

Planning
Growth and Development
Manchester City Council
Manchester
M60 2LA

Submitted electronically via planning portal only

197/001

14 October 2024

Dear Sir/Madam,

Application to vary Condition 3 of planning permission 107543/FO/2014/C2 made under Section 73 of the Town and Country Planning Act 1990 (as amended)

At McDonald's, 11 – 13 Piccadilly, Manchester, M1 1LY

Introduction

This covering letter has been prepared by Broadgrove Planning and Development Ltd ('the Agent'), on behalf of our client, MCD Manchester Ltd ('the Applicant') to support an application made under Section 73 of the Town and Country Planning Act 1990 (as amended) ('S73') at their premises at McDonald's, 11 – 13 Piccadilly, Manchester, M1 1LY ('the site'). The S73 application seeks to vary Condition 3 attached to planning application 107543/FO/2014/C2, that was approved by Manchester City Council, as the Local Planning Authority (LPA), on 9 April 2015. The application permitted the following description of development at the site:

"Change of use from A1 - shop to Sui Generis (A3/A5) - restaurant/take away to include the installation of external mounted equipment".

The application was approved, subject to the imposition of 12 planning conditions. Condition 3 relates to the opening hours of the proposal, and states:

"3) The premises shall not be open outside the following hours:- 06:00 to 24:00 daily"

This covering letter will firstly provide details of the site and its surrounding area. The site's planning history will then be examined, before the variation sought to condition 3 is explained. Continuing, relevant planning policies and material considerations to the S73 application will be outlined, before an assessment is undertaken against this context, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990. Finally, the contents of the letter will be summarised in a concluding paragraph, demonstrating the acceptability of the proposed condition variation.

The following documentation has been prepared to support the submission of the S73 application and should be read together with this letter:

Registered in England and Wales No. 11479803

Registered Address 5A Ack Lane East, Bramhall, Stockport, Cheshire, SK7 2BE

- Noise Impact Assessment prepared by Spratt and Hamer
- Site Management Plan prepared by Broadgrove Planning and Development for McDonald's

Site and Surrounding Area

The Site

The site is located at 11 – 13 Piccadilly, Manchester. It comprises a McDonald's restaurant, with the main ground level frontage facing out towards Piccadilly Gardens. The site extends from the frontage to Back Piccadilly, which is used for servicing arrangements, and is split across basement, ground floor and first floor levels, with the following components at each floor:

- Basement – public seating area, back of house uses including store room, chiller, freezer and bin store;
- Ground floor – public seating area, ordering terminals, food collection point and main kitchen area;
- First floor – public toilets, back of house staffing areas (changing rooms, manager's office) and plant room,

Surrounding Area

The surrounding area comprises a diverse mix of uses expected of a busy city centre location. The front elevation faces Piccadilly Gardens, a large public square comprising similar Class E uses on its perimeter, with gathering spaces in the middle and the city's main local bus terminus and Piccadilly Gardens Metrolink stop to the south. The area provides a key link to other areas of the city centre, with the Northern Quarter to the northeast; Piccadilly Station to the southeast; Chinatown to the southwest; and Market Street and the Arndale Centre to the northwest; and as such, experiences a lot of footfall throughout the day.

In addition to the main commercial and public transport offerings of the area, some residential development is seen on upper floors nearby. The closest residential receptor to site is at 15 Piccadilly, with existing and committed apartments above the Five Guys restaurant, accessed from a ground floor door to the west of the building's façade. Furthermore, the upper floors of the Royal Buildings, above the 24-hour Burger King restaurant, have recently received approval for conversion into a 187-bedroom hotel, although it is understood that works have not yet commenced.

Planning History

The site

Relevant planning history for the site includes the following:

107543/FO/2014/C2 – Change of use from A1 - shop to Sui Generis (A3/A5) - restaurant/take away to include the installation of external mounted equipment. Approved 9 April 2015.

This is the approved planning permission which imposed Condition 3, restricting the opening hours to 06:00 to 24:00 daily; and which this S73 application seeks to vary.

131068/JO/2021 – Variation of Planning Permission ref. 107543/FO/2014/C2, to increase the operating hours of the restaurant to 05:00 to 02:00, seven days a week. Refused 3 May 2022. Reason for refusal:

1) The proposed extension of opening hours of the existing fast food restaurant use would constitute a potential noise nuisance and source of disamenity to nearby residential accommodation late at night, by virtue of the potential increased noise and movements associated with the comings and goings of customers from the site in combination with customers

from other existing night-time uses and therefore this proposal is contrary to Policies DM1 (Development Management), C10 (Leisure and the Evening Economy) and SP1 (Spatial Principles) and saved Unitary Development Plan Policies DC10.1 and 10.4 (Food and Drink Uses), DC26 (Development and Noise).

This was a previous attempt to vary condition 3 to allow for increased operating hours at the site, although this did not propose a 24-hour operation (closing each day between 2am and 5am). The application had failed to demonstrate that the more intensive operation could be introduced without detriment to the amenity of surrounding residential occupiers. Whilst a Noise Impact Assessment was submitted in support of the application, it was the opinion of the Council's Environmental Health Team that the Assessment did not account for some crucial matters relevant to increasing the site's opening hours and failed to follow a robust approach to establishing potential impacts. The relevance of this will be returned to below.

Other relevant applications

The following applications elsewhere in Manchester are considered relevant to the S73 application:

137450/FO/2023 – Change of use of upper floors from offices (Use Class E) to hotel (Use Class C1), including infilling of lightwells, with boundary treatment to Meal Street. At Royal Buildings, 2 Mosley Street, Manchester, M2 3AN. Approved 14 December 2023.

This application was approved above the 7-day, 24-hour Burger King restaurant nearby to the site. The relationship between the approved development and 24-hour use is similar to that being proposed at McDonald's and the residential receptor at 15 Piccadilly. In this application, no issues from the 24-hour use to the proposed residential operation were discovered in the Noise Impact Assessment.

130516/FO/2021 – Change of use of vacant first floor and erection of single storey roof extension to provide 14 apartments (use class C3) with associated alterations. At 1 Chepstow Street And 36 - 38 Oxford Street Manchester M1 5EJ. Approved 14 March 2022.

This application was approved above the 7-day, 24-hour McDonald's on Oxford Street. Again, there is a similar relationship between the approved residential development and 24-hour use, as is sought by the S73 application. The Noise Impact Assessment found the main noise source to be from passing buses on Oxford Street, and no impacts from the ground floor use to the proposed residential units. This is telling, as there will be periods during the early hours of the morning, particularly during the week but also at weekends, where this background noise source would not be evident due to buses not operating. Yet, no undue impacts from the 24-hour operation below were noted. This demonstrates that such uses can coexist where appropriate management strategies are employed.

Proposed Variation of Condition

As set out above, this s73 application seeks to vary the wording of condition 3 of planning application 107543/FO/2014/C2 to allow for a 7-day, 24-hour operation at the site. The following wording is proposed to allow for this, whilst ensuring the more intense operation at the site is undertaken in accordance with the proposed management strategy, to safeguard the amenity of any residential receptors nearby.

"3) The premises shall, at all times, operate in accordance with the approved Site Management Plan. For avoidance of doubt, the Class E restaurant (McDonald's) may operate 24-hours a day, 7-days a week".

Planning Policy Context & Material Considerations

Adopted Planning Policy

In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990, applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise.

The adopted development plan for the LPA consists of the following:

- Places for Everyone (PfE) Joint Development Plan adopted March 2024
- Core Strategy (CS) adopted July 2012
- Saved Policies of the Unitary Development Plan (UDP)

Relevant policies from the adopted Local Plan include the following:

PfE

JP-Strat2: City Centre

JP-S1: Sustainable Development

JP-P1: Sustainable Places

CS

DM1 – Development Management

C10 – Leisure and the Evening Economy

SP1 – Spatial Principles

UDP

DC10.1 and 10.4 (Food and Drink Uses)

DC26 (Development and Noise)

Despite the CS and UDP policies predating the adoption of the most recent National Planning Policy Framework (NPPF) (December 2023), they are deemed consistent with the relevant policies of the NPPF and as such can be afforded due weight in the consideration of the S73 application.

Material Considerations

Key material considerations include the following:

National Planning Policy Framework (NPPF) (December 2023).

The NPPF sets out the Government's overarching vision for growth through the planning system in England and provides policies to be considered in the preparation of Local Plans and as material considerations in decision-making. Relevant paragraphs include:

“180. Planning policies and decisions should contribute to and enhance the natural and local environment by (inter alia): preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability”.

“191. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (inter alia): mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life”.

Temporary Events Notice (TEN) Operations

A Temporary Event Notice (TEN) may be submitted to a local authority, to authorise licensable activities for a limited period of time. Licensable activities which may be authorised by a TEN are:

- the retail sale of alcohol (at any time);
- the provision of regulated entertainment (at any time); or
- the provision of hot food or hot drink (between 11pm and 5am).

This has been utilised by the premises over the past three years. Below is a record of the TENs obtained by McDonald's to allow them to operate for a 24-hour period on the dates below:

2022

November – 24, 25, 26

December – 1, 2, 3, 8, 9, 10, 15, 16, 17, 31

2023

March – 9, 10, 11, 16, 17, 18, 23, 24, 25, 30, 31

April – 1

May – 12, 13, 31

June – 1, 2, 3, 4, 9, 10, 11

August – 25, 26

2024

June – 7, 8, 9, 13, 14, 15, 21, 22

August – 24

It is understood that members of Manchester City Council's Environmental Health Team have been in attendance during the TEN events and reported no issues during the 24-hour operation. The above dates include Bank Holidays and busy events such as Manchester Pride Weekend and Parklife Festival, demonstrating that even during the busiest periods, that the site can operate without detriment to neighbours and is suitable for a 24-hour operation.

Planning Assessment

This section will assess the key planning-related matters emanating from the proposed increase in operational hours. As noted in the preceding sections, a previous attempt has been made to extend the site's operation into the early hours

of the morning, albeit not on a 24-hour basis. Nevertheless, it is prudent to reexamine the reason for that application being refused, given the similarities that can be drawn between the proposals. The application to extend the opening hours from 05:00 to 02:00 was refused on the following basis:

1) The proposed extension of opening hours of the existing fast food restaurant use would constitute a potential noise nuisance and source of disamenity to nearby residential accommodation late at night, by virtue of the potential increased noise and movements associated with the comings and goings of customers from the site in combination with customers from other existing night-time uses and therefore this proposal is contrary to Policies DM1 (Development Management), C10 (Leisure and the Evening Economy) and SP1 (Spatial Principles) and saved Unitary Development Plan Policies DC10.1 and 10.4 (Food and Drink Uses), DC26 (Development and Noise).

The key considerations are therefore the noise generating activities of the increased operative hours and the potential impacts to surrounding residential amenity. Consequently, the application is accompanied by a Noise Impact Assessment (NIA) prepared by Spratt and Hamer.

Before the findings of the NIA are explored, it is crucial to note that the previous Noise Assessment prepared by Sustainable Acoustics presented shortcomings in its approach. The following is evident in the previous assessment:

- The nearest sensitive receptor was noted at 55m away on the front façade, not 27m away
- The predicted customer counts were taken from a store in Sheffield that was claimed to be comparative. However, the customer counts for just 23:00 – 00:00 were obtained and then modelled on a percentage basis for the additional opening hours, in that instance 00:00 – 01:00, 01:00 – 02:00 and 05:00 – 06:00, and then applied to the Piccadilly site.

By contrast to the previous assessment, the following has been undertaken to ensure the NIA robustly captures an accurate assessment of the likely noise environment across the increased operative hours at the Piccadilly site:

- Establish two monitoring positions suitable for determining the ambient and baseline noise levels of the area
- Identify the nearest sensitive receptors – in this case, residential development above the Five Guys Restaurant – to consider in the assessment
- Place monitoring equipment at each position, and set to measure for a representative timescale – 24hr close to the plant area (position 1) and 05:10 – 07:00 Sunday and 22:55 Monday – 01:00 Tuesday opposite McDonald's entrance – as indicated in 6.6 of the Report
- Analyse the recorded data and establish a representative background noise level for each hour within the extended opening hour period (from 00:00 to 06:00) to compare the anticipated increases from the two noise sources (patrons and plant)
- Model predicted patron numbers per hour based on the existing 24-hour McDonald's premises at St Anns Square, Manchester, during Pride Weekend, taken to be a worst-case scenario. The full methodology is contained at 8.1 of the Report.
- Assess the predicted worst-case scenario from patron at the nearest receptor window for each proposed extended opening hour, and compare this against the background environment

- Complete a similar exercise for the extended operative hours of the plant versus the background noise level at the nearest sensitive receptor

In the first Noise Assessment, a close residential receptor was missed; it was unclear how the predicted customer percentages were modelled from just one hour of customer counts; the store chosen was based in a different city to Manchester; and, taken together, this is not representative compared to an actual worst-case scenario recorded from a premises in the same city centre during one of the busiest weekends of the year.

The recent NIA discovered the following results:

- For patron noise, the assessment indicates that the excess rating level due to extended operational hours does not exceed the background noise level and therefore considered to equate to a Low Impact according to BS 4142 definitions reproduced in Table 2 of the NIA. This is also considered as having No Observed Adverse Effect Level (NOAEL) in accordance with NPPF.
- Furthermore, for patron noise, Table 11 indicates that the expected increase in ambient noise levels would be 'Not Significant' as per IEMA guidelines, which would equate to NOAEL (No Observed Adverse Effect Level) in accordance with NPPF.
- Based on propagation of a person shouting at a distance of 27m away from the source (as modelled based on the nearest sensitive residential receptor), and applying the attenuation factor of a partially open window, the internal sound pressure levels will be 7dB below the bs8233 criteria for the nighttime period.
- For plant noise, as shown in Section 9, the assessment indicates that the excess rating level due to extended operational hours will be at least less than 12dB the background noise level, equating to Low Impact according to BS 4142:2014 definitions reproduced in Table 2, of this report and no observed effect level (NOEL) in accordance with NPPF.

Despite the above findings showing compliance in respect of noise from all potential sources, Section 10 of the NIA includes recommendations to ensure the noise environment is minimised and trust is maintained between the premises and its immediate neighbours. The recommendations have been integrated into the accompanying 'Site Management Plan', that will form part of the new wording of Condition 3.

The report concludes that, based on the predicted noise emissions of the site at the location of the nearby receptors, the noise emissions from the proposed restaurant extended operating hours should have a low impact on the amenity of the residents of neighbouring dwellings, although recommends the safeguard of a Site Management Plan, as per the above.

The NIAs findings are consistent with information provided by the area and store managers in respect of the TENs that have occurred at the site over the past couple of years, where attendees of the Council's Licensing Compliance Team were present but observed no issues concerning noise or impact to neighbouring receptors. This is living proof that the store is able to operate during some of the city's busiest events without causing detriment to surrounding residential amenity.

Other positive material considerations in this instance include supporting increased economic output at the site during the additional operative hours and providing a safe space for potentially vulnerable people during the early hours of the morning, owing to the training staff have already received and initiatives that McDonald's have already entered into

as part of wider social impact goals. Furthermore, the same is true for the safety of McDonald's staff who currently start, and finish shifts during the early hours and then make their way home, often alone, from work, as the 24-hour operation will allow for shifts to be structured between evenings and overnight. Finally, the increased opening hours will also be beneficial for the safety of staff of other businesses in the city centre that operate throughout the night and into the early morning.

Conclusion

This letter has demonstrated the appropriateness of varying Condition 3 of planning permission 107543/FO/2014/C2 to allow for a 7-day, 24-hour operation at the site. It has been robustly demonstrated by the accompanying Noise Impact Assessment that the more intense use could operate without detriment to the residential amenity of surrounding properties. This consolidates the known acceptability of the 24-hour operation which has been undertaken on numerous occasions through the Temporary Events Notices over the past three years.

In conclusion, the proposal complies with relevant local planning policies and represents sustainable development, as defined at the heart of the NPPF, and should be approved without delay. I trust that the contents of the above and accompanying documentation are clear, but should you have any further queries, then do not hesitate to contact me at your earliest convenience.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'CWigley', is positioned above the printed name.

Connor Wigley MRTPI

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