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Our Ref. 131/26/MS

PLANNING STATEMENT

Removal of Condition 8 of DC/18/2594

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1.0 INTRODUCTION

1.1 This Planning Statement is submitted on behalf of our client to seek the removal of condition 8 of planning permission DC/18/2594. That application proposed the *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)*. That permission was implemented and has been occupied since.

1.2 Condition 8 relates to the restriction on the use of the two commercial premises at ground floor. It states:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending or revoking and/or re-enacting that Order), the ground floor of the premises hereby permitted shall be used for a veterinary surgery and retail unit and for no other purposes whatsoever, (including those falling within Classes D1 or A1 as defined in the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) without express planning consent from the Local Planning Authority first being obtained.

The reason given for this condition is:

Changes of use as permitted by the Town and Country Planning (General Permitted Development) Order or Use Classes Order 1987 are not considered appropriate in this case due to the potential amenity impact on adjacent residents under Policy 33 of the Horsham District Planning Framework (2015).

1.3 This application seeks the removal of this condition in its entirety. This, we contend, is fully justified by virtue of the changes to the Use Class Order which affords greater flexibility with Class E deliberately being worded as a use which would not adversely impact on neighbouring properties.

1.4 It is our contention that having regard to the reason for the condition, advice within the NPPG and policy within the NPPF, there is not sufficient justification for the blanket restriction on the use.

1.5 We would at this stage highlight that the NPPG advises that:

Conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn. Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. The local planning authority also has powers under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 to enable them to withdraw permitted development rights across a defined area, where justified.¹

- 1.6 It is contended that in these circumstances the condition would not be reasonable nor necessary, failing two of the six tests set out in the NPPG and the NPPF. The reason for the condition is for the potential impact on the amenity of neighbouring properties, yet the Use Class Order essentially defines what uses are acceptable without arising in harm to said amenities.
- 1.7 To this extent we highlight that since the revision to the use class order a number of restrictive conditions have been varied/removed to allow for such flexibility as was intended by the revisions to said order.
- 1.8 This statement will seek to set out why the current condition, in light of the 6 tests provided within the NPPF and the NPPG, is inappropriate and why it is reasonable for the condition to be removed as suggested.

SCOPE OF SUBMISSION

- 1.9 The documents submitted in support of this application for formal approval are:

- Application form (including ownership certificates)

- 1.10 Submitted in support of this application is this document for information purposes.

STRUCTURE OF PLANNING STATEMENT

- 1.11 The purpose of this statement is to set out the proposed development in further detail and assess the proposal against the relevant national and local planning policies and other material considerations.

¹ Paragraph 017. Reference ID: 21a-017-20190723

- 1.12 The statement will include the following sections: site description, planning history, description of the proposal, relevant planning policy, planning considerations, and conclusion.

2.0 SITE AND CONTEXT

- 2.1 The application site is located to the north of the junction of Abingworth Crescent and Pavilion Close. It is set behind an area of car parking adjacent to the village hall.
- 2.2 The building provides commercial space at ground floor being a veterinary practice and a café/shop with residential above. There is a small, terraced area between the car park and the entrance to the café/shop built into the land levels.
- 2.3 The building forms part of the wider development which is still ongoing in its build out though largely complete.
- 2.4 The site is within the village of Thakeham towards the south of the district.

3.0 PLANNING HISTORY

- 3.1 Other than the parent permission this application seeks to vary there is no other material planning history for the premises. There is, however, extensive history for the wider site.

4.0 PROPOSAL

- 4.1 The application proposes the removal of condition 8 of DC/18/2594.
- 4.2 Condition 8 effectively prevents the commercial spaces from being used for any purpose other than as a veterinary practice or retail premises. This therefore prevents the use of these spaces for being used for any other purpose listed within Class E of the Use Class Order, despite such changes not constituting a material change of use and therefore not fitting the definition of development set out in the act.
- 4.3 The reason that condition 8 was included as per the decision notice was to protect the amenity of neighbouring properties from inappropriate uses.
- 4.4 This application seeks to remove this condition as it is not considered reasonable, particularly as it seeks to restrict works which would not even constitute development.
- 4.5 It will be set out below why this condition does not comply with the six tests as specified in the NPPF and NPPG.

5.0 PLANNING POLICY AND BACKGROUND

- 5.1 For the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning applications are required to be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 5.2 The approved Development Plan for this site therefore comprises the policies of the Horsham District Framework 2015. This is the same plan that the parent permission was assessed under. There has, however, been updates to the National Planning Policy Framework and the Use Class Order.
- 5.3 The Council is in the process of seeking to adopt a new Local Plan. This is currently going through examination with main modifications for the key strategic policies being considered prior to further examination later in the year. There are significant changes to being proposed under the main modification which go to the heart of the plan and therefore given its current progress we contend that only limited weight could be given to the emerging policies.

Planning Policy Constraints

- 5.4 The application site is subject to the following planning constraints:
- Within the settlement of Thakeham

Central Government Planning Policy Guidance

- 5.5 The National Planning Policy Framework (NPPF) was first introduced in March 2012 and replaced planning policy statements (PPSs) and planning policy guidance notes (PPGs). The NPPF sets out national planning policy to be taken into account by Councils when preparing new local plans and when taking decisions on planning applications.
- 5.6 The NPPF has recently been updated with a revised version being published in December 2024. There continues to be a strong presumption in favour of sustainable development and at paragraph 3 it advises the Framework should be read as a whole. This
- 5.7 Paragraph 7 states the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 states achieving sustainable development means that the planning system has three overarching objectives (economic, social and environmental), which are interdependent and need to be pursued in mutually supportive

ways (so that opportunities can be taken to secure net gains across each of the different objectives). However, paragraph 9 states these are not criteria against which every decision can or should be judged. Decisions should also take local circumstances into account, to reflect the character, needs and opportunities of each area.

5.8 Paragraph 12 states the following:

'The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan...permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.'

5.9 The most relevant sections of the NPPF in relation to this proposal are 4 (Decision making); and 12 (Achieving well-designed places);

5.10 Section 4 sets out how Local Planning Authority's should consider application. Of particular relevance to this application made under Section 73 the NPPF provides clear guidance on the inclusion of conditions to planning application. The NPPF sets out the six tests for a legitimate condition with a requirement for all conditions to meet all six tests. Should the condition fail one test then it should not be applied.

5.11 Section 12 deals with the requirement for good design, which it notes is a key aspect of sustainable development. Part of this being that development should not adversely impact on the amenity of neighbouring occupiers/uses – this being the reason the condition was included. We contend that there would be no such impact.

Local Development Plan

5.12 The approved Development Plan for this site therefore comprises the policies of the Horsham District Framework 2015.

5.13 The following policies of the Plan are considered to be of relevance with that referenced in the reason being shown in bold.

Policy 1 - Strategic Policy: Sustainable Development

Policy 2 - Strategic Policy: Strategic Development

Policy 3 - Strategic Policy: Development Hierarchy

Policy 4 - Strategic Policy: Settlement Expansion

Policy 7 - Strategic Policy: Economic Growth

Policy 9 - Employment Development

Policy 10 - Rural Economic Development
Policy 15 - Strategic Policy: Housing Provision
Policy 16 - Strategic Policy: Meeting Local Housing Needs
Policy 24 - Strategic Policy: Environmental Protection
Policy 25 - Strategic Policy: The Natural Environment and Landscape Character
Policy 26 - Strategic Policy: Countryside Protection
Policy 31 - Green Infrastructure and Biodiversity
Policy 32 - Strategic Policy: The Quality of New Development
Policy 33 - Development Principles
Policy 35 - Strategic Policy: Climate Change
Policy 36 - Strategic Policy: Appropriate Energy Use
Policy 37 - Sustainable Construction
Policy 38 - Strategic
Policy: Flooding
Policy 40 - Sustainable Transport

5.14 Further relevant guidance also considered as part of the proposed development:

- National Planning Policy Framework (NPPF)
- The National Planning Practice Guidance (NPPG)
- Use Class Order

6.0 PLANNING CONSIDERATIONS

6.1 The application consists of the removal of condition 8 of planning permission granted under reference DC/18/2594.

6.2 Condition 2 states:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending or revoking and/or re-enacting that Order), the ground floor of the premises hereby permitted shall be used for a veterinary surgery and retail unit and for no other purposes whatsoever, (including those falling within Classes D1 or A1 as defined in the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) without express planning consent from the Local Planning Authority first being obtained.

The reason given for this condition is:

Changes of use as permitted by the Town and Country Planning (General Permitted Development) Order or Use Classes Order 1987 are not considered appropriate in this case due to the potential amenity impact on adjacent residents under Policy 33 of the Horsham District Planning Framework (2015).

6.3 Based on the wording of condition 8 and the cited reasons, it is evident that the primary consideration for its removal is in an assessment of the potential impact on the amenity of neighbours by virtue of any change of use.

6.4 The committee report which accompanied the original decision in 2019 does not include any contextual analysis to set out why the removal of such rights was considered justified. The section entitled *Impact on Amenity* discusses other restrictions such as to the hours of use but not the justification to restrict the commercial units to retail and veterinary practice.

6.5 It is principally our consideration that the inclusion of the restriction is not justified, and its inclusion is inconsistent with revisions to the use class order particularly the intention and justification behind such revisions to afford flexibility to occupiers.

6.6 In light of the above it is contended that the conditions are not reasonable, necessary nor justified.

6.7 Paragraph 56 of the NPPF states that:

Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.

6.8 This is confirmed within the NPPG and paragraph 57 which states that the above cited tests are referred to as the 6 tests, *and each of them need to be satisfied for each condition which an authority intends to apply.*

6.9 The NPPG further advises:

Conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity.

6.10 We contend that the condition does not conform with these six tests.

6.11 This statement will address these six texts to clearly explain why the condition should be removed. This assessment is informed by the most up-to-date policy framework within the local plan.

6.12 We recognise that there have been other decisions across the district that do not include such conditions limiting the use. We would stress at this juncture that the NPPG advises, when discussing the award of costs at an appeal, that Councils should be consistent and reasonable in their decision-making process.

Condition 2

6.13 As set out, Condition 8 relates to the blanket removal of the ability for the premises to change in use either by virtue of those rights afforded by the General Permitted Development or within the same use class. Notably for the latter of these, such a change would not constitute development as defined by Section 55 of the Town and Country Planning Act, by virtue of not constituting a material change of use.

6.14 The effect of such is that the occupiers would be unable to operate any alternative use without achieving planning permission from the Local Planning Authority; this, we contend, is contrary to the objectives of the revised Use Class Order which sought to introduce greater flexibility to the benefit of economic growth.

Necessary

- 6.15 The NPPG clearly highlights that restrictions on permitted development and changes of use are not likely to be considered necessary.
- 6.16 As set out the Committee Report which accompanied the decision does not set out any specific reason why the removal of the aforementioned rights would be necessary in this instance. Whilst it is recognised that it is precise in the context of specifying what is removed it does not justify why it should be necessary. There appears to be no justification as to why the opportunity to utilise other alternatives would be so inherently harmful that it would make the removal of such necessary.
- 6.17 To this extent we highlight that in the determination of more recent decisions within the district for similar commercial uses they do not include such limitations.
- 6.18 We highlight at this juncture that should the use change to one falling outside of a Class E then this would constitute a material change of use and therefore development for which planning permission would be required.
- 6.19 The point here being that changes within the wider bracket of Class E simply do not constitute development for which it would be justified to restrict. Had it been the Government's intention to restrict such then those uses previously separated would not have been brought under the wider umbrella of Class E.
- 6.20 Having regard to the above and the wording within the NPPG we do not consider the condition to be necessary.

Relevant to Planning

- 6.21 It is acknowledged that the condition is relevant to planning.

Enforceable

- 6.22 It is recognised that the condition is enforceable.

Precise

- 6.23 We consider the condition to be precise.

Reasonable

- 6.24 In the consideration of whether a condition is reasonable the NPPG makes it clear that restrictions on permitted development rights or change of use are unlikely to be considered reasonable. It also advises that conditions should not result in an undue burden on developers or applicants.
- 6.25 In this instance the restriction on specific uses does not appear reasonable. Notwithstanding the comments raised above about its necessity, it is clear from the reason given to the condition that it is intended to protect the amenity of neighbouring occupiers. As it is a restriction on use it is accurate to assume that such concerns amount from the specifics of use rather than operational development associated with such.
- 6.26 To this extent we highlight that the definition of Class E itself includes reference to being uses *which can be carried out in a residential area without detriment to its amenity*. This is a clear indication that there is a blanket assumption that other types of uses falling within Class E would not be considered harmful to residential amenity. In light of such the condition to restrict such uses appears to be clearly unreasonable.
- 6.27 Secondly, it is highlighted that if a future occupier operates in a manner which does disturb neighbours, likely by way of noise and disturbance, then there is other legislation and enforcement action such as ‘statutory noise nuisance’ which can be pursued to remedy such ailments. These apply to both the permitted uses and any future use that may occur. It has long been held that it is unreasonable for planning conditions to be used to control aspects of a development that could otherwise be controlled by separate legislation.
- 6.28 We would also draw attention to the variety of other conditions on the decision which are intended to protect the amenity of neighbouring occupiers including those which limit the hours of operation. These are not proposed for variation/removal ensuring that such protections remain in place. These would further minimise any potential issues from arising. Given the prevalence of these we consider it to further highlight the unreasonableness of the condition for the purposes for which it is stated.
- 6.29 It is also argued that the restriction on the use places an undue and unreasonable burden on future occupiers necessitating planning applications to vary the use. This is clearly contrary to the aims of the revised Use Class Order which sought to reduce the bureaucracy involved in changing use and in turn reduce vacancy rates within commercial premises and bring economic growth. These aims are evidenced by the definition approach to the question as to what constitutes development with it being clear that changes within the same use class do not constitute a material change of use for which planning permission is required. The significant restrictions on the use as

controlled by Condition 8 run contrary to this approach. Such restrictions would inhibit the ability of the premises to remain operational and likely lead to potentially interested parties reverting to other premises outside of Thakeham that did not include such limitations.

- 6.30 Accordingly, we contend that the condition is unreasonable in that it seeks to impose restrictions on future occupiers which do not apply elsewhere on similar premises within the district.
- 6.31 We also again highlight that the committee report does not include any justification for the condition and there is no clear reasoning for its inclusion.

7.0 CONCLUSION

- 7.1 This application is made under Section 73 of the Town and Country Planning Act seeking the removal of condition 8 of planning permission DC/18/2594.
- 7.2 This application approved *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).*
- 7.3 The condition, as per the reason on the decision notice, was included to protect the amenity of neighbouring properties.
- 7.4 This statement has clearly set out why, when assessed against the six tests set out in the NPPF and NPPG, the condition cannot be considered to be valid. Fundamentally the condition is not reasonable, precise, nor necessary.
- 7.5 Additionally, the NPPG is clear that the removal of permitted development rights and restrictions on change of use must be fully justified, which is simply not the case in the determination of the host application with this not being evidenced within the committee report.
- 7.6 We therefore respectfully request that the condition is removed.
- 7.7 We trust that you have been provided with sufficient information to determine the application, however, please let me know if you require anything further.

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