



Report of the Chief Planning Officer

SOUTH WEST PLANS PANEL

Date: 23rd June 2016

Subject: 15/05904/FU - Demolition of public house and erection of two storey restaurant, with drive through, and associated car parking and landscaping. Site of former White Bear public house, Dewsbury Road, Tingley, WF3 1JX.

APPLICANT	DATE VALID	TARGET DATE
McDonalds Restaurant Ltd	1 st October 2015	Original date 26/11/15

Electoral Wards Affected:

Morley South

Yes

Ward Members consulted

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION: REFUSE PERMISSION for the following reason:

The location and nature of the proposed use is considered likely to lead to an increase in on-street parking on Dewsbury Road (known locally as "Old Dewsbury Road"), particularly at the turning head end adjacent to the application site, outside residents houses. This will introduce new noise and disturbance from engine noise, door slamming, car radios, and customer conversations, which would be a demonstrable source of nuisance and the quality of life of the nearest residents would be diminished due to the change in acoustic character of the area. The proposal is therefore considered to be contrary to policy GP5 of the adopted UDP, and to guidance given in the National Planning Policy Framework and Guidance and for this reason does not constitute sustainable development.

1 SUMMARY

- 1.1 This application is brought back to Plans Panel following the decision by the Planning Inspector to dismiss the appeal of the previous application. Members will recall that this application was submitted to try and overcome concerns regarding the reasons for refusal that were the subject of the appeal. The application was

presented to Plans Panel on 10th December 2015 (report appended) with an officer recommendation for approval. Members resolved not to approve the scheme and instead set out areas around which refusal reasons were to be based.

- 1.2 Following the determination of the appealed application this outstanding application is brought back to Plans Panel to finally determine the refusal reasons. The original Panel report and addendum is appended which sets out the proposal, site and surroundings and the history to the site. This report will instead focus on the appeal decision, and the reasons for refusal that are suggested.

2 BACKGROUND

- 2.1 This is an application to demolish the former White Bear public house and to erect a two storey restaurant with a drive through facility, car parking and landscaping. The application was submitted on the 1st October 2015 and was originally due a decision on 26th November 2015.
- 2.2 In tandem with this, application 14/03390/FU was going through the appeal procedure following a delegated refusal on 25th September 2014. This was heard at a Public Inquiry in the week of the 15th March 2016. The decision was issued on 11th May 2016 and the outcome is summarized below.
- 2.3 This current live application was originally recommend for approval by officers, however at Plans Panel S&W on the 10th December 2015 Member resolved to refuse the scheme. Following the appeal decision these refusal reasons have been amended to reflect the Inspectors reasoning, and consequently these are now brought back to Plans Panel for ratification.

3 PLANS PANEL OUTCOME 10TH DECEMBER 2015

- 3.1 Members resolved that the application be refused in principle with the decision deferred to the Chief Planning Officer to draft detailed reasons for refusal relating to the following;
- Harm to residential amenity by virtue of the noise and disturbance from the comings and goings associated with customers visiting the premises at hours when residents could expect quieter conditions.
 - Highway safety in relation to the operation of the two accesses.
 - Further consideration of the public health implications of the proposal particularly with regard to the proximity of Woodkirk Academy.
- 3.2 The reasons for refusal were to be discussed with the Panel Chair prior to the decision being issued.

4 APPEAL DECISION

- 4.1 The application that went to appeal was essentially the same as this current application, although some amendments were made to the scheme, mostly to cater for highway works to be incorporated. The Inspector confirmed that the only area of dispute between the Council and the appellants were the impact on the living conditions of neighbours. It was identified however that Morley Town Council as Rule 6 Party were opposing the scheme on residential amenity, highway safety, pedestrian safety and public health.
- 4.2 The Inspector considered that the main issues were:

- The effect of the proposal on the living conditions of neighbouring residents, having particular regard to noise and disturbance; and
- The effect of the proposal on highway and pedestrian safety.

Noise and Disturbance

- 4.3 It was acknowledged that background noise levels were significant and would essentially drown out any noise that came from operation of the site itself. Furthermore it was considered that sufficient distance between the restaurant and residents existed to mitigate harm from noise arising from operations and use of the restaurant and the drive through.
- 4.4 However the Inspector considered that due to the location of the site, the difficulties of accessing the site (necessitating one or two turns around the roundabout), and the practicalities of parking needs meant that customers were likely to park on “Old Dewsbury Road” which terminates at the southern boundary of the site, and provides convenient access across into the restaurant. The Inspector considered that parking on this road, outside residents properties, would be easy, convenient, and would quickly become well known and would encourage visitors to park up on the road. This would lead to additional, new, noise outside residents homes that would not be ameliorated by the background noise levels. This noise was considered to lead to significant harm to residents particularly during the hours when residents could reasonably expect a lower level of disturbance. The noise would result in a material change in behaviour of the residents including not using garden areas, and keeping windows shut in an effort to avoid noise. Therefore the quality of life of the nearest residents would be diminished. It was noted however that the noise would not cause sleep disturbance or harm to health.
- 4.5 The Inspector also acknowledged that the existing pub use could recommence however he did not consider that this would lead to the same issues as the appeal scheme due to material differences in the way the two uses operate. No noise disturbance was considered to arise from the drive through, deliveries or plant at the site.

Highway and Pedestrian Safety

- 4.6 Following some amendments to the scheme which showed additional highway works being offered it was considered that the proposal would not be detrimental to highway or pedestrian safety and that adequate access into and out of the site could be achieved.

Other Material Planning Considerations

- 4.7 The Inspector considered the fall back position and did not attribute much weight to this. He agreed that the principle of this type of development on the site was acceptable in policy terms, and that there were no issues regarding headlight glare or landscaping, subject to suitable schemes being put in place.

Balance

- 4.8 The Inspector noted the significant benefits to the area arising from the scheme including the provision of jobs (65 FTE's), the provision of training and apprenticeship schemes and wider community initiatives that MacDonaldis are involved in. He also noted that the restaurant could be used by the community to meet and socialise in. He considered that there was no harm arising to highway or pedestrian safety or that it would cause noise in terms of the operation of the site.
- 4.9 Notwithstanding these benefits though the Inspector felt that the harm that would be caused by parking of cars on Old Dewsbury Road, and the impacts this would have on residential amenity, was significant enough to merit refusal of the scheme.

- 4.10 It is noted that despite lengthy discussion at the Inquiry the Inspector does not refer to issues of Public Health in his decision suggesting that this is not considered to be a material planning consideration.

5 APPRAISAL

- 5.1 In light of the Inspector's decision and reasoning it is felt that the refusal of this current application should be along the same lines as to introduce reasons for refusal that the Inspector has dismissed would require new or additional evidence which we do not have. During the appeal process highway officers and the applicant continued discussions and overcame all concerns that they had with regard to highway and pedestrian safety. Advice was taken on Public Health matters and given that the Council does not currently have a planning policy on this matter, coupled with the Inspector's non-consideration of the issue, then it is not felt that a refusal reason on those grounds could be substantiated. This was the stance that the Council took during the appeal.
- 5.2 The only reason therefore that Members original requested to refuse the scheme on is that of the impact to residents as a result of comings and goings of customers. Whilst Members were concerned about the operation of the site itself, it is recommended that the refusal reason should only seek to address the issues caused by the parking of customers on Old Dewsbury Road in line with the Inspectors reasoning. This is on the basis of the plans that were submitted at appeal stage.
- 5.3 The recommended refusal reason is given in full at the top of this report. Details with regard to the proposal itself can be found in the appended report.

6 CONCLUSION

- 6.1 Members are asked to determine the application as a refusal based on the given reason in light of the appeal decision.

Background papers

Appendix 1 (in two parts) – previous report to Panel in December, and addendum to December Panel report.

Application File

Ownership Certificate: The applicant has served notice to the landowner on 22.09.2015

Notice served to:- Matterhorn Capitol, 10 Gloucester Place, London.

For appeal documentation please refer to appropriate planning application.



APPENDIX 1 (part 1 of 2)

Report of the Chief Planning Officer

SOUTH WEST PLANS PANEL

Date: 10th December 2015

Subject:

Application 15/05904/FU; Demolition of public house and erection of two storey restaurant, with drive through, and associated car parking and landscaping. Site of former White Bear public house, Dewsbury Road, Tingley, WF3 1JX.

APPLICANT	DATE VALID	TARGET DATE
McDonalds Restaurant Ltd	1 st October 2015	Original date 26/11/15. Ext: 15/12/15

Electoral Wards Affected:

Morley North

Yes

Ward Members consulted

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

Defer and Delegate approval subject to the suggested conditions and the signing of a Section 106 agreement to cover the payment for bus stop upgrades in the vicinity of the site totaling £20,000

In the circumstances where the Sec.106 has not been completed within 3 months of the resolution to grant planning permission the final determination of the application shall be delegated to the Chief Planning Officer.

Conditions

1. Time limit on permission.
2. Compliance with approved plans.

3. Use to be as restaurant with ancillary drive through facility and not to be operated as A5 use.
4. Specified opening hours of 07.00hrs to 23.00hrs Monday to Friday, 0700 to 2200 Saturdays and 0900 to 2000 on Sundays and Bank Holidays.
5. Submission of demolition and construction management plan to include: specified operating hours during demolition and construction – 0800 to 1800 Mondays to Saturdays with no operations on Sundays and Bank Holidays; location of plant and equipment; location of parking for contractors and employees; wheel washing and prevention of mud; routing of vehicles involved in delivering materials to site.
6. Details of all fixed plant ,including noise data to be submitted and agreed
7. Noise level of mechanical services on the development not to exceed a level at the nearest noise sensitive premises higher than 5dB below the lowest prevailing background noise level (LA90)
8. Noise level and details of the air conditioning unit to be submitted and agreed. Noise levels not to exceed at least 5dBA below the existing background noise level (L90) at the nearest noise sensitive premises.
9. Sound from the Food Tannoy ordering systems shall not be audible from any point on the site boundary.
10. Details of external lighting to be submitted and agreed.
11. Details of CCTV to be submitted and agreed.
12. Details of extract ventilation systems incorporating filter to be submitted and agreed.
13. Details of the provision of Grease Trap to be submitted and agreed.
14. Submission of a Delivery, Servicing and Car Management Plan to be submitted and agreed. This shall include number of deliveries per week, hours of delivery, types of vehicles used, delivery routes, signing within car park, control of delivery vehicles within site (use of chiller units, reversing alarms, parking etc.)
15. Offsite highway works to be completed before first occupation of the site.
16. Development not to be occupied until the cycle /motorcycle parking and facilities have been provided.
17. Vehicle spaces to be laid out prior to occupation.
18. Public pedestrian access to be maintained and available through the site from Dewsbury Road to Tingley Common and Dewsbury Road at all times for the lifetime of the development. Details of signage and monitoring of pedestrian route to be submitted.
19. Vehicular access from the A650 must be clearly signed as “In only” as shown on the submitted plans.
20. The access from the A653 shall not be brought into use until the works on the visibility splays and sightlines onto A653 have been undertaken.
21. Details of drainage and surface water drainage works to be submitted and agreed.
22. Phase 1 desk top study report to be submitted prior to commencement of development.
23. Phase II site investigation reports if required to be submitted and agreed.
24. Soil importation details to be submitted.
25. Verification reports to be submitted if required.
26. Hard and soft landscaping details, management plan and implementation timetable to be submitted and agreed.
27. Protection of existing trees.
28. Details of development in root protection zones to be agreed.
29. Replacement of trees/landscaping if any die.
30. Boundary treatment details to be submitted and agreed
31. Details of acoustic fencing along southern boundary to be submitted and approved, including location, height, materials, insulation levels.
32. Details of storage and disposal of litter to be submitted and agreed, to include number and siting of litter bins, and monitoring of site and environs by staff.

1 SUMMARY

- 1.1 This application is the fifth submitted by the applicant (McDonalds) during the period from 2011 to date. The applications to date have all been refused, and one appeal has been dismissed, details of these are to be found in the Planning History section. Essentially the scheme was refused on the grounds of harm to highway safety, and harm to residential amenity.
- 1.2 Following this dismissal the applicants reconsidered the site, amended the scheme and resubmitted a new scheme (14/03390/FU). The Council took the view to refuse this one, and this is currently at appeal, awaiting a Public Inquiry in the New Year.
- 1.3 Since refusal of the 2014 application the applicants have sought to address concerns further through negotiations and council officers have reviewed their submissions together with colleagues from relevant teams. As a consequence of those discussions the decision was taken to invite a further application to be made to see how much ground could be agreed prior to the Inquiry being heard. Should agreement be reached and an approval be granted then the applicants would be likely to withdraw the appeal. If a further refusal is issued the appeal will continue on the same timetable.
- 1.4 This report then represents the latest position on the negotiations that have taken place and outlines current officer thinking based on the evidence to date. There has been significant level of opposition to this proposal with each application made, and the objections remain essentially as impact on amenity, and impact on highway safety, these are addressed in the appraisal section below. Members should note that the current Public Inquiry is scheduled for 15th March 2016, with proofs of evidence due for submission in mid-February.

2 INTRODUCTION

- 2.1 This application is presented to Plans Panel members owing to the number of objections received, local ward member concerns, local sensitivity to the proposed use and the fact that the previously refused application 14/03390/FU is the subject of a Public Inquiry scheduled for 15th March 2016.
- 2.2 Members should note that the deadline for determination has expired, however an extension of time has been agreed until 15th December 2015.

3 PROPOSAL

- 3.1 The application proposes the demolition of the existing pub building, the erection of a new, two storey restaurant building and the laying out of parking and a drive through facility. The restaurant building is to be positioned to the south eastern portion of the site, with car parking to the northern and western areas. Access and egress will come off Dewsbury Road, and a further ingress point will come off Bradford Road.
- 3.2 The existing pub building is approximately 800 sq m in footprint, the new building will provide 343.80 sq m of floorspace, along with the provision of 36 car parking spaces, 2 disabled spaces, 12 cycle spaces and 2 grill bays (waiting spaces for ordered food). The restaurant will have a drive through facility with two customer order display units.
- 3.3 The new building is proposed to be two storeys high (7.3m to flat roof), featuring the use of a mix of materials including contemporary grey block, dark grey aluminium

frames, wooden Italian walnut cladding and vertical aluminium timber effect battens. The main entrance will be on the northern elevation, the drive through booth on the eastern elevation, and both of these elevations feature large curtain glazing looking onto Dewsbury Road and the roundabout. The submitted floor layout shows a dining area to the northern part of the building, with serving areas on the ground floor. The southernmost portion of the building is indicated as a storage area for bins. The first floor has kitchen area, storage, toilets, staff facilities and a smaller dining area (located to the northern half).

- 3.4 The site has a number of mature trees which contribute positively to visual amenity, these are to be retained largely, with two groups to the northern and eastern roadside boundary providing screening, and smaller groupings providing screening along the southern boundaries. 2m high acoustic timber fences are proposed on the southern boundaries, either on the site boundary, or set in.
- 3.5 The customer order displays are canopied structures on a tapering support stand, with camera, microphone, screen and speaker incorporated into the structure. The canopy is a convex, triangular structure made out of GRP and will be illuminated from underneath. Canopy dimensions are approximately 3.5m long x 2.4m wide and 3m high.
- 3.6 Access points will have new white lining and anti-skid finishes and will be laid out to indicate direction of travel and restrictions. HGV's will be restricted to using the Dewsbury Road access point only, and will park up parallel to the old Dewsbury Road terminus whilst within the site. Pedestrian access is provided from Bradford Road, the old Dewsbury Road access and the access road off Dewsbury Road will have a footway.
- 3.7 Hours of opening are proposed from 0700 to 2300 Monday to Sunday, deliveries are expected to occur 3 times a week. The restaurant is expected to provide 45 full time equivalent jobs.

4 SITE AND SURROUNDINGS

- 4.1 The site area is located north west of Tingley Centre. The site accommodates the White Bear public house in the northern part of the site facing the Tingley A650 route. Towards the north of the site is the M62 Motorway, with the site adjacent to Bradford Road, Dewsbury Road and Tingley Common roundabout. Vehicular access to the site is both from Dewsbury Road and Tingley Common A650 route. There are a number of trees that line the edge of the site facing the roundabout and within the site adjacent to residential properties which are located to the south of the site. The closest residential properties are on Oban Close, 7m from site boundary, and 132 Dewsbury Road, 8m from site boundary, these are all two storey properties.
- 4.2 The existing pub building is two storey's high, with complex multiple pitched roof, part of the first floor is built out on a canopy. The building is brick and artificial stone to the ground floor, and white bargeboards to the upper floor. The car park area is largely tarmac, although large parts of it are overgrown with grass. Levels across the site are relatively level, although there are changes in level on the Dewsbury Road boundary, where there is a grassed embankment rising up from the road, resulting in a level change of between 1 and 1.5m. To the south of the site, on Dewsbury Road the embankment is much more overgrown with shrubs and trees. The level change tapers off towards the northern boundary of the site before rising again to the west.

5 RELEVANT PLANNING HISTORY

- 5.1 14/03390/FU: This application was essentially the same as the current one under consideration. This was refused on the following grounds on 25.09.2014 and is currently at appeal:
- The proposed use is considered unacceptable by reasons of the comings and goings of vehicles, light illuminated by car headlights, the closing and opening of car doors and the number of additional customer visits. This would generate an unacceptable level of activity, noise and general disturbance at unsociable hours. This would be detrimental to the general amenity of nearby residential occupants. As such the proposal is contrary to Leeds Unitary development Plan Review (2006) policy GP5, T2 and T24, along with Core Strategy Policies P10, T2 and T24.
 - The proposed restaurant is considered unacceptable by reason of its scale and massing and location of service delivery vehicles in close proximity to the rear gardens of dwellings on Dewsbury Road. This would result in loss of privacy and general noise and disturbance. This is considered detrimental to the residential amenities of nearby residents and thereby contrary to guidance contained within the National Planning Policy Framework (2012), policy GP5 of the Leeds Unitary Development Plan and policy P10 and T2 and T24 of the Core Strategy.
 - The proposed internal layout is considered unacceptable by reasons of inability to satisfactorily accommodate an articulated service vehicle, an inadequate level of forward visibility on the internal two-way access road and the location of the service vehicle. This would result in hindering customer vehicles as they exit the ordering point and turn right into the car park. These are all likely to vehicles queing back onto the highway. This is considered detrimental to highway and pedestrian safety and contrary to guidance contained within the National Planning Policy Framework (2012) and policy T2 of the Leeds Unitary Development Plan (Review 2006) and policy T24 of the Core Strategy.
 - The reasons for refusal, and how they relate to the current application are addressed in the appraisal section below.
- 5.2 12/02957/FU: As for 12/01072/FU but reducing the hours of operation from 24hrs to 0600hrs to midnight everyday with the aim to reduce the impact on neighbouring residents. In addition the Sequential Test questioned the need for a sequential approach as the existing building (White Bear) is a public house and restaurant and the lawful use of the site is A4. Given this use, permitted development rights exist to convert the property to either Class A3 (Restaurant), Class A2 (Financial or Professional) or Class A1 (shop use). The applicant claimed that this establishes the principle of retail use outside of an existing centre. The existing property could be used for example as a 24 hr local supermarket without the need for planning permission. Claiming that the impact of such a store would likely have more of an impact on local shopping patterns than the proposed McDonalds restaurant. Paragraph 27 of the NPPF(March 2012) states that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused. As officers were not aware of other sites that were available and sequentially preferable for this development it was not recommended that planning permission be refused for this reason. The application was refused for the reasons of loss of residential amenities by reasons of overlooking and noise and disturbance to residents on Oban Close.

- 5.3 The applicant appealed the decision which was dismissed on 11th March 2014. The Inspector concluded that the introduction of an outdoor seating area and the siting of the main entrance in close proximity to the rear gardens of Oban Close properties would introduce noise of a different character to that of the background traffic noise stating *“I consider that the noise emanating from patrons talking and laughing as they entered and exited the premises or used the seating area would be clearly audible to adjoining residents. It would result in a level of noise and disturbance over and above what is reasonably to be expected in this particular residential environment.* The Inspector further acknowledged *“that the obscure glazing to the first floor would have an impact on the rear gardens and dwellings of Oban Close”*
- 5.4 12/01072/FU demolished the Public House and proposed the construction of a two storey restaurant (within the same area of the Public House) with a drive through. The highway concerns could be addressed and much of the landscaping provision was retained. The two storey restaurant was brought closer to the rear gardens of Oban Close, further into the site than the location of the demolished Public House. This was refused on the grounds of proximity to residential dwellings (Oban Close) and the noise and disturbance this would cause. The sequential test again, did not justify why Government Policy should not apply in this instance.
- 5.5 11/02941/FU: Single storey restaurant, car parking and landscaping retaining the existing public house. This was refused for highway reasons of insufficient off street parking provision and lack of suitable servicing areas for both the existing public house and the proposed restaurant. The 24 hour operation would cause noise and disturbance at unsociable hours to nearby residents. Additionally a Town Centre Use was proposed out of the Town Centre and the sequential test submitted did not offer clear and convincing reasons why Government Planning Policy should not apply in this instance. The amount of development proposed limited the space for a suitable landscaping provision and proposed extensive tree removal.
- 5.6 The history before this date demonstrates use as a pub and restaurant (the two uses were within the same use class back then). There have also been a number of more recent advert applications in connection with McDonalds, which have all been refused as being premature as there was no permission for McDonalds to operate.

6 HISTORY OF NEGOTIATIONS

- 6.1 Previous application 14/03390/FU has been appealed with a Public Inquiry scheduled for 15th March 2016. Since submission of the appeal the LPA has been seeking to establish common ground with the applicant and narrow down the areas of disagreement before the Public Inquiry as required under Best Practice. This has involved the input of Environmental Health and Highways officers. This report addresses the amendments made to the scheme in the appraisal section below.

7 PUBLIC/LOCAL RESPONSE

- 7.1 Application advertised by site notice posted on site 9th October 2015 .The following representations have been received:-
- 7.2 Total number of 321 local representations received of which 317 are objections and 4 are in support.
- 7.3 Objections (summarised)
- Proposed use not suitable ,as not in a commercial centre
 - Highways concerns around safety of pedestrians and vehicles

- Not in keeping with the area
- Fast food outlet that will be close to schools – concern about healthy eating
- Litter that will be generated
- Emphasis on localism , local community have already said four times previously that they do not want this in their area.
- Part of the site is in the ownership of resident adjacent to the site.

7.4 Support (summarised)

- Local employment
- Local dining option
- No more a nuisance than the previous public house
- Better than being left derelict

7.5 Morley Town Council (comments summarised)

- Application similar to previous one
- Boundary to 132 Dewsbury Road is incorrect, if corrected would lessen the distance between the nearest part of the of 132 and the restaurant and its roadways
- 2m acoustic fence would be next to wall of same height, little effect.
- Appeal Inspector confirmed a 2m high acoustic fence would be too tall
- Notice on tree states that the site is breeding ground for lesser spotted woodpecker
- Highway concerns regarding access, not practical and would not be accepted by todays standards
- Highway concerns around number of parking spaces , not sufficient
- Concerns of noise and disturbance to residents regarding the hours of opening
- Noise and hours of extractor fans working
- The sequential search report is out of date and was always unconvincing
- Moving restaurant would not solve problem would move the problem elsewhere on the site
- No fundamental design objections

7.6 Local Ward members

- Concerns raised by local Morley Independent ward members around same issues as above

8 **CONSULTATION RESPONSES**

8.1 Forward planning and implementation

- Current objection as the sequential report (SA) is outdated and should be updated and revised. The SA was submitted as part of previous application 14/03390/FU and since it was originally written policy has changed and moved on. In particular:
- Reference is made to Circular 03/2005 which has been deleted and replaced with the NPPF.
- Fails to consider the policies of the up to date statutory development plan (P8d and e are relevant). (Core Strategy adopted since previous application).
- Should address the draft Site Allocations Plan – with reference to newly identified centres etc.
- Policy P8d requires the SA to be based on a catchment area of 5 minute inbound drive time, it is not clear if the SA has been carried out on this basis.

- New sites are likely to have come forward since previous SA written.

8.2 Environmental Health

- A noise impact assessment was submitted with the application. Background noise levels in the area are relatively high due to the proximity of the road network. The repositioning of the restaurant, along with reduced opening hours and provision of additional acoustic fencing will help mitigate the impact associated, in particular, with vehicles coming and going. Estimated that plant noise would be masked by existing background noise for most of the day, and other mitigation measures are suggested to deal with odour and litter. Recommend a suite of conditions regarding operating hours, noise levels, details of mechanical plant etc. as well as quite specific conditions relating to operation of refrigeration vehicles and customer order points.

8.3 Highways Agency (consulted due to proximity to motorway network)

- No objections.

8.4 Travelwise

- Development below threshold, a travel plan is therefore not required.

8.5 Flood Risk Management

- No objections subject to recommended drainage and surface water conditions.

8.6 West Yorkshire Combined Authority

- Several bus services running next to the development serving various locations including Bradford, Morley, East Ardsley etc. There are also more services nearby. Future visitors would benefit from improvements to bus stop numbers 10347 and 11459 at a cost of approximately £10,000 each.

8.7 Contaminated Land Team

- Phase I Desk Top Study required, depending on outcome of study, further reports maybe needed.

8.8 Public Rights of Way

- Developer should contact public rights of way for footpath diversion.

8.9 Air Quality Management

- No objections to the proposal on the grounds of local air quality.

8.10 Highways

- No objection to principle of development.
- The applicant has replicated the site accesses proposed safety improvements associated with the previous application 14/03390/FU, in order to mitigate the anticipated increase in vehicular trips. These include anti skid surfacing and white lining to reconfigure the junction layouts. A visibility splay is proposed at the access onto the A653 Dewsbury Road which is achievable with the foliage cutback. This submission addresses the previous highway concerns about vehicle manoeuvring, internal forward visibility and larger articulated vehicle servicing in relation to the likelihood of vehicles extending onto the highway. The location of the unloading bay position has been moved away from the residential dwellings on Dewsbury

Road to be positioned against the wall at the head of the Dewsbury road.
No further objections to the proposal.

9 PLANNING POLICIES:

Development Plan

9.1 The development plan for Leeds is made up of the adopted Core Strategy (2014), saved policies from the Leeds Unitary Development Plan (Review 2006) (UDP) and the Natural Resources and Waste Development Plan Document (DPD), adopted January 2013.

9.2 The site is unallocated in the Development Plan.

Relevant Policies from the Core Strategy are:

- SP1 – Location of development in main urban areas on previously developed land.
- P8 – Town Centres, sequential requirements.
- P10 – High quality design.
- P12 – Good landscaping.
- T2 – Accessibility.
- G8 – Biodiversity improvements.
- EN5 – Managing flood risk.
- ID2 – Planning obligations and developer contributions.

Relevant Saved Policies from the UDP are:

- GP5 – General planning considerations
- T5 – Safe access for pedestrians and cyclists.
- T6 – Safe access and provision for disabled.
- T7A – Secure cycle parking.
- T7B – Secure motorcycle parking.
- BD5 – General amenity issues.
- Car Parking Guidelines

Relevant DPD Policies are:

- GENERAL POLICY1 – Presumption in favour of sustainable development.
- WATER1 – Water efficiency, including incorporation of sustainable drainage
- WATER4 – Effect of proposed development on flood risk.
- WATER7 – No increase in surface water run-off, incorporate SUDs.
- LAND1 – Land contamination to be dealt with.
- LAND2 – Development should conserve trees and introduce new tree planting.

Supplementary Planning Documents

- Street Design Guide

National Planning Policy

- 9.3 The National Planning Policy Framework (NPPF), published on 27th March 2012, and the National Planning Practice Guidance (NPPG), published March 2014, replaces previous Planning Policy Guidance/Statements in setting out the Government's planning policies for England and how these are expected to be applied. One of the key principles at the heart of the Framework is a presumption in favour of Sustainable Development.
- 9.4 The introduction of the NPPF has not changed the legal requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The policy guidance in Annex 1 to the NPPF is that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.

Site Allocations Plan (Draft)

- Site is unallocated in this plan.

10 MAIN ISSUES

- Principle of Development
- Previous Refusal Reasons:
 - (i) Residential Amenity.
 - (ii) Highway Safety.
- Other Matters
- Representations received
- Community Infrastructure Levy/Developer Obligations.

11 APPRAISAL

Principle of Development

- 11.1 The site is currently classed as being an A4, public house, use and this operated until relatively recently. This included use of part of the building for restaurant purposes (restaurant use was previously in same use class as pubs). Under the General Permitted Development Order 2015 the property itself could be converted to any use falling within classes A4, A3 (café's), A2 (financial and professional) or A1 (retail) without requiring planning permission. The only matters requiring planning permission would be external alterations to existing building, new buildings, and any new laying out required (e.g. new car parking areas).
- 11.2 This then is the fallback position of the site, in that it could be put to one of these uses lawfully and commence operations straight away. The drive through element of the restaurant is considered to be ancillary to the main restaurant use which is allowed within the use classes order. At what point the drive through would step outside the boundaries of an "ancillary use" is a matter of fact and degree and would relate to issues such as amount of floorspace given over to it, percentage of sales etc. This issue can be controlled through planning legislation, or by means of conditions which would ensure that the main use of the site is as a restaurant.

- 11.3 Because of the fallback position planning officers have not pursued the objection of the local plans officer to the submitted sequential assessment. It is accepted that the assessment is out of date due to the policy changes that have occurred over the past year, however, to seek to refuse the application on these grounds would ignore the fallback position and could be considered unreasonable. Furthermore the previous submitted planning application (2014) did not raise this as an issue and the application has not materially altered since that point.
- 11.4 Despite not being within a town centre, the site is located in an area that is both close to residential properties, and on a busy road junction, and consequently it is likely to attract both foot visitors, and road users. It is unlikely to be a destination in its own right due to the type of food and service provided; consequently it would be unlikely to negatively impact on existing restaurant services within centres. Notwithstanding this, it should be recognized that the existing building could provide for an 800 sq m restaurant, or retail unit, which would have a much larger impact but over which the Council would have little to no control.
- 11.5 Accepting then the principle of redevelopment of this site for a more limited scale restaurant provision the main issues then relate to matters of detail, amenity, highway safety etc. These are addressed below, set out to relate to previous refusal reasons which raised such concerns.

Previous Refusal Reasons:

Impact on Residential amenities

- 11.6 Refusal Reason 1: The proposed use is considered unacceptable by reasons of the comings and goings of vehicles, light illuminated by car headlights, the closing and opening of car doors and the number of additional customer visits. This would generate an unacceptable level of activity, noise and general disturbance at unsociable hours. This would be detrimental to the general amenity of nearby residential occupants. As such the proposal is contrary to Leeds Unitary development Plan Review (2006) policy GP5 , T2 and T24 , along with Core Strategy Policies P10 , T2 and T24.
- 11.7 These issues were raised by the Planning Inspector in the previous appeal decision. At that point the new restaurant was proposed on the western part of the site and was orientated with main entrance and glazed area facing in the direction of residential properties, approximately 9m from rear boundaries. The access road off Bradford Road would have passed around the western side of the restaurant and would travel along the rear boundaries of properties on Oban Close (leaving a 1m gap). This layout would have resulted in much more activity taking place close to these properties with very limited scope to provide mitigation, whether that was in the form of acoustic fencing or dense planting. The impact on these residents then was considered to be significantly detrimental.
- 11.8 To overcome these issues the restaurant is now located to the other side of the site, where it is positioned 13m away from the site boundary (21m from the side of no. 132). Furthermore the area closest is an enclosed storage area for bins and deliveries, with all customer activity taking place to the northern side of the building. This will reduce the amount of external noise that occurs in close proximity to residential properties, and reduces the amount of traffic that passes in close proximity to boundaries. It is accepted that there will still be an access road close to the side and rear of no. 132, however this is an existing access point and would

have been used whilst the pub was trading, the impact is therefore not considered to be sufficiently different to merit refusal on these grounds alone.

- 11.9 A noise impact assessment has been submitted which is technically sound and complies with relevant Government guidance on such matters. This notes that the levels of background noise from existing roads, is such that the noise produced by the activity on site is unlikely to be harmful. Any additional noise can be adequately dealt with through mitigation and control of noise e.g. by provision of acoustic fencing, hours of use, control over deliveries etc. A 2m high timber acoustic fence is proposed to the southern boundary along the access road, adjacent to no. 132, and a further acoustic boundary could be placed within landscaping behind Oban Close – this type of boundary treatment not only protects from noise, but would also screen headlights and general activity from view.
- 11.10 Refusal Reason 2: The proposed restaurant is considered unacceptable by reason of its scale and massing and location of service delivery vehicles in close proximity to the rear gardens of dwellings on Dewsbury Road. This would result in loss of privacy and general noise and disturbance. This is considered detrimental to the residential amenities of nearby residents and thereby contrary to guidance contained within the National Planning Policy Framework (2012), policy GP5 of the Leeds Unitary Development Plan and policy P10 and T2 and T24 of the Core Strategy.
- 11.11 The proposed building is two storey's in height with a flat roof measuring just over 7m to the highest point. This has been located as far away from residential properties as can be achieved without impacting on protected trees around the boundaries of the site. The building will be 12m from the nearest residential property, and is tapered at the southernmost point which will further reduce impact. Being to the north the building will not cause any overshadowing of residential premises, and the trees along the southern boundary are to be retained which will provide suitable screening. Given the distances involved, the orientation and the shape it is not considered that the massing of the building is harmful to residential amenity.
- 11.12 The delivery vehicles have previously been proposed to park along the access road, in close proximity to no. 132. This would have caused noise if refrigeration units were left running whilst deliveries were made. To mitigate against this the delivery bay is now proposed along the dead end of Dewsbury Road, approximately 15m from the nearest property on Oban Close. It is not possible to put an acoustic fence up along this section of boundary as it is used to provide a pedestrian access. The applicant has indicated that deliveries will only happen 3 times a week, and hours can be controlled through condition. With these provisions in place it is considered that this would ensure that residential amenity is protected.

Highway Issues

- 11.13 Concerns have been raised by objectors regarding the impact of the restaurant on traffic levels on and around the Tingley roundabout. Highway officers have assessed the proposal and do not consider that the proposal would generate harmful levels of traffic. The nature of the restaurant is not as a final destination in its own right, rather a journey that is undertaken as part of other journeys, consequently it is not considered that the amount of traffic would increase significantly as a result of the proposal. The pub itself would have also generated traffic to and from it, and if the building were to be re-used as a retail unit this could generate significant traffic levels in its own right. As the highway network is considered to be able to cope with

the traffic levels associated with the proposal there is no fundamental objection on highways grounds.

- 11.14 The previous application was refused on highway grounds for the following reason:
- 11.15 Refusal Reason 3: The proposed internal layout is considered unacceptable by reasons of inability to satisfactorily accommodate an articulated service vehicle, an inadequate level of forward visibility on the internal two-way access road and the location of the service vehicle. This would result in hindering customer vehicles as they exit the ordering point and turn right into the car park. These are all likely to vehicles queuing back onto the highway. This is considered detrimental to highway and pedestrian safety and contrary to guidance contained within the National Planning Policy Framework (2012) and policy T2 of the Leeds Unitary Development Plan (Review 2006) and policy T24 of the Core Strategy.
- 11.16 Highways officers have worked with the applicants to seek to overcome these issues, modifications to the internal layout, coupled with tracking diagrams have overcome concerns regarding vehicle movements, into, within and out of the site. The applicant is also proposing to provide a suitable visibility splay at the access onto the Dewsbury Road, this will require the cutting back of foliage to achieve it and this will need to be secured via condition. Further safety improvements include use of white lining and anti-skid surfacing at the access points. It is recognised that a number of local residents have concerns about road safety around the roundabout, however it needs to be noted that this is an existing site with an existing use, and the proposed use is unlikely to increase the numbers of vehicles around the site to a level that would cause harm. The functioning of the roundabout itself is a matter for the Highway Authority to address.

Other Matters:

Health:

- 11.17 Concerns have been raised regarding the impact of a fast food restaurant on the health of, in particular, local school children. Woodkirk Academy is located just to the south and west of the application site, at the bottom of the old Dewsbury Road, with playing fields stretching up to Bradford Road. School children are known to use the pub site as a route to the school in the morning and afternoons, crossing through the car park, onto old Dewsbury Road. There are concerns that by passing through a fast food outlet they will be tempted to eat there, raising concerns regarding health, obesity etc.
- 11.18 These concerns are very valid and there is an increasing body of evidence to suggest that there is a link between poor food choices and obesity. It is currently however unproven that there is a link between fast food restaurants such as these and poor health – this is not to suggest that it does not exist, however causality has not been proven. The Council has been looking into the possibility of having a policy that seeks to address such issues, particularly in relation to hot food takeaways, however this has not yet been formulated into a policy. Such a policy would probably restrict location of take-aways within a certain distance of sensitive locations e.g. schools. At the closest point the school field is approximately 230m from the site, to the main school buildings, (in a straight line), it is about 400m. This is still some distance, and given that the main use of the site is as a restaurant it would be unlikely to be affected by the type of policies that have been formulated by other Councils. The fact that the applicant is McDonalds should not colour the determination of this application, the site could be taken over and operated by any

restaurant operator. On balance it is not considered that concerns over health have sufficient weight to justify a refusal reason in this instance.

Pedestrian Access:

- 11.19 Concerns are raised about the crossing of the site by school children, and how safe this will be once the car park and drive through is operational. At the moment there is no formally laid out pathway across the site (although a right of way does exist), and it should be borne in mind that this is a site that could recommence use at any time, thus raising similar safety concerns. It is important that it is addressed however as there is a recognized right of way across the site. The site layout does allow pedestrian access into the site and via marked road crossings across to old Dewsbury Road where there is a further pedestrian access onto the road itself. It is accepted that this route does not follow a straight line, and that it therefore is unlikely to be on a pedestrian desire line, however it has been designed as the safest route across the internal roads and avoids crossing the parking area. A condition requiring the applicant to consider and address concerns, through clear signing and monitoring, is suggested to ensure the applicant takes this issue seriously.

Trees:

- 11.20 Trees around the site are protected via TPO's and make a very valuable contribution to screening and pollution control. The site layout has sought to retain the main groupings of the protected trees, and on the whole this is achieved. The drive through access road does encroach onto root protection zones, and careful excavation and the use of appropriate technologies will be required to ensure roots are not crushed or damaged. Appropriate conditions are suggested to address this. Additional landscaping is suggested around the site, and this will help to further screen the site, as well as providing a buffer between the activity on site and residents. Conditions to ensure an appropriate scheme, management and maintenance are suggested.

Contamination and Flooding:

- 11.21 Subject to appropriate conditions it is not considered that matters of contamination and flooding cannot be overcome. The aim of the drainage system will be to ensure that there is no surface water run off onto the highway network, or into adjacent properties. McDonalds do incorporate sustainable technologies into their buildings, which will also include issues of water conservation and control.

Representations received

- 11.22 The representations raised the following concerns:-
- Not suitable and not in a commercial centre – These concerns are addressed above.
 - Highway concerns are raised – these concerns are addressed in the highways section of the report above.
 - Not in keeping within the area – the fall-back position as an alternative A1/A2/A3 or A4 use is established through the permitted development criteria, which would allow the site to operate without requiring planning permission.
 - Fast Food close to schools and the healthy eating agenda – This is addressed above.

- Litter generated – to be addressed by conditions recommended by Environmental Health.
- Emphasis on localism – the number of representations received express strongly the feelings of the local community. The Council recognises the strength of local opinion, however it is considered that the planning matters have been satisfactorily addressed and as such there are no planning reasons to justify refusal.
- The validity of the redline boundary and the ownership of land adjacent to 123 Dewsbury Road has been raised- Officers have raised this with the applicant who has checked the land registry and confirms that the land will be within the deemed ownership of applicant.

Community Infrastructure Levy/Developer Obligations

- 11.23 Whilst the proposal would be liable for CIL contributions, due to the demolition of 800 sq m of floorspace, and replacement with half this amount the CIL contribution in this case would be zero.
- 11.24 West Yorkshire Combined Authority state that there are several bus services serving various locations and that future visitors would benefit from improvements to two specified bus stops with at a total cost of £20,000. These contributions will need to be secured via s106 agreement which has not been advanced yet; the recommendation to Members therefore is to delegate approval subject to completion of a s106.

Hours of Use

- 11.25 The applicants have requested hours of use of 0700 to 2300 daily. Officers are suggesting that Saturdays, Sundays and Bank Holidays should be more restricted and consequently the hours suggested to members under condition 3 above are 0700 to 2300 Monday to Fridays, 0800 to 2200 on Saturdays and 0900 to 2000 on Sundays and Bank Holidays. This is in recognition of the proximity of residential properties to the use, and seeks to provide additional protection at the most noise sensitive times when background noise levels may be lower.

12 CONCLUSION

- 12.1 The previous application 14/03390/FU is the subject of a Public Inquiry scheduled for 15th March 2016. Should this application be approved the appeal will be withdrawn, but will continue if the application is refused. As a result of the appeal the Council has been in contact with the applicants to establish common ground, as required in Best Practice, and it is considered that the matters raised previously have been sufficiently overcome, such that the refusal reasons would no longer be defensible. Consequently on the balance of planning issues the application is now recommended for approval subject to the conditions set out at the start of the report.

Background papers

Application File

Ownership Certificate: The applicant has served notice to the landowner on 22.09.2015

Notice served to:- Matterhorn Capitol, 10 Gloucester Place, London.

For appeal documentation please refer to appropriate planning application.



APPENDIX 1 (part 2 of 2)

Report of the Chief Planning Officer

ADDENDUM TO PANEL REPORT

PLANS PANEL SOUTH & WEST

Date: 10TH DECEMBER 2015

Subject: 15/05904/FU; Demolition of public house and erection of two storey restaurant, with drive thru and associated car parking and landscaping at the Former White Bear Public House, Bradford Road, Tingley, WF3 1JX.

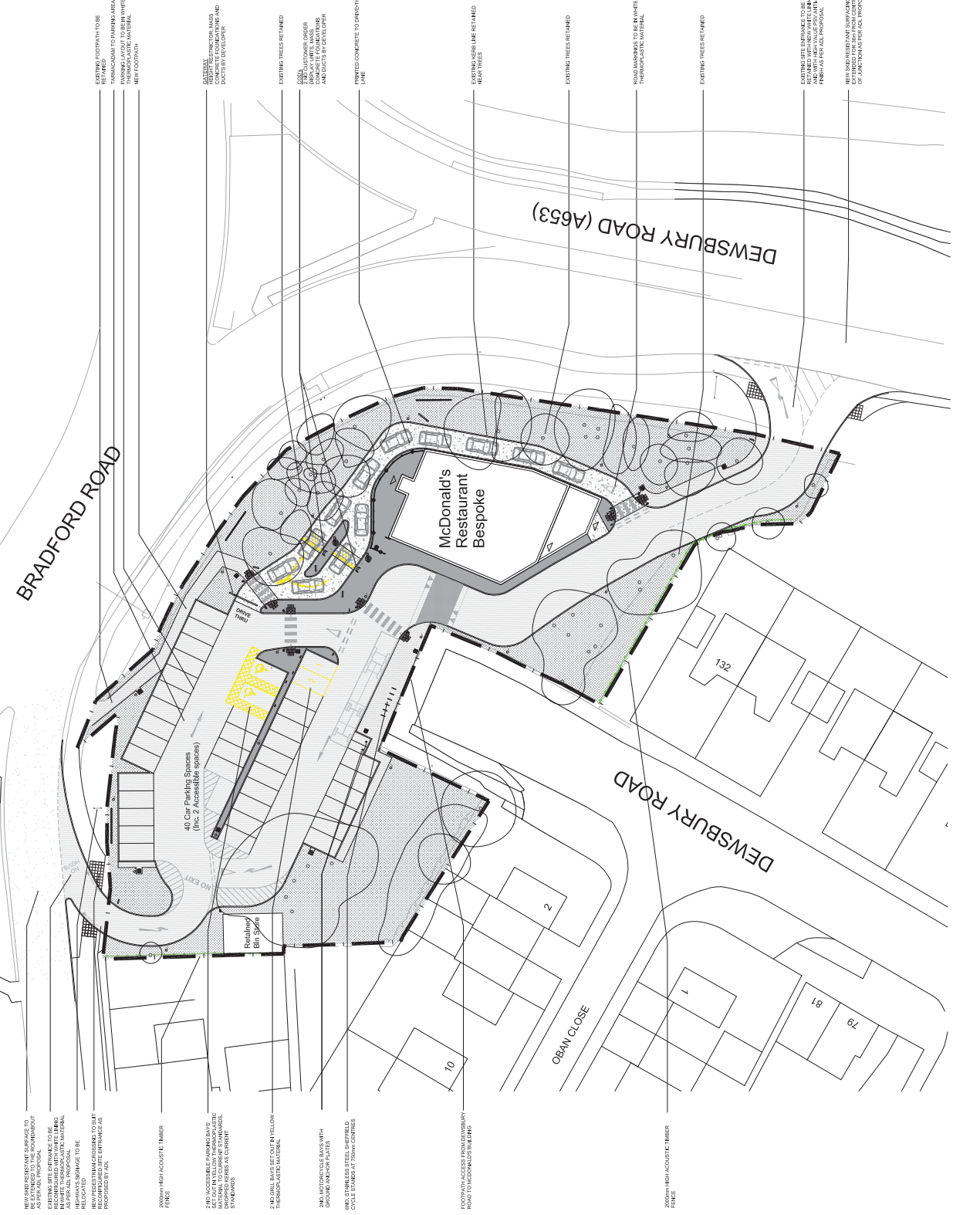
APPLICANT	DATE VALID	TARGET DATE
McDonalds Ltd	01.10.2015	15.12.2015 (Extension of Time)

ADDENDUM TO PANEL REPORT

1. Paragraph 7.6 should have included the following comments from Cllr Dawson as Ward Member for the area:
2. Planning permission should be refused for the following reasons:
 - The comings and goings of vehicles, closing and opening of car doors, headlights etc. will lead to an unacceptable level of activity, noise and general disturbance at unsociable hours. This would be detrimental to the general amenity of nearby residential occupants.
 - The proposed restaurant by reason of its characteristics and location situated out of a town centre conflicts with the aims of the Governments planning policy set out in the National Planning Policy Framework (2012) which seeks to locate drive thru restaurants such as this in main town centre to facilitate and promote sustainable patterns of development.
 - The report on the sequential test for this application is out of date and refers to sites which are not now available, and omits possible sites such as Capitol Park, Morley which are available and within the sequential test area.

- The proposed car park with only 36 allocated spaces (excluding drive thru and restricted parking spaces) will be insufficient to meet the demand at the restaurant and will lead to congestion in and around the site. It is also likely to lead to possible overspill parking on Dewsbury Road and Oban Close nearby residential streets. It is likely that some customers will park in the nearby streets as an easier and more convenient place to park. Access to the site car park, will be difficult. In addition it is not clear if staff will be allowed to park in the customer car park, if they are then they this will reduce the number of spaces further, and if they do not they will park on nearby residential streets.
- Large delivery vehicles will only be allowed in to the site from the northbound A653 with no access from the west bound A650 and therefore any delivery vehicles exiting from the M62 or going southbound on the A653 will have to divert through local estates roads such Lowry Road or Hesketh Lane or drive into Kirklees (a further two miles) to find a suitable point to do a 360° turn back onto the northbound A653.
- When delivery vehicles are at the site up to 11 car park spaces may not be available in order to allow for these large vehicles to park and exit from the site. This combined with an allocation for staff parking will put a severe strain on the ability of the site to meet demand for parking from customers.
- The estimated daily vehicle movements show hourly peak traffic of well over 100 vehicles entering and leaving the site which suggest that the proposed car park arrangements will have insufficient capacity. In addition the traffic estimate submitted will not take into account super-peak occurrences which will occur when there nearby events which attract additional traffic such as sporting events taking place at nearby Elland Road Stadium or when there are peak shopping days at the nearby White Rose Centre (sales, pre-Christmas, bank holidays etc.). On these occasions it is likely that proposed site will not be able accommodate demand and lead to parking in residential areas and traffic congestion around the entrance and exit from the site.
- The roundabout at the junction of the M62 and the A650/A653 is already noted as being the 4th worst accident black spot in the whole of the Leeds area and by increasing the traffic unnecessarily this is only destined to become worse.
- One of the entry points for the proposed restaurant is just yards off the roundabout on the A650 (Tingley Common) and is a potential hazard as vehicles will be indicating left and other road users will not be able to differentiate between vehicles exiting the roundabout and vehicles turning sharply into the site.
- The site is adjacent to a residential area and the traffic and visitors entering the restaurant will generate and cause both unwanted noise and disturbance to residents with cars entering and exiting the site from 7am in the morning until 11pm which much longer opening hours than a traditional public house. There will also be an issue with an increase in emissions caused by standing traffic waiting at the Drive Thru & the restaurant will expel unwanted smells into the atmosphere yet again causing a disturbance to the neighbouring residents.
- The restaurant is likely to cause excessive litter outside the restaurant boundaries both in the nearby streets and gardens of the neighbouring residential area and on the verges of the highways which in turn will attract an infestation of vermin.
- This site is not appropriate for the proposed restaurant based on the points raised above and I strongly object to the planning application that has been submitted.

3. The matters raised by Cllr Dawson are mainly addressed in the appraisal section of the panel report. With regard to delivery and service vehicles using Lowry Road to access the site, this is due to the fact that there is no right turn into the site off Dewsbury Road, so any vehicles coming from the north, or off the motorway would need to either travel past the site to find somewhere to turn around, or would need to route via Bradford Road, Lowry Road, and turning right at the end of Lowry Road onto Dewsbury Road.
4. Highways officers have considered this matter; the only safe access for larger vehicles into and out of the site is via the Dewsbury Road entrance. The Lowry Road loop is designed to take buses and service vehicles and consequently they feel that this proposal will not cause any harm to highway safety. A delivery management plan would provide additional details such as the number of deliveries per week and the routing of these vehicles.



NEW PERIMETER BOUNDARY TO BE EXTENDED TO THE ROUNDABOUT AS PER PLAN. PROPOSED ASBESTOS REMEDIATION TO BE RECONSTRUCTED WITH REINFORCED CONCRETE AND TYPICAL MATERIALS AS PER PLAN. PROPOSED TO BE RELOCATED TO THE NEW PERIMETER BOUNDARY TO BE EXTENDED TO THE ROUNDABOUT AS PER PLAN. PROPOSED BY A&L.

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EXISTING FOOTPATH TO BE RETAINED THROUGHOUT TO PARKING AREA. NEW FOOTPATH TO BE Laid IN WHITE THERMOPLASTIC MATERIAL.

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 2. ALL MATERIALS TO BE SUPPLIED AND INSTALLED BY THE CONTRACTOR.
 3. ALL WORK TO BE COMPLETED IN ACCORDANCE WITH THE SPECIFICATIONS.
 4. ALL WORK TO BE COMPLETED IN ACCORDANCE WITH THE DRAWINGS.
 5. ALL WORK TO BE COMPLETED IN ACCORDANCE WITH THE CONDITIONS OF CONTRACT.
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 10. ALL WORK TO BE COMPLETED IN ACCORDANCE WITH THE SUSTAINABILITY REQUIREMENTS.

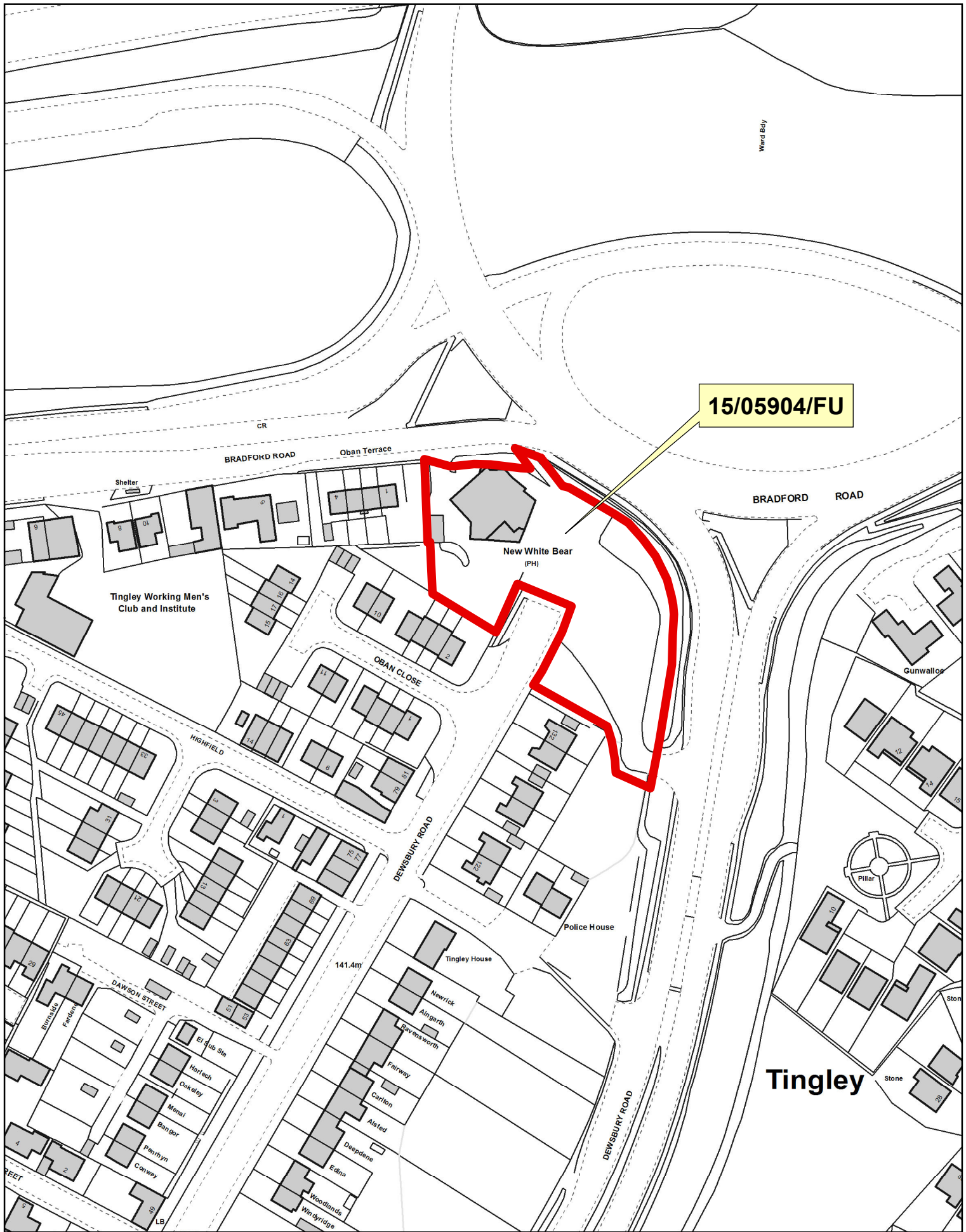
ITEM NO.	DESCRIPTION	QUANTITY	UNIT
1	EXISTING TREES TO BE RETAINED	10	NO.
2	NEW TREES TO BE PLANTED	10	NO.
3	EXISTING TREES TO BE RETAINED	10	NO.
4	NEW TREES TO BE PLANTED	10	NO.
5	EXISTING TREES TO BE RETAINED	10	NO.
6	NEW TREES TO BE PLANTED	10	NO.
7	EXISTING TREES TO BE RETAINED	10	NO.
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8	NEW TREES TO BE PLANTED	10	NO.
9	EXISTING TREES TO BE RETAINED	10	NO.
10	NEW TREES TO BE PLANTED	10	NO.



15/05904/FU

SOUTH AND WEST PLANS PANEL

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PRODUCED BY CITY DEVELOPMENT, GIS MAPPING & DATA TEAM, LEEDS CITY COUNCIL

SCALE : 1/1500

