Development Control – Delegated Officer Report

Application Number: ADC/0242/10 Recommendation – APPROVE

Site: **McDonalds Restaurants Ltd, Eastern Avenue Shoreham-by-Sea BN43 6PW**

Proposal: **Continued opening 5am-12 midnight 7 days per week (renewal of ADC/0224/09) (Variation of condition 13 of SU/269/01)**

The Application

Permission for this drive-through restaurant was granted in 2002 subject to conditions including condition 13 which restricts opening times to 7am-11pm with an additional half hour for all activity to cease (SU/269/01).

Temporary permission was granted in January 2005 for the variation of condition 13 to enable opening 6am-12 midnight but was not implemented (SU/252/04).

In February 2006, permanent permission was granted for opening 6.30am-11pm with all activity required to cease by 11.30pm (SU/3/06).

In July 2009, temporary permission was granted to relax the condition to enable opening hours of 5am-12 midnight 7 days per week, the applicants having agreed to delete a request for opening until 2am on Fri-Sat (ADC/0224/09). In practice, the premises have been open 6am–12 midnight for the drive-thru (but till 11pm inside the restaurant).

Consultations and Representations

Adur District Council: The EHO has no objection, stating that he is not aware of any complaints since the previous permission was granted.

Third Parties: No comments received.

Relevant Planning Policies and Guidance

Adopted Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1
PPS1 ‘Delivering Sustainable Development’ (ODPM 2005)
PPS4 ‘Planning for Sustainable Economic Growth’ and Practice Guidance ‘Planning for Town Centres’ (DCLG 2009)
PPG24 Planning and Noise’: Annex 3, para 20 (DoE 1994)

Planning Assessment

Policies

The site is within an area along the north side of the A259 (between the road and the railway) that is used predominantly for retail purposes. However, it is not identified for any particular purposes in the Local Plan.

Local Plan policy AG1 states that, subject to other policies, development will normally be permitted subject to "it not detracting from the existing local urban environment".

PPG24 states that food & drink uses, particularly fast food restaurants, public houses and night clubs, pose particular difficulties because their activities peak in the evening and late at night. It advises LPAs to consider the noise that may be made by customers in the vicinity and states that the disturbance from traffic and car parking should not be underestimated.

PPS4 (policy EC4.1) states that Councils need to encourage a diverse range of complementary evening and night-time uses which appeal to a wide range of age and social groups. They should consider the scale and impact on the character of the centre, anti-social behaviour, crime, and the amenities of residents. They should take account of their Statement of Licensing policy and the promotion of licensing objectives. The Government's objectives for the Licensing Act 2003 include flexibility to avoid concentrations of customers leaving premises at fixed and artificially early closing times and this is reflected in this Council's Licensing policy statement which seeks slower dispersal of people through a variety of closing times.

Residential amenity – customer noise

The premises are situated between a busy road and the railway (next to a level crossing) in a commercial and industrial area. However, there are flats and houses on the opposite (north) side of the railway, 35m away at their closest (Dolphin Mews flats and house at No.2 Dolphin Rd). During the normal working day and in the evening, background noise levels from road and rail traffic, and the frequent operation of the level crossing, are high resulting in the restaurant premises having no significant effect on residential amenity. Later, however, such traffic diminishes markedly and, particularly after midnight, background noise is low.

The permanent opening hours approved in 2006, till 11pm, were in accordance with ADC's supplementary planning guidance "Late Night Opening of Restaurants and Take-aways" which was adopted as long ago as 1985. However, this guidance now has very little weight because of more recent Government policy. The licensing regime objectives include more flexibility and generally less restrictive opening times in order to increase choice and avoid concentrations of people leaving licensed premises at particular times.

No complaints of nuisance were received as a result of opening till 11pm but, as a result of notification of the last application, two residents of the Dolphin Mews flats referred to a problem of youths congregating in the vicinity of the flats, using the boundary wall as a seat, and causing some disturbance and

litter. Consequently, only temporary permission for extended hours till 12 midnight was granted, retaining control owing to concerns about customer noise causing sleep disturbance to local residents.

However, no objections have been received in respect of the present application following the trial period of opening until 12 midnight and it is considered that permanent permission can now be granted.

Recommendation

APPROVE for reason that:-

The extended opening hours have not resulted in any significant detriment to the residential amenities of nearby properties to the north of the railway and, having regard to policy AG1 of the Adur District Local Plan, PPS4 and PPG24, it is considered appropriate to grant permanent permission.

Subject to:-

1. C14L .....hours of 5am and 12 midnight, and ..... All activity at the premises shall cease by 12.30am.

Case Officer: Keith Morgan Date: 28 July 2010