

**LICENSING PANEL  
25 MARCH 2014  
2.05 - 3.45 PM**



**Present:**

Councillors Thompson (Chairman), Allen and Brossard

**In Attendance:**

Simon Bull, Legal Adviser to the Panel

Laura Driscoll, Licensing Team Leader

Amanda Roden, Democratic Services Officer

**7. Declarations of Interest**

There were no declarations of interest.

**8. The Procedure for Hearings at Licensing Panels**

The Chairman confirmed that all parties understood the procedure to be followed for the hearing.

**9. Application for New Premises Licence - McDonalds, Wildridings Road, Bracknell, Berkshire RG12 7WT**

The Panel's decision was that the application for a new premises licence in respect of McDonalds, Wildridings Road, Bracknell, Berkshire RG12 7WT shall not be granted.

The Panel carefully considered all the information presented, both written and oral, from:

- the Licensing Team Leader who outlined the issues;
- the applicant's representatives Ms Annabel Graham-Paul, Barrister and Mr Andy Holtorp, Operations Consultant; for McDonalds
- the interested parties (1), Mrs Emma Barnard, who submitted oral and written representations on behalf of her constituents, Bracknell Town Councillor Mr Chris Turrell who submitted an oral representation, and written representations on behalf of Bracknell Town Council and from 12 other interested parties.

together with reference to the appropriate Licensing Objective: The Prevention of Public Nuisance, particularly noise nuisance, the Council's own Licensing Policy and the Secretary of State's guidance.

At the conclusion of the licensing panel hearing all participants present confirmed that they had been given the opportunity to say all they wished to say. In the interest of the equality of arms the panel restricted the number of objectors who were allowed to address the panel orally to three as set out above. Although not timed, McDonalds'

legal representative spoke approximately for an equal amount of time as the three objectors.

The Panel noted that none of the responsible authorities had made representations.

However, the experienced panel members were also aware that the police locally only made representations when there had been serious or major incidents at a licensed premises. Since the Licensing Act came into force the police had only made representations in a handful of cases, whereas Bracknell Forest Council had held many licensing panels. However, the panel still gave credit to McDonalds for the absence of representations by the statutory bodies.

The Panel noted the concerns of the representatives which included the following:

### **Parking**

People using McDonalds in Wildridings Road, parking on grass verges, in the road and in residents' parking spaces. The Panel disregarded the allegation of cars queuing on the highway to enter McDonalds as they did not feel that would occur during the extended hours. That was only relevant to the current operating times which were not under consideration by the panel.

### **Rubbish**

Rubbish deposited in people's gardens, private bins, garage areas, the Mill Pond, and residential parking bays; and risks of vermin and reports of vermin from the abandoned McDonalds food particles.

### **Cars and Lorries**

Cars revving engines, racing in the car park when it was empty, playing loud music from cars, the slamming of car doors and parking causing obstruction; HGV parking, littering and blocking the road and parking bays causing obstruction and general noise from cars.

### **Migration and foot patrons**

People migrating to and from the McDonalds restaurant through largely residential areas, particularly through the Great Hollands estate; anti-social behaviour and noise nuisance. It was the view of the panel that this went on during the opening hours up until 23:00 and the panel were certain that if the noise could not be contained within those hours it was not going to be containable within the extended hours, when people in a predominantly residential area were trying to sleep.

The panel found that the above on the balance of probabilities, occurred with a regular frequency and were attributable directly to McDonalds operations alone at Wildridings Road.

Whilst people generally did not have an issue with McDonalds as a restaurant, the main concern was the issues arising from this particular McDonalds restaurant being located in a residential area as opposed to a commercial area. This was an issue that McDonalds would always have to contend with at this particular outlet having chosen to site their business in the heart of a residential area.

## **Noise nuisance and the impact of noise nuisance on disturbance to residents sleep patterns**

The issues concerning noise were said to be worse when the restaurant was busy Friday evenings through to Sunday evenings, and particularly during the summer months. A barrier had been erected at The Lakes car park near to Mill Pond to prevent use of this car park by people frequenting the McDonalds restaurant in Wildridings Road, however, it was said that people could still gain access to this car park. Despite there being no intention to erect signs directing people to McDonalds from major roads and motorways, the restaurants' address and opening hours could be found easily on the internet, which would be accessed from people's mobile phones, for instance. The fact that McDonalds was reasonably accessible from major roads and being the only 24 hour food outlet in the area, it would attract people to use the outlet through out the night bringing traffic and noise to a residential area. Even if the patron numbers were limited to the relatively modest numbers, set out by the McDonalds legal representative, this would be too many and would regularly disturb the sleep patterns of the people living in the immediate vicinity of the area which was a residential area.

Although the restaurant was not located on a major traffic route, residents were concerned that the overnight hours proposed at McDonalds in Wildridings Road could encourage people to use it as an overnight stop, similar to a service stop on a motorway. Due to the depressed siting of the restaurant and the track leading to it, larger vehicles such as lorries would park in nearby roads when visiting it, causing problems for residents. As the traffic on nearby roads became less at night, noise would be heightened and would have a detrimental effect on the sleep of residents living nearby. It was envisaged that the noise and nuisance currently experienced by residents would continue through the night if this McDonalds restaurant was open 24 hours a day. It was the incidence of noise nuisance, which together with the cumulative concerns set out above, that tipped the balance and led the panel to decide to refuse the application.

Letters had been sent to residents, for example, living adjacent to the restaurant on both sides, opposite the restaurant and in areas bordering outside areas of the restaurant, in line with the neighbour notification policy of the Licensing Team at the Borough Council. The Panel noted that mediation had been suggested by the Licensing Team but that there had been no response from Shoosmiths, representing McDonalds, regarding this. The Panel found it regrettable for what ever reason that McDonalds had not entered into mediation. However, the Panel believed that even if they had mediated, the problem McDonalds faced with this outlet was that it was the only outlet operating in the area and the problems were associated with entering and leaving McDonalds and off site consumption in the vicinity, rather than those sitting in the restaurant to eat. This fact was relevant because very often it was not always easy to identify whether the public nuisance, particularly noise nuisance, was attributable to the particular unit in this case. However, because it was the only outlet it was possible to determine with a high degree of certainty that the public nuisance, particularly noise, was definitely attributable to McDonalds.

The issue of noise nuisance was also attributable to people patronising the establishment on foot and walking into the estates. The Panel found, on balance of probabilities that the current noise nuisance from patrons on foot currently occurred up until and immediately after 23:00 when McDonalds closed. Were the outlet licensed to open later the Panel were of the clear view that the noise would persist at least between 23:00 and 01:00 to 02:00 and the Panel found that to be an unacceptable state of affairs for those living in a residential area. The Panel did not believe that residents should face noise associated with this establishment at that

hour of the night. This was not a matter on which the Panel felt there was any uncertainty.

The Panel were addressed on the fact, that maybe was not the test, and that the presumption was in favour of granting the licence and the review process being triggered as the appropriate remedy if the situation did not work as smoothly as the applicant suggested. Having considered all the evidence and weighed it very carefully, the Panel concluded that there was currently noise up until and immediately after 23:00 and that with a high degree of certainty it would continue up until and immediately after how ever late McDonalds were allowed to operate at this outlet. The Panel did not accept the representations made on behalf of McDonalds that this outlet would function on a 24 hour basis without significantly disturbing the local residents. Whilst the Panel would accept the residents would have to tolerate low levels of irregular noise nuisance, they were of the opinion having heard the evidence that the noise levels were currently unacceptable up until and immediately after 23:00. They would continue to be so into the night, if the premises was granted later opening hours. This was not a case where the Panel felt that a later licence should be granted and the review process triggered if it did not work. The Panel were of the clear view based on the evidence, presented orally and in writing that noise would occur beyond 23:00 from day one if a later terminal hour was granted.

The Panel noted the reason for the application for a new premises licence in that as a successful restaurant, McDonalds envisaged that its customers would welcome the availability of food and hot drinks during the night, particularly for people on shift work or commuting to and from work. The Panel considered this evidence and weighed it in the balance but still felt that for the reasons set out above, the 24 hour licence should not be granted.

McDonalds undertook litter picks of all litter in the vicinity of the restaurant three times a day, including residential streets such as Arncliffe, and could possibly undertake an early morning litter pick as well. The representatives for McDonalds did not believe that the extended hours proposed during the night would exacerbate the noise or issues reported, as it was thought that less people would frequent the restaurant during the hours of 23:00 and 05:00, and that these were likely to be night workers rather than young people causing noise nuisance. The Panel considered this and considered that the noise levels would be intolerable on the sleep patterns of the residents.

McDonalds' representatives offered to erect signs in the car park asking customers to be courteous when arriving and leaving the restaurant, and confirmed that there would be between five and eight people working in the restaurant during the hours of 23:00 and 05:00, all with security training. The current delivery time for this restaurant was 06:00 and drivers had a specific time period in which to make deliveries; there were no plans to change this or to have overnight deliveries to the restaurant.

The Panel's findings on this were that it accepted without reservation that McDonalds ran an orderly house when people were eating their food inside the premises. However, that was not the issue. The problem was the noise nuisance and associated problems set out above which occurred when patrons entered and exited McDonalds. It was associated with the driving and parking of their cars and lorries, and patrons eating their food in the bays outside and being rude to residents when challenged that they should not park in the residents parking bays. It was associated with the debris left when patrons had finished their food and with people buying food to eat away from the premises on foot, the noise associated with that and depositing their McDonalds debris in the road, peoples' private gardens, bins and garage areas. The incident, although probably isolated, of sauce and mayonnaise smeared on cars,

and the revving of engines, slamming of car doors and cars being driven around the car park. These were all directly attributable to operation of the McDonalds outlet being situated and operational in the heart of a residential area.

The Panel unanimously decided that granting the premises licence would not promote the licensing objective, Prevention of Public Nuisance, particularly in relation to noise nuisance. The Panel unanimously decided not to grant the new premises licence.

**CHAIRMAN**

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