
Appeal Decision

Site visit made on 9 December 2025

by **C Harding BA (Hons) PGCert PGDip MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6TH February 2025

Appeal Ref: APP/P4605/W/25/3372049

Mcdonalds Restaurants Ltd, College Road, Kingstanding, Birmingham B44 0AA

- 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 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Matthew Tunstall on behalf of InstaVolt Ltd against the decision of Birmingham City Council.
 - The application Ref is 2024/07960/PA.
 - The application sought planning permission for installation of one rapid electric vehicle charging station and ancillary equipment without complying with a condition attached to planning permission Ref 2024/05351/PA, dated 28 November 2024.
 - The condition in dispute is No 4 which states that: "The EV charger hereby approved, must only be in use during the restaurant opening hours of between: 6:30a – 12am on any day. The charger must not be used outside of this timeframe."
 - The reason given for the condition is: "In order to secure satisfactory development of the application site and safeguard the amenity of dwellings in the vicinity in accordance with Policy PG3 of the Birmingham Development Plan 2017 and the National Planning Policy Framework."
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission has been granted at the appeal site for the installation of a single rapid electric vehicle ('EV') charging station and ancillary equipment. Condition 4 of this permission restricts the use of the charging station to between the hours 0630 and 0000 on any day.
3. The main issue is the effect of the removal of Condition 4 on the living conditions of existing occupiers of nearby properties with particular reference to noise and disturbance.

Reasons

4. The principle of a rapid car charging station in this location has been established through the original permission. The appeal site is located within the car park of a McDonald's restaurant, which I understand, operates between 0630 and 0000.
5. The location of the proposed EV charging station would be close to the boundary of the existing car park, separated by a close-board timber fence and a narrow area of landscaping. The elevation of the adjoining building contains both large and small windows, in some cases directly overlooking the proposed EV charger location.

6. The appeal site is located in an urban area, close to a busy road. Traffic levels are relatively high; however the area is largely residential in nature. I saw that the McDonald's restaurant that operates at the appeal site was reasonably busy at the time of my visit, including the drive-thru element which is also located very close to the shared boundary with the adjacent residential building.
7. There is no dispute that the restaurant closes at midnight. Although I saw no physical barriers to entering the car park after this time, it is reasonable to conclude that it is likely to be quiet. I cannot be certain that it would not be used for parking or congregation, however there is no evidence before me that demonstrates that this is currently the case.
8. Therefore, the introduction of an EV charging station, accessible on a 24-hour basis into the car park would likely lead to activity within it, where currently there is no, or very little, activity when the restaurant is closed.
9. The use of the charging point would involve noise generated by doors opening and closing as customers leave their vehicle to access and operate the charging upstand. It would also involve a degree of time being spent at the charging station, even in the case of a rapid charger such as that proposed here. Accordingly, it might be expected customers would listen to car stereos during charge periods or take or make telephone calls, either by handset or via in-car connectivity. It is also possible that they would take the opportunity to spend some time outside of the vehicle, particularly in warmer weather. If the vehicle is carrying passengers, this could also result in congregation close to the vehicle.
10. There is no substantive evidence before me in terms of overnight background noise levels at the appeal site, nor in terms of the levels of noise likely to be generated by the EV charging equipment, or customers using it. Although I saw the area is relatively busy during the day, it is unclear whether this would be the case in the early hours of the morning. Given the car park would otherwise be expected to be unoccupied during these hours and having regard to the close proximity of the adjacent residential building to the charging station, in the absence of evidence to the contrary, I cannot be certain that noise associated with the EV charger and customers making use of it, would not be intrusive, and potentially persistent.
11. Therefore, I cannot be certain that the development would not have an unacceptable effect on the living conditions of the occupiers of nearby neighbouring properties with particular regard to noise and disturbance. It would, therefore, conflict with Policy DM2 of the Birmingham Local Plan Development in Birmingham Development Plan Document 2021 which states that all development will need to be appropriate to its location and not result in unacceptable impacts on the amenity of occupiers and neighbours, including in relation to noise.
12. The Council has also referred to Birmingham Development Plan 2017 Policy PG3, however this policy relates to place making and design quality and makes no reference to this main issue. Accordingly, I do not find conflict with it in this instance.

Other Matters

13. My attention has been drawn to permitted development rights relating to EV chargers and ancillary equipment set out at Schedule 2, Part 2, Class E of the Town and Country Planning (General Permitted Development) Order 2015.

14. At the time of the original application, Class E made provision, within an area lawfully used for off-street parking, for the installation of an upstand with an electrical outlet for the recharging of electrical vehicles, subject to a number of conditions. The appellant has acknowledged that the inclusion of ancillary equipment means that the proposal did not fall within the scope of Class E at the time of application. It is, however, contended that an upstand alone would have been permitted development.
15. The wording of Class E was amended in May 2025, after the Council had issued its decision. This brought ancillary equipment within the scope of permitted development but also included a condition requiring such ancillary equipment to be located more than 10 metres from a residential curtilage. It is again contended that a charging upstand alone would amount to permitted development under the revised wording of Class E.
16. In terms of fallback positions, whether or not a charging upstand alone would have comprised permitted development at the time of the original application, this wording of Class E has now been replaced, with no transitional period. For the purposes of this appeal, it is now largely irrelevant.
17. Whether or not a charging upstand alone, at the appeal site, would constitute permitted development in accordance with the current wording of Class E is a determination that falls outside of the scope of this appeal. I am aware that the appellant has made an application to the Council in order to confirm the lawfulness of such a proposal, however I understand that these have yet to be determined.
18. However, even if the installation of a charging upstanding in the location proposed would be lawful, and I were to accept that this formed a viable fallback position, there is no dispute that the ancillary equipment would not be permitted development, and would not therefore, form part of the fallback position.
19. I understand that the ancillary equipment is required in order to facilitate high-power rapid charging. It is stated that a charging upstand without the ancillary equipment would be slower and less powerful. Therefore, the fallback position and development proposed are not wholly comparable or interchangeable, as a rapid charger would have the potential to deliver a higher turnover of vehicles in comparison to a slower charger with longer charging periods. The higher rate of vehicle turnover enabled by a rapid charger would bring with it the potential for a greater frequency of car doors opening and closing as new customers arrive and interact with the charging station.
20. Additionally, the fallback position would not include ancillary equipment and any noise that may be generated by it. While it is stated that the fact that Class E was expanded indicates that such facilities are unlikely to result in harm to living conditions, it is notable that Class E requires development permitted by it to be located more than 10 metres from the closest residential curtilage. While the reasons for doing so are not clear, to my mind, it indicates a precautionary approach to situations such as that which is before me.
21. Overall, a greater level of activity at the charging point as proposed would be more likely to result in noise and disturbance, than at a slower charging point claimed to form the fallback position. As a result, and although the differences might be minor, the fallback position would be less harmful than the proposed development and accordingly is not a factor which weighs significantly in favour of the proposal.

22. Erecting signs in relation to customer behaviour would not prevent unreasonable noise occurring. Although the display of such signs could be enforced, the actions requested on them could not be. Such advice would be particularly difficult to control given that the restaurant would be closed and therefore unstaffed, between midnight and 0630, and in any event would be a separate operation.
23. It is suggested that a planning condition could be used to restrict cumulative noise from plant and machinery, however such a condition would not extend to noise generated by those using the EV charging station. Consequently, this would not adequately mitigate the harm that I have identified.
24. I understand that the EV charging station could not be switched off. However, this technical limitation does not render the disputed condition unenforceable. Rather, the condition limits the hours of use, and it would be readily apparent to the Council on a visit to the site whether this was the case. Moreover, there are other measures that could conceivably be used to prevent the use of the charging station during the relevant hours other than disabling it, which means that the condition is not unreasonable.
25. I have been directed to a number of examples where operating hours restrictions for EV charging equipment have been relaxed. These decisions are all from areas outside of the Council's control and will have been reached on the basis of individual circumstances and planning policy context, none of which is before me. Although I have had regard to these decisions they are not, therefore, determinative in my considerations.

Planning Balance and Conclusion

26. I acknowledge that the proposal would represent a means of mitigating climate change and would support the transition to net zero by improving access to EV charging infrastructure. Having regard to Paragraph 168 of the National Planning Policy Framework, these are important considerations that weigh heavily in favour of the proposal.
27. However, this would not outweigh the unacceptable harm the removal of Condition 4 would have on living conditions of occupiers of nearby residential properties. The proposal conflicts with the development plan as a whole and there are no material considerations of sufficient weight that would lead me to make a decision other than in accordance with this. Consequently, I conclude that the appeal is dismissed.

C Harding

INSPECTOR