Development Control – Delegated Officer Report

Application Number: ADC/0365/10 **Recommendation – Temporary permission**

Site: **McDonalds, Eastern Avenue, Shoreham-by-Sea BN43 5GA**

Proposal: **Variation of Condition 1 of ADC/0242/10 to enable restaurant and drive-through to open 5am-12 midnight Sunday to Thursday; 5am Friday– 2am Saturday and 5am Saturday- 2am Sunday**

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 Saturday and Sunday (ADC/0224/09). This was renewed in August 2010 (ADC/0242/10). In practice, the premises have been open 6am–12 midnight for the drive-thru (but only until 11pm inside the restaurant).

The latest application is to stay open after 12 midnight until 2am on both Saturday morning and Sunday morning.

Consultations and Representations

Adur District Council: The EHO states that any permission should be temporary so the potential disturbance from the change of hours can be assessed. However, is also concerned about noise if customers, after purchasing food, park in the car park to eat it. Therefore, as part of any temporary permission, advises that removable security bollards be placed along the main parking area so it is kept out of bounds once the restaurant closes for foot customers. The applicant should consider how any disturbance from customers parking on-site would be managed by the restaurant staff.

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.

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 were received in respect of the recent application for renewal of opening till 12 midnight.

Opening until as late as 2am when the background noise is very low does give rise to concerns about customer noise causing sleep disturbance to local residents 35m away, on the north side of the railway. Local residents have a reasonable need to be able to sleep free from disturbance at such a late time during the night. Consequently, only temporary permission for extended hours is considered acceptable, to provide a trial period and retain control. It is considered this should be for 9 months, expiring in the summer when potential risk of disturbance is greatest.

In addition, the EHO advises that the northern part of the car park should be cordoned off to prevent customers parking there during the extended hours. The applicant's agent has responded that the applicants intend to refurbish and alter the premises, including the car park, in the near future and this could take on board the separation of the northern car park area to prevent late night use.

Recommendation

APPROVE for reason that:-

Extended opening hours during periods when background noise is low have the potential to result in unacceptable detriment to the residential amenities of nearby properties 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:-

1. C1Diii ....additional opening hours hereby.....ending on 31 July 2011 and thereafter .....restricted to opening hours of 5am to 12 midnight (with an additional half hour for all activity to cease) as specified in Condition 1 of the previous permission ref. ADC/0242/10.

R. To retain planning control in the interests of the residential amenities of the flats and houses to the north, having regard to policy AG1 of the ADLP.

2. C14L .....hours of 5am and 12 midnight Sunday-Thursday and 5am Friday– 2am Saturday and 5am Saturday- 2am Sunday ..... All activity at the premises shall cease within half an hour of these closing times.
3. Prior to the commencement of the extended opening hours hereby permitted provision shall have been made for cordoning off the northern part of the car park (west of the restaurant building) and no access by cars to that parking area shall take place during the additional late night trading hours hereby permitted.
   R. As 2 above

Case Officer: Keith Morgan Date: 27 October 2010