

Supporting Statement

Relaxation of condition 2 attached to planning permission A/113/88

**General Use Conditions and the Town and Country Planning
(General Permitted Development) Order 2015 (GPDO).**

No conditions attached to permission A/113/88 are worded in a way which would prevent any changes of use granted planning permission in accordance with the TCP (General Permitted Development) (England) Order 2015 or the Use Classes Order. This is because:

It is long established that it is the construction of a condition which dictates whether it has impliedly removed permitted development rights or the benefit of the Use Classes Order. In this respect the case *Carpet Decor and Dunoon Developments*, is the leading and only authority so far as the exclusion of the GPDO is concerned.

In the judgement *Carpet Decor (Guildford) Ltd v SSE* (1981) the Judge stated:

"As a general principle, where a local planning authority intends to exclude the operation of the Use Classes Order or the GPO, they should say so by the imposition of a condition in unequivocal terms, for in the absence of such a condition it must be assumed that those orders will have effect by operation of law."

In *Dunoon Developments Ltd v SSE* (1992) the judge concluded that Article 3(4) of the TCP (General Permitted Development) Order was not engaged by a condition which contained no reference to the GPDO. The judge said:

"The purpose of the GDO is to give a general planning consent unless such consent is specifically excluded by the words of the condition. The schedule (now the second schedule to the GPDO 2015) identifies the activities included in this general consent Therefore it is apt to include the provisions of this particular planning permission unless the condition was wide enough to exclude it."

Whilst now cancelled this interpretation was supported in Circular 11/1995: Use of Planning Conditions in Planning Permissions. In particular paragraph 86 stated:

" a general condition which restricts the use of land does not remove permitted development rights for that use unless the condition specifically removes those rights as well."

Accordingly, in accordance with the Use Classes Order 2013 and the Town and Country Planning (General Permitted Development) (England) Order 2015, the premises currently benefit from the following available changes of use.

- Cafes/restaurant
- A2 professional services
- D2
- Residential

(The floor areas of some of these changes of use is restricted)

Further if any such change of use took place the premises could then be converted back to a shop and would not be subject to any restrictions on the range of goods sold. For example, A1 to A2 and then back to A1.

The existing shop

When planning permission was first granted for the farm shop the applicant client only applied for a farm shop, with restricted items for sale. There was no intention to sell other retail items. This was because there was an identified need for a local convenience food and garden store in the immediate area.

Since then planning policies have changed materially and there has been a number of large retail developments along the Littlehampton Road. They include the proposed Aldi store to the west of Windmill Bridge, the doubling of the Sainsbury superstore a short distance to the west and the recent Asda superstore on the site of a former garden centre directly opposite the application site.

In allowing the ASDA superstore the applicants for that scheme had to demonstrate that the scheme would not impact on the retail function of Littlehampton or have an adverse impact on the character and appearance of the surrounding rural area. They did not however have to demonstrate that they would not impact on smaller retail businesses in Angmering, Ferring or indeed on the current application site.

The reality is that the above retail developments and in particular the ASDA development has had a massive impact on Roundstone Farm Shop. To enable the business to survive the range of products sold will have to broaden dramatically. Thus in 2013 an application was made to remove condition 2 of the Farm Shop approval. The Council refused the application. This was due to its impact on the rural character of the area; the parking and access arrangements and the expansion of a retail use in an unsustainable location.

Since then, the applicant has tried to keep the shop going. However over the past 3 years the shop has been declared bankrupt twice. The current stock is now being sold off and then the shop will close.

The sole reason for the demise of this previously successful shop is the siting of a large superstore directly opposite the site and the other retail developments to the west.

Given the modest size of Roundstone Farm Shop the removal of condition 2 would not have a material impact on the retail function of any town or village centres. In particular, the existing shop already sells many of the products sold from the village shops in Ferring and Angmering and in the town centres of Rustington and Littlehampton.

It should also be noted that the location of the large ASDA superstore was found by Arun DC to be a sustainable retail location.

The National Planning Policy Framework (NPPF) specifically states that the sequential approach should not be applied to applications for small scale rural business developments. Also, at some 600m² the retail shop falls well below the default threshold of 2,500m² for a retail impact assessment.

The NPPF states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. They should support the expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and new buildings. They should promote the diversification of agricultural businesses and promote the retention of local shops.

The proposal is entirely consistent with this.

At local level policy DEV1 allows for the conversion of rural buildings for commercial uses. Policy DEV26 seeks to retain the hierarchy of retail centres, which the proposal will not affect. It also requires shops to be accessible by public transport, cycle, on foot and by those with disabilities. Roundstone Farm Shop is on a bus route, close to a cycle route and within easy walking and cycling distance of many local people. It is also accessible to disabled persons and currently is widely used by persons with disabilities.

Policy DEV27 allows for retail development outside principal shopping centres provided it does not impact on principal shopping areas and local shopping centres. A similar test is applied to proposed farm shops and garden centres, which reflect the comparable nature of much the produce they sell.

Policy DEV31 allows for farm shops where the range of goods sold would be limited, where they would not affect the viability of village shops and would not have an adverse impact on the character and appearance of the surrounding area, having regard to visual impact, access and parking. The reason for this policy is to allow access to small scale shopping facilities, to enable an improved choice of retailing.

In refusing planning permission in 2013 the Council found no conflict with these policies.

The only conflict found was with policies GEN3, GEN7 and GEN12 which, amongst other things seek to:

GEN3 – protect the countryside for its own sake and only allows new development within the countryside in limited circumstances. This includes the diversification of the rural economy and for uses specifically allowed for elsewhere in the Plan.

GEN7 – seeks to make efficient use of buildings; that development responds positively to the characteristics of the site; is designed to a high quality; promotes sustainable development; and provides safe access and parking.

GEN12 – parking provision will be provided in accordance with the adopted maximum parking standards. Where provision is below these standards they will be assessed having regard to need, environmental impact, the scale of the development and highway safety.

There are no policies in the adopted Local Plan which prevent, in principle, the provision of any types of shops in the rural area, provided they do not conflict with other policies. Conversely in 1998 the adopted Local Plan at that time did not allow retail shops in the rural area, unless they were selling local farm produce.

At paragraph 214 the NPPF states that after March 2013 due should be given to relevant development plan policies according to their degree of consistence with the NPPF. In this instance the degree of conflict between the two documents is significant.

In this instance:

- The site is located opposite a large superstore; fronts onto a dual carriageway, is located close to a major road junction and a range of commercial sites.
- The site is located on the strategic road network and adjacent to a designated cycle route. It is also within a very short distance of the main built up areas of Ferring, East Preston and Angmering. This part of the A27 is the main access route along the coast and is used by local residents daily for access to work, schools, community facilities, etc. The site is an accessible drop-in location for combined visits and this is how the shop has been used for the past 27 years.
- It should also be noted that the location of the large ASDA superstore was found by Arun DC to be a sustainable retail location.
- No changes are proposed to the appearance, size or scale of the existing shop.
- No change is proposed to the retail floor-space.

- With a minimum of 76 permanent parking spaces the existing car park exceeds that of the current adopted parking standard of 1 space per 20 m² of retail floor area. (Maximum spaces required – 30)

Whilst it is noted that the car park also serves the adjacent cafe the parking requirement for this cafe is just 100m². Many people who visit the shop also visit the cafe so there are numerous shared visits.

The farm operates a pick your own facility during the summer months. Parking for this is accommodated in the adjacent field as required and is expansive. Again users of the PYO generally also visit the cafe and/or the shop.

Accordingly the proposal would have no impact on the character and appearance of the surrounding area.

Currently the Arun District Local Plan Submission Version March 2017 (Draft LP) carries little if any weight. This is particularly true of any policies which are the subject of representations.

Policy SD SP2 - allows for development in the rural area, where it accords with other Local Plan policies.

Policy SD SP3 – seeks to protect open gaps between settlements. Not only is this policy subject to objections, the application site is a developed site and no changes are proposed to it physically.

Policy EMP SP1 – promotes sustainable economic growth to meet the needs of different economic sectors. It seeks to protect and enhance existing employment sites and supports sustainable employment opportunities in the rural area.

Paragraph 8.7.2 states that maintaining and improving business infrastructure is a key objective of the Local Plan.

EMP DM1 – Seeks to protect and enhance existing employment sites; to meet the needs of businesses and the local economy; to support appropriate proposals for the re-development, upgrading of employment floor-space and making more efficient use of under-used employment floor space. It seeks to work with landowners to achieve better management, including measures which increase sustainability.

The policy goes on to protect existing employment sites with a good prospect of employment uses, unless their retention would result in insurmountable environmental harm. In the rural area permission for business uses will be permitted where modest in scale; is acceptable in terms and access; etc. It specifically allows for the conversion of rural buildings, subject to visual and highway acceptability.

The policy also allows for farm diversification subject to environmental and highway impacts.

Regarding retail developments policy RET DM1 requires it to meet the tests set out in the NPPF.

The proposal complies with all of the above policies.

When planning permission was first granted for the Farm Shop in 1998 the reason for imposing the restricted list of goods that could be sold was:

"Unrestricted retail sales would be contrary to the Council's policy in respect of the rural area, where normally only that development essential in the interests of agriculture or forestry is normally permitted."

As indicated above this is no longer the case. All types of business use is permitted in the rural area, as outlined in the NPPF and the emerging Local Plan. Whilst far more restrictive than the NPPF, the Draft LP similarly does not prevent new or the retention of existing shops in the rural area.

Not only is the availability of PD rights and the recent retail permissions in the locality a material consideration, they highlight the permissive nature of the NPPF and current Government policy.

The applicant simply wants to be given a chance to keep the shop viable by being able to diversify and thus be able to compete with the large superstores in the immediate vicinity. He would like it to continue to serve the local community and local economy and would prefer not to pursue a residential use.

Having regard to the highly accessible location of the site, the size of the building and the availability of safe access and expansive parking the site could readily continue in retail use to serve the local community.

The reason for imposing condition 2 (as set out above), was to accord to the adopted rural policies at that time. Policies now allow for all forms of development in the rural area. In addition, planning permission has been granted for a large superstore opposite the application site. This development was found to be not harmful to the surrounding rural area, or highway safety.

Condition 2 is unnecessary and unreasonable and is now totally unacceptable to the Appellant. With condition 2 the current shop is simply not viable, having been the subject of two bankrupt businesses over the past 3 years. If the condition remains the shop will be permanently closed. The building will then be left unused or used for other uses falling within the current permitted development rights. The most viable such use being residential.

The reasons why the condition fails the tests set out in the National Planning Policy Framework and is contrary to the advice set out in the National Planning Practice Guidance are as follows.

The National Planning Policy Framework (NPPF) & the Planning Practice Guidance (PPG).

Paragraph 206 of the NPPF states that planning conditions should only be imposed if they comply with the following 6 tests:

- Necessary
- Relevant to planning
- Relevant to the permitted development
- Enforceable
- Precise
- Reasonable in all other respects.

In this instance the condition 2 is not necessary and is unreasonable.

In considering the imposition of a condition the Council should ask itself whether without the condition planning permission would need to be refused.

The removal of condition 2 would simply enable the applicant to sell the same range of goods sold by the superstore directly opposite the site. With regard to the impact of the use on the character and appearance of the surrounding area and highway safety, it would be insignificant and unnoticeable. It would be very little different from the existing use and the range of other uses that could take place on the site, within existing PD rights.

The existing rural PD rights take into account the impact such uses would have on the open countryside, whereas the application site is located in a noisy, busy location and forms part of the commercial infrastructure on the edge of a major conurbation. It should be noted that if the application building were still in agricultural use it could be used for unrestricted retail purposes in accordance with Class R, or Class C1 hotel, or class S school.

Application of Tests for conditions, as set out in the NPPF and the PPG.

Condition 2 is in direct conflict with paragraphs 200 and 206 of the NPPF and paragraphs 004 and 005 PPG. In particular:

Necessity – *Conditions should only be approved where they are necessary to make a proposal approvable in planning terms. If a condition is wider in its scope than is necessary to achieve the desired objective it will fail the test of necessity.*

Having regard to convenient and sustainable location of the site, opposite and close to three large retail superstores, together with its modest size, the use of the application site for a normal retail shop could not reasonably be made subject to a restricted range of sales.

The fact that the approval of the large superstore opposite has resulted in the shop being bankrupt twice in 3 years simply serves to highlight the unreasonable nature of condition 2.

Relevant to the development to be permitted – *It is not sufficient that a condition is related to planning objectives; it must also be justified by the nature or impact of the development permitted.*

The restriction on the range of goods sold does not have any impact on the use of the countryside. The policies that were in place in 1998, which only sought to allow agricultural and forestry uses in the countryside have long since been replaced. As such the policy no longer serves the purpose it was designed to serve.

The construction of the large superstore opposite highlights this.

At the same time the large superstores existing and allowed along this stretch of the A259 highlight the urbanisation of the immediate area and the need for retail developments.

Reasonable in all other respects – *Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness.*

Condition 2 is unnecessary, excessive and thus unreasonable.

The fact that the approval of the large superstores has resulted in the shop being bankrupt twice in 3 years simply serves to highlight the unreasonable nature of condition 2. The condition prevents the shop from being able to compete with the superstores on any level.

Conclusion

Condition 2 is contrary to Government policy and advice.

Condition 2 fails the six tests set out in the NPPF and the PPG.

Condition 2 is not necessary to comply with National and Local Planning policies and proposals.