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## PLANNING STATEMENT

**IN SUPPORT OF AN APPLICATION**
**AT 120, HIGH STREET,**
**SHOREHAM-BY-SEA.**

**GGA REF: SOS/10/787**

**MARCH 2012**

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## 1.0 INTRODUCTION

1.1 This Statement is submitted in support of an application on behalf of Pets Corner, to vary condition 02 imposed on Planning Permission ADC/0478/10 to allow amended opening hours at 120 High Street, Shoreham-by-Sea.

1.2 The application relates to the variation of condition on an existing permission and by virtue of the Town and Country Planning (General Development Procedure) (Amendment) (England) Order, 2010, which came into effect on 6th April 2010, a Design and Access Statement is not required to accompany such a proposal.

1.3 However, this Planning Statement seeks to demonstrate how the preparation of this application has had regard to the documents comprising the development plan, national policy guidance, supplementary planning guidance and the planning history of the site. In particular, the fact that the variation of condition sought, was permitted for a temporary 6 month period by virtue of planning permission AWDM/0404/11 will be referred to. The evidence from this trial period will be examined, and the proposal's impact upon the amenities of the area addressed.

## 2.0 APPRAISING THE CONTEXT

### Site Location

2.1 The application site has a total area of 0.12ha and lies within the settlement area of Shoreham-by-Sea. The rear (eastern) part of the site lies within the Shoreham-by-Sea Conservation Area.

2.2 The site was originally used as a garage workshop however in March 2011 planning permission (ref: ADC/0478/10) was granted for its change of use to provide a retail pet shop and veterinary surgery with associated alterations to the building.

2.3 Vehicular access to the site is available from the High Street and car parking is provided on the site's forecourt and to the north of the building in a courtyard area, used for parking in association with the lawful use.

2.4 The character of the surrounding area is mixed, with predominantly residential development being located along the site's eastern and northern boundary. Adjacent to the southern boundary lies the main shopping area of Shoreham-by-Sea as identified on the Local Plan Proposals Map. To the west is the recently completed Ropetackle development, comprising a mix of residential and commercial uses, creating a greater nexus between the application site and the commercial centre.

## 3.0 RELEVANT PLANNING HISTORY

3.1 Planning permission (ADC/0478/10) was granted on 9th March 2011 for the *'Change of Use of Vacant Vehicle Repair Garage to Retail Pet Shop (Class A1) and Veterinary Surgery (Class D1) and Associated Alterations to Buildings'*. This permission was the subject to a number of conditions, one of which is now the subject of the current application for variation.

3.2 Condition 02 states:

*"The premises shall not be open for trade or business other than between the hours of 8am – 7.30pm Monday to Friday and 8.30am – 1pm on Saturdays".*

Reason:

*"In the interests of amenity having regard to saved policy AG1 of the Adur District Local Plan".*

3.3 In 2011 a planning application was submitted seeking the variation of conditions 2 and 3 of this permission in order to allow extended opening hours of the shop (consistent with those currently sought) and to allow the keeping of animals in the shop overnight other than cats, dogs or birds.

3.4 This permission was granted on 19th September 2011 subject to 3 conditions

Condition 01 states:

*"The retail shop opening hours specified in Condition2 below shall be discontinued permanently on or before the expiration of the period ending six months after the retail shop is first open to the public and thereafter the shop premises shall not be open for trade or business other than between the hours of 9am – 6pm Monday to Saturday and not at all on Sundays or Public Holidays".*

Reason:

*"In the interests of amenity having regard to saved policy AG1 of the Adur District Local Plan"*

Condition 02 states:

*"The retail shop shall not be open for trade or business other than between the hours of 9am and 6pm Monday to Saturday and 11am and 5pm on Sundays. The veterinary surgery shall not be open for trade or business other than between the hours of 8am and 7.30pm Monday to Friday and 8.30am and 1pm Saturdays".*

Reason:

*"In the interests of amenity having regard to saved policy AG1 of the Adur District Local Plan"*

Condition 03 states:

*"No animals shall be kept in the veterinary surgery overnight unless otherwise approved in writing by the Local Planning Authority. No dogs, cats or birds shall be kept in the retail shop overnight unless otherwise approved in writing by the Local Planning Authority".*

Reason:

*"In the interests of amenity having regard to saved policy AG1 of the Adur District Local Plan"*

3.5 The reason for granting this planning permission was stated as being:

*"The extended opening hours of the pet shop and specifically the increased use of the car park may have some impact on the amenities of adjoining residents and therefore*

*potentially conflicts with Policies AG1 and AS2 of the Adur District Local Plan. However it is considered appropriate to grant a 6 month temporary permission to provide a trial period and monitor any impacts".*

3.6 The temporary element of the permission relates only to the opening hours specified in Condition 02, and there is no time limitation on the keeping of animals (other than dogs, cats or birds) in the retail shop overnight.

## 4.0 DETAILS OF THE APPLICATION

4.1 The current application relates to the further variation of Condition 02 of ADC/0478/10 in order to allow permanently, the extended opening hours previously accepted on a trial basis. The variation sought, is such that Condition 02 would specify:

*"The retail shop shall not be open for trade or business other than between the hours of 9.00am – 6.00pm Monday to Saturday and 11.00am – 5.00pm on Sundays. The veterinary surgery shall not be open for trade or business other than between the hours of 8.00am – 7.30pm Monday to Friday and 8.30am – 1.00pm on Saturday."*

## 5.0 APPRAISING THE CONTEXT

### Policy

5.1 National planning policy relevant to the consideration of this application is contained within the following:

*Planning Policy Statement 4 – Planning for Sustainable Economic Growth*, which reiterates the fact that the Government's overarching objective is sustainable economic growth and the economic implications of applications for development affecting retail uses should be considered in this light. Planning Authorities should treat favourably, planning applications which secure sustainable economic growth.

To help achieve sustainable economic growth, PPS4 sets out a number of the Government's objectives for planning. These include the promotion of the vitality

and viability for town centres. To do this the Government wants *"competition between retailers and enhanced consumer choice through the provision of innovative and efficient shopping, leisure, tourism and local services in town centres, which allow genuine choice to meet the needs of the entire community (particularly socially excluded groups)"*.

*Circular 11/95 – The Use of Conditions in Planning Permissions,* which provides advice on the use of conditions to restrict planning permissions, including those relating to hours of use. Its Annex sets out the tests which should be applied to all conditions. With regard to the test of necessity, paragraph 17 of the Circular states:

*"In so far as a condition is wider in its scope than is necessary to achieve the desired objective, it will fail the test of need"*.

*The Development Plan*

5.2 Given that the preparation of the new emerging Adur Local Plan is still at an early stage, for development control purposes the Development Plan currently comprises 'Saved' Policies of the Adur District Local Plan (adopted 1996).

Of particular relevance is Policy AG1 – Location of Development, which is referred to in the reasons for imposing the condition, the subject of the current application. This Policy refers to the boundary of the built up area shown on the Proposals Map within which development will normally be permitted and states (inter alia):

*"Within the boundary, development will normally be permitted, subject to other policies in this Local Plan and to it not detracting from the existing local urban environment"*.

The reason for granting planning permission AWDM/0404/11 as set out on the decision notice also refer to Policy AS1 of the Local Plan. This indicates that A1 uses will be permitted within the areas to which this policy relates (as shown on the proposals map), subject to a number of considerations. However, since the current application site is not included within an area so identified on the proposals map, Policy AS1 would not appear to be directly relevant to the current application.

## 6.0 BUSINESS NEED

### The National Policy Approach

6.1 The following, from a Written Ministerial Statement 23rd March 2011, sets the up to date national policy framework for how Government considers authorities should approach applications for planning permission:

(i) *".....there is a pressing need to ensure that the planning system does everything it can to help secure a swift return to economic growth. This statement therefore sets out the steps the Government expects local planning authorities to take with immediate effect"*

(ii) *"The Government's top priority....is to promote sustainable economic growth and jobs. Government's clear expectation is that the answer to development and growth should wherever possible be 'yes', except where this would compromise the key sustainable principles set out in national planning policy"*

(iii) *"When deciding whether to grant planning permission, local planning authorities should support enterprise and facilitate housing, economic and other forms of sustainable development. Where relevant – and consistent with their statutory obligations – they should therefore:*

*(a) consider fully the importance of national planning policies aimed at fostering economic growth and employment, given the need to ensure a return to robust growth after the recent recession;*

*(b) take into account the need to maintain a flexible and responsive supply of land for key sectors including housing...*

*(c) consider the range of likely economic, environmental and social benefits of proposals; including long term or indirect benefits such as increased consumer choice, more viable communities an d more robust local economies...*

*(d) ensure that the do not impose unnecessary burdens on development...*

*"In determining planning applications, local planning authorities are obliged to have regard to all relevant considerations. They should ensure that they give appropriate weight to the need to support economic recovery, that applications that secure sustainable growth are treated favourably....and that they can give clear reasons for their decisions..."*

*"The Secretary of State for CLG will take the principles in this statement into account..."*

6.2 The Government published the draft National Planning Policy Framework (NPPF) in July 2011 which creates a 'Pro-growth' agenda for the planning system as an essential means of securing economic recovery.

6.3 Paragraph 70 of the NPPF states: *"Local planning authorities should avoid unnecessary conditions or obligations, particularly when this would undermine the viability of development proposals".*

## 7.0 PLANNING MERITS OF THE APPLICATION

7.1 The starting point for the consideration of the merits of an application to vary any condition on an existing planning permission must be an assessment of the reason for imposing the condition followed by a review of any other material considerations. This analysis was undertaken at the time of application AWDM/0404/11's submission and is again necessary to the consideration of the current application.

7.2 The original application form requested details of the proposed opening hours (if known) of each non-residential use proposed. It will be noted that the proposed hours of opening for the retail (Class A1) use were stated as 'Not Known' whilst the indicative opening hours given, related entirely to the Veterinary Surgery (Class D1) Use. However as phrased, the original planning permission restricted the operating hours of both the retail and veterinary surgery uses, to those opening hours specified in the application for the veterinary surgery.

7.3 The current application, as with its predecessor, does not propose any change to the opening hours of the veterinary surgery (8am – 7.30pm Monday to Friday and 8.30am to 1pm on Saturdays). However it was never the intention of the original application that the retail unit would trade within these strict limits. Indeed, it is not considered that the Planning Officer intended to restrict the retail unit in this way, since his Report clearly refers to the opening hours of the surgery only and the recommendation of a condition to control these.

7.4 An extension to the approved hours of opening for the retail unit are required, allowing it to trade between 9am and 6pm Monday to Saturday and 11am to 5pm on

Sundays consistent with other equivalent commercial premises that are similarly operating in proximity to residential properties.

7.5 The merits of the proposal need to be judged purely on what, if any, additional impact might result from the modest increase in hours of operation currently proposed. The Officer's report in respect of AWDM/0404/11 recognised that the previous garage use was unrestricted and could have operated 7 days a week. However he felt that the proposed extension in opening hours could have an increased impact upon local residents as a result of use of the car park at the weekends.

7.6 The granting of a variation of the opening hours condition for a temporary 6 month period provided a 'trial run' in order that the impact of these additional opening hours might be judged.

7.7 The enforcement team at the Council have been approached and have confirmed that no complaints have been received from local residents relating to noise and disturbance resulting from use of the site including the car park during the extended opening hours.

7.8 It is also noted that the environmental health officer had no adverse comments to make during the course of the previous applications' submission and to the best of the applicant's knowledge no objections have been made to this department since the use commenced.

7.9 The current proposal seeks only to bring the operation of the retail unit in line with other retail units within Shoreham Town Centre and other Pets Corner outlets operating from similar town centre locations.

7.10 Following the 'trial run' there is no evidence that the extended opening hours have caused any loss of amenity to adjoining occupiers. In the absence of such evidence, the restriction of one town centre retail use to significantly more limited hours, than other retail units within the immediate vicinity is anti-competitive, and clearly contrary to Government policy to encourage competition between retailers and consumer choice as set out in PPS4.

7.11 Furthermore, the condition has been demonstrated to go beyond what is necessary to achieve the objective of securing the amenity of the area and accordingly fails the test of 'necessity' as set out in Circular 11/95 and thereby conflicts with the Government's new NPPF.

Other Material Considerations

7.12 The variation of the condition currently proposed would allow the approved retail use to continue to compete on an equal basis with similar businesses within the vicinity, contributing towards the vitality and viability of the town centre through the availability of consumer choice. As such, the application accords with the principles of sustainable development, by facilitating a more efficient use of an existing building, and by supporting the local economy and associated employment opportunities.

7.13 The proposed re-wording of the condition, still maintains sufficient controls in order to protect the amenities of the area as intended by the condition as originally proposed. It is not evident that any other material considerations are sufficient to warrant refusal of the application.

## 8.0 EXAMINING THE APPROPRIATENESS OF A PERMANENT PERMISSION

8.1 Paragraph 109 of Circular 11/95 sets out the principles which should apply to the granting of temporary planning permissions. It states that *"These considerations will mean that a temporary permission will normally only be appropriate either where the applicant proposes temporary development, or where a trial run is needed in order to assess the effect of the development on the area"*. It continues a paragraph 112 *"A second temporary permission should not normally be granted"*.

8.2 A 'trial run' was granted by virtue of planning permission AWDM/0404/11 in order to allow the impact of the use's operation at the weekends to be judged in terms of the amenities of the area. Accordingly, it is assumed that the Council would have undertaken any monitoring of the operation of the site that they felt appropriate in

order to inform this assessment. In the absence of any complaints from local residents or evidence that the extended opening hours has had any adverse impact on the amenities of the area it is considered that there can be no objection to granting a permanent planning permission now.

## 9.0 CONCLUSIONS

9.1 The application proposes the variation of condition 02 of planning permission ADC/0478/10 to allow a limited extension to the permitted hours of opening as they relate to the authorised retail unit.

9.2 Further to the granting of permission for a variation of this condition for a temporary 6 month period, the Council have had the opportunity to monitor the operation of the site and judge its impact upon the amenities of the area. To the applicant's knowledge there have been no complaints relating to the operation of the site.

9.3 The proposed hours of opening seek to bring the operation of the retail use into line with equivalent uses in the town centre and correct what appears to have been an error in the original Officer's Report.

9.4 In the absence of any identified harm to the amenities of the area, there is no justification to constrain the operation of this site in an anti-competitive way. The operation of the retail use as proposed assists in enhancing the vitality and viability of the authorised use and the wider town centre, to the benefit of the local economy and employment opportunities. The provision of a competitive retail sector, offering extended customer choice accords with the principles of sustainable development and both national and local policy advice.

9.5 Circular 11/95 sets out in the Annex, the tests that should be applied to all conditions. With regard to the test of necessity, paragraph 17 of the Circular states:

*"In so far as a condition is wider in its scope than is necessary to achieve the desired objective, it will fail the test of need".*

9.6 It has been demonstrated that the restriction on retail opening hours imposed by Condition 02 of ADC/0478/10 goes beyond what is necessary to protect the amenities of adjoining residents. As such, this condition should be varied in order to allow the marginally extended opening hours sought.

9.7 Failure to do so would mean that the condition was acting in an anti-competitive way, preventing the proposed business from competing with other similar yet less restricted local businesses, without any reasonable justification in planning terms.

9.8 Taking these factors into account, the variation of the condition as requested can be permitted on its merits and having regard to all material considerations.