



Town Planning & Development Consultants

TOWN & COUNTRY PLANNING ACT 1990

Proposal by Domino's Pizza

Proposed temporary variation of condition 3 of planning permission 98/52768/1
to allow the premises to open for delivery sales only until 0100 hours
on Fridays and Saturdays from the front of the premises only
(12-month trial period)

Site at: Domino's Pizza, 12-13 North Street Arcade, Havant, PO9 1PR

STATEMENT IN SUPPORT OF PLANNING APPLICATION

Prepared by
Jonathan Phillips BA(Hons) DipTP MA MRTPI

April 2013

1.0 INTRODUCTION

1.1 This Planning Support Statement has been prepared to accompany the planning application to seek to extend the hours of opening at the Domino's Pizza franchise at 12/13 North Street Arcade in Havant. The current hours of use are restricted by condition 3 of planning permission 98/52768/1.

1.2 The current opening hours are 0900 to 2300 hours on any day. The proposed hours would allow the premises to be open at the operator's discretion until 0100 hours on Fridays and Saturdays for home delivery orders only (for a trial period of up to 12 months). Use of the rear yard will cease at 2300 hours.

1.3 The Planning Support Statement is laid out as follows:

- 1.0 Introduction
- 2.0 Site Description & Area Context
- 3.0 Relevant Planning History
- 4.0 Relevant Planning Policy
- 5.0 Licensing Controls
- 6.0 Assessment of Planning Issues Raised
- 7.0 Summary & Conclusions

2.0 SITE DESCRIPTION & AREA CONTEXT

- 2.1 The Domino's unit occupies the ground floor of the former vacant retail unit fronting North Street, within a mixed use area. The building is of modern construction and has no specific features of architectural merit at ground floor.
- 2.2 The Domino's operation occupies circa 75sq m of floorspace, incorporating a food preparation and baking area, customer waiting area and ancillary storage. The shopfront contains clear glazing with a single customer access door from the side (western) elevation.
- 2.3 There are a number of car parks within easy walking distance and unrestricted on-street parking immediately in front of the application site in North Street.
- 2.4 The surrounding area is mixed in character with various nearby commercial premises and some residential properties.
- 2.5 The site lies on a principal bus route and is easily accessible by a choice of transport modes.

3.0 RELEVANT PLANNING HISTORY

- 3.1 Planning permission was granted on 13 August 1998 for the change of use at the site from a vacant retail unit to a hot food takeaway (Council ref: 98/52768/1, see Appendix 1).
- 3.2 Condition 3 of the permission requires that the premises shall only be open between the hours of 0900-2300 and clearing up shall not take place after 2400 hours.
- 3.3 The unit opened to customers in 1999. Since that time, there have been no known issues with the use and no reports of any noise and disturbance caused by counter or delivery sales.
- 3.4 An application submitted in February 2013 for opening until 0500 hours on any day was withdrawn due to objections raised by third parties. The proposal has been significantly amended in response to these objections and the delivery operation will be managed differently during the additional hours to prevent any noise and disturbance to local residents (see Section 6.0 below).

4.0 RELEVANT PLANNING POLICY

National Planning Policy Framework

- 4.1 The planning application relates to activities taking place at a community leisure facility that is ideally located to serve its principal catchment area. This will result in an enhancement of the operation, to the benefit of the local economy and local community. The enhancement of a local commercial activity is sustainable development by definition.
- 4.2 At the heart of NPPF is a strong presumption in favour of sustainable development.
- 4.3 Paragraph 6 of NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system.
- 4.4 Paragraph 7 states that there are three identified dimensions to sustainable development, comprising economic, social and environmental dimensions. As a consequence, the planning system should contribute to building a strong, responsive and competitive economy.
- 4.5 Paragraph 9 states that pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, including (inter alia) making it easier for jobs to be created, improving the conditions in which people live, work and travel, and widening the choice of quality homes. Planning decisions need to take local circumstances into account, so that they respond to the different opportunities for achieving sustainable development in different areas (paragraph 10).
- 4.6 At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 14), unless there are demonstrable significant adverse impacts.

- 4.7 Planning decisions should not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives. Planning decisions should proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to, inter alia, respond positively to wider opportunities for growth (paragraph 17).
- 4.8 The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths (paragraph 18). The occupation of the application site by Domino's Pizza provides new jobs and prosperity and enhances the vitality and viability of the local area.
- 4.9 NPPF stresses that planning should operate to encourage and not act as an impediment to sustainable growth (paragraph 19). To help achieve economic growth, LPAs should plan proactively to meet the development needs of business and support an economy fit for the 21st Century (paragraph 20).
- 4.10 Planning policies should aim for a balance of land uses within their area so that people can be encouraged to minimise journey lengths for employment, shopping, leisure, education and other activities (paragraph 37).
- 4.11 In order to deliver social, recreational and cultural facilities and services the community needs, NPPF requires that planning decisions should plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments (paragraph 70).
- 4.12 Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed, provided that it is not of high environmental value (paragraph 111).

- 4.13 Planning decisions should also aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development and should aim to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions (paragraph 123 – my emphasis). In this case, it is clearly apparent that there is no significant adverse impact from the development and that any perceived impact could be controlled through the use of appropriate conditions. In practice, noise generated from the application site is no higher than, and is probably lower than, the background noise levels in the vicinity, therefore the presumption in favour of the development remains. There is no evidence of any demonstrable significant adverse impact from the existing use at first floor in the past.
- 4.14 Local Planning Authorities should approach decision-making in a positive way (paragraph 186) and should look for solutions rather than problems and decision-takers at every level should seek to approve applications for sustainable development where possible (paragraph 187).
- 4.15 Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions (paragraph 203).
- 4.16 As the proposed development comprises sustainable development that contributes significantly to economic vitality and viability, there is clearly a presumption in favour of the grant of planning permission for the planning application in this case. In these circumstances, there is no conflict with any of the aims, objectives and policies set out in NPPF. In the absence of any significant adverse impact, there is a presumption in favour of the development.
- 4.17 The Development Plan governing proposals at the application site comprises the saved policies from the Havant Borough District-Wide Local Plan (HBDWLP - September 2005) and the Havant Borough Core Strategy (March 2011).

- 4.18 Paragraph 218 of the saved policies HBDWLP states that a healthy economy is essential to all areas of life in the Borough. The Borough Council recognises the key roles that employment generation and retention continue to play in promoting economic prosperity, aiding urban regeneration, and improving social conditions and the physical environment.
- 4.19 Paragraph 272 states that the town, district and local centres in the Borough are a valuable resource contributing to sustainable development. They provide a concentration of shops, leisure, cultural and entertainment facilities, public services and places of employment, and are accessible by public transport, walking and cycling. Their economic performance has been threatened by the forces of out-of-centre competition and the Plan brings forward a policy emphasis aimed at sustaining and enhancing their vitality and viability in line with national planning policy.
- 4.20 Policies TC6 and TC7 govern changes of use in both primary and secondary frontages and both presume in favour of Class A5 uses.
- 4.21 Chapter 3 of the Core Strategy includes in its objectives the promotion and protection of the vitality and viability of the Borough's town, district and local centres. Policy CS4 (Town, District & Local Centres) presumes in favour of development proposals that enhance the evening economy, support small and independent businesses, and encourage high quality, mixed use development in designated centres that retain active ground floor frontages.
- 4.22 Paragraph 3.51 identifies that all town and district centres have weak evening economies with very few restaurants and public houses. Policy CS4 seeks to encourage a range of complementary evening economy uses to appeal to a wide range of ages and social groups. Applications will need to accord with the Council's licensing policy.
- 4.23 Policy DN5 (Control of Class A3, A4 & A5 Food, Drink & Entertainment Uses) states that planning permission will only be granted for such uses where it can be demonstrated that specific criteria are met. Whilst the wording of this policy conflicts directly with the presumption in favour approach of NPPF, it is apparent

from the history of operations at the application site that all of the criteria set out by Policy DN5 will be met by the proposed development.

Other Policy Considerations

- 4.24 In addition to national and local planning policy, Circular 11/95 gives advice on the use of planning conditions. The advice stresses that conditions should be used to control development where they are necessary and reasonable, as well as enforceable, precise and relevant both to planning and to the development to be permitted (paragraphs 3 and 14 of Annex).
- 4.25 Where a condition is intended to prevent harm to the amenities of an area which is clearly likely to result from the development, it will not usually be difficult to monitor, as those affected by the contravention of its requirements are likely to be able to provide clear evidence of any breaches (paragraph 27).
- 4.26 Where an application is made for permanent permission for a use which may be potentially detrimental to existing uses nearby, but there is insufficient evidence to enable the authority to be sure of its character or effect, it might be appropriate to grant a temporary permission in order to give the development a trial run, provided that such a permission would be reasonable having regard to the capital expenditure necessary to carry out the development (paragraph 111).
- 4.27 A trial period should be set that is sufficiently long for it to be clear by the end of the first permission whether permanent permission or a refusal is the right answer (paragraph 112).
- 4.28 Following a successful trial period, there is a presumption in favour of the grant of a permanent planning permission.

5.0 LICENSING CONTROLS

- 5.1 Since 2000, Central Government has advocated a more relaxed licensing regime in order to encourage flexibility to licensed operators, more freedom of choice and a means of addressing and reducing the impact of binge drinking. The Government White Paper 'Time for Reform: proposals for the modernization of our licensing laws' (April 2000) sets out formal proposals for modernizing and integrating the alcohol, public entertainment and associated late night leisure licensing systems in England and Wales in order to encourage a strategy for 24-hour living in Town Centres.
- 5.2 The White Paper was followed by The Licensing Bill, introduced in Parliament in November 2002. On 10 July 2003, the Bill received Royal Assent, becoming the Licensing Act 2003. This was followed by Guidance from the Secretary of State for the Department of Culture, Media & Sport (DCMS) under Section 182 of the 2003 Act. The Guidance amplifies the meaning of the Act and is a statutory document to which licensing authorities must have regard when considering both their licensing policies and individual applications for new licences. There are four fundamental licensing objectives underpinning everything within the Act:
- i) The prevention of crime and disorder;
 - ii) Public safety;
 - iii) The prevention of public nuisance; and
 - iv) The protection of children from harm.
- 5.3 The Secretary of State for DCMS also produced an explanatory letter to accompany the Guidance. The letter explains that the 2003 Act "*provides a genuine opportunity for the local development of our rich culture of live music, dancing and the arts. These, and other forms of entertainment, provide a diversity of activities for local people and visitors, help invigorate the leisure and night time economy and provide pursuits for young people that are not based around drinking*".

- 5.4 In accordance with the Licensing Act 2003, Local authorities have a statutory duty to publish a licensing policy dealing with how they will promote the licensing objectives in their area. In producing this they must consult widely with other statutory authorities, the Police, the Fire Authority and the local community.
- 5.5 Havant Council (as Licensing Authority for the Borough) has published and adopted a statutory Licensing Policy. The Council's policy confirms the four licensing objectives as the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.
- 5.6 It is important to note that the application site requires a premises licence to operate beyond 2300 hours, which will control the hours of use at the site.
- 5.7 A Premises Licence (PL) is therefore required to allow the proposed additional hours of use. In determining the PL application, the Council will fully take into account the potential impact of any additional noise and disturbance, as well as the other licensing objectives. The Police and EHO will need to be satisfied that the PL can be approved.
- 5.8 If the PL is approved, even if planning permission is granted for the additional opening, the Council has full control over the activities taking place at the site. Powers under the Licensing Act 2003 enable a PL to be revoked, suspended or amended at any time; therefore the Council has the power to cease the extended use, at any time.
- 5.9 Both the Licensing Act 2003 and the Council's own Licensing Policy are material considerations in the determination of planning applications. There is no reason to consider that these controls cannot be effective at the application site. These controls offer comfort to local residents, businesses and the local planning authority during the proposed trial period.

6.0 ASSESSMENT OF THE PLANNING ISSUES RAISED

Opening Hours

- 6.1 The Domino's Pizza unit is sustainably located along North Street and lies within an urban mixed use area that includes a range of shopping and commercial activities as well as residential properties. The unit is well located to serve its local resident population as well as visitors to the area.
- 6.2 The later opening of the Domino's Pizza unit will allow it to offer wider customer choice and better meet the needs of the whole community of the local area. Later opening will allow potential customers that cannot conveniently use this takeaway facility at present to do so at a time that is more convenient and appropriate to them; for example shift workers. The later opening will also broaden the customer choice for takeaway food available as part of the local economy within this part of Havant.
- 6.3 There is now more demand for customer choice throughout the daytime and evening and customers who may currently wish to consume takeaway food after the permitted opening hours are being denied this choice. People now tend to live more flexible lifestyles and widening consumer choice to reflect this complies with both national and local planning policy and should be generally acceptable to the Council, provided that the environmental implications of this are acceptable.
- 6.4 The principle of the extended hours and consequential improved customer choice and broadened leisure time options is therefore supported by NPPF. In addition, it is important to note the valuable contribution that uses make to the local economy and the character of the area; adding diversity and vitality as well as enhanced consumer choice. The business currently employs 25 people in full and part-time positions. The proposed extended operation will create additional job positions and will ensure viability of the current operation, thus protecting existing jobs.

- 6.5 It is also important to note that the application site will require a Premises Licence to trade the proposed later hours. The Licensing Authority is also Warrington Council. The Licensing Authority is required to assess and agree these opening hours and will consider whether there will be harm to the general amenities of the local area, taking into account the requirements of the site's Operating Schedule, and any conditions of the Premises Licence. In determining the Premises Licence application, the Council will consult the Police and Environmental Health. The Licensing Authority also has a whole raft of potential actions to seek recourse and resolution of any issues raised, regardless of the planning situation. If the Premises Licence is approved, even if planning permission is granted for the additional opening hours, the Council has full control over the activities taking place at the site. Powers under the Licensing Act 2003 enable a Premises Licence to be revoked, suspended or amended at any time; therefore the Council as Licensing Authority has the power to cease the extended trading hours (indeed the use itself) at any time if nuisance were to occur. Both the Licensing Act 2003 and the Council's own Licensing Policy are material considerations in the determination of planning applications. There is no reason to consider that these controls cannot be effective at the application site.
- 6.6 The requirement for a Premises Licence and the controls that would be exercised over the operation of this site by the Licensing Authority do not mean that the planning system should ignore or overlook residential amenity issues. They will still need to be examined in the planning system. However, that examination has to take account, as a very material consideration, the fact that all of these matters will also need to be examined and a Premises Licence subsequently approved by the Licensing Authority, which is the same Council that considers the planning application.
- 6.7 The Premises Licence is an ongoing regulatory tool. At any time the licence can be made the subject of an application for review, as a result of which the conditions can be changed or licence revoked. It follows that licensing is a far more flexible and responsive regulatory tool than the planning regime and any sustained or serious objection can be tackled by way of a review of the licence.

- 6.8 The site is also located in a busy mixed use urban area adjoining North Street, where existing pedestrian and vehicular traffic levels are high. The character of this part of Havant includes retail and other commercial premises. The premises are also located on the main road network where ambient noise levels throughout the proposed additional trading hours will be higher than that experienced in a solely residential setting. Within this context the net impact of the proposed additional hours will not cause detriment to the amenities of the local area. Consequently, the additional trading hours would not have any significant detrimental impact on the living amenities of local residents.
- 6.9 Staff will manage the premises to ensure that any noise created would be kept to an acceptable level whereby no detriment to local amenity resulted. At all times, and regardless of any controls of the LPA, the Licensing Authority has many methods of recourse if the operation of this unit failed to preserve residential amenity, including ultimately revoking the Premises Licence. In addition, any statutory noise nuisance caused would also be subject to recourse through the Environmental Health legislation.
- 6.10 An Operational Plan is proposed which sets out the means which the unit managers will use to control delivery sales during the proposed additional hours of use (see Appendix 1). Such controls over the use have been successfully implemented at similar sites within the Domino's estate (see Appendix 2). These examples include the site at West India Dock Road, London which was the subject of a Management Statement relating to use of the rear yard, in order to prevent any noise and disturbance to neighbouring properties, along with a similar statement prepared for Dominos at Springfield Road, Horsham, with a more comprehensive Operational Plan and proposed additional conditions. It is quite apparent that restrictions on use of the rear door and the rear yard are wholly relevant to the development to be permitted and are therefore reasonable in principle. In practice, the conditions are enforceable because the conditions are intended to prevent harm to the amenities of the local area which will not be difficult to monitor, as those affected by any contravention of its requirements are likely to be able to provide clear evidence of any breaches (paragraph 27 of Circular 11/95: The Use of Conditions in Planning Permissions specifically refers). The issue of enforceability, therefore, does not fall upon planning and

enforcement officers, but on local residents and the local community as a whole. Indeed, in this case any breach of conditions that restrict use of the rear access door and land to the rear of the premises would be easily detected by occupants of surrounding properties and evidence gathered in simple form, such as by photographs. The comments made by two neighbouring properties justify these conditions and indicate that they will be closely monitored.

- 6.11 In terms of potential wider impacts on the general amenities of the local area, the grant of a 'trial period' follows the advice of Circular 11/95 rehearsed above. This temporary consent period could be used to allow the applicant to demonstrate on the ground and in reality that the management of the unit and the controls imposed by the Licensing Authority are sufficient to prevent demonstrable harm being caused to the general amenity of the local area. It is suggested that if this option were to be exercised by the LPA, an appropriate period for the trial period should be 12 months.
- 6.12 During the trial period the controls of the Licensing Authority would remain in place as an additional safeguard. In addition, there would remain the powers of the Environment Health legislation to take action against any statutory nuisance caused. The LPA should also be mindful that the controls of both the Licensing Authority and Environmental Health would also remain in place if a permanent planning permission for the proposed extended opening hours were granted.
- 6.13 The unit would be managed in accordance with the controls imposed by the Licensing Authority, which has significant enforcement powers in order to ensure compliance with these controls. Noise and disturbance from customers and from delivery vehicles will therefore be controlled to ensure that local amenities are not detrimentally affected. There would therefore be no conflict with planning policies.
- 6.14 There have been no issues or incidents related to operations at the front of this site to date during the existing hours of operation and there is no reason to believe that an extension of opening hours will suddenly trigger any issue or incident. In accordance with NPPF, there is a presumption in favour of the development.

- 6.15 During any trial period, local councillors and residents (who might be affected by the proposal) will keep a close, watchful eye on the operations at the site and can provide objective feedback on the situation prior to any grant of permanent planning permission or, indeed, refusal of permission.
- 6.16 In addition, there are other means of control to ensure that activities associated with the use do not cause a nuisance during the trial period, including the powers of the licensing section (a premises licence is required for any activity at the site taking place after 2300 hours), the Environmental Health Department and, if necessary, the Police.
- 6.17 Bearing in mind the above, it is also appropriate to consider the numerous benefits to the proposal, including the following positive consequences:
- Benefits to the vitality and viability of the local area, which is in need of investment and economic drive.
 - An increase in business activity in an area of continuing commercial decline.
 - An increase in consumer expenditure and enhanced business turnover.
 - Retention of existing employment and the addition of new employment positions.
 - Enhancement to a local community facility.
 - Increased consumer choice.
 - A direct response to local demand for an enhanced facility.
 - A response to the emergence of flexible lifestyles and living.
 - An increase to natural surveillance of the locality, resulting in reduced crime incidents and opportunities.
- 6.18 The benefits of the development, combined with support from the local community, outweigh any perceived harm based upon supposition.
- 6.19 The operators have undertaken activity surveys at existing stores (see Appendix 3) and these reveal that delivery sales are very limited up to 0100 hours.

6.20 The surveys are based on one of the busiest stores (Leicester) and another store that shares very similar characteristics and context as the application site (Sandhurst). The surveys demonstrate that there will be only very limited activity at the site during the proposed additional hours of delivery sales.

7.0 SUMMARY & CONCLUSIONS

- 7.1 The Domino's Pizza unit is sustainably located on an urban site in a mixed use area. It is well located to meet the takeaway demand of the local catchment population.
- 7.2 The proposed extended opening hours would allow this takeaway facility to widen customer choice and better meet the needs of the whole local community. The proposals are therefore in compliance with both national and local planning policy.
- 7.3 The proposed extended opening hours would also be fully controlled by the Licensing Authority, who would fully assess its implications on the amenities of the local area. The recourse options for the Licensing Authority are far more flexible, responsive and potentially onerous than the powers of the Local Planning Authority.
- 7.4 The site is located within a busy urban area, where both existing pedestrian and vehicular traffic is high, especially along North Street. The local area also includes a mix of uses, which consequently leads to increased activity and background/ambient noise levels within the local area to the application site. Within this context, the additional trading hours would not cause detriment to the amenities of the local area or the living amenities of local residents.
- 7.5 The LPA could impose a temporary planning permission to act as a trial period in order to allow the applicant to demonstrate in reality that no detriment to the wider amenities of the local area would result. The absence of any detriment caused by the existing operation suggests that there is unlikely to be any issues with the extended hours of use.
- 7.6 The controls of both the Licensing Authority and the Environmental Health Unit would always remain in place in addition to the controls of the planning system.

- 7.7 In reality, the level of customer numbers and associated activity during the extended hours would be limited. Consequently their impact would be modest and no demonstrable harm would be caused to the general amenities of the local area. In addition, the operational control imposed by the Licensing Authority will ensure that the unit is well managed and would not cause nuisance or disturbance to the local area. The Licensing Authority also has significant enforcement powers to ensure that the controls it has imposed are complied with and that if any nuisance was caused to local residents, the Premises Licence could be reviewed, amended or revoked.

LIST OF APPENDICES

1. Operational Plan
2. Example conditions
3. Domino's Activity Survey