

The information, recommendations and advice contained in this report are correct as at the date of preparation, which is more than two weeks in advance of the Committee meeting. Because of these time constraints some reports may have been prepared in advance of the final date given for consultee responses or neighbour comment. Any changes or necessary updates to the report will be made orally at the Committee meeting.

Case Officer	Katie Ingram
Application No.	23/00440/REVPP
Date Valid	8th June 2023
Expiry date of consultations	18th July 2023
Proposal	Variation of Condition 1 of planning permission 21/00048/REVPP dated 17 February 2022 for the erection of a restaurant with drive-thru and takeaway facility, to allow permitted hours of use from 06:00 to 00:00, 7 days a week, on a permanent basis
Address	<b>McDonalds, 1 North Close, Aldershot</b>
Ward	North Town
Applicant	McDonald's Restaurants Ltd
Agent	Mr Brad Wiseman
Recommendation	<b>Refuse</b>

### **Description**

The application site is on the northern side of Ash Road and is a corner plot bounded to the west by North Lane and to the north by North Close. Ash Road where it adjoins the application site is a four-lane dual carriageway with a filter lane into North Lane. Opposite the junction of North Close on the western side of North Lane is Lower Newport Road.

The site is rectangular and is occupied by a two storey McDonalds restaurant/takeaway building with a drive-through facility. This site is bound by a low fence. The building is set back from Ash Road by 26m. The vehicular site entrance and exit from North Close, from where a vehicular circulation route runs through the car park areas to the east and south of the building to enter a drive-through lane to the west of the building. The customer ordering points are located to the north of the building and food delivered to customers on the east side of the building, where the drive-through lane returns to the car park area. A fenced bin-store area between the north side of the building and the customer order points.

The approved building has a gross internal floor area of 546 sq m, of which 238 square metres would be available for customer dining and provide seating for up to 160 diners. There are a total of 40 on-site parking spaces, all situated to the east and south of the building. Two spaces in the south-west corner are provided with EV chargers.

Adjoining the eastern boundary of the site is Clyde Court, which comprises two buildings built up the side boundary shared with the application site containing eight flats separated by a central parking courtyard. Adjoining the eastern side of Clyde Court is a KFC drive-through and takeaway restaurant and associated parking, which has vehicular access to/from both the end of North Close and also directly from Ash Road.

To the west of the application site is No.215 Ash Road, a 3-storey flat building containing six flats. This is adjoined to the north by No. 1 North Lane, which is a Salvation Army single storey hall, which is bounded by Lower Newport Road to the north. The nearest residential properties on Lower Newport Road to the application site are No. 36, 27m from the application site, and the first floor flat at No.41 North Lane, which is 38m from the application site.

Opposite the application site, on the northern side of North Close is No.38 North Lane which is a printing premises, 'Jondo'. To the north-east are Southern Gas Network compounds.

The current application seeks planning permission for the permanent retention of the extended opening hours that were granted on at appeal in February 2022 for a temporary trial period that commenced on 18 July 2022. This is for customer opening hours commencing at 0600 hours and ending at 0000 hours (i.e. midnight) 7-days a week at variance with the customer opening hours set by Condition No.15 of planning permission 17/00344/REVPP. In this respect the applicants clearly consider that the various mitigation measures that were proposed to the Council and the Inspector in respect of their appeal against the Council's refusal of these extended customer opening hours in 2021 have adequately demonstrated that no significant harm to the amenities of occupiers of adjoining and nearby residential properties has arisen.

### **Relevant Planning History**

Planning permission was originally granted subject to conditions in July 2016 for the "*Erection of restaurant [part single-, part two-storey building] with drive-thru and takeaway facility (Use Class A3/A5) with associated structures, fencing, parking, landscaping and vehicular access from North Close (following demolition of the existing training buildings and closure of access onto North Lane)*", 16/00411/FULPP. The 25 conditions imposed with this permission included the following:-

*"13 Prior to the first occupation of the development details of a lighting strategy for the site shall be submitted for the approval of the Local Planning Authority. Once approved the lights shall be installed in accordance with these details prior to the first occupation of the development and thereafter retained.*

*Reason - In the interests of visual and residential amenity.*

*14 The plant and machinery hereby approved shall be installed in accordance with the noise levels and mitigation measures as set out in the Environment Noise Assessment and supplementary Environment Noise Information prepared by Peter Ashford of Acoustic Associates South West Ltd dated 13 October 2015 and 4 April 2016 prior to the premises opening to the public and thereafter retained in accordance with these approved details.*

*Reason - To protect the amenity of neighbouring occupiers.\**

*15 Notwithstanding any details submitted with the application the use of the development hereby approved shall not commence, until details of the means of suppressing and directing smells and fumes from the premises have been submitted to and approved in writing by the Local Planning Authority. These details shall include the height, position, design, materials and*

*finish of any external chimney or vent. The development shall be carried out in accordance with the details so approved prior to the first use of the development and thereafter retained.*

*Reason - To safeguard the amenities of neighbouring property.\**

**16 The restaurant/takeaway/drive through uses hereby permitted shall not be open to customers outside the hours of 07:00 to 23:00.**

**Reason - To safeguard the amenities of existing and future neighbouring occupiers.**

*17 Deliveries and refuse collections to/from the premises shall only take place between the hours of 8am to 9pm.*

*Reason - To safeguard the amenities of adjoining and future occupiers*

*18 Unless shown on the approved plans no display or storage of goods, materials, plant, or equipment shall take place other than within the buildings.*

*Reason - To protect the amenities of neighbouring property and the character of the area.*

*23 Prior to the first occupation of the development and notwithstanding any information submitted with the application details of the proposed acoustic fencing shall be submitted to the Local Planning Authority for approval. These details should include its proposed construction to demonstrate that it will provide the level of acoustic attenuation required. Once approved the acoustic fencing shall be erected prior to the first occupation of the development and thereafter retained and maintained for the duration of the operational life of the premises.*

*Reason - To safeguard the amenities of adjoining occupiers.”*

The 2016 planning permission was subsequently implemented. However, in June 2017 a minor material amendment application was approved for “*Variation of conditions 2, 3, 5, 8, 10, 11, 13, 14, 15, 21, 23 and 25 attached to planning permission 16/00411/FULPP dated 20/07/2016 for the erection of restaurant with drive-thru and takeaway facility (Use Class A3/A5) with associated structures, fencing, parking, landscaping and vehicular access from North Close (following demolition of existing buildings and closure of access onto North Lane) to allow for changes to the site layout*”, 17/00344/REVPP. The approval of this application, with minor amendments, resulted in the issue of a fresh planning permission for the development, to which similar or identical conditions were imposed as above, albeit the conditions were re-numbered, as follows:-

- Condition No.12 : Lighting Strategy for the site approved with the 2017 application as shown by Drawing No.D-1954-08 Rev.3, together with lighting columns and LUMA luminaires;
- Condition No.13 : Plant & Machinery Noise Mitigation Measures to be implemented and retained thereafter identical to that approved with the 2016 permission;
- Condition No.14 : Odour control measures as approved with conditions details approval 16/00738/CONDPP dated 14/12/2016;
- **Condition No.15 : Hours of Opening to Customers identical to those imposed with the 2016 permission: 0700 to 2300 hours;**
- Condition No.16 : Delivery/Refuse Servicing Times identical to those imposed with the 2016 permission: 0800 to 2100 hours;
- Condition No.17 : No external storage of goods, plant, machinery and equipment except

within the buildings on site – identical requirements to those on the 2016 permission; and

- Condition No.22 : Acoustic Fence to be provided and retained thereafter in accordance with details approved with Condition Details application 16/00745/CONDPP dated 02/12/2016. The approved details in this respect comprise a 3.5m high timber acoustic fence running along 45 metres of the east boundary of the site adjacent to Clyde Court.

An extract of the approved Site Layout for the development is shown by Drawing No.64 85-SA-8085-P304 C, which is copied into the Report later in this section.

In April 2021 planning permission was refused for variation of Condition No.15 of planning permission 17/00344/REVPP dated 22/06/2017 to allow customer opening hours to be between 0600 and 0000 hours daily 7 days a week, thereby extending the customer opening hours one hour earlier in the morning and also an hour later at night, 21/00048/REVPP. The Council's reason for refusal was:-

*“The proposed permanent extended customer opening hours would give rise to unneighbourly nuisance impacts on neighbouring residential properties due to lighting and activity early in the morning and late at night to the detriment of the living environment and amenities of occupiers of those residential properties. The proposals are thereby unacceptable having regard to Policies SS1, DE1 and DE10 of the adopted Rushmoor Local Plan (2014-2032) and the National Planning Policy Framework and Guidance.”*

A subsequent appeal against this refusal was allowed conditionally by the Inspector by decision letter dated 17 February 2022, in effect granting planning permission for the operation of the extended customer opening hours for a trial period of 1 year in order to allow time for the Council to monitor and test the efficacy of the various neighbour impact mitigation measures proffered by the applicants. The temporary period of extended opening hours allowed by the appeal decision was commenced on 18 July 2022 and expires on 18 July 2023. The conditions imposed by the Inspector generally replicate those imposed with the 2016 and 2017 permissions. The following conditions imposed by the Inspector are relevant to the current application:-

***“1) The restaurant/takeaway/drive-through uses hereby permitted may operate between the hours of 0600 to 0000 (midnight) for a temporary period of one year and only on the condition that all noise mitigation measures included in the submitted Noise Impact Assessment report 'McDonalds Ash Road Aldershot 14-0167-79 RO2' carried out by Sustainable Acoustics are implemented. During the temporary period the restaurant/takeaway/drive-through uses shall not be open to customers outside the hours of 0600 to 0000 (midnight). The Local Planning Authority shall be notified in writing within five days of the extended hours of operation commencing. Upon the expiry of the one year temporary period, the permitted hours of operation for the restaurant, takeaway and drive-through shall revert back to 0700 to 2300. Thereafter, the restaurant/takeaway/drive-through uses shall not be open to customers outside the hours of 0700 to 2300 without a fresh grant of planning permission.***

***For the avoidance of doubt, the mitigation measures referenced above include:***

- ***Adjusting plant and kitchen extract to night-time settings;***
- ***Cordoning off those parking spaces closest to Clyde Court; and***
- ***Compliance with the Premises Noise Management Plan set out within Appendix C of the Noise Impact Assessment.***

***6) The lighting strategy for this site shall be implemented in accordance with***

***drawing number D-195408 rev 3 and the details of streetlighting columns and LUMA luminaires and thereafter maintained/retained.***

***7) The plant and machinery hereby approved shall be installed in accordance with the noise levels and mitigation measures as set out in the Environment Noise Assessment and supplementary Environment Noise Information prepared by Peter Ashford of Acoustic Associates South West Ltd dated 13 October 2015 and 4 April 2016 and thereafter retained in accordance with these approved details.***

***8) Means of suppressing and directing fumes and smells from the premises shall be installed in accordance with the details approved under application reference 16/00738/CONDPP dated 14 December 2016 and thereafter maintained/retained.***

***10) Unless shown on the approved plans no display or storage of goods, materials, plant, or equipment shall take place other than within the buildings.***

***And***

***13) The acoustic fencing shown on the approved plans shall be retained and maintained in accordance with these details and as approved under application reference 16/00745/CONDPP dated 2 December 2016 for the duration of the operational life of the premises.”***

A full copy of the 2022 appeal decision appended to this Report.

Advertisement Consents for the application site/premises were granted in July 2016 for the signage displayed at the application premises as follows:-

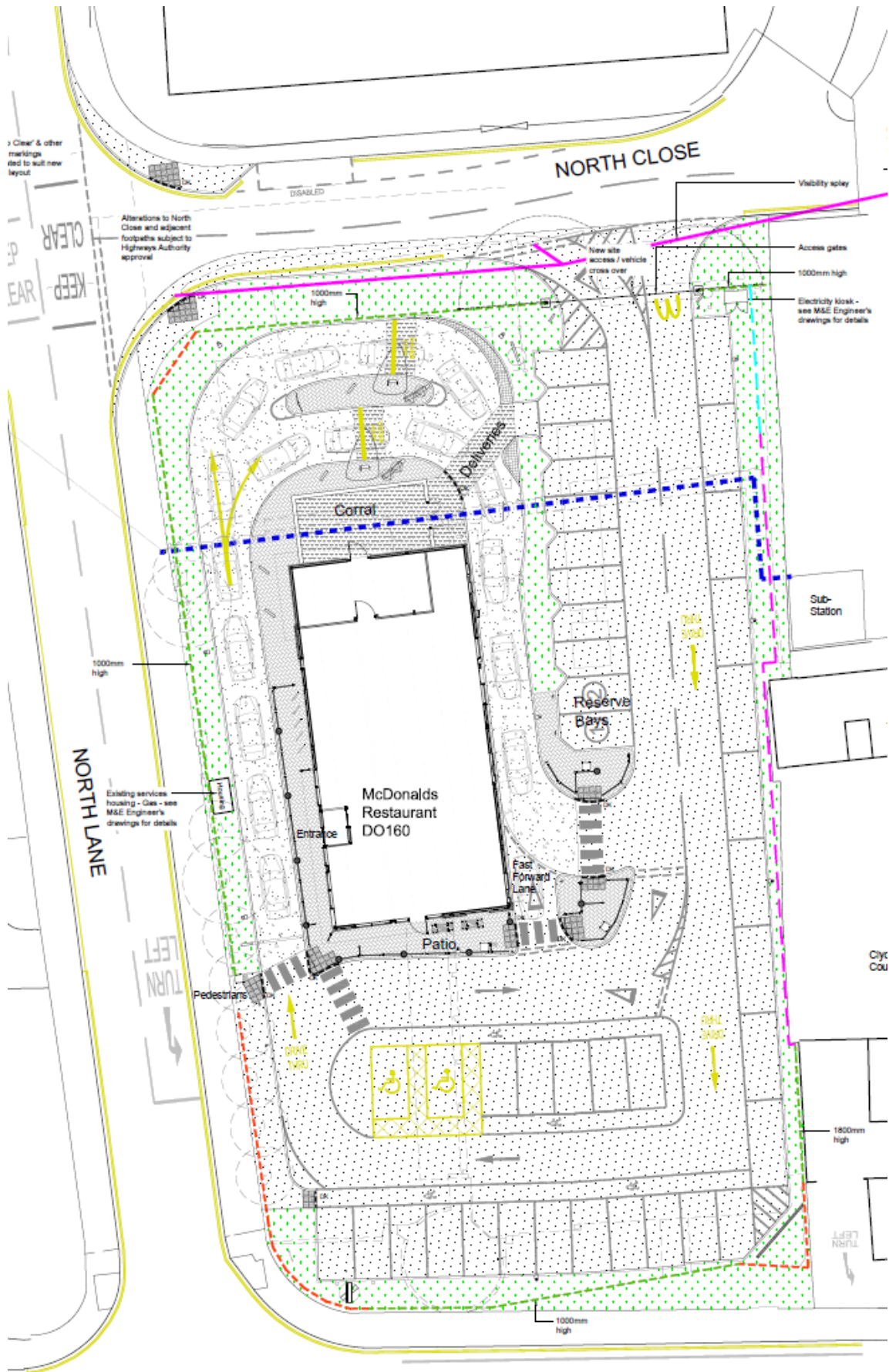
16/00408/ADVPP : Display three sets of internally-illuminated letters, three internally-illuminated fascia signs and one internally-illuminated golden arch;

16/00409/ADVPP : Display a double sided internally illuminated totem sign (6.5 metres high);  
and

16/00410/ADVPP : Display one internally illuminated Gateway (height restrictor) sign, nine freestanding internally-illuminated signs, one freestanding non-illuminated sign, twenty non-illuminated traffic signs and one non-illuminated double sided banner unit.

In April 2020 a further advertisement consent was granted for the display of 3no. double digital freestanding signs, 1no. single digital freestanding sign and 1no. 15" digital booth screen to provide further signage within the drive-thru lane for customer ordering, 20/00130/ADVPP. This is for the customer menu boards.

Finally, in January 2022, planning permission was granted for “*Installation 2 x rapid electric vehicle charging cabinets on two parking bays to become EV charging bays, and associated equipment*”, 21/00918/FULPP.



**Approved Site Layout Plan 304 C: Note that the mini-roundabout at the junction of North Lane with North Close and Lower Newport Road is not shown on this plan since, at that time, the design was subject to approval by the Highway Authority (Hampshire County Council).  
 Consultee Responses**

Environmental Health      Raises objection. Requires confirmation that the parking spaces within 25m of Clyde Court have been cordoned off during the extended hours in accordance with the Inspector's conditions, and evidence that measures to control noise from anti-social customer behaviour have been implemented by submission of an incident log through the trial period, in compliance with the conditions of consent.

### **Neighbours notified**

In addition to posting a site notice and press advertisement, 54 individual letters of notification were sent to the occupiers of properties in a radius around the site in North Lane, Lower Newport Road, Blackwater Way and all flats in Clyde Court, 215 Ash Road) including all properties directly adjoining or situated opposite the application premises.

### **Neighbour comments**

At the time of writing this report the following representations have been received:-

Flat 2 Clyde Court,      Objection: As a neighbour to this establishment, which should never  
233 Ash Road              have been granted permission in a residential area, I wish to register  
my objection to the extension of the opening hours. We are blighted  
by their customers with loud exhausts, stereos etc. We have litter  
thrown over the fence, our bins are used, I have even found people  
consuming their McDonalds on our patio and using our car park as a  
urinal. Rats run across our site to get to their bins. A reduction in  
opening times would be better.

Flat 6 Clyde Court,      Objection: A fair amount of litter from MacDonalds gets put into our  
233 Ash Road              recycling bins, this no doubts causes issues with recycling. This needs  
rectifying and will only get worse when the premise is open even later.  
Although the new roundabout has been put in place there are still  
traffic problems with cars queuing right up to the traffic lights on Ash  
Road.

17 North Lane              The extension of any hours to McDonalds is going to cause lots of  
problems to local residents, this includes sound and environmental  
pollution. We have to deal with very loud noise from noisy cars with  
the exhaust banging and rubbish and unsociable bad behaviour. This  
will make the situation even worse by extending the opening hours  
when people are trying to sleep. The present situation is not ideal for  
local residents as we have to deal with problems it causes. I suggest  
McDonalds move.

North Town      Ward      The applicant has not met the condition set by the planning inspector  
Councillor      Keith      when appeal 21/00048/REVPP was allowed. As a result residents'  
Dibble                           quality of life impacted by the failure of the applicant to comply with  
any or most of the conditions in the Premises Noise Management  
Plan

An update on the representations received will be provided to Members at the Committee meeting.

## Policy and Determining Issues

The site is located within the built-up area of Aldershot as defined by the Proposals Map for the adopted Rushmoor Local Plan (2014-2032). Policies SS1 (Presumption in favour of sustainable development) and DE10 (Pollution) are relevant to the consideration of the current application. Also of relevance is the advice in the National Planning Policy Framework (2019) with particular relevance to noise (paragraphs 180-183).

Although objection has been raised on a number of grounds relating to the existence of a McDonalds outlet at the site, including issues with litter and ongoing highway problems attributed to the operation of the site, the use of the application site as a McDonalds hot food restaurant and takeaway premises incorporating a drive-thru is lawful in planning terms; as are customer opening hours from 0700 to 2300 hours daily 7-days a week.

The stated purpose of the Inspector conditionally allowing the applicant's appeal in 2022, thereby granting planning permission on a temporary basis for a year, was to allow a period of time for the Council to monitor and assess the impact of the extended customer opening hours in the light of the efficacy or not of the neighbour impact mitigation measures proposed to be operated. Had the Inspector been convinced that the proposed mitigation measures would be adequate there would have been no reason to withhold planning permission on a permanent basis from the outset. The temporary period that the Inspector allowed is a trial and an opportunity for the applicants to demonstrate to the Council and their neighbours that they are able and willing to operate the premises for longer hours each day without causing undue and unneighbourly harm to the amenities/living environment of occupiers of adjoining and nearby residential properties.

The legal effect of the 2022 appeal decision, as confirmed by the appeal Inspector, is that the authorised customer opening hours of the application premises will revert back to those set by Condition No.15 of planning permission 17/00344/REVPP (i.e. 0700 to 2300 hours daily, 7 days a week) at 0000 hours on 18 July 2023. That is unless a further planning permission is obtained to retain the extended customer opening hours. It is considered that there are three alternative possible outcomes for the Council to consider in respect of the current application, which are that:-

- (a) as requested by the applicants, permission could be **granted** for a permanent extension of the customer opening hours if the Council are satisfied that, either with or without conditions, no material harms would arise to neighbours; or
- (b) permission could be **granted for a further temporary period** if, for example, the trial period is considered to have been inconclusive or if a conclusion of the current trial period is that new and/or amended mitigation measures are required and it is considered necessary to further assess whether or not these are adequate; or
- (c) **permission could be refused** for the extended customer opening hours if the Council considers that the trial period has demonstrated that the proffered neighbour impact mitigation measures as operated by the applicants are ineffective and inadequate and, further, that there are no practical and enforceable improvements to these measures that are considered likely to be effective and adequate to mitigate material harm to the amenities/living environment of neighbours which could be reasonably imposed by way of planning conditions. In this event the authorised customer opening hours would revert to 0700 to 2300 hours daily, 7 days a week.



In this context it is considered that the determining issues in respect of the current application are:-

1. Has the operation of extended customer opening hours during the trial period given rise to any material and harmful impacts on the amenities/living environment of occupiers of adjoining and nearby residential neighbours with or without compliance with the mitigation measures secured by the conditions of the temporary appeal planning permission 21/00048/REVPP?
2. If there have been adverse impacts, are there any possible additions or modifications to the mitigation measures to be considered that can be imposed as reasonable conditions and would or may adequately mitigate the adverse impacts that have been identified?

## **Commentary**

The operation of the extended customer opening hours both (a) before and during the additional 0600 to 0700 hour; and (b) during and after the additional 2300 to 0000 hour have been monitored by Planning Officers on a sample basis at intervals throughout the trial period in order to assess the efficacy of the mitigation measures proffered by the applicants as secured by conditions of the temporary planning permission granted by the appeal Inspector.

In addition, the North Town Ward Councillors and residents who had made representations in respect of the appeal were notified of the appeal decision and that, if implemented, the Council would monitor the operation of the extended customer opening hours. The Ward Councillors and local residents were asked to provide feedback on their experiences and observations with the extended customer opening hours to the Council for further investigation within the monitoring to be undertaken by Officers as considered necessary. The Council's Environmental Health Team were also made aware of the onset of the trial period in case enquiries might be received by them instead of the Planning Officers.

Throughout the trial period the following concerns about the operation of the extended hours have been raised by neighbours:-

- Voices audible from the Customer Order Point tannoy inside, with windows open, and in front gardens
- Disturbance to neighbours from customers chatting in the car park
- Disturbance from noisy vehicles created by anti-social driving e.g. loud car stereos and cars driving to and around the site with derestricted exhausts
- Customer litter bins being moved around waking residents up
- External lighting, including signage, and internal lighting not being switched off at midnight or left on all night
- Menu board lights being left on all night
- Customers using Clyde Court and other neighbouring driveways to dump rubbish

In January 2023, the Council wrote to the applicants to set out some observations as a result of the monitoring of the operation of the extended customer opening hours that had been undertaken up to that date, including those outlined above. The applicants subsequently responded, most significantly denying that there have been any significant issues with anti-social customer behaviour.

A detailed analysis undertaken by Planning Officers of the operation of the extended customer opening hours during the trial period, in the context of the relevant conditions relating to neighbour impact mitigation measures, which is integral to the assessment, appears in

tabulated form at the end of this Report.

Summing it up, it is evident from the monitoring undertaken at the site of the extended customer opening times that the hours have resulted in unacceptable and undue additional noise and activity at the site within anti-social night time hours which is considered to be detrimental to the amenities and living environment of occupiers of adjoining and nearby residential properties. Some of the customer behaviour witnessed by Officers during the trial period has clearly been anti-social and to be evidence of little consideration towards residential neighbours of the site. Some of this noise and activity continues beyond the extended night-time closing. Mitigation measures proposed by the applicants to tackle inconsiderate and anti-social customer behaviour and to encourage better behaviour have appeared ineffective and inadequate, and difficult for staff to implement in any event, with some critical measures not imposed.

Environmental Health legislation defines night-time hours as being between 2300 and 0700 hours, which are the hours when most people would expect to be, and remain, asleep in their homes. The noise, disturbance and activity that has been witnessed taking place before 0700 and after 2300 at the application site is considered to be of a nature that would be likely to wake people up, or make it difficult for them to get to sleep if they remain awake. This has been confirmed by neighbours, who have provided commented on the effects on them during the trial period. With the extended opening times commencing from 0600 hours daily, it is to be expected that staff would be at the site to open up and prepare for the arrival of customers from 0530 daily. In addition, tidying-up after the extended night-time closing time of 0000 hours could extend until perhaps 0030 hours or even further into the early hours of the morning depending upon how quickly the last late customers disperse from the site. Accordingly, as a result of the extended customer opening hours residential neighbours adjoining or near the site may only get any respite from the operation of the application site for perhaps 5 hours out of every 24 daily. This is in contrast to the 7 hours daily that would not impinge so significantly into night-time hours that neighbours could expect to endure with the original approved customer opening hours.

In the circumstances it is considered that there is no justification for the Council to approve the proposed extended customer hours on a permanent basis as sought by the applicants. The applicants have provided no evidence to support their assertion that no undue issues have been encountered during the trial period. Monitoring by the Council indicates otherwise.

It follows that the options that should remain under consideration by the Council in this case are the imposition of another temporary trial period should the Council consider that it is both reasonable and appropriate to give the applicants a further opportunity to demonstrate that they are able to effectively address those issues identified as a result of their first trial period; or the refusal of permission, in the event that it is considered that there are material harmful impacts on neighbours that cannot be reasonably and/or adequately addressed by imposition of conditions.

Further temporary permissions are not precluded by Government Practice Guidance and it might be appropriate, given that several of the conditions suggested by the applicants themselves, have not been implemented as they should have. Further conditions could be that all external illumination on the site, including signage, is not to be left on outside the approved extended customer opening hours; that customer litter bins are only to be moved after 06:30, and not beyond the approved closing time, and that prior to the commencement of the temporary period, details of all signage on the site suggested in the Premises Noise Management is submitted to and approved by the Local Planning Authority.

The applicants' main method of controlling noise from customer behaviour during anti-social hours is the implementation of the Premises Noise Management Plan (NMP) at Appendix C of the approved Noise Impact Assessment report, requiring staff to be proactive and vigilant in challenging anti-social and noisy customer behaviour. The applicant has not submitted an incident log to demonstrate that these incidents have been proactively managed. Objections and complaints received from occupants of Clyde Court and other nearby residential occupants suggesting that customer noise has been disturbing to them also suggest that the NMP has not been effective in curtailing customer noise. The second main mitigation measure that the car park within 25m of Clyde Court is cordoned off during the extended hours has also not been implemented. This indicates to the Council that the applicants are unable (or unwilling) to implement these conditions, in which case, technically, the conditions fail to meet the requirements of conditions in the National Planning Policy Framework, which seeks conditions to be '*reasonable*' and '*enforceable*' (paragraph 55).

The applicants have provided no evidence to back up their assertion that no undue issues have been encountered, merely stating in their submission that the trial period is 'tried and tested'. When the applicants were approached to address concerns raised by Officers in January 2023, they denied that any disturbance was taking place. When they erected the signage to ask customers to be mindful of neighbours, six months into the trial period, this was carried out with temporary signage that was not facing the site. The applicants proffered the noise mitigation measures themselves, and they were implemented in an apparently casual manner. It is therefore not considered that granting another temporary permission would mitigate the impacts of the activity taking place on the site.

It is considered therefore that it has not been demonstrated that harm caused by the proposed opening hours can be reasonably or adequately addressed by the imposition of further conditions and that the application should be refused, for the following reason:

1. The proposed permanent extended customer opening hours would give rise to continued nuisance impacts on neighbouring residential properties due to activity in the early morning and late at night to the detriment of the living environment and amenities of occupiers of those residential properties. The proposals are thereby unacceptable having regard to Policies SS1, DE1 and DE10 of the adopted Rushmoor Local Plan (2014-2032) and the National Planning Policy Framework and Guidance.

## McDonalds, 1 North Lane, Aldershot : Assessment of Extended Customer Opening Hours for Trial Period 18 July 2022 to Present

**Condition No.1 : The restaurant/takeaway/drive-through uses hereby permitted may operate between the hours of 0600 to 0000 (midnight) for a temporary period of one year.....**

**[Officer Note: No significant breach of the extended opening hours has been witnessed by Officers or reported by neighbours. Nevertheless, the longer opening hours mean that there is not only noise and activity for the additional hour morning and late at night; but also noise and activity before and after the extended opening hours due to customers arriving before the morning opening time, but also staying on site after closing time – especially if those customers arrived shortly before closing time.]**

**Condition No.1 : Proposed Mitigation Measures to be operated for extended opening hours:**

**“.....only on the condition that all noise mitigation measures included in the submitted Noise Impact Assessment report 'McDonalds Ash Road Aldershot 14-0167-79 R02' carried out by Sustainable Acoustics are implemented...**

**For the avoidance of doubt, the mitigation measures referenced above include:**

- **Adjusting plant and kitchen extract to night-time settings;**
- **Cordoning off those parking spaces closest to Clyde Court; and**
- **Compliance with the Premises Noise Management Plan set out within Appendix C of the Noise Impact Assessment.”**

In detail the proposed measures as set out in the Mitigation measures Noise Impact Assessment Report (NIA) 14-0167-79 R02 (dated 16 March 2021) Section 9.0 are:-

“9.1 It is recommended that settings be adjusted to have nighttime set back if possible so it does not exceed those already present. It would also be commended that the kitchen extract is set to automatic speed settings for daytime and nighttime to further reduce any risk of plant noise causing any impact as far as practicably possible.”

**[Officer Note: No issues have been observed with audible plant and machinery noise during the extended customer opening hours.]**

“9.2 It is recommended that the spaces on the east, close to Clyde Court, are cordoned off to prevent parking. If that can be done for spaces 25m or closer to Clyde Court, then even typical worst-case maximums from car door slams, or similar, would not be expected to exceed 60dB at the receiver.”

**[Officer Note: The proposed no parking cordon proposed by the applicants to minimise late night/early morning noise associated with the use of the car park requires that the majority of the car parking at the site be cordoned-off for the duration of the extra opening hours. This would leave available just 4 spaces in the south-west corner of the site. The operation of the drive-thru lane would be unaffected by this measure, since no parking spaces are provided there. However, throughout the trial period the applicants have not implemented this mitigation measure, choosing instead to cordon-off just the in-line parking spaces immediately adjoining the east boundary of the site, thereby providing a no parking cordon of less than 5 metres separation from the Clyde Court boundary. Residents have reported issues with noise and activity associated with the use of the car park by customers during the trial period both within the additional hours trading, but also before the morning opening and especially after the night-time closing. This activity has been witnessed during Officer visits : noisy vehicle movements, engine starting and revving, car stereos, noisy conversations and general larking about in the car park that is readily audible beyond the boundaries of the site. The applicants have not explained why they have deviated from their noise mitigation proposals in this respect.]**

“9.3 It is recommended that that system is set up to setting 14 maximum during daytime and that during night-time hours this is reduced to setting 10. However, if this causes customers not to hear McDonalds staff, then the COD settings will need to be revised to find the balance; potentially increasing to setting 12 during night-time as a NOEL level since ambient noise levels are quite high in the area due to traffic noise.”

**[Officer Note: Although there is some noise generated by passing traffic, night-time background noise levels are relatively quiet. It is not known what sound level the system is set at during the extended customer opening hours, however, the PA system of the drive-thru ordering system is readily audible beyond the boundaries of the site adjacent to the nearest residential neighbours – as are the often shouted instructions/replies from customers placing orders and/or having a conversation with staff. These Officer observations have been confirmed by comments received from neighbours. Officers have witnessed noisy conversations at the ordering consoles when customers arrive just after closing time and staff have to explain that they can no longer take an order.]**

Premises Noise Management Plan, Appendix C of Noise Impact Assessment 14-0167-79 R02 states “the following measures must be implemented between 11pm and 12am, as part of a proactive management effort to minimise the noise impact cause to nearby residents, created by the operation of the premises, and its customers when inside or in the vicinity of the premises.”

Control Measure for Minimising Vehicle and antisocial behaviour noise :

1. “Staff shall be vigilant for vehicles that arrive and have either loud music playing, or where the car is being driven deliberately to create noise by revving of the engine or other stunts after 2300. Observational records should be made of registration plates in the incident log and where possible, and CCTV footage used to provide evidence of culprits whom regularly cause antisocial behaviour. Where there are substantial examples then these should be supplied to the authorities with a copy of the noise log”;

**[Officer Note: no evidence of staff intervening to stop customers playing loud music or partaking in other anti-social or inconsiderate behaviour has been witnessed during the extended opening hours.]**

2. “Drivers should be encouraged to switch engines off when not in use”;
- [Officer Note: engines left running or being revved noisily by customers in the car park have been consistently witnessed during officer monitoring visits and no evidence has been seen of any intervention by staff or other forms of encouragement to customers to curtail this behaviour.]**

3. “Movement of bin should not occur before 6.30am to minimise noise”;
- [Officer Note: neighbours have reported noise issues associated with the moving and/or emptying of bins from 0600 (waking them up) and after midnight, although this activity has not, so far, been witnessed by Officers. Use of the litter bins in the car park area by customers during the extended opening hours does generate some noise and it would seem likely that the litter bins are emptied as part of the tidy-up routine after closing time so that the bins are not ravaged by vermin overnight. Whilst an understandable precaution and operating practice, this activity would therefore likely be taking place some time after midnight daily during the extended customer opening hours trial.]**

4. “Members of the Management Team, who are properly trained 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 should it continue will be recorded as an incident and reported when required.”

**[Officer Note: Ditto with 1. above. No information on anti-social behaviour incidents has been reported to the Council by the applicants at any time during the trial period. Nevertheless, incidents of anti-social behaviour, largely involving the movement and mis-use of cars on-site, loud stereos etc have been witnessed by Officers.]**

Control measures for minimising People Noise :

5. “Signs shall be prominently displayed that ask customers that come into the premises to leave quietly in order to respect our neighbours. At the drive through signs should request that customers keep noise to a minimum, or may risk not being served”;

**[Officer Note: some temporary signage was displayed on the North Lane frontage fence facing the road following the Council’s letter in January 2023, which provided some provisional feedback on the Council’s monitoring of the trial period identifying this omission. However, this signage is not visible from the drive-thru lane or the car park area and can hardly be considered to be prominently displayed where it might be heeded by customers. There is no evidence that the customer signage measures taken by the applicants has had any beneficial effect.]**

6. “We will work in partnership with the police and other statutory authorities to address any nuisance or crime and disorder that generate noise outside the restaurant within the licence, and which could

include CIA staff on a risk assessment basis to achieve, where it is expected to be necessary to control noise. Customers that are seen to be disregarding the 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 as ASN trained Manager will attend and have the power bar the person”;

**[Officer Note: Ditto the comments in respect of 1. & 4. above. There is no evidence of staff intervening to stop customers playing loud music or partaking in other anti-social or inconsiderate behaviour.]**

7. “Gatherings of people in the car park who are not waiting to be served, should be challenged by the Manager, notified that they are on CCTV and recorded in the incident log. Although rare where there is evidence of antisocial behaviour, of which significant levels of noise are part, information will be made available to the authorities”;

**[Officer Note: ditto above.]**

8. “A phone number will be made available to residents to contact the store, to report evidence of ASB within the boundary of the premises.”

**[Officer Note: The Council are not aware that any contact number has been provided to residents by the applicants to date.]**

**Condition No.6 : “The lighting strategy for this site shall be implemented in accordance with drawing number D-195408 rev 3 and the details of streetlighting columns and LUMA luminaires and thereafter maintained/retained.”**

[Officer Notes: The ‘lighting strategy’ to which this conditions refers is, in fact a plan for the Proposed Lighting Layout that was approved for the 2017 planning permission and, thereby relates to approved customer opening hours of 0700-2300 hours only. The approved details only show the provision of the lamp-columns and luminaires that are used to light the car parking area of the site. It is not a strategy for the external lighting of the site at all. It does not identify the downlighters that are mounted around the perimeter of the roof eaves of the restaurant building; and nor does it account for the significant extent of illumination provided within and beyond the boundaries of the site by the internally-illuminated advertising signage at the site. This comprises building fascia signage, the free-standing totem sign and the illuminated displays for the drive-thru customer order area. Nor does the ‘strategy’ set out any controls on the operation of the lighting at the site, such as times when lights and signage must be switched-off.

Officer monitoring of the site during the extended opening hours has revealed the extent to which adjoining and nearby residential properties are illuminated and potentially subject to undue nuisance and harm to their amenities arising from the significant brightness of the illumination - which now continues throughout the extended customer opening hours. It is a matter raised by neighbours in comments to the Council during the trial period.

The extent of the external lighting of the site appears to be a factor encouraging customers to remain on site in the car park. In response to feedback from the Council in January 2023 the applicants now appears to be switching-off most of the external lighting at the site, including the advertising signage, at customer closing time. This is with the exception of the customer order display screens. These are very bright and are specifically mentioned in comments received from neighbours. Imposition of a condition to require all external lighting and illuminated advertising signage to be switched-off outside customer opening times is considered to be a way to deal with this matter.]

**Condition No.7 : “The plant and machinery hereby approved shall be installed in accordance with the noise levels and mitigation measures as set out in the Environment Noise Assessment and supplementary Environment Noise Information prepared by Peter Ashford of Acoustic Associates South West Ltd dated 13 October 2015 and 4 April 2016 and thereafter retained in accordance with these approved details.”**

[Officer Note: No issues have been observed with audible plant and machinery noise during the extended customer opening hours.]

**Condition No.8 : “Means of suppressing and directing fumes and smells from the premises shall be installed in accordance with the details approved under application reference 16/00738/CONDPP dated 14 December 2016 and thereafter maintained/retained.**

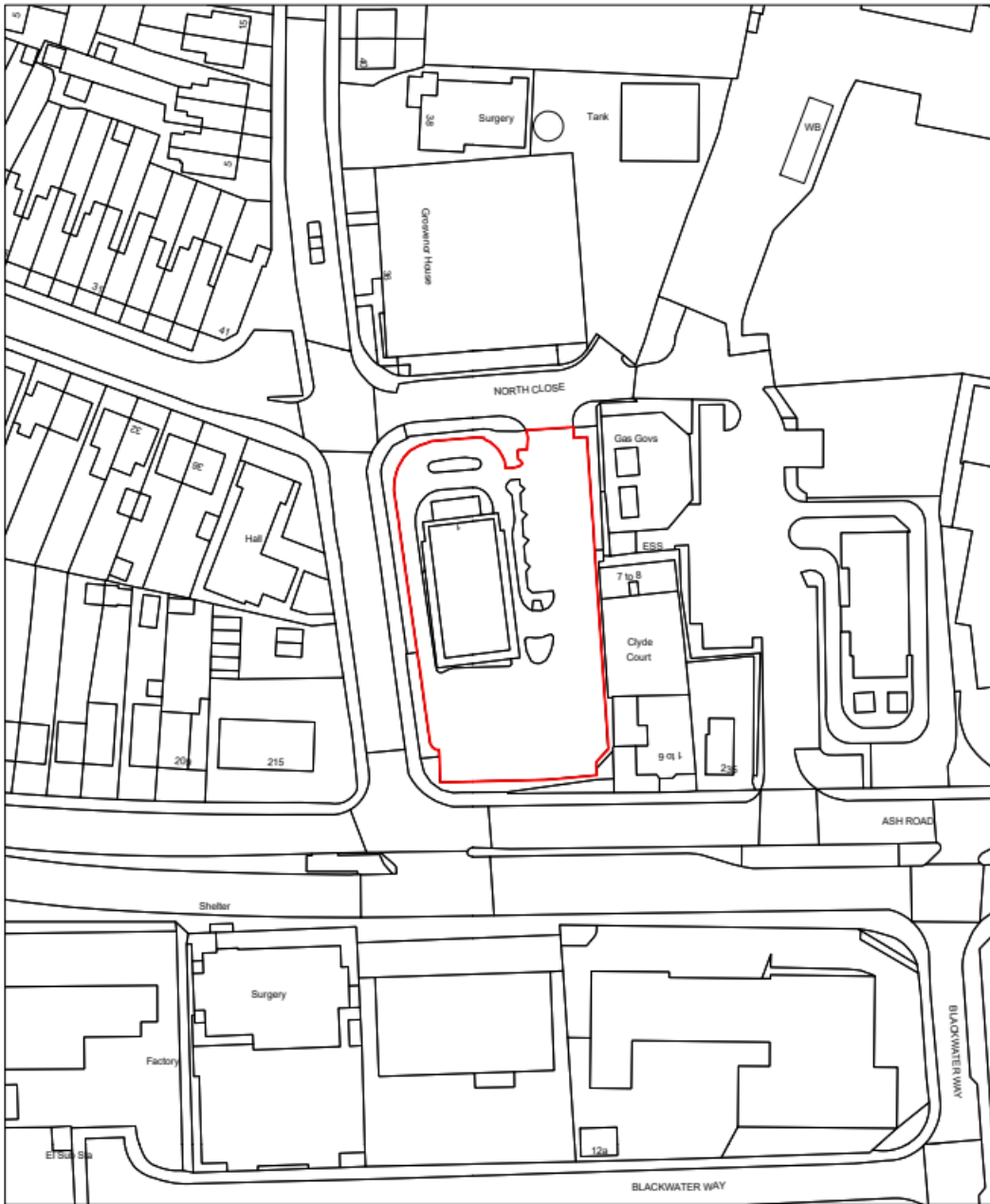
[Officer Note: Although some neighbours have reported concerns about undue cooking odours, none have been witnessed by officers to be emanating from the application premises during the extended customer opening hours. The applicants advise that the kitchen extraction system is regularly serviced to ensure that the extraction system remains effective. This is important since the extended customer opening hours mean that the kitchen is operating for longer and odour nuisance is another potential source of disturbance to neighbours that would be undue if it were ever to happen. Enforcement of this issue would be a matter for the Council’s Environmental Health Team, whom would investigate any complaints about cooking odours and can require operators of food premises to maintain, repair and/or upgrade their extraction systems if required under Environmental Health legislation.]

**Condition No.10 : “Unless shown on the approved plans no display or storage of goods, materials, plant, or equipment shall take place other than within the buildings.”**


[Officer Note: This condition ensures that there are no accumulations of material at the site outside of the building and its attached refuse corral area that could, otherwise, give rise to undue impacts upon amenity. The extended customer opening hours could, potentially, result in conflicts for staff between undertaking routine site management tasks and avoiding undue noise at anti-social times. No issues of compliance with this condition have been noted during the trial period, albeit in the case of the emptying of litter bins, this may be a task undertaken after night-time customer closing time.]

**Condition No.13 : “The acoustic fencing shown on the approved plans shall be retained and maintained in accordance with these details and as approved under application reference 16/00745/CONDPP dated 2 December 2016 for the duration of the operational life of the premises.”**

[Officer Note: The acoustic fencing has been constructed and is being retained as approved adjoining Clyde Court on the east boundary of the site. That said, this means of noise mitigation was not designed to be an alternative to the other noise mitigation measures proposed by the applicants and also required to be implemented and retained.]



6/28/2023, 11:15:17 AM

 Planning Application

1:689





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## Appeal Decision

Site visit made on 24 January 2022

**by Robert Parker BSc (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 17 February 2022**

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### **Appeal Ref: APP/P1750/W/21/3278383**

#### **1 North Close, Aldershot, Hampshire GU12 4HA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Mark Schweizer of McDonald's Restaurants Limited against the decision of Rushmoor Borough Council.
  - The application Ref 21/00048/REVPP, dated 29 December 2020, was refused by notice dated 23 April 2021.
  - The application sought planning permission for the erection of restaurant with drive-through and takeaway facility (Use Class A3/A5) with associated structures, fencing, parking, landscaping and vehicular access from North Close (following demolition of existing buildings and closure of access onto North Lane) without complying with a condition attached to planning permission Ref 17/00344/REVPP, dated 22 June 2017.
  - The condition in dispute is No 15 which states that: The restaurant/takeaway/drive through uses hereby permitted shall not be open to customers outside the hours of 07:00 to 23:00.
  - The reason given for the condition is: To safeguard the amenities of existing and future neighbouring occupiers.
- 

#### **Preliminary Matters**

1. The site address in the banner heading above is taken from the application form. However, the original decision notice refers to the site as 225 Ash Road, Aldershot, Hampshire GU12 4DD. Given that the proposal relates back to a condition on that permission, I shall use the Ash Road address in my decision.
2. The original permission restricts customer opening hours to between 0700 and 2300. The application seeks to extend these, to enable opening one hour earlier from 0600 and closing one hour later until midnight. These hours would relate to all parts of the business including the restaurant, takeaway and drive-through.

#### **Decision**

3. The appeal is allowed and planning permission is granted for the erection of restaurant with drive-through and takeaway facility (Use Class A3/A5) with associated structures, fencing, parking, landscaping and vehicular access from North Close (following demolition of existing buildings and closure of access onto North Lane) at 225 Ash Road, Aldershot, Hampshire GU12 4DD in accordance with the application Ref 21/00048/REVPP dated 29 December 2020, without compliance with condition No 15 previously imposed on planning permission Ref 17/00344/REVPP dated 22 June 2017, subject to the conditions set out in the attached schedule.

## **Main Issue**

4. The decision notice alleges that the proposed variation in opening hours would give rise to unneighbourly nuisance impacts on neighbouring residential properties due to lighting and activity early in the morning and late at night. Having regard to the Council's statement of case, I consider the main issue to be the effect of the proposal on the living conditions of adjoining residents, with reference to noise and light.

## **Reasons**

5. The appeal site is located at a busy road junction, with frontages onto Ash Road and North Lane. It is occupied by a two-storey McDonalds takeaway and restaurant building with drive-through facility. Vehicles enter and exit the car park from North Close which runs parallel to the northern site boundary. The drive-through lane circulates around the western side of the building, adjacent to North Lane, with orders being taken via Customer Order Displays (COD) to the north of the building and collections taking place on the east side.
6. The local area contains a range of commercial uses, including a KFC restaurant, takeaway and drive-through further to the east. There is housing fronting Ash Road beyond North Lane, and along Lower Newport Road. However, the closest residents are those living within Clyde Court directly adjoining the McDonalds car park. Nos 1 to 6 Clyde Court are contained within a building fronting onto Ash Road, whereas Nos 7 and 8 are located in a separate block at the rear.

### *Lighting impacts*

7. The Council is concerned that car headlights on the McDonalds site may disturb sleep for the residents at Clyde Court. However, there is a 3.5 m high solid fence along the eastern boundary and it is difficult to see how headlights would have a material adverse effect on anyone asleep on the first floor, given that vehicles in the car park and drive-through are not generally oriented towards the windows of properties in Clyde Court.
8. The Council's Environmental Health team has received complaints of lights left on in the restaurant all night and the McDonalds sign being left on. However, there is no technical evidence before me to demonstrate that lighting within the building and signage over the 2 hour extended opening period would have an unacceptable effect on the amenities of local residents. I note that the luminance of the totem is controlled under a separate advertisement consent.
9. The Council has not substantiated its allegation that the proposal would cause harm to living conditions through light disturbance. There would be no conflict with Policies DE1 and DE10 of the Rushmoor Local Plan 2014-2032 (RLP) insofar as these seek to avoid harm to adjacent users through light pollution.

### *Noise impacts*

10. The application is accompanied by a Noise Impact Assessment (NIA) which investigates the potential noise impacts arising from the proposal. The NIA examines the four principal noise sources: people, vehicles, COD and roof plant. Surveys were undertaken to determine ambient noise levels over the night-time period and noise levels for the extended opening period were estimated using readings from other McDonalds outlets and measurements taken on the site between the hours of 2200 and 2300 when the drive-through facility was open.

11. The NIA concludes that people noise would be unlikely to have an adverse impact on residential amenity and this has been assessed at No Observable Effect Level<sup>1</sup>. Noise from roof plant and COD has been placed into the same noise exposure category, subject to both being placed on night-time settings. Plant noise is controlled by a condition of the original permission in any event.
12. The acoustic consultants have modelled the impact of vehicle movements on ambient noise, and have concluded that the worst-case scenario would be a 2.2dB increase between the hours of 2300 and midnight. It is generally considered that +3dB is the level at which change would be perceptible. The Council points out that since no background noise monitoring was carried out at 7 and 8 Clyde Court, the NIA may underestimate the impact of passing vehicles at these properties. However, this may be offset by the fact that the assessment uses a number of worst-case assumptions in the analysis.
13. Impulsive sounds from car doors being slammed is another potential source of nuisance. The World Health Organisation guideline value for the onset of sleep disturbance could be exceeded in worst-case scenarios, were the residents of Clyde Court to leave their windows open whilst customers park their cars in the spaces closest to the boundary. The NIA has therefore recommended mitigation in the form of cordoning off those parking spaces within 25 m of Clyde Court. This would reduce the impact from Lowest Observed Adverse Effect Level to No Observable Effect Level. The Council contends that the mitigation would be impractical and unenforceable, but it has been offered within the NIA and there is no reason why it should not be secured by means of a planning condition.
14. The methodology within the NIA is robust. However, there are uncertainties within the analysis. It seems unlikely that the proposal would result in significant disturbance for neighbouring residents, given the ambient noise from nearby roads and relatively high maximum noise levels. Nevertheless, I consider that it would be appropriate to grant the extended hours for a temporary period in order that the impacts can be reviewed. The Council could then determine whether the mitigation measures set out within Section 9 and Appendix C of the NIA had been successful. This approach would accord with the objective of RLP Policies DE1 and DE10 to avoid harm to adjacent users through noise.

#### **Other Matters**

15. I have taken into account the representations and petitions from residents. These raise a wide range of concerns in relation to matters such as traffic, litter, odours and anti-social behaviour. Whilst I acknowledge that the opening of McDonalds will have affected the local community, I do not consider that the extended opening hours being proposed would lead to such additional impacts as to justify dismissal of the appeal.

#### **Conditions and Conclusion**

16. For the reasons set out above and having regard to all other matters raised, including the Inspector's decision for the nearby KFC development, I conclude that the appeal should be allowed on a temporary basis. The effect would be to create a new planning permission and therefore I have reimposed those conditions from the original permission insofar as they are still relevant and  
  
capable of subsisting, with the wording amended to reflect the fact that the development has been brought into use.
17. I have worded the relevant condition to ensure that the extended hours endure for a period of 1 year beginning with the date on which the appellant gives notice of their commencement. This will enable the appellant to prepare for the change in hours and provide an opportunity for the Council to monitor the impact, including the efficacy of the appellant's proffered mitigation measures.

*Robert Parker*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The restaurant/takeaway/drive-through uses hereby permitted may operate between the hours of 0600 to 0000 (midnight) for a temporary period of one year and only on the condition that all noise mitigation measures included in the submitted Noise Impact Assessment report 'McDonalds Ash Road Aldershot 14-0167-79 RO2' carried out by Sustainable Acoustics are implemented. During the temporary period the restaurant/takeaway/drive-through uses shall not be open to customers outside the hours of 0600 to 0000 (midnight).

The Local Planning Authority shall be notified in writing within five days of the extended hours of operation commencing. Upon the expiry of the one year temporary period, the permitted hours of operation for the restaurant, takeaway and drive-through shall revert back to 0700 to 2300. Thereafter, the restaurant/takeaway/drive-through uses shall not be open to customers outside the hours of 0700 to 2300 without a fresh grant of planning permission.

For the avoidance of doubt, the mitigation measures referenced above include:

- Adjusting plant and kitchen extract to night-time settings;
  - Cordoning off those parking spaces closest to Clyde Court; and
  - Compliance with the Premises Noise Management Plan set out within Appendix C of the Noise Impact Assessment.
- 2) With the exception of the proposed acoustic fencing, the boundary treatment as shown in the approved plans shall be implemented in full and thereafter retained/maintained.
  - 3) Provision shall be made for services to be placed underground. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no overhead electricity, telecommunications or service lines shall be erected or placed above the ground of the site without the express written consent of the Local Planning Authority.
  - 4) The landscaping scheme hereby approved shall be implemented in full. Any tree/shrub removed, dying or becoming seriously diseased within five years of planting shall be replaced by trees/shrubs of similar size and species to those originally required to be planted.
  - 5) The drainage strategy for this site shall be implemented in accordance with the details shown on drawing number 161444-DR-0002 rev P04 and thereafter retained in perpetuity.
  - 6) The lighting strategy for this site shall be implemented in accordance with drawing number D-195408 rev 3 and the details of streetlighting columns and LUMA luminaires and thereafter maintained/retained.

- 7) The plant and machinery hereby approved shall be installed in accordance with the noise levels and mitigation measures as set out in the Environment Noise Assessment and supplementary Environment Noise Information prepared by Peter Ashford of Acoustic Associates South West Ltd dated 13 October 2015 and 4 April 2016 and thereafter retained in accordance with these approved details.
- 8) Means of suppressing and directing fumes and smells from the premises shall be installed in accordance with the details approved under application reference 16/00738/CONDPP dated 14 December 2016 and thereafter maintained/retained.
- 9) Deliveries and refuse collections to/from the premises shall only take place between the hours of 8am to 9pm.
- 10) Unless shown on the approved plans no display or storage of goods, materials, plant, or equipment shall take place other than within the buildings.
- 11) The vehicle and cycle parking facilities shown on the approved plans shall be completed and made ready for use and shall be thereafter retained solely for parking purposes (to be used by the occupiers of, and visitors to, the development).
- 12) Notwithstanding the details shown on drawing number 6485-SA-8986-P205 B, the first floor windows in the east elevation shall be obscurely glazed to a minimum height of 1.7 metres above the internal floor level and so retained thereafter.
- 13) The acoustic fencing shown on the approved plans shall be retained and maintained in accordance with these details and as approved under application reference 16/00745/CONDPP dated 2 December 2016 for the duration of the operational life of the premises.
- 14) The permission hereby granted shall be carried out in accordance with the following approved drawings – 6485-SA-8085-P302A, P304 C, 6485-SA8986-P205 B and 206 A, Sign type 8, 161444-DR-0002 rev P04, 0003 rev P06 and 0004 rev P03, MK MCD ALD 01 (Rev D), 161444-HYD-XX-XX-DR-TP-001 Rev P2 and 0200 rev P2 and D195408 rev 3.

\*\*\* END \*\*\*