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## Appeal Decision

Site visit made on 10 December 2019

**by Thomas Bristow BA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8 January 2020**

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**Appeal Ref: APP/Y9507/W/19/3236446**

**6, The Old Dairy, Station Road, Petersfield GU32 3ED**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
  - The appeal is made by Mr J Bloch against the decision of South Downs National Park Authority.
  - The application Ref SDNP/18/06607/FUL, dated 24 December 2018, was refused by notice dated 20 June 2019.
  - The development proposed is the erection of a single terrace comprising three townhouses.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. The scheme has evolved compared to that originally proposed.<sup>1</sup> The Authority ultimately determined application Ref SDNP/18/06607/FUL on the basis of those revisions and associated evidence, and there has been the opportunity for further comment at appeal. I have determined the appeal on that basis.

### Application for costs

3. An application for costs was made by Mr J Bloch against South Downs National Park Authority ('SDNPA') which is the subject of a separate decision.

### Policy considerations

4. There is an overlapping administrative geography here. The appeal is against the decision of the SDNPA, the application was administered by East Hampshire District Council, and the appeal site falls within the area covered by the Petersfield Neighbourhood Plan (made originally on 21 January 2016, the 'NP'). In that context saved policy IB4 'Retention of Industrial or Business Uses' of the East Hampshire District Local Plan: Second Review (adopted originally in 2006, the 'DLP') and CP4 'Existing Employment land' of the Joint Core Strategy (with SDNPA adopted in 2014, the 'JCS') are cited in the Authority's decision notice.
5. However on 2 July 2019 the South Downs Local Plan was adopted (the 'LP'). In so far as relevant to land within the administrative boundaries of SDNPA, LP

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<sup>1</sup> Including via plans 12050-RFT-00-01-DR-A-0120 P02, 12050-RFT-00-01-DR-A-0121 P02, 12050-RFT-00-01-DR-A-0122 P03 and 12050-RFT-00-01-DR-A-0123 P01.

policy SD35 'Employment Land' supersedes DLP policy IB4 and JCS policy CP4. Policy IB4 sought to retain business uses other than in certain circumstances, including where such uses were unviable, or where there was a lack of market interest. Policy CP4 made similar provision; alternative uses of employment land may have come forward provided a site could 'be shown to be no longer suitable for employment use of some form...'.<sup>2</sup>

6. NP policy BP2 sets out that loss of 'business floor space' will not normally be allowed. That is unless it can be demonstrated that 'the premises are no longer suitable...', alongside evidence of active marketing for at least six months on realistic terms and a lack of market interest. If any conflict exists between development plan policies, the last document adopted prevails.<sup>2</sup> In that context LP policy SD35, criterion 3. explains how 'all existing employment sites and allocations that are fit for purpose' will be safeguarded from loss. The exception to that position is where there is a 'robust marketing campaign of at least 12 months' which clearly demonstrates 'no market demand for the business premises'.
7. Paragraph 22 of the National Planning Policy Framework published in 2012 set out how planning policies should avoid the long term protection of sites allocated for employment use where there was 'no reasonable prospect' of a site being used for that purpose. That has since morphed into paragraph 120 of the current version of the National Planning Policy Framework (updated in February 2019, the 'NPPF'). NPPF paragraph 120 sets out that where the local planning authority considers there to be 'no reasonable prospect of an application coming forward for the use allocated in a plan', alternative uses should be considered on their merits. There are nuances between the tests in relevant policies above. However at their core all seek to protect employment provision from competing uses unless a site is unsuitable or demand is demonstrably absent.

### **Main issues**

8. Against the context above, the main issues are (i) the effect of the proposal on employment provision, and (ii) whether or not the development proposed would afford suitable living conditions for future occupants, with particular regard to outside space provision.

### **Reasons**

9. The appeal site is an essentially clear, level site of approximately 0.1ha. It has a frontage to Station Road, a principal route through the town, close to the station itself. It falls between the railway, Nos 1-6 Woodcroft Mews, and Drayton House.<sup>3</sup> The site is within the Petersfield Conservation Area, on the opposite side of the tracks to Grade II listed Petersfield Signal Box, and abuts the north-westerly extremity of the defined town centre. There are occasional commercial and leisure uses nearby amongst residential properties, albeit that the centre of gravity of the town centre is some distance away. I am told that the appeal site is presently put to no particular use.

### **Employment provision**

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<sup>2</sup> Section 38(5) of the Planning and Compulsory Purchase Act 2004 as amended.

<sup>3</sup> Drayton House is also referred to in the information before me as No 6 Station Road or The Old Dairy.

10. Historically the appeal site and surrounding land including Drayton House and Woodcroft Mews was used as a commercial dairy facility and depot owned collectively by Dairy Crest. Certain elements of the site at that point in time were used for different functions, including as I understand it, Drayton House as offices. A dairy facility or depot likely represented a relatively low floorspace to employment ratio on account of the necessity of storing bulky items. I am told that the original dairy use supported 17-19 full time equivalent jobs ('FTE'), a figure stated in the application form associated with planning permission for redevelopment of the site in 2008,<sup>4</sup> following some earlier permitted site clearance. I understand the site changed hands shortly thereafter.
11. The 2008 permission was for a three storey block of 12 flats, the continued use of Drayton House for B1 office use, and the creation of a separate office building at the appeal site of some 379 square metres floorspace. That latter building was never constructed. Skipping ahead, via decision notice dated 27 August 2019 prior approval was granted for the change of use of Drayton House to a dwelling.<sup>5</sup> That approval had not been implemented at the time of my site visit, and was made on the basis that Drayton House had, since refurbishment around 2012, been used as offices.<sup>6</sup> The 2019 prior approval decision effectively clarifies the extant use of Drayton House. In doing so it undercuts the appellant's contention that the 2008 permission may not have been implemented on account of failure to adhere fully to an associated landscaping condition. However that point is not determinative.
12. Permission was also granted in 2010 in respect of part of the former Dairy Crest site for six townhouses, now Woodcroft Mews.<sup>7</sup> I understand that overlapped the 2008 permission and did not propose alternatives to the development previously permitted at the appeal site. The appellant contends the 2009 scheme demonstrates that the 'value in the site was contained within the residential development', as opposed to via the creation of an additional office building. However that is supposition; residential development may have been more profitable, or there may have been other motivations at play (releasing capital, for example). There is marketing evidence before me related to 2004, 2009/2010 and 2019, however that has not been for a continuous period of 12 months recently with reference to LP policy SD35.<sup>8</sup> In each instance, however, the site is referred to as for office development. In the case of the 2019 particulars the site is described as having 'planning consent for a range of offices'. That sits awkwardly with the appellant's position that the site should be considered as having a nil use.
13. Both the employment land reviews for East Hampshire in 2013, and for the South Downs National Park in 2015 ('ELR2015'), forecast demand for office provision based on a predominant economic base of small and medium enterprises. LP paragraphs 7.151, 7.146 and 7.140 explain how the approach in SD35 relates to the dispersed nature of smaller businesses, the value of

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<sup>4</sup> Ref 25035/007.

<sup>5</sup> Ref SDNP/19/03176/PA30.

<sup>6</sup> There is some discussion in the supporting officer report as to the prospect of the Authority directing under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended that permitted development rights for certain changes of use would be withdrawn. However such a direction was not in place at that juncture, nor is there evidence before me that has since been issued.

<sup>7</sup> Ref 25035/010.

<sup>8</sup> The 2009 information related to unsuccessful planning application 25035/012 for four terraced houses.

maintaining such to provide for balanced communities, and of the particular focus of provision around Petersfield. Section 8.1 of the NP also points to growing demand and a relative paucity of small to medium sized units in Petersfield specifically. Provision of sufficient employment land is therefore clearly of local importance, and neither LP policy SD35 nor NP policy BP2 expressly apply only to allocations.

14. It is therefore not unreasonable to argue that the proposal would, without evidence of adequate marketing, prevent a site from being used for employment use in respect of which there is local need. However, for the following reasons, that would not be the case. Firstly any formal active use of the site has long ceased. Whilst the appellant cites a figure of 22 years in this respect, that is certainly the case over the last decade. For whatever reason the market has failed to generate an employment use here for a considerable time. Whilst the site benefits from good connectivity, it is nevertheless relatively modest (much more so than many allocations in the NP). It is also something of an outlier relative to the town centre and existing employment sites around Petersfield, such as off Bedford Road. Such characteristics are, in my view, likely to limit the level of interest in undertaking office development here.
15. NP policy BP2 is also squarely framed towards provision that already exists. It refers specifically to the 'loss of business floorspace', 'premises' and 'property', none of which exist here accorded their ordinary meaning. 'Premises' is also used in criterion 3 of LP policy SD35. The site is not identified in the ELR2015 as a component of existing or future supply.<sup>9</sup> It is also not referenced in the NP. Given the nature of the employment base in the area it would be unrealistic to assume each and every site is accounted for. Nonetheless the treatment of the site in respect of the ELR2015 appears logical as it does not presently contribute towards employment provision. The NP allocates 3.23ha of additional employment land to achieve a total figure of 27.85h, relative to which 0.1ha represents an extremely small fraction.
16. Whilst the site has not been marketed for a continuous period of 12 months recently, it has been put to the market on several occasions over the last 15 years. Collectively that marketing fulfils the aims of LP policy SD35 and NP policy BP2, noting that the latter post-dates the Authority's decision in respect of application SDNP/18/06609/FUL, and added together the time that the site has been advertised to the public may have exceeded 6 or 12 months in any event. I understand that marketing has returned very little interest. It appears that the only offer received, in respect of the 2009 marketing, was for approximately 10% of the asking price of around £800,000. The appellant has not identified any interest which has arisen since the appeal was made on 3 September 2019 and marketing commenced around that time.<sup>10</sup>
17. Almost any centrally-located site may be potentially suitable for office space development or redevelopment. However there is a certain circularity to the term 'suitability' in planning. The Planning Practice Guidance explains how in respect of site selection, suitability includes 'likely market attractiveness' amongst other factors.<sup>11</sup> That is absent here, as reasoned above. Moreover,

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<sup>9</sup> Appellant statement of case, paragraph 6.13.

<sup>10</sup> As indicated in paragraph 6.11 of his statement of case.

<sup>11</sup> Reference ID: 3-018-20190722.

based on the former Homes and Communities' Agency document Employment Densities Guide 2010, the appellant has explained how the 284 square metres of office space at Drayton House would theoretically support around 24 employees. Whilst that in part results from modern working practices, nevertheless that exceeds the number of jobs supported directly at the former Dairy Crest site in its entirety. Employment space would clearly be lost were the prior approval referenced early effected, however that illustrates that the employment provision potential of the appeal site is essentially incidental in terms of job numbers.

18. Consequently in this specific instance I am not satisfied that there is demonstrable market demand for employment provision, robust justification for maintaining that an employment use should be brought forward here, or consequently that the appeal site is suitable for such. I therefore conclude that no conflict arises with the relevant provisions of LP policy SD35 or NP policy BP2.

#### Living conditions

19. The proposal is for three townhouses with accommodation arranged internally over three storeys. They would have a combined floorspace of 353sqm. That is less than the 379sqm office building permitted here in 2008, albeit floorspace is only a rough approximation for the effects of development. Individually dwellings would have 124, 106 and 123 square metres of floorspace, and in each case three bedrooms. Whilst they would be set back slightly from Station Road to the front and have some circulation space around them, section 3.7 of the supporting Design and Access Statement explains how 'rear gardens are not proposed as the amount of available space and adjacent railway would make them practically unsustainable in terms of usability and maintenance'. Nor are any other forms of communal space or individual private space, such as balconies, proposed (aside from in respect of a walkway that would join one unit with the balcony at Drayton House).
20. In brief JCS policy CP29 sought to achieve exemplary design which respects the particular character of an area including in relation to the spaces around buildings.<sup>12</sup> A similar approach is now taken in LP policy SD5 'Design', criterion h) of which sets out how development should 'provide high quality outdoor amenity space appropriate to the needs of its occupiers or users'. Similarly NPPF paragraph 127(f) sets out how development should provide a 'high standard' of amenity for all; associated footnote 46 referring to the Government's nationally described space standard dated March 2015 (the 'space standard', which does not appear to be referenced in the LP). The National Design Guide also reflects the above principles, referring to the provision of suitable levels of outside space and storage provision in sections H1, H2 and H3.
21. Individuals make an informed choice as to where to live, and it is the appellant's intention to occupy the proposed dwelling nearest Drayton House. A higher level of density is often acceptable in central locations, and there are also publicly-accessible open spaces in the surrounding area. The appellant explains that the Authority's concerns regarding the sufficiency of outside space provision were only raised in their decision notice rather than beforehand, and

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<sup>12</sup> Policy CP27 'Pollution', cited in the Authority's decision notice, being of limited relevance to domestic refuse.

that there is no foundation in policy or guidance for a 10m length rule-of-thumb for rear gardens referenced by the Authority. Also, notwithstanding any private land ownership or rights issues,<sup>13</sup> on account of the circulation space around the proposed dwellings and the likely comparability of the level of refuse generated compared to an office building, an appropriate approach to bin storage and collection could in my view be secured via appropriately-worded condition (were the development otherwise acceptable).

22. However the adequacy of outside space provision is inherently a matter of judgement based on the particular nature of a proposal and its surrounding context. No other examples of houses in this vicinity without any private amenity space have been brought to my attention, nor was I able to identify any during my site visit. Conversely despite the central location of the appeal site, properties nearby tend to be at a comparatively low density.<sup>14</sup> No 9, opposite, 26, the other side of the railway, and properties along Tilmore Road a short distance to the east are detached. There are also a number of semi-detached properties nearby set in good-sized plots. Whilst the rear gardens of Nos 1 to 6 Woodcroft Mews are relatively modest, the prevailing garden size in respect of terraced properties here is far more generous (for example along Penns Road). The prevailing pattern of development in this location, in my view, sets a benchmark for the area which it is reasonable to ensure is respected to an appropriate degree.
23. The houses proposed are relatively spacious. Purely by way of illustration with reference to the space standards, they may be capable of accommodating four or more individuals comfortably. They are likely, by consequence, to be relatively attractive to families. More intensive use is likely to generate greater need or expectation for outside space. Consequently given the size of the dwellings proposed, likely future occupants, along with the prevailing character of the area as described above, some outside space suitable for private enjoyment would be expected. Its absence does not reflect a high standard of design for this particular location. In my view without adequate outside space future occupants are likely to feel unduly and uncharacteristically hemmed in and enclosed. A comparable level of outside space provision may legitimately not be expected of flats or office buildings, with regard to the planning history here.
24. For the above reasons I conclude that the development proposed would not afford suitable living conditions for future occupants, with particular regard to outside space provision, in conflict with criterion h) of policy SD5 and NPPF paragraph 127(f).

### **Other matters**

25. The appellant has suggested that the proposal could be allowed subject to a condition 'removing or restricting Class O [permitted development] rights' in respect of the Old Dairy/ Drayton House. However that would effectively withdraw rights, or the ability to implement prior approval Ref SDNP/19/03176/PA30, in respect of land outside the appeal site. Notwithstanding present ownership, that would also appear to have to apply retrospectively (which is rarely justified in respect of statute). Such a condition

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<sup>13</sup> Noting a representation before me referring to the Woodcroft Mews Management Company.

<sup>14</sup> Lavant Court representing a notable exception, albeit not a directly comparable form of development.

is therefore neither necessary, relevant to the development proposed, nor reasonable with reference to NPPF paragraph 55.

26. I have taken careful account of all the representations before me, and the potential implications of LP policies SD2 and SD28 regarding ecosystem services and affordable housing. However even were the development proposed acceptable in all other respects, that would effectively be neutral in the planning balance rather than weighing positively in favour of granting permission (as the proposal would offset its own impacts). The proposal would, however, result in an addition to housing stock, put to use a site which has been vacant for quite some time, and future occupants would bring trade to nearby services and facilities.
27. However those benefits related to three new homes would inevitably be limited, particularly set against the provision intended via LP policy SD26. Moreover neither the support in the LP, NP, nor NPPF, including paragraph 68, for the provision of new homes in general terms is at the expense of ensuring that all development provides suitable living conditions for future occupants. Consequently neither the benefits of the proposal, nor any other matters, are sufficient to outweigh the detriment that would result as reasoned in the second main issue.

### **Conclusion**

28. For the above reasons, having taken account of the development plan as a whole, the approach in the NPPF, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

*Thomas Bristow*  
INSPECTOR