

# PLANNING APPLICATION NUMBER: P22/0251

Type of approval sought	Full Planning Permission
Ward	Coseley East Ward
Agent	Miss K. Parfett, Savills (UK) Ltd
Case Officer	James Mead
Location:	<b>MCDONALD'S RESTAURANT, BIRMINGHAM NEW ROAD, BILSTON, WV14 9JH</b>
Proposal	<b>REMOVAL OF CONDITION 1 OF PLANNING PERMISSION P19/0646 (ALLOWED VIA APPEAL REF: APP/C4615/W/19/3237704) TO ENABLE THE MCDONALD'S RESTAURANT TO TRADE 24 HOURS A DAY, SEVEN DAYS A WEEK, ON A PERMANENT BASIS.</b>
Recommendation Summary:	<b>APPROVE SUBJECT TO CONDITIONS</b>

## SITE AND SURROUNDINGS

1. The application site is an existing McDonald's restaurant located at the junction of Birmingham New Road and Ivyhouse Lane, Coseley. To the north of the site, on the opposite side of Ivyhouse Lane, is a petrol station. To the east of the site is a working men's club, to the south are retail shops with flats above. To the west, on the opposite side of Birmingham New Road are residential dwellings.

## PROPOSAL

2. This application seeks the removal of Condition 1 of Planning Permission P19/0646 (allowed via Appeal Ref: APP/C4615/W/19/3237704) to enable the McDonald's Restaurant to trade 24 hours a day, seven days a week, on a permanent basis.
3. In 2019, McDonalds applied for permission to open on a 24-hour basis (Application P19/0646). The application was refused by the Planning Committee but was

subsequently allowed on appeal by the Planning Inspectorate. The decision by the Planning Inspector included a condition that stated;

*“The restaurant and ‘drive-thru’ may operate for 24 hours a day on any day for a limited period of one calendar year. This limited period must be commenced within three years of the date of this decision and the applicant must provide the local planning authority with written notification of the start and end date 10 days prior to first commencement. From the first trading day following the end of the limited period, the opening hours shall revert to 0600 hours to 2300 hours daily”*

4. In accordance with the requirements of the condition, McDonalds informed the Local Planning Authority of their intention to start operating on a 24-hour basis on 12<sup>th</sup> April 2021. Therefore, the period of one calendar year of 24-hour operation expired on 12<sup>th</sup> April 2022. This new application is to remove this condition from that their permission, which would allow 24-hour operation of the restaurant and drive thru on a permanent basis.

## HISTORY

<b>APPLICATION No.</b>	<b>PROPOSAL</b>	<b>DECISION</b>	<b>DATE</b>
96/50298	Erection of drive thru restaurant	Approved with conditions.	21/11/1996
97/51831	Erection of extension to restaurant	Approved with conditions	26/02/1998
P00/51901	Variation of Condition 9 attached to 96/50298 to vary opening hours from 08.00-23.00 to 07.00-23.00 hours	Approved	21/12/2000
P10/0406	Refurbishment of restaurant,	Approved	07/06/2010

	landscaping of patio area and removal of cladding on booths	with conditions	
P11/0707	Variation of condition 9 of planning approval 96/50298 to amend opening hours from 7.00 hours to 23.00 hours daily to 05.00 to midnight	Refused	02/08/2011
P11/1007	Variation of condition 9 of planning approval 96/50298 to change opening hours from 0700 hours to 2300 hours daily to 0600 to 2300 daily (temporary 6 months permission)	Approved	01/11/2011
P12/0508	Variation of Condition 9 of planning approval 96/50298 to opening hours of 06.00 to 23.00 hours on any day.	Approved	31/07/2012
P16/1381	Single storey extension and elevation changes to include a new "Folded Roof", cladding, new style drive thru booths, relocation of the entrance position, corral and installation of 1 no. additional Customer Order Display (COD) to facilitate tandem ordering	Approved with conditions	22/12/2016
P19/0646	Removal of Condition 2 of Planning Approval P12/0508 to enable trade 24 hours a day, seven days a week	Refused  Appeal Allowed	14/08/2019  13/01/2020

## PUBLIC CONSULTATION

5. The application was advertised by way of site notice and neighbour notification letters being sent to forty-seven neighbouring occupiers and all three ward members.
6. Councillor Peter Drake objects to the proposal; his objection is summarised as follows;

*I object to the request to allow permanent 24/7 trading by McDonalds. I request that conditions remain which maintains the previous opening hours which were more satisfactory. There has been a temporary year-long removal of conditions controlling opening hours. This has led to many of the problems which were predicted by local councillors and residents, along with some which were not foreseen. I feel that permanent 24/7 opening hours would continue to be detrimental to the local area and to the lives of people who live here. The local environment will suffer, as it has this past year, and public order and safety will continue to be negatively affected.*

*Litter - The litter dropped by McDonald's customers in the surrounding streets has always been a problem. The advent of all-night opening hours has allowed it to spread further afield.... McDonalds' litter patrols are welcome, and they try to make an effort to clean up after their customers. But it doesn't deal with the problem.*

*Parking issues – Delivery drivers park outside properties on Ivyhouse Lane, Henne Drive, the adjacent service road along the Birmingham New Road, and elsewhere close to the store. It occurs during daytime and night-time hours but causes more disruption in the evening. Residents cannot always park outside their homes. It has created more traffic in adjacent streets at night, as the store is open all hours and taking deliveries throughout the evening and night. In addition, drivers are often a hazard to road safety, with vehicles linked to McDonald's trading parked in the limited spaces here.*

*U-turns - It is a common sight to see motorists (travelling northwards on the Birmingham New Road) perform a U-turn at the Ivyhouse Lane junction so they can access the McDonalds car park and drive-through. It is exceedingly dangerous. The 24/7 opening hours has encouraged more motorists to perform U-turns here, as the less-busy roads at night are tempting but no less perilous.*

*ASB and crime - It is not easy to gauge levels of crime and disturbances in the McDonalds store, car park and surrounding area, as during the past twelve months we have been slowly leaving covid restrictions and returning to normal life. Nevertheless, there has been a rising amount of trouble occurring during the late hours. Gatherings of youths, shouting and car engines revving. I have been told that McDonalds staff do not attempt to stop this ASB or employ security. The 24/7 opening hours and customers using the McDonalds drive-through at night is leading to more frequent anti-social behaviour during the all-night opening hours.*

*Smells - Anyone living in the area for some time will have noted the smells of fast food and cooking. It would be disingenuous for anyone to argue that there are no smells coming from a fast-food store such as McDonalds. It's fair to assume they exist. It's more difficult to quantify how serious they are, and how much they affect residents, some of them living just meters away from McDonalds.*

*Light pollution - Residents are still affected by light pollution from McDonalds. They were happier with the old arrangement and opening hours, whereby the lights were dimmed and switched lower during the night when the store closed, but now they are swathed in this light all hours. Head lights from vehicles using the McDonalds car park are reportedly shining into windows of houses on the Birmingham New Road at any hour during the night.*

*Noise - There is the afore-mentioned noise from cars on the car park and drive-through, and also customers on foot, using McDonalds during the night. This would have diminished or disappeared by the close of business previously. Now it can go on into the late hours.*

7. In addition, letters of objection have been received from six local addresses objecting to the application on the following grounds

- Use of car park for Anti-Social behaviour late at night
- There is a lack of security
- Delivery drivers block driveways
- The previous year has been unusual and should not be used as precedent for 24 hour opening.
- There is very little business after 2m, why open 24 hours a day.
- Constant smells still coming from the restaurant
- Noise from car doors slamming and revving
- Noise from extraction equipment
- Road safety issues due to inconsiderate and illegal u turns
- Residents should not just have to accept all these issues, just because they live next to the site.
- Complaints have been made to Environmental Health
- The operator is not respecting the existing conditions which required them to cease operating 24 hour on 12 April 2022.

## OTHER CONSULTATION

8. Head of Environmental Health and Trading Standards

It is noted that 24-hour operation was allowed on appeal for a temporary 12-month period by way of appeal ref: APP/C4615/W/19/3237704, which was centred on noise issues.

Four conditions were imposed under that appeal relating to relaxation of the opening hours for 12 months, control over lighting, control over noise levels from fixed plant in the surrounding residential area, and the requirement to follow a Noise and Site Management Plan.

The 12 month temporary period commenced on 12<sup>th</sup> April 2021 and is due to expire on 11<sup>th</sup> April 2022.

The last complaint received by Environmental Safety and Health in May 2021 was about behavioural noise associated with McDonalds at Birmingham New Road and a nearby garage. It was marked as resolved and no further noise complaints are on Environmental Safety and Health records.

Under these circumstances there is no justification or evidence to object to the application.

It should be noted that the controls over lighting and fixed plant noise remain. The requirement to abide by the Noise and Site Management Plan will also be retained.

## RELEVANT PLANNING POLICY

### 9. National Planning Guidance

- National Planning Policy Framework (2021)
- Planning Practice Guidance (2014)

### 10. Black Country Core Strategy

- CEN6 - Meeting Local Needs for Shopping and Services
- TRAN2 - Managing Transport Impacts of New Development

### 11. Dudley Borough Development Strategy (2017)

- S1 Presumption in favour of Sustainable Development
- D5 Noise Pollution
- D6 Light Pollution

## ASSESSMENT

12. The key issues for consideration in this application are as follows:

- Policy
- Background
- Residential Amenity

### Policy

13. The National Planning Policy Framework (NPPF) confirms that there is a presumption in favour of sustainable development, stating that the planning system should contribute to building a strong, responsive and competitive economy, and should do everything it can to support sustainable economic growth. Planning policies and decisions should aim to avoid noise giving rise to significant adverse impacts on health and quality of life as a result of new development, mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.

### Background

14. In August 2019, McDonalds applied for permission to open on a 24-hour basis (Ref: P19/0646). The application was refused by the Planning Committee but was subsequently allowed on appeal by the Planning Inspectorate. The decision by the Planning Inspector included a condition that stated;

*“The restaurant and ‘drive-thru’ may operate for 24 hours a day on any day for a limited period of one calendar year. This limited period must be commenced within three years of the date of this decision and the applicant must provide the local planning authority with written notification of the start and end date 10 days prior to first commencement. From the first trading day following the end of the limited period, the opening hours shall revert to 0600 hours to 2300 hours daily”*

15. In accordance with the requirements of the condition, McDonalds informed the Local Planning Authority of their intention to start operating on a 24-hour basis on 12<sup>th</sup> April 2021. Therefore, the period of one calendar year of 24-hour operation expired on 12<sup>th</sup> April 2022. This new application requests to remove this condition from their permission, which would allow 24-hour operation of the restaurant and drive thru on a permanent basis.

#### Residential Amenity

16. The application site is rectangular in shape with the McDonalds building located close to the junction of Ivyhouse Lane and Birmingham New Road and the car park running parallel with Birmingham New Road. There is a working men's club directly adjacent to the eastern part of the site and there is a petrol station on the opposite side of Ivyhouse Lane. There are also, numerous residential dwellings within close proximity to the site. The rear garden of No. 1 Langley Avenue and flats above shops at No. 633 Birmingham New Road directly abut the southern part of the car park. There is a long line of residential properties on the west side of Birmingham New Road directly facing the site and residential properties in Ivyhouse Lane near to the site.
17. The Head of Environmental Health and Trading Standards had previously considered the application including the technical noise reports submitted. The assessment showed that the noise from the extract systems should be capable of meeting the local authority BS4142 criteria during night time hours. It was considered that a condition to control plant noise could be attached to any approval to ensure that the amenities of residents are protected for the lifetime of the development. The Inspector attached such a condition to the appeal decision and this would remain in place in the event of the approval of this application.
18. Regarding Vehicle and People Noise/Anti-Social Behaviour (ASB), in considering the previous appeal to allow the 24-hour operation McDonalds submitted a Site Management Plan (SMP) which sets out 'good practice' measures to be adopted at the site for mitigation of any adverse impacts on the wider locality by maintaining a safe and efficient operation, with regards to litter, minimising Customer Order and

vehicle noise, rodents, ASB, signage and servicing. A condition was imposed to ensure the site operates in complete accordance with this Management Plan and again would remain in the event of this application being approved.

19. The inspector acknowledged the Council's and residents' concerns on ASB but noted *"I have no substantive evidence other than anecdotal that ASB has taken place at the appeal site, nearby petrol station and/or that it would potentially occur in the future at the appeal site, and even if this was the case, it could be addressed through the premises licence. Nonetheless, a condition could be imposed to require the appeal site to be operated in accordance with the Premises Noise Management Plan"*
20. The Local Planning Authority acknowledge there is considerable local feelings on noise and disturbance, particularly noise from people and cars, however these matters have been addressed within the Noise Impact Assessment which the Planning Inspector found to be sound. Significant weight must be given to the decision taken by the Inspector and given there is little technical evidence that can dispute the findings of the Noise Impact Assessment and that the Head of Environmental Safety and Health confirms just one complaint in May 2021 about behavioural noise associated with McDonalds, it is considered, that with the imposition of the above mentioned conditions, that there is no sufficient justification to not allow the continuation of the 24 hour operation of this McDonaldns Resturant.

## CONCLUSION

21. It is acknowledged that the site is located close to residential dwellings to the south and west. The application relates to a continued 24-hour operation and the applicants have demonstrated through the submission of technical noise data and subject to appropriate safeguarding conditions a 24-hour operation would be acceptable at this location.

## RECOMMENDATION

22. It is recommended that the application be APPROVED subject to the attached conditions.

### Conditions and/or reasons:

1. Lighting associated with the building, including the lighting up of existing signage, shall only be in use when the premises is open in accordance with the agreed opening hours.  
REASON: To protect the amenities of nearby residents in accordance with Borough Development Strategy 2017 Policy D5 Noise Pollution and Policy L1 Housing Development, extensions and alterations to existing dwellings Policy D2 Incompatible Land Uses (in part).
2. The rating level of sound emitted from any fixed plant and/or machinery associated with the development shall not exceed background sound levels by more than 5dB(A) between the hours of 0700 and 2300 (taken as a 15 minute LA90 at the nearest sound sensitive premises) and shall not exceed the background sound level between the hours of 2300 and 0700 (taken as a 15 minute LA90 at the nearest sound sensitive premises). All measurements shall be made in accordance with the methodology of BS4142 (2014) (Method for rating and assessing industrial and commercial sound) and/or its subsequent amendments. Where access to the nearest sound sensitive property is not possible, measurements shall be undertaken at an appropriate location to be agreed in writing with the Council and corrected to establish the noise levels at the nearest sound sensitive property.  
REASON: To protect the amenities of nearby residents in accordance with Borough Development Strategy 2017 Policy D5 Noise Pollution and Policy L1 Housing Development, extensions and alterations to existing dwellings Policy D2 Incompatible Land Uses (in part)
3. The premises shall operate in complete accordance with the recommendations made within Appendix B (Premises Noise Management Plan of the submitted Noise Impact Assessment, (Savills (UK) Limited: MCDONALD'S, COSELEY #743 Noise Impact Assessment: Report No. 14-0167-74 R02: Dated 03 July 2019.) and the Noise and Site Management Plan (SMP), Appendix 7, September 2019.  
REASON: To protect the amenities of nearby residents in accordance with Borough Development Strategy 2017 Policy D5 Noise Pollution and Policy L1 Housing Development, extensions and alterations to existing dwellings Policy D2 Incompatible Land Uses (in part).



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 Getmapping plc 2011. Plotted Scale - 1:1250



SAVHD01 - Site Location Plan  
 McDonalds Restaurants, Birmingham New Road,