exp 6/8

Development Control – Delegated Officer Report

Application Number: ADC/0224/09 **Recommendation – Temporary permission**

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

Proposal: **Variation of condition 13 of SU/269/01 to enable opening 5am-12 midnight**

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 does not appear to have been implemented (SU/252/04).

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

The present application, as submitted, seeks to relax the condition to enable opening hours of 5am-12 midnight Sun-Thurs and 5am-2am Fri-Sat. However, the agent has subsequently agreed to accept a temporary permission for 5am-12 midnight every day.

Consultations and Representations

Adur District Council: The EHO states that there is the potential for the premises to become a focal point for people leaving pubs and clubs late at night which may cause disturbance to nearby dwellings, especially after midnight when background noise has subsided. If it is decided to allow an extension of hours, recommends temporary permission till 12 midnight for one year, to enable the impact to be assessed.

Third Parties: 3 letters/email have been received.

2 letters are from residents of No's 1 & 2 Dolphin Mews objecting on grounds that the proposal would extend into the early morning hours the existing disruption caused to residents by the unsocial behaviour of groups of young people hanging around, including sitting on the boundary wall of the flats and throwing or dropping rubbish and litter; and from people with cars meeting in the car park and continuously using their horns. Shouting and bad language are an issue as well as litter and whether there are enough staff to control it. One of the objectors states he has two young children under 6 yrs and the noise can be quite loud in their bedrooms.

The other objection is from a resident of Shoreham Beach referring to noise from the site arising from fry alarms. He states that noise levels need to be monitored and that the business is only interested in profit, not the community.

Relevant Planning Policies and Guidance

Adopted Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1
PPS1 'Delivering Sustainable Development' (ODPM 2005)
PPS6 'Planning for Town Centres' (ODPM 2005)
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.

PPS6 states that planning policies need to manage the evening and late-night economy in appropriate centres, encouraging a range of complementary uses for a wide range of age and social groups. Councils should consider the scale and impact on the character of the centre, anti-social behaviour, crime, and the amenities of residents. They should ensure an integrated approach taking account of their Statement of Licensing policy and the promotion of licensing objectives and consider developing a local strategy. The Government's objectives for the Licensing Act 2003 are 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 in PPS6 (2005). Taking account of the new licensing regime objectives, PPS6 encourages more flexibility and generally less restriction of opening times 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 present application, two residents of the Dolphin Mews flats has 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.

The previous temporary permission for extended hours till 12 midnight was to retain control owing to concerns about customer noise causing sleep disturbance to local residents. However, it does not appear to have been implemented and therefore there was no trial period to enable the effects to be ascertained.

The present proposal to stay open until as late as 2am is excessive and considered very likely to give rise to disturbance to residents on the north side of the railway. Consequently, following the comments of the EHO, the applicant has been requested to agree to a temporary permission till 12 midnight and has agreed to this.

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 restrict opening hours to 5am-12 midnight and to retain planning control by granting a temporary permission to provide a trial period.

Subject to:-

1. C1Diii ....additional opening hours hereby.....ending on 31 July 2010 and thereafter .....restricted to opening hours of 6.30am to 11pm (with an additional half hour for all activity to cease) as specified in Condition 1 of the previous permission ref. SU/3/06/TP.

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, and ..... All activity at the premises shall cease by 12.30am.

Case Officer... [redacted] Date... 20/7/09.

Chairman of Development Control Committ [redacted] Date... 20/07/09.