

**PARISH** Barlborough

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**APPLICATION** Variation of condition 4 (trading hours) of planning permission 17/00153/FUL to trade between 05:00 and 00:00, with deliveries and other service functions only between 06:30 and 23:00.  
**LOCATION** 2 Tallys End Barlborough Chesterfield S43 4WP  
**APPLICANT** McDonalds Restaurants Ltd  
**APPLICATION NO.** 19/00181/VAR **FILE NO.** PP-07717860  
**CASE OFFICER** Mr T Ball  
**DATE RECEIVED** 27th March 2019

DELEGATED APPLICATION REFERRED TO COMMITTEE BY: (Former) Cllr H Gilmour  
REASON: Level of public interest

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### **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 with 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 adding an extra hour for trading at the beginning and at the end of the day so that the premises open at 5am and close at midnight.

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 proposal is to amend this condition to read:

*The trading hours of the restaurant/hot food takeaway shall only be between 05.00hrs and 00.00hrs daily. Deliveries and other service functions (such as refuse collection) shall only take place between 06.30hrs and 23.00hrs daily.*

The application is accompanied by a Noise Impact Assessment. This states that the closest residential properties are around 50m away; that road traffic noise is a major contributor to the noise climate; attended and unattended measurements took place in August 2018; and that the noise impact from people, vehicles, the Customer Ordering Display (COD – ordering point for drive through) and from plant, would be likely to cause no impact on nearby residential amenity without further mitigation need.

A premises Noise Management Plan is also provided to establish good practice proactively and reduce the risk of causing a low noise impact on the quality of amenity to a minimum.

## AMENDMENTS

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 and it relating to 24 hour operation.

Site Management Plan received 3 May 2019:

- security maximised with CCTV including 2 external cameras monitoring the drive-thru lane;
- litter picks every 2 hrs in the immediate vicinity and around the local community on a daily basis picking up all litter, frequency and area are able to be extended if deemed necessary should the opening hours be extended;
- McDonalds 'staff safe' system has been installed which is an audio visual system linked to remote monitoring and assists in managing anti-social behaviour etc.;
- signage is in place requesting customers to be respectful of neighbours and to keep noise to a minimum;
- managers are trained in conflict management awareness.

Response to various public responses also received 3 May 2019.

Response to comments of Environmental Health received 21 May 2019.

## 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)
18/00493/VAR	WDN	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)

## CONSULTATIONS

Environmental Health: Has reviewed the noise assessment that has been submitted to support this application which is essentially the same as that submitted for the previous application albeit the trading hours are altered so that the assessment covers the hours 23:00-00:00 and 05:00-06:00. Comments regarding the noise assessment are therefore much the same as for the previous application as the proposed increase in hours will capture many of the predicted additional customers which is to be expected. However, the main impact of the proposed increase has always predominantly been with respect to the hours now under consideration. Therefore, although aware that the applicant has sought to reduce the level of hours that they wish to trade from 24 hours, comments are still much the same as previous. The impact of traffic pulling away from Tally's End has not been considered any further, nor is there any information to determine whether a more significant noise reduction could be achievable at the store.

Unfortunately, this store is located in an area where there are already existing high noise levels due to the busy road and the commercial nature of the businesses opposite the residential houses. There is no additional information or justification with the application to demonstrate why the extended hours requested are essential or desirable. When this is

coupled to the potential for additional disturbance to the residents, unable to say that this would be justified or reasonable.

Therefore, recommendation and comments from the previous consultation remain valid and in view of the potential impact on existing residents, we would recommend a refusal of the application at this time, predominantly as much of the proposed impact would be outside the direct control of McDonalds.

Following a site visit in connection with the withdrawn application, 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. 15.05.19

Parish Council: Objects:

The air quality for the residents living in close proximity to both the restaurant and also the parking areas used by the heavy goods vehicles would be significantly diminished.

There would be significantly increased noise pollution from vehicles using the facility, the residents will only have four hours of respite from the additional noise.

Also other sources of additional noise pollution would arise from the extraction fans being operated from 4:00 a.m., the noise generated from the kitchen and the drivers and passengers in the vehicles using the car park.

The light pollution would be increased, coming from both the facility and the vehicles entering and leaving the premises.

The extended opening times will attract more traffic, especially HGV.

Potentially more anti – social behaviour after 11.00 p.m., as it could encourage groups of people and vehicles to congregate in the car park.

Permission given to this facility for extended trading hours could open the floodgates for similar businesses in the area to extend their opening hours.

We would also like to point out that this planning application for extended opening hours has a history of refusal on previous occasions and the application immediately prior to this application was withdrawn by McDonalds themselves. 17.04.19

Local Highway Authority (DCC): No objections 02.04.19

## **PUBLICITY**

Site notice posted. 23 neighbours notified.  
25 letters of objection, 2 of support:

Two letters of support one of which welcomes more employment opportunities and access to services for people who work nights etc. No reasons for support provided by second supporter.

25 letters of objection mainly from residents on Chesterfield Road, but also some from other residents nearby or regular visitors to relations on Chesterfield Road.

Main reasons for objection:

Noise and nuisance (e.g. moving headlight beams on bedroom windows) from additional traffic particularly from using Tallys End junction with Chesterfield Road disturbing sleep. (Mentioned specifically by 9 objectors).

Potential additional noise disturbance from increased use of lay-by opposite Tallys End junction (people parking to eat food purchased from McDonalds during extended hours - talking, shouting, music and litter at an anti-social time for a residential area) disturbing sleep. This problem already occurs during the current trading hours. (Mentioned specifically by 4 objectors).

Potential extra litter from additional trade. (Mentioned specifically by 18 objectors).

Potential for anti-social behaviour during increased hours. (Mentioned specifically by 9 objectors).

Additional traffic, pollution (fumes) light and noise. (Mentioned by 20 objectors).

Additional odours from cooking process. (Mentioned specifically by 2 objectors).

Additional noise from kitchen extraction plant which currently finishes and starts an hour after/before trading. (Mentioned specifically by 4 objectors).

Precedence for 24 hour opening. ((Mentioned specifically by 2 objectors).

Precedence for Costa and KFC to extend their hours of trading. (Mentioned specifically by 2 objectors).

Sufficient 24 hour restaurants in locality. (Mentioned specifically by 6 objectors).

Existing parking problems/damage to footways and verges, particularly by HGV's which cannot access car park. (Mentioned by 3 objectors).

Circumstances which justified existing restrictions on trading have not changed and still apply, being to protect the amenity of occupants of nearby dwellings and their quality of life. (Mentioned specifically by 3 objectors).

Contrary to health and wellbeing agenda/policies, widening availability of 'junk' food. (Mentioned specifically by 5 objectors)

This is not a predominantly commercial area but a mixed residential/commercial area with more residential properties than commercial ones.

The benefit of jobs does not outweigh the impacts on local residents.

The current operation of the premises impacts on the quality of life in a substantial manner, any increase will make this worse. (Mentioned specifically by 2 objectors).

Proposed new housing in the locality will increase trade during the current hours with consequent noise, pollution. Litter impacts; no need for extended hours.

Existing signage asking customers to keep noise levels down does not work.

Weekday noise is different to weekend noise (different type of customer more prone to anti-social behaviour at weekends). Noise assessment does not account for this difference.

Transient customers (passing trade) have no respect for the quality of life of nearby residents.

Affects human right to enjoy your home peacefully.

Further comments of objection received by the local Neighbourhood Watch Coordinator on behalf of residents following consideration of agents response to previous objections. These are discussed below.

## **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, and which promote health and well-being, 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. (para 127f).

### 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) currently undergoing examination although with public sessions now closed and minor modifications published for consultation. The plan is therefore at an advanced stage.

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). The proposed minor modifications to the emerging Local Plan do not impact on the interpretation of these policies in the context of this proposal.

### **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 an additional 2 hours trading of the restaurant and drive through. Currently it is closed between 11pm and 6am. The proposal is to change these times so that the premises are closed between 12midnight and 5am. 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 in the restaurant being on average 21 during the 11pm – 12am period and 3 during the 5am – 6am period and customers using the drive-thru being on average 29 during the 11pm – 12am period and 7 during the 5am – 6am period. These equate, from information within the NIA, to an average of 36 cars during the 11pm – 12am period and 7 cars during the 5am – 6 am period visiting the premises. The kitchen extract system works for an additional hour beyond the closing time and before the opening time. The NIA includes a Premises Noise Management Plan which in summary requires staff and management to be vigilant and intervene if necessary in respect of vehicle and antisocial behaviour (e.g. loud music) and noise from people outside the building, and to set the intercom (COD) at the drive-thru to reduced noise levels after 23.00hrs and before 07.00hrs. The Site Management Plan submitted during the consideration of the application (summarised above) adds specific additional detail (e.g. existing number of CCTV cameras, existing number of litter bins and frequency of litter picks, existing signage, existing staff training and the existing external monitoring system) which supports the Premises Noise Management Plan. No new or additional measures are proposed.

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 from people visiting the premises causing noise and nuisance during the additional hours,
- 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 (in connection with the withdrawn application) 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. They comment that it is essentially the same as that submitted for the previous (withdrawn) application albeit with the trading hours altered to cover the hours now applied for. Their comments are therefore much the same as the proposed increase in hours captures many of the predicted additional customers which 24 hour operation anticipated. The main impact of the proposed increase in hours has always predominantly been with respect to the hours now under consideration. Although the applicant has sought to reduce the level of hours that they wish to trade from 24 hours, Environmental Health comments are still much the same as previous. The impact of traffic pulling away from Tally's End has not been considered any further, nor is there any information to determine whether a more significant noise reduction could be achievable at the store.

This store is located in an area where there are already existing high noise levels due to the busy road and the commercial nature of the businesses opposite the residential houses. There is no additional information or justification with the application to demonstrate why the extended hours requested are essential or desirable. When this is coupled to the potential for additional disturbance to the residents, it is not possible to say that this would be justified or reasonable.

The previous comments of Environmental Health therefore remain the same. These relate to 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 extended opening hours at 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 extended hours of operation (including 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 (e.g. Markham Vale or Woodall Services). 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 full weight cannot be given to its policies.

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 during the extended hours.

The applicant has stated in his application that the proposal will generate new jobs 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 and subsequently a 'Site Management Plan'. These set out that the trained members of the management team should challenge anti-social behaviour noise, log incidents for reporting to the authorities when appropriate and identifies provision already in place to assist in monitoring and controlling the site. It is not clear if any of the internal CCTV cameras effectively monitor the car park and outdoor sitting area, the Site Management Plan states there are 2 external camera monitoring the drive-thru and 13 internal cameras. Implementation of these plans can be required by condition. However these measures are already in place and in operation but do not appear to impact on the examples of anti-social behaviour (including litter) and noise identified and currently experienced by objectors (most of whom live on Chesterfield Road). Such problems primarily relate to vehicles entering or leaving Tallys End making excessive noise or using the lay by opposite, which are outside the direct control of McDonalds but appear to relate to their customers.

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.

In respect of issues of parking raised by objectors, this relates to the current use of the premises, given the anticipated level of trade during the extended hours similar parking problems (on pavements and verges on Tallys End) are unlikely. The highway authority has not raised any objections to the development.

The applicant has responded to various issues raised, pointing out that a perceived lack of commercial need or demand is not a valid reason for refusal of an application. In response to the objections concerning noise the applicant points out that the NIA (Noise Impact Assessment) provides a robust, technical basis from which to assess the impact of the proposed extended operating hours. The NIA provides clear technical advice, undertaken by a suitably qualified acoustic engineer, which concludes the proposals will not have an unacceptable impact on the amenity of residents. The NIA unequivocally states that the proposed extended hours will not generate any material increase in noise or disturbance as a result of vehicular movement. This is primarily due to a high proportion of the customers who will be using the premises during the proposed hours already being on the road network, and therefore the noise generated by vehicles is predominately existing rather than new.

In response to the comments about the generation of traffic the applicant states that the majority of the additional trade during the extended hours will be drawn from passing vehicles which are already travelling on the road network, rather than generating new dedicated vehicle trips. Similarly there will be no increase in pollution as the vehicles are already on the road. However this does not take into account that as the premises becomes established with its extended hours that additional traffic and custom may be attracted to the restaurant, i.e. over time specific journeys rather than just passing trade may be attracted to the restaurant.

As regards anti-social behaviour the applicant states that there is absolutely no evidence to show that the proposed extended operation of the restaurant would result in any increase in anti-social behaviour at the site due to the proposed hours. The applicant understands that the restaurant does not currently have a problem with the occurrence of anti-social behaviour. A large amount of custom at the McDonald's Restaurant during the extended hours will be 'pass by' trips carried out by vehicles already on the road network. They state that a high proportion of these customers using premises during late-night hours do so linked to their employment such as taxi drivers, shift workers and delivery drivers. As a result of this, the potential risk of anti-social behaviour is, the applicant states, limited due to the nature of the custom.

Further objection has been received in response to these issues on behalf of residents:

Comments made by residents are not about commercial need or demand, there are no benefits to the neighbourhood as a result of longer opening hours as there are already two 24 hour McDonalds within 4 miles of Barlborough, extending hours provides no benefits, it only generates nuisance.

The Noise Impact Assessment is deeply flawed as it deals primarily with noise emanating from the restaurant itself rather than the 'full cycle' impact of customers using the restaurant including their route entering and exiting Tallys End. Problems of noise predominantly arise from customers manoeuvring within and leaving the car park and exiting Tallys End. The true impact of noise at affected properties should include assessment of all types of traffic using Tallys End including hgvs which have to turn with reversing alarms.

As regards highway impact, it is inconceivable that the level of demand predicted (50 vehicles during the late night hour) will be generated only from passing trade, it is inevitable that new traffic will be attracted to the area at times of the day when there are typically few vehicles on the road. The applicant also states that a high proportion of these new customers will be taxi drivers, shift workers and delivery drivers, at 11pm taxis are usually busy, shift workers are at work, and delivery drivers are long haul (and therefore more able to stop at premises more suitable for their vehicles). Tallys End junction is dangerous, evidence of 3 accidents is provided. A further 100 vehicle movements in and out of this junction late at night increases the likelihood of further accidents.

Comments relating to air pollution are wrong, a vehicle travelling at a steady speed along a straight road will not have the same emissions as a vehicle manoeuvring around the McDonald's site and pulling away from the Tallys End junction which will be much greater.

As regards light pollution photographs are submitted to illustrate the problem from vehicles exiting Tallys End.

With respect to anti-social behaviour, this takes many forms not just rowdy behaviour; it includes litter which will be increased with the extended hours. There have been incidents, last September, of theft from property and vehicles apparently perpetrated

by people seen leaving McDonalds car park. Late night opening after the pubs have closed will result in increased anti-social behaviour from people attracted to the premises for food. The Site Management Plan is a worthwhile document and any efforts to reduce the impact of the McDonalds operation with respect to their current opening hours is welcomed but does not justify extending the opening hours which will extend the nuisance caused by the restaurant to further encroach upon times when neighbours are trying to sleep. The Plan merely demonstrates that McDonald's recognises that it introduces all manner nuisance to its neighbours and that it makes a cursory attempt to implement some rudimentary control measures.

In addition the applicant has provided further commentary on the Environmental Health response. These include in summary:

There is no requirement for the applicant to demonstrate why the extended hours are essential or desirable [Comment – in this respect Environmental Health were trying to see if there were any overriding reasons for the proposal which would outweigh its impacts.]

Emphasises that the NIA demonstrates that the proposed development will not have a significant impact upon the residential amenity of the surrounding area by way of noise. [Comment: The NIA relates to noise emanating from the premises it does not take into account the impacts of vehicles using the Tallys End junction.]

The test in the Framework is that there should be 'significant adverse impact'

If the existing noise climate in the vicinity of the application site is characterised by high noise levels associated with the road network and commercial businesses (as detailed in the NIA and Cover Letter), then any noise impacts of the proposed extension of operating hours will be even further reduced. [Comment: the noise and traffic on the road network related to commercial businesses in the area do not impact on Tallys End.]

The additional comments of the applicant are noted and taken into account, however it is not felt that the additional information justifies or outweighs the adverse impacts of the proposal upon the residential amenity of nearby residents as further illustrated by their later comments.

#### **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 (although no job creation figures have been given) 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 sensitive times of the 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 times 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 sensitive times 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.

Site Location Plan

