

Statement of Case of

Matthew Carpenter BA(Hons) DipTP MRTPI

In accordance with the

Town & Country Planning

(Hearings and Inquiries Procedure) (England) (Amendment) Rules 2013

Appeal against Kirklees Council's refusal of planning permission for the erection of restaurant with drive-thru facility, car parking, landscaping, play frame, customer order display and associated works.

LPA ref 2020/62/90450/E

APPEAL BY McDonald's Restaurants Ltd

Land at Owl Lane,

John Ormsby V C Way,

Shaw Cross,

Dewsbury

WF12 7RQ

October 2021

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1. Qualifications And Experience

- 1.1 My name is Matthew Carpenter. I hold a Bachelor of Arts Town Planning Degree from Oxford Polytechnic and a Post Graduate Diploma in Planning from Oxford Brookes University.
- 1.2 I have been a member of the Royal Town Planning Institute for over twenty-six years.
- 1.3 I am the planning Director for Planware Ltd and have been since July 2004. Previously I was employed by Anthony Bowhill and Associates in Central London reaching a position of Senior Associate (1993 – 2004). I became a Chartered Town Planner in 1995.
- 1.4 During the course of my employment I have been involved in all aspects of planning. I advise clients throughout the United Kingdom in respect of matters relating to retail, commercial, industrial and residential schemes. My clients vary from blue chip companies through to land owners with individual sites.
- 1.5 Planware Ltd is planning consultant to McDonald's Restaurants Ltd for both new stores and the re-imaging and alterations to their existing properties. I have advised McDonald's restaurants on planning matters for 28 years and am familiar with a large number of different types of their restaurants throughout the UK. I have been involved with a substantial number of new McDonald's restaurants during the course of my planning career.
- 1.6 I am familiar with the subject site.
- 1.7 The statement, which I have prepared and provided, is true and has been prepared in accordance with the guidance of my professional institution. I confirm that the opinions expressed are my true professional opinions.

2. Introduction

- 2.1 The development proposes to redevelop of a brownfield site to provide a freestanding drive-thru restaurant (mixed Class E/ Sui Generis).
- 2.2 The application was submitted by McDonald’s Restaurants Ltd. I understand that McDonald’s Restaurants Ltd has a contract to purchase the freehold interest in the site, subject to obtaining satisfactory planning permission.
- 2.3 The proposal will conservatively generate at least 65 on site full and part-time jobs (at least 45 full time equivalent) and will improve the character of the area through choice and regeneration. The site has been vacant for over 15 years and has a history of restaurant and hotel permissions, albeit now expired.
- 2.4 My office submitted a planning application to Kirklees Council, on the 10th February 2020. The planning application was registered as valid on the 11th February 2020. At the same time, three applications for express consent to display advertisements were submitted, that remain undetermined.
- 2.5 A copy of the submission version of the application is found at Appendix A. The application was amended during the course of consideration, with changes being set out in section 3. The revised plans are also included within Appendix A for clarity and ease of cross reference.
- 2.6 Contrary to the officer’s recommendation (Committee Report, [Appendix A](#)) to approve the application, it was initially refused by members at committee on the 27th January 2021, principally because of the impact on health, highways and amenity grounds but no decision notice was issued. The application was then presented to committee on the 31st March 2021 as officers required clarity on and were concerned regarding the validity of the reasons of refusal presented by members. The decision notice is dated 27th April 2021, [Appendix B](#).
- 2.7 In section 3 of my statement, I provide a description of the site, the planning history and detail the proposal.
- 2.8 In section 4, I refer to and comment briefly on the reasons for refusal.
- 2.9 Section 5 identifies relevant national and local planning policy.
- 2.10 In section 6, I consider the performance of the proposal against planning policy.
- 2.11 Section 7 comments on third party representations.
- 2.12 A summary of my evidence is set out in section 8 that concludes that there are no justifiable planning grounds for refusal. I therefore request the Inspector allow the appeal.
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3. The Site, Planning History and the Application

The site and surroundings

- 3.1 We agree with officers description of the site and surrounding area as set out in the committee report and repeated herein for convenience:

The site comprises an area of 0.35ha and is located at the junction of Leeds Road and John Ormsby VC Way, Shaw Cross, currently characterised by scrub land and containing a number of trees. The site lies adjacent to residential properties to the east, and a detached two storey office building to the south west. The northern and western boundaries of the site adjoin the road network of Leeds Road and John Ormsby VC Way.

The immediate locality is characterised by residential and commercial development, with the existing commercial development having a strong presence to the south of the site.

- 3.2 The sites principle frontages are to the Leeds Road and John Ormsby V C Way. The site can be considered a brown field site, with access provided from the east from Owl lane. Access has been in place for many years. A bus shelter is located between the site and John Ormsby V C Way.

Planning History

- 3.3 The site has been vacant for over 15 years. As confirmed by the planning committee report the planning history is agreed as follows:

2019/20147 – Pre-application enquiry for erection of a restaurant with drive thru – advice given

2016/92953 – Outline application for erection of restaurant and hot food outlets – conditional outline permission

2015/93898 – Outline application for erection of restaurant, retail outlet and hotel – Withdrawn

2010/92846 – Removal of Condition 3 on previous application ref 2004/90778 for outline application for erection of hotel – refused

2006/92257 - Reserved Matters Application for erection of Hotel with Restaurant – approval of reserved matters

2004/90778 – Outline application for erection of hotel – conditional outline permission

*2000/92074 – Outline application for erection of hotel and B1 office building –
Granted under Reg 3 General Regulations.*

Submission and Documentation

3.4 The application subject to this appeal was submitted on the 10th February 2020 and was supported by the plans, reports and documents. The documents were amended during the course of the application. The following is the documents against which the council determined the application:

- Application Form
- Supporting Statement inc Sequential Test v2
- 7866-SA-8587-AL01C Site Location Plan
- 7866-SA-8587-P002E Block Plan
- 7866-SA-8587-AL03A Site Layout Plan - As Existing
- 7866-SA-8587-P004D Proposed Site Layout Plan
- 7866-SA-8587-P005C Elevations & Section
- 7866-SA-8587-P006C Ground Floor and Roof Plan
- 7866-SA-8587-P007B Site Layout Plan – Landscape
- xxx Site Layout Plans - Landscaping Plan
- 7866-SA-8587-P028B Elevations and Plan - Bin Store
- Goal Post and McDigit COD Canopy brochure
- E09-004 PLAY FRAME 2X2 Planning
- Specifications for the Standard Patio Area, EVC, Customer Order Display and Height restrictor, Fat Strippas and Grease Traps
- Refuse Storage and Recycling Statement
- Tree Survey
- Landscape Plans (16716-VL-MCD_L01B and 16716-VL-MCD_L02)
- Landscape management and maintenance plan
- Odour Control Assessment
- Transport Assessment (February 2020)
- Travel Plan (January 2020)
- Road Safety Audit 1 and Designers Reponse
- Preliminary Ecological Appraisal and Biodiversity and Enhancement Plan V3
- Proposed Levels and Site Survey (4190299-1000 P1 - Proposed Levels & 8180507-4101 - Site Survey)

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- Construction Management Plan
 - Noise Impact Assessment
 - Drainage Statement and a Drainage Maintenance Plan
 - Ground Investigation
 - Litter Patrol Plan
 - Lighting Plot
- 3.5 Full copies of the application documents have been submitted alongside this statement and have therefore not been duplicated within the appendices. The principal drawings are included in [Appendix C](#) for convenience.
- 3.6 The submission is considered a “minor application” as the floor area is below 1,000m².
- 3.7 During the course of the application, a range of amendments were made to the scheme following discussions with the case officer. This includes changes to pedestrian access to tie into the future Local Authority junction improvements and minor changes to the drive thru to suit. Electric Charing Bays were also added to the proposal and additional details in line with the Environmental Health Comments I have set out below the changes from the submission documents, these have also been included within Appendix A (under superseded plans and documents) for clarity.
- Additional attenuation added and updated within the Environmental Noise Assessment
 - A lighting plot was submitted
 - Details of Grease Trap/Fat strippers
 - A full Odour Assessment was carried out, which included full mitigation.
 - Electric Charging Bays
 - Amendments to the landscaping and biodiversity enhancement plan.
- 3.8 Additional information was submitted to the council following consultation comments from Environmental Health and Ecology. Both these matters were suitably addressed, and we believe are unlikely to be contested as part of this appeal.
- 3.9 During the course of the application discussions and negotiations took place on highways matters. Again, both applicant and authority agreed the final proposal was acceptable and highways does not form part of the reason for refusal. Again, we do not believe this will be contested at appeal.
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- 3.10 Additional information was submitted to the council following consultation comments from Environmental Health and Ecology. Both these matters were suitably addressed and we believe are unlikely to be contested as part of this appeal.

Use

- 3.11 The existing use of the site is likely a null use, as any historic uses have been abandoned. The proposed use is mixed class E and sui generis (take-away). The proposal will provide customers the ability to purchase food and drink within the restaurant for eat in or takeaway purposes and to take away from the drive thru lane.

Consultation and officers' recommendation/report to committee members

- 3.12 The committee report of the 27th January 2021 recommends members approve the application, subject to a number of agreed conditions. Copy at [appendix A](#). Members refused the application on four grounds but before a decision notice was issued, officers, in discussion with members, brought the application back to the next available committee.
- 3.13 The application was present to the second committee on the 31th March 2021, again recommended for approval. Copy of committee report at [appendix B](#).
- 3.14 A summary of the consultation responses is provided in section 7 of the report, confirming 60 local objections were received, and 10 representations in support of the proposal. The officers report summarises the principal concerns, namely residential amenity; visual amenity; highway safety; and drainage. Other matters including litter; health; impact on residential housing numbers; competition and residential property values. Support confirmed need for something in the area; nice to have a new business; new jobs and opportunities; and that health is responsibility of the individual. These issues are considered at paragraph 10.44 to 10.48 of the committee report.
- 3.15 Following further consultation, additional letters opposing and supporting the scheme were received, generally following the issues outlined above.
- 3.16 One ward member raised the issue of traffic impact.
- 3.17 None of the statutory consultees objected to the proposal. Highways, Environmental Services and Ecology were discussed in some detail with experts from both sides.
- 3.18 The officer considers planning policy in some detail confirming that the principle of development is acceptable and that there is no conflict with the local plan.

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- 3.19 Officers considered the sequential test and the documents submitted with the application confirming that the proposal accorded with the sequential test; that officers were not aware of any other sites not considered by the applications that could require assessment; and that the site was within the desired catchment.
- 3.20 We concur with the officers report in that the planning permission for a restaurant and takeaway granted in May 2017 has lapsed. The point is not made in the committee report, but policy has not substantially changed since that permission was granted in 2017. The local plan has been adopted but draft policy PLP16 and adopted policy LP16 are identical in text albeit criteria are numbered differently.
- 3.21 The report confirms that the design of the building is acceptable.
- 3.22 The report confirms that hours of operation have been agreed at 5am to midnight, and deliveries restricted to between 9am and 10pm Monday to Saturday.
- 3.23 Residential amenity formed much of the discussion during the course of the application. The committee report confirms that residential amenity from noise and odour were considered in detail, with Environmental Services officer confirming that the proposal was acceptable and complied to DEFRA and EMAQ guidance, and local policy.
- 3.24 Officers detail the highways considerations in the report and set out some details of the proposal and its impacts. Highways matters have been resolved and we do not consider these will form part of any evidence in this appeal.
- 3.25 The officer confirms that the proposal will support economic growth; will have no highways or amenity impact; accords with sustainable development principles; and accords with national and local planning policy. The proposal is recommended for approval subject to a number of acceptable conditions.
- 3.26 Members refused the application when represented to committee on the 31st March 2021. Members reconsidered their previous reasons for refusal and determined to only refuse the application for a single reason.

4. The Decision

The Reasons for Refusal

- 4.1 The application was presented to committee on the 27th January 2021 with a recommendation for approval (committee report at [Appendix A](#)) and was subsequently refused. No decision notice was issued and after a meeting between the applicant and the authority, the reasons for refusal were reviewed and discussed.
- 4.2 Following a further committee meeting on the 31st March 2021 the application was again presented to committee, with a recommendation for approval and discussions took place on the previous reasons for refusal proposed at the January committee, which were narrowed down to a single reason for refusal. ([Appendix B](#)). The application was refused for that reason:

1. The addition of the proposed restaurant and drive-thru, in an area where there are higher levels of deprivation combined with high levels of overweight or obese children and adults, would not be in the interests of ensuring healthy, active and safe lifestyles insofar as resisting the location of fast-food establishments in areas of poor health, contrary to Policy LP47 of the Kirklees Local Plan and the aims of Chapter 8 of the National Planning Policy Framework. ([Appendix D](#))

5. Planning Policy

5.1 I set out below the key planning policies against which I consider the appeal should be assessed.

National Planning Policy Framework

5.2 The Framework was published in 2012 with the most recent amendment published on the 20th July 2021.

5.3 Paragraph 7 refers to the definition of sustainable development by Resolution 42/187 of the United Nations General Assembly, i.e. development *“meeting the needs of the present without compromising the ability of future generations to meet their own needs”*.

5.4 Paragraph 8 provides the three dimensions to sustainable development in the planning system. These dimensions allow the planning system to execute various roles:

- a) an **economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
- b) a **social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and
- c) an **environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

5.5 The document reaffirms the Government’s presumption in favour of sustainable development (paragraph 11), which should be pursued in a positive way.

5.6 Paragraph 11 further confirms the Governments advice that decision takers should:

- *Approving development proposals that accord with the development plan without delay; and*

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- Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

5.7 Paragraph 38, considering Development Management confirms:

Local planning authorities should approach decisions on proposed development in a positive and creative way.

5.8 Whilst the whole of the document takes a positive approach to development, paragraph 38 confirms that Local Authorities should approach development management decisions positively looking for solutions rather than problems so that applications can be approved where possible.

5.9 Chapter 7 of the Framework sets out Government policy on ensuring the vitality of town centres. Paragraph 87 introduces the sequential test, which looks to locate main town centre uses, to town centres where sites are available.

5.10 Chapter 8 of the Framework considers promoting healthy and safe environments. It promotes three principle policies. To promote social interaction, to promote safe and accessible places, and to enable and support healthy lifestyles. Examples of the latter include provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.

5.11 Chapter 8 goes on to explore social, recreational and cultural facilities; choice of school places. The main detail of the chapter focuses on open space and recreation.

Local Planning Policy

5.12 I have included the policy referenced in the reason for refusal in the section below.

Kirklees Local Plan 2019

- 5.13 The Kirklees local plan was adopted on the 27th February 2019 and is the statutory development plan for Kirklees, superseding the Unitary Development Plan adopted in 1999.
- 5.14 The committee report fully assess policies in the adopted local plan confirming that the proposal accords with them. Typically, I would demonstrate that the proposal accords with those local policies before considering those in conflict. However, we agree with the councils assessment of policy in the light of consultees responses. We also agree with the reasoning presented by the officer. I therefore propose to only summarise the policy support in the following section without referencing lengthy policy in this section.
- 5.15 The reason for refusal refers to one local plan policy. LP47.

Policy LP47

Healthy, active and safe lifestyles

The council will, with its partners, create an environment which supports healthy, active and safe communities and reduces inequality.

Healthy, active and safe lifestyles will be enabled by:

- a. facilitating access to a range of high quality, well maintained and accessible open spaces and play, sports, leisure and cultural facilities;
 - b. increasing access to green spaces and green infrastructure to promote health and mental well-being;
 - c. the protection and improvement of the stock of playing pitches;
 - d. supporting initiatives which enable or improve access to healthy food. For example, land for local food growing or allotments;
 - e. increasing opportunities for walking, cycling and encouraging more sustainable travel choices;
 - f. supporting energy efficient design and location of development;
 - g. ensuring that the current air quality in the district is monitored and maintained and, where required, appropriate mitigation measures included as part of new development proposals;
 - h. creating high-quality and inclusive environments incorporating active design and the creation of safe, accessible and green environments which minimise and mitigate against potential harm from risks such as pollution and other environmental hazards;
- i. encouraging the co-location of facilities so that different types of open space and facilities for sport and recreation can be located next to each other and in close proximity to other community facilities for education and health;
 - j. working with partners to manage the location of hot food take-aways particularly in areas of poor health;
 - k. encouraging initiatives to promote energy efficiency within homes; and
 - l. supporting appropriate initiatives which address poor health indicators and anti-social behaviour in the district.

Health Impact Assessments will be carried out for all proposals that are likely to have a significant impact on the health and well-being of the local communities, or particular groups within it, in order to identify measures to maximise the health benefits of the development and avoid any potential adverse impacts.

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- 5.16 The supporting text at paragraph 17.5 references the councils Health and Well-being Strategy, stating that the local plan has a role in implementing those strategies. I therefore take that document to be a material consideration in determining this application. I will review that document and the likely weight to be given to it below.
- 5.17 Paragraph 17.8 considers food and drink uses in centres, noting that their number can diminish a centres ability to provide other town centre uses. It notes that increased A5 uses (now sui generis) can lead to an increase in environmental health, odour and litter issues. The paragraph states that “*Such uses can be a contributing factor to obesity and wider health issues for Kirklees residents including risks of developing chronic heart disease and type 2 diabetes.*”
- 5.18 Paragraph 17.11 supporting the policy states that where developments are likely to have a significant impact [my emphasis], on health and well-being of the local population or group a Health Impact Assessment will be required.

Material Considerations

- 5.19 The local plan refers to the council Health and Well-being Strategy. There appear to be two potential documents, and I consider each of these below. None of these are referenced in the decision notice.

Kirklees Health and Wellbeing Plan ([Appendix E](#))

- 5.20 This document suggests one of a number of areas of focus is to produce an SPD on Hot Food Take-Aways [sic]. The document provides no further information or background on this and provides no details of healthy eating other than referencing that an objective is to get residents to eat a healthy diet. Again, no further details are provided.
- 5.21 It is not clear if this document has undergone any public consultation or peer review. Whilst of exceptionally limited relevance, the weight attached is considered limited at best.

Kirklees Health and Wellbeing Strategy 2014 – 2020 ([Appendix F](#))

- 5.22 The document suggests improved regulation on issues like “takeaways” at section 4, but makes no other reference to healthy eating etc.

- 5.23 It is not clear if this document has undergone any public consultation or peer review. Whilst of exceptionally limited relevance, the weight attached is considered limited at best.

6. Assessment of the Proposal Against the Planning Policy

Introduction

- 6.1 This section of my evidence sets out my assessment of the policy in context.
- 6.2 Section 5 of my statement sets out relevant planning policy to the appeal.
- 6.3 I will first review the principle of development on the basis set out in the officers report to committee.
- 6.4 I will then consider the issues raised in the reason for refusal with an overall assessment of policy.
- 6.5 I will then examine any other planning considerations associated with the proposal.
- 6.6 Whilst I have assessed all points below, this statement should be read in conjunction with the relevant specialist evidence appended. Details of McDonald's operation, community involvement and approach to development are set out in Mr John Robsons' evidence ([Appendix G](#)). Dr Capehorne has provided a detailed report on obesity and commented on the reasons for refusal ([appendix H](#))

Principle of Development

Assessment of Sustainability

- 6.7 I have set out in section 5 above the three pillars of sustainability that are the golden threads running through the national guidance. The proposed development accords with these three pillars. Whilst sustainability does not form a reason for refusal, the proposal does represent sustainable development and will bring substantial benefit to the local area in terms of jobs, social integration and environmental consideration.
- 6.8 The Framework confirms at paragraph 11 that at its heart is a presumption in favour of sustainable development. It clarifies, that for decision taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

6.9 Given the above, I demonstrate that the proposal can be considered as sustainable development under each of the headings below:

Economic dimension

6.10 Sustainable economic development is set at the heart of the planning system with a presumption in favour of sustainable development. The definition at paragraph 8 of the Framework importantly includes the requirement to build a strong, responsive and competitive economy.

6.11 The appeal proposal brings the economic benefit of at least 65 on site full and part time jobs and excellent training programmes, details of which are included in Mr Robsons' evidence ([Appendix G](#)). Section 4 of his statement clarifies both the direct and indirect job creation. McDonald's currently employ 582 people in restaurants and supply chain in Kirklees and over 1,100 full and part time staff in the Leeds to the north. McDonald's prides itself on its commitment to staff training and education, investing over £43m annually. The investment of the proposed development will support Dewsbury.

6.12 McDonald's figures show that they contributed £8.66 million to Kirklees economy per year both from restaurant and restaurant suppliers.

Social dimension

6.13 The proposal will create and attract strong social links with the local community. Section 5 of Mr Robsons' evidence ([Appendix G](#)) sets out details of McDonald's engagement in the wider communities, and what a restaurant can bring to an area. It further sets out both local and national sports sponsorship, open farms programme, 'love where you live' programme and

support of Ronald McDonald House Charities. In addition, the restaurant provides a family destination for local residents.

- 6.14 With over 80% of restaurants run as a local business by a local franchisees, McDonald's takes pride in working with local communities in which they operate. As an example, includes a long-term commitment to football at a national and local level, training over 20,000 qualified football coaches offering 2 million hours of free, quality football to young players nationally. This is organised at a local community level, with almost all restaurants sponsoring local youth teams. Other examples include support for employees, free Wi-Fi and full accessible access.
- 6.15 It is the current intention that this store will be franchised locally. Local franchisee initiatives in the Dewsbury area are includes in Mr Robsons statement Appendix A.

Environmental dimension

- 6.16 The restaurant will play a positive approach to its environmental role. The planning application details McDonald's approach to the environment both in terms of construction and ongoing operation of the store.
- 6.17 The proposal will bring an underutilised site into a more active, beneficial use.
- 6.18 In terms of construction, the environmental considerations include the selective use of materials and modern methods of construction to reduce waste; the inclusion of building energy management systems; 100% green energy supply generated off site and the installation of waterless urinals which save 150 million litres of water per year nationally; amongst many more benefits.
- 6.19 McDonald's have their own environmental standards for design and construction, details of which are set out in section 4 of the Supporting Statement. McDonald's assessed their existing restaurants with environmental and energy consultants ECOFYS to investigate improved performance of new restaurant buildings. This has resulted in McDonald's setting their green building guidelines.
- 6.20 In addition to the above, I have set out further details of other environmental measures McDonald's make from Chapter 4 of the Supporting Statement submitted with the application. These include:
- Recycling of cooking oil to biodiesel;
 - Building management system to operate lighting and air conditioning;

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- Use of low energy LED lighting throughout;
 - Kitchen standby reminders;
 - SUDS drainage
 - A number photovoltaic cells provided on site
 - Use of solar gain/shielding

6.21 Substantial emphasis is placed on recycling once the restaurant is opened. This includes 100% recycling of corrugated cardboard, with 72% of packaging being from recycled resources, and items such as drink carriers, bags, napkins and toilet paper made from 100% post-consumer material. Further details are set out in Mr John Robsons' evidence ([Appendix G](#)) and section 4 of the Supporting Statement. In addition, the proposed restaurant will incorporate recycling of customer waste with the provision of separated waste bins for liquid, food and paper waste.

6.22 Waste cooking oil from the restaurants is collected by the delivery vehicle and later recycled as bio-fuel. This is then used in the delivery fleet, providing a carbon saving of around 8,209 tonnes per annum. All of these processes accord with the policy ambitions.

6.23 The Framework confirms the Government's commitment to ensuring the planning system does everything it can to support sustainable development such as the proposal. The planning system should not act as an impediment to sustainable growth and weight should be attached on the need to support such growth.

6.24 Chapter 2 of the Framework sets out a presumption in favour of sustainable development which is the golden thread running through both planning policy and decision-taking.

6.25 The proposed restaurant adheres to the three principle threads of sustainable development set out in the Framework, thus is sustainable development.

Highway Safety and Parking

6.26 We are not expecting the council to contend highway matters.

6.27 Highways Development Management initially responded on 23/03/2020 with a holding objection and requested additional information to support the application, including additional modelling of Junctions, a stage 1 Safety Audit (RSA1), Gradient of the access road and queue length analysis.

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- 6.28 The issues were exacerbated with the amount of residential development and related highway improvements, which was going through the planning process at the same time, one of which was on the agenda prior to this application on 27/01/2021. After a number of email correspondences, a formal response was sent back to the authority on 14th September 2020, with all the relevant information except the RSA1, which was forwarded on the 18th January 2021.
- 6.29 Due to the various junction improvements proposed, Highways requested for a small reduction in the red line to ensure no conflicts during construction. This revised drawing and the sketches highlighting the S278 works were sent to the planning officer on 18th January.
- 6.30 Highways issued a second consultation response on the 19th January 2021 confirming no objection to the scheme, subject to conditions.
- 6.31 Prior to the second committee date, Highways was approached to review the reasonableness of a reason to refuse the application and further review on whether “The proposed development would have a detrimental impact upon the volume of traffic on the existing highway network, resulting in congestion at the junction of Leeds Road and John Ormsby VC Way.”
- 6.32 Highways confirmed that “..in operational terms, the proposals provide sufficient capacity for deliveries, drive thru customers and parking. Officer assessment indicates that traffic generated by the development will have no material impact on the operation of the local highway network.”

Environmental Health

- 6.33 The Environmental Health Officer (EHO) initially commented on the application on 23rd March 2020 and a formal response was sent back to the planning officer on 22nd September 2020, with additional information and clarification of a number of points. The EHO formally responded on the 23rd December 2020 with revised comments, which confirmed that all issues had been resolved and recommended a number of conditions, including a restriction on opening hours (05:00 to midnight on any day) and delivery hours.
- 6.34 After the first committee meeting, a further reduction of hours was agreed to 6am until 11pm, 7 days a week and was included within the committee report (31/03/2021).

Ecology

- 6.35 During the application there was a change of personnel and so the various comments were conflicting throughout the process and a number of different options to the Biodiversity Enhancement and Landscape Plans were circulated. The formal response received from the new Ecology Officer asked for several additional actions to be taken to allow the objection to be removed and suggested conditions.
- 6.36 The revised Biodiversity Plan and Landscape plan was submitted on 18th January 2021, with all issues resolved and acceptance of a condition on external lighting.

Conclusion on the principle of development

- 6.37 In light of the above, I confirm that the principle of development, including sustainable development, highway matters, amenity issues and ecology are all considered acceptable. This is the same conclusion reached by the council's development control team as set out in the committee report.

NPPF Chapter 8

- 6.38 The council's decision notice makes reference to the proposal conflicting with chapter 8 of the Framework. The reason for refusal states that the development proposal would not be in the interests of ensuring healthy, active and safe lifestyles in an area of poor health.
- 6.39 The McDonald's proposal does assist in encouraging healthy lifestyles. Both Mr Robson and I have set out details of local sports sponsorships of both football and rugby for all. This is a real benefit to the local community from the existing restaurants, and one that is certain from the proposed store. A local team will receive sponsorship, that otherwise wouldn't, should this proposal go ahead. This, in addition to the benefits for staff and the work they do in the local community confirms the proposal not only adheres to chapter 8 of the Framework, but actively supports it.
- 6.40 In addition, the community engagement from staff in for example the engagement presented by Annie Wainwright in nearby Leeds is supported by the Framework, aiding in social and cultural wellbeing (paragraph 93b). Paragraph 94 confirms these social and economic benefits should be considered. This, in conjunction with the restaurant providing a place where families can spend time together, either for a treat time, or for a quick meal is of significant benefit. The proposal provide secure cycle parking.

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- 6.41 Chapter 8 of the Framework does not advise council to refusal or support applications on healthy eating grounds. The Framework supports access to “healthier” food and allotments. It does not look to control what food is or is not sold from a restaurant. Both Mr Robson and Dr Capehorne provide extensive evidence of McDonald’s food offer, and how this has addressed issues of HFSS (high fat, salt or sugar).
- 6.42 Paragraph 93 considers the social, economic and environmental benefits of estate regeneration. The aims of this paragraph are met, as the proposal would bring a large amount of investment to a brown site, which is been vacant for over 15 years, which will revitalise a site within an area which is shown to rank high within the areas of deprivation.
- 6.43 I have reviewed chapter 8 of the Framework a number of times in relation to this application and I can see nothing to support the refusal provided by the council. Any link from the stated reason to finding support from the Framework is unjustified. Indeed, the opposite is true. The proposal, with all of the benefits it brings, supports and promotes social, cultural and community values aiding in defining place and creating a sense of community. The Framework chapter 8 supports the proposal.

Policy LP47

- 6.44 Policy LP47 is based on the text in chapter 8 of the Framework. It looks to support healthy, active and safe communities, and sets out a number of criteria that should be adhered to. The policy does not suggest that applications that do not accord with the policy should be refused.
- 6.45 Most of the criteria are not relevant to the proposal. Mr Robson does set out substantial information relating to local sports involvement the restaurant will bring, confirming the proposal accords with criteria a. and b. The proposal provides for both walking and cycling, with secure cycle stands proposed. Mr Robson has confirmed the sustainability of the proposed development including its green electricity supply and the company’s ambition to carbon neutral, in accordance with f. The proposal is built upon the criteria in h. being inclusive, safe and addressing environmental harm.
- 6.46 The proposal does not conflict with those any other criteria. Criteria J suggests the council will work with partners to manage the location of hot food takeaways. This is really the “hook” from which will emerge the SPD, as discussed later. The council have not expanded on this in any other policy documents. We have reviewed two additional public health documents referenced in the previous section (from the local plan paragraph 17.5 reference) that could potentially be the Health and Well-being Strategy referred to by the council. We understand

from the committee report that an SPD was started but has since been abandoned. It may be something the council pursue at a later date.

- 6.47 This application is one considered to be minor (see 3.6 above). Health Impact Assessments (HIA) are required by the policy for proposals that are likely to have a significant impact on health. That is not the case with this application. The planning team never raised the issue of a HIA. Health was not raised as a major issue by third parties, and indeed Public Health never asked for one in their late response. Health was not a principal consideration in the committee report. Members never asked for an HIA before or during the first committee or before the application was represented to the second committee. I do not consider that a proposal for a small restaurant of less than 500m² would have anything like a significant impact on health.
- 6.48 Paragraph 17.8 considers concentration of A5 (now sui generis) uses and the potential health impacts. That is not the case here. There is not a concentration of takeaway uses in the local area, indeed there are very few restaurants or take-aways within 1km of the site.
- 6.49 In the absence of any policy specific guidance suggested by criteria J, there is no policy basis to refuse any takeaway on healthy eating grounds. There is certainly no policy basis to refuse this proposal.
- 6.50 This approach has been supported at appeal by inspectors. The most recent appeal decision considering health and well-being was in Mansfield, where the proposal was located outside of a school exclusion zone. A copy of the appeal decision is included as [appendix I](#). Importantly, the Inspector in that case confirmed that the council had presented child obesity, life expectancy and other background data. He considered that data was inherent in formulating the recently adopted policy, as is the case here. He stated that the data in itself did not preclude the proposal (paragraph 13).
- 6.51 The Inspector concludes on the matter in paragraphs 15 and 16. He notes that the planning system is plan led and that policy sets a clear path – that is the case here. The policy in the appeal was prepared in the context of national policy as is the case here, with reference being made to Framework paragraphs 91c and 92 b (now 92c and 93b) regarding healthy lifestyles and wellbeing. The inspector found the proposal accorded with the Framework. This proposal is almost identical in policy terms, without the school exclusion zones.
- 6.52 In the Mansfield appeal decision, the Inspector states:

The Council has referred me to public health matters over child obesity, proximity to primary schools, density of outlets to schools and life expectancy, and the associated concerns of the County's Public Health team. Much of this evidence did inform the preparation of Policy RT10 and is set out in the supporting text to the policy. As such, it is

already inherent with how the policy deals with hot food takeaways. Such evidence does not preclude the proposal. [paragraph 13]

However, the planning system is plan led and policy RT10 sets out a clear path as regards how proposals for hot food takeaways are to be dealt with as a result of public health issues. Policy RT10 has been prepared in the context of national policy, namely the Framework. This includes with regard to paragraphs 91c) and 92b) which set out to enable and support healthy lifestyles, especially where this would address identified local health and well-being needs, and take into account and support the delivery of local strategies to improve health. This also leads me to find that the proposal is in compliance with the Framework in this respect. [paragraph 15]

I conclude that the proposal would not have an unacceptable effect on public health, in particular that of children and food consumption. It would accord with the approach that Policy RT10 takes as regards hot food takeaways and with paragraphs 91c) and 92b) of the Framework in relation to promoting healthy and safe communities, for the reasons that I have already set out. [paragraph 19]

Conclusion

- 6.53 In conclusion, I have demonstrated above that the proposal should be considered sustainable development. I have highlighted other considerations assessed by the council at application stage but on the basis that these are agreed. I have demonstrated that the proposal accords with the Framework, and supported this with a material consideration – the Mansfield appeal decision. Principle of development is acceptable.
- 6.54 I have considered local planning policy and confirmed that the proposal is supported by that policy. I have considered policy LP47 in detail and demonstrated there is no conflict between the proposal and policy.
- 6.55 In the light of the above and with policy support for the proposal, with no policy objection or conflict, I request this appeal be allowed.

7. Other material considerations

Third Party representations

- 7.1 A number of third-party representations were submitted in relation to the planning application and those issues have been addressed thought the statements. I provide more details on litter below and consider the objection from Kirklees Public Health below.

Litter

- 7.2 It is not McDonald's that drops litter, rather residents. Litter is for the council to manage through the Environmental Protection Act 1990 which makes dropping litter an offence. McDonald's cannot enforce against offences committed. The planning system cannot address unlawful acts, ie dropping litter or parking on yellow lines. That is not to say McDonald's do not do their best to limit litter dropped by an unsociable element of the community. It is in fact unsociable behaviour.
- 7.3 A Litter plan was submitted during the application.
- 7.4 McDonald's provide sufficient bins both in the store and around the car park, all of which are emptied on a regular basis.
- 7.5 The provision of litter bins in the car park are shown on the application drawings.
- 7.6 In addition to the bins, all packaging carries the "tidy man" logo reminding people to dispose of litter responsibly.
- 7.7 McDonald's is a founding member of Keep Britain Tidy's Love Where You Live anti-littering campaign. The company organises regular clean-up events in local communities and raises awareness of the anti-littering message through its 1,280 UK restaurants. This has seen McDonald's carry out over 3,000 events across the country involving over 50,000 volunteers. Individual restaurants also undertake their own anti-littering initiatives, such as litter picking sessions in local parks and open spaces with local community groups. Such initiatives could involve local residents and target the areas residents are concerned about. Such events would need to be coordinated once the store was open, as such matters cannot be conditioned.
- 7.8 A majority of McDonald's restaurants have a 'Planet Champion' who has the responsibility to help raise awareness of ways to be more environmentally friendly. The little changes that

these Planet Champions have introduced have made a huge difference to reduce the energy that McDonald's use. Planet Champions are also responsible for organising litter events alongside the local community.

- 7.9 In addition to the above, McDonald's undertake a minimum of three litter patrols per day, within 150m of their front door, picking up all litter, not just branded litter. Whilst this cannot be conditions this is standard practice at all UK restaurants and has been for over 30 years.

Health and healthy eating

- 7.10 One objection raises points not previously considered. That is the late objection by Kirklees Public Health (KPH) received immediately before the committee. Copy enclosed as [Appendix J](#). There is no policy basis to refuse the application on health or wellbeing grounds. In my view the objection carries exceptionally limited, if any, weight. [see 7.26 below – I believe the proposal accords with the presented tool in any event].
- 7.11 The approach taken by KPH does not follow PHE (Public Health England) own advice; and the tool devised by KPH has not been tested in public; is applied in an ad hoc manner; is lacking in understanding of the background data in its the mathematical application and the correlation upon which it is based. The model/tool is not supported by any government department, national policy or local policy (within or outside of planning).
- 7.12 Notwithstanding the above, we explore these reasoning below should the Inspector consider KPH's approach carries any weight.
- 7.13 Kirklees Council Public Health team objected to the planning application on the basis that the public health department want to restrict residents from eating fast food or takeaway meals. There is no central or local planning or health policy to support such an approach.
- 7.14 Public Health England's advice on the subject is set out in "Using the planning system to promote healthy weight environments – Guidance and supplementary planning document template for local authority public health and planning teams", published in February 2020. The document states it recognises local environments can be contributing factors to excess calorie consumption and that the guidance aims to provide practical support for local authorities that want to use the planning system to influence health outcomes.
- 7.15 We dispute much of the advice therein and provide our own commentary on the subject in the form of Dr Capehornes statement.
- 7.16 The PHE document makes specific reference to the NPPF, specifically paragraphs 91, 92, 102, 104, 110 and 127 (pre-June 2021 version). None of these suggest restricting access to

any food, let alone take-aways, in either development control or local policy making. It does promote access to “healthier food” (no definition) via other means.

- 7.17 PHE suggest that an SPD is the correct tool for local PH policies to be included in local plans, with SPD’s being a material consideration for planners and planning inspectors when determining applications and appeal ([Appendix K](#)). It notes on page 11:

Local Plans should contain a healthy built environment or a health and wellbeing policy to substantiate any supporting guidance.

- 7.18 The local plan does contain such a policy to hook to an SPD. Policy LP47 criterion j. However, no supporting guidance or SPD has been drafted or completed by the council. Indeed, we understand from the committee report (paragraph 6.3) that the council did start writing one but on further investigation it has been abandoned. We are unaware of any further drafts at this time.

- 7.19 As there is no policy referencing restrictions on take-away, or any other food provision, in the local plan, and no SPD, the KPH objection can only be afforded minimal weight at best. Further, deviation from PHE advice affords it no weight at all, in my view.

- 7.20 PHK have invented their own “tool”, as set out in their objection. As above, this is not supported by policy or guidance and neither is an approach supported by PHE. We do not believe it has undergone any public consultation or peer review. It is not a recognised approach to assessing suitability of a food provider of any description.

- 7.21 The tool does not take into account the type of food sold from an establishment, or consider the food sold from other operators such a supermarkets or newsagents in the local area. It is based on wider post codes not local areas. It uses averages across Kirklees as a starting point, rather than area specific, ignoring whether Kirklees is better or worse than the regional or national average. No “weighting” is allowed for in calculations on the importance of each element in the scoring mechanism. E.g. IMD rank appears to carry the same “points” as overweight adults. Adults are scored twice, but potentially counted once.

Model scoring does not work

- 7.22 The results presented in the models’ final score ignore the facts. In this case Overweight adults are considered “the best” in Kirklees. Adult obesity is only 1% higher than average, year 11’s with excess weight is average, year 6’s is only 0.1% above average, diabetes is average, and heart disease is again 0.1% above average. Despite the site measuring average in all the metrics, PHK therefore recommends refusal on the sole basis that the ward has a low IMD ranking (without actually specifying the ranking – see below as I believe we accord with the model in any event). **The model does not work.** Such an approach to controlling

development, based on depravity scores, is not supported by national or local planning or health policy and is unreasonable.

Model is applied in an ad hoc manner

- 7.23 We have undertaken significant research into when the “tool” has been used elsewhere. We found two applications for A5 uses in Kirklees in 2019. Neither were assessed with the tool. The council appears to have used the matrix three time to date, including our application.
- 7.24 Figures are fed into the matrix based on various categories, and the table gives a final score. Anything above 20 is considered unacceptable. This is the scoring matrix:

INDICATOR	Category	Worst	2	3	4	Best
IMD RANK	Range	Most deprived 20%	Most deprived 20-40%	Most deprived 40-60%	Least deprived 60-80%	Least deprived 80-100%
	Score	6	4	2	0	0
ADULTS OVERWEIGHT	Range	>=38%	36%-38%	34%-36%	32%-34%	<32%
	Score	6	4	2	0	0
ADULTS OBESE	Range	>=13%	12%-13%	11%-12%	10%-11%	<10%
	Score	6	4	2	0	0
5 YEAR OLDS WITH EXCESS WEIGHT	Range	>=29%	26%-29%	23%-26%	20%-23%	<20%
	Score	6	4	2	0	0
11 YEAR OLDS WITH EXCESS WEIGHT	Range	>=40%	38%-40%	36%-38%	34%-36%	<34%
	Score	6	4	2	0	0
DIABETES PREVALENCE	Range	>=11.5%	9.5%-11.5%	7.5%-9.5%	5.5%-7.5%	<5.5%
	Score	6	4	2	0	0
CORONARY HEART DISEASE PREVALENCE	Range	>=4%	3.5%-4%	3%-3.5%	2.5%-3%	<2.5%
	Score	6	4	2	0	0

- 7.25 In relation to the proposed McDonald’s, PHK team reported the following result to the planners, this being the basis for the recommendation that the application was not granted:

IMD rank:	Worst 10-120%	6
Adults overweight:	30.6%	0
Adults obese:	13%	4
<u>5 year olds</u> with excess weight:	26.1%	4
<u>11 year olds</u> with excess weight:	37.6%	2
Diabetes prevalence:	9%	2
Coronary heart disease prevalence:	3.6%	4
SCORE		22

- 7.26 Note that the IMD rank is incorrectly referenced as 10-120%. This is clearly an error as it should be a single percentage figure. We believe the IMD rank should be 20% which scores either 6 points or 4 points depending on how you read the model (most deprived is 20% scoring 6, and most deprived (2) is between 20% - 40% scoring 4). Giving the benefit of the doubt a score of 4 should be applied, giving an overall final score of 20. The proposal accords with the tool.

7.27 The PHK objection states “Public Health [Kirklees] would advise that an application should be refused if it has a combined points **above** 20” [my emphasis]. The proposal does not score over 20. It scores 20. Therefore, accords with the tool.

7.28 Application 2021/91172 (dated 07/04/2021) at Crown Motors received no objection from Kirklees Public Health. The differences in their matrix from the McDonald’s one above are highlighted in red. The same percentages are used in the assessment, except the first, but the scores vary. I suggest KPH can’t apply their own model.

IMD rank:	40-50%	2
Adults overweight:	30.6%	0
Adults obese:	13%	0
<u>5 year olds</u> with excess weight:	26.1%	6
<u>11 year olds</u> with excess weight:	37.6%	0
Diabetes prevalence:	9%	2
Coronary heart disease prevalence:	3.6%	4
SCORE		14

7.29 Please note that with the exception of the IMD rank, all other indicators remain the same, but a different score has been applied, suggesting the scheme is acceptable. Our assessment shows that the scheme should have scored 18. This remains below 20 but demonstrates the inconsistent approach of KPH.

7.30 Application 2021/91613(dated 24/04/2021) was not opposed by Kirklees Public Health. The differences in the matrix from McDonald’s are again highlighted in red. Again, the same percentages are used in the assessment, except the first, however the scores vary yet again.

IMD rank:	10%	6
Adults overweight:	30.6%	0
Adults obese:	13%	0
<u>5 year olds</u> with excess weight:	26.1%	4
<u>11 year olds</u> with excess weight:	37.6%	0
Diabetes prevalence:	9%	0
Coronary heart disease prevalence:	3.6%	0
SCORE		10

7.31 Please note that with the exception of the IMD rank, all other indicators remain the same, but a different score has been applied, presenting the scheme acceptable. My assessment

shows that the scheme should have scored 22, failing the tool test. However, KPH scored the scheme with 10 points and no objection was raised.

- 7.32 In short either KPH do not understand their own model or are just making up the numbers. There is no other explanation for the severity of responses based on almost identical data.
- 7.33 As national planning consultants working with many restaurants and coffee providers, we have not seen such an approach (this matrix) used anywhere else in the UK.
- 7.34 I have on many occasions seen the use of SPD's to control food outlets in accordance with the PHE recommendation of restricting take-aways within 400m of a school. No policy exists in this case. However, as a point of note, most, if not all of my clients already apply the 400m moratorium when looking for sites for food outlets in the first instance. There is not a school within 400m of this site.
- 7.35 We have shown above that the determining factor when applying the erroneous toolkit is the weight attached to deprivation. The council claim that there is a causal link between deprivation and obesity (which we reject). However, regeneration of a brownfield site with the economic benefits the proposal brings can only have a positive impact on the local economy and deprivation. Investments and jobs for the area will have a positive impact and is likely to attract further investment (we have demonstrated the indirect jobs created above). The education provision for staff is not just academic. It includes an holistic approach to wellbeing, including healthy eating and encourages exercise and visits to the gym.

Conclusion

- 7.36 McDonald's have considered the issues raised in the objection letters and consider that perceived issues have been addressed. McDonald's are a sustainable community operator and dutiful neighbour who wish to build a strong relationship with residents in the local community.
- 7.37 In the light of the above, I cannot see any other material consideration that would make the appeal proposal unacceptable.

8. Summary and Conclusions

- 8.1 My name is Matthew Carpenter. I hold a Bachelor of Arts Town Planning Degree from Oxford Polytechnic and a Post Graduate Diploma in Planning from Oxford Brookes University.
- 8.2 I have confirmed that the proposal is sustainable development. I have part relied on evidence produced by Mr Robson and part from my assessment of the proposal. The development brings economic benefit in terms of both direct and indirect employment and training. The proposal is socially responsible, and supportive of the local community. Mr Robson confirms sports sponsorship details and community involvement both on a national, but importantly on a local level. At an environmental level the proposal goes beyond any local policy, recycles, reuses oil for biodiesel and is powered from 100% renewable energy. In addition, high ambitions are set for the stores improvements in the future.
- 8.3 The proposal accords with national planning policy and national health policy. Health policy published by PHE is based on the criteria in the Framework. The framework confirms a presumption in favour of sustainable development and promotes access to healthy food. The proposal accords with that approach.
- 8.4 Local planning policy considers similar criteria to national policy, and a hook in policy LP47(j) links to a forthcoming SPD. That material consideration has yet to be completed by the council. There is nothing in the policy restricting the proposed development which accords with all relevant remaining policy in the plan. Indeed, the proposal is supported by policy.
- 8.5 The proposal is supported by another Inspectors recent comments who found that a very similar proposal was compliant with paragraphs 91c and 92b (now paragraphs 92c and 93b) from the Framework in promoting healthy and safe communities, and accorded with local policy as policy did not restrict the proposal.
- 8.6 All of the third part representations have been addressed in the context of this statement. Kirklees Public Health raise objection to the proposal. The proposal complies with their tool even though I do not consider it carries any weight.
- 8.7 Dr Capehorne has provided evidence on health and obesity. Much of this counters the need for a policy in the first place, but sets a background to obesity and health. His statement confirms that the levels of obesity in adults presented by KPH is considerably lower than the national average, and that the rates presented for children are only slightly higher than the national average.

- 8.8 In the light of the above there is no policy basis to refuse the appeal. In addition, material considerations do not indicate the appeal should be refused either. The reason for refusal presented by the council is incorrect. There are not higher levels of overweight population at the site or in the surroundings, and figures presented by KPH show heart disease and diabetes accord with the averages.
- 8.9 With all of this in mind, I request the appeal is allowed.