

The application is for the variation of condition 4 of planning permission 99/00330/FUL to allow revised opening hours for the main restaurant to be from 05:00 hours to 00:00 seven days a week and the hours of operation of the drive-thru facility to be 24 hours a day seven days a week (opening hours are currently 0700 and 2300 hours).

The site is located within the urban area of Newcastle as defined by the Local Development Framework Proposals Map.

The application has been called in to Committee by two Councillors due to resident's concerns.

The 8 week period for the determination of this application expires on the 2nd November 2016.

RECOMMENDATION

Permit with the following conditions;

1. Revised opening/ operating hours for the main restaurant to be from 05:00 hours to 00:00 seven days a week and the hours of operation of the drive-thru facility to be 24 hours a day seven days a week,
2. Submission and approval of noise mitigation measures proposed for the ventilation plant,
3. Submission and approval of the updated arrangements to control onsite and offsite litter,
4. All other conditions of the previous permission, application no. 99/00330/FUL, that are still required and relevant.

Reason for Recommendation

The application has demonstrated through the submission of a noise impact assessment that the revised opening/ operating hours of the existing restaurant would not result in a significant harmful impact to the residential amenity and quality of life of neighbouring residents, subject to conditions. The proposal is therefore compliant with the guidance and requirements of the National Planning Policy Framework.

Statement as to how the Local Planning Authority has worked in a positive and proactive manner in dealing with the planning application

Discussions were undertaken with the LPA and other departments of the Council prior to an application being submitted and the information submitted to support the application addresses concerns and the proposed revised hours are acceptable. The proposal is considered to be a sustainable form of development in compliance with the provisions of the National Planning Policy Framework.

Key Issues

The application is for the variation of condition 4 of planning permission 99/00330/FUL to allow revised opening hours.

Condition 4 in its current form reads;

"4. The hours of opening of the development hereby permitted shall be restricted to between 0700 and 2300 on any day of the week.

Reason: To protect amenity.”

The applicant now seeks to extend these hours to allow opening hours for the main restaurant to be from 05:00 hours to 00:00 seven days a week and the hours of operation of the drive-thru facility to be 24 hours a day seven days a week.

The drive-thru restaurant is located on a busy roundabout at the junction of Dimsdale Parade West and the A34 with a residential property adjoining the site and further residential properties in the immediate locality.

The Authority, in the determination of this application, cannot reconsider the principle of the use of the building or whether the opening should be restricted more than is currently the case, but it does have the following options:-

- If it considers that any additional hours of opening would result in an adverse impact on the living conditions of nearby residents, the original condition should remain and the application refused,
- If it considers that the condition should be varied then it should approve the application subject to the reworded condition or subject to a different condition as it considers appropriate.

The effect of a grant of permission upon an application to vary a condition is to create a new planning permission. Accordingly, unless there have been other material changes, such a permission should also make reference to the other conditions of the original planning permission where they remain relevant.

Whether the extended opening hours would cause an unacceptable loss of amenity to neighbouring properties from noise and disturbance?

The National Planning Policy Framework seeks to protect living conditions and quality of life of an area (paragraph 123).

The applicant has indicated that the extension of the operating hours for the restaurant will create additional employment positions and additional working hours for existing employees at the site.

The application is supported by a Community Consultation Statement which sets out the community consultation processes that have taken place to engage with the local community, elected members, the police and council officers in order to address any concerns. Meetings and letters have been the main methods of consultation with the community.

The application is also supported by a Noise Impact Assessment (NIA). The NIA outlines that people and vehicle noise related to the drive-thru and car park is likely to cause the lowest observable impact level and would therefore not be harmful if the proposed hours are accepted. However, the NIA assessment shows that extending the running of the extractor plant would cause a significant adverse impact at the surrounding residential properties. Such an impact can, however, be addressed through mitigation which will reduce the plant noise levels sufficiently to allow operation during the extended hours.

An objection has been received from the occupiers of 279 Dimsdale Parade West raising concerns about existing noise levels generated by cars, extractor fans and the general operation of the business that they say will be increased by the proposed additional hours.

The Environmental Health Division (EHD) has raised no objections to the application subject to a noise mitigation condition for the ventilation plant and a condition regarding litter control details to address the extended hours. The noise mitigation condition would help to control the noise levels of the ventilation plant to an acceptable level in terms of the impact on nearby residential properties and in particular the occupiers of no.279 Dimsdale Parade West.

The EHD has indicated that there is the potential for noise disturbance due to larger commercial vehicles parking on the highway as they are unable to gain access to the site due to the current access arrangements. It is considered that a reason for refusal could not be sustained on this ground as it could not be demonstrated that the additional opening hours proposed would materially increase the level of disturbance associated with the parking of such vehicles to the extent that living conditions are reduced to an unacceptable level. It is noted that the EHD do not advise that there is any such grounds to refuse the application.

In terms of any anti-social behaviour EHD have consulted Stoke on Trent City Council regarding similar 24 hour McDonald's sites. Where issues have arisen Stoke have advised that the operators of the sites have responded positively and as any such issues have been suitably addressed and EHD have raised no concerns in this regard. Furthermore, the sale of hot food beyond 11pm and before 5am will require an application to the Borough Council for a premises licence under the Licensing Act 2003. In order for a licence to be granted, the applicant will need to demonstrate that the proposed operating schedule will not harm the four licensing objectives, these being Prevention of Crime and Disorder, Public Safety, Protection of Children from Harm and the Prevention of Public Nuisance. Therefore as matters of anti-social behaviour are suitably addressed by other legislation such an issue should not be a ground to refuse this planning application.

The applicant has submitted further mitigation measures, specifically aimed at addressing issues of anti-social behaviour, which include a noise management plan that sets out additional measures that can be taken such as staff recording incidents, CCTV, increased signage and intercoms decibel levels being turned down. As these are matters that are addressed through the premises license it would not be appropriate to impose a condition that requires compliance with such a plan, but the indications are that the operator of the restaurant would comply the management plan and provide assurance that ant-social behaviour won't be an ongoing issue.

In consideration of the above the proposed hours are unlikely to result in a significant harmful impact to the residential amenity levels and quality of life of neighbouring properties subject to the condition advised. The proposal therefore complies with the guidance and requirements of the NPPF and should be approved.

APPENDIX

Policies and Proposals in the Approved Development Plan relevant to the decision:-

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy (CSS) 2006-2026

None relevant

Newcastle-under-Lyme Local Plan (NLP) 2011

None relevant

Other Material Considerations

National Planning Policy

National Planning Policy Framework (March 2012) as amended

National Planning Practice Guidance (March 2014) as amended

Planning History of this site

99/00330/FUL Demolition of existing public house, construction of restaurant, revision of parking area, alterations to existing access arrangements and landscaping Permit

09/00212/FUL Refurbishment of restaurant and patio area to include removal of one drive through booth and associated elevational alteration. Installation of customer order display unit and height restrictor Permit

13/00780/FUL The reconfiguration of the drive thru lane with a new island for signage and reconfigured kerb lines including associated works to the site. The relocation of the booth windows to accommodate the new drive thru layout. The reconfiguration of the existing corral and the construction of new remote corral. The installation of 2 x Customer Order Displays (COD) with associated canopies Permit

Views of Consultees

The **Highways Authority** raises no objections

The **Environmental Health Division** raises no objections subject to conditions regarding litter and noise mitigation for ventilation plant. In reaching their recommendation they indicate that they are satisfied with the assessment approach and consider the report to be robust in its assessment findings. It has been identified that additional works will be necessary to reduce noise levels and the target rating level of LAeq, 5min 32dB(A) at 3m from the nearest residential window under normal duty. The required mitigation measures will also reduce noise from this source during the existing operating hours. In terms of vehicle headlights there are currently no controls on the existing store to mitigate this and short of a physical redesign of the site exit there is nothing further that can be done practically to reduce the impact of vehicle headlights. It is reasonably foreseeable that HGV's and large commercial vehicle drivers will use the restaurant during the additional periods when the restaurant is open which could cause disturbance to residents. It is considered that should this be found to be an issue, that the only means of preventing such vehicles from parking is by physical no waiting area, (Double Yellow Lines, bollards or similar). The current litter control arrangements in place as part of the 1999 permission will need updating to reflect the extended opening hours and the consequent increase in trade and potential for litter. The sale of hot food beyond 11pm and before 5am will require an application to the Borough Council for a premises licence under the Licensing Act 2003. Enquiries have been made with Stoke on Trent City Council concerning the 24 hour McDonald's site in Stoke on Trent. The closest sites to residential areas are at Springfield in Trent Vale; Lysander Road, Meir Park and High Street, Sandyford. The advice

received is that the operators of these sites have responded positively to any issues of ASB arising on their premises.

The **Staffordshire Police Crime Prevention Design Advisor (SPCPDA)** has been consulted on this application and has until the 29.09.2016 to comment. Any comments received prior to the committee meeting will be reported.

Representations

One letter of objection has been received from the adjoining neighbouring property raising the following matters;

- The daily routes of staff already cause disturbance to residents due to noise,
- The disturbances start as early as 6am and as late as 1am,
- A bedroom window is directly adjacent to where cars park
- Noise disturbance includes banging of car doors, revving engines, and shouting farewells,
- Whilst management have attempted to address issues they don't cease for long,
- The proposed hours would increase noise disturbance throughout the night,
- The noise of the extractor fans are harmful,
- The manager says noiseless extractor fans are not possible,
- Speculative figures are provided in the noise assessment,
- Existing signage directing cars does not work so proposed signage will also not,
- Litter would increase around surrounding streets which is already detrimental, and
- Delivery vehicles cause disturbance and pollution by leaving engines on.

The letter is accompanied by copies of letters sent to the manager of the store which raise issues of disturbance.

Applicants/ Agents submission

The application documents are available at the Guildhall and on the Council's website via the following link. These documents are available for inspection at the Guildhall or via this link <http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/16/00726/FUL>

Background Papers

Planning File
Planning Documents referred to

Date Report Prepared

26th September 2016