



Appeal Decision

Site visit made on 24 November 2021

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th December 2021

Appeal Ref: APP/L2250/W/21/3275546

Tesco Car Park, Cheriton High Street, Folkstone, CT19 4QJ

- 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 Restaurants Ltd against the decision of Folkestone & Hythe District Council.
 - The application Ref 20/0983/FH, dated 10 July 2020, was refused by notice dated 24 December 2020.
 - The development proposed is described as erection of a freestanding restaurant with drive-thru facility, car parking, landscaping and associated works, including Customer Order Displays (COD), goal post high restrictor and play frame. Relocation of the existing recycling area, click and collect and trolley bays.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a freestanding restaurant with drive-thru facility, car parking, landscaping and associated works, including Customer Order Displays (COD), goal post high restrictor and play frame. Relocation of the existing recycling area, click and collect and trolley bays at Tesco Car Park, Cheriton High Street, Folkstone, CT19 4QJ in accordance with the terms of the application, Ref 20/0983/FH, dated 10 July 2020, and the plans submitted with it or as substituted during the processing of the application, subject to the conditions set out in a schedule attached to this decision.

Application for Costs

2. An application for costs was made by the Appellant against Folkestone & Hythe District Council. This application is the subject of a separate decision.

Preliminary matters

3. Since the appeal application was refused the National Planning Policy Framework 2019 (2019 Framework) has been replaced by the National Planning Policy Framework 2021 (The Framework). Within The Framework paragraph 127 (f), which is referred to in the Council's decision notice, has been renumbered 130, although its content is unchanged.
4. During the processing of the appeal application a number of the drawings submitted with the application were superseded. As indicated on the decision notice the Council's decision is based upon drawing Nos: 7584-SA-8869-P002N, 7584-SA-8869-AL03B, 7584-SA-8869-P004N, 7584-SA-8869-P005D, 7584-SA-8869-P006D, 7584-SA-8869-P014E, 16987-VL-McD_L01 Rev D, 16987-VL-

McD_L02 Rev A, DWG 00, DWG 01, Goal Post Height Restrictor and COD/Canopy Digital Drive Thru Lane and E11-003-V01.

5. On 12 February 2021 the Council confirmed that it would not be contesting highway safety or that the proposal amounts to unsustainable development. Also, that the council would not be presenting evidence relating to air quality or climate change.
6. I confirm that this decision is based upon the information set out in paragraphs 3, 4, 5 and 6 above.

Main issue

7. The main issue is the effect of the proposal on the living conditions of the occupiers of nearby dwellings, with particular regard to noise and light pollution.

Reasons

8. The appeal site occupies a prominent position in the street scene, adjacent to the junction of Cheriton High Street and Cheriton Approach. The Cheriton Interchange and the M20 occupy an elevated position a short distance from the appeal site, with the Eurotunnel UK Terminal beyond the M20. The triangular parcel of land bordered by these roads is currently occupied by a Tesco superstore, petrol filling station and associated parking.
9. The appeal site comprises the eastern end of Tesco's car park, which abuts the embankment between Cheriton Approach and the M20 junction to the north and a small area of scrub, grass verges and occasional trees to the south. To the west is the car parking with the supermarket beyond. Other than highway and rail infrastructure the surrounding area is characterised by a combination of estate housing and commercial developments, as well as a number of educational, training and leisure/recreational facilities.
10. The site is located close to the strategic road network and the Eurotunnel terminal. There are bus stops on both sides of the road outside the Tesco store and the site is within easy walking and cycling distance of local housing developments and businesses. Overall, the site is located in an accessible and convenient location for the proposed facility.
11. The proposed two storey building would be located in the southern part of the appeal site, with the restaurant entrance and parking area to the north of it, adjacent to the existing car park and motorway embankment. There would be an outside play area and seating to the north and west of the building and the drive thru opening would be located along the southern elevation.
12. The proposed restaurant and drive thru facility would operate 24 hours a day. This differs from the Tesco supermarket, which is currently open between 0600 – 0000 hours Monday to Saturday and 1000 -1600 hours on Sundays, although it has the ability to open 24 hours a day. The petrol filling station on the site opens the same hours during the week and 0700 – 0000 hours on Sundays.
13. With the proposal the appeal site would be separated from Cheriton High Street by a hedge, wide verge and tree planting. Access to the deliveries area would be in the northeast corner of the building and the associated yard area would be enclosed and located to the east of the proposed building.

14. Customer access to the facility would be from the existing vehicle access which serves the Tesco supermarket. Vehicles would follow the existing car park layout and would turn into the McDonald's parking area at the northern end of the appeal site. Access to the drive thru would be directed along the northeast side of the site and then between the southern elevation of the building and the southern boundary of the site. A soft landscaped area would be formed within the southern and south-eastern boundaries of the site.
15. To facilitate the proposal the Tesco superstore would lose some of its existing parking spaces and the existing click and collect vehicles spaces and recycling centre would be relocated elsewhere on the site.
16. Amongst other things Policy HB1 of the Folkstone & Hythe Places and Policies Local Plan 2020 (LP), state that new development should not have an adverse impact on the living conditions of existing residents. Similarly, Section 8 and paragraph 130 f) of The Framework seek to ensure that new developments promote health and well-being. LP Policy RL8 3) & 5) relates to development outside of designated town centres. It requires new facilities to be located in accessible locations, with acceptable vehicular access and which can be provided without harm to the living conditions of local residents.
17. The closest dwellings to the proposed restaurant and drive thru are located within Samian Crescent. These dwellings are elevated above and separated from the proposed restaurant and drive thru facility by Cheriton High Street and Samian Crescent. The embankment, hedge and trees adjacent to Samian Crescent form a physical barrier and provide a screen between the dwellings in Samian Crescent and the proposed development. Whilst the proposed building would be visible from these dwellings, particularly from their first-floor windows, it would be seen within the context of its commercial setting, as well as beyond and against the backcloth of roads, hedges, trees, embankments, Cheriton interchange and the M20.
18. The dwellings in Star Lane are located in excess of 50 metres from the appeal site. They are separated from the appeal site by Cheriton approach, embankments and associated mature planting.
19. There are high level street lights along both sides of Cheriton High Street and Cheriton Approach, as well as adjacent to the Cheriton interchange, the M20 and within the Eurotunnel site. There is lower-level lighting within the highway, Tesco car park, Samian Crescent, the surrounding roads and within residential and commercial properties. For these reasons I agree with the lighting assessment prepared by Herrington Consulting Limited, that the area falls within a suburban environmental zone (E3), which has a medium brightness lighting environment.
20. The outside lighting scheme has been prepared by a lighting specialist and can be secured through the imposition of a condition.
21. There is no fenestration in the eastern elevation of the proposed building, which faces towards Star Lane and limited fenestration in the southern elevation, which faces towards the closest dwellings in Samian Crescent. The only areas of large expanses of glazing are on the north elevation which faces the embankment and Cheriton interchange and on the north side of the western elevation which faces into the Tesco supermarket access road.

22. It is reasonable to assume that most people visiting the proposed restaurant and drive-thru will do so by car. This will include a combination of visits solely to the facility and shared visits by those travelling to or from the channel tunnel terminal, going to or returning from work, shopping, etc. As illustrated in the appellant's highway statement relatively few visits to the proposed restaurant and drive-thru would likely take place between the hours of 1200 and 0600, when traffic is light and some street and other lighting may not be in use. At other times there is likely to be significantly more traffic activity in the locality. It is also possible that the proposed facility would reduce traffic elsewhere in Folkstone, by providing a restaurant and drive thru close to the M20 and the Eurotunnel terminal.
23. For these reasons the light pollution from vehicles accessing and exiting the proposed facility would be minimal.
24. Whilst the proposal would add to light pollution in the locality, there is a considerable level of illumination in the area. The majority of the proposed glazing is orientated into the Tesco site and away from local dwellings. The dwellings in Samian Crescent and Star Lane are separated from the appeal site by roads with high and low-level street and other lighting and are screened from the appeal site to varying degrees by embankments and planting. The proposed lighting scheme has been assessed against ILP Guidance Criteria and the appellants External Lighting Assessment concludes that the proposed lighting would not harm the living conditions of local residents.
25. The appeal proposal does not include any signage. Any proposal to install illuminated signage would need to be assessed on its individual merits having regard to potential light pollution and its impact on the living conditions of local residents.
26. For these reasons and notwithstanding the fact that the proposed facility would be able to operate 24 hours a day, I am satisfied that the additional light pollution generated by the proposal would not have a material impact on the living conditions of local residents.
27. The appellant has submitted an environmental noise assessment, which has regard to the aims of National and Local policies, current British Standards and various publications by the World Health Organisation (WHO). The assessment includes day and night time measurements of existing background noise levels, together with an assessment of the predicted noise levels adjacent to 30 Samian Crescent, which is the closest dwelling to the proposed restaurant and drive-thru.
28. Noise levels relating to the drive thru facility were based upon noise generated by other similar facilities and on forecasted customer arrival data provided by ADL Traffic and Highways Engineering. The noise assessment included calculated Friday and Saturday drive thru flows and took account of arrival, ordering, collection and departure associated with comparable drive-thru facilities. With regard to the use of the restaurant the assessment focused on parking and included car door slam events, which are associated with peak noise levels in car parks. Noise levels for the proposed fixed plant were also taken into account. The assessment concluded that all three sources of noise would comply with the WHO daytime and night time noise values, with noise limits associated with fixed plant being controlled through the imposition of a condition. This fixed plant should also deal with matters relating to odour.

29. The proposed restaurant would attract people on foot and those arriving by car would need to walk to the restaurant from their vehicles. Should it occur, shouting and other forms of loud anti-social behaviour could have the potential to be noticeable and intrusive for some local residents, particularly during the night and early morning hours.
30. The appellant has advised that Anti-social behaviour impacts on customer experience and staff safety and that the company understands that it has a responsibility to the local community. The company already has policies and measures in place to mitigate and minimise such anti-social behaviour. They include a combination of training, staffing levels, physical security equipment and partnership working with all responsible authorities.
31. In addition, as pointed out by the appellant's agent, the operation of 24 hour restaurants supplying hot food and drink are regulated under other legislation. Accordingly, the local authority has the ability to keep the restaurant's opening hours under review. I also note that the Council's Environmental Health Officer has raised no concerns, subject to the imposition of a noise condition which sets out maximum rating levels of the sound emitted from the site, when measured from the nearest residential premises.
32. I note and understand the concerns raised by the Council and third parties regarding possible noise and disturbance. The appellant has addressed these concerns in detail and I find their submitted evidence to be objective and robust. It is supported by my observations at a comparable sized McDonalds restaurant and "Drive-thru", on a busy Friday evening. The outside areas were quiet and there was no Anti-social behaviour or obvious litter.
33. For these reasons, subject to the suggested noise condition, I consider that the noise from all sources likely to be generated by the proposal would not have a material impact on the living conditions of local residents.
34. Regarding vehicle fumes, little evidence has been provided by either of the main parties. Having regard to the accessibility of the site, the projected and nature of customer trips and the potential of the proposal to reduce trips from the strategic road network, into the main settlement, I am far from convinced that the proposal would materially add to air pollution in the locality and in Folkstone as a whole.
35. Overall, I find that both individually and collectively, the effect of the likely noise generated by vehicles and guests, traffic fumes and the increased light pollution within the local area would be modest.
36. I conclude on the main issue that the proposal would not have a materially adverse impact on the living conditions of local residents due to noise, light or other pollution. Accordingly, it would comply with LP Policies HB1 & RL8 3) 5) and section 8 & paragraph 130 f) of The Framework.

Other matters

37. Concerning highway capacity and safety, the proposal uses the existing supermarket access. Kent highways has confirmed that the proposal would not impact negatively on the revised layout for the Cheriton Interchange junction. That the proposed visibility splays, and cycle and vehicle parking provision is acceptable and that the agreed maximum queue for the Drive-Thru could be accommodated within the McDonald's site. They have raised no objections to

the proposal and the local planning authority has confirmed that it would not be contesting highway safety. Little evidence has been submitted to demonstrate that the predicted traffic levels are inaccurate, or that parking provision would be inadequate.

38. Consequently, I am satisfied that the proposal would comply with LP Policies HB1 & RL8 and paragraph 111 of the Framework, which together seek to ensure that new development is safe and would not have a significant detrimental impact on the highway network in terms of congestion and road safety.
39. Regarding litter the appellant company has advised that they would conduct at least three daily litter patrols both on and off site. Litter bins would be provided outside the premises and customers would be encouraged to dispose of litter responsibly, both through signage and promoting Anti-littering within local communities and nationally.
40. I note the comments made regarding need, proximity to schools and health and well-being. However, no policies which seek to restrict the number or siting of 'fast food' outlets have been brought to my attention. The appellants conducted a sequential test and retail impact assessment at the application stage, which concluded that there are no sequentially preferable sites and that the proposal would not impact on the neighbouring centre.
41. Finally, with regard to the impact of the proposal on wildlife, the site is currently hard surfaced and used for parking and whilst some existing boundary planting would be lost the proposal includes new tree planting within and around the site and a soft planting strip around the southeast corner of the site. For these reasons I find that the proposal would not have an adverse impact on wildlife.

Conditions

42. The Council has suggested the imposition of conditions relating to the provision and maintenance of soft landscaping; the provision of the proposed parking spaces; refuse and recycling facilities, cycle storage facilities; the provision of visibility splays; details of the relocated click and collect facilities; the undertaking of an archaeological evaluation; maximum noise levels; , adherence to the submitted lighting scheme, any on-site contamination; adherence to the submitted drainage strategy and adherence to the approved plans and associated details.
43. I agree that these conditions are all necessary to protect the living conditions of local residents; for reasons relating to highway safety; to ensure the proposal respects the character and appearance of its surroundings; to ensure the site is suitably drained; to record and where necessary preserve any archaeological remains; to ensure the site is not put at risk from unacceptable levels of contamination; and in the interests of certainty. I have however amalgamated the two proposed landscape conditions to avoid duplication and have made minor changes to the wording of some conditions in the interests of precision and enforceability.

Conclusion

44. Having regard to the conclusion on the main issue and having regard to all other matters the appeal is allowed.

Elizabeth Lawrence

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 complete accordance with the details shown on the following approved plans: 7584-SA-8869-P002N, 7584-SA-8869-AL03B, 7584-SA-8869-P004N, 7584-SA-8869-P005D, 7584-SA-8869-P006D, 7584-SA-8869-P014E, 16987-VL-McD_L01 Rev D, 16987-VL-McD_L02 Rev A, DWG 00, DWG 01, Goal Post Height Restrictor and COD/Canopy Digital Drive Thru Lane and E11-003-V01.
- 3) No development shall take place until the applicant, or their agents or successors in title, have secured the implementation of:
 - i) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved in writing by the local planning authority; and
 - ii) Following on from the evaluation, any safeguarding measures to preserve in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved in writing by the local planning authority.
- 4) A landscape management plan, including details of the type of maintenance proposed for all planting including the planters, replacement planting and trees, including tree pits, and proposals for long term tree management shall be submitted to and approved in writing by the local planning authority prior to the first use of the development and the landscaping shall thereafter be maintained in accordance with the approved details for the lifetime of the development unless previously agreed otherwise in writing by the local planning authority.
- 5) No fixed plant and/or machinery shall come into operation until details of the fixed plant and machinery serving the development hereby permitted, and any mitigation measures to achieve this condition, have been submitted to and approved in writing by the local planning authority. The rating level of the sound emitted from the site shall not exceed 50dBA between 0700 and 2300 hours and 35dBA at all other times. The sound levels shall be determined by measurement or calculation at the nearest residential premises. The measurements and assessment shall be made according to BS 4142:2014 as stated within the Noise Assessment report dated 16 December 2019 – Project 199336.
- 6) Prior to the first use of the building hereby permitted the parking spaces shown on the approved plans shall be made available and thereafter retained and maintained.

- 7) Prior to the first use of the building hereby permitted the cycle parking shown on the approved plans shall be made available and thereafter retained and maintained.
- 8) The visibility splays as shown on the approved plans, with no obstructions over 1.05 metres above the carriageway level within the splays, shall be provided prior to the first use of the development, and thereafter be maintained and retained.
- 9) Details of the facilities for the storage and collection of refuse and recyclables shall be submitted to and approved in writing by the local planning authority and the approved facilities provided before the development is first occupied. Thereafter the approved facilities shall be kept available for such use by the development.
- 10) Details of the allocated Click and Collect Facility serving the Tesco Supermarket shall be submitted to and approved in writing by the local planning authority prior to being constructed. The development shall be carried out in accordance with the approved details unless previously agreed in writing by the local planning authority and permanently retained thereafter.
- 11) The lighting scheme hereby approved shall be carried out in accordance with the guidelines provided by the Institution of Lighting Professionals 2011 and shall be maintained as such unless otherwise agreed in writing by the local planning authority.
- 12) If, during development, contamination is found to be present at the site then no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the local planning authority. The remediation strategy shall be implemented as approved.
- 13) The development hereby approved shall be carried out in complete accordance with the information and details provided in the Drainage Statement report (NB8869) produced by Granville and the Drainage Maintenance Plan (NB8170) produced by Glanville received 13.07.2020.