proposal, and that it would serve a different, currently underserved customer base. Nothing in the representations leads me to reach a different conclusion.
20. Many third parties have raised concerns over highway safety and convenience given the location of the site, traffic speeds and junction arrangements. I accept that in highway terms, there is a lot of activity around the site, with access to and from the A38, as well as residential accesses, multiple accesses for the filling station/diner, as well as the junction between The Castle Way and the A5132.
21. However, neither the Council, County Highways nor National Highways raise any objection on highway safety grounds. Traffic modelling, which updates that carried out before the determination of the application, including modelling traffic growth and undertaking new traffic-counts, has found that all of the junctions around the site have sufficient capacity to accommodate the proposal. Evidence from the intended site operator also demonstrates that there should be sufficient capacity within the site to accommodate any vehicles using, and waiting to use, the drive-thru facilities as well as those parking to go into the restaurant area.
22. I also note that in reaching a different overall conclusion on the proposal as a whole to that of their Officers, Members did not choose to make highway safety a reason for refusal, and that adds weight to my conclusion that there is no reason to dismiss the appeal on the basis of highway safety concerns.
23. I also note public health concerns, and whilst there is support in the Framework for planning policies and decisions which enable and support healthy lives, there is nothing to suggest that the proposal would directly conflict with those aims, and the proposal, at its core, simply provides more choice in the market. I also note that the proposal does not meet any of the criteria in paragraph 97 of the Framework which require applications for hot-food takeaways to be refused.

Conditions

24. The Council has suggested a number of conditions to be attached, should planning permission be granted. Having had regard to the requirements of the Framework and the Planning Practice Guidance I have imposed those requested conditions, with minor alterations and corrections where necessary.
25. I am satisfied that they are necessary amongst other things to ensure the satisfactory appearance of the completed development, to ensure that it can be safely accessed, and that its implementation, operation and servicing does not cause harm to living conditions.
26. The appellant has confirmed in writing that they have no objection to the terms of the conditions as a suite, or to the pre-commencement conditions proposed by the Council. It is necessary and reasonable that the information required by these conditions be provided prior to the commencement of development, as these are matters which cannot properly or reasonably be addressed following the commencement of the development.
27. I am therefore satisfied that the conditions I have imposed meet the tests in, and requirements of both the Framework and the Planning Practice Guidance.

Conclusion

28. In light of my reasoning above, I find that the proposal would accord with the development plan. In addition, there are benefits arising from it in terms of local employment and economic benefits which further weigh in its favour.
29. The appeal should therefore be allowed, and planning permission granted.

S Dean

INSPECTOR

Schedule of conditions

1. The development hereby approved shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following documents and drawings:
 - 11275_AEW_8862_0001 (Location Plan)
 - 11275_AEW_8862_0002 (Block Plan)
 - 11275_AEW_8862_0004 (Proposed Site Plan)
 - 11275_AEW_8862_0005 (Proposed Elevations)
 - 11275_AEW_8862_0006 (Proposed Floor and Roof Plan)
 - 18341-VL-McD_L01 Rev B (Landscape Plan)
 - 18341-VL-McD_L02 Rev A (Landscape Planter Plan)
 - Mitigation measures set out in the Updated Environmental Noise Assessment (Ref 7617-2024 Rev 0 Date 5 August 2024)
 - ADL Delivery Management Plan Ref ADL/CC/4418/17A, July 2024
3. The development hereby approved shall not be brought into use until the access, parking and turning facilities have been provided as shown on the approved drawings.
4. The development hereby approved shall not be brought into use until visibility splays are provided from a point 0.6m above carriageway level at the centre of the access to the application site and 2.4m back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 73m to the right and 52m to the left measured along the nearside edge of the adjoining carriageway and offset a distance of 0.6m from the edge of the carriageway. These splays shall thereafter be permanently kept free of all obstructions to visibility over 0.6m in height above carriageway level.
5. The development hereby approved shall not be brought into use until the bicycle and motorcycle parking has been provided in accordance with the approved details. The bicycle and motorcycle parking shall be maintained for this purpose thereafter.
6. An electric vehicle infrastructure strategy and implementation plan shall be submitted to and approved in writing by the Local Planning Authority prior to the first use of the building hereby permitted. The plan shall contain details of the number and location of all electric vehicle charging points shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851, and Derbyshire Highway Design Guide. Parking spaces that are to be provided with charging points shall not be brought into use until associated charging points are installed in strict accordance with approved details and are operational. The charging point installed shall be retained thereafter unless replaced or upgraded to an equal or higher specification.
7. The Travel Plan prepared by ADL Traffic and Highways dated October 2023 (Ref ADL/CC/4418/05A) hereby approved shall be implemented and monitored in accordance with the regime contained within the Plan. In the event of failing to meet the targets within the Plan a revised Plan shall be submitted to and approved in writing by the Local Planning Authority to address any shortfalls, and where necessary make provision for and promote improved sustainable forms of travel to and from the site.

8. Notwithstanding the details provided, prior to commencement of the development hereby permitted details of a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the demolition/construction period. The plan/statement shall include but not be restricted to:
 - A. Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 - B. Advisory routes for construction traffic;
 - C. Any temporary access to the site;
 - D. Locations for loading/unloading and storage of plant, waste and construction materials;
 - E. Method of preventing mud and dust being carried onto the highway;
 - F. Arrangements for turning vehicles;
 - G. Arrangements to receive abnormal loads or unusually large vehicles;
 - H. Highway Condition survey;
 - I. Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.
9. No deliveries shall be made to the premises other than between 0700 hours and 2300 hours.
10. During the period of construction, no ground, construction or fitting out works shall take place and no deliveries shall be taken at or dispatched from the site other than between 0800 and 1800 hours Monday to Friday and 0800 and 1300 hours on Saturdays. There shall be no construction works (except for works to address an emergency) or deliveries on Sundays or Bank Holidays.
11. The approved scheme for odour, submitted with the application by CDM Partnership, dated July 2023 shall be installed prior to the first use of the extraction equipment and subsequently maintained as such.
12. No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
 - A. Glanville. 25/05/2022. Flood Risk Assessment. 4210338/ZM/007. Including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team.
 - B. DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015), have been submitted to and approved in writing by the Local Planning Authority.
13. Prior to commencement of the development, the applicant shall submit for approval to the Local Planning Authority details indicating how additional surface water run-off from the site will be avoided during the construction phase. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved system shall be operating to the satisfaction of the Local Planning Authority, before the commencement of any works, which would lead to increased surface water run-off from site during the construction phase.

14. Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).
15. The development shall be carried out in strict accordance with the enhancement recommendations detailed in the Preliminary Ecological Appraisal version 2 prepared by Practical Ecology dated May 2023. If the Field Maple identified in the PEA will be affected by site clearance further assessment by a suitably qualified bat ecologist will be required prior to works to determine the presence/absence of a bat roost.
16. In line with recommendations within the PEAR report no clearance of trees, hedgerows or scrub will be completed during the bird breeding season. The active nests of all wild birds are protected under the Wildlife & Countryside Act 1981 (as amended). An active nest is one being built, containing eggs or chicks, or on which fledged chicks are still dependent. Therefore, no such vegetation clearance work should be undertaken between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check for active birds' nests immediately before the work is commenced. If any active nests are discovered then the nest should be left undisturbed until the birds have fledged with an appropriate buffer surrounding the nest.
17. Prior to the installation of lighting fixtures, a detailed lighting strategy shall be submitted to and approved in writing by the LPA to safeguard bats and other nocturnal wildlife. This should provide details of the chosen luminaires, their locations and any mitigating features such as dimmers, PIR sensors and timers. Dependent on the scale of proposed lighting, a lux contour plan may be required to demonstrate acceptable levels of light spill to any sensitive ecological zones/features. Guidelines can be found in Guidance Note 08/23 - Bats and Artificial Lighting at Night (BCT and ILP, 2023). Such approved measures will be implemented in full.
18. All planting, seeding or turfing comprised in the approved details set out on the landscaping plan 18341-VL_McD_L01 Rev B shall be carried out in the first planting and seeding seasons following the first occupation of the buildings or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period.
19. The premises shall not be open to the public other than between 06:00 hours and 23:00 hours.

End of schedule of conditions