



Appeal Decision

Site visit made on 14 August 2019

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date 25 October 2019

Appeal Ref: APP/Q1445/W/18/3211930 35-39 The Drove, Hove, BN3 6LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr S Taghan of RedBull Properties Ltd against Brighton & Hove City Council.
 - The application Ref BH2017/04050, is dated 1 December 2017
 - The development proposed is change of use from Former Dairy Crest Depot (B8) to office (B1a) and mixed-use flexible commercial (Flexible between Use Class B1(a), A1, A2, A3, D1) use. Alteration (including removal of northern extension) and erection of new wing incorporating residential accommodation (Use class C3). Development includes 14 residential units and GIA 1383sqm of commercial floorspace with the erection of new central wing to the courtyard. Onsite car parking, cycle storage and areas for the storage of waste and recycling.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from Former Dairy Crest Depot (B8) to office (B1a) and mixed-use flexible commercial (Flexible between Use Class B1(a), A1, A2, A3, D1) use. Alteration (including removal of northern extension) and erection of new wing incorporating residential accommodation (Use class C3). Development includes 14 residential units and GIA 1383sqm of commercial floorspace with the erection of new central wing to the courtyard. Onsite car parking, cycle storage and areas for the storage of waste and recycling, in accordance with the application Ref BH2017/04050, dated 1 December 2017, but subject to the attached schedule of conditions.

Reasons

2. This is an appeal against the failure to give notice of a decision within the prescribed timescales. However, following the completion of a Section 106 legal agreement in the course of this appeal the Council advise that it does not object to the proposed development subject to planning conditions.
3. Accordingly, the main parties agree that the appeal should be allowed. This decision is based on amended plans submitted whilst the proposal was under consideration by the Council. Interested parties had an opportunity to consider the revised plans in the public consultation period that ran after the appeal was submitted. They can be taken in to account without prejudicing the interests of any parties. I have amended the description of development to reflect the fact a proportion of the commercial space is to be specifically designated as office space.

4. Concerns were raised by interested parties regarding traffic movements around the site and the accuracy of the transport report. However, the access and parking arrangements accord with the locally used standards where new development is proposed. The development would be located in an urban area and would be readily accessible by foot and bike, thus reducing the extent to which the proposal would result in additional vehicular traffic movements. The local highways department do not object to the development and I agree that it is acceptable in transportation and highways terms. Proposals for new traffic controls and restrictions on the road network around the site fall outside the scope of this decision.
5. The amended drawings provided show that the new buildings on the site would not directly overlook residential properties to the north of the site along Mallory Road. This is due to the land levels and the height of the proposed boundary treatment. This evidence was accepted by the Council and I agree that the development would be acceptable in this respect. Given the characteristics of the site and development that surrounds it, this boundary feature would not be of a scale that is overbearing on neighbouring properties. Its final design would be agreed in response to a planning condition.
6. More generally, the development has been designed to avoid visual intrusion or loss of privacy. Whilst it would be visible from existing properties, there would be no unacceptable loss of outlook. There would be a degree of noise and light pollution emanating from the proposed residential and commercial uses on the site, but this was clearly also true of the previously existing depot. In this respect, the proposal would not result in any unacceptable harm to the character of the area or to the living conditions of neighbouring residential occupants.
7. Concerns about the impacts of building works can be addressed through the submission of a construction management plan in response to a planning condition. Whilst a new access would be created to Mallory Road, this would be consistent with the existing residential character of this street and would not result in any unacceptable harm. Overall, the effect of the development on the living conditions of the occupants of neighbouring residential properties would be acceptable in all respects.
8. The environmental impacts of this proposal have been comprehensively considered. It would provide good quality housing on the site in addition to commercial space, and the close proximity of the different uses would not lead to an unacceptable increase in the risk of crime. The works would be sensitive to the heritage of the site, preserving much of the existing building fabric identified locally as being of historic interest, with the use of rooflights being appropriate in this context. Accordingly, there would be no harm to this non-designated heritage asset. Overall, the proposal makes effective use of previously developed land, and is of an appropriate intensity in this built up area.
9. There was an objection from a nearby authority on the basis that the proposal could lead to a likely significant effect on the Ashdown Forest Special Area of Conservation (SAC), together with the Lewes Downs and Pevensey Levels SAC's, which are European Protected sites, through pollution arising from additional traffic movements. However, the transport assessment argues that the total trip generation arising from the proposed use of this site would be

similar to its extant use as a dairy. Whilst the methodology behind this calculation is disputed, the protected sites are located a long way from the urban area in which the development would be located. Given the moderate scale of this development, it is reasonable to conclude there would be no effect on vehicular movements and consequential pollution in these areas. Accordingly, a likely significant effect can be ruled out and there is no need to carry out an appropriate assessment in relation to the proposed development.

10. Overall the proposal complies with the relevant policies in the Brighton and Hove City Plan Part One (March 2016), including CP1, CP2, CP3, CP9, CP12, CP14, CP15, CP19 and CP20; and saved policies HE10, QD27 and SU10 of the Brighton and Hove Local Plan 2005 which, amongst other things, seek to encourage sustainable economic growth whilst making provision for new housing through the efficient development of sites across the city.

Conditions and legal agreement

11. A number of pre-commencement conditions were suggested by the Council and subsequently agreed to in the course of this appeal. A construction management plan and details of tree protection measures are necessary to ensure the works associated with the development are carried out without harm to the living conditions of neighbouring residents or to trees. These measures must be agreed prior to commencement of development to cover the entirety of works associated with the scheme (8 and 12). I have amended the wording suggested by the Council in the interests of ensuring the requirements are reasonable in all respects. It is also justified to prevent any demolition of the existing historic buildings on the site until there is a reasonable prospect of construction going ahead, in the interests of preserving built heritage (9). Such actions must necessarily occur prior to the commencement of development.
12. Details of existing and proposed ground levels are necessary (10) to achieve a satisfactory standard of development and, in the interests of accuracy, such baseline surveys must occur prior to the commencement of works on site. Provision must also be made for appropriate surface water drainage to achieve a satisfactory standard of development (29), and it is necessary to agree this prior to works beginning on site as the need for such measures has the potential to impact on the detailed design of the development. Finally, a programme of archaeological works is justified in the interests of preserving the heritage interest of the site (31), such works must necessarily occur before development starts to avoid any possible damage to archaeology.
13. Condition 4 requires that the uses should accord with the approved plans. This is because the mix of uses proposed has been justified with reference to policies in the development plan, that seek to preserve commercial uses. Accordingly, the removal of permitted development rights is exceptionally justified on this occasion. Condition 3 prevents servicing and deliveries from occurring in the night time. These hours, as suggested by the Council, strike a reasonable balance between the needs of future businesses and residential occupants in the surrounding area. With regard to contaminated land, I have added the condition suggested by the Environmental Protection department following consideration of the contamination risk assessment. This approach is proportionate to the scale of risk associated with the development of the site.
14. These and other conditions are necessary in the interests of certainty and to comply with legislation; in the interests of highway safety and the promotion of

sustainable transport; in the interests of nature conservation and biodiversity, to enact relevant standards in relation to accessibility, water and energy consumption reflected in local planning policies; and to ensure a satisfactory standard and design of development is achieved that preserves the character and appearance of the area and the living environment of surrounding residential and other occupants. In some cases I have amended the wording suggested by the Council to ensure the conditions meet the relevant policy tests set out in the Framework.

15. A Section 106 legal agreement was agreed between the main parties and provided in the course of the appeal. On the evidence before me this agreement would meet the relevant statutory and policy tests in relation to the use of planning obligations and can therefore be taken into account as a reason to grant planning permission.

Conclusion

16. The proposed development complies with the development plan and there are no other considerations that outweigh this finding. The appeal should succeed.

Neil Holdsworth

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:
 - Site Location Plan TA1045/01 08/12/2017;
 - Proposed Demolitions TA1045/09 08/12/2017;
 - Proposed Sections TA1045/18, 08/12/2017;
 - Proposed Sections and Elevations TA1045/19 08/12/2017;
 - Proposed Floorplans TA1045/30 08/12/2017;
 - Proposed Sections and Elevations TA1045/31 08/12/2017,
 - Proposed Elevations TA1045/32 08/12/2017,
 - Proposed Floorplans TA1045/33 08/12/2017,
 - Proposed Elevations TA1045/34 Rev A 08/12/2017,
 - Fabric Study TA1045/40 08/12/2017,
 - Fabric Study TA1045/41 08/12/2017,
 - Fabric Study TA1045/42 rev B 08/12/2017,
 - Fabric Study TA1045/43 08/12/2017,
 - Proposed Floor Plan TA1045/13 Rev A 20/02/2018,
 - Proposed Floor Plan TA1045/21 Rev A 20/02/2018,
 - Proposed Sections and Elevations TA1045/22 Rev A 20/02/2018,
 - Proposed Floor Plan TA1045/33 Rev A 20/02/2018,
 - Proposed Sections and Elevations TA1045/34 Rev B 20/02/2018,
 - Proposed Floor Plan TA1045/12 Rev B 26/04/2018,
 - Proposed Roof Plan TA1045/14 Rev C, 26/04/2018
 - Proposed Elevations and Sections TA1045/15 Rev B 26/04/2018,
 - Proposed Sections TA1045/16 Rev B 26/04/2018,
 - Proposed Floor Plans TA1045/23 Rev B 26/04/2018,
 - Proposed Sections and Elevations TA1045/24 Rev B 26/04/2018,
 - Proposed Sections and Elevations TA1045/25 Rev B 26/04/2018,
 - Proposed Floor Plans TA1045/26 Rev C 26/04/2018,
 - Proposed Sections and Elevations TA1045/27 Rev B 26/04/2018,
 - Proposed Sections and Elevations TA1045/28 Rev B 26/04/2018,
 - Proposed Floor Plans and Elevations TA1045/29 Rev B 26/04/2018,
 - Confirmation of Commercial Uses TA1045/20 27/04/2018,
 - Proposed Sections TA1045/36 24/05/2018,

- Proposed Site Plan and Ground Floor Plan TA1045/11 Rev F 24/05/2018,
 - Proposed Sections TA1045/17 Rev C 24/05/2018,
 - Boundary Screening Study TA1045/35 Rev A 24/05/2018,
 - Proposed Floor Plans and Elevations TA1045/29 Rev C 16/08/2018.
- 3) No activities associated with the non-residential uses hereby approved, including servicing and deliveries, shall take place outside the hours of 07.00 to 23.00 daily.
 - 4) The non-residential uses hereby approved shall accord with the layout shown on drawing no. TA1045/20 received 27 April 2018. The areas annotated as office (Use Class B1(a)) shall be retained in office use and shall not be used for any other purpose (including any other purpose in class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) ("The Order")), or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that Order with or without modification. The areas annotated as mixed use shall only be used as uses within Classes B1(a) (office), A1 (retail), A2 (financial and professional services), A3 (café/restaurant) and D1 (non-residential institutions) of the respective parts of the Order.
 - 5) The development hereby permitted shall not be occupied until a Delivery & Service Management Plan, which includes details of the types of vehicles, how deliveries, servicing and refuse collection will take place and the frequency of those vehicle movements has been submitted to and approved in writing by the Local Planning Authority. All deliveries servicing and refuse collection shall thereafter be carried out in accordance with the plan approved under the terms of this condition.
 - 6) Noise associated with plant and machinery throughout the development shall be controlled such that the Rating Level, calculated at 1-metre from the façade of the nearest proposed residential unit, shall not exceed a level 5dB(A) below the existing LA90 background noise level. The Rating Level and existing background noise levels should be determined as per the guidance provided in BS 4142:2014.
 - 7) Prior to first occupation of the development hereby approved, full details of a proposed external lighting scheme shall be submitted for approval by the Local Planning Authority. The development shall be carried out in accordance with details approved under the terms of this condition. No external lighting other than that which forms part of the approved scheme shall be installed.
 - 8) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include i) measures to set out the proposed phasing of the development, ii) measures to manage pollution arising from the proposed construction works, iii) measures to keep the local community informed of the construction process including a complaints process, (iv) measures to control noise arising from the construction process, v) details of construction hours including vehicular movements and traffic management measures; (vi) a congestion minimisation plan for the duration of the construction works; (vii) measures for waste management associated with the construction

works. The development shall be carried out in accordance with the approved details.

- 9) The works of demolition hereby permitted shall not be begun until documentary evidence has been submitted to and approved in writing by the Local Planning Authority to show that contracts have been entered into by the developer to ensure that the two new build blocks on the site hereby approved are commenced within a period of 6 months following commencement of demolition.
- 10) The development hereby permitted shall not commence until full details of existing and proposed ground levels (referenced as Ordnance Datum) within the site and on land and buildings adjoining the site by means of spot heights and cross-sections, proposed siting and finished floor levels of all buildings and structures, have been submitted to and approved by the Local Planning Authority. The development shall then be implemented in accordance with the approved level details.
- 11) Prior to occupation of the development hereby permitted, a scheme for landscaping and boundary treatments (including the privacy screen on the northern boundary of the site) shall be submitted to and approved in writing by the Local Planning Authority. The approved landscaping shall be implemented in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. All boundary treatments shall be erected in accordance with the approved details prior to first occupation of the development and shall be retained as such thereafter. The scheme shall include the following:
 - a) details of all hard and soft surfacing to include type, position, design, dimensions and materials and any sustainable drainage system used;
 - b) a schedule detailing sizes and numbers/densities of all proposed trees/plants including details of tree pit design, use of guards or other protective measures and confirmation of location, species and sizes, nursery stock type, supplier and defect period;
 - c) details of all boundary treatments to include type, position, design, dimensions and materials;

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.

- 12) Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a scheme for the protection of the trees alongside the boundaries of the site, in accordance with BS 5837:2012, including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be implemented in strict accordance with the approved details.

- 13) All hard surfaces hereby approved shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.
- 14) No development above ground floor slab level of any part of the development hereby permitted shall take place until samples of all materials to be used in the construction of the external surfaces of the development including:
 - a) samples of all brick, render and tiling (including details of the colour of render/paintwork to be used)
 - b) samples of all cladding to be used, including details of their treatment to protect against weathering
 - c) samples of all hard surfacing materials
 - d) samples of the proposed window, door and balcony treatments
 - e) samples of all other materials to be used externallyhave been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details approved under the terms of this condition.
- 15) No development above ground floor slab level of any part of the development hereby permitted shall take place until a sample panel of flintwork has been constructed on the site and approved in writing by the Local Planning Authority. The flintwork comprised within the development shall be carried out and completed to match the approved sample flint panel prior to the development hereby permitted being occupied.
- 16) The rooflight(s) hereby approved shall have steel or cast metal frames colour finished black or dark grey, fitted flush with the adjoining roof surface and shall not project above the plane of the roof.
- 17) The vehicle parking areas shown on the approved plans shall not be used otherwise than for the parking of private motor vehicles and motorcycles belonging to the occupants of and visitors to the development hereby approved and shall be maintained so as to ensure their availability for such use at all times.
- 18) The new/extended crossovers and accesses shall be constructed prior to the first occupation of the development hereby permitted.
- 19) Prior to the first occupation of the development hereby permitted the applicant shall reinstate the redundant vehicle crossover on The Drove way in front of the existing double garage (Building D) back to a footway by raising the existing kerb and footway.
- 20) Prior to first occupation of the development hereby permitted, details of disabled car parking provision for the occupants of, and visitors to, the development shall have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for its intended purpose at all times.
- 21) Prior to first occupation of the development hereby permitted, full details of secure cycle parking facilities for the occupants of, and visitors to, the development shall have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully

implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for its intended purpose at all times.

- 22) None of the new build residential units hereby approved shall be occupied until each residential unit built has achieved a water efficiency standard using not more than 110 litres per person per day maximum indoor water consumption.
- 23) None of the residential units hereby approved shall be occupied until each residential unit built has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).
- 24) Unless otherwise agreed in writing by the Local Planning Authority, within 3 months of first occupation of the non-residential development hereby permitted a BREEAM Building Research Establishment report must be submitted to the local planning authority for written approval, confirming that the non-residential development built has achieved a minimum BREEAM New Construction rating of 'Excellent'.
- 25) No development above ground floor slab level shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority providing full details of one of the units which form part of the approved scheme, which shall be in compliance with Building Regulations Optional Requirement M4(3)(2b) (wheelchair user dwellings). This shall be completed in compliance with Building Regulations Optional Requirement M4(3)(2b) (wheelchair user dwellings) prior to first occupation and shall be retained as such thereafter. All other dwelling(s) hereby permitted shall be completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) prior to first occupation and shall be retained as such thereafter. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.
- 26) The development hereby permitted shall not be occupied until a scheme to enhance the nature conservation interest of the site has been submitted to and agreed in writing by the Local Planning Authority. The scheme approved under the terms of this condition shall be implemented prior to the first occupation of the development, or in a timetable otherwise agreed with the local planning authority. Any 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, unless the Local Planning Authority gives written consent to any variation.
- 27) Further to the Preliminary Contamination Risk Assessment dated October 2017 (Report Ref. TA/Redbull/Dairy/PCRA) produced by Environmental Assessment Servicers Ltd and information provided from Soil Environment Services Ltd, if notified that the results of the intrusive site investigation are such that site remediation is required then:
 - a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring shall

be provided for the approval of the Local Planning Authority. Such a scheme shall include nomination of a competent person to oversee the implementation of the works.

- The development hereby permitted shall not be occupied or brought into use until there has been submitted to the local planning authority a written verification report by a competent person approved under the provisions of this condition that any remediation scheme required and approved under the provisions of this condition has been implemented fully in accordance with the approved details (unless varied with the written agreement of the local planning authority in advance of implementation).
- Unless otherwise agreed in writing by the local planning authority the verification report shall comprise: a) Built drawings of the implemented scheme; b) Photographs of the remediation works in progress; c) Certificates demonstrating that imported and/or material left in situ is free from contamination.

If during site investigation on construction any asbestos containing materials are found, which present significant risk/s to the end user/s then: a) A report shall be submitted to the local planning authority in writing, containing evidence to show that all asbestos containing materials have been removed from the premises and taken to a suitably licensed waste deposit site.

- 28) The development hereby permitted shall not be occupied until a scheme for the storage of refuse and recycling, for the residential and non-residential uses hereby approved, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out and provided in accordance with the approved details prior to first occupation of the development, and the refuse and recycling storage facilities shall thereafter be retained for use at all times.
- 29) The development hereby permitted shall not be commenced until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
- 30) No development above ground floor slab level of any part of the development hereby permitted shall take place until a drainage strategy detailing the proposed means of foul water disposal and an implementation timetable, has been submitted to and approved in writing by, the Local Planning Authority in consultation with the sewerage undertaker. The development shall be carried out in accordance with the approved scheme and timetable.
- 31) The development hereby permitted shall not be commenced until a programme of archaeological works has been carried out in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. A written record of any archaeological works undertaken shall be submitted to the Local Planning Authority within 3 months of the completion of any archaeological investigation unless an alternative timescale for

submission of the report is first agreed in writing with the Local Planning Authority.

END OF SCHEDULE