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by special delivery and email

Dear Sirs

Proposed Development: the change of use from shop (A1) to three bedroom domestic dwelling along with single store rear extension requiring removal of existing outbuildings, where the shared boundary wall within the rear garden is proposed to be extended slightly to allow for the rear extension

Planning Application: the application under reference APP/18/00704 validated on 13 July 2018 for the Proposed Development

Application Site: 12 Queen Street Emsworth PO10 7BL

We act for Stephanie Elsy, the freehold owner of the dwelling known as 10 Queen Street, Emsworth, PO10 7BL (the **Property**). Our client wishes to object to the Planning Application.

Site context

The Property and the Application Site are neighbouring terraced properties situated on Queen Street, Emsworth. The properties are located within the Emsworth Conservation Area and Chichester Harbour Area of Natural Beauty and both are Grade II listed buildings.

Our client lets the whole of the Property as a single residential dwelling to a private tenant, who has been in occupation since March 2018. The Application Site comprises five storeys: the ground floor and basement appear to benefit from an A1 use and the remainder of the property has a residential use.

Both properties have small gardens to the rear measuring approximately 7 metres by 3.5 metres. The gardens are separated by a party wall, which is of variable height (between 2.3 metres at part of the wall closest to the dwellings; and 1.6 metres towards the rear of the garden). The Planning Application envisages an extension to the height of part of this wall by approximately half a metre.

There is no off-road parking provision and each property is allocated a single parking permit to park in an unspecified bay on Queen Street.

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THL133111498.1

Determination of the Planning Application

Planning applications are to be determined in accordance with the Council's development plan unless material considerations indicate otherwise.

The decision making process is a two-stage exercise. Firstly, it should be established whether the proposal is policy compliant. Secondly, the Council should determine whether there are material considerations that indicate that the application should be approved or refused notwithstanding the development plan policies.

We set out below our client's objection to the Planning Application both in the context of the Council's development plan and in terms of material considerations that must be taken into account.

1 The Planning Application in the context of the Local Plan

1.1 Chichester Harbour AONB

1.2 The Application Site is located in the Chichester Harbour Area of Natural Beauty (**CHAONB**) and the Emsworth Conservation Area. Policy E11 of the Council's draft Local Plan states that development in the CHAONB will only be permitted where it conserves and enhances the special qualities of the AONB. The Council has adopted supplementary planning guidance in the form of the Chichester Harbour AONB SPD (the **AONB SPD**), which is a material planning consideration to which regard must be had in determining the application.

1.3 The AONB SPD states that *"rear and side extensions should be carefully designed to avoid impact on neighbouring properties"* (paragraph 14.3). Our client is concerned that the design of the Proposed Development will have an adverse impact on the Property, for the reasons we set out at paragraph 2. We invite the applicant to amend its design proposals to properly mitigate this impact in line with the AONB SPD, or failing that for the Council to refuse the application on the grounds the proposals have a material adverse impact on neighbouring properties.

1.4 Emsworth District Centre

1.5 The Council's policy framework makes it clear the non-residential uses on Queen Street should be protected. The Application Site is located in an area recognised as a District Centre under Policy CS4 of the Core Strategy and Policy C5 of the Council's emerging Local Plan. The Core Strategy recognises that smaller shops and businesses can significantly enhance the character and vibrancy of a district centre while enhancing consumer choice.

- 1.6 Paragraph 3.54 of the Core Strategy and 7.50 of the emerging Local Plan conclude that loss of ground floor town centre uses to residential development will be resisted.
- 1.7 Policy C5 of the draft Local Plan goes further and states:
- "proposals for uses which are not A1, A2 and/or D1 uses in the primary frontage will only be permitted in exceptional circumstances and will need to demonstrate that:*
- i. Through an active and realistic twelve month marketing exercise that there are no other viable A1, A2 or D1 uses which can be accommodated in the unit; and*
 - ii. The new use will retain an active ground floor frontage."*

The applicant has submitted a marketing report in line with policy C5 of the Local Plan which seeks to demonstrate that there is no viable A1, A2 or D1 use for the Application Site. In fact, that marketing report demonstrates that there was significant interest in obtaining a commercial lease of the ground floor (see, for example, the schedule of enquiries on page 6 of the report). The impediment to a successful letting is not that A1/A2/D1 is not viable but a collection of issues (including the length of lease term being offered the poor condition of the property; and the stepped access). The Council should invite the applicant to take steps to remedy these shortcomings in the marketing exercise before it agrees to sacrifice this important non-residential use contrary to policy C5. The applicant's failure in this regard, points towards a deliberate strategy to avoid Policies CS4 and C5 that seek to protect non-residential uses.

Further, even if the report did demonstrably evidence that there is no viable A1, A2 or D1 use (which it does not), the wording of policy C5 makes it clear that departure from the non-residential use will only be permitted in exceptional circumstances (the policy does not state the change will be permitted only in exceptional circumstances unless a marketing report indicates otherwise)

There is nothing exceptional about this case. While the Application Site is currently vacant, short term vacancy is no justification for departing from the strong policy support for the protection of commercial uses in Emsworth District Centre. It is vital that the Council robustly protects important non-residential uses to ensure communities and places are properly balanced.

1.8 **Parking**

The parking standards contained in the *Havant Borough Council Parking SPD (Parking SPD)* will apply to planning applications for extensions involving a significant increase in area. Given that the Proposed Development envisages operational development to the rear as well as a complete refurbishment and change of use of the ground floor and basement, the increase in area is significant and the Parking SPD will apply.

Where the Parking SPD applies, the impact of the development on parking will be a material consideration in the decision making process and additional parking spaces should be sought to ensure that a suitable level of parking provision is made.

The Planning Application involves conversion of the Application Site into a three bed unit. The design statement does not make it clear how the attic will be used and, in time, it may well comprise an additional bedroom. The Parking SPD imposes minimum car parking requirements for three bed units (two new spaces) and four bed units (three new spaces). Two spaces for cycle parking should also be provided for three and four bed units.

The Parking SPD also recognises that:

"It will not be appropriate to lower parking standards simply because there is capacity for parking on the immediate road network. This approach can individually or cumulatively alter and detrimentally affect the character and visual amenity of an area."

And further that *"If on-street parking is intrinsic to the character of the area, the main concern will relate to additional capacity. If sufficient, safe, or appropriate on-street parking is not available then indiscriminate parking will occur, resulting in highway safety issues or inappropriate parking on grass verges"*.

There is no "sufficient, safe, or appropriate on-street parking" on Queen Street. Queen Street is a narrow two way street, which connects Emsworth High Street and the A259. It is a busy road, often subject to high levels of traffic. Parking spaces are limited: on the south side of the street, double yellow lines run for almost its entire length; on the north side, there are small pockets of on-road parking bays, which are almost always occupied.

Conversion of the Application Site to a three (or four) bed dwelling will inevitably place an additional burden on roadside parking that is already in short supply. The application should therefore be refused on the grounds that it fails to provide any off-street parking, and would exacerbate the already short supply of on-site parking spaces. If the Council were minded to approve the application notwithstanding the inadequate parking arrangements, it should do so subject to a S106 agreement that prohibits occupants from obtaining resident parking permits.

1.9 Design guide

Under Policy CS16, planning permission will be granted for development that is designed to a high standard and which helps to create places where people want to live, work and relax. The design should:

- 1.10 use the characteristics of the locality to help inform the design of the new development including heights, massing, existing buildings lines, plot widths and depths, materials and proportions of windows and doors; and
- 1.11 not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking.

The Havant Borough Council Design Guide Supplementary Planning Document (**Design SPD**) which is a material consideration of significant weight adds:

- 1.12 Development of backland sites should not have an adverse effect on neighbouring properties, should maintain and enhance the existing character and quality of an existing area and should create pleasant and attractive places to live.
- 1.13 Backland development should not dominate in terms of mass or height;
- 1.14 Rear extensions... need to have particular regard to neighbouring properties and should not cause an adverse affect, such as overshadowing. Rear extensions should maintain a distance of 8 metres plus from the extension and rear boundary wall and 20 metres from the extension and the neighbouring property to the rear.
- 1.15 The design of a rear extension should avoid the loss of light to neighbours. Obstruction of light and outlook from an existing window can be mitigated against if the extension does not result in the centre of the existing windows being within a combined plan and section 45 degree overshadowing zone.

The Planning Application offends policy CS16 and the Design SPD on all these points. We outline our client's principal concerns at paragraph 3.1 below. The applicant has also provided limited details of the external design of the rear extension and the front elevation and of materials to be used on external surfaces. It is unclear how the Council will determine the application in line with the Policy CS16 design requirements without such details and the Council must ensure they are provided before the application is decided.

We ask the Council to ensure that any development is compliant with the design requirements set out in the local policy framework and that it has no adverse impact on our client's property. At present, the Proposed Development is not policy compliant and threatens to affect our client's enjoyment of her property. This is not acceptable.

2 Other material considerations

Notwithstanding the assessment of the Proposed Development against the development plan, we believe the Planning Application should be refused or appropriately conditioned as it is unacceptable in planning terms. We set out the relevant material considerations below.

2.1 Overshadowing

Our client is concerned that the Proposed Development will materially reduce the amount of natural light presently enjoyed by the Property. Although the proposed rear extension comprises one storey only, the applicant intends to raise the boundary wall between our client's property and the Application Site. In its design and access statement, the applicant states that this will have a "minimal impact to the neighbouring property". This statement is strongly denied.

We include at Appendix 1 photographs of the boundary wall that the applicant intends to extend in height. The wall is currently 1.6 metres high; the proposed extension will increase the height by half a metre, an increase of some 30%.

As the Council will note from the appended photographs, our client's property has glass doors leading from the rear extension into the garden. Given the close proximity of the boundary wall to our client's Property and given the extent of the proposed extension, the development will significantly reduce the amount of daylight and sunlight currently enjoyed by our client's property.

The wall extension is required because the applicant intends to increase the height of the existing rear extension at the Application Site. While the applicant has downplayed the impact of the rear extension (repeatedly emphasising that it is a single storey and that it will not extend beyond the existing building line), the impact will be substantial due to the significant height extension and due to the proximity of the building to our client's property.

We cannot emphasise enough how significant the overshadowing impact of the Proposed Development on our client's Property threatens to be. As a bare minimum, we ask the Council to require that a daylight/sunlight assessment is carried out. If the results of that assessment demonstrate that our client's property will be adversely impacted, the Planning Application in its current form must be refused.

2.2 Residential amenity and use

Our client is concerned that the residential amenity of the Queen Street area must be protected. In particular our client is concerned that the applicant intends to convert the Application Site into a larger dwelling expanding into the cellar and attic areas. The application would not require planning consent to do this, and if the number of bedrooms were to be increased, this would have a further material impact on residential amenity as well as impacts on parking demand. Indeed it is easy to foresee the Application Site being used as a house in multiple occupation or by a multi-tenanted property, which would be wholly unacceptable. If the Council is minded to grant the

consent, we invite the Council to condition any planning consent to restrict use of the Application Site to a single dwelling with no more than three bedrooms.

2.3 Creation of precedent for residential development

If permission were granted for the change of use, it would make it increasingly difficult for the Council to refuse other planning applications for similar development on Queen Street, which would erode the character of the area. There are a number of buildings in the area, which could incorporate a similar ground floor change of use and such development would lead to a further dilution of the commercial character of the Emsworth Town Centre.

The courts have been happy to accept that a local planning authority may refuse permission if a proliferation of applications for similar development would likely follow if the permission were granted (*Collis Radio Ltd v Secretary of State for the Environment*).

3 Conclusions

To ensure our client's concerns are suitably addressed, we invite the Council to refuse the Planning Application or to attach appropriate conditions to any planning consent to ensure the concerns set out below are addressed:

- 3.1.1 the use of the Application Site should be as a single dwelling by a single person, couple or family;
- 3.1.2 the attic and cellar should not be used as bedrooms;
- 3.1.3 the existing boundary wall and rear extension should be retained at its existing height;
- 3.1.4 construction works should only be carried out between the hours of 9am and 5pm on Monday to Friday and no works should take place on Saturdays, Sundays and bank holidays;
- 3.1.5 no construction vehicles, equipment, or machinery (including skips) should be parked or kept on Queen Street;
- 3.1.6 future residents should be allowed one parking permit only;
- 3.1.7 the height of any rear extension should be strictly controlled so that no future extension can exceed one storey in height.



We would be grateful if the Council would take into account our client's concerns in determining the Planning Application.

Yours faithfully



Appendix 1



