

Committee	PLANNING COMMITTEE B	
Report Title	MCDONALDS AT THE JUNCTION OF BESTWOOD STREET & EVELYN STREET, LONDON, SE8 5DQ	
Ward	EVELYN	
Contributors	Russell Brown	
Class	PART 1	15th March 2018

Reg. Nos. DC/17/103670

Application dated 18.09.2017

Applicant MJ Restaurants Ltd t/a McDonalds

Proposal An application submitted under Section 73 of the Town and Country Planning Act 1990 for a Minor Material Amendment of the planning permission dated 10th May 1990 (ref. DE/151/A4/TP) for the erection of a single storey and mezzanine free standing drive through restaurant on the north west part of the former Molins site at Evelyn/Bestwood Street SE8 **in order to allow for an extension of the existing opening times of the drive-thru until 02:00am on Saturdays and Sundays and the installation of associated 2.1m high acoustic fencing.**

Applicant's Plan Nos. D0382-0366-01 Rev A; Acoustic Report; Planning Statement; Site Management Plan Received 18th September 2017

06 J7/01043; Figure 4; Figure 5 Received 10th November 2017

Background Papers

- (1) Case File DE/151/A4/TP
- (2) Core Strategy (June 2011)
- (3) Development Management Local Plan (November 2014)
- (4) London Plan (March 2016)

Designation None

Screening N/A

1.0 Property/Site Description

1.1 The application site is currently operated as a McDonald's restaurant (Use Classes A3/A5). The site has dual frontage to Evelyn Street (A200) and Bestwood Street from where vehicles can access the site, but they are required to exit the site via Bestwood Street only.

1.2 The building itself is one and a half storeys and is surrounded by a carpark and a fenced-off external dining area. It either adjoins or is close to both commercial and residential

properties. Commercial properties are located to the south, east and west of the site and residential properties to the southwest, northeast and northwest.

- 1.3 The site is not located within a strategic employment location identified by the Core Strategy, however the site adjoins a Local Employment Location (LEL) to the south east and there is a Mixed Use Employment Location to the east.
- 1.4 The site is not within a Conservation Area, nor subject to an Article 4 direction and is not a listed building or in the vicinity of a listed building. It has a PTAL rating of 3 and is within Flood Risk Zones 2 and 3.

2.0 Relevant Planning History

- 2.1 Planning permission was **granted** on 2nd June 1988 for the erection of a non-food retail park and free-standing fast food restaurant with surface parking for 686 cars at the Former Molins Site, Evelyn Street SE8.
- 2.2 Planning permission was **granted** on 10 May 1990 for the erection of a single storey and mezzanine freestanding drive through restaurant on the north west part of the former Molins site at Evelyn/Bestwood Street SE8.
- 2.3 DC/90/31636: The variation of Condition (3) attached to the planning permission dated 10 May 1990 for the erection of a single storey and mezzanine free standing drive through restaurant on the north west part of the former Molins site at Evelyn/Bestwood Street SE8 together with ancillary storage, office and staff facilities and the provision of 69 car parking spaces with entry from Evelyn Street and entry and exit onto Bestwood Street to allow hours of opening 7 am - midnight. **Granted.**
- 2.4 DC/96/41051: The erection of a single storey extension to the front of McDonalds Drive-Thru Restaurant, Evelyn Street/Bestwood Street SE8 incorporating an additional booth to the drive through lane. **Granted.**
- 2.5 DC/09/71614: The alteration of the elevations and roof of McDonalds Restaurant Ltd, Evelyn Street SE8, together with refurbishment of the restaurant and patio area. **Granted.**
- 2.6 DC/16/095336: Application submitted under Section 73 of the Town and Country Planning Act 1990 to vary condition 3 by extending the existing opening timings of the planning permission (DE/151/A4/TP) dated 10 May 1990 for the erection of a single storey and mezzanine free standing drive through restaurant on the north west part of the former Molins site at Evelyn/Bestwood Street SE8, to between 00:00 and 07:00 for 7 days a week so as to permit the whole of the premises restaurant and drive thru facilities to be open to staff and customers for trade for 24 hours a day 7 days a week. **Withdrawn.**
- 2.7 Pre-application discussions (PRE/17/002876) have been had with Officers who had concerns about the proposed extended trading hours on the residents of John Silkin Lane and required that a Noise Impact Assessment be submitted with any application. They also advised that a site management plan would be required, which should cover the proposed impact on amenity, including noise, smell and litter.

3.0 Current Planning Application

- 3.1 Permission is sought to vary of Condition (3) of the planning permission dated 10th May 1990 (ref. DE/151/A4/TP) for the erection of a single storey and mezzanine free standing drive through restaurant on the north west part of the former Molins site at Evelyn/Bestwood Street SE8 **in order to extend the existing opening times of the drive-thru until 02:00 on Saturdays and Sundays and the installation of associated 2.1m high acoustic fencing.**

3.2 Condition (3) on the original planning permission requires that the premises are shut at midnight (00:00) on Saturdays and Sundays. The current opening time is 07:00am, which is not proposed to change.

4.0 Consultation

4.1 Pre-application advice was sought as detailed under paragraph 2.7.

4.2 The Council's consultation met the minimum statutory requirements and those required by the Council's adopted Statement of Community Involvement.

4.3 A site notice was displayed and letters were sent to 147 adjoining addresses, Evelyn Ward Councillors and the Council's Highways and Environmental Protection Officers.

Written Responses received from Local Residents and Amenity Societies

4.4 Three responses were received (one letter of support and two objections). The objections raising the following concerns:

- A new sound level test should be done as there has been numerous noise issues from this location and very little negative feedback from the management there when contacted.
- The road layout forces all traffic to drive past the residential blocks on John Silkin Lane, and the speaker where order are placed directly faces these buildings with voices clearly being heard even with the windows closed.
- It is not in the best interests of the area to have this restaurant open until 2am and therefore permission should be declined.
- McDonalds have erected an unauthorised billboard and refused to engage with local residents and groups to discuss its removal. It is requested that all McDonald's unauthorised signage in the area be removed with immediate effect.

4.5 Deptford Folk raised the following concerns:

- No strategy on anti-social behaviour or details about engagement with local policing have been included within the application. The late opening hours and congregation of gangs in the area (with the excuse of being at McDonalds) has seen thefts, mugging and a fatality in the area. This is not adequately addressed in the site management plan.
- McDonalds litter plagues the streets and the drive-thru element means people throw containers from windows. McDonalds have not shown a good enough response to the problem.

4.6 The letter of support states that McDonalds prevent noise and disturbance.

Responses from Internal Consultees

4.7 The Council's Environmental Protection Officer stated that they had no objections to the proposed variation provided that the mitigation is incorporated as it would have good noise reduction benefits for the nearby residents and would reduce the overall impact for all other parts of the day as well.

4.8 The Council's Highways Officer had no objections.

Responses from External Consultees

4.9 Lewisham's Designing Out Crime Officer had the following comments:

- The use of good quality CCTV is welcomed, especially when monitoring usage of the car park.

- The management plan should fully describe how the use of the car park for extended periods by customers would be prevented. This could be resolved by the issuing of penalty notices.
- It was agreed that McDonalds staff should be trained in conflict management, which would reduce the likelihood of attacks on staff and reduce the demand on the Police as a result of the extended opening hours.
- The arrangement for staff to take food orders to cars should be reviewed. Perhaps customers should collect food from the window themselves.
- The restaurant was subject to a knife-related robbery in July 2017 after hours and therefore the physical security features of the building should be reviewed.
- The management of the site could provide a safe environment provided that the plan is adhered to, and it should be monitored regularly to ensure compliance.

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 must 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 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, Development Plan Document (DPD) (adopted in June 2011), DMLP (adopted in November 2014) and policies in the London Plan (March 2016). 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 that (paragraph 211) 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.

London Plan (March 2016)

- 5.6 The London Plan was updated on 14 March 2016 to incorporate the Housing Standards and Parking Standards Minor Alterations to the London Plan (2015). The new, draft London Plan was published by the Mayor of London for public consultation on 29 November 2017 (until 2 March 2018). However, given the very early stage in this process, this document has very limited weight as a material consideration when determining planning applications, does not warrant a departure from the existing policies of the development plan in this instance and is therefore not referred to further in this report. The policies in the current adopted London Plan (2016) relevant to this application therefore are:-

Policy 2.14 Areas for regeneration

Policy 4.8 Supporting a successful and diverse retail sector

Policy 7.3 Designing out crime

Policy 7.15 Reducing and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes

Core Strategy

- 5.7 The Core Strategy was adopted by the Council at its meeting on 29 June 2011. The Core Strategy, together the Development Management Local Plan 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 Lewisham Core Strategy as they relate to this application:

Core Strategy Objective 11: Community well-being

Spatial Policy 2 Regeneration and Growth Areas

Core Strategy Policy 5 Other employment locations

Core Strategy Policy 15 High quality design for Lewisham

Development Management 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 Core Strategy and the London Plan is the borough's statutory development plan. The following policies are relevant to this application:-

DM Policy 1 Presumption in favour of sustainable development

DM Policy 11 Other employment locations

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

6.0 Planning Considerations

- 6.1 The relevant planning considerations are the impacts arising from the proposed increase in opening hours including residential amenity of neighbouring occupiers, noise, crime/fear of crime and impact on the highway network.

- 6.2 London Plan Policy 7.3 Designing out crime states that development should reduce the opportunities for criminal behaviour and contribute to a sense of security without being overbearing or intimidating. In particular:

- a. routes and spaces should be legible and well maintained, providing for convenient movement without compromising security;
- b. there should be a clear indication of whether a space is private, semi-public or public, with natural surveillance of publicly accessible spaces;
- c. design should encourage a level of human activity that is appropriate to the location, creating a reduced risk of crime and a sense of safety at all times; and
- d. places, buildings and structures should incorporate appropriately designed security features.

The above measures should be incorporated at the design stage to ensure that overall design quality is not compromised.

- 6.3 London Plan Policy 7.15 states that development proposals should seek to manage noise by:
- a. avoiding significant adverse noise impacts on health and quality of life as a result of new development; and
 - b. mitigating and minimising the existing and potential adverse impacts of noise on, from, within, as a result of, or in the vicinity of new development without placing unreasonable restrictions on development or adding unduly to the costs and administrative burdens on existing businesses.
- 6.4 For all development, the Council will ensure design acts to reduce crime and the fear of crime. Core Strategy Objective 11 (Community well-being) states that the Council with its partners will provide and support measures and initiatives that promote social inclusion and strengthen the quality of life and well-being for new and existing residents of the borough by:
- a. addressing deprivation and health inequalities particularly within the wards of Evelyn, New Cross, Lewisham Central, Whitefoot, Bellingham and Downham
 - b. creating safer and stronger communities by reducing crime and the fear of crime through innovative design and land use policies
 - c. providing physical, social and green infrastructure, including high quality health and education facilities, that are accessible and suitable to all of Lewisham's residents, to foster independent community living.
- 6.5 DM Policy 17 Restaurants and cafés (A3 uses) and drinking establishments (A4 uses) states that the Council will consider proposals for such uses provided the following are met:
- There is no harm to the living conditions of nearby residents, including that created by noise and disturbance from users and their vehicles, smell, litter and unneighbourly opening hours; and
 - Parking and traffic generation is not a danger to other road users, public transport operators or pedestrians.
- 6.6 DM Policies 17 and 18 Hot food take-away shops (A5 uses) also state that applicants will be expected to provide acceptable arrangements for appropriate mitigation measures in relation to the impact on neighbours of the proposed opening hours.
- 6.7 DM Policy 26 Noise and vibration states that the Council will require a Noise and Vibration Assessment for noise and/or vibration generating development or equipment and new noise sensitive development, where appropriate, to identify issues and attenuation measures, prepared by a qualified acoustician.
- 6.8 In terms of crime, disorder and anti-social behaviour, the applicant has committed to the following measures:
- i. High quality resolution CCTV with Automatic Number Plate Recognition (ANPR) software to be in operation throughout the restaurant dining area, car park and drive

through areas, including the entrances, footage from which would be held for a minimum of 31 days;

- ii. The training of all McDonald's managers, and employees between 23:00 and 07:00, in Conflict Management Resolution;
- iii. The use of Staff Safe, a 24 hour remote monitoring system, accessible on the premises to prevent and deal with issues of crime and disorder;
- iv. The display of two notices, one requiring customers to be respectful of residents and keep noise to a minimum and one warning about the use of CCTV, in prominent positions in the drive through and car park.

6.9 Officers welcome all of the above measures, which are supported by the local Designing out Crime Officer. Officers acknowledge the concern of residents regarding anti-social behaviour in the local area and creating safer and stronger communities by reducing crime and the fear of crime through innovative design and land use policies is a Core Strategy policy objective. However as part of the application the above measures are proposed to mitigate the increase in hours and whilst none of the measures require planning permission in their own right, it is considered necessary to secure the measures by condition. It is acknowledged that the behaviour of individuals or groups cannot be controlled or pre-determined, but it is considered that the proposed measures offer the best solution to deter anti-social behaviour and control it in the event of it happening. The use of CCTV would have the added benefit of monitoring the amount of time a vehicle spends in the car park given that footage can be monitored on-site.

6.10 In regards to noise, Officers recognise that a number of noise mitigation improvements have been implemented since 2015, including the laying of new tarmac, the installation of speed humps and the use of a 'night mode' for the microphone used for customer orders, which operates at a reduced volume compared with the daytime volume. However, following the commission of an Acoustic Report, which has been submitted with this application, the following issues were identified:

- i. noise created by conversation at the customer order, payment and collection points; and
- ii. noise events created by vehicles driving around the drive through lanes.

6.11 In order to provide mitigation, the following measures have been proposed:

1. The erection of a 2.1m high timber acoustic fence as detailed on drawing no. 06 J7/01043 with its location shown on Figure 4.
2. The closure of specified car parking spaces to the nearest residential boundary that abuts the applicants site as shown on Figure 5.

6.12 Detailed drawings have been forthcoming for both of these mitigation measures, which Officers welcome. The proposed acoustic fence would provide a local noise barrier resulting in a reduction in engine noise and noise from conversation as perceived by 75-96 John Silkin Lane throughout the opening hours of MacDonald's, which is considered to positively improve the environment for local residents. The proposal to close off the parking closest to 75-96 John Silkin Lane is also supported, however Officers have sought to have this area expanded along the entire southern boundary to discourage cars from stopping along this boundary at all, as this area has the most potential to disturb adjacent residents. It is therefore proposed that a condition be attached requiring the submission of an updated parking plan indicating the extended area to be closed off for use from 11pm on Friday and Saturday night until 7am the following day.

6.13 In terms of residential properties, the proposal has the potential to have the most impact on 75-96 John Silkin Lane. An objection was received from a property on John Silkin Lane, which is only 12m away. The resident requested that a new sound level test be carried out as there has been numerous noise issues from the restaurant, cars pass directly past the residential blocks on John Silkin Lane and the speaker can be heard when orders are made. However as detailed above an acoustic report has already been

carried out, which includes proposed measures, which subject to implementation of the proposed measures Officer support.

- 6.14 The submitted Site Management Plan also states that at least three dedicated litter patrols between 00:00 and 02:00 would be undertaken around the drive through lanes and car parking area. Furthermore, all litter would be properly bagged and disposed of via a commercial waste contract. This would be checked and followed up by the shift manager. As such, the proposal is considered to comply with DM Policies 17 and 18.
- 6.15 The proposed increase in hours relates solely to the drive-thru, with the restaurant to close in accordance with the previous approved opening times. Furthermore, the applicant has committed to ensuring that no deliveries are received between 23:00 and 05:00 on any day of the week, that no delivery cages are moved between 23:00 and 05:00 on weekends and that refuse collections are restricted to between 06:00 and 22:00 every day of the week. These are all included within the submitted Site Management Plan, which shall be secured by condition.
- 6.16 Therefore, subject to the required mitigation measures the scheme is considered acceptable in terms of neighbouring amenity.

Highways

- 6.17 Lengthening the proposed opening times by two hours from 00:00 until 02:00 on Saturdays and Sundays would give rise to more business for this premises. However, it is not considered that the change would result in a significant increase in vehicular or pedestrian traffic to what is already a popular restaurant and take away option such that it would have an adverse impact on highways safety. Moreover, the Council's Highways Officer has raised no objection to the proposals.

Equalities Considerations

- 6.18 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.19 In summary, the Council must, in the exercise of its function, have due regard to the need to:
- (a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - (b) advance equality of opportunity between people who share a protected characteristic and those who do not;
 - (c) Foster good relations between people who share a protected characteristic and persons who do not share it.
- 6.20 The duty continues to be a "have regard duty", and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 6.21 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice". The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have

statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

- 6.22 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
 2. Meeting the equality duty in policy and decision-making
 3. Engagement and the equality duty
 4. Equality objectives and the equality duty
 5. Equality information and the equality duty
- 6.23 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>
- 6.24 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.

7.0 Conclusion

- 7.1 The Local Planning Authority has considered the particular circumstances of the application against relevant planning policy set out in the Development Management Local Plan (2014), the Core Strategy (2011), London Plan (March 2016) and the National Planning Policy Framework (2012).
- 7.2 In summary, it is considered that the applicant now has adequately considered the noise and other impacts of the additional proposed drive-thru operating hours on the amenity of neighbouring properties and the mitigation measures proposed are acceptable.

8.0 RECOMMENDATION: GRANT PLANNING PERMISSION subject to the following conditions:

- 3) The restaurant premises shall not be open for customer business/operational between the hours of 12.00am – 07.00am Monday to Sunday and the drive-thru shall not be open for customer business/operational between the hours of 12.00am – 07.00am Monday to Friday and 02.00am and 7.00am Saturdays and Sundays.

Reason: In order to safeguard the amenities of adjoining occupants at unsociable periods and to comply with Paragraph 120 of the National Planning Policy Framework and DM Policy 26 Noise and Vibration, DM Policy 17 Restaurants and cafes (A3 uses), and drinking establishments (A4 uses), DM Policy 18 Hot food take-away shops of the Development Management Local Plan (November 2014).

- 4) The proposed 2.1m high 'Jakoustic' acoustic boundary fencing shown on drawing no. 06 J7/01043 shall be installed in the location shown in drawing Figure 4, and shall have a minimum surface mass of 8 kg/m² with no gaps. It shall be implemented prior

to the commencement of the proposed additional operation hours of the drive-thru, and it shall be retained in perpetuity.

Reason: To ensure that the boundary treatment is of adequate design in the interests of visual and residential amenity, particularly with regard to noise, and to comply with Policy 7.15 Reducing and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes of the London Plan (March 2016), Policy 15 High quality design for Lewisham of the Core Strategy (June 2011) and DM Policies 26 Noise and vibration and 30 Urban design and local character of the Development Management Local Plan (November 2014).

- 5) A) Prior to the commencement of the extended drive-thru opening hours a revised car parking plan shall be submitted to and approved in writing by the local planning authority indicating that the parking bays along the entire south western boundary shall be closed off from use between the hours of 11:00pm on Friday and Saturday until 07:00am on the following day.
B) The parking plan as approved under part A) shall be implemented on commencement of the extended drive-thru opening hours and retained in perpetuity.

Reason: To ensure that the use of the site does not cause adverse impacts on residential amenity, particularly with regard to noise, and to comply with Policy 7.15 Reducing and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes of the London Plan (March 2016) and DM Policy 26 Noise and vibration of the Development Management Local Plan (November 2014).

- 6) All measures as outlined in the Site Management Plan shall be implemented and adhered to prior to the operational of the extended drive thru hours and retained in perpetuity

Reason: In order to safeguard the amenities of adjoining occupants at unsociable periods and to comply with Paragraph 120 of the National Planning Policy Framework and Core Strategy Objective 11 of the Core Strategy (March 2011) and DM Policy 26 Noise and Vibration, DM Policy 17 Restaurants and cafes (A3 uses), and drinking establishments (A4 uses), DM Policy 18 Hot food take-away shops of the Development Management Local Plan (November 2014).

Informative

Positive and Proactive Statement: 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. Positive and proactive discussions took place with the applicant prior to the application being submitted through a pre-application discussion. On this particular application, positive discussions took place, which resulted in further information being submitted to bring it in line with the Development Plan.