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15 August 2017

Your Ref: A/23/15 and A/11/17/OUT

Our Ref: SP/9349B

Mr David Innes
Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

Dear Mr Innes,

OBJECTION TO A/11/17/OUT AND A/23/15 – APPLICATION AT LAND SOUTH OF NEW ROAD AND EAST OF BROOK LANE, ANGMERING

We write in respect of the Report of DPDS dated June 2017 (made available on 10th July) to provide further comments in respect of both application A/23/15 and A/11/17/OUT. For the avoidance of doubt these objections are in addition to the very significant concerns raised by my client's transport consultant under separate cover.

We understand that the DPDS report has been reviewed and subsequently amendments made as recommended by Counsel, however the details of Counsel's advice is not being made available to the public. In the context of the planning history of the site, we consider that it would be in the public interest and in particular the interest of Members of the Planning Committee to have sight of the legal advice received.

DPDS Conclusion – Development is Contrary to the Development Plan

The DPDS report endorses our view that the application should be refused on retail grounds. We therefore urge the Planning Officers to follow the recommendation of their independent retail advice.

In summary, DPDS' advice to Arun District Council is that the Former Waitrose Unit should be considered available for the purposes of the sequential test and that the rejection of the site's suitability is impermissibly retailer-specific. Importantly DPDS in chapter three of their report disagree strongly with the applicant's assessment of the viability of the site. Fundamentally therefore the advice of DPDS in chapter three of the report is that the applicants' retail assessment is flawed in terms of the sequential approach. To approve the application therefore would be to breach the sequential test.

On the basis of the very detailed consideration of the Mansfield Case within the DPDS report, it is clear that the retail floorspace proposed is not acceptable in retail planning terms and that the application fundamentally fails the well-established sequential test for town centre uses. Notwithstanding the above, we do wish to highlight a number of areas of disagreement with the DPDS report.

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Retail Impact

We were pleased to see that DPDS considered our view regarding the need for an up-to-date consideration of shopping patterns, however we wish to stress that we disagree with the conclusion reached. Although the floorspace proposed is relatively small, because of the trading density of the proposed operator, the potential impact is high. Looking at DPDS' assessment for a cumulative impact in the order of 6% it is clear to us that this assessment would be very sensitive to any changes in shopping patterns. On this basis the applicant should be asked to update their assessment to provide the confidence necessary regarding the impact of the proposals. We disagree with DPDS that a new household survey would not fundamentally change the basic numerical relationships between the proposal. Because of the dated nature of the last survey and the vast amounts of changes in the local context, the baseline position for the impact assessment is weak. Given the finely balanced nature of the impact assessment there is every reason that a full impact assessment should be justified. Furthermore, and to reiterate our earlier representations DPDS has previously stated that:

"there would be some advantages in producing a new retail impact assessment from scratch, because many of the assumptions about trade draw go back to impact assessments carried out some time ago and based on assessment which should be reviewed in the context of changes since.... A new household survey which would include the trading patterns following implemented planning permission is becoming necessary so that the developments can be omitted from the cumulative impact assessment".

We also consider that it is pertinent that both a retail occupier with presence in a local centre (Waitrose), and local landowner with interests in the town centre (my client) have expressed concerns regarding the impact of the proposed development. This should also be taken into account when considering the impacts of the development. Furthermore the latest Parish Council meeting minutes express concerns about the impact on the town centre. We consider that the DPDS report should have taken these matters into account when analysing the predicted impacts on centres.

Furthermore DPDS should have highlighted to Officers the very significant benefits the retail development proposed could bring to the town centre of Littlehampton, and the investment and opportunity that will be lost in the event that the sequential approach is not properly followed. The Waitrose site is available and suitable for the proposed development. Directing the proposed development to the town centre as required by planning policy would substantially improve the vitality and viability of the town centre, in line with Government policy and in compliance with Local Planning Policy.

Consideration of Alternative Retail Considerations

We were surprised to note the comment in paragraph 5.9 of the DPDS report, relating to retail material considerations that they consider could be given more weight than the sequential test. We strongly disagree that it is relevant for the Council to consider the counterfactual position where it is demonstrated that there is an available and suitable site for the retail development proposed. The case discussed by DPDS as the 'Mansfield case' and also discussed in our previous representations is clear that it is inappropriate to rule out the town centre as potentially more suitable location purely because of the identity of the proposed retailer.

Marks and Spencer has not seriously engaged with the prospect of alternative sites, and this is evidenced by the reliance on a dated board decision and lack of engagement with local landowners. We therefore disagree with the DPDS contention that M&S' Board decision not to proceed in 2011 is 'significant evidence that they would not do so now'. In the first instance the date of this board decision is important. There will have been many changes to the local context in this period, it is also clear that there have been changes to the retail industry in this period. Quite simply, there is no recent evidence to show that the Board would reject the town centre site, and there has been no attempt to seriously consider how the proposed use could occupy the town centre site.

However, even if the applicant had provided up-to-date evidence from the proposed occupier, we consider that this is not satisfactory by way of evidence to show that a town centre site would not be acceptable in the event that their first choice is not acceptable in planning terms. In this respect the DPDS statement is misleading, as there are many examples of major retailers insisting that a town centre site isn't acceptable only to change their stance when their first choice site or format is denied in planning terms. It is likely for example that DPDS is aware that Tesco fought a planning inquiry seeking an out-of-centre store at Romsey (Hampshire) and as part of that appeal gave evidence to the inquiry that they would not trade from the sequentially preferable town centre site. Following the inquiry Tesco went on to develop and occupy a store on the town centre site.

The Mansfield decision is very clear that NPPF paragraph 23 and 24 "are simply not couched in terms of an individual retailer's corporate requirements or limitations. That would be the antithesis of planning for land uses and here, its default policies. It would take very clear language for such an odd result to be achieved." Paragraphs 5.8 and 5.9 of the DPDS report represent an attempt to reapply the factors that they have ruled out from the sequential assessment which is a perverse reintroduction of the same or similar factors in order to diminish the significance of, or override, the consequences of failing the sequential test in both the national and development plan policy. We consider that this approach would equally undermine the application of the test for the reasons set out in the Mansfield decision.

We also disagree with the market view put forward by DPDS. As Montagu Evans note within the health-check assessment, Littlehampton has a history of low vacancy rates, and this difficulty in gaining representation within the Centre will be well known within the retail industry. The lack of published requirements should not therefore been seen as an indicator of lack of interest. On the contrary the same health-check assessment shows that a number of the vacant units vacant in 2015 have been re-occupied, again demonstrating that in spite of the vulnerability of the trading position of the centre, that there is continued and sustained retailer interest in the centre. DPDS should be aware that Waitrose has written in respect of the application, and as part of those representations highlighted that the location was viable for retail development, it is therefore very difficult to understand how they can sustain an argument that there is not a realistic prospect of re-occupation.

It should also be noted that in finalising their assessment, DPDS considers material considerations which could override the conflict with the development plan and notes that there is an 'absence of other retail harm'. Even on the basis of the limited assessment to date (discussed above) it is clear that there cannot be said to be an absence of other retail harm. However, if this is to be relied on as a material consideration then it should be expected that there is a robust assessment that demonstrates whether this is the case.



Finally DPDS has not advised how the planning permission will be made specific to Marks and Spencer in the event that a planning permission is granted on the basis of an individual retailer's refusal to occupy a town centre site. In the event that Officers were minded to grant planning permission, we would wish to review and comment on the restrictions that would follow.

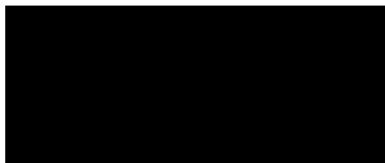
Conclusion

For the reasons explained above, we do not consider that it would be appropriate to approve the application on the basis of paragraph 5.8 and 5.9 of the DPDS report. However, in the event that the planning team wished to approve the application contrary to the development plan, then it will be important that the following information is secured from the applicant in the first instance to evidence the material considerations at play:

- 1) Retail Impact Analysis based on up-to-date data on current shopping patterns in the catchment area;
- 2) Further information from the proposed occupier, to demonstrate that there has been a detailed consideration of the available and suitable town centre site.

Fundamentally, in retail terms we agree with DPDS that the proposed development is contrary to the development plan and on the basis of the failure of the sequential test should be refused. There are no material considerations in our view which would outweigh this policy conflict. We therefore hope that Officers will follow the very clear guidance, both in national and local policy, and support and encourage investment in its town centres.

Yours sincerely,



SERENA PAGE
Partner
Dalton Warner Davis LLP

