

6 December 2022
L221206 - Rebuttal Evidence Final



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APPEAL REFERENCE: APP/B4215/W/22/3304464

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Dear Sir/ Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
APPEAL AGAINST THE DECISION OF MANCHESTER CITY COUNCIL TO REFUSE PERMISSION FOR
THE VARIATION OF PLANNING CONDITION 3 OF PLANNING PERMISSION 104616/FO/2014/N1 TO
ALLOW 24 HOUR TRADING
10 QUEENS ROAD, MANCHESTER, M8 8UF**

Introduction

We write on behalf of the Appellant, McDonald's Restaurants Ltd, in respect of Appeal Ref: APP/B4215/W/22/3304464 ('the Appeal') and further to your recent correspondence on 21 November 2022, in which you provided a copy of the Council's Statement of Case ('SoC'), along with a copy of representations made by Third Parties to the Appeal. This correspondence provides the Appellant's formal response to those representations.

Initial Observations in Relation to Council's Statement of Case

In the SoC, the Council confirms that Application Ref: 132796/JO/2022 ('the 2022 Application') was refused for a single reason, as follows (Savills' emphasis):

"The proposed extension to the opening hours to allow 24 hour trading, seven days a week would have a detrimental impact on the amenity of neighbouring residents, in particular residents on Queens Road and Signet Walk, due to the increase in the comings and goings to and from the premises, and associated noise, disturbance and increase in vehicular and pedestrian traffic late at night and during the early hours of the morning. The proposed extension to the opening hours is therefore considered to be contrary to the provisions of Core Strategy policies SP1, DM1 and C10 and Saved Unitary Development Plan policies DC10 and DC26."

As set out at Paragraph 5.9 of our Appeal Statement, we understand "disturbance" to primarily relate to noise. It follows that the only matter relevant to the consideration of the proposal is the potential for impact upon amenity afforded to nearby residents as a result of an increase in noise originating from vehicles and pedestrians accessing the site during the extended hours of operation proposed.

Therefore, the Council accepts that noise originating from the restaurant's plant machinery and the Communication Operations Device ('COD') is acceptable and do not contribute towards the reason for refusal. Accordingly, it is agreed between the parties that the development accords with all other relevant planning policies.

Nature of Customer Trade

In the SoC, the Council notes that the Appeal Site is located within a prominent position on a major radial route with the potential to attract trade from:

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“... within the neighbourhood and wider community, including those travelling home from the city centre in the early hours of the morning and that the comings and goings of car borne traffic would adversely affect the amenity of nearby residents.”

The above statement accords with the Appellant’s consistent position throughout both planning applications and this appeal, in that the majority of trade to the Appeal Site will originate from passing trade which is already on the surrounding road network, rather than generating significant numbers of new vehicular trips. As a consequence, it follows that the proposal will not result in any significant increase in vehicle noise.

Vehicular Noise Sources

In relation to vehicles, the Council does not allege that noise generated by vehicle engines will result in any level of adverse impact. Rather, the SoC relies on the argument that noise generated by customers slamming car doors has the potential to result in significant adverse impacts. In that regard, an assessment is included in the NIA (refer to Paragraph 5.17 of our Appeal Statement). The Council’s SoC seeks to criticise that assessment by reference to the frequency that such noise will occur and the relevant British Standard.

As is common to McDonald’s restaurants, the majority of vehicles accessing the Appeal Site during the hours proposed will access the drive-thru, and therefore will not open or close vehicle doors and so the opportunity for such noise to occur is significantly less than the Council contends. It is therefore likely that any car doors being slammed will be akin to one off events, rather than a “constant source”. We therefore remain of the view that the assessment of noise sources contained within the NIA is robust – including in relation to car doors – and that noise originating from vehicles will not result in any significant adverse impacts upon residential amenity.

If the Council were concerned about the potential for car doors being slammed, a discussion with the Appellant could have led to the consideration of mitigation, such as restricting customer parking during the extended hours of operation proposed to occur only in the southern and western areas of the Appeal Site (i.e. furthest from adjacent residential properties). Such mitigation would reduce the already low prospect of any impacts upon residential amenity from occurring. Unfortunately, officers elected not to engage with the Appellant to discuss concerns and the 2022 Application was refused.

Pedestrian Noise Sources

In relation to pedestrian noise sources, the Council’s objection is made on the basis that the extended hours of operation will result in the restaurant becoming a place for people to congregate and engage in anti-social behaviours (‘ASB’). The SoC provides no justification to support the assertion that ASB will occur at the Appeal Site simply as a result of it operating additional hours of trade. There are no existing issues with ASB at the Appeal Site.

The SoC goes on to dispute the Appellant’s statement that “a high proportion of customers during the night-time hours would probably be taxi drivers, shift workers, food delivery vehicles and emergency services who are not prone to cause anti-social behaviour or significant noise”, stating that there are “no safeguards to ensure that the site does not become a destination location for people to meet”. It should be noted that the Appellant’s statement is based on the experiences of operating over 600 restaurants across the UK on a 24 hour basis, whilst the Council’s position makes unsupported assumptions about the type and nature of people who will access the Appeal Site during the additional hours of operation proposed.

In other areas of the SoC, the Council appears to state that the mere presence of people being at the Appeal Site during the additional hours proposed will result in “heightened levels of noise and activity” which would therefore impact upon amenity. In that regard, it should be noted that the submitted NIA specifically addresses noise originating from “people” sources and concludes that such noise will not result in any significant adverse impacts.

Relevance of Recent Appeal Decisions

It is notable that much of the Council's case is centred on the "potential" for noise impacts to occur which is not substantiated by any evidence; counter to the evidence-based approach which is considered to be best practice. Similar approaches have been adopted by numerous other Councils in similar appeal proceedings in the recent past. Of particular relevance in this instance is the appeal at Denham, in Buckinghamshire (Ref: APP/N0410/W/20/3253252), where the Inspector agreed, at Paragraph 13:

"... a high proportion of customers who visit McDonald's restaurants during these hours would be linked to their employment based on the appellant's experience... These trips are largely of shorter duration than daytime customers and the purpose of their visits functional rather than social. These customer groups would not be prone to causing anti-social behaviour or significant noise."

In addition, the matter of potential ASB was specifically addressed by the Inspector in the appeal at Coseley (Ref: APP/C4615/W/19/3237704):

"I acknowledge the Council's and residents' concerns on ASB, but I have no substantive evidence other than anecdotal that ASB has taken place at the appeal site, nearby petrol station and/or that it would potentially occur in the future at the appeal site, and even if this was the case, it could be addressed through the premises licence."

Further to the above, numerous Inspectors have concluded that the use of a management plan to control the operation of the site is a significant benefit, which lies in stark contrast to the Council's position in this appeal:

- Newcastle-under-Lyme (Ref: APP/P3420/W/3196812).

"... I am satisfied that the appellant is taking a proactive approach to the neighbours' concerns through the submission of the PNMP and acting upon the operator's guidelines."

- Barlborough (Ref: APP/R1010/W/19/3237017).

"Nevertheless, I am satisfied that the appellant is taking a proactive approach to the neighbours' concerns through the submission of the management plan, which is likely to alleviate some of the problems being experienced."

The Appellant drew the above appeals to the attention of the Council's officers, prior to the 2022 Application being determined, in an effort to demonstrate that the Planning Inspectorate had previously considered very similar matters on numerous occasions. Unfortunately, those attempts to engage with the Council were ignored and the 2022 Application was refused.

Third Party Representations

The Third Party representations submitted in relation to this Appeal discuss a range of potential issues, including general ASB (for example littering), increased crime, and noise. The Appellant considers that all of the comments and objections have been addressed in the Appeal Statement. It is not considered that those comments raise any matters relevant to the consideration of this Appeal which are not addressed by the Council's Officer Report, Council's SoC or the Appellant's Appeal Statement.

Conclusion

The evidence submitted as part of the 2021 Application, the 2022 Application and this Appeal demonstrates that the proposed development will not result in any unacceptable impacts on the amenity afforded to nearby residents. As a result, the proposal is acceptable and planning permission should be granted.



On the basis of the above and the evidence provided in the Appeal Statement, we respectfully request that the Appeal is allowed and planning permission issued.

Should you require any clarification or additional information, please do not hesitate to contact Brad Wiseman or Heloise Whiteman at these offices.

Yours sincerely,

A handwritten signature in black ink that reads "Savills". The signature is written in a cursive, flowing style.

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