

APPEAL BY MCDONALD'S RESTAURANTS LTD AGAINST THE DECISION OF THE BOROUGH COUNCIL TO REFUSE TO GRANT PLANNING PERMISSION FOR THE VARIATION OF CONDITION NO. 4 OF PLANNING PERMISSION 99/00330/FUL TO ALLOW REVISED OPENING HOURS FOR THE MAIN RESTAURANT TO BE OPEN BETWEEN 05:00 AND 00:00 HOURS SEVEN DAYS A WEEK, AND THE HOURS OF OPERATION OF THE 'DRIVE-THRU' FACILITY TO BE BETWEEN 00:00 AND 05:00 HOURS SEVEN DAYS A WEEK AT MCDONALD'S RESTAURANT, DIMSDALE PARADE WEST, NEWCASTLE-UNDER-LYME

<u>Application Number</u>	17/00856/OUT
<u>Recommendation</u>	Approval subject to conditions
<u>LPA's Decision</u>	Refused by the Planning Committee 8th December 2017
<u>Appeal Decision</u>	Appeal allowed
<u>Date of Appeal Decision</u>	10th September 2018

The Appeal Decision

The Inspector identified the main issue to be the effect that varying the condition would have on the living conditions of the occupiers of nearby residential properties, with particular regard to noise and other disturbance.

In allowing the appeal the Inspector made the following comments:-

- The appeal proposal follows a previously refused application and the appellant has sought to address the reason for refusal of that application and local residents' concerns in the current submission.
- The previous application included a comprehensive Noise Impact Assessment (NIA) which considered potential noise impacts arising from the proposed extension of opening hours, from plant and from vehicles and customers visiting the site. However, following the installation and operation of a new ventilation plant in an attempt to address previous noise concerns from that source, an updated NIA was carried out and submitted. Amongst other things this concluded that there would be no noise impact from the new plant on the occupiers of neighbouring properties, and showed a noise level of 39 dB (A) at the closest residential window compared with a figure of 51 dB (A) for the previous ventilation plant.
- Appendix 4 of the updated NIA report cites the operator's guidance on managing anti-social behaviour. This is in addition to the site specific Premises Noise Management Plan (PNMP) in the original NIA report. The PNMP lists procedures to identify, mitigate and address instances of anti-social behaviour including staff recording incidents, increased use of CCTV, additional signage requesting customers to keep noise to a minimum, restrictions on the use of the car park, no movement of bins before 07:00 and intercom decibel levels being turned down. Although many of these operational matters would be addressed through the premises licence, a condition could nonetheless be imposed to require the restaurant and drive-thru to be operated in accordance with the PMP.
- Overall the NIA provides technical evidence that the proposal will not have an unacceptable impact on the living conditions of nearby residents in terms of noise and disturbance from plant, vehicles and people, and the appellant is taking a proactive approach to the neighbour's concerns through the submission of the PNMP and acting upon operator's guidelines. There is very limited evidence from the Council to dispute these findings. Significantly, neither the Council's Environmental Health Division nor Staffordshire Police has raised any issues with regard to the potential for increased anti-social behaviour.
- With regard to traffic generation and increased use of the car park, the Highways Authority and the Council's Environmental Health Division have raised no objections with regard to increased traffic and congestion on surrounding streets during the

proposed extended hours. There is no reason to disagree with their professional assessments and it is accepted that most customers would visit the restaurant/drive thru as part of a trip to another destination, rather than making a destination trip solely to the premises.

- With regard to noise and disturbance from delivery vehicles, deliveries to the site would continue to be controlled by conditions attached to the original permission. In any event no alteration to the approved delivery regime is indicated as part of this proposal.
- Overall, and although a carefully balanced decision, the proposed extended opening hours would not result in significantly increased levels of noise and disturbance to nearby residents, subject to the imposition of appropriate conditions and requirements for compliance with the various mitigation measures set out in the PMP.
- The disputed condition is neither necessary nor reasonable in order to safeguard the living conditions of nearby residents, with particular regard to noise and other disturbance. It would amount to a sustainable form of development that would satisfy the policies of the development plan and the Framework when taken as a whole.
- Although considerable local feeling has been demonstrated, for the reasons given above none is sufficient to alter the conclusions.
- In conclusion the proposal would amount to a sustainable form of development that would satisfy the policies of the Framework when taken as a whole. Therefore, for the reasons given and taking into account all other matters raised, the appeal should be allowed.

Recommendation

That the appeal decision be noted.