
Appeal Decision

Site visit made on 15 July 2019

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th July 2019

Appeal Ref: APP/U2370/W/19/3226028

**Morrisons Supermarket Carpark, Amounderness Way, Thornton Cleveleys
FY5 3TS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by McDonald's Restaurant Ltd and Wm Morrison Supermarkets Plc against the decision of Wyre Borough Council.
 - The application Ref 18/00008/FUL, dated 22 December 2017, was refused by notice dated 5 October 2018.
 - The development proposed is the erection of a two-storey restaurant with associated drive thru (Class A3/A5), car parking, landscaping and associated works, installation of outdoor seating area and two customer order displays; 3m high acoustic fence to boundaries and 6 CCTV cameras on building.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two-storey restaurant with associated drive thru (Class A3/A5), car parking, landscaping and associated works, installation of outdoor seating area and two customer order displays; 3m high acoustic fence to boundaries and 6 CCTV cameras on building at Morrisons Supermarket Carpark, Amounderness Way, Thornton Cleveleys FY5 3TS in accordance with the terms of the application, Ref 18/00008/FUL, dated 22 December 2017, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. The description of development has been taken from the appeal form and decision notice as the appellant has indicated that the description was changed during the assessment of the planning application, and they agreed to this change.
3. The Council has recently adopted the Wyre Borough Local Plan (2011- 2031) (February 2019) (LP). Consequently, Policy SP14 of the superseded Wyre Borough Local Plan has been replaced by Policy CDMP3 of the new LP. Policy CDMP3 was cited in the reason for refusal, and the appellant has had the opportunity to address this in the evidence.

Background and Main Issues

4. Additional reasons for refusal are detailed in the Council's statement of case. The objection relating to the risk of flooding has since been removed, but the other remains in relation to the sequential test for main town centre uses. With that background, the main issues are the effect of the proposal upon:

- i) the living conditions of the occupants of nearby residential properties, with specific reference to noise and disturbance, light and air quality; and
- ii) the vitality of Cleveleys town centre.

Reasons

Living conditions

5. Situated on a supermarket carpark in an urban area, the proposal is for a 2 storey restaurant and associated drive thru. Residential dwellings are located to the north and west of the site on Victoria Road West and Osborne Avenue. There is a petrol filling station to the east and a band of trees and established landscaping between the site and the residential dwellings on both the northern and western boundaries.
6. The proposal is accompanied with an Environmental Noise Assessment¹ (ENA) and supplementary report, which assess the effect of the proposal upon the living conditions of surrounding neighbouring dwellings. The report and scheme propose various mitigation measures.
7. These include a 3m high acoustic barrier fence, hours of opening and hours of delivery restrictions. The acoustic barrier fence would absorb activity noise from the site to mitigate any adverse noise in neighbouring gardens. The controls over the hours of opening and deliveries would ensure there are reasonable hours of site operations given the proximity of the neighbouring dwellings. These measures could all be imposed by condition.
8. The ENA also recommends mitigation in the form of acoustic enclosures for the extract systems and fitting the control order displays (CODs) on the drive thru with ambient and absolute volume control systems. This means that the volume would be automatically reduced when ambient sound levels reduce during quieter times, and the extract system noise would be subdued. Whilst the location for the CODs is closer to residential dwellings than the building, with the acoustic barrier and volume controls in place, I see little reason why the noise arising from the site would be adverse.
9. The outdoor seating area would be located to the front of the restaurant, away from neighbouring dwellings such that noise arising from the seating area would be a significant distance away, and absorbed by either the building or acoustic barrier fence. Deliveries would take place to the south of the site, again away from the neighbouring dwellings.
10. With the mitigation measures included, the findings of the reports describe that the development will create what is deemed to be *No Observable Effect* and the overall impact assessment concludes that the proposal would have no or at worst, a negligible effect, on the neighbouring living conditions.
11. Whilst the Council upholds its objections in relation to noise from the site, I have been given very little substantive reasons to dispute the findings of the technical reports. Vehicle noise, doors slamming and radio noise from the site would already occur given its use as a car park, and whilst the proposal would be more intensive, based upon the evidence before me, the numerous

¹ Prepared by Peter Ashford, Acoustic Associates South West Ltd (22nd November 2017)

mitigation measures and in particular the acoustic barrier fence, noise arising from the site would be within acceptable levels.

12. The Council also raised concerns over the supplementary acoustics report, which details an increase in background noise levels between 2017 and 2019. The final comments provided by the appellant reasonably explain this increase and provide comparison graphs. I have no reason to dispute that background noise levels have increased by around 5 decibels, and I agree with the appellant that this would provide a greater sound masking effect of any activity noise arising from the site.
13. The External Lighting Impact Assessment² sets out that the site is located in a suburban environmental zone with regard to light assessment. The maximum vertical illuminance on any of the windows of surrounding properties from the external lighting would not exceed 0.71 lux. This is below both the pre and post-curfew values prescribed by the Institute of Lighting Professionals GN01:2011 Guidance note on the reduction of obtrusive light for a suburban environment. The horizontal overspill analysis shows that illuminance levels on the ground would not exceed 1.0 lux within any of the neighbouring gardens. This would be within acceptable levels.
14. Owing to the design of the external lights, there will be no upward light output. None of the luminaires are aimed directly at any neighbouring dwellings, nor would the scheme include any floodlighting, and I observed that the site already contains lighting columns. The Council suggest a condition that external lighting is switched off between 2300-0600. However, this would be unnecessary and unreasonable given that none of the thresholds for the suburban environmental zone have been exceeded. Therefore, the external lighting would not lead to unacceptable adverse effects on amenity.
15. Given the location of windows, the internal lighting emitting from the building would only have the potential to affect occupants of the dwellings on Victoria Road West. This rear elevation would have floor to ceiling glazing in the upper floor and drive thru openings at ground floor. The appellants set out that general guidance in order to avoid impacts from internal spill is that the amount of glazing should be designed to a minimum and ideally not exceed 25% of the floor area. The appellants detail that the glazing in the north facing elevation would not exceed 25% of the floor area of the first floor dining area. This is undisputed by the Council.
16. Furthermore, the separation distance between the rear elevation of the properties on Victoria Road West is approximately 30m. Thus, given this separation and the level of openings, any light spill from the internal windows would be unlikely to lead to unacceptable adverse effects on amenity.
17. In terms of air quality, the evidence³ before me sets out that based on the results of a dispersion modelling assessment; potential impacts on annual mean NO₂ and PM₁₀ concentrations associated with additional vehicle emissions from the development are predicted to be negligible at all receptors. Whilst there would be idling vehicles in the drive thru lane and the Council has raised concerns regarding the methodology of the report; the area is not of poor air quality. Therefore, the effect of the proposal would not lead to or exceed

² Prepared by Herrington Consulting Limited (dated April 2019)

³ Air Quality Impact Assessment, Prepared by Isopleth Ltd. (March 2019) Report Ref: 01.0141.001/AQ v5

- unacceptable air quality limits; and the proposal would not result in, or contribute to, a harmful deterioration in air quality.
18. Odour control from the site could be managed by the submission of an extraction system that would include technical specifications and precise location and siting of the extraction vents and/or external flues. This would be subject to the Council's approval of a scheme required by condition and would ensure there was no adverse odour effect upon amenity.
 19. The site is close to nearby residential dwellings, and perhaps closer than other similar style restaurants in the area. However, the technical evidence presented satisfies me that the effect would not give rise to unacceptable adverse impacts upon living conditions.
 20. Consequently, the proposal would have an acceptable effect upon the living conditions of the occupants of nearby properties. This would be in accordance with Policies CDMP1 and CDMP3 of the LP, which amongst other things, seek to ensure development will be compatible with, and not have an unacceptably adverse impact on the amenity of occupants and users of surrounding or nearby properties the development. I also find no conflict with the National Planning Policy Framework (the Framework), which seeks to create places with a high standard of amenity for existing and future users.

Vitality of Cleveleys town centre

21. The proposal would be a town centre use and the site is located outside of Cleveleys town centre. As such, the application of a sequential test would be necessary. Since making the decision, the Council highlighted 2 additional sites that have become available. Based upon the evidence submitted, The Tramway is not available for occupation until at least 2023, and therefore not sequentially preferable to the appeal site.
22. The Jubilee Park Harvester is closer to Cleveleys town centre. However, it is not in the town centre, being around 427m away. The sequential test is used to identify preferable sites in town centres for accommodating main town centre uses. Although the Jubilee Park Harvester is located closer than the appeal site to the town centre, both sites would be regarded as 'out of centre' as they are more than 300m away from the town centre boundary but not outside the urban area⁴.
23. In terms of the effect upon the vitality of the town centre, the Council present very little evidence to suggest why developing the Jubilee Park Harvester would ameliorate the vitality of the town centre, in comparison to developing the appeal site. The appeal site is accessible, being in the urban area near existing development, accessed off a main trunk road with a bus stop in walking distance. Thus, it is well connected to the town centre.
24. Consequently, as both sites are 'out of centre', I see little reason why it would be sequentially preferable to develop one 'out of centre' site over another, having regard to the policy objective to support the vitality of Cleveleys town centre.
25. Furthermore, although the initial sequential test outlined the Jubilee Park Harvester site would be considered suitable, in assessing the suitability of the

⁴ As defined by the National Planning Policy Framework Glossary under "Edge of Centre" and "Out of Centre".

site again owing to its recent availability, the operator has detailed that the predicted sales would be below the level required to support a McDonald's drive thru and there is less passing traffic. Therefore, based upon the operational requirements of McDonalds to operate a restaurant with drive thru, it is clear to me that the Jubilee Park Harvester site would not be pursued as a viable alternative option by McDonalds.

26. Therefore, taking all matters into account, I consider the sequential test to be met for the development of the appeal site. Consequently, the proposal would have an acceptable effect upon the vitality of Cleveleys town centre. This would be in accordance with Policy EP5 of the LP, which seeks to ensure that town centres remain the focus for both convenience and comparison retail growth and other town centre uses. I also find compliance with the Framework, which seeks to support the role that town centres play at the heart of local communities.

Other Matters

27. I have paid significant regard to the matters raised by interested parties. The operators offer a range of lower calorie options and nutritional information is accessible in store, which enables an individual to identify and purchase food items and combinations that fit in with their individualised calorie or nutritional requirements. Whilst the Council raises some concerns in this regard, I have little evidence to substantiate why the proposal would have an adverse effect upon the health and well-being of Wyre's residents, particularly given the availability of healthier menu choices.
28. I acknowledge the objections raised relating to an increase in traffic and queuing from the site. However, the technical evidence before me, along with consultation responses from both County Highways and Highways England, conclude that the proposal would not have an adverse effect upon the road network. Therefore, although there may be additional queuing during busy periods on the car park, this would be an inconvenience; and would not lead to a harmful effect upon pedestrian and highway safety, nor would it be a reason to withhold planning permission.
29. CCTV and a barrier at the main entrance are proposed, along with other methods to reduce anti-social behaviour or crime, which would in any event be a matter for law enforcement. Any litter or vermin associated with the proposal would be a matter for the management of the site, or for the Council's Environmental Services team.
30. It is a well-founded principle that the planning system does not exist to protect private interests such as the value of land or property, or competitive business interests. The issue of flooding has been agreed between the main parties and I am satisfied the proposal would not impact upon flood risk on the site or in the wider area.
31. Disruption during construction would be temporary, but a construction management plan would help to ameliorate any adverse effects. The site has limited ecological value, but a condition to ensure protection of nesting birds would be necessary in the interest of habitat protection. Employment contracts for future employees would not be a matter material to this proposal.

Conditions

32. I have had regard to the conditions suggested by both main parties, and where necessary have amended these for purposes of clarity and conciseness in line with the Framework and Planning Practice Guidance. In addition to those conditions detailed in my reasons, a condition listing the approved plans is imposed for certainty.
33. A tree protection plan is necessary in order to protect retained trees. A construction management plan is necessary to ensure the construction process has a limited effect upon the safety of highway users and neighbouring living conditions. Details of foul and surface water drainage are necessary to ensure there is suitable drainage provision. As the footprint of the proposed development is within the immediate vicinity of an area of infilled ground, suitable gas protection measures are necessary in the interests of public safety. These conditions are required to be pre-commencement conditions as it is fundamental to have these details agreed before work starts on site. The appellants have agreed to the pre-commencement conditions as required by Section 100ZA(5) of the Town and Country Planning Act 1990 (as amended).
34. Off-site highway works are necessary to protect and improve highway safety for pedestrians or cyclists accessing the site. Completion of the parking spaces, turning space and refuse storage is necessary to ensure there is sufficient provision. Bicycle spaces are necessary to encourage sustainable methods of transportation to the site. A condition to require the planting of the landscaping scheme is necessary in the interests of ameliorating the scheme.
35. Implementation of the flood risk assessment and mitigation is necessary to avoid the risk of flooding. A condition to require the Travel Plan is executed is necessary to ensure the development maximises sustainable travel options. A condition regarding the use of the building is necessary for certainty.
36. A separate material condition along with a ground, slab and finished floor levels condition are not necessary as these details are set out on the approved drawings. It is not necessary or enforceable to apply a condition requiring staff car parking to be in a certain location outside the opening hours. I have been provided with little information why a delivery management plan is necessary given the hours of deliveries and collections would be controlled through another condition, and so I have not imposed it.
37. A restriction on the times in which metal roller cages can be used would in practice be unenforceable. Furthermore, as delivery and collection hours would be restricted, it would be reasonable to assume that use of the metal roller cages would only take place during deliveries or collections, and thus it is also unnecessary. A condition requiring an electrical vehicle charging point is not necessary to make the development acceptable given the substantive evidence submitted by the appellant on the issue of air quality.

Conclusion

38. For the reasons set out above, I conclude that the appeal should be allowed.

Katie McDonald

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and details:
 - Location plan (6789_AEW_8344_0001 Revision E)
 - Block plan (6789_AEW_8344_0002 Revision D)
 - Proposed site plan (6789_AEW_8344_0004 Revision H)
 - Proposed building elevations (6789_AEW_8344_0005 Revision A)
 - Proposed internal layout (6789_AEW_8344_0006)
 - Proposed barrier plan (6789_AEW_8344_0012 Revision A)
 - Landscape Plan (6789_AEW_8344_0015 Revision E)
 - Proposed bin store (6789_AEW_8344_0019 Revision A)
 - Typical barrier and lamp post details
 - BXMW/GS/Sheffield-Stand
 - Ensemble Cloture
 - Poteau Lampadaire SB99
 - Terrace equipment Range Euroline 3 - Mix 2015
 - COD DT Order Post 1:20
 - Absorptive modification to Jakoustic fencing (J7/04177)
 - Jacksons Fencing Acoustic barriers
 - Proposed levels (4170778-1100 Rev I1)
- 3) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]
- 4) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by the local planning authority. The plan shall provide for:
 - i) procedures for maintaining good public relations, including complaint management, public consultation and liaison with the Council's Environmental Protection Team;
 - ii) delivery, demolition and construction working hours.
 - iii) measures for controlling and monitoring:
 - noise and vibration
 - dust and air borne pollutants having regard to the location of nearby sensitive receptors and industry best practice
 - the use of site lighting whether required for safe working or security purposes
 - iv) procedures for emergency deviation of any agreed element within the Plan.

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

- 5) No development shall take place until a drainage scheme, which shall detail measures for the attenuation and the disposal of foul and surface waters, has been submitted to and approved in writing by the local planning authority. The surface water drainage scheme shall be in accordance with the hierarchy of drainage options outlined in the National Planning Practice Guidance and the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015), or any subsequent replacement national guidance / standards, with evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltrations rates to be submitted. A nearby ordinary watercourse (Royles Brook) shall be investigated as a means of surface water disposal.

Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation; and,
- iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

For the avoidance of doubt, surface water must drain separate from the foul and, unless otherwise agreed in writing by the local planning authority, no surface water shall discharge to the public sewerage system either directly or indirectly.

No part of the development shall be occupied or brought into first use until the drainage works have been completed in accordance with the approved scheme. The approved scheme shall be retained, managed and maintained in accordance with the approved details thereafter.

- 6) No development shall take place until a scheme for suitable gas protection measures has been submitted to and approved in writing by the local planning authority prior to the commencement of development. The measures shall include as a minimum: ventilation of confined spaces within the building, a ground slab of suitable construction, a low permeability gas membrane, minimum (ideally none) penetration of the ground slab by services, and passive ventilation to the underside of the building. The development shall be carried out in accordance with the approved scheme and thereafter be maintained and retained.

Alternatively, prior to the commencement of development, a gas monitoring programme and risk assessment of the results shall be undertaken to demonstrate that the above protection measures are not required. The results shall be submitted to and approved in writing by the local planning authority. Any gas monitoring programme must be carried out over a period of at least three months and include at least three readings where the atmospheric pressure is below 1000mb. Gas flow rates must also be provided.

- 7) The development shall not be brought into use until design details of a scheme to provide pedestrian and cycle crossing improvements to the

A585(T) Amounderness Way/Victoria Road roundabout junction (based upon that contained in outline within ADL Traffic Highways Drawing Reference 3385-07 Rev A dated 20/02/2018) have been submitted to and approved in writing by the local planning authority. The details to be submitted shall include:

- Final design details of how the crossings improvement scheme interfaces with the existing highway alignment;
- Full footway surfacing and carriageway marking details;
- Full construction details, including details of any additional protection measures required to safeguard adjacent culvert structure(s);
- Confirmation of compliance with current departmental standards (as set out in the Design Manual for Roads and Bridges) and policies (or approved relaxations/departures from standards; and,
- An independent Stage 1 & Stage 2 Road Safety Audit carried out in accordance with current departmental standards and current advice notes.

The development shall not be brought into use until the scheme been constructed and completed in accordance with the approved details.

- 8) The development shall not be brought into use until a scheme for the control of odours has been submitted to and approved in writing by the local planning authority. The scheme shall include technical specifications, construction and precise location and siting of the extraction vents and/or external flues. The approved scheme shall be implemented in full prior to first use and all equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
- 9) Notwithstanding the submitted information, the development shall not be brought into use until details of the external appearance and materials of the acoustic barrier fencing have been submitted to and agreed in writing with the local planning authority. The 3m high (from ground level) acoustic barrier fence shall be completed prior to the first occupation of the use in accordance with the approved external appearance and materials details, drawing No J7/04177, Proposed site plan (6789_AEW_8344_0004 Revision H) and the Jackson Fencing: Acoustic Barriers documentation. The acoustic barrier fence shall be maintained and retained thereafter.
- 10) The development shall not be brought into use until the parking and turning areas shown on the Proposed site plan (6789_AEW_8344_0004 Revision H) have been laid out, surfaced and drained. The parking and turning areas shall not thereafter be used for any purpose other than for the parking and manoeuvring of vehicles.
- 11) The development shall not be brought into use until the refuse storage area has been completed in accordance with the approved details. The refuse storage area shall be retained thereafter.
- 12) The development shall not be brought into use until the secure cycle storage, as detailed on drawings Proposed site plan (6789_AEW_8344_0004 Revision H) and BXMW/GS/Sheffield-Stand, has been completed in accordance with the approved details. The cycle storage area shall be maintained and retained thereafter.

- 13) The development shall not be brought into use until the scheme of noise mitigation measures set out in sections 6 and 7 of the supporting Noise Assessment [project reference 6814/pja dated 15 June 2018] have been implemented. The approved noise insulation measures shall thereafter be retained.
- 14) All planting, seeding or turfing comprised in the approved details of landscaping [Landscape Plan (6789_AEW_8344_0015 Revision E)] shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The completed scheme shall be managed and maintained thereafter.
- 15) No tree felling, tree works or works to vegetation/hedgerows shall take place during the optimum period for bird nesting (March to August inclusive) unless a detailed survey and report, undertaken by a suitably qualified person immediately prior to any clearance, has been submitted to and approved in writing by the local planning authority demonstrating that nesting/breeding birds have been shown to be absent.
- 16) The development shall be carried out in accordance with the Flood Risk Assessment (FRA) [Issue 3: 15 August 2018, Ref: MD4170778/KLJ/001] and the mitigation measures detailed within the FRA.
- 17) The Travel Plan (ref: ADL/CC/3385/13A dated September 2018) shall be implemented and operational from the point of the first operation of the development for a minimum period of five years.
- 18) All external lighting shall be installed and operated in accordance with the External Lighting Impact Assessment (April 2019), and shall be maintained and retained thereafter in accordance with this.
- 19) The premises shall be used for a restaurant with hot food takeaway and drive thru only, and for no other purpose.
- 20) Deliveries or collections of goods (including waste and recycling) shall be taken at or despatched from the site only between 0700 and 1900.
- 21) The premises shall only be open for customers between 0600 and 2300.

*****End of Conditions*****