

## **McDonalds Restaurant, Lane End, Kirkby – V/2025/0003**

### **The Proposal**

Development of a Drive-Thru Restaurant with Associated Access, Servicing, Car Parking, Hard and Soft Landscaping and Other Associated Works

### **Policy Context**

#### **Development Plan**

- Ashfield Local Plan Review (ALPR), 2002 (saved policies)
  - Policy ST1: Development.
  - Policy ST2: Main Urban Areas.
  
  - Policy TR2: Cycling provision in new developments.
  - Policy TR3: Pedestrians and People with limited mobility.
  - Policy TR6: Developer contributions to transport improvements.
  
  - Policy SH8: Commercial/Retail Development.
  - Policy SH9: Hot Food Shops
  
- Neighbourhood Plan
  - There is no neighbourhood plan for the area.

### **Material Considerations**

- **National Planning Policy Framework (NPPF) (2024)** policies relevant to the application are:
  - Part 2 Achieving Sustainable Development and in particular Para.11 the presumption in favour of sustainable development.
  - Part 7: Ensuring the vitality of town centres.
  - Part 8: Promoting healthy and safe communities.
  - Part 9: Promoting sustainable transport.
  - Part 11: Making effective use of land.
  - Part 12: Achieving well-designed places.
  - Part 14: Meeting the challenge of climate change, flooding and coastal change.

The NPPF at paragraph 3 identifies that the NPPF should be read as a whole including its footnotes and annexes.

- **National Planning Policy Guidance (PPG)** brings together national planning guidance on various topics.
  
- **ODPM Circular 06/2005 Biodiversity and Geological Conservation** - The circular remains in force. In summary:

- This provides that it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development is established before planning permission is granted. This is a material consideration and must be addressed in making the decision.
  - If potential harm cannot be ruled out in relation to this issue, then all such surveys should be undertaken before any planning permissions are granted, as made clear in the circular.
  - The Circular identifies that the Biodiversity Action Plan (BAP) is capable of being a material consideration in the making of planning decisions.
- **Masterplans**
    - Kirkby Town Centre Spatial Masterplan
    - Notts Highway Design Guide.
    - The National Design Guide (2020)
    - Building for a Healthy Life (2020).
    - Gear change: a bold vision for cycling and walking (2020).
    - Cycle infrastructure design (LTN 1/20) (2020).
- **Planning Guidance:**
    - Ashfield District Council Planning and Climate Change, 2022.
    - Ashfield District Council Developer Guide to Biodiversity and Nature Conservation 2022.

## Legislation

- Natural Environment and Rural Communities Act 2006 section 40 duty “to have regard” to the conservation of biodiversity in England.
- Crime and Disorder Act 1998 Section 17 requires local authorities to consider the impact of all their functions and decisions on crime and disorder in their local area.

## Policy Comments

Section 70(2) of the Town and Country Planning Act 1990 provides that, in dealing with proposals for planning permission, regard must be had to the provisions of the development plan, so far as material to the application, and to any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that, if regard is to be had to the development plan for any determination, then that determination must be made in accordance with the plan, unless material considerations indicate otherwise. Therefore, the starting point for decision-making are the policies set out in the following:

- Ashfield Local Plan Review 2002 (saved policies)

The National Planning Policy Framework (NPPF) is a material consideration. The policies in the development plan have to be considered in relation to their degree of

consistency with the provisions of the NPPF (NPPF paragraph 48). This will depend on the specific terms of the policies and of the corresponding parts of the NPPF when both are read in their full context. An overall judgement must be formed as to whether or not development plan policies, taken as a whole, are to be regarded as out of date for the purpose of the decision<sup>1</sup>.

Under NPPF paragraph 11, where there are no relevant development plan policies, or policies which are most important for determining the application are out of date grant permission unless

- (i) the application of policies in the 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 significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

Under (i) it has to be considered whether the application of one or more "Footnote 7 policies" provides a clear reason for refusing planning permission. The mere fact that such a policy is engaged is insufficient to satisfy (i)<sup>2</sup>, the application of a Footnote (i) policy has to provide a clear reason for refusal.

## **Emerging Local Plan**

NPPF paragraph 49 enables local planning authorities to give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

The Emerging Ashfield Local Plan 2023-2040 was submitted to the Secretary of State for independent examination in April 2024. It is the Council's intention that this Plan will ultimately replace the saved policies of the current Ashfield Local Plan Review 2002 upon adoption and is considered to be a material consideration in decision making.

## **Policy ST1 Development.**

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<sup>1</sup> Wavendon Properties Limited v Secretary of State for Housing, Communities and Local Government & Anr. Case Number: CO/200/2019

<sup>2</sup> Barwood Strategic Land II LLP v East Staffordshire Borough Council [2017] EWCA Civ 893]

The proposal needs to be considered against ALPR Policy ST1, which specifies a number of provisions including that development will be permitted where:

- a) It will not conflict with other Local Plan policies.
- b) It will not adversely affect the character, quality, amenity or safety of the environment.
- c) It will not adversely affect highway safety or the capacity of the transport system.
- d) It will not prejudice the comprehensive development of an area.
- e) It will not conflict with adjoin or nearby land use.

Policy ST1 is consistent with the provision of the NPPF. However, in relation to any conflict with 'other Local Plan policies,' these other policies have to be considered in relation to the provisions of the NPPF.

### **Design and Masterplans**

Good design is a key aspect under ALPR Policies ST1 and has been given substantial emphasis in the NPPF which sets out the importance of high-quality design in new development. These policies are supported by ADC Planning Guidance on climate change and also Planning Policy Guidance - National Design Code.

The Kirkby Town Centre Spatial Masterplan (2021) identifies the proposed site as a gateway opportunity site. The vision for the site is to enhance connectivity between the station and the main town centre core and to increase legibility with improved signage and navigable routes. The Masterplan identifies that there is an opportunity to redevelop and reconfigure this gateway area to enhance access to/from the station, to provide a focus to the gateway, and to develop vacant land on the edge of the town centre. A mixed-use development, including residential, and potentially business/service uses, local convenience store, and car parking is cited as appropriate uses.

The Station Masterplans identifies the proposed site for high density residential apartments, taking advantage of the proximity to the station, with retail at ground floor level and parking for residents. A development of this nature would aim to provide an anchor at this end of the high street. It has also been identified that there is insufficient parking at the station site and this site has been identified as a possible solution to provide station parking to the rear of the apartments/retail units.

### **Climate Change**

Addressing climate change is one of the core land use planning principles, which the NPPF seeks to underpin in both plan making and decision taking.

The Council has set out that it "recognises the scale and urgency of the global challenge from climate change". This Council recognises that local action on global warming can make a difference." Resolved to "Reaffirm its commitment to doing everything possible to combat climate change including committing to a robust

climate change strategy". The Council's Planning Guidance Climate Change reflects that:

- a) Proposals for development should demonstrate an ambitious approach to the use of renewable energy, sustainable design and construction methods, with a high level of energy efficiency in new buildings.
- b) The measures set out in this Planning Guidance will need to be integrated into the design and layout of development within Ashfield, as climate change adaptation and mitigation will be considered in all development decisions.
- c) Applicants for planning permission should demonstrate how they have met the requirements set out in this Planning Guidance.

The Climate Change Committee's 2022 Report to Parliament notes that for the United Kingdom to achieve net zero carbon status by 2050, action is needed to support a modal shift away from car travel. This is reflected in the NPPF paragraph 164 in relation to new development and paragraphs 109 and 115 emphasising the need to promote walking, cycling and public transport.

### **Heritage**

No designated or non-designated heritage assets have been identified on the site or the immediate adjacent to the site.

### **Ecology**

No national or local designation are on site; however, Natural England's Magic Maps should be used a source of information for Priority Sites.

ADC's Biodiversity Opportunities Map should also be used as a source of information: <https://www.ashfield.gov.uk/media/8d850ab32628420/biodiversity-opportunity-mapping.pdf> It contains maps of habitat opportunities and notes where missing connections are needed, potentially facilitated by new development and funding opportunities.

A Developers Guide to Biodiversity and nature Conservation for Ashfield has been approved by the Council. This sets out how development can help deliver biodiversity improvements and net gains and should be used to inform the requirements in relation to all planning applications.

### **Flooding**

- Part of the site is in Flood Zones 2 and 3. A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3.
- Information source includes Flood Maps for Planning and Lead Local Flood Authority response to the application.

A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. In Flood Zone 1, an assessment should accompany all proposals involving: sites of 1 hectare or more. NPPF paragraph 181 and footnote 63.

Flooding was not a saved policy under the ALPR. Consequently, any application will need to be considered against the provisions of the NPPF Part 14 (Meeting the challenge of climate change, flooding and coastal change) and Planning Practice Guidance Flood risk and coastal change.

NPPF paragraph 182 emphasises that for applications which could affect drainage, Sustainable Drainage Systems (SuDS) should be utilised which should provide multifunctional benefits wherever possible. For major applications, the submitted information will need to identify the proposed operational standards and what maintenance arrangements will be in place to ensure an acceptable standard of operation for the lifetime of the development.

Planning Practice Guidance Flood risk and coastal change<sup>3</sup> sets out the aim should be to discharge surface run off as high up the following hierarchy of drainage options as reasonably practicable:

1. into the ground (infiltration);
2. to a surface water body;
3. to a surface water sewer, highway drain, or another drainage system;
4. to a combined sewer.

## **Highways/Transport**

There are policies in the ALPR which relate to the development of the site and transport aspects, but it is recognised that they are not comprehensive. Policy ST1 seeks to ensure that development will not adversely affect highway safety or prejudice the comprehensive development of an area. Policy TR2 Cycling provisions in new development set out the requirements in relation to cycling and Policy TR3 sets out requirements for pedestrians and people with limited mobility. Policy TR6 provides for contributions toward transport infrastructure.

The NPPF has a more comprehensive approach to transport. NPPF Part 9 promotes sustainable transport, contributing towards sustainability and health objectives. The NPPF stresses in paragraphs 77 and 110 that significant development should offer 'a genuine choice of transport modes.' Paragraph 117 gives priority to pedestrian and cycle movements and having access to high quality public transport. NPPF Paragraph 118 requires a travel plan for development that will generate significant amounts of movement and a transport statement/assessment.

## **Strategic Transport**

It is important that development management decisions consider the wider strategic transport implications in relation to proposed development. This not only reflects the

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<sup>3</sup> Paragraph: 080 Reference ID: 7-080-20150323 Revision date: 23 03 2015

location and scale of development but includes development contributing toward the provision of necessary strategic transport infrastructure, including highways improvement to reduce congestion, promoting greater public transport use and active travel through walking and cycling. The need to take account of strategic transport requirements has a number of positive impacts including economic benefits, reducing social exclusion and health inequalities, improving air quality and meeting the challenge of climate change through decarbonation.

The National Planning Policy Framework (NPPF) identifies that transport issues should be considered from the earliest stages of development proposals with significant development being focused on locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes (Paragraph 77). In assessing planning applications, paragraph 115 states that it should be ensured that appropriate opportunities to promote sustainable transport modes are prioritised taking account of the vision for the site, the type of development and its location and that any significant impact from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

Contributions to transport infrastructure are required under ALPR Policy TR6. Policy TR6 states that contributions are required from development where it places additional demands on the transport infrastructure. This includes the following:

- Improvements to public transport infrastructure including:
  - i. Bus priority measures
  - ii. Bus stop facilities.
  - iii. Rail facilities
  - iv. Associated highway infrastructure to support public transport modes.
- Improvements to cycling networks.
- Improvement to pedestrian facilities
- Park and ride sites.