

PARISH Barlborough

APPLICATION Application for the variation of Condition 4 of Planning Permission 17/00153/FUL (to remove trading hours of between 0600hrs and 2300hrs to allow 24 hour trading)
LOCATION 2 Tallys End Barlborough Chesterfield S43 4WP
APPLICANT McDonald's Restaurant Ltd
APPLICATION NO. 18/00493/VAR **FILE NO.** PP-07272719
CASE OFFICER Mr T Ball
DATE RECEIVED 1st October 2018

DELEGATED APPLICATION REFERRED TO COMMITTEE BY: Planning Manager
REASON: Level of public interest

SITE

Existing McDonald's restaurant with drive through situated at the junction of Tally's End with Chesterfield Road (A619). KFC (Kentucky Fried Chicken) restaurant and drive through and Costa Coffee unit adjoin to the south-western side. All these units have the same trading hours restriction of between 06.00hrs and 23.00hrs daily.

Beyond the restaurant/take-away units, to the south west are offices. Across Tally's End to the south east a single storey office with, further east, the Ibis Hotel and Treble Bob Public House. All these commercial units are accessed off Tally's End.

Across Chesterfield Road are residential properties, the closest of which is approximately 44m away (building to building).

PROPOSAL

This application is to vary condition 4 of planning permission 17/00153/FUL by deleting the reference to trading hours to allow 24 hour opening/trading while retaining the restriction on deliveries and other service functions (only between 06.30hrs and 23.00hrs daily).

Condition 4 of 17/00153/FUL states:

The trading hours of the restaurant/hot food takeaway shall only be between 06.00hrs and 23.00hrs daily. Deliveries and other service functions (such as refuse collection) shall only take place between 06.30hrs and 23.00hrs daily.

The reason for the condition is:

For the avoidance of doubt and to be consistent with extant planning permissions for the site, to protect the amenity of occupants of nearby dwellings and in compliance with policy GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan.

The application is accompanied by:

- Community Consultation Statement;
- Noise Impact Assessment.

AMENDMENTS

08 & 12.10.18 Correction and clarification of application description: relates to condition 4 on application No. 17/00153/FUL (not condition 1 of 11/00145/VAR as originally applied for) and seeks only to remove trading hours restriction with no change to deliveries and other service functions restrictions.

Community Consultation Statement removed from consideration with the application by BDC following consideration of comments made by members of the public and councillors due to alleged misleading statements.

In relation to issues raised by Environmental Health, further information submitted (19.11.18):
People/pedestrians – no impact, and controls in place in case this was ever going to be the case.
Vehicles - Ambient noise levels are dominated by traffic, and therefore car noise from around the store will not change the noise in character, this source would not be audible at the residential properties – no impact.
Customer Order Display (drive through order point) noise levels and settings provided.
Plant – worst case scenario gives a rating of 2dB below background, therefore not audible at the residential properties – no impact.
Overall impact is none when considering all sources together.

HISTORY

99/00309/FUL	GC	Erection of a restaurant & hot food takeaway with a drive through facility & formation of a car park & creation of a new access
99/00310/FUL	GC	Erection of a restaurant & hot food takeaway with a drive through facility & formation of a car park & creation of a new access
08/00510/VAR	WDN	To trade between 6am - 11.00pm, seven days a week (Vary condition 9 of planning permission 99/00309/FUL & 99/00310/FUL which limited hours to 0730-2300 daily)
08/00720/VAR	GC	To extend opening hours (vary condition 9 of planning permission 99/00309/FUL and 99/00310/FUL which limited hours to 0730-2300 daily). [Revised hours of 06.30 to 23.00 approved for temporary 6 month period].
09/00628/VAR	GC	Variation of condition 9 of planning permissions 99/00309/FUL & 99/00310/FUL to allow restaurant to open between the hours of 6.30am - 11.00pm
10/00456/FUL	GC	External alterations including doors, windows and cladding and alterations to car parking and landscaping
11/00145/VAR	GC	Extend opening hours of restaurant from 0630hrs to start 0600hrs (Variation of Condition 9 of planning permission 99/00309/FUL and condition 1 of 09/00628/FUL)

13/00144/FUL	GC	Reconfiguration of the exit and car park to allow side-by-side drive through order point
17/00153/FUL	GC	Refurbishment of the restaurant with alterations to elevations to include the installation of a new "Folded Roof" concept, comprising of aluminium cladding to the roof (increasing overall height of roof by 0.3m), the construction of extensions totalling 47.23 sq m (Revised plans submitted 28th April 2017).
17/00280/MINAM	GU	Minor amendment to planning application 17/00153/FUL - Erection of 7.5ft fence (Drawing No. 6925_AEW_1027_004 Ref F)

CONSULTATIONS

Local Highway Authority (DCC): No objections 04.10.18

Parish Council: Object (No reasons given). 23.10.18

Environmental Health: Has some concerns regarding the extension of hours at this location in view of the other neighbouring businesses that are also likely to request similar hours if this application is granted. However, this application must be assessed on the information submitted in the first instance. The acoustic report that has been submitted includes monitoring that has been carried out during the week of the August Bank holiday and we would concur with some of the residents' comments that this may not fully reflect the background noise although is likely to make the background level lower than is actually the case.

The assessment has identified a range of noise sources and then considered each one separately against background noise levels, there is no cumulative assessment for the overall noise levels. We would not be supportive of a scheme that increases the overall background noise levels in the area and therefore would be expecting an assessment that looks at the cumulative impact of the noise sources. Welcome the inclusion of a premises noise management plan for night-time activities. Currently it is not felt that a full evaluation of the potential amenity impact can be made based on the information provided. 05.11.18

Additional comments following consideration of additional information:

"We have reviewed the additional clarification submitted via email on the 19th November 2018 which has helped in our understanding of the assessment. We have also visited the site during the evening to get a better idea of the potential impact.

Due to the relatively high noise environment, it is likely that we would like rating levels of between -5 to -10dB to be achieved to ensure that there is no overall noise increase in the area. From the information that has been submitted, it is not clear that that would be possible. The acoustic report does demonstrate that most of the noise sources would not be readily discernible but they would contribute to an accumulation of noise which then leads to the ambient background levels gradually creeping up.

In addition, following our visit, it would appear that a potentially significant source of

noise is from vehicles pulling away from the junction on Tallys End to turn right towards the Treble Bob roundabout. This is difficult to assess within this type of acoustic report. Although there will always be some vehicles in this area at night, the presence of a 24hr McDonalds will increase the traffic flow. Due to the intermittency of this noise, it can potentially be more disruptive to local residents than if it was happening constantly.

The assessment of noise also relies on a limited number of customers using McDonalds during the night time hours. Whilst it is not disputed that there will be less customers at night, there is no way to condition a maximum level of customers so the impact could increase if the site becomes popular with shift workers etc. If that were the case, the noise level could potentially increase which could significantly affect the overall impact and I am unclear what, if any, additional mitigation could be provided, particularly if the main impact is from the vehicle noise entering or leaving the site as this is outside the control of McDonalds. The data for the projected customers both for the drive thru and using the restaurant demonstrates that for some nights of the week, there are very few customers throughout the night expected with the main impact over the weekends. The majority of customers are expected to arrive between 11pm-1am and I do have concerns that this could be disruptive for local residents.

This is a difficult decision as whilst there is a limited discernible impact from the operations specifically at McDonalds, the current situation is that there is a high noise environment, mainly from the road traffic along the main road. This does not allow for much flexibility in terms of additional noise sources and whilst there will be a limited impact during much of the night, the additional vehicles predominantly between the hours of 11pm-1am have the potential to affect the amenity of the residents nearest the junction. I note that there are a number of concerns from local residents about noise levels currently in the area and unfortunately do not feel that McDonalds would be able to mitigate their impact any further via any planning condition that could be imposed. Therefore, I feel that we have to recommend a refusal of the planning application.”

05.12.18

PUBLICITY

Site notice posted. 36 neighbours notified.

Objection, submitted on behalf of residents, in relation to the content of the Community Consultation Statement:

Community consultation not as positive as made out. Three residents represented Chesterfield Road residents, others felt the venue (the restaurant) was unsettling and intimidating. Many reasons given for objection to the proposal of which noise was only one (but significant) factor. A619 does not experience high levels of traffic through the night, it is relatively quiet, residents get undisturbed sleep with windows open, currently no vehicle manoeuvring into and out of Tallys End after 11pm, disturbance becomes significant again after 6am when McDonalds opens. Consensus at the end of the meeting was that the residents unanimously rejected the plans to extend the opening hours.

Copy of correspondence with applicant submitted for information.

20 further letters of objection [number indicates address on Chesterfield Road unless otherwise stated]:

Live opposite, area to front constantly littered with discarded food and litter; has become a parking area for people to sit and eat with engines running late at night. [16a]

This is a residential area, already suffer from negative environmental impacts, proposal will add further noise and traffic throughout the night, additional pollution in an already highly polluted area, increased lighting throughout the night, already suffer from rubbish, invitation to anti-social behaviour, will be detrimental to residents health and wellbeing, established 24hr fast food facilities on M1, no need for 24hour provision in this area. [50]

Not for locals who actually sleep at night. Foul odour currently discharged during opening hours is objectionable enough, unacceptable for it to continue for 24hours. Other problems from this establishment: increase in road traffic accidents and near misses; decrease in air quality, light pollution, litter. [24]

Object on grounds of noise, light pollution and air pollution. Bedroom directly opposite Tallys End, noise and traffic leaving McDonalds makes sleep difficult, but as everything shuts at 11pm can accept. All night opening would change this. Need window open in summer due to asthma, additional exhaust fumes from car turning out of Tallys End would impact on health. [24 another occupier]

Objection on grounds of anti-social behaviour, litter, noise, light pollution, atmospheric pollution and risk of crime. Some existing customers have no respect or consideration for the local community by dropping litter. Will become a magnet for youth and criminals with greater risk of crime for the whole village. Noise assessment should be taken from residential properties involving all types of vehicle noise. [24 another occupier]

Object as will cause more anti-social behaviour throughout the night, more congestion, and cars racing back and forth. [30]

Objection based on experiences of similar restaurant on an estate with 24 hour opening: attracts groups of kids in cars with door slamming, playing loud music, shouting, fighting, and some crime; meeting place for boy racers who race on nearby roads. Bedroom window faces Barlborough McDonalds, proposal will harm everyone living in the area as a result of the antisocial behaviour, noise and crime. [24 another occupier]

No change in circumstances since last application to change hours, so should stay as they are. Jobs are important but not at the expense of the right to quiet enjoyment such as a good nights sleep. Could set a precedent for KFC and other businesses throughout Barlborough. Will compound existing traffic problems in the area. [5 Old Quarry Close]

Noise assessment is flawed and scientifically unsound. Should be based on information from existing 24 hour McDonalds in the area, commercially little benefit in opening if it is not going to be busy. Extended hours (until midnight) has been previously refused on the grounds that it is a residential area; this has not changed. Tallys End cannot accommodate existing vehicles, vehicles queue on Tallys End with parking on the road as the car park is full. Will

therefore impact on pedestrian safety and further damage amenity. Litter continues to be a problem, one sack full of McDonalds litter every morning from Clowne Road, Oxcroft Way, Barlborough Road, North Road. Burden is being born disproportionately by the local community who have to pick it up. Problem of anti-social behaviour, previous application refused on such grounds. Revised noise assessment should take into account potential for KFC to similarly extend their hours. [No address given]

Since McDonald's opened massive increase in litter, noise and unruly behaviour. McDonalds gives such people somewhere to collect. Giving access to 24hour fast food will not help the young be healthier and fitter. [79 Slayley View Road]

Will significantly increase foot traffic and vehicles to the area affecting noise levels and increase litter . [No address given]

Increase in noise due to traffic and people; increase in litter; increase in light pollution from vehicles pulling out of Tally's End; increase traffic hazard. [24]

The traffic pulling out of Tallys End during the night time hours will generate extra noise and light on houses across from the junction. Already find it hard to settle to sleep mainly due to car headlights. [24 another occupier]

Area has enough litter and noise. Will be a target for nuisance gatherings of cars and youth. [No address given]

Severe impact on residential amenities of local dwellings and impact on Human Rights (right to enjoy your home peacefully). Original permission was granted with restricted hours to protect the amenity of local residents, residents are still present, the applicant knows of these restrictions when taking over the restaurant. Applicant may be able to control impacts on the property but cannot exert any influence on customer behaviour off the premises. Anti-social behaviour of customers who sit in cars with engines revving, music playing in lay by at front of house as they consume products then throw litter out of car. The Noise Management Plan with the application states that noisy customers will be moved on but they will only be displaced to nearby lay-by outside residents houses. Noise Report does not consider the impact of such behaviour on local residents, it only considers noise originating at the site. Numbers of customers predicated in the report do not appear to be congruent with the number of staff to be employed. [18]

Its noisy enough, wouldn't want any more traffic noise when I stay at relatives. [Worksop resident]

Residential area, increase in noise, light pollution and traffic not acceptable to people living so close. Will impact on Tallys End, insufficient parking and rubbish. More litter picking is required by McDonalds. Noise and traffic assessment flawed, should use data from existing 24hr operations. Will increase air pollution. [17 Slayley View Road]

Increase in litter which is already a problem; extra traffic at the Tallys End junction; extra noise for traffic especially when accelerating from junction late at night; light pollution from signage and vehicle lights when exiting the junction. [20]

Already have noise from horn blowing as well as noise generated by engines and people. Suffer light pollution from vehicles exiting during the hours of darkness. Litter problem is unacceptable. Potential for KFC and Costa to extend their hours if approved. Existing 24hr McDonalds nearby (J29a and Woodall Services). [26]

Exit road is dangerous either with queueing traffic or fast traffic. [No address given]

POLICY

National Planning Policy Framework ('The Framework')

Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration with a presumption in favour of sustainable development, decisions should secure development which will improve the economic, social and environmental conditions of the area. As the Bolsover District Local Plan was adopted prior to 2004 due weight should be given to its policies according to their degree of consistency with the Framework.

Development should make effective use of land while safeguarding and improving the environment and ensuring safe and healthy living conditions. Good design is a key aspect of sustainable development. Development should optimise the potential of the site; and, create places that are safe, inclusive, and accessible, with a high standard of amenity for existing and future users.

Bolsover District Local Plan

Shows as within settlement framework, general urban area policies apply, of particular relevance will be policies GEN1 (Minimum Requirements for Development), GEN2 (Impact of Development on the Environment).

It is considered that the general aims of these policies have a degree of consistency with the principles and policies of the National Planning Policy Framework.

Emerging Local Plan:

Publication Version of the Local Plan for Bolsover District (May 2018) submitted to the Secretary of State 31st August 2018 for independent examination, following the statutory (Regulation 19) consultation period.

This shows the site as within the development envelope for Barlborough within which urban forms of development will generally be acceptable (Policy SS3) and allows development which is appropriate in scale, design and location; is compatible with and does not prejudice existing or intended use of adjacent sites; accords with other policies of the Plan, and would not have an unacceptable environmental impact (Policy SC1).)

ASSESSMENT

This is an established McDonald's restaurant with 'drive through' on the north western edge of Barlborough Links. The building backs onto Chesterfield Road with the drive through lane and collection booths on this north-western elevation. It is at a lower ground level than the main road, with a 2.3m (7ft 6in) high close boarded fence at road level, which effectively screens the restaurant, drive through lane and restaurant windows which face this side.

There are no illuminated advertisements on this elevation although there are lights illuminating the drive through lane. There is a residential area across Chesterfield Road with a mixture of house and bungalows. The front elevation of the nearest dwellings are 44m to 47m from the McDonalds building.

The application is to allow 24 hour trading of the restaurant and drive through. Currently it is closed between 11pm and 6am. The main issues are therefore the impact on residential amenity and on the amenities of the area as a result of the extended opening hours.

The Noise Impact Assessment (NIA) predicts customer numbers being on average 60 between 11pm and 6am in the restaurant with the majority being between 11pm and 1am (37 on average), Sunday being the busiest time. The NIA using these figures, with an assumption of an average of 3 passengers per car, equates this to an average of 20 cars per night. In addition the NIA assumes the drive through outlet would generate an average of 68 customers per night, again with the majority between 11pm and 1 am the busiest days being Friday, Saturday and Sunday. Combining restaurant and drive through figures this equates to an average of 88 vehicles per night.

It is generally accepted, including by some of the objectors, that the building and drive through lane are well screened from impacts on the residential properties across Chesterfield Road. The main concerns to this current application relate to

- the increased activity at night from people visiting the premises causing noise and nuisance,
- from the additional traffic visiting the premises causing noise from engines and from headlights, particularly when exiting from the junction of Tallys End with Chesterfield Road to turn towards the Treble Bob roundabout,
- as a result of the increase in trade, the consequential increase in litter, and
- potential use of the lay-by/access way across Chesterfield Road serving nos 16 - 28 for parking and consuming McDonald's products (possibly with vehicle windows open, music playing and engines running).

It was noted on a site visit by the Case Officer during the hours of darkness that the dipped headlights of vehicles leaving Tally's End and turning right towards the Treble Bob roundabout can be seen tracking the movement of the vehicle on the walls of the houses opposite the junction at about first floor cill level. It is therefore accepted that there could potentially be disturbance from the extra vehicles leaving McDonald's and turning onto Chesterfield Road during the night impacting on people sleeping in the first floor front facing rooms. Due to the camber of the road and boundary treatments along the frontage of the dwellings the impact on ground floor windows is much less.

Environmental Health have considered the submitted Noise Impact Assessment and additional information. They have concerns about the impact of the proposal. Most of the noise sources from the increased use of the premises would not be discernible but they would contribute to the accumulation of noise which then leads to an increase in the ambient background levels.

Background noise levels are already high in the area and it is therefore considered that any addition to background noise is not acceptable as this would worsen an already poor

situation.

Environmental Health consider following a night time site visit that a potentially significant source of noise is from vehicles pulling out of Tallys End and turning right towards the Treble Bob roundabout. The presence of a 24 hour McDonalds will increase the traffic flow. Due to the intermittent nature of the noise it can potentially be more disruptive to local residents than if the flow and movement of traffic were constant.

The saved policies of the Bolsover District Local Plan show the site as within the settlement framework where the general urban development policies apply, in particular policy GEN2 (Impact of Development on the Environment) which resists development that creates materially harmful impacts on the local environment with a list of criteria to consider in this assessment. These include the extent of the generation of noise, vibration, smells etc., the hours of operation of any activities proposed and the amount of road and pedestrian traffic generated.

It is clear that the 24hour operation of restaurants such as McDonald's can take place in business park or road side service station locations, i.e. in locations where they do not abut residential areas. This is not the case at Barlborough where residential dwellings are located across the man road from the restaurant. The many objections received outline amenity problems already experienced by local residents which could potentially be extended into the quieter night time period when impacts can be more closely felt. These impacts relate to the additional road traffic that could be attracted to the area causing noise disturbance and related activity potentially of an anti-social nature. Combined with the noise generated by plant and equipment which would need to operate during the proposed extended hours, and their impact on background noise levels (as explained in the response of the Council's Environmental Protection Officer) it is considered that the development would create an harmful material impact on nearby residents contrary to policy GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan.

The emerging Local Plan for Bolsover District similarly has policies to ensure development does not have an unacceptable environmental impact (policy SC1) and that development ensures a good standard of amenity is maintained for the occupants of existing neighbouring properties. The proposal would therefore also be contrary to the submitted policies of the Local Plan for Bolsover District although due to the stage of preparation of the emerging Local Plan only limited weight can be given to its policies.

The Framework also supports development which creates places that are safe, inclusive, and accessible, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime do not undermine the quality of life or community cohesion and resilience. (policy 127/f). In addition planning decisions should also ensure that development is appropriate for its location taking into account the likely effects of pollution on health and living conditions, and avoid noise giving rise to significant impacts on health and the quality of life (policy 180).

It has been recorded above that the proposal will add to already high night time background noise levels, this could impact on health and the quality of life with the higher background levels and the addition of sporadic additional vehicle movements.

The applicant has stated in his application that the proposal will generate 15 new jobs (Statement of Community Involvement) and that custom will largely be drawn from passing traffic (supporting letter). In addition the applicant states that a high proportion of customers would be taxi drivers, shift workers, delivery vehicle drivers, and emergency service crews, none of whom are prone to causing anti-social behaviour or significant noise. While this may be so it would not be possible to limit trade to such people nor is the statement necessarily true.

The applicant has submitted a Premises Noise Management Plan with the NIA. This sets out that the trained members of the management team should challenge vehicle, anti-social behaviour noise and people noise and log incidents for reporting to the authorities when appropriate. This can be required by condition.

It would be appropriate, if the application were to be approved to review the litter management plan to include an increase in frequency of litter patrols to reflect the increased custom.

Other Matters

Listed Building:	N/A
Conservation Area:	N/A
Crime and Disorder:	Discussed in report
Equalities:	No issues raised
Access for Disabled:	No issues raised
Trees (Preservation and Planting):	N/A
SSSI Impacts:	N/A
Biodiversity:	N/A
Human Rights:	A potential breach of Human Rights has also been raised. However it is accepted that the planning system by its very nature respects the rights of the individual whilst acting in the interest of the wider community. It is an inherent part of the decision-making process to assess the effects that a proposal will have on individuals and weigh these against the wider public interest in determining whether development should be allowed to proceed.

Conclusion

In summary, the proposal is within an established business area, although where it adjoins a residential area, and within the settlement framework where development is generally acceptable subject to no adverse impacts. While there may be economic benefits from the proposal, through increased employment and provision of a food service at a time of day when there is no similar provision in the immediate area, it is considered that the amenity impacts outweigh any economic and employment benefits. The proposal will add to background noise levels at a sensitive time of day and there is potential for additional disturbance and anti-social behaviour from the additional pedestrian and vehicular traffic visiting the premises to the detriment of the amenities of nearby residents.

The proposal is therefore contrary to saved policy GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan and to policies of the Framework which

seeks to ensure that development is appropriate for its location. In view of the impacts of the development the proposal is not considered to be sustainable development within the terms of the Framework.

RECOMMENDATION

REFUSE

For the following reason:

While there may be economic benefits from the proposal, through increased employment and provision of a food service at a time of day when there is no similar provision in the immediate area, it is considered that the amenity impacts outweigh any economic and employment benefits. The proposal will add to background noise levels at a sensitive time of day and there is potential for additional disturbance and anti-social behaviour from the additional pedestrian and vehicular traffic visiting the premises to the detriment of the amenities of nearby residents. The many objections received outline amenity problems already experienced by local residents which could potentially be extended into the quieter night time period when impacts can be more closely felt.

The proposal is therefore contrary to saved policy GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan and to policies of the Framework which seeks to ensure that development is appropriate for its location. In view of the impacts of the development the proposal is not considered to be sustainable development within the terms of the Framework.

Statement of Decision Process

Discussions have taken place with the applicant to clarify aspects of the proposal. The proposal has been considered against the policies and guidelines adopted by the Council and the decision has been taken in accordance with the guidelines of the Framework. In view of the impacts of the proposal and the location of the site the proposal is not considered to be sustainable development; it is not considered that these issues can be overcome.



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