

REPORT FOR WESTERN AREA PLANNING COMMITTEE

Date of Meeting	22 July 2020
Application Number	19/12153/VAR
Site Address	McDonald's Restaurant 235 Bradley Road Trowbridge BA14 0AZ
Proposal	Variation of condition 3 of W/96/00587/FUL to modify the opening hours to 06:00-23:00 Monday to Saturday
Applicant	McDonalds Restaurant
Town/Parish Council	Trowbridge Town Council
Electoral Division	Councillor Andrew Bryant, Trowbridge Drynham
Grid Ref	385,495 156,022
Type of application	Variation of condition
Case Officer	David Cox

Reason for the application being considered by Committee

Cllr Bryant as the unitary ward Member requested that should officers be minded to approve this application, it should be brought before the elected members of the western area planning committee for its determination to consider the impact upon local residences in respect of noise, smell, traffic and pollution.

This application is brought back to Committee following the deferment made at the 17 June 2020 committee meeting and to report back to Members on the requests made for additional information relating to litter management as well as noise and traffic impacts on neighbouring amenity. Members are also advised that the applicants have submitted a site management plan (SMP) and a supporting letter in response to the committee deferment to which this revised report refers.

1. Purpose of Report

Having assessed the merits of the proposed development and tested it against the policies of the development plan and other material considerations, to consider the recommendation that the application should be approved.

2. Report Summary

The main issues discussed in this report are as follows:

- The Principle of the Development
- Impact on neighbouring amenity
- Impact on traffic congestion
- Litter

3. Site Description

The application site comprises of the McDonalds restaurant which is located within the Spitfire Retail Park located along Bradley Road in Trowbridge. It has a drive through facility where orders are placed on the eastern side of the building and paid for and collected on the western side facing the residential properties on the opposite side of Bradley Road. The residential properties immediately opposite are approximately 55 metres from the McDonalds building; and, No 134 (opposite the junction into the retail park) is approximately 40 metres away.

To the south of the application site but still within the Retail Park, Costa Coffee and a KFC facility operate, both of which are positioned at similar or at closer distances to the residential properties that front Bradley Road.

Although Costa Coffee does not have a drive through, consented planning application reference 19/08237/VAR allows it to be open for business during the hours of 06:00-19:00 Monday-Saturday (including Bank Holidays) and 08:00 -18:00 on Sundays. Deliveries are not allowed

between the hours of 19:00 to 06:00 Monday-Saturdays nor before 08:00 or after 18:00 on Sundays.

KFC has different and varied opening hours and does not currently open earlier than 10am, but can trade until 23:00. Similar to MacDonalD's, KFC has a drive through with product collection on the western elevation facing Bradley Road – similar to MacDonalD's.



Site Location Plan with Costa Coffee and KFC to the south



The MacDonalD's consented Drive-Thru facility

4. Planning History

W/96/0586/FUL – Single Storey Restaurant with Drive-Through Facility (A3) with associated landscaping and car parking – Permitted 19 September 1996 (this is the existing McDonalds building). **Condition 3 restricted the use and servicing to the hours of 07:30 – 23:00**

14/03456/FUL - Reconfiguration of the drive thru lane to provide a side-by-side order point, incorporating a new island for signage and reconfigured kerb lines and associated works to the site. One tree to be removed with the planting of new tree. Installation of 2 no. Customer Order Displays – Permitted 21 May 2014. **This application consented a change to the drive through road layout on the eastern side to allow for two order points, which has been implemented.**

16/11877/VAR - Variation of Condition 3 of planning permission W/96/00586/FUL (to allow for business hours of use and servicing 06:00 – 24:00)– Refused 6 February 2017 for the following reason (which was not appealed).

“The proposed extended hours of operation by reason of increased activity by customers, staff and deliveries beyond the existing hours, would give rise to a loss of amenity to the existing nearby residential development, contrary to CP57 of the adopted Wiltshire Core Strategy.”

5. The Proposal

This application is materially different to refused 16/11877/VAR in that this application only seeks to extend the business opening hours in the morning on Mondays - Saturdays as 06:00-23:00 Monday to Saturday.

On Sundays the existing restriction of 07:30-23:00 for on-site servicing and opening hours would remain unchanged.

No operational development is proposed under this application.

6. Planning Policy

Wiltshire Core Strategy (WCS) - The following Core Policies (CP) are relevant when assessing this application: CP1 (Settlement Strategy); CP2 (Delivery Strategy); CP3 (Infrastructure Requirements); CP29 (Trowbridge Area Strategy); CP57 (Ensuring High Quality Design and Place Shaping).

The National Planning Policy Framework (NPPF), Noise Policy Statement for England (NPSE) and Planning Practice Guidance (PPG)

7. Summary of Consultation Responses

Trowbridge Town Council – Objects. The original condition remains pertinent and should not be changed

Wiltshire Council Highways Officer: No objection. The extended morning opening hours are outside of the usual peak traffic periods and as a result, are not considered to represent a highway capacity issue in this instance.

Wiltshire Council Environmental Health Officer: No objection

Noise - The noise impact assessment undertaken by Hawkins Environmental as part of an application by Costa Coffee was submitted to provide information to officers to enable them to assess whether plant noise associated with their original application would lead to a harmful impact

on nearby residential properties. This report was also relevant when Costa submitted a variation of hours application.

McDonalds have referred to the Hawkins Environmental report on the basis that the two sites are in a similar location, accessed off the same road, with the same residential properties nearby. Although the report was carried out in 2018, there is no evidence to suggest that traffic flow has changed considerably in the last few years, and therefore we have looked at the background noise measurements within this report to help assess whether the extension of hours at McDonalds would cause a significant noise issue to the nearby residential properties.

Background noise levels from the report are set out below which are fairly high given the time of day timeframes surveyed, which is attributed to the busy road, which residents say starts to get busy from 5am. There is an increase of between 9-13db when the road is at its busiest.

6am – 6.15am	49.5
6.15am – 6.30am	46.0
6.30am – 6.45am	47.6
6.45am – 7am	51.4
7am – 8am	58.7
8am – 9am	62.6

The 2018 Hawkins Environmental report confirms that the background noise levels are relatively high at 6am for this location with the dominant noise source being vehicle traffic along the A363. It is considered significant that this report determined that the rated sound level (including a 7dB penalty correction for interment plant) at 6am to be -14dB below the background level at the nearest residential receptor at around 30 metres distance away. As such, for this McDonalds application and considering the location of the drive through being so close to the main road, it is wholly unlikely that the rated sound level would exceed the background levels at 6am when measured at the façade of the closest residential property (positioned around 40 metres away). To require a separate or additional noise report in the context of this background information currently available (and relatively recently produced) would be unnecessary.

In terms of the concerns raised about the noise generated by the drive-thru, in our experience, and following a review of relevant noise reports* a typical early morning customer to a McDonalds drive thru would be on their way to or from work and does tends not to linger at the site. Vehicles drive very slowly round the circuit and do not open and close doors. The only other source of noise from the activity that may cause adverse impact by virtue of its sound frequency and intermittency, would be the use of a customer order display (COD) intercom unit. However, it is noted that the intercom unit is located on the other side of the building to the residential receptors and therefore any noise would be shielded well below the aforementioned level of background noise from the road and other ambient sources. In any case, typical noise generated from COD units at 2metres distance are 52 LAeq 10 mins and or 71 LA MAX which allowing for distance adjustments of >58 metres would result in noise levels well below background levels.

*<https://documents.norwich.gov.uk/Planning/StreamDocPage/obj.pdf?DocNo=10986132&PageNo=1&content=obj.pdf>

Litter - We are not aware of any litter complaints at the site. When the food officers inspect establishments, they make sure they have a waste contract and that the commercial bin area is well managed. They also check for vermin issues and if any problems are identified the establishment is required to take immediate action.

Conclusion - Taking everything into account we believe that the background levels identified in the noise impact assessment are consistent with the current traffic flow. Noise associated with an early morning drive-thru would most likely be commuters, which given the time of day should move through the drive-thru effectively without exceeding the background noise levels.

8. Publicity

A site notice was displayed on 20 January 2020 and 13 neighbour notification letters were posted. Following this consultation, six representations were received (four objections and two letters of support, one being a local resident) which can be summarised as follows:

Supportive Comments:

- I'm an early starter and am often frustrated by the late 0730 start. This would help me, and others start their day at a reasonable hour. Many other tradesmen agree with me
- We live opposite the Spitfire Estate and we have absolutely no issue with the proposed start time of 6am. If it was 24 hours, it would be objectionable.
- Costa Coffee opens at 6am
- Traffic on Bradley Road starts at 5am anyway.
- People should not live opposite a retail park and moan about it

Objections:

- We live opposite and we strongly oppose the application to open at 6am. There would be too much increased activity and noise at that time of the morning and would be totally unacceptable
- The original permission set the time at 0730 for a reason; being that its near residential premises and that the business would have an impact on nearby residents
- Opening earlier would lead to staff arriving earlier for work, presumably around 5am creating more noise
- Customers would start arriving before 6am, creating more noise
- The supporting statement is complete nonsense
- Litter issue in this area is abysmal. They don't empty the bins often enough.



Map showing nearby properties and the nearest REPs

9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise. In this case, the Wiltshire Core Strategy, including those policies of the West Wiltshire District Plan that continue to be saved and are enshrined within the WCS, constitute the relevant development plan for the Trowbridge (CP29) area.

9.1 Principle of the Development

9.1.1 The Wiltshire Core Strategy (WCS) promotes through Strategic Objective 1, to deliver a thriving economy “*encouraging economic vitality, providing local jobs for Wiltshire’s population*”. McDonalds is an existing business located within a well-established retail park and this proposal would help retain existing jobs whilst also allowing for longer hours of work. No operational development is proposed. The principle of development is therefore supported by officers.

9.2 Impact on Neighbouring Amenity

9.2.1 WCS core policy 57 (vii) states that: “*Development must have regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants including the consideration of pollution e.g. noise and fumes.*”

9.2.2 Officers acknowledge that an application was refused (under application 16/11877/VAR) to increase the opening hours from 07:30-23:00 to 06:00-24:00 due to concerns raised about the impact it would have on neighbouring amenity. However, the concerns around the previous application mainly related to anti-social behaviour, police being called, noise disturbance and ‘boy racer’ congregation – activities that would be far more akin to late-night opening, which is not part of this application.

9.2.3 This proposal seeks to increase the opening hours for an extra 90 mins in the morning with a 06:00 start and retaining the 23:00 closure (Monday to Saturday) – and would not likely lead to the same concerns officers raised against the 2016 application. Officers submit that this application is materially different to the refused 16/11877/VAR application.

9.2.4 Following the Committee’s deferment, the Council’s Environmental Health Officer has looked at previous Environmental Health noise complaints, and the only issues reported from McDonald’s itself related to an alarm being tested in the morning when the store manager arrived to open the restaurant. McDonalds have now confirmed that the alarm has been reduced in volume and is now inaudible outside of the restaurant. The Council’s Environmental Health Officer is satisfied and continues to have no objection to the proposal.

9.2.5 Noisy staff returning to work was highlighted as a concern and officers have, since the application was deferred, engaged with the appointed agents and secured a Site Management Plan (SMP) which includes details on staff, litter picking/management and other operational practices of the business. In relation to staff arrivals, the SMP confirms the following:

“Staff arriving in the early morning trading period will arrive no earlier than one hour before opening, in order to carry out essential services to prepare the restaurant for opening. It is expected that no more than 3 staff members will arrive at the store in the period 05:00 – 05:30. Members of staff who choose to travel by car will park in the area of car parking directly adjacent to the Curry’s unit, furthest away from residential dwellings in order to keep noise to a minimum at the site. Staff are reminded to keep noise to a minimum at all times when arriving at the site in the early morning period.

**McDonalds* plan to set up the restaurant pre-opening at 6am with only 3 members of staff, with a further 3 members of staff arriving for the first hour’s business.”*

9.2.6 Officers submit that 6 members of staff arriving and being present between 5am and 6am (and until circa 8am) is not a large number and it would not be unexpected for some to arrive by means other than motor vehicles. It is acknowledged that McDonalds tend to attract and employ a younger workforce who are likely to be local and may not drive (or be able to afford their own motor vehicle). Therefore, the concerns raised about additional noise being created from staff arriving for a 06:00 start are not shared by planning or public protection officers. The evidence to which the public protection officer references within section 7 above, does not support the thesis that the proposal would lead to harming neighbouring amenity. It is also noted that there have been no Environmental Health noise related complaints about staff arriving to work for the existing business hours.

9.2.7 The McDonalds drive-thru ordering points are on the eastern elevation facing the retail park itself and not residential properties. In the SMP it states that:

“During the extended hours, the Customer Order Display unit has the facility to be set to the lower night time setting which automatically reduces the speaker volume during these hours..... and therefore is not audible from Bradley Road.”

9.2.8 The order collection side is on the western elevation facing Bradley Road. However, as the Council’s public protection officer argues, any increased noise levels created by the additional use made of the retail park entry point and the drive-thru in the early morning period would not exceed the background levels (as recorded and referenced above). The supportive representation letter received from a nearby local resident argues that road traffic noise from Bradley Road starts around 5am, and officers are entirely satisfied that any vehicle noise using the drive-thru from 06:00 would not cause substantive harm to justify refusing planning permission. Moreover, the Council’s Environmental Health Officer argues that *“taking into account the location of the drive through being so close to the main road, it is wholly unlikely that the rated sound level will exceed the background levels at 6am when measured at the façade of the closest residential property around 40 metres away.”*

9.2.9 Officers are also mindful that in 2019, the Council approved application 19/08237/VAR to allow the nearby Costa Coffee facility to be open for business from 6am. Should the committee resolve to refuse this application for the McDonalds facility against officer recommendation, members are respectfully advised that they would need substantive planning reason for doing so, supported by evidence, which would be required and essential to defend any subsequent appeal; and a failure to do so, may place the local authority at risk of a costs award for unreasonable behaviour.

9.2.10 Officers are also very appreciative of the ongoing Covid-19 pandemic, the consequential impacts and restrictions; and the changes and press releases made by Central Government to support the local economy, and with the ongoing necessity to socially distance, the proposed extended operating hours could assist in this regard.

9.3 Impact on Highway Safety, Traffic Flow and Congestion

9.3.1 The Councils Highways officer has no objection stating that the extended morning opening hours are outside of the usual peak traffic periods and as a result, would not represent a highway capacity issue or concern.

9.4 Litter Concerns

9.4.1 The submitted Site Management Plan responds to the above matters by stating that:

“There are 8 external bins in the car park of the restaurant. The store has a strict litter collection protocol which includes dedicated litter patrols done every 1 – 2 hours. Litter patrols cover the whole site.”

the restaurant assists in other large scheme litter events in the area. McDonald's is a founding member of 'Clean Coasts Week' and the 'Love Where You Live' anti-littering campaign which aims to encourage everyone to take action to help reduce the amount of litter in their local area, and across the UK by 2020. This restaurant has sponsored 'Love Where You Live' events in 2018 and 2019, with a planned event in 2020 cancelled due to the coronavirus pandemic. The restaurant will continue to plan and undertake 'Love Where You Live' events when safe to do so."

9.4.2 Officers are of the view that litter is well managed on the site and that there is no substantive evidence to argue that the development conflicts with WCS Core Policy 57 (vii) by reason of impact on amenity through litter. On this point, the committee is respectfully reminded that the McDonalds facility can legitimately open for business at 07:30 and stay open until 23:00. Refusing the application on litter concerns is not considered reasonable or defensible.

10. Conclusion (The Planning Balance) -

It is considered that the proposed earlier opening hours would not lead to substantive adverse harm affecting the amenity of residents of properties on the opposite side of the road, and this, combined with the economic benefits that would prevail, justifies an approval.

11. RECOMMENDATION: Approve subject to following conditions

1. The use hereby permitted shall only take place between the hours of 06:00-23:00 Monday-Saturday (including Bank Holidays) and 07:30 - 23:00 on Sundays. Deliveries shall not take place between the hours of 23:00 to 06:00 Monday-Saturdays nor before 07:30 or after 23:00 on Sundays.

REASON: In the interests of neighbouring amenity and to be synchronised with the other nearby takeaway food/restaurant outlet.

2. The development hereby permitted shall be carried out in accordance with the following approved plans and supportive statements:

Site Location Plan and Covering Statement Letter – both received 23 December 2019; response letter to Committee received 3 July 2020 and Site Management Plan – received 6 July 2020

REASON: For the avoidance of doubt and in the interests of proper planning.

3. The development hereby permitted shall be carried out in strict accordance with the submitted details of the approved Site Management Plan at all times in perpetuity.

REASON: In the interests of neighbouring amenity.

INFORMATIVES TO APPLICANT: The applicant is respectfully advised to consider adding to or making more prominent, existing advertisements that encourage customers not to drop litter or to not have loud music or radios when using the drive-thru.

The applicant is also respectfully encouraged to promote the use of sustainable modes of transport other than using private motor vehicles for their staff, and for those who drive to McDonalds to consider car share potential and to park as far away from Bradley Road as reasonably possible in order to reduce potential noise disturbance and to encourage a more environmentally friendly and carbon free future.