

8 October 2024
L241008 SAV Cover Letter



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SUBMITTED VIA PLANNING PORTAL REF: PP-13394196

Dear Sir/ Madam,

**SECTION 73 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
APPLICATION FOR THE OPERATION OF DRIVE-THRU RESTAURANT WITHOUT COMPLIANCE WITH
CONDITION 1 OF PERMISSION: 09/00639/FUL TO ALLOW 24-HOUR OPENING
MCDONALD'S RESTAURANT, CABLES RETAIL PARK, STELEY WAY, PRESCOT, L34 5NQ
MCDONALD'S RESTAURANTS LTD**

We write on behalf of our client, McDonald's Restaurants Ltd, to apply for permission to operate the drive-thru restaurant without compliance with Condition 1 of Permission: 09/00639/FUL to allow 24 hour opening at McDonald's Cables Retail Park in Prescot (the 'Site'). The application simply seeks the extension of operational hours of the drive-thru lane only.

In accordance with the Town and Country Planning (Development Management Procedure) Order 2015 (as amended), we enclose the following documents which comprise the application:

- This covering letter;
- The completed application forms;
- Noise Impact Assessment, prepared by Sustainable Acoustics; and
- Planning Permission: 09/00639/FUL.

As the application has been submitted electronically via the Planning Portal website (**PP-13394196**), payment for the application fee of £293.00 has been made electronically.

Relevant Planning History

On 16 September 1999, planning permission was granted for the '*Erection of approximately 318 sq.m drive through restaurant and associated car parking and landscaping*' (App Ref: APP/99/00431) (the '**1999 Permission**'). The 1999 Permission was granted pursuant to 12 Conditions. Condition 7 of the 1999 Permission controlled the operating hours of the unit.

On 27 January 2005, planning permission was granted for the '*Variation of Condition 7 of planning permission: APP/99/00431 to amend opening hours from 7.00 am to midnight on any day to 6.00 am to midnight on any day*' (App Ref: 04/01378/FUL) (the '**2005 Permission**').

On 15 March 2010, planning permission was granted for the '*Variation of Condition 1 attached to planning permission 04/01378/FUL to allow opening times to be extended from 6am – midnight on any day to 5am - midnight on any day*' (App Ref: 09/00639/FUL) (the '**2010 Permission**'). The only condition attached stated:

"The use hereby permitted shall not operate or customers to be served or accommodated on the premises outside the hours of 05.00 hours until 24.00 hours (midnight) on any day."

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Condition 1 of the 2010 Permission controls the operating hours of the unit.

On 25 June 2024, the Council refused an application which sought to extend the operational hours of the restaurant to enable the drive-thru alone to operate 24 hours a day, seven days a week (App Ref: 24/00036/FUL). The formal decision notice included a single reason for refusal which states:

"It has been evidenced that the site currently experiences significant issues with anti-social behaviour, and they are particularly prevalent around the McDonald's premises. The proposed extended opening hours, it is considered, will exacerbate the potential for further anti-social behaviour and result in an increase in noise and general disturbance during the late evening /early morning to the detriment of the amenity of nearby residential properties (particularly Steley Way and Station Road Boulevard). As such, the proposal would be contrary to the provisions of the National Planning Policy Framework (2023), Saved Policy ENV2 of the Knowsley Replacement Unitary Development Plan, adopted June 2006 and Policies CS2 and CS19 of the Knowsley Local Plan: Core Strategy, adopted January 2016."

The Proposal

This application seeks permission for the continued use of the above site, without compliance with Condition 1 of the 2010 Permission, in order to enable the restaurant's drive-thru to operate 24 hours a day, seven days a week.

There are no changes to the established servicing hours at the restaurant as a result of this application.

The additional hours are required to ensure that the restaurant is better set to meet the needs of its customer base and enhance the overall operational efficiency. As a result of the proposed changes, the trading hours would marginally increase by a few hours in the early morning trade period.

Justification for the Proposed Development

The proposed extension to the operating hours of the drive-thru lane is not considered to result in any unacceptable impact on the existing levels of amenity. The Site is located within Cables Retail Park which is characterised as a commercial area.

The Site is connected to Warrington Road (A57), a major arterial route on the local highway network, via Steley Way. The road network experiences high levels of traffic volumes throughout the day and night. This constant activity contributes towards established high background noise levels in the surrounding vicinity.

Based on experiences of other restaurants within the group, the bulk of the custom during the extended hours will be drawn from passing trade, rather than drawing people into the area. On the basis that these vehicles will already be on the local highway network, the proposal will not increase vehicular traffic or noise associated with movements.

In addition, a high proportion of customers who use the restaurant during night time hours are often taxis, shift workers, delivery vehicles and emergency service crews, none of whom are prone to causing anti-social behaviour or significant noise. In this regard, the proposed development is self-regulating and therefore the restaurant does not anticipate any unacceptable impacts as a result of the extended hours.

The application relates to the proposed extended operation of the restaurant's drive-thru, between the hours of 00:00 and 05:00, during which only the drive-thru will be in operation. No customers will be allowed into the building, including delivery drivers (i.e. Uber Eats). Customers will be arriving and leaving by car alone, and all orders will be made and received through the drive-thru mechanism (i.e. the Customer Order Display 'COD') at the Site. The proposal therefore provides very little opportunity for an increase in ASB at the restaurant during the late-night trading hours.

Addressing the Reason for Refusal of the 2024 Application

Given the reason for refusal of the 2024 Application, we understand that the only matter relevant to the consideration of the proposal relates to the level of impact on the amenity afforded to existing residents in relation to the perceived potential for the occurrence of anti-social behaviour ('ASB') at the Site. The concerns raised primarily relate to the afternoon and early evening period, rather than the late night trading period and no evidence has been provided to suggest that the late night opening would result in anti-social behaviour.

It should be noted that the Planning Inspectorate has previously considered the potential for increased trading hours to result in increased risks of ASB occurring at McDonald's restaurants. In a recent appeal allowed in Feltham (Appeal Ref: APP/L5810/W/16/3166075), the Inspector concluded:

There is limited evidence of a causal link between the restaurant and the antisocial behaviour identified by the residents. Nevertheless, I am satisfied that the appellant is taking a proactive approach to the neighbours' concerns through the submission of the management plans, which are likely to alleviate some of the problems being experienced.

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise, and that application are determined on its own merits. The technical evidence produced confirms that the proposal is acceptable with regard to national planning policy concerning potential noise impacts. There is simply no evidence of a connection between increasing the operational hours of the restaurant and the potential for ASB to result in significant adverse impacts upon residential amenity.

Furthermore, it should be noted that the potential of occurrence of ASB is primarily a licensing matter which falls outside of the planning process. The hours of operation for public houses, for example, are rarely controlled by planning condition. Instead, The Licensing Act 2003 controls the sale of alcohol, including restrictions on the hours of operation. The control of the sale of food and drinks during the late-night period is similarly controlled by licensing. Whilst crime and/ or the perception of crime is a planning consideration, this relates predominantly to the design and layout of buildings which is not a consideration for this application.

A single reason for refusal was attached to the decision notice for the 2024 Application which states that:

"It has been evidenced that the site currently experiences significant issues with anti-social behaviour, and they are particularly prevalent around the McDonald's premises. The proposed extended opening hours, it is considered, will exacerbate the potential for further anti-social behaviour and result in an increase in noise and general disturbance during the late evening/ early morning to the detriment of the amenity of nearby residential properties (particularly Steley Way and Station Road Boulevard). As such the proposal would be contrary to the provisions of the National Planning Policy Framework (2023), Saved Policy ENV2 of the Knowsley Replacement Unitary Development Plan, adopted June 2006, and Policies CS2 and CS19 of the Knowsley Local Plan: Core Strategy, adopted in January 2016"

Relevant Planning Policy

To address the reasons for refusal, the relevant policies stated on the decision notice are considered to assess the acceptability of the proposal. Section 38(6) of the Planning and Compulsory Purchase Act 2004, which states that planning applications must be determined in accordance with the local development plan unless material considerations indicate otherwise. 'Material considerations' can include, for example, the National Planning Policy Framework ('NPPF').

The Development Plan

On January 2016, the Council adopted the Knowsley Local Plan (the '**Local Plan**'). The policies relevant to the reason for refusal in the Local Plan are:

- Policy CS2 – Development Principles
- Policy CS19 – Design Quality and Accessibility in New Development

Policy CS2 provides guidance on the Council's development principles and states that new development in Knowsley will be expected to promote sustainable economic development; reduce carbon emissions and adapt to the effects of climate change; reduce the need to travel and increase accessibility; and recognise environmental limits, protect and enhance environmental assets, enhance local character and promote quality of place.

Policy CS19 provides guidance on maintaining a good standard of amenity for all existing and future occupants of land and buildings.

Unitary Development Plan

The Knowsley Replacement Unitary Development Plan ('UDP') was adopted in June 2006, and was subsequently superseded by the adoption of the Local Plan in 2016. There are 39 remaining UDP Policies, with Policy ENV2 referenced in the reason for refusal.

The National Planning Policy Framework

The NPPF sets out the Government's planning policies for England and how these are expected to be applied.

Paragraph 191 of the NPPF states that planning decisions should ensure that new development should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant impacts on health and the quality of life.

Justification for the Proposal

Comments received from Merseyside Police regarding the 2024 Application stipulated that the concerns primarily surrounded trading during the early evening hours and states that: *"when looking at a date range of 01/01/2021-31/12/2023 Police ASB logs recorded for this area show as a high demand between 1500-2100 hours"*. The concerns raised relate to an existing problem with anti-social behaviour during hours where trading is already permitted, rather than the late-night trading period.

Policy CS19 states that developments must minimise crime, fear of crime and anti-social behaviour, include good levels of natural surveillance and security; and accommodate future maintenance and long term management requirements. As demonstrated within this covering letter, the PNMP and SMP, the proposal will seek to provide increased levels of natural surveillance during the proposed extended hours which will assist with minimising the fear of crime at the Site. Further, the training provided to staff at the restaurant will assist in alleviating the existing ASB experienced at Site by being equipped to de-escalate volatile situations. We therefore consider that the proposal can assist with addressing an existing issue which Merseyside Police have identified.

Policy ENV2 states that development that will either cause an unacceptable increase in noise or vibration levels or itself be subject to unacceptable noise or vibration from an existing source will not be permitted. No evidence has been produced to suggest that late night opening would result in an increase in noise at the restaurant, especially given that the trade will be confined to the drive-thru, where customers will be within their vehicles and on the premises for a short period of time. It is therefore considered that the reason for refusal is not justified as there will be little opportunity for an increase in anti-social behaviour or any associated noise.

Noise Impact Assessment

As the closest residential properties are located approximately 35m from the drive-thru lane to the south of the Site, on Layton Way, the application is supported by a Noise Impact Assessment ('NIA'). The NIA outlines that

a noise survey was carried out at the site between 22:00 – 07:00 on 15-16 November 2023. The report concludes that the proposed extension to operating hours will result in ‘no observable adverse effect’ (**‘NOAEL’**) upon nearby residential amenity. Thus, the proposed development meets the aspirations of anticipated noise as set out in Saved Policy ENV2 of the Unitary Development Plan and Policies CS2 and CS19 of the Core Strategy.

In a recent appeal decision in Liverpool where the Inspector allowed the use of upper floors as a 17 bedroom hotel (Use Class C1) ground floor to restaurant (Use Class E) and basement to bar (Sui Generis) (*Appeal Reference: APP/Z4310/W/24/3337065*). The Inspector stated that:

*“I find that the location of the appeal site within a mixed commercial area **would not lead to an overt increase in noise or disturbance beyond that which is already generally experienced in the Breck Road locality.** The proposal would not therefore give rise to unacceptable harm to the living conditions of neighbouring residents with regard to noise and disturbance. As such, it would not conflict with Policies SP2, UD2 and UD7 of the Liverpool Local Plan 2022 (LLP). It would also not conflict with the guidance found within the SPG regarding the effects of new development on the living conditions of neighbours.”*

The Inspector concluded that the proposed development at the appeal site was considered acceptable as there was no significant adverse impact on residential amenity and were considered to accord with policies and guidance.

The technical evidence produced confirms that there will be no adverse impact on nearby residential amenity as a result of the proposed development. In addition, proactive mitigation measures will be implemented to minimise and prevent the risk of noise and anti-social behaviour at the Site.

Although the NIA concludes there will be no adverse impacts as a result of the proposed development, any remaining potential for impacts to occur would be further minimised by a robust Premises Noise Management Plan (**‘PNMP’**) found at Appendix C of the NIA.

As the LPA will be aware, the National Planning Policy Framework (**‘NPPF’**) states that planning permission should only be refused on noise grounds where adverse impacts are categorised as ‘significant’. The quantitative evidence submitted as part of this application demonstrates that there will be no adverse impacts. It follows that impacts upon residential amenity should not provide any impediment to the grant of planning permission for this proposal.

Site Management Plan

In addition to the PNMP, the proposal includes a Site Management Plan (**‘SMP’**) which demonstrates how the restaurant will prepare staff and managers for anti-social behaviour which may arise at the Site through conflict avoidance trading. The SMP presents the opportunity to reduce ASB concerns through effective mitigation and management. The SMP will ensure that the Site is effectively managed throughout all hours of trade, and therefore has the potential to result in betterment for local residents.

The Applicant has sought to engage with the Council and Merseyside Police in order to attempt to gain a greater understanding of any remaining potential concerns and thereby maximise the effectiveness of the SMP.

Economic Benefits

The proposed development will have a series of positive impacts that contribute towards meeting the local and national policy objectives relating to economic growth and job creation. The extension of operating hours for the restaurant will create additional employment positions and additional working hours for existing employees at the site. These positions help to reduce unemployment and increase earnings and disposable income which benefit other businesses.

Further, the increased hours will enable the restaurant to better meet the demands of customers, and allow more opportunities to generate sales leading to increased revenue, which will contribute to Knowsley's local economy.

Summary and Conclusion

This application seeks permission to operate the drive-thru restaurant without compliance with Condition 1 of Permission: 09/00639/FUL. This is to enable the drive-thru lane of the restaurant to trade 24 hours a day, seven days a week.

The proposed extension is required to ensure that the restaurant is better able to meet the demands of its established customer base and enhance its overall efficiency.

As there are no unacceptable impacts, we respectfully request that this application will be approved and that planning permission is granted.

We trust that the information provided above is sufficient for the Council to register and consider this application. We will endeavour to contact you within the next few days to establish your timetable for decision making.

In the meantime, should you require any clarification or additional information, please do not hesitate to contact Francesca Opoku-Gyamfi or Brad Wiseman at these offices.

Yours faithfully,

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