TOWN AND COUNTRY PLANNING ACT 1990

(AS AMENDED BY THE PLANNING AND COMPULSORY PURCHASE ACT 2004)

SECTION 78 APPEAL.

STATEMENT OF CASE ON BEHALF

OF THE APPELLANT

APPELLANT : MR J PATEL

APPEAL SITE : 1-3 THE MEAD, HITCHIN, MEADS SG5 1XZ

OUR REF : TC/5144 /AP

LPA REF : 18/00278/FP

DATE : OCTOBER 2018

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1.0 INTRODUCTION

1.1 North Hertfordshire District Council refused planning permission at 1-3 The Mead, Hitchin, Hertfordshire, SG5 1XZ , planning reference 18/00278/FP on the 29 May 2018, for the Part change of use from Class A1 (Retail) to create separate Class A5 (Hot Food Takeaway). Alterations to shopfront and erection of external fume extraction flue, on the following grounds:

> ***"By way of its size and design the proposed external flue would fail to improve the character or quality of the area or the way it functions and thereby respond poorly to the site's local context. The proposal would therefore be contrary to Section 7 of the National Planning Policy Framework and Policies SP9 and D1 of the North Hertfordshire Emerging Local Plan 2011-2031"***.

2.0 THE SITE LOCATION AND DESCRIPTION

2.1 The appeal site is located at 1-3 The Mead, within the ground floor of a detached property, currently operating under A1 retail use. Residential units are situated above. The building is located in close proximity of residential properties in The Mead, Lammas Mead, Old Hale Way and Shepherds Mead.

2.2 The site lies within the 'developed area'.

3.0 THE APPEAL PROPOSAL

3.1 The appeal proposal seeks full planning consent for the part change of use from Class A1 (Retail) to create separate Class A5 (Hot Food Takeaway). Alterations to shopfront and erection of external fume extraction flue.

3.2 Copies of the planning application forms submitted to the Council are enclosed in Appendix B. The existing and proposed layout plans, are illustrated on drawings attached. The photographs of the site are enclosed in Appendix D.

4.0 POLICY CONSIDERATIONS

4.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 gives priority to the provisions of development plans in determining planning applications and appeals as well as all other material considerations. The Courts have held that Central Government's policy contained in Ministerial Statements, Circulars, the National Planning Policy Framework (NPPF) are material considerations that must be taken into account by the decision maker, as are previous relevant appeal decisions. The following section reviews the NPPF, North Hertfordshire's emerging Local Plan and considers any relevant matters of national policy that arise in relation to this appeal.

4.2 The NPPF (July 2018) identifies core planning principles which should underpin both plan-making and decision taking. They include the requirement for planning to set out a positive vision for the future of an area, to act creatively to find solutions to enhance places, to encourage the effective use of previously developed land and actively manage the pattern of growth to make the fullest possible use of sustainable transport. Underlining these principles is advice in paragraph 124 of the NPPF that *"The creation of high quality buildings and places is fundamental to what*

the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities". Advice in paragraph 127 of NPPF requires planning decisions to aim to ensure that development meets (inter alia) the following criteria:
a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience".

4.3 Advice in paragraph 11 of NPPF states that there should still be a presumption in favour of sustainable development and "Planning policies and decisions, in turn, should aim to achieve places which promote:

- opportunities for meetings between members of the community who might not otherwise come into contact with each other, including through mixed-use developments, strong neighbourhood centres and
- active street frontages which bring together those who work, live and play in the vicinity;
- safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and
- safe and accessible developments, containing clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas.

4.4 **Local Plan**

- SP9 and D1 of the emerging Local Plan

Reference has also been made to Section 7 of the NPPF.

5.0 THE PLANNING CONSIDERATIONS

This section considers the planning issues relating to this planning application and demonstrates – with reference to relevant Development Plan policies and other material considerations - that permission should be granted.

5.1 The Principle of Development

Considerable effort has been made to put forward a development that respects the host dwelling and character of the surrounding area; whilst meeting the necessary amenity guidelines and standards. Overall it is considered that the appeal scheme meets the sustainable strategy objectives of the Council. It is clear that the principle of the partial change of use is not disputed and considered appropriate by the Local Planning Authority. As stated within the Officer's report "due to its location, there are no Saved Local Plan Policies which are applicable to the change of use of the building. As such, there is no objection to the principle of the part change of use as the Saved Local Plan is silent on this matter". The only point of contention is the impact the flue would have on the surrounding area.

a) Policy SP9 of the emerging Local Plan states:

"The Council considers good design to be a key aspect of sustainable development. We will:
a. Support new development where it is well designed and located and responds positively to its local context:
b. Require masterplans for significant developments;
c. Assess proposals against detailed policy requirements set out in this Plan and the Design SPD; and
d. Adopt the Government's technical standards for the size of new homes, water efficiency and, in specified circumstances, accessibility".

Policy D1 of the emerging Local Plan goes on to state:

"Planning permission will be granted where development proposals:
a. Respond positively to the site's local context;
b. Take all reasonable opportunities, consistent with the nature and scale of the scheme, to:
i. create or enhance public realm;
ii. optimise the potential of the site by incorporating Sustainable Drainage Systems (SuDS);
iii. reduce energy consumption and waste;
iv. retain existing vegetation and propose appropriate new planting;
v. maximise accessibility, legibility and connectivity;
vi. future proof for changes in technology and lifestyle;
vii. design-out opportunities for crime and anti-social behaviour; and
viii. minimise the visual impact of street furniture and parking provision;
c. Have regard to the Design SPD and any other relevant guidance; and
d. For residential schemes, meet or exceed the nationally described space and water efficiency standards".

The Local Plan seeks all development to provide a high standard of design based on an understanding of local characteristics. Proposals should preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets.

b) In the first instance, as noted within the Officer's report, it was considered that the proposed alterations to the shopfront would clearly have some visual impact but would not cause visual harm. On the basis that the "*existing building is not particularly attractive nor is the area on the whole particularly visually sensitive. As such I do not consider that the installation of the flue would cause such harm to the character or appearance of the area that it would merit refusal*". The Officer, fully assessed the application, together with Senior Officers and visited the site and local area, and considered that the proposed development would not cause any undue detriment to the visual amenities of the streetscene. It should also be observed that the host property, lacks architectural merit.

(b) The appeal development is utilitarian in form however its bespoke design would reflect the character of the surrounding area and design of the host building. The appeal proposal provides a good standard of design and seeks to seamlessly blend in with the character, form and urban grain prevalent in the immediate locality. The height, width, depth and massing of the proposed development ensures that the siting of the development respects the host property and the surrounding properties.

(c) The materials, in so far as possible, match that of the host property to appear congruent within the context of the site. In this respect, the appeal scheme maintains the character and appearance of the immediate locality in accordance with Policy. Thus it is clear that the appeal proposal is a well thought-out, creative and appropriate design solution, specific to this particular site's shape, size and location with a suitable scale, massing and height.

(d) The appeal development would prevent any smells, undue noise and disturbance by way of specialist mechanisms which can be conditioned. The Senior Environmental Health Officer raised no objections to the scheme. In addition, the opening hours are not undue and are similar to the surrounding uses. Notwithstanding the above, should the Council deem it appropriate, the opening hours can be negotiated and altered. The appellant would also be amenable to a condition requiring sound insulation.

6.0 CONCLUSION

6.1 Taking into account the above, it is considered that the proposal would not harm any interests of acknowledged importance. The design and layout is a well thought-out, creative and appropriate design solution, specific to this particular appeal premises. Furthermore, the development would respect the character and appearance of the locality.

6.2 The appeal proposal provides a high standard of development and seeks to seamlessly blend in with the character and form prevalent in the

immediate locality. The siting and massing of the proposed development ensures that the development respects the host property and surrounding area. Thus it is clear that the appeal proposal is a well thought-out, creative and appropriate design solution, specific to this particular site's shape, size and location with a suitable scale, massing and height.

6.3 As such, it is considered that the proposal would not have an adverse impact on the visual amenities of the street scene, character and appearance of the wider area. Furthermore, it is integral to take into account the pattern of development in the vicinity, which the proposed development respects. It is therefore considered that the use would be entirely appropriate within this commercial part of locality.

6.4 It is considered that appropriate conditions, relating to the hours of operation specified by the Council's environmental Health department would be adequate to ensure the development would not be detrimental to the amenities of the adjoining occupiers. In any case, the development would not result in an increase in 'unacceptable' levels of noise and disturbance to surrounding residents to warrant refusal. The National Planning Policy Framework states that, 'where the development plan is absent, silent or relevant policies are out-of-date' permission should be granted unless 'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits'. Consequently, the proposal would not conflict with the NPPF and emerging Local Plan.

6.5 In these circumstances, the Inspector is respectfully requested to uphold the appeal and grant planning permission.