

# **PLANNING APPLICATION B/20/0432**

Planning Application:

Full Planning Permission

Erection of a freestanding restaurant with drive-thru facility,  
car parking, landscaping and associated works,  
including Customer Order Displays (COD),  
Goal Post Height Restrictor and Play Frame

Location:

Land to the South of Swineshead Road and East of Wortley's Lane,

Applicant:

McDonald's Restaurants Ltd & Carta Real



# BOSTON BOROUGH COUNCIL

## Planning Committee – 9<sup>th</sup> March 2021

Reference No: B/20/0432

Expiry Date: 19-Jan-2021

Extension of Time: 05-Feb-2021

Application Type: Full Planning Permission

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Site: Land to the South of Swineshead Road and East of Wortley's Lane, Wyberton, Boston PE21 7JF

Applicant: McDonald's Restaurants Ltd & Carta Real

Agent: Mr Benjamin Fox, Planware Ltd

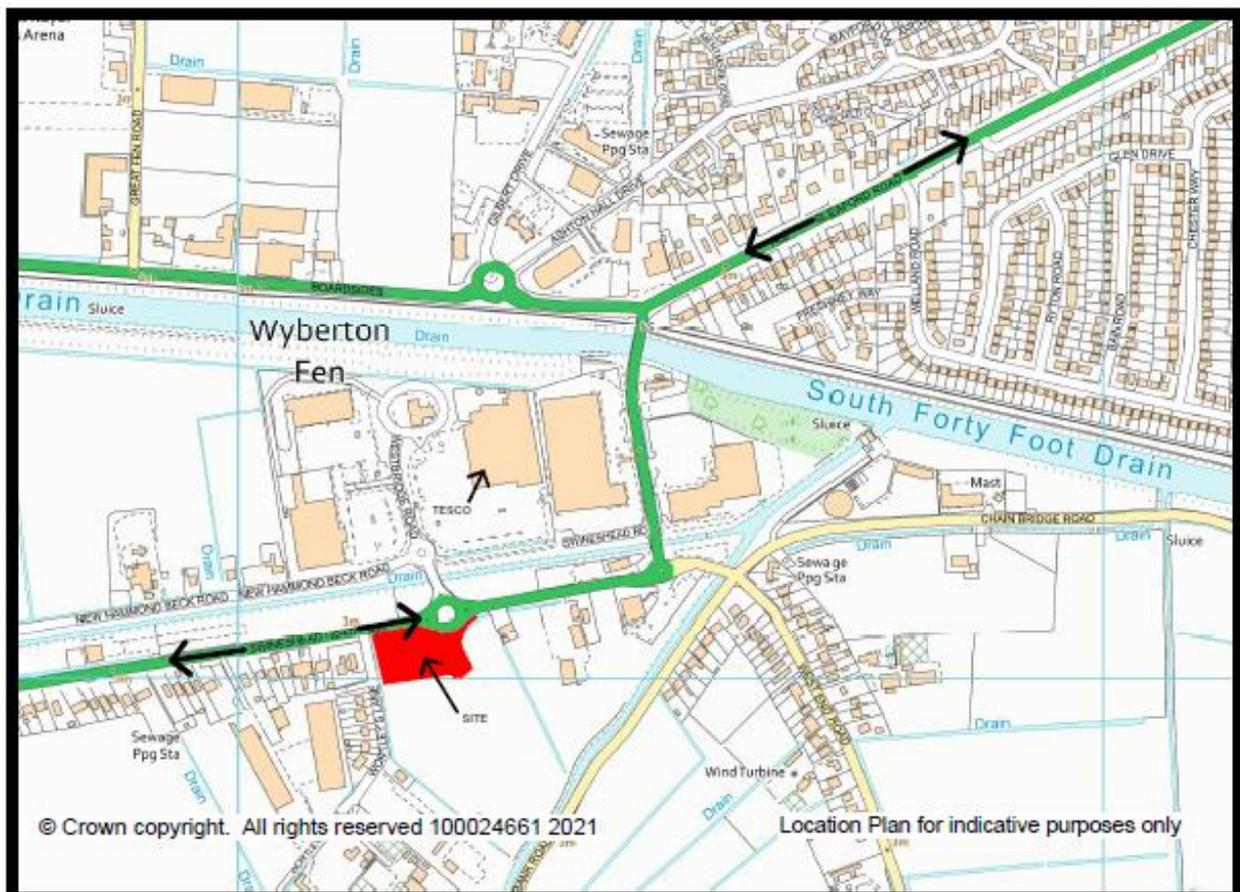
Ward: Wyberton

Parish: Wyberton Parish Council

Case Officer: Simon Eldred

Third Party Reps: 4 received

**Recommendation: GRANT Planning Permission**



## **1.0 Reason for Report**

- 1.1 This item has been called in for consideration by the Planning Committee by Councillor Richard Austin, who states that the reasons for the call-in are *“safeguarding of route for distributor road, tail backs onto public road, lack of footpath on West End Road, and litter issues.”*

## **2.0 Application Site and Proposal**

- 2.1 The application site is located to the south of Swineshead Road and east of Wortleys Lane, Boston. It consists of 0.52 hectares of a larger agricultural field which was uncultivated at the time of the site visit. It is located in a part of the town where uses are very mixed, with:
- To its west, dwellings (off both Wortleys Lane and Swineshead Road), and industrial premises (which are allocated in the Local Plan for residential redevelopment (85 dwellings));
  - To its north, dwellings under construction on the northern side of Swineshead Road and (beyond the New Hammond Beck Drain) edge-of-town retail premises;
  - To its east, the remainder of the agricultural field, scattered dwellings, a farm shop, a business selling garden buildings, two public houses, and land on which planning permission is being exercised for the construction of a drive-thru coffee shop; and
  - To its south, the remainder of the agricultural field, scattered dwellings, and land on which planning permission is outstanding for the construction of further dwellings.
- 2.2 The application is for the construction of a restaurant/drive-thru (proposed to open 24 hours per day) and, in more detail, the proposed development consists of:
- A new Access Road (which is also intended to serve ‘a wider retail park development’), oriented southwards from the existing roundabout at the junction of the A52/Swineshead Road with Westbridge Road;
  - A new roadway, providing access into and within the restaurant curtilage, leading off the Access Road;
  - Drive-thru lanes with two Customer Order Displays;
  - A single-storey restaurant/drive-thru building, with a gross internal floorspace of 402m<sup>2</sup> and a dining area 137m<sup>2</sup>, providing 136 seats. The building will: be flat-roofed; stand 5.835m high at its tallest point; have large areas of glazing in its eastern and southern elevations; and be finished in timber-effect and stone-effect cladding panels, and dark-grey engineering bricks, with white-coloured canopies to all elevations;
  - An attached corral area, finished in grey cladding panels;
  - 48 car parking spaces (including 2 accessible bays), and 4 bicycle stands (providing parking for 8 bicycles);
  - An outdoor patio area with tables and chairs and a children’s play space/ outdoor climbing frame; and

- Surrounding landscaping including grassed areas, an area of ornamental shrub planting, and new trees.

2.3 The application is accompanied by:

- a Supporting Statement;
- a Flood Risk Assessment;
- a Drainage Maintenance Plan;
- an Odour Control Assessment;
- a Lighting Layout and Specification;
- an Air Quality Screening Assessment;
- a Litter Management Plan;
- a Travel Plan;
- a Transport Assessment;
- a Tree Survey and Arboricultural Impact Assessment;
- a Noise Assessment; and
- a Preliminary Ecological Appraisal Report.

Additional information and responses have also been provided by the agent and their technical consultants over the life of the application, seeking to respond to any concerns or issues that have arisen.

### **3.0 Relevant History**

3.1 The site has no relevant planning history, but is affected by three further applications which are the subjects of reports to this meeting of the Planning Committee, namely:

- B/20/0427 – Application for Advertisement Consent for the installation of 1 internally illuminated freestanding totem sign;
- B/20/0428 – Application for Advertisement Consent for the installation of 10 internally illuminated signs; and
- B/20/0429 – Application for Advertisement Consent for various site signage.

3.2 Recent history in the wider area which is of potential relevance includes:

- Full Planning Permission (B/19/0169) was granted in September 2019 for a proposed affordable housing scheme providing 25 dwellings on land 10m to the north-west of the application site; and
- Full Planning Permission (B/19/0519) was granted in December 2019 for the construction of a drive-thru coffee shop on land 155m to east of the application site.

Both of these permissions have been exercised, with the residential scheme largely complete and works on the coffee shop at an early stage.

### **4.0 Relevant Policy**

#### **South East Lincolnshire Local Plan**

4.1 The South East Lincolnshire Local Plan 2011-2036 shows the application site as being within the Countryside, immediately adjacent to Boston's Settlement Boundary and within the Safeguarding Corridor. Land to the west of the application site (on the

opposite side of Wortleys Lane) is identified as Housing Allocation Wyb013 where 85 dwellings are expected to be built. The relevant Policies for this application are:

- Policy 1: Spatial Strategy;
- Policy 2: Development Management;
- Policy 3: Design of New Development;
- Policy 4: Approach to Flood Risk;
- Policy 24: The Retail Hierarchy;
- Policy 28: The Natural Environment;
- Policy 29: The Historic Environment;
- Policy 30: Pollution;
- Policy 32: Community, Health and Well-being;
- Policy 33: Delivering a More Sustainable Transport Network;
- Policy 34: Delivering the Boston Distributor Road; and
- Policy 36: Vehicle and Cycle Parking.

### **National Planning Policy Framework**

4.2 At the heart of the 2019 Framework is a presumption in favour of sustainable development. The following sections are relevant to this scheme:

- Section 2 : Achieving sustainable development;
- Section 6 : Building a strong, competitive economy;
- Section 7: Ensuring the vitality of town centres;
- Section 8: Promoting sustainable transport;
- Section 12: Achieving well designed places;
- Section 14: Meeting the challenge of climate change, flooding and coastal change;
- Section 15: Conserving and enhancing the natural environment; and
- Section 16: Conserving and enhancing the historic environment.

### **5.0 Representations**

5.1 As a result of publicity, 4 letters of objection have been received – 3 from local residents and 1 from the Boston Woods Trust

5.2 The objections can be summarised as follows:

- The proposal will lead to the littering of takeaway packaging, which will: have harmful impacts upon the character and appearance of the locality, wildlife, and the quality of life of local residents; and necessitate additional financial cost for the disposal of waste from the Boston Woods Trust car parks. To tackle this issue:
  1. takeaway containers should be stamped with car registration numbers;
  2. the applicant should employ a litter patrol; and
  3. the applicant should support the Boston Woods Trust's waste disposal activities financially and/or with staff volunteers.
- The proposal will lead to increased anti-social behaviour locally;
- The proposal would be more appropriate on the Quadrant development; and
- The proposal will worsen existing traffic congestion in the area.

## 6.0 Consultations

6.1 The Health and Safety Executive indicates that it does not advise against the granting of consent.

6.2 Boston Borough Council's Environmental Health Department indicates that it agrees with the conclusions of the Noise Assessment which accompanies the application that:

- The restaurant could trade on an unrestricted basis without associated noise causing significant adverse impact upon nearby residential properties; but that a condition should be attached requiring the prior approval of plant and machinery, and ensuring that sound levels emitted from the site at the nearest residential premises will not exceed 45 dBa between 0700 and 2300 hours, and 34 dBa at all other times;
- It agrees with the conclusions of the Air Quality Screening Assessment which accompanies the application that the proposed restaurant:
- Will not impact the current Air Quality Management Areas in the town, and may lead to a reduction in traffic using the current Queen Street McDonalds; and
- Will not result in poor air quality in the vicinity of the site itself;
- No issues with odour are foreseen, given that the extraction system that is proposed to be used is the same as at the Queen Street restaurant, where no complaints of odour have been received;
- The area is well-lit and consequently the predicted light levels at the site boundaries should not result in nuisance to nearby residential properties; and
- The site is currently in agricultural use and is not known to have been put to any other use. Risks from ground contamination to public health are therefore very low, but it would nonetheless be prudent to attach a condition to deal with any 'unforeseen' contamination that may be detected during development.

6.3 Cadent Gas:

- Identifies that there are high or intermediate pressure gas pipelines and associated equipment in the vicinity of the application site;
- Does not object to the proposal, but asks for the following informative to be raised with the applicant *"Cadent has a 273mm High Pressure gas pipeline close to the edge of the development application. It holds a deed of grant for a legal easement on this High Pressure gas pipeline and no development is permitted inside the easement without Cadent's written permission. Cadent will need to be approached and liaised with before work commences as it may have pipeline protection measures that need to be adhered to."*

6.4 Heritage Lincolnshire indicates that the application site:

- Forms part of the setting to a Grade II listed milepost. The current grass verge and open character are sympathetic to the milestone's character, but the proposed boundary fencing will adversely affect its setting. A post and rail fence with hedging to its rear would better maintain the rural character and would help to mitigate the impact of the development on the listed milepost's setting; and

- Potentially contains archaeological remains, based upon the extent and type of remains previously recorded in the vicinity, and asks that a condition be attached to require site investigation and recording prior to development taking place.
- 6.5 The Environment Agency indicates that the proposed development will meet the requirements of the NPPF provided a condition is attached to require the development to be carried out in accordance with the submitted Flood Risk Assessment (FRA). The Agency also advises that a Flood Warning and Evacuation Plan is produced, and that future occupants sign up to Floodline Warnings Direct.
- 6.6 Wyberton Parish Council indicates that, whilst the restaurant may create employment and may help to reduce traffic congestion in the town centre, it may also lead to extra litter locally, increase traffic numbers locally – potentially creating traffic congestion and posing a risk to pedestrians and cyclists. Consequently, the Parish Council asks that:
- The applicant should make a contribution towards the construction of a path/cycleway on West End Road;
  - The potential for congestion in the area should be taken into consideration;
  - An area should be provided for *“vehicles to park up with the takeaway and plenty of bins to help minimise litter in the area including the wooded areas”*;
  - The applicant should work with local groups for litter picking;
  - Takeaway containers should be in biodegradable materials; and
  - Takeaway containers should be stamped with car registration numbers to enable those responsible for littering to be traced.
- 6.7 Lincolnshire County Council (the Local Highway and Lead Local Flood Authority) indicates that:
- The application site falls within the safeguarding corridor for the Boston Distributor Road (BDR) identified in the Local Plan and *“prior to the determination of this application, ... advises that the necessary assessment work is undertaken to satisfy the determining authority that the development ... will not restrict the future delivery of the BDR”*;
  - The following condition should be attached to any approval *“Prior to the commencement of any other part of the development hereby permitted, the proposed fourth arm of the existing A52/Westbridge Road roundabout shall be completed in accordance with the details that shall first be approved in writing by the Local Planning Authority. Reason – In the interests of the safety and free passage of those using the adjacent public highway and of providing safe and suitable access to the permitted development.”*;
  - The Highway Authority would not wish to adopt the proposed Access Road because initially *“the road, would serve nothing more than the proposed McDonalds restaurant”*; and *“until such time as the road is further extended, the proposals to manage the surface water run-off for this initial part of the road involve taking that water through the restaurant site via an underground attenuation and storage device that relies on the vigilance and maintenance of the restaurant staff”*;

- *“The drainage of the site proposes an attenuated discharge into an existing watercourse on the west side of the site. This watercourse relies upon a culvert that is purported to run northwards, under the A52, across third-party land before discharging into the New Hammond Beck. In the interests of avoiding surface water flood risk to the application site and adjacent land and property, it is strongly recommended that the Applicants be required to demonstrate the existence, viability and suitability of this drainage route before commencement of any part of the development.”;*
- *“The vehicular access into the proposed restaurant involves the use of a right-turn lane on the proposed new spur road off the A52 roundabout which is just a short distance from the roundabout. This will be acceptable to serve the proposed development because the spur road serves no other purpose than to provide access to the restaurant. There will be no other, on-coming traffic approaching the roundabout from the opposite direction. What is not possible to determine at this time is whether that right-turn lane would be adequate should there be further development served by this road or indeed should this spur become part of the Boston Distributor Road.”;*
- *“The submitted details advise that the proposed internal layout would provide sufficient space for the vehicles of drive-through customers to queue within the site, so that the queue would not tail-back out of the restaurant site or onto the A52. Whilst this may be supported by empirical data drawn from other McDonald’s sites, the experience in this County, and in particular at Boston’s Queen Street outlet, is that notwithstanding that data, traffic frequently queues back onto the adjacent public highway. It is therefore suggested that the internal layout of the site be designed so that the entirety of the queue lane, from the site entrance to the pay-point, is two vehicles wide. This should be achievable by amendment to the submitted layout. The highway authority would not be able to confirm or disprove the contention within the submitted details, that the proposed development would be expected to result in transference of custom from the existing outlet in Queen Street, Boston and thereby possibly reduce the vehicle queuing at the Queen Street site.”;*
- *“The submitted information advises the proposed development is in compliance with the minimum car parking standards set-out within the South-East Lincolnshire Local Plan.”; and*
- *“The highway authority is not of the opinion that the proposed development would be unacceptable in planning terms without the provision of a cycleway/footway along West End Road.”*

6.8 The Black Sluice Internal Drainage Board indicates that:

- Rainfall runoff:
  - The prior written consent of the Board will be required for the proposed discharge of surface water from the development into an adjacent watercourse (and, where possible, discharges should be limited to 1.4ltrs/sec/Ha.);

- It is understood that the development's proposed drainage system will also receive surface water from the adjacent link road, albeit on a temporary basis. If this is the case, the applicant must declare the additional impermeable area to be drained within any application to the Board;
  - All drainage routes through the site should be maintained both during the works and after completion of the works. Provisions should be made to ensure that upstream and downstream riparian owners and those areas that are presently served by any drainage routes passing through or adjacent to the site are not adversely affected by the development;
  - Consideration must be given to the route downstream of the site from the discharge point to an appropriately maintained watercourse. The applicant will be expected to carry out off-site works or increased maintenance required to safeguard the site discharge for the life of the development, including any necessary maintenance to any adjacent piped culverts along the route of flow;
  - A permanent undeveloped strip (of sufficient width to allow future maintenance work) must be created adjacent to the top of the bank of all watercourses bounding the development;
  - Full details of any surface water schemes for the proposed development should be submitted to the local planning authority for consideration, and approval received in writing from that authority, prior to any discharge from the site;
- Discharge Outfalls
    - If the proposed surface water discharge outfall is into an adjacent watercourse, prior written consent will be required from the Board for any structures placed in the bank as per Section 23 of the Land Drainage Act 1991;
- Filling in or Culverting Watercourses:
    - The ownership and maintenance of watercourses within the applicant's land registry boundaries (including any existing piped culverts or other structures within the confines of the watercourses) lies with the applicant and their successors;
    - If the applicant intends to install new piped structures within watercourses, the prior written consent of the Board is required under Section 23 of the Land Drainage Act 1991;
- Site Ground Levels
    - The existing ground level of the site should not be raised above the level of any surrounding land unless measures are taken, to the satisfaction of the local planning authority, to prevent possible flooding or waterlogging of any neighbouring land or property.

6.9 Councillor Tracey Abbott indicates that there are grave concerns that the proposed development will cause more traffic holdups and problems on roads which are already busy; considers that a third drive-through establishment in the area is not

needed; and considers that the proposal potentially conflicts with the desire of the Government and local councils to promote healthy eating.

## **7.0 Planning Issues and Discussions**

7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determination must be made in accordance with the Plan unless material considerations indicate otherwise. The key considerations in regard to this application are:

- Matters of principle;
- Impacts on the character and appearance of the area;
- Impacts upon neighbours' amenity;
- Flood risk;
- Impacts upon heritage assets;
- Impacts upon biodiversity;
- Highway safety;
- Car and cycle parking provision;
- Impacts upon the delivery of the Boston distributor road;
- Issues concerning pollution; and
- Other issues raised by objectors.

### Principle

7.2 As paragraph 4.1 of this report identifies, the South East Lincolnshire Local Plan 2011-2036 shows the application site as being within the Countryside, immediately adjacent to the town's Settlement Boundary. Indeed, the Local Plan shows land to the west, north and east as being within the town, with a 'finger' of Countryside of approximately 150m-width encompassing the application site and land to its immediate east. Policy 1 of the Local Plan seeks to concentrate development and activity into the area's existing towns and villages and identifies that, in the Countryside, *"development will be permitted that is necessary to such a location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits."* The Policy's justification identifies agriculture, forestry, recreation, tourism, plant and equipment of public utility providers, flood mitigation infrastructure, and certain types of housing as uses that would be appropriate in the countryside.

7.3 The Policy essentially identifies two tests for whether a proposed development is appropriate in the countryside. The first test is whether or not the development is 'necessary to such a location'. It is considered that a restaurant/drive-thru does not need a countryside location – i.e. it is not a use that **must** be located in the countryside (and the application is not supported by any specific information or evidence to demonstrate that it must), but could equally well be accommodated within an existing town or village. Thus, it is considered that Policy 1's first test is not passed.

7.4 The second test is whether the development 'meets the sustainable development needs of the area in terms of economic, community or environmental benefits'. It is considered that the proposal:

- Will bring significant economic benefits (in that it will provide full-time or part-time employment for more than 65 people); and
- Will bring significant community benefits, in that it will provide a service to its customers.

It could be argued that these benefits could be equally well realised at a location within a Settlement Boundary (rather than in the Countryside) and that the Policy's second test is not therefore passed.

7.5 However, it must be recognised that whilst the site is outside of the settlement boundary and is therefore designated as 'Countryside', this does not take in to full consideration the context of the area around the site. As was found on the recent Appeal decision at Cherry Tree Lodge (B/19/0441) - the Inspector identified that there has to be an element of planning judgement, and the extent of the settlement boundary is not determinative. That is to say, that the designation in the SELLP is the starting point, but not the end of the consideration. In this case, it is considered that the particular characteristics of the application site - the fact that it is effectively surrounded by the town's built-up area to three sides, and that the surrounding area (if not the application site itself) does not have a rural character; and the fact that the application site is close to existing residential neighbourhoods and edge-of-town retail units means that the proposed development does not conflict with Policy 1's fundamental aims to ensure that a sustainable pattern of development is created, and to protect the countryside's character. In these circumstances it is considered that, although the proposed development does not strictly speaking accord with Policy 1's provisions, a refusal on this basis would be unlikely to be supported at appeal. Furthermore, the proposals would bring employment and a service into an area where there is already existing services and economic activity, arguably therefore the site is a sustainable one for the proposed use.

7.6 Policy 24 of the Local Plan seeks to focus main town centre uses (such as a 'food and drink outlet') within town centres and district/local centres, and requires proposals for such uses which are to be established outside of a Town Centre Boundary to demonstrate their suitability through a sequential test. The Supporting Statement which accompanies the application identifies that potential sites within Boston's Town Centre:

- Are unsuitable to accommodate a drive-thru restaurant, by virtue of their size or relative inaccessibility to the road network; and/or
- Would be unsuitable or unviable as a consequence of their proximity to the existing McDonald's restaurant at Queen Street; and
- Whilst Policy 7 identifies that Mixed-Use Areas might potentially be suitable to accommodate a main town centre use, in practice the only one in Boston is The Quadrant, which is not sequentially preferable to the application site.

As a consequence, the Supporting Statement concludes that *"the proposed site is positioned in a good location adjacent to the existing Tesco supermarket and wider retail park. The existing retail park lacks a leisure offering for which the proposal will provide such a facility, benefiting from a number of joint and linked trips. No alternative sites are currently available which are suitable or viable for the intended proposal as a whole. ... The proposal will ... support the function and longevity of the adjacent retail park through the provision of wider customer choice."*

- 7.7 It is considered that the submitted sequential test is robust and that, in this respect, the proposal accords with the provisions of Policy 24. However, the Policy does not support the establishment of main town centre uses in a countryside location, i.e. it expects them to be provided 'within a settlement boundary'. Once again, however, it is considered that the fact that the application site is effectively surrounded by the town's built-up area to three sides; and the surrounding area contains two existing public houses, a drive-thru coffee shop under construction, and many retail units means that, although the proposed development does not strictly speaking accord with Policy 24's provisions, a refusal on this basis would be unlikely to be supported at appeal. Furthermore, it is not considered that the introduction of this facility would undermine the overall aspiration for the town centre, or prejudice its function.
- 7.8 In conclusion it is considered that whilst (strictly speaking) the proposal does not accord with the provisions of Policies 1 and 24, it nonetheless does not conflict with their overarching aims to: create a sustainable pattern of development; protect the countryside's character; and prevent the unnecessary 'leakage' of town centre uses from Boston's designated Town Centre. Whilst the site is technically in 'Countryside' it is in an area which has an urban character, and which is located alongside residential and commercial uses. The proposals would bring an additional service and jobs into an area which already exhibits commercial activity. It will bring significant employment benefits itself (and may be the first step in the development of further neighbouring land with further economic benefits), and is likely to complement the existing range of uses in the surrounding area. It is considered that the proposed use and its infrastructure will not appear incongruous or out-of-place in this predominantly commercial and strongly 'roadside' environment. As a consequence, it is considered that a refusal on the basis that the proposal conflicts with these Policies may not be supported at appeal, particularly as the over-riding themes of sustainable development as promoted by policies 1 and 24 would not be undermined. These factors are further considered within the planning balance.

#### Character of the area

- 7.9 Policy 2 of the Local Plan indicates that developments will be permitted which will not have harmful impacts upon the character and appearance of the area.
- 7.10 As was noted in paragraph 2.1 of this report, the application site is located within a part of the town where existing uses are very mixed, but where commercial uses predominate (although there are existing and planned residential elements). These include several very large edge-of-town retail premises, two public houses, a farm shop, a business selling garden buildings, and land on which planning permission is currently being exercised for the construction of a drive-thru coffee shop. It is also the case that the area's visual character is strongly influenced by the presence of two large, busy, and well-lit roads (the A52 and Westbridge Road) and their associated infrastructure - lighting columns, roundabouts, a bridge, etc. It is considered that the proposed use and its infrastructure will not appear incongruous or out-of-place in this predominantly commercial and strongly 'roadside' environment. It is considered it would not create noise or disturbance that will unacceptably conflict with the area's existing character and appearance.

7.11 The proposed building is relatively modest in scale, is of a modern and very plain design (albeit following the brands typical designs) and is proposed to be built in a relatively muted palette of materials. It is proposed to be set back significantly from surrounding highways, and it is considered that neither it nor the parking/manoeuvring space (largely to the building's south) will have any significantly harmful impacts upon the area's character or appearance. The proposal also includes:

- A lighting scheme, but it is considered that neither the proposed lighting columns nor the level of illumination proposed will be out-of-character with the surrounding area, given the nature of nearby land uses and the fact that the area is already well-lit after dark; and
- Associated advertisements, which are dealt with by separate consenting processes, and are considered in other reports to this meeting of the Planning Committee.

7.12 The application site is in agricultural use and, on its Swineshead Road frontage, has a large number of closely-planted young (approximately 4m in height) trees, which have the appearance of overgrown hedging plants. Neither the site itself nor the trees have any particular amenity value and make no notable contribution to the character of the area. The proposals involve the removal of the eastern-most two-thirds of the existing trees (presumably to facilitate the construction of the Access Road) but all others are proposed to be retained, and the proposal includes a landscaping scheme comprising:

- A new mixed species, native hedge just within the northern, western and parts of the southern boundaries of the site, behind a 1.2m-high post and rail fence;
- Extensive areas of new grass;
- Areas of ornamental shrub planting at the site's north and south-western corners; and
- Six areas of tree-planting.

It is considered that the proposed landscaping scheme will adequately 'soften' the appearance of the development and that, taken as a whole, the new planting will adequately compensate in visual terms for the trees which are proposed to be felled.

7.13 There is no doubt that the proposal will change the area's character, but change (of itself) is not necessarily harmful. In all, it is considered that the proposal will not have unacceptably harmful impacts upon the character and appearance of the area, and that it therefore will meet these requirements of Policy 2.

#### Neighbours' amenity

7.14 Policies 2, 3 and 30 of the Local Plan require the amenity of neighbouring land users to be protected. Land to the immediate south and east of the application site is in agricultural use, and it is considered that the proposal will have no adverse impacts upon these neighbouring land users. However, there are a number of dwellings in the vicinity of the application site, and the following paragraphs assess likely impacts on residential amenity.

- 7.15 There are significant numbers of dwellings (existing and under construction) in the vicinity of the application site. However, it is considered that, given the extent to which the area's character is dominated by nearby highways and commercial uses, the proposed development is not inherently incompatible with nearby residential uses. Looking at specific potential issues in turn:

*Light*

- 7.16 The application is accompanied by a Lighting Layout and Specification, and it is considered that predicted light levels at the site boundaries will not significantly undermine the amenity of nearby residential properties, particularly given how well-lit the area is at present – a view which is shared by the Borough Council's Environmental Health Department.

*Noise*

- 7.17 The application is accompanied by a Noise Assessment, which considers potential noise impacts from fixed plant equipment (fans, condensers, etc.), drive-thru activity, and car parking activity. It concludes that, for the latter two categories, the restaurant could trade day and night without associated noise giving rise to significant adverse effects for nearby residential properties. On the issue of noise from fixed plant equipment, it suggests that predicted noise levels should not exceed the typical measured background sound levels, and proposes a condition to secure this. The Borough Council's Environmental Health Department agrees with these conclusions and, subject to the attachment of the recommended condition, it is considered that noise from the proposal will not significantly undermine the amenity of nearby residential properties.

*Odour*

- 7.18 The application is accompanied by an Odour Control Assessment, which concludes that, given the proposed extraction system, no receptors are likely to experience nuisance from the air extracted from the kitchen. The Borough Council's Environmental Health Department agrees that no issues with odour are foreseen, given that the proposed extraction system is the same as at the Queen Street restaurant, where no complaints of odour have been received.

*Outlook and Privacy*

- 7.19 The proposal will undoubtedly create a significant change to the outlook from the dwellings and domestic gardens to the application site's north, west and east, and could potentially impact upon privacy. However, it is considered that, given the distances involved, and the proposed boundary treatments and landscaping scheme, any such impacts will not be unacceptably severe.
- 7.20 Consequently, it is considered that the proposal will not have unacceptable impacts upon neighbours' amenity and that it therefore will meet these requirements of Policies 2, 3 and 30.

## Flood risk

- 7.21 Policy 4 of the Local Plan seeks to ensure that new development is not unnecessarily exposed to flood risk, and does not increase flood risk elsewhere.
- 7.22 Lincolnshire County Council indicates that *“The drainage of the site proposes an attenuated discharge into an existing watercourse on the west side of the site. This watercourse relies upon a culvert that is purported to run northwards, under the A52, across third-party land before discharging into the New Hammond Beck. In the interests of avoiding surface water flood risk to the application site and adjacent land and property, it is strongly recommended that the Applicant be required to demonstrate the existence, viability and suitability of this drainage route before commencement of any part of the development.”* The applicant has been invited to respond but, at the time of writing has provided no comment. It is hoped to report verbally on this issue at the meeting. In any event, it is considered that this can be dealt with by way of conditions as recommended to require submission of a drainage scheme prior to commencement.
- 7.23 The Black Sluice Internal Drainage Board raises a number of points in its consultation response. It is considered that these points can all be adequately dealt with by means of an informative attached to the decision notice.
- 7.24 The application is accompanied by a revised Flood Risk Assessment (FRA) which identifies:
- That site levels range from 1.53m to 1.94m AOD;
  - The proposed use falls within the ‘less vulnerable’ category, as defined in the Flood Risk Vulnerability Classification set out in the Planning Practice guidance; and
  - Potential sources and likely severity of flooding.
- 7.25 In particular the FRA identifies that, in the event of a fluvial or tidal breach under present day conditions, the site could be inundated to a depth of 1.6m (i.e. to 3.3m AOD). The FRA concludes that the finished floor level of the restaurant cannot be raised above this level, but that:
- A formal flood evacuation plan will be agreed with the Local Planning Authority;
  - In the event that staff and customers are unable to vacate the premises, the roof-level platform (which will accommodate plant) will provide an emergency refuge;
  - Flood resilient construction will be used to protect the building from floods as high as 3.3m AOD; and
  - A floodable void will be provided beneath the building to mitigate increased flood depths to surrounding land.
- 7.26 It is considered that the above measures are adequate to meet the requirements of Policy 4, and the Environment Agency has indicated that the proposed development will meet the requirements of the NPPF. This is provided a condition is attached to require the development to be carried out in accordance with the submitted Flood Risk Assessment (FRA).

### Heritage assets – Listed building

- 7.27 The Planning (Listed Buildings and Conservation Areas) Act 1990 confirms the duty of the Local Planning Authority to have special regard to the desirability of preserving listed buildings, their setting and any features of special architectural or historic interest. In the context of Section 66 of the Act, the objective of preservation is to cause no harm. The courts have said that this statutory requirement operates as a paramount consideration - ‘the first consideration for a decision maker’. Planning decisions require balanced judgement, but in that exercise, significant weight must be given to the objective of heritage asset conservation.
- 7.28 This statutory duty sits above the policy objectives identified within the earlier section of this report. In this context, the objective of preservation is to cause no harm, and is a matter of paramount concern in the planning process. Beyond this, where harm would be caused, there is a necessity to establish the extent of that harm, and consider this within the policy context.
- 7.29 In practice, this requires a methodical approach to be followed wherein the relevant assets which would be affected need to be identified, along with their significance. Consideration can then be given to any effects on this significance resulting from the proposals, which may be reduced through mitigation. If harm is identified, it is then required to establish the scale and extent of such harm, before moving on to matters such as the planning balance and weighing the public benefits arising against any identified harm.

### *Heritage assets affected*

- 7.30 It is considered that only one heritage asset is potentially affected – a Grade II listed milestone beside Wortleys Lane, the list description for which reads “*Milestone. Early C19. Painted ashlar. Square post with pyramidal top, inscribed "Sleaford 16 miles, Boston 2 miles"*”. N.B. The application is not accompanied by a Heritage Statement.

### *Impacts of the proposal on the asset*

- 7.31 Most of the milepost’s immediate setting is dominated by modern development of a largely suburban character, and its wider setting also contains retail and commercial buildings of a similarly unsympathetic character. The application site’s open and undeveloped appearance provides the milestone’s only sympathetic local context, and the site’s development threatens to further undermine its setting. However, given that the proposed restaurant building is of a modest scale, is proposed to be built in a reasonably sympathetic palette of materials and is proposed to be located more than 40m from the milepost, it is considered that the most crucial issue will be the proposed treatment of the boundary and areas of the site nearest to the listed structure.
- 7.32 Heritage Lincolnshire objected to the boundary treatment initially proposed (a 1.2m-high close-boarded fence) as it was considered that this treatment was unsympathetic and would have adversely affected the listed milepost’s setting. In

response to this objection, the applicant revised their proposal to replace the close-boarded fence with a 1.2m-high post and rail fence with a mixed species, native hedge at its rear (as requested by Heritage Lincolnshire). It is considered that this treatment (together with a proposed area of ornamental shrub planting at the site's north-western corner) will better maintain the application site's comparatively 'rural' character and will significantly mitigate the proposal's impact on the listed milepost's setting. Nonetheless, it is considered that the proposals will still lead to some harm to the listed milepost's setting – albeit that the impacts will be “*less than substantial*” (in the terminology used by the NPPF). Indeed, given the factors identified in this and the preceding paragraph, it is considered that the net effects of the proposal will be towards the lower end of the spectrum of less than substantial harm.

- 7.33 Nonetheless, in such circumstances, the provisions of the NPPF indicate that “*the harm should be weighed against the public benefits of the proposal.*” The proposals will undoubtedly bring economic benefits (in that they will provide significant new employment) and will provide a new local service which meet the needs of the restaurant's future customers and, given that the adverse impacts upon the listed milepost are assessed as being very minor in nature, it is considered that, within the planning balance, the harm would be outweighed by the positive public benefits arising from the proposals.

#### Heritage assets – archaeological remains

- 7.34 Policy 29 of the Local Plan requires proposals that affect archaeological remains to take reasonable steps to protect or enhance their significance.
- 7.35 Heritage Lincolnshire has identified that, given the extent and type of remains previously recorded in the vicinity, the application site potentially contains archaeological remains. Consequently, they ask that a condition should be attached to require that, before development commences, a programme of archaeological works must be approved by the Local Planning Authority to cover:
- Evaluation, excavation and recording;
  - Analysis and production of a report; and
  - Dissemination, publication and archiving of findings.
- 7.36 It is considered that, subject to the above condition, the proposal will meet these requirements of Policy 29.

#### Biodiversity

- 7.37 Policy 28 of the Local Plan seeks the protection, enhancement and management of natural assets, and requires all development proposals to provide an overall net gain in biodiversity.
- 7.38 The application is accompanied by a Preliminary Ecological Appraisal Report which identifies that the development of the site would result in general habitat loss and more specifically:
- loss of foraging and commuting habitat for bats;
  - loss of foraging and nesting habitat for birds; and

- loss of foraging habitat for hedgehogs and hares

and it identifies the measures required to: mitigate these losses; and ensure biodiversity net gains (enhancements). It is considered that, provided the identified mitigation and enhancement measures are implemented, the proposals will meet these requirements of Policy 28, and that a condition should be attached to require their implementation.

7.39 The Preliminary Ecological Report also identifies that the ditch on the application site has the potential to be used by water voles, and that the development has the potential to kill/injure individuals and destroy their burrows. It therefore recommends that at least two water vole surveys are carried out (one between mid-April and June and the other between July and September) to establish whether the animals are present. It is considered that, provided the surveys are carried out as recommended, the proposals will meet these requirements of Policy 28, and that a condition should be attached to require this.

#### Highway safety

7.40 Policy 2 of the Local Plan identifies access as a sustainable development consideration. Consultees have raised the following specific highway safety concerns:

- Potential danger to pedestrians and cyclists;
- Local congestion;
- The need for the provision of a footpath/cycleway along West End Road; and
- Potential to create a tailback of queueing vehicles onto the public highway.

#### *Safety of proposed new highway infrastructure*

7.41 It is proposed to construct: a new Access Road, which will form a fourth arm to the existing A52/Westbridge Road roundabout; and have a Right Turn Lane providing access to a new roadway into the restaurant's curtilage. There will be footways on both sides of the Access Road and a new pedestrian crossing (with a pedestrian refuge, dropped kerbs and tactile paving) at the roundabout (linking with the existing footways along the southern side of the A52). It is also proposed to provide tactile paving at the existing nearby crossing over the A52 to improve pedestrian links towards the stores off Westbridge Road. Separate pedestrian access will be provided into the restaurant curtilage, with informal zebra crossing facilities across the car park and the drive-thru lane.

7.42 In all, it is considered that the proposal will provide adequately for pedestrian safety, and will provide acceptable linkages to the area's existing pedestrian infrastructure. Although the proposals include no specific provisions for cyclists (beyond parking for 8 bicycles), the local highway network includes no cycle-lanes – the presence of which might have suggested a need to make greater provision for the needs of cyclists. The Highway Authority indicates that:

- (Notwithstanding the views expressed by objectors) the proposed development would be acceptable in planning terms without the provision of a cycleway/footway along West End Road; and
- Subject to a condition reading *“Prior to the commencement of any other part of the development hereby permitted, the proposed fourth arm of the*

*existing A52/Westbridge Road roundabout shall be completed in accordance with the details that shall first be approved in writing by the Local Planning Authority” it is content that the proposed new highway infrastructure will not be unsafe.*

- 7.43 However, the Highway Authority have commented in detail on the right turn lane and the potential for backing-up. The applicant has responded advising that *“the proposed Right Turn Lane can accommodate 5 vehicles. Currently all traffic will turn right in and left out. The proposed McDonald’s traffic during the peak periods is 113-117 vehicles inbound so 2 vehicles per minute. It is therefore unlikely that the queue in the Right Turn Lane will exceed 2 vehicles even with all traffic turning right into the site. If other developments or the Boston Distributor Road come forward then we would expect that there would be split turning both left and right into the site, therefore although the traffic levels may increase the number of right turn movements into the site would decrease so it is still likely that the right turn lane would have more than sufficient capacity.”*
- 7.44 Documents submitted with the application identify that, in the longer-term, there are ambitions for the new Access Road to serve further development. There is also the possibility that the Access Road might, at some point, become part of Phase 3 of the Boston Distributor Road (this issue is discussed further below). However, it is far from certain that either of these proposals will materialise, and consequently, this application must be determined on its own merits and as it stands. Given that the Highway Authority indicates that the highway proposals *“will be acceptable to serve the proposed development”* it is considered that there is no evidence to suggest that the proposed right turn lane is inadequate. Indeed, taken as a whole, it is considered that there is no evidence to suggest that the proposed new highway infrastructure will be unsafe.

#### *Congestion*

- 7.45 The Transport Assessment (TA) which accompanies the application predicts that the proposals will generate 113 vehicle movements at the Friday PM peak and 117 vehicles at the Saturday lunchtime peak, but that only 43% and 36% respectively of these trips will be additional (i.e. the majority of the vehicles that will visit the restaurant will be existing on the road network). The TA analyses accident records and traffic and queue data and concludes that: there are no highway safety issues on the existing network which need to be addressed as part of the planning application; the A52 /Westbridge Road roundabout can accommodate the proposed traffic; and the proposed development will have no material impact on the operation of the road network.
- 7.46 The Highway Authority does not dispute the TA’s conclusions and thus there is no evidence to suggest that (notwithstanding views expressed by objectors) the proposals will materially increase congestion locally, nor that mitigation measures (such as the construction of a footway/cycleway on West End Road) are required.

#### *Drive thru lane capacity*

- 7.47 Using data from three similar restaurants, the TA indicates that the average number of vehicles waiting in the drive-thru lane at peak times is 6 (maximum 11). The proposal's drive-thru lane has capacity to accommodate 19 vehicles and the TA therefore concludes that it is more than adequate to accommodate the anticipated level of demand. In contrast, the Highway Authority indicates that *"the experience in this County, and in particular at Boston's Queen Street outlet, is that ... traffic frequently queues back onto the adjacent public highway. It is therefore suggested that the internal layout of the site be designed so that the entirety of the queue lane, from the site entrance to the pay-point, is two vehicles wide."*
- 7.48 The applicant was invited to consider making such an amendment but indicated that there will be *"capacity to accommodate up to 19 vehicles within the drive thru lane"* and *"the entrance to the proposed drive thru lane has been located as far from the site access as possible so there could be up to 26 vehicles accommodated before the circulation of the car park would be affected."* They go on to state: *"The Highway Authority suggestion for a two lane drive thru approach is a non-standard design for McDonald's restaurants and is not acceptable – it would lead to customers weaving between lanes. The Highway Authority also have not considered how a driver in the outside lane is supposed to reach across and pay for their meal with another vehicle between them and the cash booth."* They go on to indicate that *"the Boston Queen Street restaurant is overtrading. The drive thru lane only has capacity for 13 vehicles and if there are more than 15 vehicles then the queue blocks the access to the Retail Park so the vehicles queueing are then Retail Park customers as well as McDonald's customers."*
- 7.49 The applicant has advised that 40% of the proposed development traffic will be transfer trips from the Queen Street restaurant and this will reduce the level of activity at Queens Street by 25%. This would inevitably help improve the existing queue situation at Queens Street. Nevertheless, on the issue of transfer trips, the Highway Authority has indicated that it *"would not be able to confirm or disprove the contention .... that the proposed development would be expected to result in transference of custom from the existing outlet in Queen Street, Boston and thereby possibly reduce the vehicle queuing at the Queen Street site."*
- 7.50 The applicant has responded: *"transfer trips are a recognised concept by the Department of Transport and are regularly assessed as part of foodstore Transport Assessments. For example, the application for the Aldi recently approved (September 2020) at Uffington Road, Stamford (S20/0955) included a Transport Assessment which made assessments on the level of transfer trips from the nearby Morrisons to the proposed Aldi. This was seemingly accepted by Lincolnshire Highway Authority without comment and we would note that these are different supermarket brands. It is therefore concluded that there is no justifiable reason why the Highway Authority should not be consistent in their approach and that the same concept should not apply to restaurant use, especially given that in this case the transfer of trips is between the same operator."*
- 7.51 Local knowledge of the existing Queen Street McDonald's restaurant suggests that the TA's estimate of the maximum number of vehicles likely to use the drive thru lanes is a significant under-estimate - at peak times, in excess of 35 vehicles have

been noted (queueing around the entire perimeter of the Queen Street Retail Park's car park). Given that arrangements within the Retail Park's car park have been in place for some months to attempt to separate the traffic generated by McDonald's from that generated by the remaining retail occupiers, it is considered that the applicant's argument that some "*vehicles queueing are then Retail Park customers as well as McDonald's customers*" cannot be given great weight. However, recent queueing at the Queen Street restaurant will have been exacerbated by current Covid-19 lockdown arrangements (whereby potential customers do not have the option to eat in the restaurant). Furthermore, logic suggests that overall local demand for McDonald's products within the area will not be greatly increased by the proposed new restaurant and that (notwithstanding the Highway Authority's equivocal comments), it is likely that the presence of two outlets will 'spread' the demand (reducing the number of customers using the Queen Street outlet and preventing queueing at the proposed new outlet of the scale recently witnessed at Queen Street). Indeed, one could argue that McDonalds would not be looking to bring forward an additional offer if the market conditions and need did not support it. Officers have reviewed both positions in respect of queueing within and around the site, and consider that the applicant's position is logical, well justified and evidenced. In the absence of a clear contrary view from the Highway Authority, it is considered that the proposals' capacity to accommodate vehicles queueing to use the drive thru will be adequate.

- 7.52 In all, it is considered that the proposals will not prejudice highway safety or materially increase local congestion, and that they therefore meet these requirements of Policy 2.

### Parking

- 7.53 Policy 36 of the Local Plan indicates that all new development should provide vehicle and cycle parking in accordance with the minimum parking standards set out in Appendix 6. The Local Plan Appendix indicates that 1 car parking space and 0 cycle parking spaces should be provided for each 5m<sup>2</sup> of public dining area for a class A3 restaurant/café.
- 7.54 The application form identifies this specific proposal to be a sui generis use, however, the above standard is still considered to be a reasonable starting point for the assessment of the proposal's parking provisions. The TA which accompanies the application indicates that the dining area will be 137m<sup>2</sup> and the Policy/Appendix would therefore suggest that 27 vehicle spaces and 0 bicycle stands should be provided. As a point of comparison, the TA suggests that (based upon the average of three surveyed restaurants) the maximum demand for parking is anticipated to be for 26 vehicles.
- 7.55 The application form and drawings identify that 48 vehicle parking spaces and parking for 8 bicycles will be provided. Thus, it appears that the proposed parking provision comfortably exceeds the Local Plan's requirements. Furthermore, paragraph 105 of the NPPF states that "*local parking standards ... should take into account: the accessibility of the development, the type, mix and use of development; the availability of and opportunities for public transport.*" The site is accessible by bus

(with stops on Swineshead Road and Westbridge Road within 200m of the application site) and some visits are also likely be made on foot or by bicycle (given that there are substantial numbers of dwellings within a reasonable walking or cycling distance and given the existence of footpaths in both directions along Swineshead Road). Indeed, the Transport Assessment and Travel Plan which accompany the application suggest (based upon three surveyed restaurants) that approximately 40 pedestrian visits can be expected in a peak hour; and indicate that pedestrian accessibility to the site will be improved by:

- The provision of tactile paving at the drop kerbs on the existing uncontrolled crossing over the A52 close to the A52/Westbridge Road roundabout; and
- The provision of an uncontrolled pedestrian crossing over the new 'Development Access Road'.

7.56 The specific design and construction of the new access can be secured by planning condition. In all therefore, it is considered that, because significantly more on-site vehicle parking provision is proposed than the Local Plan seeks; and there are clear opportunities for travel by means other than the private car, the proposed parking provision is adequate - a view shared by the Highway Authority.

#### Boston Distributor Road

7.57 Policy 33 of the Local Plan indicates that a Safeguarding Corridor is identified within which *"Phase 3 of the Boston Distributor Road will be delivered (outside this Plan period)".* The Policy goes on to indicate that *"any development that would prejudice the design of this infrastructure will not be permitted."*

7.58 Policy 34 of the Local Plan indicates that the Boston Distributor Road (BDR) will be delivered in three phases. Phase 3 includes *"highway improvement options from West End Road which may include new infrastructure to the A52 ..."*, and the Policy indicates that these improvements are not *"expected to happen in the Plan period up until 2036."* The Reasoned Justification to the Policy indicates that Phase 3 *"includes the consideration of highway improvements from West End Road which may include new highway infrastructure and bridging effectively from the A52 through to the new BDR highway provisions at the North Forty Foot. .... It is acknowledged that Phase 3 of the BDR will require the examination of options in greater detail. The need for this is likely to be part of the preparation of a Local Plan review or as part of a completely new Local Plan."*

7.59 Appendix 10 of the Local Plan includes a plan entitled 'Indicative Layout Boston Distributor Road'. This Plan shows a number of potential lines for Phase 3 of the BDR (shown as *"longer term options requiring further evaluation"*) and, whilst it shows two options for a link between the northern end of Phase 2 and the A52, neither of these options involves the application site. Furthermore, the plan shows the line of a 'potential bridging point' over the South Forty Foot Drain and railway line approximately 240m to the west of the application site.

7.60 The application is accompanied by a report by ADL Traffic & Highways Engineering Ltd. which (additionally to the above) identifies that:

- The Boston Distributor Road Strategic Case Summary (2018) shows the indicative Phase 3 route significantly to the west of the application site;
- The Boston Distributor Constraints Study Stage 1 Review (2008) identified concerns with the high-pressure gas main located close to the A52 /Westbridge Road roundabout, and also dismissed the option of taking the BDR through the Tesco site due to significant engineering risks associated with crossing the drain and railway at this point, as well as potential compensation liabilities. The Review therefore stated that the preferred route would take the Distributor Road to the west of the retail area to connect to the A52 via a new roundabout;
- Following pre-application discussions with the Highway Authority, the Access Road has been designed to adoptable standards and would be capable of incorporation into the BDR should the Highway Authority deem this necessary; and
- A conceptual masterplan for the development of the wider site (incorporating the remainder of the field to the south and east of the application site) includes:
  - A 10m-wide Access Road, with 3m-wide right-turn lane facilities into the application site and other potential development plots; and
  - Buildings set back significantly from the Access Road and the A52 to allow for future widening if required; and
  - The drive-thru coffee shop permitted (B/19/0519) 155m to the site's east (and also within the Safeguarding Corridor) was permitted.

7.61 The Report by ADL Traffic & Highways Engineering Ltd therefore concludes that:

- The potential for the application site to form part of the BDR has been considered and rejected by the Local Plan, the Boston Distributor Road Strategic Case Summary (2018) and the Boston Distributor Constraints Study Stage 1 Review (2008); and
- It is unlikely that the application site would form a suitable point of connection for the BDR onto the A52; but that the internal layout design does not prevent this.

7.62 The applicant has further indicated that:

- If the Access Road were adopted, it is expected that the S38 Agreement could include land which the Highway Authority may deem necessary for future highway improvement. In this way the land would be secured. The extent of this would need to be agreed with the Developer and the Highway Authority; and
- Based on pre-application discussions with the Highway Authority, the 10.0m wide Access Road (with right-turn lanes) was advised to be sufficient for the Boston Distributor Road highway, but the proposed layout also affords some scope for modification if required. For example the Highway Authority may decide that that the BDR should also include a cycle route then the footway could be widened to 3.0m on the eastern side of the Access Road to accommodate this. The proposed restaurant has been set back from the A52 and the Access Road so that the Access Road approach to the Tesco Roundabout could, in theory, be widened to two lanes in the future – even though a dual carriageway (with higher traffic speeds) would not be

desirable in this location, and the existing A52/Westbridge Road roundabout could not accommodate a link to a dual-carriageway road without significant modification.

7.63 The Highway Authority has been provided with a copy of the Report by ADL Traffic & Highways Engineering Ltd and invited to address the report's arguments that: the expected alignment of Phase 3 of the BDR is unlikely to use the application site; and the site layout and the Access Road are designed to enable incorporation into the BDR, if required. However, the Highway Authority has simply indicated that *“prior to the determination of this application, the highway authority advises that the necessary assessment work is undertaken to satisfy the determining authority that the development proposed in this planning application will not restrict the future delivery of the BDR”*. The Highway Authority does not dispute that the Access Road is of an adoptable standard but indicates that it would not wish to adopt the proposed Access Road because:

- Initially *“the road, would serve nothing more than the proposed McDonalds restaurant”*; and
- *“Until such time as the road is further extended, the proposal to manage the surface water run-off for this initial part of the road involve taking that water through the restaurant site via an underground attenuation and storage device that relies on the vigilance and maintenance of the restaurant staff”*

7.64 Taking account of the above it is clear that, if it can be demonstrated that the proposal will prejudice the delivery of Phase 3 of the Boston Distributor Road (BDR), it will potentially be appropriate for planning permission to be refused on that basis. However, it is considered that the various relevant provisions of the Local Plan (set out in the preceding paragraphs) and the Highway Authority's far-from-definitive advice do not provide strong evidence upon which to base a possible refusal. In particular:

- Phase 3 of the BDR is not expected to be delivered until after 2036 (i.e. at least 15 years hence);
- Phase 3 works in this part of the route may involve:
  - ‘new infrastructure to the A52’ (which might in theory affect the application site) but, although the ‘Indicative Layout Boston Distributor Road’ shows an option of this sort, it passes substantially to the south and west of the application site; or
  - ‘highway improvement options’, i.e. up-grades to existing roads, rather than new roads (which would not therefore affect the application site at all); and
- Phase 3 works in this part of the route may involve bridging from the A52 northwards but, although the ‘Indicative Layout Boston Distributor Road’ shows an option of this sort, it passes substantially to the west of the application site.
- There is no clear reason that the proposed new route to serve the restaurant could not be amended or adapted to form part of the BDR route if necessary.

7.65 Whilst it **may** be the case that the development of the application site will curtail the range of options that can potentially be taken forward for Phase 3 of the BDR, even

this point is not clearly established. However, the Local Plan's provisions, taken together with a lack of clear information or evidence from the Highway Authority, do not provide a credible indication that: the successful implementation of the BDR requires the application site to remain undeveloped; Phase 3 of the road will be implemented in the foreseeable future; or that the proposed Access Road could not become a part of the BDR. In these circumstances, it is considered that a refusal on the basis that the proposed restaurant/drive-thru would conflict with the provisions of Policy 33 of the Local Plan is unlikely to be sustainable at appeal.

## Pollution

### *Air quality*

- 7.66 Policy 30 of the Local Plan requires: this planning application to be accompanied by an assessment of the proposal's air quality impacts; suitable mitigation measures to be provided if required; and proposals to be refused if impacts cannot be suitably mitigated or avoided.
- 7.67 The application is accompanied by an Air Quality Screening Assessment which examines existing air quality issues in the town, and concludes that:
- Users of the restaurant will not be exposed to unacceptable levels of pollutants;
  - Increased traffic flows on the A52 as a consequence of the restaurant would be insufficient to create poor air quality;
  - The proposal will not increase traffic through the town's Air Quality Management Areas; and
  - A more detailed air quality assessment is therefore not required.
- 7.68 The Borough Council's Environmental Health Department agrees with the above conclusions and thus it is considered that the proposals meet these requirements of Policy 30 of the Local Plan

### *Ground contamination*

- 7.69 Policy 30 of the Local Plan indicates that, where there is reason to suspect ground contamination, proposals must include an assessment of the extent of contamination and any possible risks.
- 7.70 The site is currently in agricultural use and is not known to have been put to any other use and risks from ground contamination to public health are therefore very low. The Borough Council's Environmental Health Department asks for a condition to be attached to deal with any 'unforeseen' contamination that may be detected during development. The inclusion of such a condition is considered to be reasonable.

## Other issues raised by objectors

- 7.71 Representations to the proposal have been made on the basis of issues not covered by the preceding paragraphs. These issues are that the proposal:

- will lead to increased anti-social behaviour locally;
- would be more appropriate on the Quadrant development;
- will lead to increased littering of takeaway packaging;
- is not needed; and
- will not encourage healthy eating.

#### *Anti-social behaviour*

- 7.72 Policy 32 indicates that development will not be permitted unless it creates an environment which discourages crime and disorder and does not create the fear of crime. However, no evidence has been put forward to indicate that the proposal will create anti-social behaviour and the Supporting Statement which accompanies the application indicates that: the car park will be monitored and customers who cause disruption or noise will be asked to leave the premises; and CCTV will be used to deter anti-social behaviour.

#### *More appropriate at The Quadrant*

- 7.73 The Quadrant is already home to uses of a similar nature. However, in planning terms, The Quadrant is not a preferable location to the application site – neither is within Boston’s Town Centre nor a designated District or Local Centre.

#### *Littering*

- 7.74 Objectors have suggested that this issue could be tackled by:
- The provision of an area for *“vehicles to park up with the takeaway and plenty of bins to help minimise litter in the area including the wooded areas”*;
  - The applicant should: work with local litter-picking groups; employ a litter patrol; and support the Boston Woods Trust’s (BWT) waste disposal activities financially and/or with staff volunteers;
  - Takeaway containers being made in biodegradable materials; and
  - Takeaway containers being stamped with car registration numbers to enable those responsible for littering to be traced.
- 7.75 Although the Local Plan contains Policies which are concerned with developments’ potential impacts on their surroundings (Policies 2 and 30 are of the greatest relevance here), none specifically refers to litter. Paragraph 183 of the NPPF indicates that *“the focus of planning ... decisions should be on whether the proposed development is an acceptable use of land, rather than the control of ... emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively.”* Given the above advice and the fact that littering is an offence under the Environmental Protection Act 1990, it is considered that there are appropriate bodies outside of the planning system which considers and addresses the source of littering.
- 7.76 Nonetheless, looking briefly at the detailed issues raised:
- The restaurant includes a car park (with litter bins (which are considered to be adequate in number to serve the proposal) and signs encouraging the

appropriate disposal of waste (see application B/20/0429)) in which customers can park and eat their takeaway food;

- The Supporting Statement which accompanies the application indicates that at least three daily litter patrols will be conducted within 150m of the restaurant. The applicant was invited to consider the extension of this scheme to include the BWT's car parks, but they
  - Noted that the BWT car parks are either closer or equidistant to both the drive-thru coffee shop approved under B/19/0519 and Quadrant development (where a number of similar operators are located) but that such issues had not featured in the consideration of these developments;
  - Noted that the closest BWT car park at Westgate Wood is approximately a 1.5km walk along Old Hammond Beck Bank Road (without lighting or a suitable pavement), and it would therefore be unpractical and unsafe to be included within litter patrols; and
  - Indicated that, once the restaurant is open, the BWT would be able to liaise directly with the franchisee to review local initiatives. However, they consider that this is not something for discussion through the planning process.
- The nature of packaging materials is not a material planning consideration; and
- Using ANPR technology to stamp containers with car registration numbers would potentially conflict with data-protection regulations, and would not provide an evidential link between the litterer and the owner of the vehicle (e.g. litter could have been discarded by a passenger, or could have blown out of a bin).

#### *Will not encourage healthy eating*

7.77 Policy 32 of the Local Plan indicates that *“development will not be permitted unless it (where possible and appropriate) ...creates environments which ... encourage healthy eating ...”*. Paragraph 91 of the NPPF indicates that *“planning ... decisions should aim to achieve healthy, inclusive and safe places which ... enable and support healthy lifestyles ... for example through ... access to healthier food”*.

7.78 It is considered that there is no evidence to demonstrate that the proposed restaurant would conflict with the above advice and Policy provisions. Equally the proposal is not located in an area where there is a proliferation of such uses, or indeed where such uses may be perceived to be in conflict with other land-uses (eg near schools), and to that end, it is considered that a refusal on these grounds would be unlikely to be sustainable.

## **8.0 Summary and Conclusion**

8.1 Section 38(6) of the Act requires that proposals are determined in accordance with the development plan unless material considerations indicate otherwise. It is well-defined in case law that the Development Plan (in this case the South East Lincolnshire Local Plan 2011-2036) should be taken as a whole. It is for the decision-maker to weigh up the extent to which proposals are in accordance with or may

conflict with policies of the development plan and their objectives, along with all relevant materials considerations. The weight attributed to each of these factors within the exercise is known as the 'planning balance'.

- 8.2 It is considered that the following factors weigh in favour of the proposal:
- The proposals will not have unacceptably harmful impacts upon the character and appearance of the area;
  - The proposals will not have unacceptable impacts upon neighbours' amenities (subject to a condition);
  - The proposals will be acceptable in flood risk terms (subject to a condition);
  - Any minor harm caused to the setting of the nearby listed milestone will be outweighed by the positive public benefits arising from the proposals;
  - Subject to a condition, the proposals will include reasonable measures to protect archaeological remains;
  - Subject to conditions, the proposals will protect and enhance natural assets;
  - The proposals include adequate vehicle and cycle parking; and
  - Subject to condition, the proposals will not have unacceptable adverse impacts in terms of pollution.
- 8.3 Conflicting views are presented by the applicant and the Highway Authority concerning the adequacy of the capacity of the proposed drive thru lane. Although the Highway Authority's view undoubtedly weighs against the proposals, it is considered that this view is expressed in equivocal terms and that the site's ability to accommodate 26 queueing vehicles is likely to be adequate to meet demand under normal trading conditions. The applicant's position is well evidenced and informed on this matter. Therefore there can be no certainty that any harm would be able to be evidenced if the proposals were refused on this basis.
- 8.4 With regard to the impact on the Boston Distributor Road, there is no credible evidence that the proposals will prejudice the delivery of Phase 3 of the route, and as such it is considered that an objection to the scheme on the basis of policy 33 is unlikely to be sustainable.
- 8.5 Finally, with respect to policies 1 and 24, the site is located outside of the limits of the settlement boundary, and therefore technically within Countryside wherein the need for the development has not been fully demonstrated. However, the actual context of the area is more urban in nature, and includes a number of other commercial and residential uses, as such it is not considered that the proposals would undermine the general thrust of the objectives of these policies. Additionally the proposals would not undermine the ability of the town centre to function, and would have a negligible impact upon it. On balance therefore it is considered that the proposals would be acceptable.
- 8.6 There are therefore certain aspects of the proposal which conflict with policy, or criteria within policy. However, the proposal would also result in the provision of a new service to meet the needs of the community and would provide a significant number of jobs within an area which is subject to other forms of commercial development. These are significant positives which weigh in favour of the proposals.

In overall terms the proposals are considered to result in a sustainable form of development.

- 8.7 On balance, therefore, it is considered that the proposal is in accordance with the policies of the development plan when taken as a whole. Where any minor conflicts with the plan or minor material harm would occur these negatives would be outweighed by other material planning considerations, including the considerable economic benefits that are likely to arise from the development. The proposals are considered to be representative of sustainable development. It is therefore recommended planning permission is granted subject to the conditions as set out in the report and set out below.

## 9.0 **Recommendation**

- 9.1 It is recommended that the Committee **GRANTS Planning Permission**, subject to the following conditions and reasons:-

1. The development hereby permitted shall be begun before the expiration of four years from the date of this permission.

**Reason:** Required to be imposed pursuant to Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in strict accordance with the application received 03-Nov-2020 and in accordance with the associated plans referenced:

- Drawing Number 7489-SA-8675-AL01 B: Site Location Plan;
- Drawing Number 7489-SA-8675-P102 D: Block Plan;
- Drawing Number 7489-SA-8675-P104 F: Site Layout Plan As Proposed;
- Drawing Number 7489-SA-8675-P105 B: Proposed Elevations and Section;
- Drawing Number 17019-VL-McD\_L01 Rev B: Landscape Plan;
- Un-numbered Drawings: Goal Post Height Restrictor and COD/Canopy Digital Drive Thru Lane;
- Un-numbered Drawings: Outdoor Climb 2017 Revision;
- Un-numbered Drawings: Standard Patio Area Supporting Specifications; and
- Drawing Number D-375612: Proposed Lighting Layout.

**Reason:** To ensure that the development is undertaken in accordance with the approved details, and to comply with Policies 2, 3, 4, 28, 29 and 36 of the South East Lincolnshire Local Plan 2011-2036.

3. No development and/or clearance of the site shall take place until two further surveys have been undertaken to establish whether the site and the ditch to the north of the site are utilised by water voles and the results submitted to and approved in writing by the Local Planning Authority. The surveys shall take place during the optimum period for water voles activity (one between mid-April and June and the other between July and September, following water vole survey guidance).

If such a use is established, then no development shall take place until a comprehensive method statement indicating how water voles are to be safeguarded with appropriate mitigation measures have been submitted to and approved in writing by the Local Planning Authority.

The duly approved method statement shall be implemented in full accordance with the details, recommendations and timescales contained therein. Any mitigation measures shall be fully implemented before clearance of any vegetation and subsequent development of the site and retained as such thereafter.

**Reason:** In the interests of protected species, and to accord with Policy 28 of the South East Lincolnshire Local Plan 2011-2036.

4. No fixed plant and/or machinery shall come into operation until details of the fixed plant and machinery serving the development hereby permitted, and any mitigation measures to achieve this condition, are submitted to and approved in writing by the local planning authority. The rating level of the sound emitted from the site shall not exceed 45 dBA between 0700 and 2300 hours and 34 dBA at all other times. The sound levels shall be determined by measurement or calculation at the nearest residential premises. The measurements and assessment shall be made according to BS 4142:2014.

**Reason:** To ensure that noise levels from fixed plant and machinery do not exceed the existing background noise climate, in the interest of residential amenities, and to comply with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan 2011-2036.

5. The development hereby permitted shall be carried out in accordance with the Flood Risk Assessment dated 15 December 2020 (ref: MD4190159/KLJ/004) and the following mitigation measures detailed within it:
  - Finished floor levels to be set no lower than 2.75m AOD;
  - The availability of the upper level plant room platform to act as an emergency refuge; and
  - Flood resilience and resistance measures to be incorporated into the proposed development as stated.

The mitigation measures shall be fully implemented prior to occupation and subsequently remain in place.

**Reason:** To reduce the risk of flooding to the proposed development and future occupants, and to comply with Policy 4 of the South East Lincolnshire Local Plan 2011-2036.

6. No development shall take place until the implementation of a programme of archaeological works in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the local planning authority. The WSI shall cover the following:
  1. A phased programme and methodology of site investigation and recording to include:
    - an archaeological evaluation; and

- (where merited by the evaluation results) targeted area excavation and monitoring and recording;
2. A programme for post investigation assessment to include:
    - analysis of the site investigation records and finds; and
    - production of a final report on the significance of the archaeological and historical interest represented;
  3. Provision for publication and dissemination of the analysis and report on the site investigation;
  4. Provision for archive deposition of the report, finds and records of the site investigation; and
  5. Nomination of a competent person or persons/organisation to undertake the works set out within the approved WSI.

Works shall then only be undertaken in accordance with the WSI and any associated recommendations therein.

**Reason:** To record and advance understanding of heritage assets to be lost and to make information about the archaeological heritage interest publicly accessible, in accordance with Policy 29 of the South East Lincolnshire Local Plan 2011-2036.

7. Prior to the commencement of any other part of the development hereby permitted, full details of the proposed fourth arm of the existing A52/Westbridge Road roundabout and the associated access road to service the development shall be submitted to and agreed in writing by the Local Planning Authority. The fourth arm of the roundabout and the access road shall then be completed in accordance with the agreed details prior to the first use of the development.

**Reason:** In the interests of the safety and free passage of those using the adjacent public highway and of providing safe and suitable access to the permitted development, and to comply with Policy 2 of the South East Lincolnshire Local Plan.

8. The development hereby permitted shall be carried out in accordance with the Requirements and Enhancements identified in the Ecological Risk Assessment table on pages 4-6 of the Preliminary Ecological Appraisal Report (Version 2/September 2020) with all measures implemented prior to first use of the development.

**Reason:** To ensure the development provides an overall net gain in biodiversity, in accordance with Policy 28 of the South East Lincolnshire Local Plan.

9. If, during development, contamination not previously considered is identified, the local planning authority shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspect contamination has been submitted to and agreed in writing with the local planning authority.

**Reason:** To ensure that all contamination within the site is dealt with, and to accord with Policy 30 of the South East Lincolnshire Local Plan 2011-2036.

10. No above ground works shall take place until a scheme for the disposal of foul and surface water from the site has been submitted to and approved in writing by the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, the scheme shall include:
- (i) Separate systems for the disposal of foul and surface water;
  - (ii) Details of the rate of surface water discharge from the site to any soakaway, watercourse or sewer, including provisions to ensure that the post-development discharge rate does not exceed the pre-development rate (incorporating an appropriate allowance for climate change);
  - (iii) Details of any necessary flow attenuation measures, including the use of SUDS where appropriate; and
  - (iv) Details of how the scheme will be maintained and managed after completion.

The scheme shall be implemented in accordance with the duly approved details before the dwelling is first occupied, and shall be maintained and managed as such thereafter.

**Reason:** To ensure that the development is not at risk of flooding and does not increase flood risk elsewhere, and that adequate measures are put in place for the disposal of foul and surface water in accordance with the requirements of Policy 2 and 4 of the South East Lincolnshire Local Plan (2011- 2036).

## INFORMATIVES

- Cadent has a 273mm High Pressure gas pipeline close to the edge of the development application. It holds a deed of grant for a legal easement on this High Pressure gas pipeline and no development is permitted inside the easement without Cadent's written permission. Cadent will need to be approached and liaised with before work commences as it may have pipeline protection measures that need to be adhered to.
- The Environment Agency advises that a Flood Warning and Evacuation Plan is produced for the development in order to address the residual risks of flooding at the site and to confirm the approach that will be taken for safe evacuation of the area.
- The Environment Agency supports the suggestion in the FRA that future occupants sign up to Floodline Warnings Direct to receive advance warning of flooding. This can be done online at <https://www.gov.uk/sign-up-for-flood-warnings> or by phoning Floodline Warnings Direct on 0345 988 1188.
- The Black Sluice Internal Drainage Board indicates that:
  - Rainfall runoff:
    - The prior written consent of the Board will be required for the proposed discharge of surface water from the development into an adjacent watercourse (and, where possible, discharges should be limited to 1.4ltrs/sec/Ha.);
    - It is understood that the development's proposed drainage system will also receive surface water from the adjacent link road, albeit on a temporary basis. If this is the case, the applicant must declare the additional impermeable area to be drained within any application to the Board;
    - All drainage routes through the site should be maintained both during the works and after completion of the works. Provisions should be made to ensure that upstream and downstream riparian owners and those areas that are presently

served by any drainage routes passing through or adjacent to the site are not adversely affected by the development;

- Consideration must be given to the route downstream of the site from the discharge point to an appropriately maintained watercourse. The applicant will be expected to carry out off-site works or increased maintenance required to safeguard the site discharge for the life of the development, including any necessary maintenance to any adjacent piped culverts along the route of flow;
- A permanent undeveloped strip (of sufficient width to allow future maintenance work) must be created adjacent to the top of the bank of all watercourses bounding the development;

#### Discharge Outfalls

- If the proposed surface water discharge outfall is into an adjacent watercourse, prior written consent will be required from the Board for any structures placed in the bank as per Section 23 of the Land Drainage Act 1991;

#### Filling in or Culverting Watercourses

- The ownership and maintenance of watercourses within the applicant's land registry boundaries (including any existing piped culverts or other structures within the confines of the watercourses) lies with the applicant and their successors;
- If the applicant intends to install new piped structures within watercourses, the prior written consent of the Board is required under Section 23 of the Land Drainage Act 1991.