



Appeal Decision

Site visit made on 18 February 2026

by **Andreea Spataru BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 06 March 2026

Appeal Ref: APP/Q3060/W/25/3373060 **503 Clifton Lane, Nottingham NG11 8NA**

- 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 McDonald's Restaurants Limited against the decision of Nottingham City Council.
 - The application Ref is 25/00294/PVAR3 (PP-13753258).
 - The application sought planning permission for the erection of two restaurants with drive through facilities (Class A3/A5) with variation of condition S1 of planning permission reference 12/01824/PFUL3 to revise the site layout to provide a Drive Thru Lane with double ordering points for unit B without complying with a condition attached to planning permission Ref 13/01393/PVAR3 (PP-02687080), dated 7 August 2013.
 - The condition in dispute is No 15 which states that: *Neither restaurant shall be open outside the hours of 0700 and 2330, daily.*
 - The reason given for the condition is: *To protect the amenities of the occupants of the development and nearby property and in the interests of community safety in accordance with Policy BE2, BE3 and NE9 of the Nottingham Local Plan.*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. A McDonald's restaurant is trading at the appeal site. The appellant wishes to extend the opening hours for the McDonald's restaurant from those originally imposed to 24 hours every day of the week to permit outgoing customer deliveries by Deliveroo, Uber Eats, etc. The main issue is the effect that varying the opening hours for customer deliveries would have on the living conditions of neighbouring residents, with particular regard to noise and activity.

Reasons

3. The appeal site relates to the McDonald's restaurant and its associated parking area and drive-thru. It is located next to a major road, which abuts its western side, and has commercial premises to the north, and residential areas immediately to its south and east.
4. The appellant submitted a Noise Impact Assessment dated 12 July 2024 (NIA) which undertook both attended and unattended monitoring across the night-time period (3 – 4 June 2024) and assessed four principal noise sources: people, vehicles, intercom (COD) and plant. This report identifies that, in relation to the subjective/objective assessment levels in front of the nearby residential facades, without mitigation, plant, COD, and vehicle noise would result in lowest observable

adverse effect level (LOAEL) or significant observable adverse effect (SOAEL). Mitigation measures are proposed for each source of noise to reduce all relevant noise sources to a no observable adverse effect level (NOAEL).

5. The appellant indicates that the submitted NIA presents a worst-case scenario, and that some noise sources, such as COD, customers and queuing vehicles are not relevant, because during the proposed extended hours of operation the restaurant would only accommodate outgoing customer deliveries such as Deliveroo, Just Eat and Uber Eats. The appellant's submissions emphasise that the restaurant and the drive-thru would remain closed to the public during the proposed extended hours. The delivery drivers would collect orders from within the restaurant by accessing the restaurant through the main entrance.
6. The NIA indicates that the noise from people was found to have NOAEL. The noise from vehicles is found to have LOAEL. The study for vehicle noise considered both the drive-thru and the car park, and it was estimated that half the vehicles will use the drive-thru and the other half would use the car park. The study and its mitigations proposed for vehicle noise is not fully related to the proposal, as it includes customer vehicles and the use of the drive-thru. Therefore, it does not present an accurate representation of the anticipated vehicle noise from delivery vehicles and therefore of its mitigations. The relevance of the study and mitigations for COD noise is also uncertain, given that it is stated that the drive-thru would be closed.
7. Based on the details of the proposal, the plant noise is of relevance. The NIA identifies that noise from the existing plant, particularly the kitchen extract, would amount to a SOAEL for the closest residential dwellings if allowed to continue during the proposed extended hours of operation. Although the NIA proposed a two-stage mitigation process for plant noise, adjusting the fan speed and installing an in-duct attenuator together with an acoustic enclosure of the kitchen extract fan, these measures are presented only in conceptual form and are not supported by substantive evidence, such as technical specifications or drawings. The NIA records that the current fan speed setting is unknown and that a check should be undertaken, with a repeat measurement 'if possible' to inform the design of the mitigation package. No such post adjustment measurement has been provided. The second stage is presented as a broad prescription, such as install 'at least' a 1.5-metre-long attenuator and enclose the kitchen extract fan, yet the report does not demonstrate the feasibility of these measures.
8. Given these limitations, I am not persuaded that the proposed plant mitigation measures have been demonstrated to be effective, deliverable, or capable of securing compliance with the performance level relied upon by the appellant. Without robust evidence that plant noise can be reduced to a level that would avoid harm to the living conditions of the occupants of nearby dwellings, the proposal fails to demonstrate that it would be acceptable with regard to its effect on the living conditions of the nearby residents.
9. I have had regard to the suggested condition regarding the mitigation package for the plant noise, as outlined within the NIA. While performance-based conditions can sometimes be appropriate, they must rest on evidence demonstrating that the required acoustic outcome is achievable using identifiable and deliverable mitigations. In the absence of such evidence, this condition does not meet the 6 tests outlined within the National Planning Policy Framework (the Framework)

because there is no credible basis upon which to conclude that compliance is attainable in the first place.

10. Accordingly, due to the limitations and uncertainties within the submitted NIA, and in the absence of robust, deliverable mitigation measures for the identified plant noise, I must take a precautionary approach and find that the proposal would result in unacceptable harm to the living conditions of the occupants of nearby dwellings, with particular regard to noise.
11. For the reasons set out above, a site management plan/ premises noise management plan condition and a condition to secure the implementation of the proposed mitigation measures would not address or overcome the harm I have identified.
12. In conclusion, I find that the proposed variation of the disputed condition would lead to unacceptable harm to the living conditions of neighbouring residents, with particular regard to noise. Thus, it would be contrary to Policy 10 of the Greater Nottingham Broxtowe Borough Gedling Borough Nottingham City Aligned Core Strategies Part 1 Local Plan 2014 and Policies LS1, DE1 and IN2 of the Nottingham City Land and Planning Policies Development Plan Document Local Plan Part 2 2020, which collectively require developments, amongst other things, to maintain high standards of amenity, to safeguard the health and wellbeing of residents, and to ensure that activities associated with new or intensified uses do not give rise to harmful levels of noise and disturbance.

Other Matters

13. A lack of objection from the Council's Environmental Health Officer does not alter my findings above.
14. I have had regard to the economic objectives of the Framework, and I acknowledge the economic benefits of the proposal. However, I am mindful that the Framework, as it states at paragraph 135, seeks to achieve a high standard of amenity for existing and future users. Consequently, I find that the economic benefits of the proposal would not outweigh the harm identified above.
15. I have had regard to the appeal decisions¹ referenced by the appellant. However, I do not have full details of those cases, and it has not been demonstrated that the proposal before me is directly comparable with them. In any event, I have considered the proposal based on its own merits and site-specific circumstances.

Conclusion

16. For the reasons set out above, the appeal should be dismissed.

Andreea Spataru

INSPECTOR

¹ Appeal refs: APP/L5810/W/16/3166075; APP/P3420/W/3196812; APP/C4615/W/19/3237704; APP/N0410/W/20/3253252; APP/Z3635/W/18/3217395; APP/B4215/W/22/3304464; APP/P5870/W/17/3186813; APP/P1750/W/21/3278383; APP/R1010/W/19/3237017.