

Committee	PLANNING COMMITTEE (C)	
Report Title	Restaurant Unit, Bell Green Retail Park, Bell Green SE26	
Ward	Bellingham	
Contributors	Geoff Whittington	
Class	PART 1	Date: 17 March 2016

<u>Reg. Nos.</u>	DC/15/094209
<u>Application dated</u>	25.10.2015
<u>Applicant</u>	Savills (UK) Limited on behalf of McDonald's Restaurant Ltd
<u>Proposal</u>	An application submitted under Section 73 of the Town and Country Planning Act 1990 for a minor material amendment in connection with planning permission (DC/13/82885) dated 25 June 2013, and amended 11 April 2014 (DC/13/84572), for the construction of a single-storey building to provide a McDonald's restaurant (Use Class A3/ A5), at Bell Green Retail Park fronting spine road, Land at former Bell Green Gas Works, Bell Green SE26, in order to allow the deletion of Condition (15) to enable the restaurant to trade 24 hours a days, seven days a week.
<u>Applicant's Plan Nos.</u>	Site Management Plan (Savills); Covering letter dated 25 October 2015; OS Map
<u>Background Papers</u>	(1) Case File LE/214/21/TP (2) Local Development Framework Documents (3) The London Plan (4) The NPPF
<u>Designation</u>	Development Site, Area of Archaeological Priority, Flood Risk Zone 3, PTAL 2/3, Adj to Metropolitan Open Land, Local Open Space Deficiency, Adj. to Waterlink Way SNCI, Not Conservation Area, Not Listed.

1.0 Property/Site Description

- 1.1 The application site lies within the Bell Green Retail Park and is currently occupied by a McDonalds restaurant. The restaurant accommodates a maximum of 85 customers, providing up to 65 employee roles, including 40 full time posts.
- 1.2 The restaurant operates between the hours of 06.00 and midnight 7 days a week, and was granted permission in 2014 for a drive-thru service.

- 1.3 31 car-parking spaces are provided within the McDonald's site, which is accessed from spine road and the main retail estate car-park. Ten dry and secure bicycle spaces are also provided.
- 1.4 The site forms part of an extensive site formerly known as the former Bell Green Gas Works. The Gas Works site has been divided into three phases.
- 1.5 The Phase I land was developed to provide a Savacentre hypermarket (now trading as Sainsbury). The existing retail unit is located close to the eastern boundary of the site adjacent to the River Pool. There is a large car park located in front of the store accessed from spine road leading off Perry Hill.
- 1.6 The Phase II land is the area between the gas holders and the linear park/river, to the north of spine road and the Sainsbury store. This is the largest phase of the Bell Green site with a site area of approximately 6.3ha.
- 1.7 Phase II provides retail and employment floorspace, located on a east-west axis towards the western end of the site closest to the gas holders. The retail units occupy approximately one half of the site towards the northern boundary, with car parking for 460 vehicles in front of the retail units on the southern section of the site, accessed from the spine road. The current application site lies within Phase II.
- 1.8 The Phase III site is located to the west of the application site, fronting Bell Green, and provides a commercial building currently occupied by SportsDirect, with a block of residential units to the south, accommodating 20 self-contained flats. Further to the south is a residential building comprising 32 one bedroom flats and 104 two bedroom flats.
- 1.9 The Bell Green site lies in an area of mixed use and character, comprising residential properties to the north (Silver Birch Close and Selworthy Road), Livesey Memorial Hall (Listed Grade II), tennis courts and bowling green to the northwest, residential development to the east, Staunton Industrial Estate to the south and residential development to the west, on the opposite side of Bell Green and Perry Hill.
- 1.10 To the west and south of this site are Bell Green and Southend Lane, leading to Staunton Way. These are busy routes linking Sydenham, Catford, Beckenham and Bromley.
- 1.11 The site is not located within a conservation area, and does not lie near any listed buildings.

2.0 Planning History

- 2.1 On 25 June 2013, permission was granted for the construction of a single storey building to provide a McDonald's restaurant (Use Class A3/A5), at Bell Green Retail Park, fronting spine road, Land at former Bell Green Gas Works, Bell Green SE26, comprising 316sqm gross internal floor space, access, 31 car spaces, 10 covered cycle spaces and associated soft landscaping. (DC/13/82885)
- 2.2 On April 8 2014, permission was granted in respect of a Section 73 application for a minor material amendment in connection with planning permission (DC/13/82885) in order to allow the construction of a drive-thru lane.

3.0 Current Planning Application

- 3.1 The S73 Minor Amendment application relates to Condition (15) of the planning approval (DC/13/84572), which stated that the McDonald's restaurant shall not be open before 6am or after 12am on any day. The operating hours were requested by the applicant, and have been adhered to since opening in 2014.
- 3.2 The current application proposes that Condition (15) be deleted to allow the restaurant and drive-thru to operate 24 hours a day, seven days a week.
- 3.3 The Site Management Plan submitted as part of this application advises the proposed 24 hour operation would not change the existing delivery servicing hours, which are currently between 7am and 8pm Mondays to Fridays, and 8am and 1pm Saturdays.
- 3.4 The applicant has advised the proposed extension of hours would create up to 20 additional on-site jobs.

4.0 Consultation

Neighbours and Local Amenity Societies

- 4.1 This section outlines the consultation carried out by the Council following the submission of the application and summarises the responses received. The Council's consultation exceeded the minimum statutory requirements and that required by the Council's adopted Statement of Community Involvement.
- 4.2 A site notice was displayed, letters were sent to residents in the surrounding area and the relevant ward Councillors.

Written Responses received from Local Residents

- 4.3 Four letters received from residential occupiers, objecting on the following grounds;
- Existing anti-social behaviour will increase;
 - Noise concerns;
 - Additional litter;
 - Impact upon residential amenity;
 - Young people on motorbikes congregate regularly around the McDonalds site.

(Letters are available to Members)

5.0 Policy Context

Introduction

- 5.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) sets out that in considering and determining applications for planning permission the local planning authority shall have regard to:-
- (a) the provisions of the development plan, so far as material to the application,
 - (b) any local finance considerations, so far as material to the application, and

- (c) any other material considerations.

A local finance consideration means:

- (a) a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown, or
- (b) sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy (CIL)

5.2 Section 38(6) of the Planning and Compulsory Purchase Act (2004) makes it clear that 'if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.' The development plan for Lewisham comprises the Core Strategy, the Development Management Local Plan, the Site Allocations Local Plan and the Lewisham Town Centre Local Plan, and the London Plan. The NPPF does not change the legal status of the development plan.

National Planning Policy Framework

- 5.3 The NPPF was published on 27 March 2012 and is a material consideration in the determination of planning applications. It contains at paragraph 14, a 'presumption in favour of sustainable development'. Annex 1 of the NPPF provides guidance on implementation of the NPPF. In summary, this states in paragraph 211, that policies in the development plan should not be considered out of date just because they were adopted prior to the publication of the NPPF. At paragraphs 214 and 215 guidance is given on the weight to be given to policies in the development plan. As the NPPF is now more than 12 months old paragraph 215 comes into effect. This states in part that '...due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)'.
- 5.4 Officers have reviewed the Core Strategy for consistency with the NPPF and consider there is no issue of significant conflict. As such, full weight can be given to these policies in the decision making process in accordance with paragraphs 211, and 215 of the NPPF.

Other National Guidance

- 5.5 On 6 March 2014, DCLG launched the National Planning Practice Guidance (NPPG) resource. This replaced a number of planning practice guidance documents.

The London Plan (2015)

- 5.6 The London Plan policies relevant to this application are:

Policy 3.2 Improving health and addressing health inequalities
Policy 6.3 Assessing effects of development on transport capacity
Policy 6.13 Parking
Policy 7.4 Local Character

Core Strategy

- 5.7 The Core Strategy was adopted by the Council at its meeting on 29 June 2011. The Core Strategy, together with the Site Allocations, the London Plan and the Development Management Local Plan (2014), is the borough's statutory development

plan. The following lists the relevant strategic objectives, spatial policies and cross cutting policies from the Lewisham Core Strategy as they relate to this application:

Spatial Policy 1	Lewisham Spatial Strategy
CS Policy 20	Delivering educational achievements, healthcare provision and promoting healthy lifestyles

Development Management Local Plan

5.8 The Development Management Local Plan was adopted by the Council at its meeting on 26 November 2014. The Development Management Local Plan, together with the Site Allocations, the Lewisham Town Centre Local Plan, the Core Strategy and the London Plan is the borough's statutory development plan. The following lists the relevant strategic objectives, spatial policies and cross cutting policies from the Development Management Local Plan as they relate to this application:-

DM Policy 17	Restaurants and cafés (A3 uses) and drinking establishments (A4 uses)
DM Policy 18	Hot food take-away shops (A5 uses)
DM Policy 26	Noise and vibration
DM Policy 29	Car parking

6.0 Planning Considerations

6.1 The main issues to be considered in respect of this application are:

- a) Principle of extending the operating hours;
- b) Impact upon amenity;
- c) Anti-social behaviour;
- d) Highways and traffic issues;
- e) Health implications.

Principle

6.2 The application site is occupied by an established fast food outlet with restrictive operating hours between 6am and midnight. There is no principle policy objection to the proposed extension of operation to 24hr, considering the NPPF supports sustainable economic growth. In this case therefore, the main issues to consider are neighbour amenity implications, anti-social behaviour, health implications and highways matters.

Impact upon amenity

6.3 DM Policies 17 and 18 state the Council will consider proposals for restaurants (A3) and hot food takeaways (A5) where it is demonstrated there would be no harm or loss of amenity to the living conditions of nearby residents, including that created by noise and disturbance from other users and their vehicles, smells, litter and unneighbourly opening hours.

(i) Noise

6.4 The applicants have advised they expect the restaurant would experience increased 24hr trade on Fridays and Saturdays, whilst less so during the week. Due to the

location of the restaurant within a retail park, it would be more likely to attract customers who drive rather than people passing by on foot, with a high proportion of customers being local residents, taxi drivers, shift workers or emergency service crews. It would be unreasonable to assume the 24hr use would necessarily attract customers seeking to cause anti-social behaviour or significant noise.

- 6.5 The applicant has advised that a Noise Impact Assessment (NIA) has not been undertaken in this case as it is located in an entirely commercial area with the nearest residential properties being located approximately 180m away from the restaurant to the west of the Bell Green site, whilst the local highway network experiences high levels of traffic volume throughout the day and night. In addition, the nearby Sainsburys operates 24hrs during the week. Therefore, the constant activity within the immediate area contributes to high background noise levels and an NIA in this case is considered unnecessary.
- 6.6 Environmental Health have been consulted, and they agree that a Noise Impact Assessment is not required due to the nature of the site, and the considerable distance between the restaurant and existing residential occupiers.
- 6.7 The applicant has prepared a Site Management Plan (SMP) in order to ensure that the extended hours of operation would not result in any unacceptable impact on existing levels of amenity, including provisions relating to noise and anti-social behaviour, 24hr security, CCTV and litter.
- 6.8 The SMP also advises that the extended hours of operation would not alter the existing delivery servicing arrangements. Condition (14) of the original consent restricted such activity to between 7am and 8pm Mondays to Fridays, and 8am and 1pm Saturdays.

(ii) Anti-Social Behaviour

- 6.9 A number of residents have raised objections that a 24hr McDonald's would serve to further exacerbate existing problems being experienced during evenings whereby young people congregate on spine road to race cars and motorbikes unlawfully, with the revving of engines causing disturbance.
- 6.10 Officers are aware this has been an ongoing issue for a number of years, prior to McDonald's opening. The main reason why spine road is popular for such activity is due to the area being relatively quiet once the retail units have closed, whilst the 'dead end' highway is rarely used apart from buses terminating there. This activity does not occur in the main retail car-park as barriers prevent access at set times. A second barrier restricting access to the main retail site was installed in November 2015 due to fly tipping.
- 6.11 There is no barrier between spine road and the McDonald's site, however any form of racing is unlikely there as the car-park is too small for such activity.
- 6.12 There is no evidence to suggest that McDonald's is either a cause of the problem, or would increase such activity should 24hr use be granted. The Police are aware of the 'boy racers', and are seeking to find a resolution, however they have attributed no blame to McDonald's, and raise no objections in principle to the proposed 24hr use. The Franchisee has worked closely with the local Police and other retailers to ensure appropriate security measures are in place to ensure against anti social behaviour.

6.13 Officers do not therefore consider the 'boy racer' incidents to be sufficient reason to refuse permission in this case.

(iii) CCTV

6.14 The applicant has advised that additional cameras have recently been installed on spine road by the Council in order to increase security for the restaurant and the wider area.

6.15 At the time of granting permission for the drive-thru, it was established that camera provision around the site was already appropriate, including a comprehensive full HD CCTV system that records a minimum of 28 or 31 days per month (as required by Premises Licence). The cameras include facial recognition on entry to the restaurant, extensive coverage of the public areas, manager's office, back door and other key areas internally and externally for reducing crime and disorder.

6.16 An audio / visual monitoring system (part of the full CCTV system) linked to a control centre is also in place in order to assist in protecting staff and customers using the restaurant. All managers are trained in conflict management, whilst security department support is available 24hrs a day to deal with any other issues or concerns.

(iv) Odours

6.17 The proposals would extend the period for cooking on the premises and therefore extraction would be in use for a longer period. Officers are unaware of any significant odour issues arising from the existing operation during peak hours of custom, therefore it is not expected that any significant impact on amenity would occur as a result of odour during quieter periods of use in the night.

6.18 Existing ventilation equipment would be retained in full accordance with specifications formally granted by discharge of condition.

(v) Pollution from Vehicles

6.19 It is acknowledged that customers using the drive-thru during the early hours would mean idling vehicles omitting exhaust fumes, however considering the levels of vehicular movement during the night would not be expected to be significant, the extension in hours of operation would be unlikely to give rise to harmful levels of emissions.

Other Measures

6.20 Signage would be placed around the restaurant and car park, requesting that customers should be respectful of neighbours, keeping noise to a minimum when leaving the premises. This has been proposed as an additional measure for the restaurant operating 24 hours and aims to prevent any anti-social behaviour occurring at the site.

6.21 The restaurant has confirmed that if the extended hours are approved, they would consider increasing the frequency of litter picks which takes place at the site every hour between 5am and 11pm, ensuring that litter attributed to McDonald's and general litter would be collected during the night.

- 6.22 Existing lighting within the McDonald's site comprises six, 5 metre high single column mounted floodlights, one 5 metre high double column mounted floodlight, and a 2.2m high 'galvanised lamp head'. The applicants consider this assists in deterring any anti-social behaviour within the grounds of the restaurant, whilst officers remain satisfied that sufficient measures are in place to reduce light spillage.
- 6.23 The existing speaker volume level of the customer order display unit that serves the drive-thru can be programmed to a lower setting during the night hours, thereby reducing any potential harm to neighbouring amenity.

Highways

- 6.24 The Council's Highways officer is satisfied that the proposal would not result in any highway safety concerns or significant increase in traffic. The site is suitably accessed from Bell Green, whilst the site provides sufficient customer parking.

Health Implications

- 6.25 DM Policy 18 considers the impact of new hot food takeaways upon health to be a material planning consideration, for example restricting the number of takeaways in a shopping parade, or where schools are located nearby. In this case, the restaurant has been in operation since 2014, there is no over-proliferation of such 24hr uses within the immediate area, whilst the proposed extension of time would fall outside the hours of operation of any local schools. It is therefore considered that a refusal on the basis of health implications would be unreasonable in this case.

Planning Conditions

- 6.26 Considering the current application is seeking a minor amendment of an approved scheme, the original planning conditions remain applicable, albeit amended to reflect those that have already been formally discharged. Details relating to ventilation equipment, noise, external lighting and cycle parking were formally submitted to the Council in 2014, and were considered by officers to be acceptable.

7.0 Equalities Considerations

- 7.1 Section 149 of the Equality Act 2010 ("the Act") imposes a duty that the Council must, in the exercise of its functions, have due regard to:-
- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and those who do not;
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.2 The protected characteristics under the Act are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.3 The duty is a "have regard duty" and the weight to attach to it is a matter for the decision maker bearing in mind the issues of relevance and proportionality.

7.4 The planning issues set out above do not include any factors that relate specifically to any of the equalities categories set out in the Act, and therefore it has been concluded that there is no impact on equality.

8.0 Conclusion

8.1 Officers consider that the proposed 24hr use would have no significant impact upon the amenities of neighbouring residential occupiers, due in part to the considerable distance of the restaurant away from the nearest dwellings. On examination, there is insufficient evidence to suggest that the additional hours would give rise to significant, demonstrable harm upon the immediate area by way of anti social behaviour.

8.2 The applicant has provided a Site Management Plan that acknowledges key areas to ensure the extended hours of use would be operated appropriately, whilst the site already benefits from sufficient CCTV provision and security measures.

8.3 The restaurant currently adheres to planning conditions in respect of delivery/ servicing, ventilation, noise and external lighting, which would be applicable to the extended hours of operation.

8.4 In addition, the extension of hours would have a positive impact upon local employment by creating up to 20 additional jobs.

8.5 For these reasons, it is therefore recommended permission be granted.

RECOMMENDATION

GRANT PERMISSION, subject to the following conditions;

1. The development shall be retained strictly in accordance with the application plans, drawings and documents hereby approved and as detailed below:

LS-08 Rev B, 1826-P-145, 1826-P-146, 1826-P-147, 1826-P-148, 1826-P-149, H7713/02A, 05F, 23G, Site Location Plan, Transport Statement, Planning Statement, Design & Access Statement, Breeam Report, Transport Statement, 'Our Food, Nutrition and Sourcing' and Letter dated 14 May 2013; covering letter (Savills) dated 25 October 2015; Site Management Plan (Savills) received 27 October 2015.

Reason: To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application and is acceptable to the local planning authority.

2. The rating level of the noise emitted from fixed plant on the site shall be 5dB below the existing background level at any time. The noise levels shall be determined at the façade of any noise sensitive property. The measurements and assessments shall be made according to BS4142:1997.

Reason: To safeguard the amenities of the neighbouring premises and the area generally and to comply with DM Policy 26 Noise and vibration of the Development Management Local Plan (November 2014).

3. Prior to commencement of the 24hr use hereby granted, details shall be submitted to and agreed in writing in respect of the operation and use of the control barriers, including how the vehicular access route and relationship with the retail car parking area would be managed.

The measures specified in the approved details shall be maintained thereafter.

Reason: In order to ensure satisfactory vehicle management and to comply with Policy 14 Sustainable movement and transport of the Core Strategy (June 2011).

4. The refuse facilities hereby approved shall be permanently retained and maintained thereafter.

Reason: In order that the local planning authority may be satisfied with the provisions for recycling facilities and refuse storage in the interest of safeguarding the amenities of neighbouring occupiers and the area in general, in compliance with Development Management Local Plan (November 2014) DM Policy 30 Urban design and local character and Core Strategy Policy 13 Addressing Lewisham waste management requirements (2011).

5. All cycle parking spaces approved under Application DC/13/84572 shall be retained and maintained thereafter.

Reason: In order to ensure adequate provision for cycle parking and to comply with Policy 14: Sustainable movement and transport of the Core Strategy (2011).

6. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Reason: In order that the local planning authority may be satisfied as to the details of the proposal and to comply with Core Strategy Policy 12 Open space and environmental assets, Policy 15 High quality design for Lewisham of the Core Strategy (June 2011), and DM Policy 25 Landscaping and trees and DM Policy 30 Urban design and local character of the Development Management Local Plan (November 2014).

7. The external lighting shall be permanently maintained in accordance with the specification details approved in DC/14/86563.

Reason: In order that the local planning authority may be satisfied that the lighting is maintained in a manner which will minimise possible light pollution to the night sky and neighbouring properties and to comply with DM Policy 27 Lighting of the Development Management Local Plan (November 2014).

8. No deliveries shall be taken at or despatched from the site other than between the hours of 07.00 and 20.00 on Mondays to Fridays, 08.00 and 13.00 on Saturdays, or at any time on Sundays or Public Holidays.

Reason: In order to safeguard the amenities of adjoining residents and to comply with Paragraph 120 of the National Planning Policy Framework, and DM Policy 26 Noise and Vibration of the Development Management Local Plan (November 2014).

9. (a) The building hereby approved shall achieve a minimum BREEAM Rating of 'Excellent'.

(b) Prior to commencement of the 24hr operation hereby granted, evidence shall be submitted in the form of a Post Construction Certificate (prepared by a Building Research Establishment qualified Assessor) to demonstrate full compliance with part (a) for that specific building.

Reason: To comply with Policies 5.1 Climate change and mitigation, 5.2 Minimising carbon dioxide emissions, 5.3 Sustainable design and construction, 5.7 Renewable

energy, 5.15 Water use and supplies in the London Plan (2011) and Core Strategy Policy 7 Climate change and adapting to the effects, Core Strategy Policy 8 Sustainable design and construction and energy efficiency (2011).

10. Evidence shall be submitted within 6 months of first commencement of the 24hr operation to demonstrate compliance with the proposed Site Management Plan.

Reason: To ensure that the intensity of the operation does not cause an unacceptable loss of amenity to neighbouring residential properties.

11. The ventilation system shall be permanently maintained in accordance with the specification details approved in DC/14/87328.

Reason: To safeguard the amenities of neighbouring premises and the area generally and to comply with Policy 17 Restaurants and cafes (A3 uses) and DM Policy 18 Hot food take-away shops of the Development Management Local Plan (November 2014).

INFORMATIVE

- (1) **Positive and Proactive Statement:** The Council engages with all applicants in a positive and proactive way through specific pre-application enquiries and the detailed advice available on the Council's website. On this particular application, no pre-application advice was sought. However, as the proposal was considered to be in accordance with the Development Plan, permission could be granted without any further discussion.