

REPORT SUMMARY

REFERENCE NO - 16/505632/FULL		
APPLICATION PROPOSAL Removal of condition 7 (operating hours) of previously approved 14/504694/FULL to allow 24hr operation.		
ADDRESS 1 - 17 The Broadway Maidstone Kent ME16 8QX		
RECOMMENDATION – Temporary permission for 6 months within 2 years of this decision		
SUMMARY OF REASONS FOR RECOMMENDATION The impact of the proposed operation (when taken as a whole) is considered to be low and the Environmental Protection Team has not recommended refusal of the application on the likely level and frequency of disturbance from the proposed 24hr operation. As such, a proposed 6 month trial (within 2 years of this decision) will provide the minimum time necessary to see how in reality such a use will impact upon local residents. For the reasons outlined, a temporary permission for 6 months within 2 years of this decision is recommended on this basis.		
REASON FOR REFERRAL TO COMMITTEE - Councillors Harper and Adkinson wish to see the application presented to Planning Committee		
WARD Fant	PARISH COUNCIL – N/A	APPLICANT McDonald's Rest Ltd. AGENT Savills (UK) Limited
DECISION DUE DATE 29/05/17	PUBLICITY EXPIRY DATE 25/01/17	OFFICER SITE VISIT DATE 06/01/17
RELEVANT PLANNING HISTORY:		

15/510353 - Application to remove condition 8 of MA/13/0921 – To allow 24hr operation - Withdrawn

14/504694 - Variation of condition 20 of MA/13/0921 to allow minor-material amendments – Approved

MA/13/0921 - Partial (almost complete) demolition of existing car dealership and construction of two storey restaurant with associated drive-thru, car parking and associated works (resubmission of MA/12/1843) as s – Approved

MA/12/1843 - Demolition of existing car dealership and erection of restaurant with associated drive-thru, car parking and associated works - Refused

MAIN REPORT

1.0 Site description

1.01 The proposal site is occupied by McDonald's restaurant and drive-thru; and The Broadway runs along the site's northern boundary, with Barker Road to the east and Hart Street to the south. Vehicle access into the site is from Hart Street, and pedestrian access is also possible from here and from the corner of The Broadway and Barker Road. The Broadway Shopping centre is to the north of the site; a newsagent shop and the law courts are to the east; to the west there are residential flats in 19-21 The Broadway (Grade II listed buildings) and Broadway Heights beyond; and a terraced row of (three storey) properties is located to the south that includes takeaway restaurants and a barbers. Lockmeadow leisure centre is further to the south of the site. For the purposes of the 2000 Local Plan, the proposal site is within the defined urban area.

2.0 Proposal

- 2.01 This application is proposing that the business (including the restaurant and the drive-thru) is open to customers for 24 hours, Monday to Sunday; and seeks the removal of condition 7 of planning permission 14/504694 which states:

The premises shall not be open for customers outside the hours of 06:00 to 00:00hrs Mondays to Sundays;

Reason: To safeguard enjoyment of properties by adjoining residential occupiers.

- 2.02 In the covering letter, the applicant states that the proposal would ensure the restaurant is better able to meet the needs of its customer base and enhance the overall efficiency of the restaurant. In summary, the covering letter also sets out the following justification:

- *There are no residential properties within close proximity of the site – covering letter omits the fact that there are residents immediately to west of proposal site.*
- *Noise already generated from A20 contributes towards background noise levels; and the fact that majority of trips to restaurant will be linked trips from shift workers/emergency services and delivery vehicles etc..., would result in no further unacceptable traffic generation to and from site during extended hours of use.*
- *Submitted NIA concludes that noise impact from extension of hours would only cause a “low risk of observable effect” and no mitigation is required.*
- *Good economic benefits of employing 30 additional staff and giving additional hours for existing staff*

3.0 Policies and other considerations

- Maidstone Borough-Wide Local Plan 2000: R17
- National Planning Policy Framework (2012)
- National Planning Practice Guidance (2014)
- Submitted version of Local Plan: SP4, DM1
- Noise Policy Statement for England (2010)

4.0 Consultee responses

- 4.01 **Councillor Harper:** If minded to approve, application should be reported to Planning Committee;

“My grounds for call in are fact of local concern this is causing in the community as well as following:

- *Drive through is inappropriate on this site, there should be strict limitation on opening hours and these should not be extended.*
- *Extending opening hours will have detrimental impact on other long established neighbouring businesses.*
- *There are insufficient containment measures to prevent this operation being a bad neighbour especially to residents of adjacent Broadway Heights.*
- *When site is open due to insufficient flues the smell of fat fryers percolates Broadway Heights, extending opening hours will cause and aggravate already identified mental and physical health issues.*
- *Impact to Local Road Network, currently there are frequently long delays and traffic backing up causes by traffic trying to exit the site, extending this with no remediation will cause further environmental degrading of the neighbourhood.*
- *There will be further bad social behaviour if open into the night with people who are drunk from all night drinking in the town centre night time economy.*
- *Staff blowing whistles all night will keep people awake.*
- *Increase in Litter etc.*
- *A 24 hour 7 day a week opening will only blight our area and Broadway Heights further. There is a new drive in in Aylesford and this one is not needed.”*

- 4.02 On review of the amended Noise Impact Assessment, further objections received by Councillor Harper were as follows:

"I have reviewed the recent Noise Assessment Update and consider this wilfully short sighted. Its remit is just limited to noise and issues affecting residents and other people include air quality and smell from the fryers etc, which pervades area and blights the Broadway Heights Flats. On new document I raise following points:

- 1. Address of the site varies in the report!*
- 2. Refers to mixed area, buildings adjoining site are blocks of flats including Broadway Heights, so more residential in character.*
- 3. Report seems to ignore likely noise and environmental impact from plant running 24x7, and car and noise of people etc.*
- 4. McDonalds already attracts antisocial behaviour and this will only worsen in middle of night.*
- 5. Sound travels upwards, all noise assessments were done at ground level.*
- 6. Broadway Heights and Tonbridge Road flats are not blocked from noise from Tonbridge Road by McDonalds as claimed.*
- 7. No assessment of the current noise from Broadway Heights*
- 8. Most customers during period midnight to 6am are expected to arrive by car, problems of noise and other pollution will include engine noises, revving of cars, people chatting whilst walking across car park, music from parked cars especially bass music etc*
- 9. Assessment is not valid, whilst Ashford is a nice town it is not acknowledged night capital of Kent, therefore comparison is not valid. Usage of Maidstone site will be considerably higher and will have a lot of night time revellers etc*
- 10. Noise mitigation plan is woefully inadequate, indeed it is not a plan at all. Reporting information via a log to Police will have no impact, police are not reactive to complaints. There is no attempt for proactive remediation, simply because there is not any possible."*

- 4.03 **Councillor Adkinson:** Commented that If minded to approve application it should be reported to Planning Committee.

- 4.04 **Councillor Bird (KCC - Maidstone Central):**

"I am writing in support of residents living in Broadway Heights and other local areas who object to the extension of operating hours of this McDonalds outlet. My reasons for objecting are as follows:

- Drive through is totally inappropriate at this town centre site. Should be strict limitation on opening hours; an extension would exacerbate problems currently being experienced in area.*
- Applicant recognises there will be significant all night noise from restaurant which will have severe detrimental impact on residents of Broadway Heights. While proposed mitigations will help, they will not stop additional all night noise. I note that Environmental Health officer has recommended refusal because of inadequate noise impact measures.*
- Smell of fat fryers percolates Broadway Heights because flues are inadequate. Extending opening hours will aggravate already identified environmental, social and health issues for local residents."*

- 4.05 **Environmental Protection Team:** Recommends temporary permission to operate for 24hrs for a set period of 6 months (see main body or report for details).

- 4.06 **MBC Environmental Enforcement Team:** There has been 1 complaint about noise since the restaurant/drive-thru has been in operation that was due to an internal alarm that sounded for a few seconds when staff entered to open up the restaurant.

- 4.07 **MBC Licencing Department:** No direct complaints have been received relating to the premises from a licensing point of view; and a view cannot be given on the acceptability of a 24hr use.

- 4.08 **MBC Community Safety Partnerships Officer:** Raises no objection.

- 4.09 **Kent Police:** Have no comments to make.

- 4.10 **KCC Highways Officer:** Raised no objection under 15/510353.

4.11 **Conservation Officer:** Raises no objection on heritage grounds.

5.0 **Local residents:** 20 representations have been made raising concerns over noise and disturbance; antisocial behaviour; odours; litter; and traffic congestion.

6.0 Principle of development

6.01 The principle for a restaurant in this location has already been accepted under previous approved applications; and the development has been implemented and is operational. However, still of relevance to this application is saved policy R17 of the adopted Local Plan which states:

THE COUNCIL WILL PERMIT HOT FOOD SHOPS, RESTAURANTS, CAFES, BARS AND PUBLIC HOUSES OUTSIDE THE CORE SHOPPING AREA TO WHICH POLICY R7 APPLIES, PROVIDED THAT THE FOLLOWING CRITERIA ARE MET:

- (1) THAT THERE IS NO DETRIMENTAL EFFECT, BY REASON OF HOURS OF OPENING, FUMES AND SMELLS OR NOISE AND DISTURBANCE, TO NEARBY OR ADJOINING USES AND ESPECIALLY RESIDENTIAL AMENITY; AND*
- (2) THAT THE EFFECT OF ONE OR A CONCENTRATION OF SUCH USES WOULD NOT BE DETRIMENTAL TO THE VITALITY AND VIABILITY OF ANY DISTRICT OR LOCAL CENTRES WITHIN WHICH THEY MAY BE LOCATED.*

6.02 The purpose of the planning system is to contribute to the achievement of sustainable development and in the Government's view, as contained within the National Planning Policy Framework (NPPF), there are 3 dimensions to sustainable development, those being economic, social and environmental. These roles should not be undertaken in isolation, and this proposal seeks to increase trade and the ongoing viability of the business. However, this potential economic benefit must be balanced against any adverse environmental and social impacts; and of particular relevance here is the 'social' role of sustainable development. This is where support should be given to supporting strong, vibrant and healthy communities, by creating a high quality built environment that reflects the community's needs and support its health, social and cultural well-being.

6.03 Paragraph 123 of the NPPF also states that planning decisions should aim to ".....avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development". This wording is based on DEFRA's Noise Policy Statement for England (2010) (NPSE). Paragraph 17 of the NPPF also states that 1 of the 12 principles are that planning should "...always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings".

6.04 The submitted version of the Local Plan is also considered to hold significant weight. Emerging policy SP4 seeks to regenerate Maidstone town centre and emerging policy DM1 seeks to respect the amenities of occupiers of neighbouring properties. The submitted version of the Local Plan is subject to main modifications and public consultation on these was carried out between 31st March and 19th May.

7.0 Residential amenity

7.01 The current hours of operation, as requested by the applicant under the original application, were restricted under condition 7 of 14/504694, in order to safeguard the enjoyment of properties by adjoining residential occupiers. As such, the key issue for this proposal is to consider what impact there would be on the living conditions of local residents who live in the flats at 19-21 The Broadway and Broadway Heights, if the restaurant and premises were open between the hours of midnight and 6am.

- 7.02 The submitted amended Noise Impact Assessment (NIA) (received 23/12/16) states there are 3 main identified potential noise sources related to this proposal, those being people, vehicles and plant. The NIA then confirms that the proposal is likely to generate noticeable noise in terms of people and vehicle noise (but with no change in impact of plant noise). However, the NIA also states that the level of noise impact likely from this proposal would not be detrimental to existing quality of life for local residents, whilst accepting that mitigation should be considered to minimise the potential noise impact.
- 7.03 The report has concluded that the noise from the extended operation represented *Lowest Observable Effects Level* (LOEL) for the three main categories of noise (people, vehicles and plant). LOEL is the level above which adverse effects on health and quality of life can be detected. Whilst there are no specific criteria set out in the NPPF and the NPSE to define the parameters of this, the report concludes that the proposal is not considered to cause a '*significant*' change and therefore is not contrary to paragraph 123 of the NPPF in this respect.
- 7.04 The Environmental Protection Team disagreed with this assessment and commented that based upon the information provided, the applicant's assessment of LOEL could not be substantiated by the methods, data and assumptions raised in the report. The Environmental Protection Team also considered the Noise Management Plan (NMP) that was submitted with the NIA to be "*woefully inadequate at controlling the impact of customer noise during the proposed extended hours*".
- 7.05 The applicant subsequently submitted additional noise impact information to address these concerns, as well as an amended NMP (Issue 6 - received 16/02/17) which sets out details of proposed measures which are and will be adopted by the restaurant to ensure the proposal does not trigger any unacceptable noise impacts.
- 7.06 On review of the updated information, the Environmental Protection Team are satisfied that it addresses their technical concerns; and they state that they are unable to argue with the technical conclusion of the report that the overall impact of the proposed operation is likely to represent a '*Low Observed Effect Level*'. This means that whilst it is acknowledged that some effect will be experienced, it will be at an overall low level that could be considered to be acceptable in terms of the guidance found in the NPPF.
- 7.07 However, the Environmental Protection Team also recognises that there will be some impact on nearby noise sensitive premises particularly from sporadic incidents such as shouting, car radios, noisy or defective cars etc; and whilst the NMP contains mitigation measures for when such incidents may occur, it is by its very nature reactive to those incidents meaning that disturbance will have been caused before it can be acted upon. It is difficult if not impossible to accurately predict the number or frequency of those occurrences on a day to day basis; and this element of unpredictability will increase the potential impact on neighbouring residents as if disturbed they will not know if they will be disturbed again making it more difficult to recover.

- 7.08 The measures set out in the NMP (to be implemented between 23:00-07:00) are summarised below;

NOISE SOURCE	CONTROL MEASURES
Minimising Vehicle Noise	<ul style="list-style-type: none"> - Staff shall be vigilant for vehicles arriving playing excessive noise and/or being driven deliberately to create noise after 2300. - Observational records should be made of registration plates in Incident log and where possible, CCTV footage used to provide evidence of culprits whom regularly cause antisocial behaviour. - Members of management team are required to quickly and safely challenge those creating unreasonable noise levels and request them to adjust their behaviour, to minimise noise and respect their neighbours. - Information on those causing antisocial behaviour (ASB), should it continue, will be recorded as an incident and reported.
People Noise	<ul style="list-style-type: none"> - Signs shall be prominently displayed that ask customers that come into premises to leave quietly in order to respect our neighbours. - We will work in partnership with police and other statutory authorities to address any nuisance or crime and disorder that generates noise outside the restaurant within the licence, which could include CIA staff on a risk assessment basis to achieve, where it is expected to be necessary to control noise. - Franchisee was awarded "MaidSafe" recognition because of their work, which will continue and is expected to be ongoing focus on minimising disorder and ASB. - Customers that are seen to be disregarding notices and or loitering outside after 2300 and making noise should be encouraged to come inside if they are eating, rather than be outside, or move on. Where this becomes confrontational an ASB trained Manager will attend and have the power bar the person. - Gatherings of people in car park who are not waiting to be served, should be challenged by the Manager, notified that they are on CCTV and recorded in Incident log.
Intercom (COD) and other Noise	<ul style="list-style-type: none"> - Intercom system should be set up such that its noise level is limited between hours of 2300- 0600, such that is it barely audible at closest premises. For this store a COD setting of 12 is to be trialled, with 10 as refinement if necessary. Use of jet wash should be restricted for use between 0800-2000. Outside hours of 0700-2300 intercom should be set up such that it reduces in noise level, such that is it barely audible at the closest premises.

- 7.09 With the information presented, the Environmental Protection Team has not made a conclusive recommendation. This is because the scientific evidence submitted demonstrates that the impact of the proposal will (when taken as a whole) be low; and whilst in their experience this premises operating between midnight and 6am could be problematic for those residents that overlook the site's car park, in terms of being disturbed by individual incidents, in this balanced case they have not recommended refusal of this application.
- 7.10 As such, the Environmental Protection Team have taken a finely balanced view that a temporary permission for 6 months would be the only way of properly assessing what the impact of such a proposal would be on local residents in terms of general noise and disturbance. Based on the evidence presented and the Environmental Protection Team's advice, a temporary permission is considered reasonable. 6 months is considered the minimum time necessary to allow local residents to raise issues/complaints with the store and the Council's Environmental Enforcement Team

as well as actively participate in complaint investigations; and this timeframe will also adequately cover the summer period when there is generally more outdoor activity and windows open etc. To allow time for the operator of the premises to implement the proposal (for example to arrange staffing) I consider a recommendation of 7 months to be reasonable.

8.0 Other considerations

- 8.01 Given the nature of the proposal, no further issues or objections are raised in terms of the proposal's impact on the character and appearance of the surrounding area (including heritage and its impact upon the setting of the adjacent listed buildings); highway safety/traffic congestion and parking provision; land contamination; litter; air quality; flood risk; landscaping/arboricultural issues; biodiversity; and its impact upon the Area of Archaeological Potential. With regards to odour, a condition imposed on the original application dealt with this and if the systems in place have failed this is a matter for the Environmental Health Protection Team.
- 8.02 The representations received from Councillor Harper, Councillor Adkinson, Councillor Bird and the local residents have been considered in the determination of this application; and I would add that the principle for this use has already been accepted and my assessment here is solely based on the potential impact of 24hr operation.

9.0 Conclusion

- 9.01 The Environmental Protection Team is not raising an objection to the technical details and the noise report's conclusion that the proposed operation is likely to represent a '*Low Observed Effect Level*', which is a level accepted under the NPPF. With regards to the NMP, this will provide mitigation for when sporadic incidents relating to the use of the premises happens, but it is accepted that it cannot prevent or control all incidences before they happen and neighbour disturbance is inevitable. However, the Environmental Protection Team has not recommended refusal of the application on the likely level and frequency of disturbance from the proposed 24hr operation and the proposed 6 month trial will provide the minimum time necessary to see how in reality such a use will impact upon local residents. For the reasons outlined, I therefore recommend a temporary permission for 6 months (within 2 years of this permission) on this basis.

10.0 RECOMMENDATION – APPROVE for temporary permission of 6 months (to start within 2 years of this permission):

- (1) The restaurant premises and drive-thru may operate 24 hours a day on any day for a limited period of 6 months. The temporary period hereby approved must commence within two years of the date of this decision for a continuous period of 6 months and must include the months of July and August. The applicant must provide the local planning authority with written notification of the start and end date 10 days prior to first commencement.

Upon the expiry of the temporary period the restaurant may only operate between the hours of 06:00 hours to 00:00 hours on any day (as permitted under planning permission 14/504694);

Reason: In the interests of residential amenity.

- (2) Following the implementation of this permission and the commencement of the extension to the operating hours, the restaurant must operate in accordance with the provision of the Premises Noise Management Plan Report No. 14-0167-12 R01 Appendix B (Issue 6 - received 16/02/17) for the full 6 month temporary period;

Reason: In the interests of residential amenity.

- (3) The plant equipment to be used at the premises shall be so installed, maintained and operated in accordance with the acoustic report submitted and approved under MA/13/0921 that was carried out by Ian Sharland Ltd, ref: 5755/pja (received 23/05/13), and shall fulfil all the recommendations for noise mitigation specified in the report, so as to prevent the transmission of significant noise and/or vibration to any neighbouring premises;

Reason: To safeguard the enjoyment of their properties by local residential occupiers.

- (4) The approved details of the parking/turning areas and vehicle loading/unloading areas shall be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

Reason: Development without adequate parking provision is likely to lead to parking inconvenient to other road users and in the interests of road safety.

- (5) The development hereby permitted shall be carried out in accordance with the following approved plans (under 14/504695): BX-MW-AP-4120-STD-1.00(D), 6362-PL-405 Rev B and 6362-PL-406 Rev B received 14/10/14 and (excluding the alterations to 19-21 The Broadway) 6362-PL-404 Rev D received 13/01/15;

Reason: To ensure the quality of the development is maintained and to prevent harm to the residential amenity of neighbouring occupiers.

Case Officer: Kathryn Altieri

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.