

# Briefing Note

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**Our ref** 67783/01/JW/KJ  
**Date** 13 May 2024  
**To** Barnsley Metropolitan Borough Council  
FAO Helen Willows  
**From** Lichfields (on behalf of McDonald's Restaurants Ltd)

## **Subject 2024/0331: Unit 1B, Barnsley Retail Park**

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### **1.0 Introduction**

- 1.1 This note has been prepared by Lichfields on behalf of McDonald's Restaurants Ltd ("McDonald's") in relation to a planning application for the change of use of Unit 1B, Barnsley Retail Park from a restaurant (Use Class E) to a restaurant/hot food takeaway use (Use Class E/*sui generis*) (ref: 2024/0331).
- 1.2 This briefing note considers relevant development plan policy and supplementary guidance and their application in decision making. It also addresses matters raised by the Council's Public Health and Policy teams in responses to a pre-application enquiry made prior to the planning application.
- 1.3 This note is structured under the following headings:
- **Section 2.0:** Compliance with development plan policies relating to public health;
  - **Section 3.0:** Status of the Planning Advice Note;
  - **Section 4.0:** Compliance with the Planning Advice Note on HFTs, in relation to:
    - i Over proliferation;
    - ii Proximity to schools;
    - iii Levels of obesity;
    - iv Requirement for a HIA;
  - **Section 5.0:** Other matters; and
  - **Section 6.0:** Conclusions.

### **2.0 Compliance with the Development Plan Policies**

- 2.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations (including the NPPF) indicate otherwise. The statutory development plan comprises the Barnsley Local Plan (adopted January 2019).
- 2.2 The Barnsley Local Plan does not include any policies which seek to control new HFT uses.

- 2.3 The only development plan policies relevant to health are:
- Policy Poll1 (Pollution Control) which requires developers to minimise the effects of any possible pollution and provide mitigation measures where appropriate; and
  - Policy D1 (High Quality Design and Placemaking) where development should contribute to place making and be of a high quality that contributes to a healthy, safe and sustainable environment.
- 2.4 Neither of these policies relates specifically to HFT uses. Instead, they seek to minimise and mitigate pollution, and to promote healthy and safe environments through design and legibility.
- 2.5 The subject planning application proposals meet the requirements of both of these policies. The application is accompanied by a range of technical assessments that demonstrate the proposals comply with the relevant national and local standards in terms of noise, air quality, ground contamination and flood risk and drainage. Furthermore, there is no evidence to suggest that the proposals would give rise to significant adverse effects on health and quality of life, nor residential amenity.
- 2.6 In addition, elsewhere in the Plan, Policy BTC1 sets out that the Council will work with developers and operators to diversify both daytime and evening economies. Preference will be given to a range of uses including restaurants, which cater for a range of customers and are family friendly; are open throughout the day and evening; maintain an active street frontage throughout the day and evening; serve food; and complement other leisure activities. In accordance with Policy BTC1, McDonald's would occupy a vacant unit in a prominent position to the retail park and restore activity to the unit frontage throughout the day and evening. It will also provide a family-friendly restaurant which is complementary to and easily accessible from other surrounding uses within the retail park.
- 2.7 The site is located within the Barnsley urban area where there will be a focus for growth, in line with Policy LG2. Barnsley Retail Park is the closest retail park to the town centre, and is well connected to the town centre, with linkage opportunities, including on foot.
- 2.8 An assessment of the proposed development against the adopted development plan is set out in the Planning Statement which accompanies the application. Overall, the proposed development is in accordance with the development plan when considered as a whole.

### **3.0 Status of the Planning Advice Note**

- 3.1 BMBC published both a Planning Advice Note ("PAN") and Supplementary Planning Document ("SPD") for HFTs in May 2019.
- 3.2 Supplementary planning guidance does not carry the same weight as a development plan document. Although it is noted that the SPD and PAN were subject to public consultation, it is not clear what that consultation entailed, and neither document was subject to an Examination in Public as a development plan document would be.
- 3.3 Government guidance is clear that SPDs should build upon and provide more detailed advice or guidance on policies in an adopted local plan. As they do not form part of the

development plan, they cannot introduce new planning policies into the development plan.<sup>1</sup> The Town and Country Planning (Local Planning) (England) Regulations 2012 sets out that policies contained in a supplementary planning document must be consistent with the adopted development plan.<sup>2</sup>

- 3.4 The Report of the Executive Director Place to Cabinet acknowledges that where a document is referred to as a Planning Advice Note, it is providing guidance on an issue that “*does not have a direct link to a Local Plan policy*”.<sup>3</sup> There are no policies within the adopted Barnsley Local Plan which seek to restrict HFTs. The PAN effectively introduces entirely different (and significantly more restrictive) policies than are set out in the development plan. This demonstrates that the PAN is inconsistent with the adopted development plan, and by introducing a new restrictive policy, it does not adequately meet the requirements of an SPD as set out in legislation.
- 3.5 PPG states that “*planning policies and supplementary planning documents can, where justified, seek to limit the proliferation of particular uses where evidence demonstrates this is appropriate (and where such uses require planning permission.)*”<sup>4</sup> However, should the Council determine that it is necessary for a planning policy response that seeks to limit HFT uses, such policies should be set out in the development plan. In circumstances where such policies are not set out in the development plan, the Council should seek to introduce them through a review of the Local Plan – rather than through a supplementary planning document, which has not been subject to the same level of consultation or scrutiny, or indeed independent examination by a Planning Inspector.
- 3.6 The PAN references chapter 8 ‘Promoting Healthy and Safe Communities’ of the NPPF which states that “*planning policies and decisions should aim to achieve healthy, inclusive and safe places which: enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling*”.
- 3.7 The principle aim of the NPPF is to achieve sustainable development which the application would achieve. Moreover, paragraph 3 states that the NPPF should be read as a whole (including its footnotes and annexes). Chapter 8 therefore needs to be read in conjunction with the remainder of the NPPF, specifically chapter 7 concerning town centres, chapter 6 ‘building a strong, competitive economy’ and chapter 11 ‘making effective use of land’.
- 3.8 The site is within an established retail park and as demonstrated within the application submission, it is within a sustainable location which is an easily accessible location on foot, and by bicycle and public transport (paragraph 89), and would reuse a vacant unit in a prominent location (paragraph 89). National policy seeks to create the conditions in which businesses can invest, expand and adapt (paragraph 85) and take a positive approach to the

<sup>1</sup> Paragraph: 008 Reference ID: 61-008-20190315

<sup>2</sup> <https://www.legislation.gov.uk/ukxi/2012/767/part/4/made>

<sup>3</sup> Adoption of New and Updated Supplementary Planning Documents SPDs and Planning Advice Notes PANs, for Cabinet meeting on Wednesday 15 May 2019.

<sup>4</sup> PPG Reference ID: 53-004-20190722

growth, management and adaptation of town centres to allow them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries (paragraph 90)

- 3.9 In summary, the SPD and PAN on HFTs seek to introduce restrictive policy which is inconsistent with the adopted development plan and the NPPF. Notwithstanding this point, supplementary guidance can only ever be afforded limited weight in decision making.

## 4.0 Compliance with the Planning Advice Note

- 4.1 Notwithstanding the limited weight that can be afforded to the PAN, an assessment of the proposed development against the four considerations for HFTs is outlined below.

### 1. Over Proliferation

- 4.2 The site lies within the Central Ward where there is the highest concentration of HFTs in the Borough. The PAN notes that there were 40 HFTs in the Central Ward as of 2018. The PAN indicates that the greater number of HFTs within a ward, the more likely it is that proposals for further HFTs would be in conflict with the NPPF, and specifically paragraph 96 which indicates that planning decisions should aim to achieve healthy, inclusive and safe places which enable and support healthy lifestyles.
- 4.3 There is no development plan policy which seeks to prevent an over proliferation of HFTs – and there is no evidence that there actually is an over-proliferation of HFTs in the vicinity of the application site. Restaurants and drive through restaurants are recognised as main town centre uses at Annex 2 of the NPPF. Town centre uses often cluster together to take advantage of the larger concentration of people. Seeking to locate in proximity to each other is no different to any other town centre uses which seeks to take advantage of a critical mass, such as a café quarter, or financial district.
- 4.4 If, in accordance with the PAN, proposals for HFTs within the Central Ward are not supported, this would effectively prevent such uses across a significant area within Barnsley including the Town Centre. Such an approach is inconsistent with the NPPF, which advocates positive planning and supports economic development and the needs of businesses. It is also inconsistent with national policy which recognises drive throughs and restaurants as a main town centre use.
- 4.5 Furthermore, Policy BTC1 sets out that the Council will work with developers and operators to diversify the daytime and evening economies. The proposed development is consistent with the aim of Policy BTC1 which will create a complementary use to the retail park and deliver sustainable economic growth. The proposed development would provide clear benefits to Barnsley Retail Park, including creating 50 direct headcount jobs once operational.<sup>5</sup>
- 4.6 Within the retail park itself, retail would remain the dominant use and there would not be an over proliferation of HFTs. The only existing food and drink uses at the retail park are Popeyes, Subway and Starbucks (only the former can be considered a HFT).

<sup>5</sup> Other economic benefits of the proposal are outlined in the Economic Operator Statement which accompanies the application.

- 4.7 Overall, the PAN seeks to restrict economic investment and employment opportunities in the Central Ward. This is inconsistent with national and local planning policy which seeks to support economic growth and employment opportunities.

## 2. Proximity to Schools

- 4.8 The site is not within 400m of a secondary school or Advanced Learning Centre as acknowledged in the pre-application response.

## 3. Location where there are high levels of obesity

- 4.9 The pre-application response states that the site is in a location where there are high levels of obesity. The SPD and PAN indicate that proposals for HFTs in wards where more than 32% of 10-11 year old pupils are classed as having excess weight are more likely to be in conflict with the NPPF.
- 4.10 It is acknowledged that the Public Health team is committed to addressing obesity and unhealthy eating. However, the approach to restricting new development that comprise an element of hot food takeaway uses is completely unjustified.
- 4.11 The site is within a retail park accessed by a busy arterial route into Barnsley and is not within 400m of a school. The site is therefore unlikely to be a location young children would attend without a parent/guardian. As identified by the Council, there are a range of restaurants/HFTs already in operation in the Central Ward, and it is a matter of personal choice where families choose to visit.
- 4.12 In a recent appeal decision seeking the change of use from estate agent (Use Class E(c)(iii)) to HFT (*sui generis*) at 306 High Road, Leyton, the Inspector found that “*given the Class E use of the site, it could be used as a shop, café restaurant without the need for planning permission. This is a material consideration. Such uses could sell food deemed as unhealthy as that of a hot food takeaway. This includes confectionary, sugary drinks, snacks of limited nutritional value and similar hot food choices to that of the proposal.*”<sup>6</sup>
- 4.13 Both the PAN and the response from the Council’s Public Health team fail to recognise that food which is high in calories and low in nutritional value can be bought at other premises trading under a Class E use. Such premises are more accessible to children than a restaurant/takeaway at Barnsley Retail Park. It is therefore clear that the causes of obesity cannot be solely attributed to HFTs, nor that this is ultimately something that can be controlled via the planning process given the flexibility afforded by Class E.
- 4.14 Furthermore, it is important to highlight that McDonald’s supports the promotion of healthier lifestyles and tackling obesity and is committed to giving their customers a range of options and supporting them to better understand the choices they make. Nutritional information is presented in a variety of ways to customers, from nutrition labelling on select food packaging to use of its mobile apps, kiosks and online nutrition calculators, as well as displaying calories on menu boards. This allows customers to select an order that fits with their own dietary plans and nutritional requirements.

<sup>6</sup> Appeal ref. APP/U5930/W/22/3299945, decision dated 17 January 2023.

- 4.15 McDonald's nutrition strategy in the UK has been in place for over 15 years. During this time, McDonald's has reformulated over 200 of their ingredients and invested heavily in broadening its menu of balanced healthy options. McDonald's has introduced more salad options, as well as fruit and vegetable bags, orange juice, mineral water and organic semi-skimmed milk. Currently, 92% of the core food and drink menu is under 500 calories. Around 70% of items in the McDonald's Happy Meal menu is non-high in fat, salt and sugar (non-HFSS), according to the U.K. Government's Nutrient Profiling Model.
- 4.16 McDonald's also seeks to encourage young people to have active lifestyles and has supported community football through their longstanding partnerships with the four UK football associations. McDonald's now has over 600 Fun Football Centres that provide hundreds of free football sessions designed with their UKFA partners and delivered by a team of fully qualified coaches across the UK.
- 4.17 Given the above, it should be clear that the proposed McDonald's approach is very different from that of other HFT operators who do not operate such a wide-ranging menu or provide customers with information on nutrition and calories to help customers make an informed choice. It is important that this is taken into account when considered the proposed use.
- 4.18 For the reasons set out in the Planning Statement that accompanies the planning application, it is not considered that there is any aspect of the proposal which would impact negatively on health and again, no evidence that the development would give rise to significant adverse effects on health and wellbeing. The planning application confirms that there will be no adverse impact on odours and noise, traffic or refuse and litter. Furthermore, there is no link between the proposed development and levels of childhood obesity, particularly given McDonald's ongoing responsible approach to offering balanced options and promoting active lifestyles.

## 4. Requirement for a Health Impact Assessment

- 4.19 The application was accompanied by a Health Impact Assessment ("HIA"). The HIA confirms that the proposed change of use will not cause adverse harm to the health or wellbeing of any groups of people who utilise the unit. The HIA has not identified any significant adverse effects resulting from the proposed development that need to be mitigated against. Indeed, the employment opportunities created by the development will have socio-economic benefits, as outlined in the Economic Operator Statement.
- 4.20 The HIA concludes that the site is suitable for the change of use to a hot food takeaway/restaurant which would create socio-economic and environmental benefits. The proposals are therefore considered to accord with Policy Poll1 in the adopted Barnsley Local Plan. On this basis, the proposed development is acceptable on health and wellbeing grounds.

## 5.0 Other Matters

- 5.1 The established use of the unit is Use Class E and it was previously occupied by Cow & Cream, and Bathstore prior to this. As a Class E use, there was no requirement for planning permission to be sought for change of use from retail to restaurant, as both of these uses fall



within Class E. Therefore, the assertion in the pre-application response that the previous restaurant use of the building was potentially not authorised is incorrect. The principle of a restaurant operating from the unit is established. Indeed this use also included an element of takeaway sales, with the unit being listed by delivery providers including Uber Eats and Deliveroo.

- 5.2 This is consistent with the wider retail park where an application was approved in June 2022 at Unit 9 (ref: 2021/0542). Despite the proposal including a drive-thru lane, the officer's report acknowledged that the definition of a café/restaurant within Use Class E allows the *"sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises"* (emphasis added). A S73 application was approved at Unit 9 in April 2023 and the officer's report again noted that Class E allows a mixed use of restaurant and HFT without any planning control or consideration against planning policy or the hot food takeaway SPD and PAN (ref: 2023/017). This demonstrates the acceptability of nearby units operating as a restaurant and takeaway under Use Class E.
- 5.3 The above confirms that a genuine fallback position for McDonald's is to operate the unit under Class E, where sales would predominantly be for consumption on the premises. The increase in the proportion of takeaway sales associated with the proposed development would not be materially different to this fallback position.

## 6.0 Conclusion

- 6.1 The Council's response to the pre-application enquiry is based on guidance set out in the PAN, rather than an adopted development plan policy. The PAN goes beyond providing guidance on how development plan policies should be applied, and instead introduces new policies which have not been subject to Examination in Public. In our view, only very limited weight can be attached to the PAN in making a decision on the subject planning application.
- 6.2 Notwithstanding this, and as set out above, there is no basis upon which to conclude either that the proposals would have a significant adverse effect on health, quality of life and wellbeing, or that the proposals are in conflict with the two relevant policies (on health matters) set out in the development plan – namely Policies Poll 1 and D1.
- 6.3 Importantly, the proposal will bring a vacant unit back into active use. In accordance with paragraph 89 of the NPPF, the application will make best use of previously developed land, and of a site that is physically well-related to existing settlements.
- 6.4 Finally, the Public Health team's response fails to acknowledge both the wider benefits of the development in terms of economic investment and job creation (noting that Enterprising Barnsley supports the proposed application given that it will help to create employment opportunities within the borough) and McDonald's acknowledgement of the need for a balanced nutritional diet and active lifestyles, which it is proud to support.
- 6.5 The proposed use is an appropriate town centre use within an established retail park. A McDonald's restaurant/takeaway in this location is compatible with nearby commercial

uses and indeed would complement the retail function of the park, resulting in linked trips. Furthermore, and as has been demonstrated, the application proposals are in accordance with the development plan when considered as a whole.