Development Control – Delegated Officer Report

Application Number: AWDM/1019/11 Recommendation – APPROVE

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

Proposal: Variation of condition 1 of ADC/0242/10 to enable restaurant and drive-though to open 5am-12 midnight Sunday to Thursday; 5am Friday to 2am Saturday and 5am Saturday to 2am Sunday (permanent renewal of ADC/0365/10)

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 permanently in August 2010 (ADC/0242/10).
In November 2010, temporary permission was granted for variation of condition 1 of ADC/0242/10 to enable restaurant and drive-though to open 5am-12 midnight Sunday to Thursday; 5am Friday to 2am Saturday and 5am Saturday to 2am Sunday (ADC/0365/10). The present application is to renew this permission permanently.

Consultations and Representations

Adur District Council: The EHO states they have not received any complaints about the current temporary use and, as the applicants closed off the north/west car park at night as recommended, he therefore has no objections to the permanent change of hours.

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 have since been received.

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. However, the nearest of these is 35m 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 the extended hours. Consequently, it is not considered that there is sufficient case to refuse the application. The temporary permission should be made permanent.

Recommendation

APPROVE for reason that:-

The extended opening hours do not result in unacceptable detriment to the residential amenities of the dwellings to the north by reason of the cordoning off of the northern part of the customer car park and, having regard to policy AG1 of the Adur District Local Plan, PPG24 and DoE Circular 11/95, the temporary permission should be renewed permanently.

Subject to:-

1. 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.
2. 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.
   R. As 2 above

Case Officer: Keith Morgan Date: January 2012