

Development Control Committee
2 September 2020

Application for Advertisement Consent
DC/20/0817/ADV -
Land Adjacent to Willie Snaith Road,
Newmarket

| | | | |
|-------------------------|--|------------------------|---------------------|
| Date Registered: | 01.06.2020 | Expiry Date: | 03.09.2020 |
| Case Officer: | Adam Ford | Recommendation: | Approve Application |
| Parish: | Newmarket Town Council | Ward: | Newmarket North |
| Proposal: | Application for Advertisement Consent - 1 no. internally illuminated freestanding totem sign | | |
| Site: | Land adjacent to Willie Snaith Road, Newmarket | | |
| Applicant: | McDonald's Restaurants Ltd | | |

Synopsis:

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and Associated matters.

Recommendation:

It is recommended that the Committee determine the attached application and associated matters.

CONTACT CASE OFFICER:

Email: adam.ford@westsuffolk.gov.uk

Telephone: 07984 468062

Background:

- 1. This application relates to the site upon which planning permission has recently been granted by the Development Control Committee for 2no. drive-through cafe/restaurant units (DC/18/2210/FUL).**
- 2. Due to the objection from Newmarket Town Council, which conflicts with the Case Officer's recommendation of approval, the application was presented to the West Suffolk Delegation Panel on 28th July.**
- 3. The Panel resolved that the application should be referred to the Development Control Committee.**

Proposal:

4. The application seeks advertisement consent for 1 free standing internally illuminated advertisement adjacent to Willie Snaith Road. The advertisement comprises two elements; a yellow 'M' which will form the advertisement for McDonalds and a red backing with 'Costa' written in white text.
5. The illuminated elements are the yellow 'M', and white Costa text only.
6. The advertisement has a maximum height of 5m and a width of 2.8m. The depth of the advertisement (measured from front panel to back panel) is 0.48m.
7. Amended plans were submitted to the Local Planning Authority on the 18th August 2020 which reduced the proposed illuminance from 600 candelas per sqm to 300 sqm.

Application Supporting Material:

- Application form
- Layout plan
- Location plan
- Totem pole elevations
- Advertisement statement

Site Details:

8. The site is located on the corner of Willie Snaith Road and Fordham Road, north of the town centre. The site is presently empty and has been for several years. Surrounding uses comprise Tesco superstore and Wickes with other office and employment uses in the close vicinity. Planning permission under DC/18/2210/FUL has recently been granted for 2no drive-through cafe/restaurant units (DC/18/2210/FUL).

Planning History:

| Reference | Proposal | Status | Decision Date |
|----------------|---|---------------------|---------------|
| DC/18/2210/FUL | Planning Application - (i) 2no drive-through cafe/restaurant units (Use Class A1/A3 for Costa and Use Class A3/A5 for McDonald's) with associated parking and landscaping and (ii) McDonalds Climbing box | Application Granted | 09.06.2020 |
| DC/19/0021/ADV | Application for Advertisement Consent - 7no. internally illuminated fascia signs | Application Granted | 09.06.2020 |
| DC/19/0031/ADV | Application for Advertisement Consent - Various site signage including - (i) 17 no. non illuminated Directional signs (ii) 5no. internally illuminated Digital screen signs (iii) 1no. internally illuminated Playland sign | Application Granted | 22.02.2019 |

9. Consultations:

SCC Highway Authority

- No objection to the proposal subject to a condition which controls the maximum luminance of the advertisement.

Public Health & Housing

- No objection raised and no conditions requested

10. Representations:

Newmarket Town Council

- The Town Council have submitted an objection to this proposal on the basis that they feel it does not comply with NKT32. The objection states that the Town Council feel the advertisement will be prominent and visible, dominating the landscape along the A142.

Ward Member, Cllr Soons

- I am opposed to the application of a 5 metre (16 and a half foot) luminous yellow 'M' in the sky over Newmarket. There is no planning precedent for

such a sign any-where in Newmarket. This is why I feel it should be refused:

- It contravenes policy 32 of the Newmarket Neighbourhood plan
 - It is out of step with existing signage in Newmarket (no 5m sign exists in the town even at the nearby Burger King).
 - It goes against government advice on obesity. Fast food advertising should not appear on television before 9pm so why is it ok to erect a 5m advertising sign adjacent to the George Lampton (Children's) Playing fields?
 - We as a nation are in the midst of a global Pandemic, (Covid 19) that has fatal consequences for those classified as obese.
 - We are, as of now also in the midst of a nationally recognised obesity epidemic. The combination of D & E could prove fatal for the future of our children and residents in Newmarket.
- Please refuse this application as being against government advice on fast food advertising, planning precedent, Newmarket Neighbourhood plan and at variance to health advice in an obesity epidemic and health pandemic made worse by obesity.

11. Public comments:

- Public consultation letters were issued to 3, 4 and 5 Hatchfield Cottages on the 6th June 2020. No public comments were received in response at the time of writing this report.

Planning Policy:

12. On 1 April 2019 Forest Heath District Council and St Edmundsbury Borough Council were replaced by a single Authority, West Suffolk Council. The development plans for the previous local planning authorities were carried forward to the new Council by Regulation. The Development Plans remain in place for the new West Suffolk Council and, with the exception of the Joint Development Management Policies document (which had been adopted by both Councils), set out policies for defined geographical areas within the new authority. It is therefore necessary to determine this application with reference to policies set out in the plans produced by the now dissolved Forest Heath District Council.

13. The following policies of the Joint Development Management Policies Document and the Forest Heath Core Strategy 2010 have been taken into account in the consideration of this application:

Newmarket Neighbourhood Plan

- NKT32 – Gateways into the Town

Forest Heath Core Strategy Document

- Core Strategy Policy CS5 - Design quality and local distinctiveness

Joint Development Management Policies Document

- Policy DM1 Presumption in Favour of Sustainable Development

- Policy DM2 Creating Places Development Principles and Local Distinctiveness
- Policy DM38 Shop Fronts and Advertisements

Other Planning Policy / legislation

The Town and Country Planning (Control of Advertisements) (England) Regulations 2007

14. It should be noted that this is not an application for planning permission. It is an application for advertisement consent only.
15. Regulation 3 of the 2007 Advertisement Regulations requires that local planning authorities control the display of advertisements in the interests of **amenity** and **public safety**, taking into account the provisions of the development plan, in so far as they are material, and any other relevant factors.
16. Unless the nature of the advertisement is in itself harmful to amenity or public safety, consent *cannot* be refused because the local planning authority considers the advertisement to be misleading (in so far as it makes misleading claims for products), unnecessary or offensive to public morals.

National Planning Policy Framework (2019)

17. The NPPF was revised in February 2019 and is a material consideration in decision making from the day of its publication. Paragraph 213 is clear however, that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the revised NPPF.
18. Due weight should be given to them according to their degree of consistency with the Framework; the closer the policies in the plan to the policies in the Framework; the greater weight that may be given. The policies set out within the Joint Development Management Policies have been assessed in detail and are considered sufficiently aligned with the provision of the 2019 NPPF that full weight can be attached to them in the decision making process.

Officer Comment:

19. The issues to be considered in the determination of the application are:
 - Regulation 3 of the 2007 Advertisement Regulations
 - Impact on amenity: scale and form
 - Impact on amenity: illumination
 - Impact on public safety

Regulation 3 of the 2007 Advertisement Regulations

20. The display of advertisements is subject to a separate consent process within the planning system. This is principally set out in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
21. As clarified above, regulation 3 of the advertisement regulations state that in determining applications for advertisement consent, local planning authorities may only consider **amenity** and **public safety**, taking into account the provisions of the development plan, in so far as they are material, and any other relevant factors. Other matters such as misleading claims or potential offence to public morals are not relevant in the determination of such applications.

Impact on amenity: scale and form

22. "Amenity" is not defined exhaustively in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. It does, however, include aural and visual amenity (regulation 2(1)) and factors relevant to amenity include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest (regulation 3(2)(a)).
23. In practice, "amenity" is usually understood to mean the effect on visual and aural amenity in the immediate neighbourhood of an advertisement or site for the display of advertisements, where residents or passers-by will be aware of the advertisement. It is, however, a matter of judgement by the local planning authority as it applies in any particular case.
24. Therefore, in assessing amenity, the local planning authority would always consider the local characteristics of the neighbourhood: for example, if the locality where the advertisement is to be displayed has important scenic, historic, architectural or cultural features, the local planning authority would consider whether it is in scale and in keeping with these features. In this instance, the advertisement is proposed in area which is dominated by commercial and functionally styled / scaled buildings with associated advertisements common.
25. With respect to the development plan, Policy DM38 (Shop Front and Advertisements) states that proposals for advertisement must preserve or enhance the character and appearance of the building or location of which it forms a part, and the street scene in which the proposal is located, and must not adversely affect amenity and/or public safety. In addition, Policy DM2 also seeks to ensure advertisements are not unduly large or visually jarring and it also requires that such proposals do not undermine prevailing or existing amenity.
26. Policy NKT32 of the Newmarket Neighbourhood plan is also relevant in that the site is identified as being a gateway into the town. Specifically, NKT32 states that *"any new development or re-development at the gateways to the town (as identified on Policies Map 1) and in particular along the A142, should be of high quality and sympathetic to the locality."*
27. In this instance, the proposed advertisement is relatively modest in scale with a height of 5m and a width of 2.8m. This will be read and interpreted

within the context of the wider, commercially styled locality and, as a result, the free-standing advertisement is not considered to represent a departure away from the area's existing vernacular or character. The advertisement would be positioned in-front of the approved drive-thru units and it will not therefore be seen in isolation or presented in a way which is harmful to the street scene or character of the area. Given the existing advertisements and developments already in situ (Tesco: 5.7m and 7.1m and Wickes: 6m for example), the modestly scaled totem pole is not judged to be an addition which would be visually jarring or out of character. As such, the advertisement is not considered to represent a proposal that the Local Planning Authority could justify recommending for refusal.

28. The detailed objection from the Town Council is noted but in considering the application, it must be understood that the advertisement is not assessed against policy NKT32 in isolation. The proposal is considered against the advice within the NPPF and the development plan as a whole (insofar as it is relevant to advertisements). The advertisement is considered to comply with policies DM2 and DM38 with respect to its scale and siting.
29. As noted, policy NKT32 specifically states "*any new development or re-development at the gateways to the town (as identified on Policies Map 1) and in particular along the A142, should be of high quality and sympathetic to the locality*". Accordingly, given the locality within which the advertisement is proposed and the prevailing commercial, functional form, although the objection from the Town Council is noted, Officers do not concur that the proposal conflicts with NKT32. By virtue of its relatively modest scale and non-intrusive colour scheme, the proposed advertisement is judged to be suitably and aesthetically sympathetic to the locality.
30. At this juncture it should be noted that the proposed advertisement represents a *significantly* smaller version than the applicant had initially planned for the site. Officers gave pre-application advice to the applicant and this has resulted in a potential 12m totem pole being reduced to what is presently proposed; being 5m in height. This is a substantial reduction and, for the reasons set out above, to require a further reduction – given the requirements of DM2, DM38 and NKT32 – would be unreasonable and not something that Officers feel would withstand scrutiny at appeal should the advertisement to be refused on the grounds of scale or appearance.

Impact on amenity: illumination

31. In addition to the scale and form of the advertisement, in considering the amenity impacts, the Local Planning Authority must also have regard to the degree of illuminance. The development to which the advertisement relates (presently a Costa and a McDonalds) is permitted to trade on a 24hour basis. The proposed advertisement is therefore intended to be illuminated during night-time hours of trade although the applicant has not stated specific hours. It is therefore appropriate for the LPA to consider the illumination and its impact pragmatically.
32. Within this section of the report, the extent of the illumination has been considered within the context of relevant legislation and lighting guidance.

33. The advertisement as proposed comprises two areas of illumination; the 'M' for the McDonalds and the red/white Costa element. The drawings indicate that the illumination will be static (i.e. no flashing or strobing) and that the maximum luminance shall be 300 candela per square metre.
34. To understand how 'bright' 300 candela is, reference should be made to two documents:
- The Town and Country Planning (Control of Advertisements) (England) Regulations 2007
 - Guidance Notes for the reduction of obtrusive light GN01:2011 (as produced by the Institute of Lighting Professionals)
35. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 set out when advertisements do and do not require consent. Although this advertisement requires consent, classes 2B, 2C, 4A, 4B and 5 allow a number of illuminated advertisements without requiring consent. This offers a useful reference point as the regulations state that where an advertisement does not require consent and it is to be illuminated, the following restrictions on illumination shall be relevant:
- where the illuminated area is not more than 10 square metres, 600 candela per square metre; and
 - where the illuminated area is more than 10 square metres, 300 candela per square metre.
36. In this instance, the proposed advertisement does not exceed the level of illuminance which is considered acceptable in the national regulations for those advertisements which do not require consent – this nationally prescribed level being 600 candela per sqm. In this respect, the advertisement, which has an illuminance value of 300 candela per sqm, is not therefore considered to represent an unacceptably visually obtrusive design which would give rise to unacceptable amenity impacts.
37. In addition, the guidance notes for the reduction of obtrusive light GN01:2011 (as produced by the Institute of Lighting Professionals) offer a useful point of reference in considering the degree of illumination as proposed. As noted, this is a technical document, but it offers a simple explanation for general consumption.
38. The guidance note is designed to illustrate what levels of lighting are appropriate in particular locations. To do this, table 1 splits land uses into 5 typologies depending on their characteristics:

| Zone | Surrounding | Lighting Environment | Examples |
|-------------|--------------------|-----------------------------|---|
| E0 | Protected | Dark | UNESCO Starlight Reserves, IDA Dark Sky Parks |
| E1 | Natural | Intrinsically dark | National Parks, Areas of Outstanding Natural Beauty etc |
| E2 | Rural | Low district brightness | Village or relatively dark outer suburban locations |
| E3 | Suburban | Medium district brightness | Small town centres or suburban locations |
| E4 | Urban | High district brightness | Town/city centres with high levels of night-time activity |

39. In this instance, the application site would be considered as being within the E3 zone given the location with respect to the main settlement and the presence of the existing 'out of centre' commercial units. It is not deemed to be within E2 as the area is well lit by lighting columns and is not in a rural location.

40. Having established that the site lies within what could be described as zone E3 (as confirmed through comments from the Highway Authority on other, adjacent applications), the guidance note then enables users to consider what lighting levels are appropriate by stating what would be considered as excessive in both pre curfew conditions (non-sensitive times, i.e. daylight, early evening) and post curfew conditions (sensitive time i.e. 11pm onwards).

41. The important column within table 2 to look at is therefore the one highlighted blue; this shows what level of illuminance in candela would be considered intrusive in the E3 zone, during hours of darkness:

| Environmental Zone | Sky Glow ULR [Max %]⁽¹⁾ | Light Intrusion (into Windows) E_v [lux]⁽²⁾ | | Luminaire Intensity I [candelas]⁽³⁾ | |
|---------------------------|---|---|--------------------|---|--------------------|
| | | Pre-curfew | Post-curfew | Pre-curfew | Post-curfew |
| E0 | 0 | 0 | 0 | 0 | 0 |
| E1 | 0 | 2 | 0 (1*) | 2,500 | 0 |
| E2 | 2.5 | 5 | 1 | 7,500 | 500 |
| E3 | 5.0 | 10 | 2 | 10,000 | 1,000 |
| E4 | 15 | 25 | 5 | 25,000 | 2,500 |

42. The table above illustrates that when located in zone E3, after the 'curfew' (when it is reasonable to expect less light and darker conditions), an illumination value of 1000 candela would be considered as visually obtrusive. However, the advertisement as proposed has a value of 300 candela. Therefore, given the extent to which this is *below* what the institute of lighting professionals prescribe as being visually obtrusive, a conflict with policy CS5, DM2, DM38 or NKT32 has not been identified by the Local Planning Authority.

43. Although the above illustrates that the proposed advertisement is not likely to be considered as excessively bright, how long the advertisement will be illuminated must also be considered. In doing this, it should be noted that under DC/19/0021/ADV, advertisement consent has already been granted for a number of fascia signs to be illuminated without restrictions on times; i.e. they are permitted to be 'on' 24 hours.
44. Accordingly, taking policies DM2 and DM38 into account insofar as they relate to residential amenity, the nearest dwelling is located approximately 70m to the South of the totem pole. It is noted that the area is already dominated by a proliferation of illuminated advertisements and street lighting; however, the proposal results in an illuminated advertisement being closer to a private residential dwelling and there is limited screening between the proposed dwelling and the site of the proposed totem pole. It is noted however that no public comments have been submitted in response to the proposal.
45. Therefore, given the degree of illuminance already permitted under DC/19/0021/ADV and noting the need to protect residential amenity, although the advertisement is not considered to be excessively bright, it will emit a visual glow – the impact of which must be considered.
46. The submitted application form does not clarify when the applicant wishes for the advertisement pole to be illuminated although it is understood, based on discussions with the agent that the intention is for it to be illuminated during all hours of darkness. Public Health & Housing have also not suggested any restriction on hours although this does not preclude the LPA from further considering the potential impact on amenity, taking into account any cumulative impacts as may arise.
47. As such, given the proximity of the dwelling to the South, the existing degree of illuminance and the need to curtail unrestricted proliferation of advertisements, when the totem pole was proposed as being illuminated to 600 candela per sqm the Local Planning Authority considered it reasonable to condition the hours of illuminance as follows:
- Monday: 6am until midnight
 - Tuesday: 6am until midnight
 - Wednesday: 6am until midnight
 - Thursday: 6am until midnight
 - Friday: 6am until midnight
 - Saturday: 6am until midnight
 - Sundays / bank holidays: 6am until 10pm
48. However, this would have resulted in a position whereby the advertisement was not operational during the night and it is noted that a 24hour convenience offering such as this will, to an extent, likely rely on a degree of 'after dark' trading. Instead of the above restriction, the applicant has volunteered that the illuminance will be reduced by 50% from 600 candelas per sqm to 300 candelas per sqm. This represents a significant reduction in illuminance and, on balance, given the context of the site, would enable the LPA to support the 24-hour illumination sought by the applicant. This positively negotiated outcome offers a compromised position in which the illuminance has been reduced by half without the need to impose further conditional control over the advertisement.

49. Following the significant reduction in the illuminance levels, and given the above discussion with respect to amenity, a specific condition which requires the advertisement to be switched off is not considered to be required. Accordingly, a conflict with policies CS5, DM2, DM38 or NKT32 has not been identified by Officers.

Impact on public safety

50. In assessing the impact of an advertisement on public safety, a Local Planning Authority is expected to have regard to the effect upon the safe use and operation of any form of traffic or transport on land including the safety of pedestrians. The proposed totem pole will be positioned on land owned by the applicant and will not therefore cause any obstruction to pedestrians or impede the adjacent footpath. Whilst the signs will be illuminated and visible from the adjacent roundabout, the Highway Authority is satisfied that they will not cause such a distraction to motorists to be considered dangerous and as such, the signage would not have any adverse effects in terms of public safety. This is confirmed through the submission of their 'no objection' comment.

51. The advertisement is also positioned so that it is not immediately adjacent to the roundabout; it is set back away from the junction with Willie Snaith Road by approximately 26m. This serves to prevent motorists being potentially distracted whilst on the roundabout which is something that the Highway Authority would seek to avoid in the interest of highway safety.

52. Given the lack of an objection from the Highway Authority, the proposed advertisement is not judged to conflict with policies DM2(L), DM38 or paragraph 110 of the National Planning Policy Framework.

Other matters

53. Within the 'consultation' section of this report, comments as provided by the Ward Member, Cllr Soons have been reproduced. The concerns raised with respect to the scale and physical presence have been addressed above with direct reference to relevant planning policy and technical guidance.

54. However, the comments made with respect to obesity, Covid-19 and televised advertising are not relevant to the determination of an application for advertisement consent.

55. Regulation 3 of the 2007 Advertisement Regulations very clearly states that in determining applications for advertisement consent, Local Planning Authorities may only have regard to amenity and public safety. In this context, public safety includes all of the considerations which are relevant to the safe use and operation of any form of traffic or transport on land (including the safety of pedestrians), over water or in the air.

56. It does not, however, include issues such as a perceived increased propensity for obesity; it would therefore be unlawful to base a decision on matters which the legislation specifically excludes from being material.

Conclusion & planning balance

- 57. In conclusion, the principle and detail of the proposed advertisement is considered to be acceptable and in compliance with relevant development plan policies and the National Planning Policy Framework.
- 58. As set out within this report, when determining applications for advertisement consent, local planning authorities may, given the provisions of the 2007 Advertisement Regulations, only consider amenity and public safety, taking into account the provisions of the development plan, in so far as they are material, and any other relevant factors.
- 59. In this instance, the relevant policies against which the proposal should be considered are CS5, DM2, DM38 and NKT32. Whilst the objection from the Town Council and elected ward member are respectfully noted, the advertisement as proposed is not judged to conflict with the aforementioned policies insofar as they relate to amenity and public safety.
- 60. Accordingly, no material reasons have been identified which would otherwise outweigh the relevant policy support, and subject to the conditions below, the 5m high illuminated totem pole is considered to represent a policy compliant proposal.

Recommendation:

It is **RECOMMENDED** that advertisement consent be **GRANTED** subject to the standard advertisement conditions as set out in appendix 1 and the following bespoke conditions:

- 1 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans and documents:

| Reference No: | Plan Type | Date Received |
|----------------------|------------------|----------------------|
| 6929-SA-8361-P022M | Layout | 18.08.2020 |
| 6929-SA-8361-AL01A | Location Plan | 21.05.2020 |
| 6929-SA-8361-SK20D | Sign Details | 18.08.2020 |

Reason: To define the scope and extent of this permission.

- 2 The maximum luminance from the freestanding 5m totem sign shall not exceed 300 candela/m2 unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety and in order to avoid disability or discomfort glare for either pedestrians or motorists.

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online DC/20/0817/ADV

Case Officer:

Adam Ford

Phone:

07984 468062

Appendix 1

Standard conditions which apply to all advertisements as prescribed by Regulation 2 of the 2007 Advertisement Regulations

1. no advertisement is to be displayed without the permission of the owner of the site on which they are displayed (this includes the highway authority, if the sign is to be placed on highway land);
2. no advertisement is to be displayed which would obscure, or hinder the interpretation of, official road, rail, waterway or aircraft signs, or otherwise make hazardous the use of these types of transport;
3. any advertisement must be maintained in a condition that does not impair the visual amenity of the site;
4. any advertisement hoarding or structure is to be kept in a condition which does not endanger the public; and
5. if an advertisement is required to be removed, the site must be left in a condition that does not endanger the public or impair visual amenity.

Source: <https://www.legislation.gov.uk/uksi/2007/783/schedule/2/made>