

Item no. 5e**Application Reference Number:** P/23/1391/2**Application Type:** S73 variation of condition of **Date Valid:** 28th July 2023**Applicant:** McDonald's Restaurants Limited**Proposal:** Section 73 application to extend the hours of operation as set out in condition 4 of Planning Application ref: P/13/2471/2 (Erection of restaurant and other associated works).**Location:** McDonald's, Warwick Way, Loughborough, Leicestershire LE11 4UG**Parish:** Loughborough**Case Officer:** Linda Walker**1.0 Background**

1.1 This application is referred to Plans Committee as Councillor Tillotson has called the application in to Plans Committee for the reason of amenity - raising concern in relation to:

- Neighbour amenity on noise as the restaurant is in a residential area, closely surrounded by housing and with old people's bungalows.

2.0 Description of the application site

2.1 The existing MacDonalDs restaurant is situated approx. 2 miles to the north of Loughborough Town Centre, in an area that is predominantly residential, with a modest number of commercial properties within the residential area.

2.2 The site is accessed from Warwick Way, a busy main distributor road to the north of the site. Access to other main distributor roads are found via a large roundabout junction to the north of the site, one of those being Derby Road (A6) that gives access to a retail park located further to the east of the site, also close to the residential area.

2.3 The residential properties adjacent to the site are found in Durham Close to the south-east and Rockingham Way to the south-west. The existing layout of the site is

formed of the main restaurant building on the corner of Warwick Way and Rockingham Way. A large car park is to the north of the building giving access to the drive thru that curves around the building with a microphone order point and pick up area to the south-east of the building. An acoustic fence is in situ along the south-eastern boundary of the site with Durham Way.

3.0 Description of the proposal

3.1 Section 73 (S73) of the Town and Country Planning Act 1990 allows for planning applications to be made for the variation or removal of a condition on an existing planning permission. Permission granted under section 73 creates a new permission. The new permission sits alongside the original permission, which remains intact and unamended.

3.2 This S73 application proposes to vary condition 4 imposed on planning permission P/13/2471/2, that restricted the opening hours of the MacDonalds restaurant from 0600 – midnight:

No use of the premises shall be carried out other than between 0600 hours and midnight on any day.

REASON: The premises are close to residential property and a limit on the use is needed to prevent a nuisance or annoyance to nearby residents.

3.3 The proposed new opening hours are from **0500 - midnight** (1-hour additional hour).

3.4 This S73 application therefore only considers the proposed additional hour of operation. The policy context relating to the proposal is found at the relevant part of this report below.

3.5 The application has been subject to further supporting information through the application process, in that a Noise Impact Assessment, prepared by Savills, has been submitted and all interested parties were reconsulted on the 31st October 2023. The Noise Impact Assessment was further amended and received on the 22nd January 2024 in light of the new NPPF being published in December 2023. No further consultation was necessary as the Noise Impact Assessment solely reflected the new paragraph numbers in relation to the development. The NPPF (2023) policy wording remains unchanged from the previous version.

4.0 Development Plan Policies

4.1 The Development Plan comprises the Charnwood Local Plan Core Strategy (adopted 9 November 2015), the Borough of Charnwood Local Plan (adopted 12 January 2004) (saved policies), and the Minerals and Waste Local Plan (2019).

4.2 The policies applicable to this application are as follows:

4.3 [Charnwood Local Plan Core Strategy \(2015\)](#)

- Policy CS2 – High Quality Design
- Policy CS6 – Employment and Economic Development
- Policy C25 – Presumption in Favour of Sustainable Development

4.4 [Borough of Charnwood Local Plan \(adopted 12 January 2004\) \(saved policies\)](#)

4.5 Where they have not been superseded by Core Strategy Policies previous Local Plan Policies remain part of the Development Plan. In relation to this proposal, the relevant ones are:

- Policy EV/1 – Design
- Policy TR/1 – Highway Safety

5. Other material considerations

5.1 [The National Planning Policy Framework \(NPPF 2023\)](#)

5.2 The NPPF policy guidance of particular relevance to this proposal includes:

- Section 2: Achieving sustainable development
- Section 4: Decision making
- Section 6: Building a strong and competitive economy
- Section 8: Promoting healthy and safe communities
- Section 15: Conserving and enhancing the natural environment

5.3 [Planning Practice Guidance](#)

5.4 This national document provides additional guidance to ensure the effective implementation of the planning policy set out in the National Planning Policy Framework. The guidance sets out relevant guidance on aspects of flooding, air quality, noise, design, the setting and significance of heritage assets, landscape, contaminated land, Community Infrastructure Levy, transport assessments and travels plans, supporting the policy framework as set out in the NPPF.

5.5 [Leicestershire Highways Design Guide](#)

5.6 The purpose of the guidance is to help achieve development that provides for the safe and free movement of all road users, including cars, lorries, pedestrians, cyclists and public transport. Design elements are encouraged which provide road layouts

which meet the needs of all users and restrain vehicle dominance, create an environment that is safe for all road users and in which people are encouraged to walk, cycle and use public transport and feel safe doing so; as well as to help create quality developments in which to live, work and play. The document also sets out the quantum of off-street car parking expected to be provided in new housing development and advice regarding the design of parking courts and waste collection.

5.7 Equality Act 2010

5.8 Section 149 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality.

5.9 The Draft Charnwood Local Plan 2021-37

This document sets out the Council's strategic and detailed policies for the Borough over the period 2021-37. The Local Plan was submitted for examination in December 2021 with hearings concluding in February 2023. Further hearings are to be held in February 2024 on limited matters following on from the consultation on the post hearing submissions which closed on 8th November 2023. Following the further hearings, it is anticipated that the Inspectors will issue a letter setting out the requirement for main modifications to be made to make the plan sound. These modifications will be published for six weeks of public consultation so that the responses can assist the Inspectors in preparing their final report. The precise timings of these events are dictated by the Inspectors although, subject to their report, it is anticipated the Local Plan will be adopted by the Council in Autumn 2024.

5.10 In accordance with NPPF paragraph 48, the relevant emerging policies in the plan may be given weight in determining applications, according to:

- (a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater weight it may be given);
- (b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given);
- (c) the degree of consistency of the relevant policies in the emerging plan to the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).

The following policies are considered applicable to this application, and the weight they can be assigned is addressed in the 'Planning Considerations' part of this report.

- Policy DS5: High Quality Design
- Policy E1: Meeting Employment Needs
- Policy T3: Parking Standards

5.12 Noise Policy Statement for England (2012)

6. Relevant Planning History

6.1

Planning reference	Description	Decision and date
P/19/2619/2	Variation of Condition 4 of planning permission reference P/13/2471/2 to change opening hours of premises from between 0600 hours and midnight to between 0500 and 0200 hours seven days a week	refused 21 st February 2020
P/14/0520/2	Discharge of Condition 2 of P/13/2471/2 (materials)	Discharged subject to implementation 23 rd March 2014
P/14/0811/2	Discharge of condition 7 of P/13/2471/2 for highway works	Discharged subject to implementation 6 th June 2014
P/14/1165/2	Discharge of Condition 10 of P/13/2471/2. Landscaping	Discharged subject to implementation approved 21 st July 2014.
P/13/2471/2	Erection of restaurant and other associated works	Approved by plans committee on the 18 th February 2014. Decision found at appendix one for reference.

6.2 All the conditions imposed by P/13/2471/2 have been discharged. Since the approval of the application in 2013 a number of enforcement investigations have been carried out in relation to the breach of conditions at the site as imposed by P/13/2471/2. The last enforcement case was closed in 2022.

7.0 Responses of Consultees and Other Comments Received

7.1 The table below sets out the responses that have been received from consultees with regard to the application. Please note that these can be read in full on the Council's website www.charnwood.gov.uk

Consultee	Response
Leicestershire County Council – Highways	No objection – As condition 4 – operating hours were imposed by the Local Planning Authority (LPA) and not the Highways Authority.
Charnwood Borough Council Environmental Health Team	No objection – content and findings of the supporting noise impact assessment - Savills. 14-0167-91 R01. 26 October 2023.

Ward Councillor and Parish Council Response	
Councillor Tillotson – objection raised and called in to Plans Committee	Neighbour amenity on noise grounds as the restaurant is in a residential area, closely surrounded by housing and with old people's bungalows.

Responses to publicity	
10 letters of objection have been received	<ul style="list-style-type: none"> • Questions details/evidence in noise report • No acoustic fencing for residents at Rockingham Road – noise is an issue • Nuisance from vehicles – horns and general noise • Antisocial behavior • Excessive noise/volume of ordering kiosk • Noise from pick up point • Additional traffic/pollution • Privacy loss • Lighting at site is a nuisance • Inconsiderate parking • External areas being cleaned early in morning • Litter • Re-organize living areas due to excessive noise

8.0 Consideration of the Planning Issues

8.1 The starting point for decision making on all planning applications is that they must be made in accordance with the adopted Development Plan unless material considerations indicate otherwise. The most relevant policies for the determination of this application are listed above and are contained within the Development Plan for Charnwood which comprises the Core Strategy (2015), “saved” policies within the Borough of Charnwood Local Plan 1991-2026 (2004) which have not been superseded by the Core Strategy (2011-2028) and the Minerals and Waste Local Plan (2019). The Core Strategy and Charnwood Local Plan are over 5 years old, and

it is important to take account of changing circumstances affecting the area, or any relevant changes in national policy. The relevant policies listed above are up to date and compliant with national guidance and as such there is no reason for them to be given reduced weight. Development proposals that accord with an up-to-date Development Plan should be determined without delay.

- 8.2 Amongst the material considerations are the emerging Charnwood Local Plan 2021-2037 (ELP) and the National Planning Policy Framework (NPPF), and the Noise Policy Statement for England (2012).
- 8.3 The Planning Practice Guidance (PPG) notes that there are instances where new issues may arise after planning permission has been granted, which require modification of the approved proposals. It advises where these modifications are fundamental or substantial, a new planning application will be required. Where less substantial changes are proposed a non-material amendment application can be submitted, or a minor material amendment (S73 application) where there is a relevant condition that can be varied.
- 8.4 An application made under [section 73 of the Town and Country Planning Act 1990](#) can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission.
- 8.5 Provisions relating to statutory consultation and publicity do not apply. However, local planning authorities have discretion to consider whether the scale or nature of the change warrants consultation, in which case the authority can choose how to inform interested parties.
- 8.6 The main planning considerations applicable to this application are considered to be:
- Background – policy context
 - Residential Amenity
 - Highway and Transportation Matters

Key Issues

9.0 Background – Policy context

- 9.1.1 The NPPF makes it clear that the purpose of the planning system is to contribute towards achieving sustainable types of development, meeting the three strands, such as economic, social objectives and environmental objectives. In terms of meeting the need for economic development, it is clear the framework promotes the effective use of land, while safeguarding and improving environments and healthy living

conditions, it is expected that Local Planning Authorities should plan to make as much use as possible of previously developed or brownfield land, in achieving sustainable patterns of development.

- 9.1.2 The NPPF also, at section 6, paragraph 85 makes it clear that *“planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development”*.
- 9.1.3 Whilst the principle of the development is not considered with this S73 planning application, in terms of policy background, Policy CS6 of the Adopted Core Strategy supports business uses expansion in sustainable locations, such as this site. The emerging Policy E1 of the draft Local Plan, whilst only given limited weight in the determination of the planning application, it does follow the same theme, in that, it encourages growth of businesses in a competitive market.
- 9.1.4 This S73 application proposes to extend the operating hours at the MacDonalds restaurant. Whilst no information has been put forward by the applicant in relation to the need to increase the opening times of the restaurant by 1 hour, there is clear support for business growth and expansion, both in the NPPF and Policy CS6 of the adopted Core Strategy, as well as Policy H1 of the Emerging Local Plan.
- 9.1.5 Having said this, the main issues to consider with this application are residential amenity and highway safety and these are addressed below.

9.2 Residential amenity

- 9.2.1 The NPPF at para 191 states that planning policies and decisions should mitigate and reduce to a minimum potential adverse impacts from noise from new development – to avoid noise giving rise to significant adverse impacts on health and the quality of life and to identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.
- 9.2.2 The PPG explains that Section 73 of the Town and Country Planning Act 1990 considers material amendments to planning applications. This part of the Act allows for the variation of conditions associated with a planning permission, as applied for under this application to vary condition 4 of the above planning application approved in 2013 to amend the opening hours. Local opposition has been received based on the impact that this proposed change would have on residential amenity for a number of issues as set out at section 7.0 above.
- 9.2.3 The Noise Policy Statement for England provides the policy context for the effective management and control of environmental, neighbour and neighbourhood noise

within the context of Government policy on sustainable development. It sets out that development should:

- avoid significant adverse impacts on health and quality of life;
- mitigate and minimise adverse impacts on health and quality of life; and
- where possible, contribute to the improvement of health and quality of life.

- 9.2.4 Policies CS2 of the Core Strategy and EV/1 of the adopted Local Plan seek to protect the amenity of existing and future residents. They require high quality design that does not impact on the amenity of adjacent properties or create poor standards of amenity for future occupiers.
- 9.2.5 Emerging Local Plan Policy DS5 states that new development will be required to protect the amenity of people who live or work nearby and those who live in the new development. This policy is at an advanced stage and hearing sessions in February 2023 considered the policy and it is consistent with the NPPF but is subject to objections and can therefore be given limited weight.
- 9.2.6 The site is located in area that is characterised by predominantly residential uses, however, whilst the land use in the main is residential, main distributor roads are located close to the site and to the existing residential properties.
- 9.2.7 As discussed above this S73 application proposes to vary the restrictive condition 4 of planning permission P/13/2471/2 to change the opening hours. The condition to restrict the hours of opening was imposed solely due to the restaurant being situated close to residential properties, and it was considered that the condition was necessary to limit the use, to prevent a nuisance or annoyance to nearby residents.
- 9.2.8 Whilst the Councils Environmental Health Officer (noise specialist) raised no objection to the extended time of opening, based on the amount of objections received from local residents, officers considered it necessary to request a noise impact assessment and this was carried out and submitted for consideration.
- 9.2.9 The noise impact assessment and premises noise management at appendix C of the assessment was carried out on the 16th and 17th October 2023 between the hours of 22:00 – 07:00 to ensure noise levels were captured during operating hours and when the restaurant is closed. It considers four different noise sources; vehicle noise, people noise, intercom (drive-thru) and plant noise. The assessment acknowledges the relationship with the neighbouring properties and the distances they are set from the restaurant, and states that road noise (Warwick Way) is a contributing factor to noise climate along with some noise from the nearby factory when measuring noise levels.
- 9.2.10 At paragraph 5 of the Assessment observations are made, in that the site is located in a busy suburban area, with the dominant noise source being traffic from the main

Road (Warwick Road), with background noise from the factory. It is confirmed that during the Assessment no people arrived by foot during the early morning survey and people walking from their cars to the store did so quietly and no antisocial behaviours were witnessed during the survey.

9.2.11 In terms of vehicles visiting the site, it was further observed that customers had no preference for using the drive-thru facilities at this store, as opposed to the car park; (10 vs 11). Noises from cars using the restaurant were audible as discrete events when on site, but at greater distances became difficult to distinguish from the continuous sound of passing cars and buses on Warwick Way. Vehicle noise was a combination of idling vehicles in traffic and accelerating/braking as the vehicles entered/left the restaurant.

9.2.12 In relation to the noise levels from the drive thru, it was observed that noise levels were clearly audible with the car park, it is however acknowledged that the noise levels were raised slightly to the south. The noise levels from voices using the drive thru were considered to be in a normal voice tone.

9.2.13 The Assessment confirms that whilst the noise levels on the whole meet the standards for noise, (Noise Policy Statement for England (2012) and the NPPF (2023)) some proactive mitigation measures could be put in place to further protect the amenities and living conditions of those living close to the site.

9.2.14 A management plan is found at appendix C of the Assessment, that indicates the level of noise that is acceptable in terms of noise standards and planning policy including the NPPF in terms of amenity. The management plan is based on the data collected from the assessment and sets out the 3 different noise sources:

- vehicle/anti social behaviour
- People noise
- Intercom and other noise (COD)

9.2.15 The details contained in the management plan set out clear and precise information on how the restaurant should operate and how staff should liaise with other authorities to control anti-social behaviour if and when this occurs, in terms of noise/use of vehicles.

9.2.16 It is also stated in the management plan that signs should be erected at the entrance/exit of the restaurant and at the order point of the drive thru to remind customers to respect the residents in the locality and to reduce noise when leaving the premises or when ordering via the intercom. An informative will be added to the planning permission, if Members are minded to approved the application, to remind the applicant that an advert consent may be required for any new signage.

- 9.2.17 In terms of the intercom (COD) (ordering point for drive thru) a full assessment of noise levels has been carried out at appendix E (COD Noise Levels). The data collected draws on comparison from other stores in terms of noise and volumes of the intercom system, along with collecting data at the application site, that is based on other noise receptors in the locality. The advice contained in the management plan at appendix C states that the volume of the intercom should be reduced/maintained at volume 10 during the night - between the hours of 11pm and 7am, and no higher.
- 9.2.18 The suggested mitigation set out at section 8 of the assessment are measures, that in the main are contained in the management plan at appendix C. However, as a full assessment has been carried out, the plant used at the restaurant is also assessed. The plant at the restaurant is already in place and is calculated at 3dB below the background at the closest receivers, it is however recommended that the fan speeds could be reduced therefore reducing possible noise impact, as highlighted in appendix D of the assessment.
- 9.2.19 In addition to the management plan at appendix C, MacDonalds guidance on anti-social behaviour is found at appendix F that sets out a protocol for staff when dealing with antisocial behaviour, and also includes advice on the use of appropriate CCTV.
- 9.2.20 Having reviewed the noise assessment, the Environmental Health Team concur with the information contained within it. All comments from the neighbouring residents in relation to the current situation and the suggested nuisance being caused by the MacDonalds restaurant have been considered. Based on the information contained in the noise assessment, and noise management plan (appendix C) it is considered that subject to the noise management plan being secured by condition and implemented, the situation at the site is likely to improve in terms of amenity. It is therefore considered that the noise impact assessment as a whole should be imposed by condition as it also recommends suggested mitigation and the McDonalds antisocial behaviour policy at appendix F.
- 9.2.21 It is concluded in the Assessment that the recommended mitigation measures are implemented to ensure the additional 1 hour opening time from 0600 to 0500 results in an acceptable level of noise in accordance with national Noise Policy Statement for England (2012) and the NPPF (2023). Both aim to protect residential quality of life whilst balancing the burden on business.
- 9.2.22 It should also be noted that the Council's noise specialist in the environmental health team has fully reviewed the details contained in the Assessment and raised no objection to the additional hour of opening. It has also been confirmed during the consultation that noise and nuisance are covered by environmental legislation and the licensing department will also consider the issue of amenity, when reviewed.

9.2.23 All of the comments raised by the local residents have been fully considered in the application process. Based on the details contained in the noise impact assessment and no objection raised by the Council's Environmental Health Officer, the application is considered to meet the requirements of policy CS2 of the adopted Core Strategy and Policy EV/1 of the Local Plan (saved policies) and Policy DS5 of the Emerging Local Plan, the NPPF, PPG, and the Noise Policy for England

9.3 Impact on Highway Safety

9.3.1 The County Council Highways officers have not objected to the additional hour of opening proposed, as they have confirmed the condition was not imposed due to highway safety matters.

10.1 Conclusion

10.1.2 The proposed application to extend the operating hours from 0600 – midnight to 0500 to midnight is considered to be compliant with the relevant policies contained in policy CS2 of the adopted Core Strategy, Policy EV/1 of the Adopted Local Plan (saved policy), Policy DS5 of the Emerging Local Plan, the NPPF, PPG and the Noise Policy for England, as it would not have a significant detrimental impact on the neighbouring properties. In addition, there are no highway safety concerns to note.

10.1.3 Taking national and local planning policies into account, and having regard for all relevant material considerations, it is recommended that the variation to condition 4 is approved and planning permission be granted, subject to the imposition of appropriate conditions as set below in recommendation A. In accordance with the Planning Practice Guidance, the decision notice will set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on the earlier permission that continue to have effect. The reasons for the conditions will be updated with the relevant policy references.

11 Recommendation

11.1 Recommendation A

That planning permission be granted subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the approved plans and documents:
 - Layout Plan - Drawing REF: 5014-8896-0004 REVG received on the 20th February 2014
 - Elevations – 5014_8806_005 received on the 20th February 2014
 - Location Plan - -5014-8806-001 received on the 20th December 2013

- Plan number 5014_8806_0004REXH 10th February 2014.
- Noise Impact Assessment (report No. 14-0167-91R01 prepared by Savills and dated 19th January 2024).

REASON: For the avoidance of doubt and to ensure the development is carried out with the approved plans and documents.

2. The details contained in the Noise Impact Assessment (Savills, report No. 14-0167-91R01 dated 19th January 2024), with specific reference to the noise management plan found at appendix C, shall be implemented prior to the extended hours of opening taking place, and the management plan shall continue to be implemented in perpetuity.

REASON: To ensure the noise management plan is implemented and the restaurant continues to manage noise in accordance with the management plan, in the interests of residential amenity in accordance with policy CS2 of the adopted Core Strategy, Policy EV/1 of the Local Plan (saved policies), Policy DS5 of the Emerging Local Plan, The Noise Policy for England, and the NPPF.

3. No trade deliveries or waste collections shall be taken at or dispatched from the site outside the hours of 0700 and 1900 hours.

REASON: The premises are close to residential property and a limit on the use is needed to prevent a nuisance or annoyance to nearby residents. In accordance with policy CS2 of the adopted Core Strategy and Policy EV/1 of the Local Plan (saved policies) and Policy EV5 of the Emerging Local Plan.

4. No use of the premises shall be carried out other than between 0500 hours and midnight on any day.

REASON: The premises are close to residential property and a limit on the use is needed to prevent a nuisance or annoyance to nearby residents in accordance with policy CS2 of the adopted Core Strategy and Policy EV/1 of the Local Plan (saved policies) and Policy EV5 of the Emerging Local Plan.

5. If any vehicular access gates, barriers, bollards, chains or other such obstructions are to be erected they shall be set back a minimum distance of 20 metres behind the highway boundary and shall be hung so as to open inwards only.

REASON: To enable a vehicle to stand clear of the highway whilst the gates are opened/closed and protect the free and safe passage of traffic, including pedestrians, in the public highway.

6. The car parking facilities shown within the curtilage at the site shall be permanently maintained for use as a car park, as approved by plan number 5014-8896-0004 REXH received on the 20th February 2014.

REASON: To ensure that adequate off-street parking provision is retained as approved

7. The vehicular access drive shown on the approved plans shall be maintained at all times as approved by plan number 5014_8806_0004REVH received on the 10th February 2014.

REASON: To ensure the possibility of deleterious material being deposited in the highway (loose stones etc.)

8. The acoustic fence shall remain as approved by plan number 5014_8806_0004REVH received by the Local Planning Authority on 10th February 2014.

REASON: To ensure the satisfactory, overall appearance of the completed development; in order to prevent noise nuisance.

Location Plan:

