

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.	25/00117/REVPP
Date Valid	11th March 2025
Expiry date of consultations	14th April 2025
Proposal	Variation of condition 1 imposed on planning permission granted on appeal ref APP/P1750/W/21/3278383 dated 17 February 2022 in accordance with the application ref 21/00048/REVPP, for the erection of a restaurant with drive-through and takeaway facility (Use Class E) with associated structures, fencing, parking, landscaping and vehicular access from North Close (following demolition of buildings and closure of access onto North Lane), to allow permitted hours of operation from 06:00 to 23:00 hours, 7 days a week
Address	<b>1 North Close Aldershot</b>
Ward	North Town
Applicant	Mr Daniel Brooks
Agent	n/a
<b>Recommendation</b>	<b>Grant for a temporary period of 12 months</b>

### **Description**

1. 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.
2. The site is rectangular and is occupied by a two-storey McDonalds restaurant/takeaway building with a drive-through facility. This site is bounded by a low fence. The building is set back from Ash Road by 26m. The vehicular site entrance and exit is 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 is located between the north side of the building and the customer order points.

3. 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.
4. Adjoining the eastern boundary of the site is Clyde Court, which comprises two buildings separated by a central parking courtyard; both built up to the side boundary shared with the application site and, in total, containing eight flats. 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.
5. To the west of the application site is No.215 Ash Road, a 3-storey 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.
6. 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.
7. The current application seeks planning permission for customer opening hours commencing at 0600 hours and ending at 2300 hours 7-days a week at variance with the customer opening hours set by Condition No.1 of planning permission 17/00344/REVPP of 0700 to 2300 hours. In this respect the applicants consider that not extending the customer opening hours by one hour at night to midnight, and various proposed amended mitigation measures set out in a new Site Management Plan will satisfactorily address the Council's previous concerns about a) mitigation measures operated during a previous trial period of extended operating hours of 0600 to midnight operated between 18 July 2022 and 18 July 2023, and b) refused permission 24/00117/REVPP, such that no significant harm to the amenities of occupiers of adjoining and nearby residential properties will be demonstrated.
8. The application is accompanied with a Premises Management Plan (SMP) which includes a parking plan. Acoustic Noise Report 14-0167-79 RO2 prepared by Sustainable Acoustics dated 21 March 2021 is also relevant to the application.

## Relevant Planning History

9. 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.”*

10. 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.

11. 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:-

12. *“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.”*

13. 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, by notice of the appellant, and expired on 18 July 2023. The conditions imposed by the Inspector generally replicated those imposed with the 2016 and 2017 permissions. The following conditions imposed by the Inspector are pertinent:-

- **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.**
- **9) Deliveries and refuse collection 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.**

**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.”**

14. In June 2023 (i.e. before the trial period allowed by the appeal Inspector had expired),

an application was submitted seeking the permanent retention of the extended opening hours the subject of the trial period on the basis that the applicants considered that the trial period had been a success, 23/00440/REVPP. However, this application was withdrawn from consideration in mid-July shortly before the application was to be considered by the Council's Development Management Committee on 19<sup>th</sup> July 2023. According to Condition No.1 of the Appeal decision permission, the opening hours of the site reverted to the hours of 0700 to 2300 hours 7 days a week with effect from 19 July 2023 and the premises have continued to operate in accordance with these approved customer opening hours since.

15. In February 2024 the applicants submitted another planning application, reference 24/00117/REVPP, seeking to extend the opening hours to be between 0600 and 0000, i.e midnight, daily 7 days a week. This time they specified the extended hours would be for a temporary period of 1 year and provided a new premises management plan that contained an updated suite of mitigation measures they felt addressed the issues the Council identified in trial period by the Council during their assessment of application 22/00048/REVPP. However, this application was refused for the following reason:

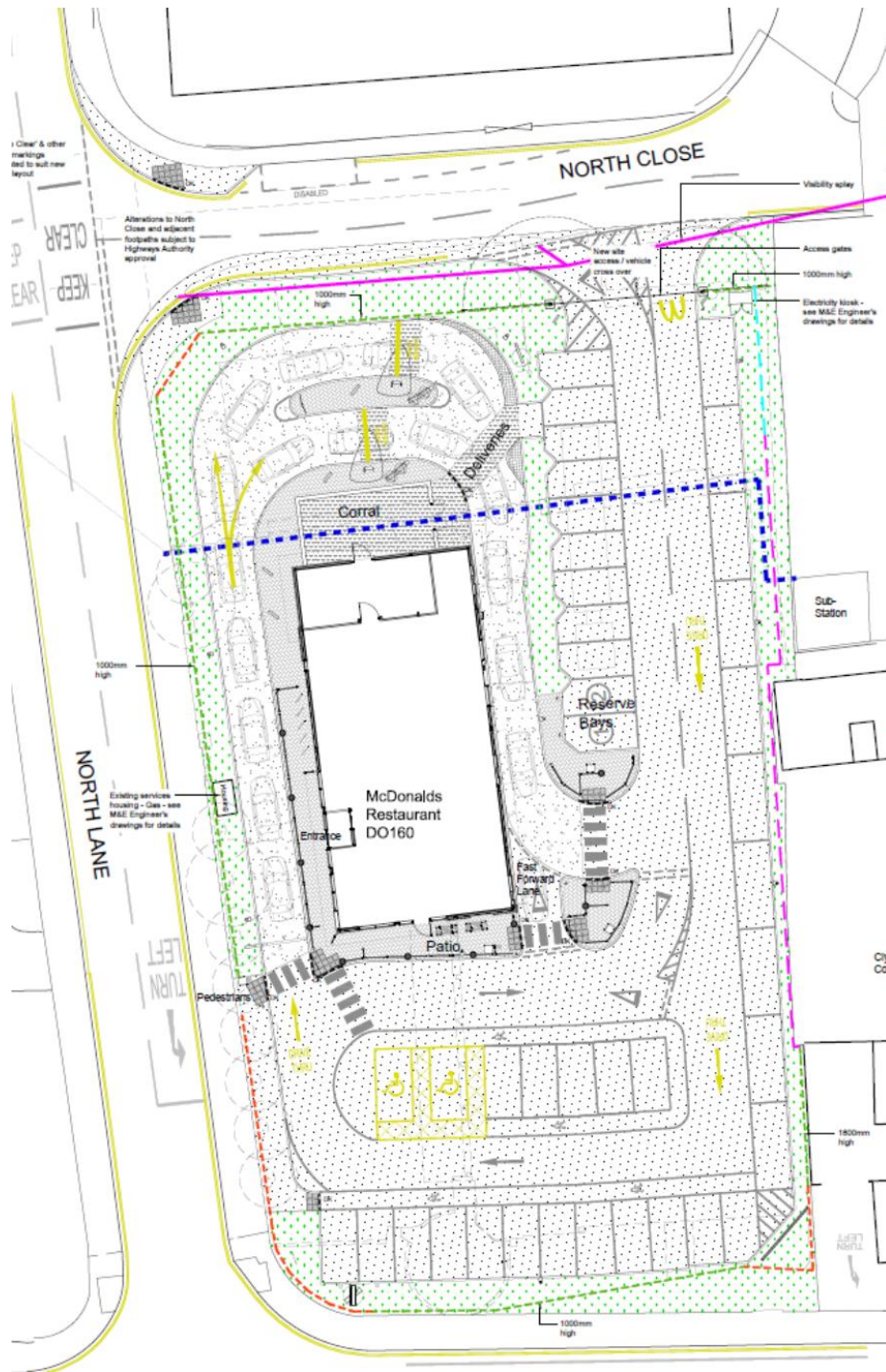
*16. The proposed extended customer opening hours would, even for a temporary period, be likely to give rise to unacceptable noise nuisance impacts on neighbouring residential properties due to activity at the site in the early morning and late at night to the detriment of the living environment and amenities of occupiers of those residential properties. It is not considered that adequate and effective means and methods of mitigation and management of customer behaviour at and in the vicinity of the site can be implemented and sustained to ensure that such impacts do not arise and it is considered inappropriate to grant permission on a temporary basis to facilitate a trial period for the extended customer opening hours. 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.*

17. 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.

18. 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.

19. 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.



**Figure 1: 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

Following receipt of parking plan showing staff and customer parking spaces during the extended operating hours, raises no objection subject to condition requiring implementation of the Site Management Plan stating 'a COD setting of 7 reported to have a noise level at 1m from the COD of 63.7dB. If the nearest residential premises is 35m distant, then noise from the COD should be approximately 33dB, which will be significantly below

*the existing ambient background noise level at that location' (see below).*

Hampshire  
Highways                      Raises no objection.

### **Neighbours notified**

20. In addition to posting a site notice, 47 individual letters of notification were sent to adjoining and nearby properties.

### **Neighbour comments**

21. Six objections have been received, from 40 North Lane, 5 (twice) and 35 Lower Newport Road, Flat 2 Clyde Court, Flat 6 215 Ash Road and 23 Friend Avenue on the following grounds:-

#### Noise

- We suffer noise from the additional traffic, long lines of idle cars during promotions, road rage and car horns, footfall from college studies, noisy car exhausts and don't want this extended to the additional hour;
- Will be an increase in work vehicles and lorries;
- Unreasonable that the local residents have to put up with this any longer than current hours, will bring just as much misery / living here is unbearable;
- The area used to be peaceful;
- Horns honk before 7am at the drive through;
- Can hear the tannoy and will exacerbate in summer with windows open;
- Get woken up by staff walking to work before 7am and that is bad enough;
- Already hear the customer tannoy at 7am don't want it at 6am especially on the weekend after a long week at work;
- Are we not entitled to 8 hours sleep every day without noise pollution;

#### Traffic/parking

- Cars and delivery drivers already use our driveway and this will make it worse;
- Drivers abuse us when we ask them to move;
- The ONLY thing worthy of consideration if I understand it correctly is the closing of the Access and EGRESS onto North Close and then North Lane. Now that would be a good idea as the traffic problems around this junction are problematic; [*Officer note: the means of access to the site are as already approved and are, in any event, not the subject of the current application under consideration*]
- Customers park on properties around the site and throw rubbish out of the window;

#### Lighting

- As it may be opening at 6 staff arrive earlier and all the lights go on;
- Light pollution from signs and building;

#### Rubbish/litter

- Their customers use our bins to dump their litter from the place or just leave it on the floor & there has been an increase in rats since it opened;
- Promised litter picks never happen; we pick up and bin more rubbish than McD!;
- Food and drinks thrown at your property and cars in driveway;



### Other

- The applicants previously trialled the evening session and extended hours and it didn't work [*Officer note: the applicants have previously trialled both extended evening and morning opening hours simultaneously and problems identified with the extended evening opening hour only.*]
  - Residents will be disturbed all for the sake of profit;
  - There could be another restaurant opening less than a mile away which doesn't make this application feel much better;
  - Support local independent takeaway businesses instead & no £ to USA via franchises;
  - They state they support local groups [charities], but they are not local;
  - Can smell the restaurant at 7am;
  - There is a 24hr McDonalds less than 10min drive away, so no need to increase hours for this one;
  - Should we really be encouraging people to eat unhealthy fast food as NHS strained [*Officer note: there is no material planning control or guidance that warrants consideration of the refusal of the application on these grounds.*]
22. 2 representations in support have been received from 65a North Lane and 5 Compass Rose Road Ash Green on the following grounds:-
- Will be beneficial to me and others out on the road at that time of morning
  - The roads are already busy at that time of the day so won't be any impact
  - Will provide more jobs
  - Management plan addresses concerns
  - Beneficial to local economy

Unless addressed with officer comments above, concerns raised are addressed in the main body of the report.

### **Policy and determining issues**

23. 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), SS2 (Spatial Strategy) 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 (paragraph 198).
24. The use of the application site as a McDonalds hot food restaurant and takeaway premises incorporating a drive-thru with the existing vehicular access from North Lane via North Close is lawful in planning terms; as are customer opening hours from 0700 to 2300 hours daily 7-days a week. This application is solely to extend the operating hours of the premises by one hour in the morning, so that the premises would open to customers at 0600 and close at 2300 hours.
25. The temporary period that the Inspector allowed (reference 21/00048/REVPP) for extended hours of 0600 to midnight, and that was operated between 18 July 2022 and 18 July 2023, was a trial and an opportunity for the applicants to demonstrate to the Council and their neighbours that they were 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.

26. It is considered that there are three possible outcomes for the Council to consider in respect of the current application, which are that:-

- (a) permission could be **granted** for a permanent extension of the proposed increased 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 temporary period** if it is considered that the amended opening time and proposed mitigation measures are considered likely to be sufficiently effective that it is considered appropriate and reasonable to allow a temporary trial period within which the efficacy of those measures can be properly assessed in action by the Council; in this regard the suite of mitigation measures should address concerns raised as part of refused application 24/00117/REVPP; or
- (c) **permission could be refused** for the extended customer opening hour without a further trial period in the event that the Council considers that the proposals and mitigation measures would be 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 remain 0700 to 2300 hours daily, 7 days a week.

27. Granting further temporary permissions are not precluded by Government Practice Guidance, not least in the current circumstances, with a different range of management measures now being suggested by the applicants that have not previously been subject to trial and, indeed, on the basis that the applicants themselves are requesting a further trial period in their Site Management Plan (SMP).

28. Since the further mitigation and management measures proposed are untested it is not considered that there is a strong justification for the Council permitting extended opening hours on a permanent basis (Outcome (a) above).

29. Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and, in respect of every condition under consideration, only used where they satisfy the following 6 tests:-

- 1. necessary;
- 2. relevant to planning;
- 3. relevant to the development to be permitted;
- 4. enforceable;
- 5. precise; and
- 6. reasonable in all other respects.

30. In this context it is considered that the sole determining issue is the impact of the proposed extended customer opening hours on the amenities of occupiers of adjoining and nearby residential properties.

## Commentary

31. Throughout the previous trial period in 2023 the following concerns about the operation of the site during the extended hours were raised by neighbours, but almost entirely arising from the evening extended opening hours:-

- Voices from the Customer Order Point tannoy was audible on neighbouring properties inside with windows open and in gardens;
- Disturbance from customers chatting in the car park during and beyond the extended hour at night;
- Disturbance from noisy vehicles created by anti-social driving and behaviour e.g. car stereos being played with car doors open and cars driving to and around the site with derestricted exhausts at night;
- Impatient drivers using their horns or revving engines when outlet is busy at night;
- Various elements of external lighting, including signage, and internal lighting, not being switched off at midnight and/or left on all night
- Lighting being very bright at night
- Menu board lights in the drive-through lane being left on all night frequently;
- Car parking spaces not cordoned off, in conflict with the conditioned mitigation measures in the Premises Noise Management Plan and acoustic report;
- Anti-social behaviour to surrounding properties from customers leaving the site dropping rubbish, urinating in driveways etc at night.

The only issue previously raised that was specifically a consequence of the previously trialled 6.00am opening related to litter bins being moved around the site by staff before the morning opening time waking residents up.

32. The applicant's main method of controlling noise from customer behaviour during anti-social hours of 0600 to 0700 and 2300 to midnight conditioned by the Inspector was the implementation of a Premises Noise Management Plan (PNMP) that was in the appendix of the applicant's Noise Impact Assessment Report, requiring staff to be proactive and vigilant in challenging anti-social and noisy customer behaviour.

33. These objections and complaints received from occupants of Clyde Court and other nearby residential occupants during the trial period suggested the customer noise was disturbing to them and that the management measures being operated were not successful or effective in tackling inconsiderate and anti-social customer behaviour and encouraging better behaviour during the later night-time opening.

34. Planning officers and Ward councillors also monitored the operation of site a) before, during and after the extended 0600 to 0700 hour and b) the extended 2300 to midnight customer opening hours on a sample basis at intervals throughout the trial year, to assess the efficacy of the mitigation measures proffered by the applicants.

35. From the observations made it was evident that the extended nighttime hour had resulted in unacceptable and undue additional noise and activity at the site that had continued beyond the extended night-time closing. This included cars arriving at the gates very close or just after midnight and raising voices asking to be served; customers in different vehicles in the car park talking across to each other and/or playing car stereos; parked cars idling with engines and headlights on and cars with derestricted exhausts moving around the site, and audible car stereo music. The customer tannoy

system was also audible across the site and at the nearest residential properties. It was considered that the anti-social customer behaviour for the additional night-time opening hour until midnight was detrimental to the amenities and living environment of occupiers of adjoining and nearby residential properties. It suggested that the mitigation measures proposed and/or operated by the applicants were inadequate. Indeed, it was clear that it was difficult for staff to implement their adopted mitigation measures in any event, with some critical measures not implemented as originally indicated and specified (see below).

36. 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 reported and witnessed taking place during the extended night-time customer opening hours was 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 remained awake. This was confirmed by neighbours whom provided comments of the effects on them during the 2023 trial period.
37. The other mitigation measures conditioned by the Inspector were those put forward in Part 9 of the Noise Impact Assessment report submitted in support of the application 21/00048/REVPP, dated 16 March 2021 reference 14-0167-79 RO2. These were that that the car parking spaces within 25m of Clyde Court be cordoned off during the extended hours, and the Customer Order Display units (CODs) would be reduced 'to a night time setting of 10' (page 18). Throughout the trial period the applicants cordoned off only a single row of parking spaces immediately adjacent to the Clyde Court boundary with a width of 5m (despite being informed of the non-compliance). This left most of the car park available for unrestricted use.
38. Planning application 24/00117/REVPP to extend the hours but with a new suite of management measures proposed, was refused, even for a trial temporary period of 1 year. It was not considered that the mitigation measures put forward by the applicant were adequate to control the anti-social customer behaviour witnessed during the trial period, in particular by vehicles arriving at the site late at night.
39. The question to consider with the current application is whether the amended proposed extended morning only customer opening hour and a revised Site Management Plan would provide adequate control over the noise and activity generated, so that it would not have an undue impact on the residential amenity. The proposed mitigation and management measures to be operated, as updated with additional information received on 9 May 2025, in the applicant's Site Management Plan and parking plan, are as follows:-
  - a) Public parking for most of the parking spaces will be cordoned off with a cone on each space ahead of the 0600 opening time, with the exception of the four most south westerly bays on the site (including two EV charging bays) and two disabled bays, and these will be available for customer use during the 0600 to 0700 period.
  - b) 10 spaces for staff will be available in the row against the eastern side of the building that will be coned off from customers.
  - c) Staff will manage the existing access barrier into the site at 0600 to ensure that customers do not enter before that time, and will manage the barrier to allow staff entry prior to 0600.

- d) The restaurant will not be open to food delivery businesses until 0700 hours.
  - e) The Customer Order Display unit will be programmed to automatically reduce from Level 10 to Level 7 volume at 0600 each morning and evidence of the COD's noise levels can be provided to the Council upon request
  - f) All Managers are to be required to complete conflict management awareness courses so that they can deal effectively with any problems faced with customers and customer behaviour. Furthermore, all shift managers will undertake an on-line training module so that staff will be able to deal more efficiently with any potential anti-social behaviour.
  - g) An internal intercom system is already in place at the site which can be used to deter anti-social behaviour. Internal and external CCTV cameras at the site are monitored by a third-party and they can intervene via the intercom system to explain that offenders should leave the site otherwise emergency services will be called. It is argued by the applicants that the existence of CCTV discourages anti-social behaviour from taking place and can record any car registration plates of offenders associated with anti-social behaviour.
  - h) External lighting will have a phased switch-on. At 0600 hours the perimeter post lighting will be turned-on and at 0630 the external building lighting and signage lights will be turned-on. Internal lighting will remain in use during the opening period, but the upstairs dining area will remain closed until 0700 as part of the strategy so only the ground floor internal lighting will be switched on.
  - i) Signage reminding customers to be respectful of neighbours, around the premises will be retained.
  - j) Restaurant staff will not move waste bins within the site before 0800. As per existing condition, there will be also be no waste collections before 0800.
  - k) Any incidents of anti-social behaviour or other crime issues will be recorded within an Incident Log-Book which will be regularly monitored, reviewed and action taken as considered appropriate. A soft copy of the log-book will be shared with the Council, upon request, in phases to provide updates on how anti-social behaviour is addressed if it occurs.
  - l) Residents near the site will be able to contact the store directly in event of an anti-social or similar incident on the site and an email and phone number is provided.
40. The main mitigation measure that is different to the trial period and previous refused application is that the restaurant will not be operating any extended night-time opening beyond the already permitted 2300 hours. During the previous 2023 trial year, the complaints around noise associated with anti-social customer behaviour were focussed on the extended night time hour. The monitoring of the site in the morning by officers did not evidence antisocial customer behaviour. Custom was seen to be relatively slow from 0600 to 0630 with most customers using the drive through lane and with none of the anti-social behaviour witnessed during the extended night-time opening hour.

41. The Noise Impact Assessment (NIA) report reference 14-0167-79 R02 modelled the impact of vehicle movements on the site on existing ambient noise, based on a maximum predicted 38 customers during the 0600 to 0700 hour, and concluded that the worst case scenario would be a 0.4dB increase on ambient noise levels during this hour. As it is generally considered that +3dB is the level at which change would be perceptible, it is not considered that noise from vehicles driving through the site would cause a disturbance to neighbours during the extended 0600 to 0700 hour, that would warrant a reason for refusal on this ground. It is also noted that if the restaurant opens at 0600 there will not be a queue of vehicles impatiently waiting entrance at 0700 hours as is the case currently.
42. During the trial year the Communications Operation Devices (CODs) or drive through customer order points, were recommended to be set at 10 (NIA para. 9.3), but complaints were received that staff voices were audible through the CODs from residential properties in Clyde Court and North Lane throughout the twelve months. Officers and Councillors also noted this impact during their own visits. The new SMP proposes that the CODs are automatically set to Level 7 between 0600 and 0700 hours.
43. The Council's environmental health officer has reviewed the application and commented as follows:-

*"The Noise Impact Assessment submitted under planning references 24/00117/REVPP and 21/00048/REVPP (Report No. 14-0167-79 R02, dated 16 March 2021) indicates that the predicted change in ambient noise levels for a change in hours to include the period 06:00 to 07:00 would be +0.4dB, which is imperceptible in acoustic terms. The report discusses noise from the Communications Operation Device (COD) and recommends the system at night (night-time hours traditionally considered 23:00-07:00) be reduced to a setting of 10. The Site Management Plan submitted in support of the current application proposes the COD settings be reduced to 7 between the proposed hours of 06:00 to 07:00. Appendix E of the Noise Impact Report discusses COD noise levels for different settings, with a COD setting of 7 reported to have a noise level at 1m from the COD of 63.7dB. If the nearest residential premises is 35m distant, then noise from the COD should be approximately 33dB, which will be significantly below the existing ambient background noise level at that location. Based on the available information, Environmental Health would have no objection."*

The NIA report concludes that **people** noise subject to implementation of the mitigation measures would be unlikely to have an adverse impact on residential amenity and was assessed at No Observable Effect Level (NOEL), relating to the Noise Exposure Hierarchy set out in the Planning Practice Guidance and one of the mitigation measures is cordoning off parking spaces within 25m of Clyde Court.

44. The submitted parking plan shows that the nearest spaces available to customers would be 21m and 23m from the site boundary with Clyde Court. Whilst slightly less than the minimum 25m cordon proposed in Noise Impact Assessment (section 9), it would allow availability of limited spaces to those customers walking into the restaurant, preventing them from parking elsewhere closer to residential properties in the vicinity and potentially slamming doors, or driving over the cones altogether, causing further disturbance. It is noted that officers did not consider this method practical or enforceable for application 24/00117/REPP on the grounds that from 2300 to midnight, where there would generally be less surveillance and more people socialising, it could cause further disturbance with customers moving the cones and remaining in the car

park. However, it is considered that using cones could be less disturbing during the proposed morning hour.

45. Whilst it is acknowledged that staff parking spaces will be 10m from the eastern common boundary with Clyde Court these spaces will not be as close to the windows serving the flats as the main car park south of the restaurant building and the operators would have more control over staff behaviour than that of the general public.
46. The SMP specifies` that staff will not move bins or clean areas using jet washes outside until 0700.
47. The lighting on the site comprises the taller pole lighting that is along the perimeter fencing of the site which lights the car park; the building fascia signage; other signage on the site including the menu boards and totem sign and there is also down-lighting on the building awnings. During the trial period officers noted that a phased lighting strategy was introduced halfway through the year and the building signage started to be switched off half an hour before midnight or a half hour after opening at 0630. The applicant is proposing to reinstate the phased lighting strategy (contrary to application 24/00117/REVPP) by leaving the building signage lights off until 0630. The building signage is very bright, and it is considered that this measure will assist in integrating the proposal better with the surrounding area during the initial hour.
48. An objection has been raised that cooking smells are apparent during the operation of the restaurant in the morning. Cooking odour extraction system is subject to condition 8 of 21/00048/REVPP and details approved by RBC application reference 16/000738/CONDPP (dated 16 December 2016). The applicant has stated that they regularly clean and maintain the extraction system. This should be sufficient to manage any odour at acceptable levels. Any further complaints would need to be subject to investigation and action if appropriate, possibly under Environmental Health legislation.
49. The NIA states that the increase in noise from vehicles will not be perceptible to residents during the proposed extended morning opening hour. The Inspector noted that the 'methodology of the Noise Report is robust' (para. 14). Nevertheless, the Inspector imposed a trial period to allow the Council to measure the impacts and success of the mitigation measures proposed. It was apparent that the measures to control customer behaviour that caused disturbance to neighbours during the 2023 trial period were not effective especially as customers were reported and still seen on site, and staff left the site, after midnight. This application addresses that concern by proposing that the site remains closed to customers after 2300. It is therefore considered that the proposed application would have an acceptable impact on the amenity of the occupants of the closest residential properties. Nonetheless, since the further mitigation and management measures proposed are untested it is not considered that there is a strong justification for the Council permitting extended opening hours on a permanent basis.
50. It is therefore considered appropriate to grant the extended hour for a further temporary period in order that the efficacy of the mitigation measures in the application and Site Management Plan can be measured and the resultant impacts during the operation of the single extended hour reviewed.

## Full Recommendation

It is recommended that planning permission be **GRANTED** to vary condition 1 attached to permission 21/00048/REVPP to allow the restaurant to operate with the extended hour for a temporary period of 12 months subject to the following conditions:-

1. The restaurant/takeaway/drive-through uses hereby permitted may be operated between the hours of 0600 to 2300 for a temporary period of one year and only on the condition that all mitigation measures included in the Site Management Plan dated 9 May 2025 and the associated Parking Plan P304A (received 28 April 2025) are implemented. During the temporary period the restaurant/takeaway/drive-through uses shall not be open to customers outside the hours of 0600 to 2300.

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.

Reason – To safeguard the amenities of neighbouring residential properties

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.

Reason – To ensure a satisfactory external appearance.

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.

Reason – To ensure the development makes an adequate contribution to visual amenity.

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 or similar size and species to those originally required to be planted.

Reason - To ensure a satisfactory external appearance and comply with Policies NE3 (Trees and Landscaping) and NE4 (Biodiversity) of the Rushmoor Local Plan 2014-2032.

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 I perpetuity.

Reason – To reflect the objectives of Policy NE6 of the Rushmoor Local Plan (2014-2032).



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.

Reason – In the interests of visual and residential amenity

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.

Reason – To protect the amenity of neighbouring occupiers.

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.

Reason – To protect the amenity of neighbouring occupiers.

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

Reason - To protect the amenity of neighbouring occupiers.

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.

Reason – To ensure the development makes an adequate contribution to visual amenity.

11. The vehicle and cycle parking facilities shown on the approved plans shall be completed and made ready for use (other than during the customer opening hours of 0600 to 0700 when the Premises Noise Management Parking Scheme shall be implemented) and shall thereafter be retained solely for parking purposes, to be used by the occupiers of, and visitors to, the development only.

Reason – In the interests of highway safety and residential amenity.

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.

Reason – To protect the amenity of neighbouring occupiers.

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.

Reason – To protect the amenity of neighbouring occupiers.

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 206A, 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.

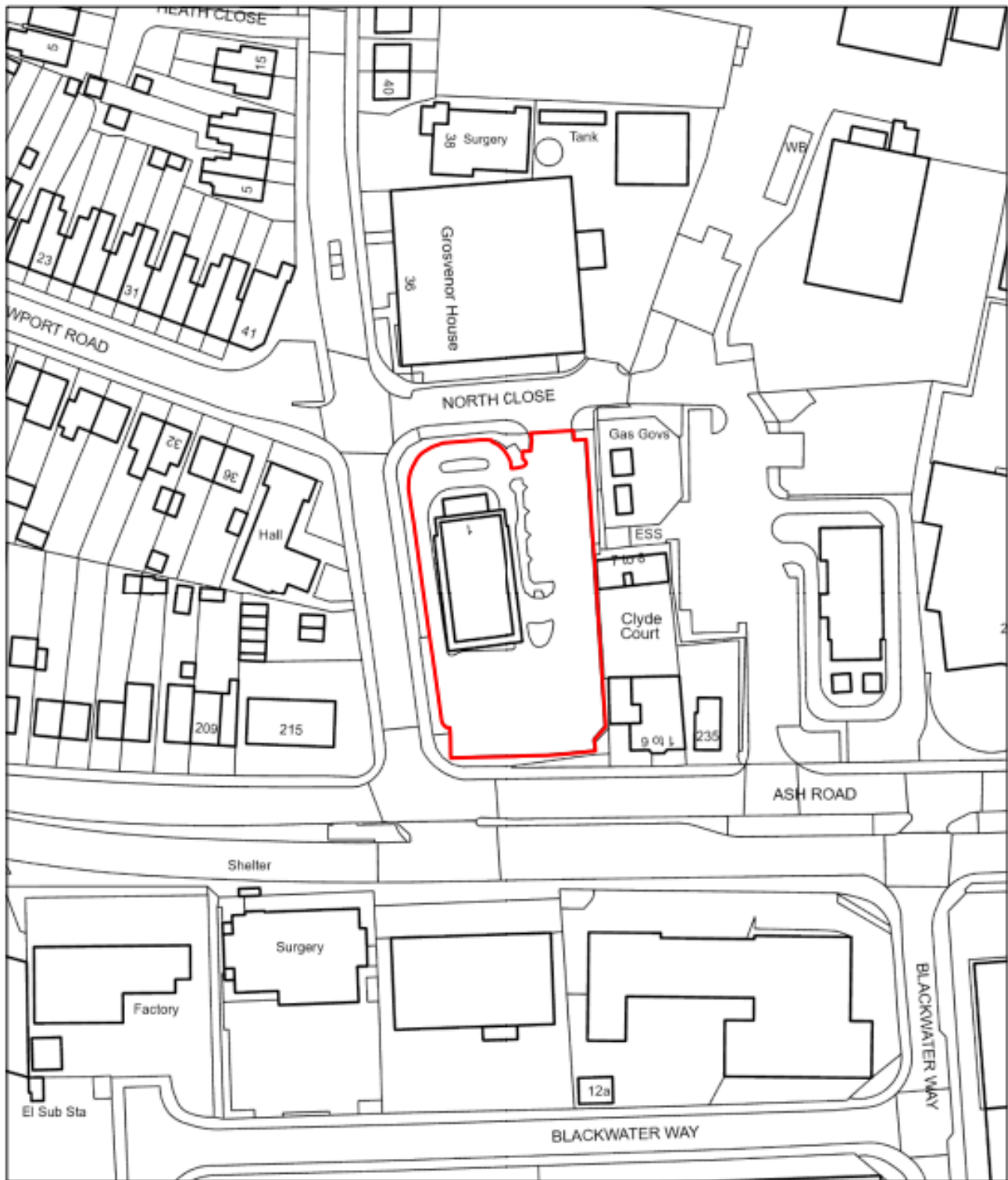
Reason – To ensure the development is implemented in accordance with the permission granted.

### **Informatives**

- 1      INFORMATIVE – The Local Planning Authority’s commitment to working with the applicants in a positive and proactive way is demonstrated by its offer of pre-application discussion to all, and assistance in the validation and determination of applications through the provision of clear guidance regarding necessary supporting information or amendments both before and after submission, in line with the National Planning Policy Framework.
  
- 2      INFORMATIVE –It is considered that the proposed development would have an acceptable impact on the amenity of the adjacent and nearby residential occupiers, and in this regard the application complies with Policy DE1 of the Rushmoor Local Plan. The Council has granted permission to ensure that the extended hour enures for a period of 1 year however, beginning with the date on which the applicant gives notice of their commencement. This will enable the applicant to prepare for the change in hours and will also provide an opportunity for the Council to monitor the impact, including the efficacy of the applicant’s proffered untested new mitigation measures, given the planning history on the site.

It is therefore considered that subject to compliance with the attached conditions, and taking into account all other material planning consideration, including the provisions of the development plan, the proposal would be acceptable. This also includes a consideration of whether the decision to grant permission is compatible with the Human Rights Act 1998.

- 3      INFORMATIVE – The applicant is reminded that the premises should be made accessible to all disabled people, not just wheelchair users, in accordance with the duties imposed by the Equality Act 2010. This may be achieved by following recommendations set out in British Standards BS 8300:2009 “Design of buildings and their approaches to meet the needs of disabled people – Code of Practice”. Where Building Regulations apply, provision of access for disabled people to the premises will be required in accordance with Approved Document M to the Building Regulations 2000 ‘Access to and use of building’. The Rushmoor Access Group would welcome the opportunity to give further advice and guidance.

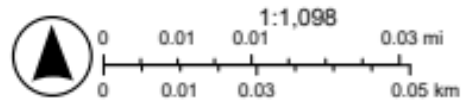


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Planning Application

**Building**

- Buildings
- <all other values>



# Parking Plan as part of the Site Management Plan :-

