11 Ferry Road, Shoreham-By-Sea, West Sussex

STATEMENT IN SUPPORT OF APPLICATION TO VARY PLANNING PERMISSION GRANTED FOR APPLICATION REF. SU/14/96

1. Planning permission for application ref. SU/14/96/TP was granted in respect of the above land for change of use to "catering pizza shop with home delivery service" (former Use Class A3), subject to 5 conditions.

2. Such conditions include condition 2 which concerns the use of the premises for the preparation and cooking of pizzas only, and condition 3 which concerns permitted trading hours. These conditions are the subject of this application for variation.

3. Condition 2 of the relevant planning permission provides:

> "...the premises shall be used only for the preparation and cooking of pizzas..."

4. The present application seeks the variation of condition 2 in so far as the Applicant does not wish to be limited to use of the premises for the preparation and cooking of pizzas only. The intention is simply to enable the everyday business of a hot food takeaway use under Class A5 and one which conventionally allows a premises to prepare and cook a variety (albeit a variety which is modest in scope) of food types – commonly, kebabs, hamburgers, chips and salads.

5. The reason given for the imposition of condition 3 has been stated as "in the interests of residential amenity".

6. In so far as this is the aim of the condition, it is considered that no greater planning harm may arise by the prospect of the scope of food types sold at the premises, being broadened, albeit modestly. So much is common sense.

7. This is not least so with regard to the other operative conditions imposed on the planning permission and which govern the use and uphold the amenity interest.

8. The application also seeks the variation of condition 3 so as to allow hours of operation from 09.00 hours through to 00.00 hours; essentially enabling operation for 1 ½ hours later per evening of trade.

9. In so far as condition 3 further concerns the provision of outside illumination during the hours of operation, it is confirmed that only where the local planning authority considers it necessary that the outside of the premises be illuminated after 22.30

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hours, does the applicant seek as part of the application for variation to consistently extend the hours of external illumination on the premises. As such, the applicant is content (where the local planning authority is similarly content) to operate until 00.00 hours notwithstanding outside illumination may cease at 22.30 hours.

10. Condition 3 of the relevant planning permission provides:

> "The premises shall not be open for trade or business other than between the hours of 9.00 a.m. and 10.30 p.m. and there shall be no external illumination on the premises outside these specified hours".

11. In so far as condition 3 of the planning permission combines both operating hours and hours of outside illumination, it is apparent that the control of light pollution from the premises (and in the later evening) was a principal factor for implementing the condition, rather than, say, the potential for disturbing noise to be emitted from the premises during hours of operation.

12. The reason given for the imposition of condition 3 has been stated as "in the interests of amenity".

13. No planning policy then to be applied under the statutory Development Plan was cited either as part of the reason given in support of imposing condition 3, or, elsewhere in the notice of planning permission. Indeed it is apparent that no specific planning policy under the then Development Plan was directly aimed at protecting amenity in so far as may be relevant in planning terms to the operation of a hot food takeaway use.

14. It is apparent that this similarly remains the position since the present Development Plan does not include any specific policy which aims to protect amenity (whether residential in character or otherwise) within the context of a Class A5 (or analogous) use. Certainly, there is no Development Plan policy which recognises that a Class A5 use operating after 22.30 hours is likely, in principle, to cause harm to the amenity to the neighbouring surrounds. This is fundamental since, similarly albeit more specifically, the premises have not in fact caused any such harm during its evening operation.

15. It may also be considered that the time of 22.30 hours is an especially early time at which a hot food takeaway must cease operation and one which is materially inconsistent with policy objectives and neighbourhood timings which are expressly stated in development plan policies of other planning authorities.

16. It is also noteworthy that the description of "amenity" which has been included in the reason for imposing condition 3 is to be distinguished from the description of

"residential amenity" which has been cited in the reason for imposing condition 2. Amenity has not been defined in the body of the notice of planning permission and in the absence of any planning policy directly seeking to describe amenity, the reader is not further assisted by the Development Plan.

17. Importantly, the application made to vary conditions 2 and 3 do not seek to disturb any other conditions subject to which the planning permission has been granted. Accordingly, it is highly instructive that any extended permitted use of the land will remain subject to the following:

    i. Such prepared and cooked foods on the premises shall be sold to customers primarily by means of a home delivery service (thus limiting the frequency with which the premises may be attended by customers in order to collect food);

    ii. A satisfactory means of ventilation is installed and remains functioning for the extraction and disposal of cooking odours during the hours of operation; and

    iii. Sound insulation has been provided in order to protect the residential unit which is located above the premises.

18. The Applicant is content that all of the above remain in circumstances where the application is granted.

19. Moreover, conditions 4 and 5 are by definition conditions precedent. As such, they have of course been satisfied prior to the commencement of the use of the premises. It is understood that the local planning authority is perfectly content that these conditions have been satisfied and with the impact of these conditions in mitigating the use of the premises in the later evening. As such, no issue arises over the installation of such equipment or with the adequacy of the equipment in its existing form in dealing with the production of any cooking odours.

20. To date, the operator of the premises is not aware that any or any legitimate (and substantiated) complaints have ever been made, either to the operator or to the local planning authority, arising from, or otherwise in connection with, the operation of the premises in accordance with the planning permission, up until 22.30 hours. Accordingly, it has been vividly demonstrated that the use of the premises has not, in fact, caused any harm in amenity terms, not least in the later evening. Certainly, it has been demonstrated that the use of the premises up until 22.30 hours has not attributed any material planning harm which may otherwise lend itself to complaints from the neighbouring surrounds. As such, the operator is not required to begin to consider whether any material complaints have been made or are founded.

21. The satisfactory operation of the premises is, it is considered, referable to the operation of the premises subject to conditions nos. 1, 2 (balance), 4 and 5. This is so irrespective of the management of the premises which is regulated under separate statutory scheme. As stated, this application does not seek to disturb these conditions.

22. Whilst the application seeks to broaden (if modestly) the food types sold and to extend trading hours, it is considered that in the above context - which includes the historical use of the premises, the established mixed use character of the immediate area, the existing conditions to which the premises must operate, and the modest nature of the application, the application is in accordance with the Development Plan.

23. In this context, it is acknowledged that the local planning authority may properly refer in addition to national planning policy. This application satisfies national planning policy in so far as it has not historically been suggested that the use of the late evening use of the premises has caused, or is likely to cause, harm in amenity terms.

24. Certainly, the application is consistent with the overarching advice set out under both PPS6: Planning for Town Centres (which prescribes particular emphasis for supporting small businesses, etc.) and PPG24: Planning and Noise.

25. In respect of noise more particularly, it is not envisaged that the local planning authority would contemplate seeking to limit the use of the premises by reference to an identifiable noise level. Firstly, the thrust of PPG24 is not consistent with such an approach and the use of the premises as a hot food takeaway. Secondly, the Environmental Health Department of the Council has not historically sought to impose such a condition or take action against the use pursuant to the Environmental Protection Act 1990. Naturally, this statutory power would remain to be exercised wherever necessary and appropriate irrespective of the determination of this planning application.

26. Furthermore, there are no standards set out under PPG 24 which could reasonably apply to any later operation of the premises in circumstances where there is accepted to be no noise escape from the building when in use. Certainly, the thrust of PPG24 is other than to secure the exclusion of disturbances caused by patron noise or noise caused by patrons when located away from commercial premises.

27. Separately, the operator is not required to demonstrate that the business would satisfy any need which may otherwise be unmet. Nevertheless, the later operation of the premises will not result in any concentration, or inappropriate concentration, of Class A5 uses in the area.

Conditions

28. The planning authority is asked to consider, where appropriate, lawful and in accordance with best practice, the scope for imposing conditions dealing with the following matters:

    i. The proper provision of facilities for refuse storage (in accordance with Circular 11/95), if required. Such a condition could provide for a timescale for carrying out such works to be agreed following the planning authority's approval of required details. However, the applicant considers that such is adequately dealt with at the present time; and

    ii. The exclusion of the playing of music or the use of amusement machines in the premises after 22.30 hours.

29. In conclusion, no harm, or material harm in planning terms will be caused by allowing the operation of the premises subject to the variation of conditions 2 and 3 of the planning permission for the reasons given above. The proposed use of the premises consistent with the variation of conditions 2 and 3 (as applied for) may take place without any unacceptable impact on the amenity, in all planning respects.

September 2009