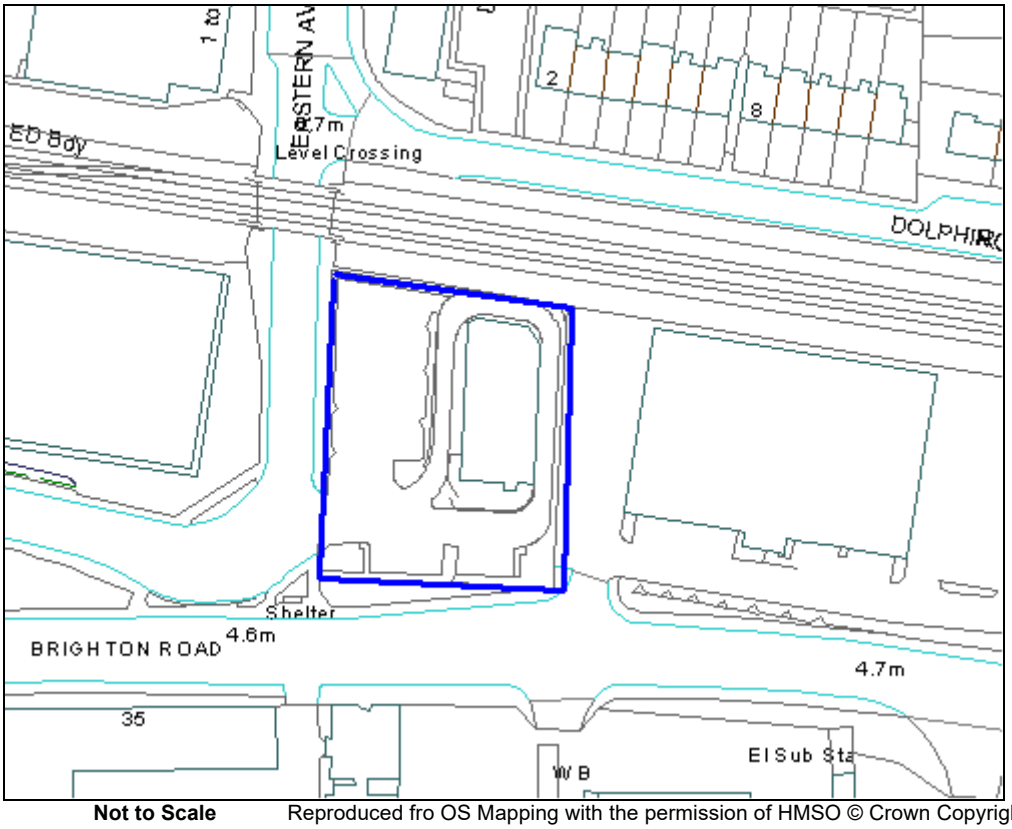
Application Number: AWDM/0255/12 **Recommendation – TEMPORARY PERMISSION**

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

Proposal: **Variation of condition 13 of SU/269/01 and condition 01 of AWDM/1019/11 to allow restaurant and drive-through to trade from 5am–12 midnight Monday to Thursday and continuous trading from 5am Friday to 12 midnight on Sunday (for a 12 month temporary period)**

Applicant: McDonalds Ward: St Mary's
Case Officer: Rebekah Smith



Not to Scale Reproduced fro OS Mapping with the permission of HMSO © Crown Copyright Licence number LA100024321

Proposal, Site and Surroundings

The application relates to a single-storey restaurant building located on eastern side of Eastern Avenue at its corner, south of the level crossing. The premises are situated between A259 Brighton Road to the south and the railway line to the north in a predominantly commercial and industrial area. However, to the north side of the railway there are flats and houses in Dolphin Road and Eastern Avenue.

Permission for this drive-through restaurant was granted in 2002 subject to conditions including condition 13 which restricted 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). Then 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 week, the applicants having agreed to delete a request for opening until 2am on Saturday and Sunday (ADC/0224/09). This was renewed permanently in August 2010 (ADC/0242/10).

In November 2010, temporary permission was granted for the variation of condition 1 of ADC/0242/10 to enable the restaurant and drive-through to open 5am to 12 midnight Sunday to Thursday; 5am Friday to 2am Saturday and 5am Saturday to 2am Sunday (ADC/0365/10). This was renewed permanently in January 2012 (AWDM/1019/11).

The applicant now seeks permission to vary the conditions again, for a temporary 12 month period. The current application would not alter the existing Monday to Thursday approved hours (5am to 12 midnight) but a variation is sought to allow the restaurant and drive-through to open continuously from 5am Friday to 12 Midnight on Sunday.

Consultations

Adur & Worthing Councils: The ***Environmental Health officer*** has received no complaints and is agreeable to a 12 month trial period being permitted.

Representations

No comments received at time of writing.

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.

As a result of notification of the application in 2009, 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. However, no complaints have since been received and no third party comments were received in respect of the recent permanent renewal in January which allows opening hours of 5am to 12 midnight Sunday to Thursday; 5am Friday to 2am Saturday and 5am Saturday to 2am Sunday.

Opening continuously though the night on Friday and Saturday nights, as the current application would allow, when the background noise is very low, does give rise to concerns about customer noise causing sleep disturbance to local residents. However, the nearest of these is 35 metres away, on the north side of the railway, and the northern/western part of the car park is cordoned off by the applicants to prevent customers parking there during extended hours. The permanently approved hours until 2am on Friday and Saturday nights have not given rise to any complaints and, if approved, this application would allow, in addition to the existing approved hours, the premises to remain open in the period between 2am and 5am on Friday and Saturday nights when the premises currently close. Given the approved opening hours, the restricted use of the car park, and the proximity to residential properties, subject to the views of the Environmental Health Officer, the variation is considered acceptable for a trial period of 12 months to allow the extended hours of use to be monitored.

Recommendation

APPROVE for the reason:-

Extended opening hours during periods when background noise is low have the potential to result in unacceptable detriment to the residential amenities of properties north of the railway by reason of noise disturbance from people attracted to and gathering in the vicinity of the restaurant premises. Having regard to policy AG1 of the Adur District Local Plan, it is considered necessary to retain planning control by granting only a temporary permission to provide a trial period.

Subject to Conditions:-

1. The use of the premises for the additional opening hours hereby permitted shall cease on or before the period ending on 30 April 2013 and thereafter the premises shall be restricted to opening hours of 5am to 12 midnight Mon-Thurs and 5am Friday– 2am Saturday and 5am Saturday- 2am Sunday (with an additional half hour for all activity to cease) as specified in Condition 01 of the previous permission ref. AWDM/1019/11.
2. The premises shall not be open for trade or business other than between the hours of 5am and 12 midnight Monday to Thursday and from 5am Friday to 12 midnight Sunday.
3. The northern part of the car park (west of the restaurant building) shall be cordoned off at 12 midnight daily to prevent access by cars to that parking area during the additional late night trading hours hereby permitted.

.....