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Planning Inspectorate
c/o Gemma Carey
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Dear Sirs,

PINS REF:
RE: RESPONSE TO SUBMISSION OF COUNCIL IN RESPONSE TO THE APPLICATION FOR AN AWARD OF COSTS
PROPOSAL: AMENDMENT OF CONDITION 8 OF PREVIOUSLY APPROVED APPLICATION DC/18/2594 (ALTERATIONS TO AN EXISTING BUILDING; RETENTION FOR USE AS A VILLAGE SHOP (CLASS A1) WITH ANCILLARY CAFÉ FACILITIES TO PART OF GROUND FLOOR, USE OF PART OF GROUND FLOOR AS VETERINARY PRACTICE (CLASS D1) AND CHANGE OF USE OF UPPER FLOOR TO TWO FLATS (USE CLASS C3)) RELATING TO USE CLASSES
SITE: 3 ABINGWORTH CRESCENT, STORRINGTON ROAD, THAKEHAM, WEST SUSSEX

We write further to the submission on behalf of the Local Planning Authority ("LPA") in regard to the application for an award of costs. As a summary the reasons for costs presented are as follows (1.6 of the LPA's case)

- *Failing to determine the application in accordance with national policy and material considerations resulting in a delay.*
- *Basing decisions on vague and generalised comments which were not supported by evidence.*
- *Not determining the application in line with previous determinations at the site.*
- *Failing to engage with the applicant prior to determination*

It is the LPA's position that they do not consider an award of costs for these reasons is justified. As per paragraph 1.8 it is the LPA's position that the contention stems from a disagreement in planning judgement and does not constitute unreasonable behaviour. It is therefore the LPA's position that the decision has not caused unnecessary expense to have been incurred.

For clarity the appellant acknowledges that a disagreement of planning judgement does not in itself constitute unreasonable behaviour. It is, however, the purpose of the cost regime (as set out in the NPPG) to ensure (in part) that *local planning authorities…properly exercise their development management responsibilities'. Rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay.* It is the appellant's position, for the reasons already set out, that the LPA have failed in this duty and the reasons for refusal do not stand up to scrutiny.

Whilst the original submission sets out at length why we consider the award of costs to be justified, we do, below, provide specific response to some of the matters raised in the LPAs submission. Where relevant we will refer to specific paragraph numbers. For consistency we have also followed the LPA's approach to split the submission into the two commercial units.

Veterinary Practice

Paragraph 2.5 of the LPA's statement provides the justification for why it was considered appropriate to restrict the uses permitted within the wider Class E category. It is split between assumptions regarding the current retail/ancillary café use, a consideration regard E(b) and a consideration of E(g). We respond to each of these points in turn.

Assumption about operation

Firstly, in response we consider that the comments raised by the Council in respect of the *usage pattern* to be reliant on generalised and vague assertions which are unsupported by evidence. The LPA statement recognises the existing ancillary café but states that it *mainly sells hot/cold drinks and snacks with a likely peak use in the daytime.* This is a generalised and vague comment; it should be noted that the condition (12) on the original consent grants permission for the use of the unit between the hours *07.30 to 22.00 Monday to Friday and 08.00 to 22.00 on Saturday and Sunday.* It was therefore deemed acceptable by the LPA in the determination of the original application that the shop with ancillary café could operate from relatively early in the morning until late into the evening and was not restricted to a daytime use.

We highlight that the retail unit, like many other retail/café operations, operates with greater flexibility and variety to their offering incorporating evening events such as tastings, meet the makers, charity fundraisers etc. These are all in an effort to remain a viable business that engages with the community. It is also highlights that the use of the premises is not limited to

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daytime hours but already extends to earlier in the day and into the evening, as controlled by Condition 12 of the original permission. Accordingly, the assumption about opening hours is based on vague and generalised comments and is inconsistent with the condition's hours of operation.

We also contend that these arguments are new and were not previously included within the officer's report. The original officer's report made no restriction about hours of usage. We highlight that this is despite the comments made in the originally submitted planning statement at 6.4 and 6.28.

To this extent we consider that the LPA's position continues to rely on vague and generalised comments that are not supported by the evidence.

Class E(b)

The LPA's statement goes on to state *Class E(b) also covers restaurants which are likely to result in a different usage pattern to both the veterinary surgery and the retail unit (with ancillary café) with a greater potential impact on amenity, particularly when the existing residents are living upstairs.*

It is highlighted that in neither the LPA's cost statement nor the officer's report (or indeed the EHO comments) does it identify how the harm to residents could be incurred. This again is clearly a vague and generalised statement. It is widely acknowledged, as per Policy P3 of the NPPF, that there are a multitude of factors which contribute to considerations of amenity. It can therefore be reasonably expected that in seeking to justify a reason for refusal on such basis that this would be specific so that they could be addressed as required.

Notwithstanding this, in addition to the condition restricting hours of use any potential impact on amenity caused could reasonably be controlled by way of the Environmental Protection Act 1990 (EPA 1990), which would cover noise, odour etc. Policy DM7 of the NPPF being relevant in this regard. To this extent it is also highlighted that the building is of very recent construction and built to relevant building control requirements, thereby offering far greater insular properties than an older building or indeed those common in highstreets whereby residential properties harmoniously occupy the floor above a variety of Class E buildings.

Again, we therefore consider that this position is inconsistent with previous determinations and relies on vague and generalised comments.

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Class E(g)

The LPA's position on these potential harms (noise and vibration) is much clearer than that on other matters. This position, however, we again highlight is new to the cost response having not been raised in the officer's report or EHO comments previously.

This, we contend, however, continues to rely on generalised and vague assumptions about the nature of the process. By definition those processes relating to Class E(g) cannot be deemed to result in harm to the amenity of neighbours by definition. Should the activity cause adverse impacts then it would be incumbent upon the LPA to investigate whether such activities were commensurate to a material change of use that would be a breach of planning control. We highlight that the separation to nearest neighbour does not change the requirements of E(g).

In respect of the comments regarding mitigation to these potential impacts, we again highlight that the building is of recent construction according with the relevant building control regime. This regime gives regard to a variety of considerations including noise, vibration etc that the building must accord with. These regulations vary for buildings in a mixed use to ensure that residents are afforded sufficient amenity and safety.

Accordingly, we continue to contend that the Council's submission on this point does not stand up to scrutiny and is unreasonable relying on vague and generalised assumptions which are unsupported by both the evidence available and policy.

Retail/Ancillary Café

At paragraph 2.6 the LPA acknowledge that the reason for the condition has expanded as part of the Section 73 when compared to the parent permission. The LPA also acknowledge that it is the appellant's position that neither of the applications made under DC/18/2514 and DC/10/1314 gave mention to there being a need to protect the shop nor that the shop was inherently necessary for the sustainability of the wider development.

DC/10/1314

At paragraph 2.7 the Council state that should the retail unit cease then there would be no shop in Thakeham as was the case prior to the grant of the original permission in DC/10/1314. The LPA state:

> *While the Officer Report for DC/10/1314 is not explicit in stating that a shop would be required for the sustainability of the wider development, it is inferred throughout the document including in paragraph 1.13 where it is stated that the number of car journeys would be reduced.*

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We dispute this position. Firstly, paragraph 1.13 of DC/10/1314 is worded as:

> *A proposed shop would be attached to the village hall which,* ***it is stated in the supporting information,*** *would reduce the number of car journeys to nearby settlements.*
>
> ***[our emphasis]***

We consider that a fair reading of this position is that this is a benefit promoted by the applicant of the original permission. It is also relevant that Section 1 of DC/10/1314, as shown by the header, is a description of the respective applications and not that of considerations of benefits. This is different from it being an agreed position with the LPA.

Section 3 of DC/10/1314 is a summary of the consultation responses. At paragraph 3.29, the report presents a summary of consultation responses regarding the sustainability of the development. Within this paragraph it is noted that regardless of the proposed shop residents of the new development would still be reliant on private car to travel for shopping. One could reasonably expect that if the shop was inherently required for sustainability, it would have been mentioned in this consultation response.

Section 6 of the same report is titled as being the Planning Assessment. At paragraphs 6.29 – 6.32, the report considers the matter of sustainability. These identify the shop as being a planning benefit (alongside others) but not a necessity to the sustainability of the development. It is evident that in considering the sustainability of the wider development the principle of sustainability was on the basis of the retention of the Mushroom Farm and associated employment akin to enabling development. It was not the case that the development itself made a new sustainable settlement with associated amenities This, we contend, is a clear reading of the report, yet both this and Section 3 are omitted from the LPA's response and original officer's report.

Given the context of the wider report of DC/10/1314 beyond the one identified paragraph within the LPA cost response, we do not consider that it can be inferred that the delivery of the shop was a necessity to the original permission to warrant its long-term protection. We contend that the LPA has failed to give full regard to the original committee report of DC/10/1314 when read as a whole resulting in a decision which fails to give regard to the available evidence.

<u>DC/18/2514</u>

In respect of DC/18/2514 it is acknowledged that paragraph 6.2 states that the shop was *'considered an important provision and community asset in the original permission.'*

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Notwithstanding that this matter is disputed given the context of DC/10/1314, it is highlighted that sole regard to this one sentence fails to give regard to the wider context of DC/18/2514.

The parent permission was in part justified on the basis that the large shop could not attract a suitable operator. By contrast an operator for a smaller shop with ancillary café alongside a veterinary practice had been identified as a viable alternative. At paragraphs 6.3 – 6.9 of the officer's report it is clearly explained that the loss of the original approved larger shop is suitably justified. At no point does the report identify that there is an essential need to retain the smaller shop for the purposes of sustainability.

Again, we contend that the consideration of the application subject of the appeal is not informed by the available evidence. It is clear that the LPA have failed to give regard to the wider report which should be read as a whole.

Expansion of reason for condition

At paragraph 2.8 the LPA acknowledge that the original reason for the condition did not include reference that it was intended to secure the future provision of a retail unit. Accordingly, by their own admission they have sought through the Section 73 to introduce an additional reason for the condition not originally considered relevant to the parent permission.

The justification for this within 2.8 being that that this was *not considered particularly necessary given that the shop was being retained as part of the permission*.

This, we consider, is a completely contrary to established planning practice.

Policy DM6 of the NPPF and the wording of the NPPG clearly set out where conditions should be imposed. DM6 1.a. states that they should be included where they are *Necessary to make the development acceptable in planning terms.* Although DM6 is a recently adopted policy this approach to conditions is not. Accordingly, it stands to reason that at the time of the consideration of the parent permission it was not deemed necessary to protect the use of the unit for the sake of sustainability. Had it been the case, then as established in planning practice, this would have been included within the decision notice and a justification for such given in the officer's report. Evidently, neither of these occurred with the justification for the condition being solely linked to residential amenity.

It is long established that planning decision and conditions should be sufficient to consider future occupation, and pressures of buildings regardless of what is shown on the plans. With this in mind it is common practice that conditions are included that give regard to considerations shown both on the submission and what could occur in future. We consider it

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to therefore be wholly unreasonable to retrospectively justify a condition when this is not supported by a fair reading of the parent permission.

Notwithstanding this, the LPA in the cost response state that it was reasonable to retrospectively attach the condition following a review of the original permission under DC/10/1314. As set out above we do not consider that to have been thoroughly reviewed, and the Council has not presented any evidence in response other than a reference to it being inferred within the report.

Accordingly, we contend that this is clearly unreasonable behaviour. It is based on vague and generalised comments that are not supported by available evidence. A fair reading of both reports indicates that the shop, either larger or small, was not considered to be an inherent necessity to the sustainability of the wider development.

The approach taken by the LPA therefore has been to retrospectively seek to justify a condition that was not considered appropriate at the time of the decision. This, we contend, is contrary to established planning practice and clearly unreasonable behaviour.

Other Matters

We note that the LPA's response does not seek to respond to all of the matters raised in the application for an award of costs. We therefore direct the Inspector's attention to paragraphs 3.15, 3.18 – 3.23, 3.32, and 3.40- 3.43.

Conclusion

Whilst acknowledging that disagreements in planning judgement are not inherently unreasonable behaviour we continue to contend that one of the purposes of the cost regime is to ensure that such judgements stand up to scrutiny. Determinations which fail to do so should be considered unreasonable.

In this instance for the reasons originally set out, as read in combination with the contents of the above submission, we consider this to be the case. The Council's position is clearly unreasonable lacking precision and unsupported by a fair reading of the evidence before them. The result of such behaviour has been the bringing of the appeal which inherently has resulted in unjustified costs on behalf of the appellant.

Yours sincerely,

Matt Smith
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