11 November 2016
L 161111 SAV Planning

Head of Planning
Planning Services
South Holland District Council
Council Offices
Priory Road
Spalding
PE11 2XE

Clara Blagden
E: cblagden@savills.com
DL: +44 (0) 207 075 2844
F: +44 (0) 207 495 3773

33 Margaret Street
London W1G 0JD
T: +44 (0) 20 7499 8644
savills.com

Dear Sir / Madam,

SECTION 192 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
APPLICATION TO CONFIRM THAT THE PROPOSED UNRESTRICTED OPERATION OF THE RESTAURANT IS LAWFUL
MCDONALD'S RESTAURANT, HOLBEACH ROAD, SPALDING, LINCOLNSHIRE, PE11 6JP

PLANNING PORTAL REFERENCE: PP-05622246

Introduction

We write on behalf of our client, McDonald's Restaurants Ltd, to apply for a Certificate, pursuant to Section 192 of the Act, to confirm that the proposed unrestricted trading operation (i.e. 24 hours a day) of the McDonald's Restaurant on Holbeach Road in Spalding, is lawful.

In accordance with the Town and Country Planning (Development Management Procedure) Order 2015 (as amended), we enclose the following documents which comprise the application:

- The completed application forms;
- Site Location Plan;
- Planning Permission: H16-0416-11;
- The court transcript for *I'm Your Man Limited v SSE* (Reference Number CO/728/98); and
- Example Certificates of Lawfulness issued by the following Local Planning Authorities:
  - Weymouth and Portland Borough Council;
  - Birmingham City Council;
  - London Borough of Barking and Dagenham; and
  - Tonbridge & Malling Borough Council.

The application has been submitted electronically via the Planning Portal website (PP-05622246) and therefore, a payment of £97.50, has been made electronically online.

Relevant Planning History

In 1997, planning permission was originally granted for the erection of a McDonald's Restaurant (H16/1314/97) ("**1997 Permission**"). Condition 18 of the 1997 Permission restricted the opening hours of the restaurant.

A series of planning permissions have been granted at the application site pursuant to Section 73 of the Act for the extension of the operating hours of the restaurant. The Council granted planning permissions in 2004, April 2008 (Ref: H16-0204-08), 2009, June 2010 (Ref: H16-0475-10) and most recently in August 2011 (H16-0416-11) ("**2011 Permission**").

Offices and associates throughout the Americas, Europe, Asia Pacific, Africa and the Middle East.

Savills (L&P) Limited. Chartered Surveyors. Regulated by RICS. A subsidiary of Savills plc. Registered in England No. 2605138.
Registered office: 20 Grosvenor Hill, London W1K 3HQ

The 2011 Permission is the latest permission and that which provides any control relating to the operating hours of the restaurant. There were no conditions attached to the planning permission which impose any controls or limitations on the operating hours of the restaurant.

The Proposed Use

This application seeks confirmation that the proposed unrestricted trading operation of the restaurant at the application site (i.e. 24 hours a day) is lawful.

The justification for the lawful nature of the proposed operation is explained in detail below.

Justification for the Proposed Unrestricted Operating Hours

As set out in the Planning History section, the original control of the permitted operating hours of the restaurant at the application site were imposed by Condition 18 attached to the 1997 Permission.

That condition has been formally varied by at least four applications made pursuant to Section 73 of the Act. As the Council is aware, Section 73 relates to applications to develop land without compliance with conditions previously attached.

Following the number of variations and the most recent 2011 Permission, the original Condition 18 attached to the 1997 Permission no longer provides any control over the development.

The 2011 Permission sought to extend the hours of operation at the restaurant. The Permission however was granted subject to no planning conditions to replace what they were intending to vary. The only reference to the revised operating hours was included within the description of development on the decision notice.

It is now well established that for any restriction on a development to be binding it must be imposed by a formal planning condition. The relevant case law in respect of this principle was established in *I'm Your Man Ltd v Secretary of State for the Environment.* A copy of the court transcript Referenced CO/728/98 is enclosed.

The *I'm Your Man* case related to a planning permission which granted: *'The use of the buildings for sales, exhibitions and leisure activities for a temporary period of seven years'.* The Permission intended to grant provision for a temporary use for a period of seven years. Although the description of development made reference to the permission being for a temporary period, this was not replicated as a formal planning condition.

Sections 70(1) and 72(1) of the Town and Country Planning Act 1990 (as amended) provide a formal procedure to control development through the imposition of conditions on a planning permission. There are no grounds for implying a continuing restriction through other means (i.e. the description of development). The Judgment of *I'm Your Man* confirmed that the relevant permission did not impose any limitation on the period of use and therefore it was a permanent rather than a temporary permission.

As with the relevant planning permission in the *I'm Your Man* case, the restrictive element of the operating hours was contained within the description of development of the 2011 Permission. It was not reiterated or imposed as a formal planning condition.

Now that the 2011 Permission, the latest Permission relating to the operation of the restaurant, has been implemented in accordance with the terms of the description of development, there are no longer any limitations on the operation imposed by a formal condition.

It follows that the both the restaurant and drive-thru can lawfully be open for trade 24 hours a day and such an operation would not be in breach of any planning condition.

To assist the Local Planning Authority's assessment of the lawful nature of the proposed development, we include copies of Certificates issued in respect of McDonald's Restaurants in Tonbridge, Weymouth, Birmingham and Dagenham. The principle considered in these recent examples is identical to that central to this application (namely the failure to impose a formal planning condition).

We trust that these examples are useful and assist the consideration of the lawful nature of the proposed operation.

Summary and Conclusion

This application seeks confirmation that the proposed operation of the restaurant and drive-thru at the application site without limitation (i.e. 24 hours a day) is lawful.

The operating hours of the restaurant at the application site have been varied a number of times but the most recent, 2011 Permission does not impose a lasting and enforceable control. As part of this application we have demonstrated:

a) Condition 18 of the 1997 Permission has been varied pursuant to Section 73 of the Act at least four times and no longer provides any control over the operating hours of the restaurant at the application site;

b) The 2011 Permission has been implemented in accordance with the description of development;

c) A description of development cannot impose a lasting restriction on the opening hours of the restaurant. A lasting and enforceable control can only be imposed by a planning condition; and

d) As there is no formal planning condition attached to the 2011 Permission that imposes any limitations on the hours of operation, the restaurant can lawfully operate 24 hours a day.

In light of the above, we request that the application is approved and a Certificate is issued pursuant to Section 192 of the Act confirming that the proposed unrestricted trading operation of the restaurant (i.e. 24 hours a day) is lawful pursuant to Planning Permission: H16-0416-11.

We trust that the information provided above is sufficient for the Council to register and consider this application. We will endeavor to contact you within the next few days to establish your timetable.

In the meantime, should you require any clarification or additional information, please do not hesitate to contact Clara Blagden or Tim Price at these offices.

Yours faithfully,

Savills

Savills (UK) Limited
Commercial Planning