

Appeal Decision

Hearing held on 26 February 2015

Site visit made on 17 February 2015

by R Schofield BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 March 2015

Appeal Ref: APP/N1025/A/14/2226966

Land at M1 Junction, Bostocks Lane, Sandiacre NG10 5QG

- 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 [sic] Ltd against the decision of Erewash Borough Council.
 - The application Ref ERE/0214/0009, dated 6 February 2014, was refused by notice dated 15 April 2014.
 - The development proposed is freestanding two storey restaurant with associated drive-thru, car parking and landscaping, installation of 2 No customer order display and canopy.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by McDonald's Restaurants Ltd against Erewash Borough Council. This application is the subject of a separate Decision.

Main Issues

3. In advance of the hearing the Council confirmed that it would not pursue its first reason for refusal, relating to the potential disturbance of a 24 hour operation of the appeal scheme, as this could be addressed by a condition restricting hours of opening. Nonetheless, this, along with other matters relating to living conditions, remains an area of significant concern to local residents. Consequently, I consider the main issues to be the effect of the proposed development on:
 - the safety of highway users and pedestrians and on the efficient operation of the highway network in the vicinity of the appeal site; and
 - the living conditions of the occupiers of nearby dwellings on Bostocks Lane, with particular regard to noise and disturbance, smell, light and privacy.
4. Although discussed separately at the Hearing, to assist with clarity and to avoid repetition I have drawn the highways issues together.

Reasons

Highway Safety and Efficiency of Operation

5. Bostocks Lane is primarily a residential road on the edge of the village of Risley, with an unobtrusive office development at the Interchange 25 site and a

well-hidden Holiday Inn set behind houses towards the junction with Derby Road and Rushy Lane.

6. The appeal site is situated prominently beside Bostocks Lane, from which it would be accessed directly, which itself connects with the roundabout junction providing access to the A52 and M1. It was apparent from my site visit that Bostocks Lane is a busy road with a considerable amount of commercial vehicle and HGV traffic. It was not disputed that one in four vehicles is an HGV. The A52 is a busy dual carriageway, connecting Derby and Nottingham and the M1 is in very close proximity. Photographic and video evidence submitted by local residents shows that it is not unusual for traffic to be nose-to-tail along Bostocks Lane and on the roundabout at certain times of the day. Accident data from Derbyshire Police, provided by the appellant, shows that from 1 March 2011 to 9 August 2013 there were five accidents at the Bostocks Lane junction with the roundabout, comprising of rear shunts between cars waiting to enter the roundabout or collisions while joining or circulating.
7. The appellant's transport evidence is based upon an empirical assessment of usage, and thus trip generation, of what is regarded as a comparative McDonald's restaurant at Stone Cross Park, Warrington. This store was chosen primarily as McDonald's regard it as having a comparable turnover to that predicted for the proposed store and as being in a comparable location.
8. With regard to the first factor, it was suggested that McDonald's uses a range of data to predict likely turnover and that, on the basis of work done to inform viability of the appeal scheme it and the Stone Cross Park restaurant were to be regarded as comparable. I do not doubt that McDonald's undertakes such modelling. However, no evidence was presented that demonstrated the comparability of likely and actual turnover of the respective restaurants and it was made clear that such information would not be forthcoming. Consequently, in the absence of any detailed information in support of this assertion, I can give it little weight.
9. My attention was drawn to an appeal decision¹ where an Inspector accepted McDonald's approach to comparative analysis. However, I do not have any details of the information that was before that Inspector to suggest that it is comparable to that before me. Thus, I afford it little weight and, in any case, each proposal must be assessed on its own merits.
10. Turning to the second factor, the Stone Cross Park restaurant is situated next to a pub and hotel on, and accessed from, a large business park some distance from the nearest motorway junction, rather than directly from a busy road. The business park entrance is off the A580, which runs to the south of the combined settlements of Golborne and Lowton. The nearest residential properties are some distance away. In my judgment, this is far from being comparable to the situation and wider context, in social, geographic and transport terms, of the appeal site.
11. In addition, the Stone Cross Park restaurant is single storey and considerably smaller than the 160 seat, two-storey appeal proposal. It was suggested that the only reason for the size of the appeal restaurant was a response to the Council's request for a two-storey building on the site and that between 100 and 120 seats would be utilised. However, the email from the planning officer

¹ 2150362

- presented in support of this argument only makes reference to a wish for a *'bespoke building to take full advantage of its [the site's] location'*. There was no suggestion that the appeal building was 'bespoke', but even if it was I do not find it convincing that the operator of a restaurant that is designed to, and could, support considerably greater numbers of customers than that at Stone Cross Park, with a commensurately greater impact upon trip generation, would not seek to maximise its potential.
12. There is an extant permission for an office development on the appeal site, which would itself generate additional traffic. This appears, from their consultation response, to be the substantive basis for the County Council's lack of objection. However, no transport information relating to the original office permission appears to exist. The appellant has undertaken a TRICS-based assessment, which shows that an office use would generate fewer peak hour trips than the appeal scheme, albeit that the appellant's view is that the differences are not considered to be material. As such, this extant permission does not weigh in favour of the appeal scheme.
 13. A 'sensitivity' test against TRICS data shows a lower predicted trip generation rate from a restaurant and drive-thru than that recorded at the Stone Cross Park store. However, by the appellant's own admission the TRICS database contains data for only three other McDonald's drive-thru restaurants and was not regarded as providing a realistic dataset. Consequently, data from other non-McDonald's fast food restaurants had to be used and no information was provided to demonstrate that these, or the three McDonald's restaurants, were in any way contextually comparable to the appeal site or appeal scheme.
 14. Paragraph 32 of the National Planning Policy Framework (the Framework) seeks, among other things, to ensure that decisions take account of whether safe and suitable access to the site can be achieved for all people and that development is prevented or refused on transport grounds where the residual cumulative impacts are severe. Taking the above factors into consideration, I am not satisfied that the evidence before me is sufficiently robust or conclusive to demonstrate that there would not be a severe adverse impact upon the efficient operation of the highway network or an adverse impact upon highway safety arising from the development.
 15. There was dispute at the Hearing about the location and size of the proposed upgraded pedestrian crossing point on Bostocks Lane, notably with regard to which standards a pedestrian refuge should be measured against. It was also noted that some school children safely cross the M1/A52 roundabout to reach school, albeit that traffic light controls will restrict traffic flow to some degree. To my mind, however, this is largely moot. The appellant confirmed that the assessment of pedestrian access to the store was not based upon its specific context. Consideration had not been given to the likely increase in pedestrian flows to the appeal site arising from the appeal proposal, down and across Bostocks Lane, notably from the direction of Friesland Secondary School, but only to a limited number of pedestrians walking to the restaurant from Interchange 25. In this context, I do not find the appellant's argument that a feature that is safe for one is safe for all to be persuasive.
 16. Similarly, there was dispute about the likelihood of overspill parking from the development, notably in relation to coaches and HGVs, which could park, legally but obstructively, on Bostocks Lane so that their drivers and passengers

- could use the proposed store. As noted above, Bostocks Lane has a high number of HGVs upon it. On my site visit, I noted HGVs parked on Bostocks Lane, albeit further up it than the appeal site. I also observed an HGV park outside the convenience shop on Derby Road, so that its driver could make a purchase from it, necessitating traffic having to manoeuvre around the vehicle. Based upon these observations, I have no reason to doubt the oral and photographic evidence of local residents that this is not uncommon and that similar parking occurs outside the fish and chip takeaway on Derby Road.
17. The proposed restaurant would not actively cater for HGVs and coaches, for which parking spaces would not be provided. The appellant noted that HGV drivers and coach parties would make use of facilities on the M1 instead. However, as the appellant also considers that the proposed restaurant would not draw significant numbers of vehicles from the M1, it is difficult to see how such use would occur before these vehicles passed the appeal site. It is also reasonable to consider that most professional HGV and coach drivers would not park where they were actively obstructing the carriageway. Nonetheless, this is clearly not always the case. Based upon my own observations and evidence presented, I do not consider that it has been adequately demonstrated that potentially obstructive parking would not be problem.
18. Turning to potential overspill of cars and vans from the car park, it was agreed between all parties that the parking provision was in line with Council's policy on this matter. I also note that some customers might choose to use the drive-thru in the event that the car park was full. Nonetheless, given my concerns about the derivation of the trip generation data and the lack of any information about how McDonald's actually calculate parking space need, beyond a study of Stone Cross Park, there cannot, in my judgment, be any certainty that overspill parking would not result. As the parties also agreed that customers could legitimately use 'old' Bostocks Lane to park on if the car park was full, this cannot but give rise to concerns about highway obstruction, which would negate efforts to alleviate such through the imposition of the existing Traffic Regulation Order (TRO) for this road. On my site visit, I noted a large panel van and a car, both parked in contravention of the TRO (with letters alerting them to this fact, tucked under their windscreen wipers), parked up on 'old' Bostocks Lane, one obstructing the pavement and one the turning head. It is reasonable to consider that inadequate parking provision at the appeal site would exacerbate this situation.
19. Although I do not consider the issues of the pedestrian crossing and HGV/coach/overspill parking to be necessarily determinative individually, together they add further weight to my conclusion above.

Living Conditions

a) Noise and Disturbance

20. As a consequence of its location, background traffic noise is audible at the appeal site. The appellant's evidence has demonstrated that noise from the proposed restaurant, in relation to the operation of the drive-thru, including the use of the Customer Order Displays and the extraction and ventilation equipment, would not exceed the quietest measured background noise level. A condition would secure the installation, operation and maintenance of the latter and the former would be situated to the front of the building, away from residential properties. I have no reason to doubt, based upon guidance in

BS:4142 and reasonable assumptions about the quietest time during the week, that the data in relation to background noise levels is correct or that the survey period was sufficient and, thus, that there would not be a significant disturbance to occupiers of nearby dwellings in relation to these factors.

21. Notwithstanding this, the appellant acknowledged that BS:4142 is not suitable for measuring the impacts of car park noise or that of human activity and that only predictable noise sources can be accurately and objectively assessed. In this context, the Risley Residents Group (RRG) suggested that noise from the use of the car park and outdoor seating area would adversely impact upon nearby residents. Specific concerns were raised about vehicle doors slamming and the audibility of people and music.
22. The appellant and Council agreed that a timing condition would help alleviate the matter of noise arising from deliveries and refuse collection and that a restriction on opening hours would alleviate some additional concerns about noise during the night and early morning. The appellant's Noise Impact Assessment (NIA) also addresses the matter of the impact of car door slams, and notes the comparability of data with that provided by the RRG from a different McDonald's site.
23. However, the NIA acknowledges that, *'there may be a small number of youth gatherings at weekends'*. It does consider that these are most likely to be at a time when traffic will be at a consistent level and, therefore, dominate the noise environment but there is no guarantee that this would be the case. It also acknowledges that there would be noise from customers in the car park and/or using the proposed outside eating area. It is suggested that these would be a matter for the local restaurant management plan, but much would depend on its content and the effectiveness of its implementation.
24. The appellant's response to the RRG's noise submission refers to the removal of the outside seating area to the front of the building, although this is on the western elevation rather than away from nearby dwellings, and to the extra mitigation effects of an acoustic barrier, in relation to door slams, which is not proposed by the appeal scheme. The latter could be conditioned, but there is no certainty that such a proposal would be acceptable in design terms.
25. Thus, it is evident that there is an acknowledgement that the appeal scheme would generate noises that would be distinct from the more constant level of background traffic noise and which cannot be objectively assessed. I have no reason to doubt that customer noise is dealt with diligently by McDonald's and that anti-social behaviour, which may give rise to noise and disturbance, is proactively discouraged. The issue is whether such noise would be sufficiently distinct and frequent that it could be considered to be detrimental to the living conditions of the occupiers of nearby residential properties, to the extent that they would give rise to a change in behaviour or attitude. On this basis, I find that the evidence before me is not conclusive.
26. The RRG and Council also raised concerns in relation to the potential for noise and disturbance arising from vehicles that would be parked on 'old' Bostocks Lane overnight, with their occupants seeking to use the appeal development for food and washing facilities in the morning. Although this may be a possibility, there is not, however, any compelling evidence to suggest it is likely.

27. The appellant drew my attention to another appeal decision², in which the Inspector concluded that the operation of a drive-thru function would not give rise to unacceptable levels of noise. As noted above, notwithstanding my wider concerns, I agree that this is likely to be the case here. The RRG drew my attention to a decision³ in which an appeal for a McDonald's drive-thru was dismissed on noise grounds. However, it appears from this decision that the proposed drive-thru lane was in much closer proximity to residential dwellings, notably their rear gardens, than is the case here. As such, I do not regard it as being directly comparable to the proposal before me.

b) Smell

28. As noted above, the proposed restaurant would incorporate extraction equipment, the agreement, operation and maintenance of which could be secured by condition. No substantive evidence has been presented to suggest that it would not be effective in containing odours from the site and I see no reason why, if properly installed and maintained, it would not be.

c) Light

29. Approval of external lighting on the site could be secured by condition. While there would clearly be an increase in light in the area, generated by the appeal proposal, there is no reason to consider that an appropriate scheme, which would contain light such that it would not affect the occupiers of nearby houses, could not be implemented.

30. Concern was also expressed over the effects of vehicle headlights shining into bedroom windows from the car park. The appellant provided evidence of the limited height to which the beams from car headlights would rise when facing a barrier and I do not consider that van lights would be significantly different. Vehicles facing the houses on Bostocks Lane would be parked behind a boundary hedge. While it was evident from my site visit that this was sparse given the time of year, further complementary boundary treatment could be secured by condition. I consider that these factors would make it unlikely that any significant adverse impacts would arise from illumination of bedrooms by vehicle headlights.

d) Privacy

31. RRG suggested that the use of CCTV on the appeal site would compromise the privacy of nearby residents. This is a valid concern but, again, any CCTV scheme could be agreed by condition and there is no reason why such a scheme would need to, or should, cover residential dwellings beyond the confines of the appeal site.

32. Turning to the potential for overlooking, the restaurant building itself would be a reasonable distance, in terms of sight, from the houses on Bostocks Lane and would not directly overlook any of them. Notwithstanding this, any substantive concerns about loss of privacy, perceived or otherwise, resulting from sightlines of customers at first floor level could be addressed by a condition requiring the appropriate use of obscure glazing in the restaurant. Suitable soft landscaping and boundary treatment could address any overlooking at ground floor level.

² 2150362

³ 2193716

33. I conclude, therefore, that given the inability to fully quantify human noise that it is acknowledged would arise from outside the restaurant, a precautionary approach is appropriate given the proximity of the appeal site to residential properties. Thus, I am not satisfied that it has been shown conclusively that the appeal scheme would not have an adverse impact upon the living conditions of the occupiers of nearby dwellings on Bostocks Lane, with particular regard to noise. In these terms it would conflict with paragraph 17 of the Framework, which seeks, among other things, to ensure that planning always seeks to secure a good standard of amenity for all existing and future occupants of land and buildings. I further conclude that the scheme would not have an adverse impact upon the living conditions of the occupiers of nearby dwellings on Bostocks Lane, with particular regard to light, smell and privacy. In these terms, it would not conflict with the requirements of the Framework.

Other Matters

34. The appeal scheme would create jobs, with opportunity for local employment and access to McDonald's training scheme. However, as there is extant permission for a sizeable office development on the site, which it is reasonable to consider would also result in job creation, I give this factor little weight.
35. McDonald's franchisees are also encouraged to build strong links with the local community and support local initiatives. Notwithstanding the very significant levels of local community opposition to the scheme, there is no evidence of how this would be manifested locally and, although there could be some targeted benefited, this does not outweigh my findings above.
36. The Council has not raised an objection in relation to the impact of the appeal proposal on the character and appearance of the area. However, such an objection has been made by a considerable number of local residents. Although Bostocks Lane may function as an arterial route it is essentially residential in character with a limited amount of discreetly placed office accommodation and a similarly unobtrusive hotel. There are no retail or restaurant outlets and advertising is absent. Any future advertisements proposed for the appeal site could be controlled by the Council through the Advertisement Regulations, but the introduction of a restaurant and drive-thru in such a prominent position on an overwhelmingly residential street would appear incongruous in relation to its established character. There is an extant permission for an office building on the site, but the character and appearance of such a development would be markedly different to that of a drive-thru restaurant facility. It would, at least, reflect that of the established development at Interchange 25. Thus, although I am dismissing the appeal scheme for other reasons, it would appear to give rise to a harmful impact upon the character and appearance of the area, which adds weight to my overall findings.

Conclusion

37. I have found that the appeal proposal would not have an adverse effect upon the living conditions of the occupiers of nearby dwellings on Bostocks Lane with regard to smell, light and privacy. However, I have also found that on the balance of the evidence before me it has not been shown conclusively that the appeal scheme would not have an adverse impact with regard to noise. Nor am I satisfied that the evidence before me is sufficiently robust or conclusive to demonstrate that there would not be a severe adverse impact upon the

efficient operation of the highway network or an adverse impact upon highway safety arising from the development. I do not consider that the lack of adverse effects with regard to smell, light and privacy is sufficient to outweigh these matters. Thus, for the reasons given above, and taking all other matters into consideration, including the lack of objection to the appeal proposal by the County Council, Highways Agency and Environmental Health Officer, I conclude that the appeal should be dismissed.

R Schofield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Matthew Carpenter	Planware Ltd
Mr James Pereira QC	
Mr Peter Ashford	Acoustic Associates South West
Mr Allan Mendelsohn	ADL Traffic
Mr Rob Green	ADL Traffic

FOR THE LOCAL PLANNING AUTHORITY:

Mr Charles Robinson	Parkwood Consultancy Services
Mr Phillip Taylor	Savoy Consulting

INTERESTED PERSONS⁴:

Mr Trevor Pedley	Risley Residents Group
Mr Kenneth Richardson	Risley Residents Group
Cllr Wayne Major	County Council Ward Member for Sandiacre
Mr Peter Monk	Headteacher, Friesland School

DOCUMENTS SUBMITTED AT THE HEARING

1. Letter from Mr Martin Loven to Mr Matthew Carpenter, dated 17 February 2015, regarding the Risley Residents Group's noise assessment, submitted by the appellant.
2. DVD of video evidence of traffic on Bostocks Lane and of Stone Cross Park, submitted by Risley Residents Group.
3. Costs Application by McDonald's Restaurants Ltd, dated 26 February 2015.

⁴ Given the number of people who did not give their name when asking questions or making points, but who made contributions to the proceedings on an *ad hoc* basis, this list is not comprehensive and the omission of any names does not undermine the valuable contribution that other participants made.