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## Appeal Decision

Site visit made on 21 December 2021

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2022

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Appeal Ref: APP/B1415/W/21/3272859

York Road Buildings between 4-6 York Road, St Leonards-on-Sea TN37

6PU Grid Ref Easting: 580081, Grid Ref Northing: 110755

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Paul Ferguson against the decision of Hastings Borough Council.
  - The application Ref HS/FA/20/00130, dated 10 February 2020, was refused by notice dated 16 October 2020.
  - The development proposed is 'change of use of buildings from mixed Class B8 Storage and Distribution and, Class B1 Offices to C3 Dwellinghouses, including live/work units. Conversion and rear extension to existing building to form 3 dwellinghouses. Conversion of existing building to form 4 live/work units. Provision of amenity space, parking areas and bin store, and associated works'.
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### Decision

1. The appeal is allowed and planning permission is granted for **the** 'change of use of buildings from mixed Class B8 Storage and Distribution and, Class B1 Offices to C3 Dwellinghouses, including live/work units. Conversion and rear extension to existing building to form 3 dwellinghouses. Conversion of existing building to form 4 live/work units. Provision of amenity space, parking areas and bin store, and associated works' at York Road Buildings between 4-6 York Road, St Leonards-on-Sea TN37 6PU in accordance with the terms of the application, Ref HS/FA/20/00130, dated 10 February 2020, subject to the attached Schedule of Conditions.

### Preliminary Matters

2. The site address referred to in the application form is different to that in the appeal form. I have taken the site address for the banner heading above from the appeal form as this **matches that used in the appellant's other submissions** and more clearly describes the appeal site.

### Main Issues

3. The main issues are: i) whether the proposal would represent the unacceptable loss of employment land; and ii) whether the proposal would be capable of providing appropriate waste collection facilities.

### Reasons

#### *Employment Land*

4. The appeal site is a commercial yard and buildings located to the rear of terraced and semi-detached houses, accessed by a narrow passage between

two houses off York Road. The buildings have been described as being used for office and storage purposes, and I saw the appeal site remains in active use. As such, the proposed development would be carried out on existing employment land. Plots 1 - 4 **have been described as 'live/work' units**, and the proposed plans show **ground floor areas annotated as 'workspace', rather than living areas**.

5. Policy E1 of the Hastings Planning Strategy 2011 – 2028 (2014) (PS) seeks to protect existing employment land to secure its effective use. The starting point for the policy, as explained in the **Council's Supplementary Planning Document<sup>1</sup>** (SPD), is at criterion 'a', which sets out that existing employment land will be retained unless it is demonstrated that there is no reasonable prospect of its continued use for employment purposes or it would cause serious harm to local amenities. Where continued employment use is unviable, **criterion 'b'** supports mixed uses incorporating employment.
6. **The appellant's business currently occupies the** appeal site and it is claimed to have outgrown the facilities, but no evidence, such as a marketing campaign following the advice of the SPD, has been provided to demonstrate the appeal site could not be occupied by any other businesses or is otherwise unviable for employment use. The appellant has suggested the existing use could operate 24 hours a day, 7 days a week, to the detriment **of neighbours' living** conditions, but the Council advise the current arrangement causes no disruption in this regard. I saw the layout of the site and its close relationship to neighbouring houses and gardens would provide opportunities for conflict between commercial and residential uses; however, no evidence of existing **'serious harm'** has been provided.
7. In comparison to the existing use, it is claimed the appeal site would be appropriate and viable for a mixed development incorporating an element of employment use, such as that proposed through the live/work units at Plots 1 – 4. Reading Policy E1 alongside the SPD it is clear that criterion 'a' should be complied with first, before support is provided for any live/work units in place of existing employment land.
8. The Council has referred to The Hastings and Rother Housing and Economic Development Needs Assessment (2020) (HEDNA) and a progress report<sup>2</sup> which post-dates its decision notice. These show a steady demand for industrial and warehouse space locally, and the Council describe the shortfall for such as particularly acute in Hastings. I have not been referred to any figures demonstrating the magnitude of any demand for the size and quality of the employment land which is, or reasonably could, be offered at the appeal site.
9. **I note the appellant's claims that** the demand for warehousing primarily relates to companies with wide distribution networks, but this has not been demonstrated through any detailed research. The appeal site would, however, be inappropriate for many businesses on account of its location within a residential area and its narrow access. Notwithstanding those concerns, I am unconvinced by claims that the existence of other office space in the local area means the loss of such as proposed would be insignificant, or that the loss of storage space would be negligible.

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<sup>1</sup> Retention of Employment Land and Premises Supplementary Planning Document (2015)

<sup>2</sup> Final Room to Grow Report 2, by SHW dated June 2021

10. The Framework offers support for the redevelopment of employment land for housing where, amongst other things, it would not undermine key economic sectors or sites. The Council has not suggested the appeal site is a key economic site and the appellant has claimed the specific circumstances of the appeal site would ensure no key economic sectors would be undermined by the proposal. Rather than explicitly state the proposal would undermine any key economic sectors, the Council has concluded the appeal site provides an important function by providing space for storage and distribution in the Borough, which has a steady demand predicted to grow in the medium-term. This conclusion does not appear to have taken the specific circumstances of the appeal site into account, notably the limited width of its access which would prevent many large commercial vehicles from accessing the site, and its position amongst houses and gardens in a predominantly residential area.
11. The proposal would not therefore undermine key economic sectors or sites, but it would have a harmful effect on existing employment land, reducing its supply in the face of latent demand and without a sufficiently justified reason. The appeal scheme would therefore represent the unacceptable loss of employment land. This would conflict with Policy E1 of the PS which seeks to protect such, and for the reasons I have set out above none of the criteria under which Policy E1 would offer support for mixed uses incorporating an element of employment land would be met.

#### *Waste Collection*

12. The straight, hard-surfaced access driveway from York Road into the appeal site would be too narrow for **the Council's** refuse vehicles to use, and the proposed plans show refuse stores would be located within the core of the appeal site, either side of this access. The appellant refers to the distance from the proposed refuse stores to the highway as measuring 23m, which has not been disputed by the Council. The Council claims that it would be unacceptable for refuse collection crews to have to walk over 15m to collect wheelie bins from refuse stores, and this forms the basis for their objection to the proposal on this issue.
13. The main parties have confirmed that a maximum distance of 25m between refuse storage facilities and the point at which the refuse collection vehicle stops to collect a wheelie bin is specified in the Building Regulations. The appellant has also referred to excerpts from a Good Practice Guide (GPG) relating to refuse and recycling storage for new residential developments within parts of East Sussex, including Hastings, which suggests a standard 25m minimum hard surfaced distance between refuse stores and the edge of the highway is encouraged in those parts of the County.
14. That would conflict **with the advice of the Council's Waste Services** Team, but no detailed argument has been presented to explain why any distance over 15m from the highway would be an unacceptable distance for refuse collection crews to walk. I accept that there would be a maximum distance over which it would be unreasonable to expect refuse collection crews to move wheelie bins, but this is not specified in the development plan. In the absence of any explanation as to why a distance of 23m would be too far in this instance, I consider the 25m distance set out in the Building Regulations and GPG would be a reasonable maximum. However, in practice, there would be no certainty

**that the Council's refuse collectors** would be willing to walk over 15m to collect refuse from the proposed development.

15. The existing use of the appeal site has its own non-residential refuse collection needs, which are managed on a weekly basis by a private waste collection company, and the appellant has explained that similar private waste collection services would also be available to serve the proposed development. I am therefore satisfied that the proposal would be capable of providing appropriate waste collection facilities, subject to the approval of a waste management strategy specifying how refuse would be collected and by whom in the case that an agreement **could not be reached with the Council's waste collectors**. This could be required by condition.
16. The proposal would therefore be capable of complying with Policy DM3 of the **Council's Development Management Plan** (2015). This requires, amongst other things, that development provides adequate space for the storage of waste and the means for its removal. The proposal would also be capable of functioning well, with integrated bin stores which would not be visible from the street, in accordance with the guidance set out in the Framework and National Design Guide.

#### Other Matters

17. I note concerns from a number of neighbouring residents in relation to the extent of the appeal site which covers an existing pedestrian access path between 25 and 27 Strood Road and along the rear boundaries of 27 to 35 Strood Road. That land falls outside the ownership of the appellant and I am satisfied that Certificate B of the application form has been correctly completed and complied with. The access already exists but it does not lead into the appeal site, and I understand there would be no right of access for future occupants of the proposal over that land; however, that would be a matter for the appellant or future occupants to address with the owners of that land.
18. I do not consider the proposed pedestrian access from Strood Road to be essential to provide safe access to the appeal site, which is presently accessed by pedestrians and vehicles from York Road. There would be the potential for conflict between pedestrians and vehicles using the narrow access from York Road, but such a situation already exists, and I do not consider the short length of the access drive would be likely to create any unacceptable risks to highway or pedestrian safety.
19. I have read the comments of the Highway Authority, which take the existing use of the appeal site into account and raise no objection to the proposal. No evidence has been presented to suggest to me that the proposal would have a more harmful effect on parking provision or highway safety within the appeal site itself, or outside of the appeal site, compared to the existing use and the extent to which it could be used for commercial purposes.
20. As the pedestrian access from Strood Road already exists and is used by some residential properties on that street, any possibility of the future occupants of up to 7 additional dwellings also using that access would not lead to an unacceptable risk of crime or noise. The proposal would therefore remain acceptable in either case where the proposed pedestrian access from Strood Road is provided or not.

21. The orientation of the appeal site and its existing buildings and boundaries do not suggest to me that the proposal would result in any unacceptable loss of light being experienced within neighbouring residential properties. I noted small changes in land levels within the appeal site and its surroundings, but these did not appear to be significant enough to create the potential for any harm resulting from any future boundary treatment which may replace existing low walls and fences.

### Planning Balance

22. The Council is unable to demonstrate a five-year housing land supply and I have been referred to Paragraph 11 of the Framework. Where this is the case, the policies which are most important for determining the application should be considered out of date, and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
23. Although some mixed use employment space would be retained within the proposed live/work units, the proposal would reduce existing employment land in an area where warehousing is in demand. The existing employment land is a constrained site unsuitable for large vehicles, in a location where there would be potential for conflict between any commercial use and the living conditions of surrounding residents. The quality of the existing premises could be improved to an extent but would be limited by the age and size of the existing buildings and their siting amongst residential properties. These factors reduce the weight that I would assign to the economic harm which would result from the unacceptable loss of employment land proposed and the subsequent conflict with the development plan.
24. The proposal would provide 7 new dwellings which, the precise extent of housing shortfall aside, would be a modest but not insignificant contribution to **the Council's supply. The appeal scheme would redevelop brownfield land and enhance drainage and biodiversity through the reduction in hardstanding.**
25. The Framework refers to the important contribution small and medium sized sites can make to meeting housing requirements and advises support should be given to the development of windfall sites and great weight should be assigned to the benefits of using suitable sites within existing settlements for homes. It also advises significant weight should be given to the need to support economic growth. Paragraph 120 advises that substantial weight should be given to the value of using suitable brownfield land within settlements for homes, and Paragraph 123 advises a positive approach should be adopted for alternative uses of developed land. This should include using employment land for homes in areas of high housing demand, provided it would not undermine key economic sectors or sites and would be compatible with other policies in the Framework, amongst other things.
26. Taking all of the above into account, the adverse impacts of the proposal would not significantly and demonstrably outweigh its benefits, when assessed against the policies in the Framework taken as a whole. As such, under the provisions of the Framework, planning permission should be granted.

## Conditions

27. A condition requiring the commencement of development within the relevant timeframe is necessary, and a condition identifying the approved plans is also needed in the interests of clarity and enforcement. The Council has suggested a condition controlling the hours within which the development could be carried out, which would be reasonable and necessary to protect the living conditions of neighbouring residents while development is carried out. A condition requiring the approval of details of the external surfaces of the development would be reasonable to ensure those elements of the proposal blend appropriately with the existing buildings and surrounding area.
28. Details of hard and soft landscaping would be required to ensure these parts of the proposal are finished to an appropriate standard and are thereafter retained. Such details could include the vehicle and pedestrian access and circulation arrangements and parking specifications, removing any need for a separate condition specifying the sizes of parking spaces. Additional conditions would be reasonable and necessary to ensure the proposed planting is completed, retained and replaced where necessary, and to require the approval of a landscape management plan in respect of the proposed communal garden. The landscape management plan would ensure the proposed communal garden is appropriately managed and maintained to the benefit of the future occupants of Plots 1 – 4 and neighbouring residents whose boundaries abut that space.
29. The Council has suggested a condition which would prevent the occupation of the proposal until it is satisfied that the necessary drainage infrastructure capacity is available to adequately service the proposal. However, no evidence has been presented to suggest a suitable sewerage and surface water drainage/management scheme may not be capable of providing the necessary drainage infrastructure to service the proposal. The wording proposed by the Council would not be reasonable where appropriate details would have already been approved to their satisfaction and completed prior to the first occupation of any dwellings. I have therefore amended the suggested condition to ensure it meets the tests set out at Paragraph 56 of the Framework.
30. Conditions clarifying the extent of residential and business floorspace within the proposed live/work units and their retention are reasonable and necessary to protect the employment space proposed. I note concerns from neighbouring residents relating to the hours of use of the proposed live/work units, but as that building is currently used for commercial purposes with no controls over its hours of use, and because the proposed live/work units would be a less intensive commercial use, it would be unreasonable to control the business hours of those properties. In any case, I consider it unlikely that live/work units of the sizes proposed would cause any noise or disturbance which would harm the living conditions of neighbouring residents.
31. Windows in the rear roof slope of Building A would serve a vaulted ceiling, avoiding any unacceptable levels of overlooking into properties along Vale Road. However, I am aware that the internal arrangement of the roof space of Plots 1 – 4 may change without the need for planning permission. It would therefore be reasonable to attach a condition requiring those roof lights to be obscure glazed and non-opening where any part of those windows are within 1.7m of the finished floor level of the room they serve to protect against unacceptable levels of overlooking. A condition requiring the blocking up of the

first floor level east elevation window of Building A in accordance with proposed elevation plans would provide certainty that those works would be completed and prevent any unacceptable levels of overlooking from that window.

32. The Council has suggested a condition prohibiting the installation of an external lighting scheme until such a scheme has been approved to prevent light obtruding beyond the area it is intended to light. I have amended the wording of the suggested condition to make it unambiguous, which would protect the living conditions of neighbouring residents in the case that an external lighting scheme is required.
33. As concluded in the second main issue, a condition requiring the approval and implementation of a waste management strategy would be necessary to ensure appropriate waste collection facilities are provided as part of the proposal.

#### Conclusion

34. The appeal scheme would conflict with the development plan. However, the approach of paragraph 11 of the Framework, as a significant material consideration, is worthy of sufficient weight that would indicate a decision other than in accordance with it. The appeal should therefore, subject to the attached conditions, be allowed.

*L Douglas*

INSPECTOR

### SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: OV/PF/YR/GT/01, OV/PF/YR/GT/02, OV/PF/YR/GT/03, OV/PF/YR/GT/04, OV/PF/YR/GT/05, OV/PF/YR/GT/06, OV/PF/YR/GT/07, OV/PF/YR/GT/08, OV/PF/YR/GT/09, OV/PF/YR/GT/10/B and OV/PF/YR/GT/11/C
- 3) Demolition or construction works shall take place only between 08:00 and 18:00 on Mondays to Fridays and between 08:00 and 13:00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 4) No development shall take place above ground level until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place above ground level until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
  - i) Planting plans, including written specifications and cultivation and other operations associated with plant and grass establishment;
  - ii) Schedules of plants noting species, sizes and numbers and densities;
  - iii) boundary treatments;
  - iv) vehicle parking layouts;
  - v) vehicle and pedestrian access and circulation areas;
  - vi) hard surfacing materials;
  - vii) cycle stores;
  - viii) Bin stores; and
  - ix) an implementation programme.

The hard and soft landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.

- 6) All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) The live/work units at Plots 1, 2, 3 and 4 hereby permitted shall not be first occupied until a landscape management plan, including details of the long-term management and maintenance of the communal garden, measures to control the spread of dominant plants, and a strategy for replacement

planting shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved.

- 8) The dwellings and live/work units hereby permitted shall not be first occupied until a scheme for the management and disposal of foul and surface water to serve the development hereby permitted has been submitted to and approved in writing by the local planning authority. The scheme shall be completed on site in accordance with the approved details prior to the first occupation of any dwelling or live/work unit hereby permitted and retained thereafter.
- 9) The business floorspace of the live/work units at Plots 1, 2, 3 and 4, as **annotated 'Workspace' on drawing number OV/PF/YR/GT/07**, shall not be used for any purpose other than purposes within Class E(g)(i) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 10) The live/work units at Plots 1, 2, 3 and 4 hereby permitted shall not be first occupied until the windows in the rear roof slope shown on the proposed north elevation plan have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed. Once installed the obscured glazing shall be retained thereafter.
- 11) The live/work unit at Plots 1 hereby permitted shall not be first occupied until the existing window on the east elevation of Building A has been blocked up as shown and annotated on approved plan OV/PF/YR/GT/06.
- 12) No dwelling or live/work unit hereby permitted shall be first occupied until a waste management strategy has been submitted to and approved in writing by the local planning authority. The waste management strategy shall include details of who will be responsible for collecting waste from the dwellings and live/work units hereby permitted, how that waste will be collected and taken away from the site, and how regularly that waste will be collected. The approved waste management strategy shall be adhered to at all times.
- 13) No external lighting scheme shall be installed unless full details have been submitted to and approved in writing by the Local Planning Authority. Any external lighting scheme shall be installed and maintained in accordance with the approved details.