
Appeal Decisions

Site visit made on 15 July 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 28 August 2020

Appeal A Ref: APP/Z3825/W/19/3241462

Windacres Farm Development Site, Church Street, Rudgwick RH12 3EG

- 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 John Bailey (Rudgwick Metals Ltd) against Horsham District Council.
 - The application Ref DC/19/0411, is dated 15 February 2019.
 - The development proposed is replacement extension to retain existing B2 Use Class Industrial Unit and provide 3 x new self-contained B1 Use Class office units (Revision of LPA Reference: DC/16/2917).
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Appeal B Ref: APP/Z3825/W/19/3241470

Windacres Farm Development Site, Church Street, Rudgwick RH12 3EG

- 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 John Bailey (Rudgwick Metals Ltd) against Horsham District Council.
 - The application Ref DC/19/0374, is dated 15 February 2019.
 - The development proposed is extension to existing B2 Use Class industrial unit to provide new B1/B8 Use Class commercial unit.
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Decisions

1. Appeal A is allowed and planning permission is granted for replacement extension to retain existing B2 Use Class Industrial Unit and provide 3 x new self-contained B1 Use Class office units at Windacres Farm Development Site, Church Street, Rudgwick RH12 3EG in accordance with the terms of the application, Ref DC/19/0411, dated 15 February 2019, and the plans submitted with it, and subject to the conditions in the Schedule following these decisions.
2. Appeal B is allowed and planning permission is granted for extension to existing B2 Use Class industrial unit to provide new B1/B8 Use Class commercial unit at Windacres Farm Development Site, Church Street, Rudgwick RH12 3EG in accordance with the terms of the application, Ref DC/19/0374, dated 15 February 2019, and the plans submitted with it, and subject to the conditions in the Schedule following these decisions.

Procedural Matters

3. As set out above there are two appeals on this site. They differ in terms of the development proposed and its location on the site. I have considered each proposal

on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

4. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulation 2020 will come into force, amending the Town and Country Planning (Use Classes) Order 1987. It will amend the system of Use Classes, including Use Class B1. Regulation 4 states however that, if prior to the commencement of the material period¹, a relevant planning application was submitted, or was deemed to be submitted, to the local planning authority which referred to uses or use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31st August 2020, that application must be determined by reference to those uses or use classes. As these proposals were submitted prior to the material period, I have determined these appeals in relation to the Use Classes stated in the applications. The main parties have had the opportunity to comment on the implications of the changes.

Background and Main Issues

5. Planning permission was granted in 2017 on the appeal site and adjacent land for 'Demolition of 2 x existing dwellings, industrial and agricultural outbuildings and erection of 55 dwellings, 3 x offices (Use Class B1) and industrial building extension (Use Class B2) with associated access, drainage and landscape works'² (the 2017 permission). I saw at my site visit that the dwellings were under construction and the site of the approved Class B1 and B2 units had been cleared, however construction of those units had not yet commenced.
6. The S106 agreement for the 2017 permission included an obligation³ not to permit occupation of more than 27 residential units until the Commercial Units permitted are constructed, practically completed and capable of being occupied. 'Commercial Unit' is defined in the agreement as meaning 'a business office or industrial unit forming part of the Proposed Development' and therefore includes both the Class B1 and Class B2 units permitted.
7. In relation to Appeal A, the Council has indicated that had it been in a position to determine the application within the statutory timescale it would have refused permission on the basis that no Deed of Variation (DoV) to the principal S106 agreement to the 2017 permission had been entered into, and therefore the appellant would be frustrating another party from completing their development in accordance with the planning obligations in the S106 agreement.
8. In relation to Appeal B, the Council has indicated that it would have refused permission on the basis that it had not been demonstrated that sufficient turning and parking could be provided to serve the proposed development together with the Commercial Units from the 2017 permission.
9. Therefore, the main issue for Appeal A is the effect of the proposed development on the delivery of housing and commercial floorspace on the appeal site and adjacent land. The main issue for Appeal B is whether the proposal would provide sufficient parking and turning space having regard to the effect of the proposed development on highway safety and the living conditions of neighbouring occupiers.
10. Furthermore, having regard to the submissions from the Council, appellant and interested parties regarding noise and planning obligations on the 2017

¹ Defined as the period beginning with 1st September 2020 and ending with 31st July 2021

² Council Ref. DC/16/2917

³ Clause 4.5

permission, for both appeals A and B there is an additional main issue of the effect of the proposed development on the living conditions of neighbouring occupiers in respect of noise and disturbance.

Reasons

11. The appeal site and wider land are allocated via Policy AL9 of the Council's Site Specific Allocations DPD⁴ (SSADPD) for residential development and employment use. Amongst other things, the Policy requires the retention of existing business on the site, a contribution to local employment in the form of new small business units (Class B1), and the careful siting, design and separation of employment uses and housing.

Appeal A: Delivery of housing and commercial floorspace

12. There is no dispute between the parties that the Appeal A scheme is acceptable in principle and in detail, subject to conditions. From the evidence before me, I see no reason to take a different view. The Council's case is therefore that if the appeal scheme were built instead of the Commercial Units previously permitted, it would limit the number of dwellings that could be occupied in the residential element of the scheme, which would frustrate delivery of that development by the housebuilder, Berkeley Homes (BH). The Council has not referred me to any specific development plan policy on this matter, however the National Planning Policy Framework (the Framework) sets out that it is important that land with permission is developed without unnecessary delay.
13. From the evidence before me it is apparent that for the adjacent housing scheme to comply with SSADPD Policy AL9, there needed to be a mechanism to secure delivery of commercial floorspace to replace that lost as a result of the housing development and to deliver additional Class B1 units. However, a permission already exists for those units and the accompanying S106 agreement provides the necessary mechanism to secure their delivery and comply with that Policy. As that permission has been implemented, the S106 agreement is in effect and the power to enforce compliance lies with the relevant authority.
14. Should Appeal A be allowed, the appellant would have a choice of which of the two permissions to build, as the physical overlap between the two schemes would prevent both permissions being implemented in full. Therefore, the grant of a new planning permission would not prevent the appellant from building out the 2017 permission and complying with the obligations in the S106 agreement, and as such, would not prevent the occupation of all of the permitted houses. Consequently, it is not necessary for the Appeal A scheme to be tied to the approved housing development, through a DoV or other mechanism, in order for it to be acceptable in planning terms, or to ensure compliance with Policy AL9.
15. I recognise the Council's concerns that delivery of the approved housing could be delayed should the appellant wish to build the Appeal A scheme instead of the approved scheme. However, the appellant is a signatory of the S106 agreement and therefore the obligations in it are binding on them and the outcome of this appeal would not affect their ability to comply with them. I appreciate that previous attempts by both the appellant and BH to modify the S106 agreement, either to substitute the Appeal A scheme or to change the number of dwellings that can be occupied before the commercial units are built, have been unsuccessful. However, it is a matter for the signatories to find a solution to ensure the housing continues to be delivered. Any conflict with a developer agreement between the

⁴ Horsham District Local Development Framework to 2018: Site Specific Allocations of Land Development Plan Document (2007)

signatories is a private legal matter and not within my remit in deciding this appeal. Given the number of houses already built, there would appear to be some impetus for the signatories to reach an agreement irrespective of my decision on this appeal. As such, and given my findings above, the absence of a DoV does not warrant refusal of permission for the Appeal A scheme.

16. I note the appellant's concerns that the design of the approved Commercial Units is flawed, however while the Appeal A scheme may well be more functional than the approved scheme, there is no compelling evidence before me to demonstrate that the approved scheme cannot physically be built.
17. Consequently, allowing Appeal A would not in itself frustrate the delivery of housing or commercial floorspace on the appeal site or adjacent land. Therefore, as a standalone development I find that Appeal A would not conflict with SSADPD Policy AL9 or the Framework.

Appeal B: Parking and turning space

18. The Council raises no concerns in principle with the Appeal B proposal, which would provide additional employment floorspace within an existing built up area as supported by Policies 3, 7 and 9 of the Horsham District Planning Framework 2015 (HDPF). Its concerns relate to the ability to provide parking and turning if both this proposal and the approved Commercial Units were built. As the proposed extension would occupy a different part of the site to the approved Commercial Units, it would be physically possible for both schemes to be built. Therefore, it is necessary to consider the cumulative effects of both developments.
19. Failure to provide enough parking for either the Appeal B scheme or the combined developments would be likely to result in vehicles parking and manoeuvring on the estate road in close proximity to the new dwellings. The consequent noise disturbance would be likely to adversely affect the living conditions of occupiers. Furthermore, if sufficient turning for large vehicles cannot be provided on site, they may reverse down the estate road, leading to potentially unsafe manoeuvres and harm to highway safety. It is therefore necessary to ensure that sufficient parking and turning can be provided.
20. The 2017 permission showed 5 parking spaces and a turning head for large vehicles to be provided within the existing yard area, with an additional 12 car spaces provided on the other side of the site. The proposed site plan shows the same turning head as in the 2017 permission, which would not be obstructed by the proposed extension. Furthermore, the areas to the east of the turning head would be unaffected by the Appeal B proposal, and as such the approved Commercial Units and all associated parking spaces could still be delivered even if the proposed extension were built.
21. The increase in floorspace from the proposed extension would then generate a need for additional parking. The highway authority states that 4 parking spaces would be required for the proposed extension if in Class B1 use, while for Class B8 use, fewer car spaces but 1 lorry space would be needed. The proposal is for a mixed B1/B8 use and as such the parking requirement is likely to be somewhere in between.
22. The site plan shows 6 parking spaces located parallel to the site boundary. Even without swept path analysis, it is evident that at least one of those parking spaces would obstruct the turning head, however the submitted plan shows more parking spaces than would be required for the proposed extension. Therefore, given the size of the appeal site, I am satisfied that there is sufficient space within the site to accommodate the parking required for the Appeal B scheme, albeit in a different

configuration to that shown, together with the turning head, Commercial Units and parking already approved. Furthermore, although the parties have not set out a specific parking requirement for the Appeal A scheme, I am satisfied that the appeal site is large enough to accommodate sufficient parking for the Appeal A and B schemes if both were built. Details of the layout could be secured by condition.

23. Accordingly, the proposal would provide sufficient parking and turning space and, in this respect, would not adversely affect highway safety or the living conditions of neighbouring occupiers.

Appeals A and B: Noise and disturbance

24. The S106 agreement limits the hours of operation of the approved Commercial Units, and the noise emissions from both the existing and permitted commercial units⁵. Both obligations also apply to, 'any other or future commercial premises on the land', however, as the term 'commercial premises' is not defined in the agreement I cannot be certain that the obligations would bind the appeal proposals. Without such restrictions, it is likely that the operation of both appeal schemes would adversely affect neighbouring occupiers in terms of noise and disturbance. Accordingly, it is necessary to impose noise and hours restrictions by condition and, in order to be reasonable, these should include the same limits as the existing obligations.
25. The submitted site plan shows parking spaces close to the boundary with Plots 14-17, therefore noise and disturbance from vehicle parking and manoeuvring could also potentially adversely impact the living conditions of neighbouring occupiers. While there is already a boundary fence between the site and the neighbouring dwellings, I have no details of its noise performance and as such cannot be certain that it would be effective in mitigating these impacts. However, for the reasons given above, the number and configuration of parking spaces is likely to need to change. Furthermore, further details of hard and soft landscaping would be needed for both proposals in order to ensure that the proposed developments would integrate into their well landscaped surroundings, and this would include any new boundary treatments. From the evidence before me and my observations on site, I consider that there is sufficient space to provide parking for both proposals along with appropriate hard and soft landscaping, while respecting the relationship with neighbouring properties. Details of these can be secured by condition.
26. Consequently, in combination, the final parking layout, landscaping and limits on hours and noise would mitigate the potential effects of the proposed developments on the living conditions of neighbouring occupiers in respect of noise and disturbance. The proposals would therefore comply with HDPF Policy 33, which requires development to be designed to avoid unacceptable harm to the amenity of occupiers of nearby property and land.

Other Matters

Appeals A and B

27. The appeal site is adjacent to the Rudgwick Conservation Area (CA) and forms part of its setting. However, the Appeal A scheme would be screened by intervening development so would not adversely affect views into or out of the CA. The Appeal B scheme would be close to the CA but the scale, materials and form would be similar to the existing buildings and as such it would not significantly alter the appearance of the existing site. Consequently, both appeals would preserve the setting and the character and appearance of the CA as a whole.

⁵ Clause 4.4

Appeal A

28. The proposed building would be approximately 5.9m to 6.6m high, taking into account the lower floor level now proposed to respond to the sloping site, approximately 0.3m higher than the approved Class B2 building. As such, the building would provide sufficient internal height for the units on the proposed mezzanine floor. The siting of the proposed building would be likely to result in some impact on the outlook from Plots 18 and 19 and their gardens, however given the small increase in height, it would not have a materially greater impact than the approved scheme. As such, I do not consider that this warrants refusal of Appeal A.

Appeal B

29. The proposed extension would be close to existing trees, however the Council's Tree Officer identifies that one (T41) is in poor condition and is best removed, and that although another (T42) is in fair condition, it is already affected by the existing building, so the proposed extension would have a minimal impact. From the evidence before me I see no reason to reach a different conclusion. As such, the proposal would not result in loss of trees which contribute positively to the character of the area.
30. The proposal is for B1 and B8 use, therefore as a mixed use it would not fall within any specific Use Class and, even with the forthcoming changes to the Use Classes Order, planning permission would likely be required to change to any other use. The 2017 permission does not limit occupation of the existing site to Rudgwick Metals and sets hours of operation and noise limits that would apply to any user of the site if those Commercial Units were built. The same limits would apply to the Appeal B scheme if allowed. As such, while I understand the concerns of interested parties regarding previous uses on the site, compliance with the terms of any planning permission can be enforced by the local planning authority. Consequently, there is no compelling evidence before me to justify limiting occupancy of the proposed extension to Rudgwick Metals.

Conditions

Appeals A and B

31. For both appeals, conditions are necessary to secure implementation of the proposed developments and compliance with the approved plans, in the interests of certainty and proper planning. As the submitted plans specify that the external materials will match the existing buildings, there is no need for a separate condition in this regard.
32. Suitable surface water drainage is required for both schemes to ensure that the developments do not increase flood risk on site or elsewhere. However, as the drainage needs to be in place before occupation of the respective development, details are only required before its installation, not prior to commencement of development. I have therefore amended the Council's suggested condition accordingly.
33. For the reasons set out above, conditions are necessary for both schemes to secure parking, turning and landscaping. Conditions limiting external storage and securing refuse and recycling provision are also necessary to limit impacts on the character and appearance of the area and living conditions of neighbouring occupiers.
34. The Council suggests that a condition is necessary to assess and validate compliance that plant installed within the proposed buildings complies with the

noise limit in the S106 agreement. However, for the reasons given above it is not clear if the obligation would bind the appeal proposals. It is also not known whether any plant is proposed in either of the proposed buildings. In any event, pre-occupation verification would not ensure that any subsequent activities or uses would comply with the obligation. Furthermore, as set out above, a condition setting a limit on overall noise from both proposals is necessary. This would be precise and measurable, and therefore enforceable. Consequently, the suggested validation condition would not be reasonable or necessary.

35. The noise limit condition would relate to average noise over an hour, but would not necessarily address short, loud noises such as those occurring from use of machinery and power tools. As such, it is necessary to manage the way in which such equipment could be used, in order to mitigate the potential adverse impacts on the living conditions of neighbours.
36. It is also necessary to restrict the hours of construction for both schemes in the interests of the living conditions of neighbouring occupiers. However, in light of recent Government guidance in response to the Covid-19 pandemic⁶ I will amend the wording of the suggested conditions to allow flexibility in working hours if it has been agreed with the Council.
37. Minor changes are needed to the wording of the Council's suggested conditions to ensure that they relate to the developments proposed and are precise and enforceable, however these would not change the meaning or effect of those conditions. As such I do not consider that any party would be prejudiced by my making those minor changes.

Conclusion

38. For the reasons given above, and subject to the conditions set out in the following Schedules, Appeals A and B are allowed and planning permission is granted for those developments.

L McKay

INSPECTOR

⁶ Written Ministerial Statement: Construction update - HLWS230, 13 May 2020

Appeal A: 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: RML/1, RML/2, RML/3 except in respect of the parking and turning arrangements shown on plan RML/2.
- 3) The development hereby approved shall not be occupied or brought into use until foul and surface water drainage has been installed and is operational, in accordance with a drainage strategy that has been submitted to and approved in writing by the Local Planning Authority.
- 4) No part of the development hereby approved shall be occupied or brought into use until parking and turning facilities have been provided within the site in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. The parking and turning facilities shall thereafter be retained as such.
- 5) The development hereby approved shall not be occupied or brought into use until full details of all hard and soft landscaping works have been submitted to and approved, in writing, by the Local Planning Authority. The details shall include plans and measures addressing the following:
 - i) details of all existing trees and planting to be retained;
 - ii) details of all proposed trees and planting, including schedules specifying species, planting size, densities and plant numbers and tree pit details;
 - iii) details of all hard surfacing materials and finishes;
 - iv) details of all boundary treatments;
 - v) details of all external lighting.

The approved landscaping scheme shall be fully implemented in accordance with the approved details within the first planting season following the first occupation of any part of the development hereby approved. Unless otherwise agreed as part of the approved landscaping details, no trees or hedges on the site shall be wilfully damaged or uprooted, felled/removed, topped or lopped without the previous written consent of the Local Planning Authority until 5 years after completion of the development. Any proposed planting, which within a period of 5 years, dies, is removed, or becomes 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.

- 6) No unit hereby approved shall be occupied or brought into use unless and until provision for the storage of refuse/recycling has been made for that unit in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. These facilities shall thereafter be retained for use at all times.
- 7) No works for site clearance, ground works or construction of the development hereby approved shall take place outside of 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays nor at any time on Sundays, Bank or Public Holidays unless the Local Planning Authority gives written consent to any variation.
- 8) No external storage of any materials or waste shall take place at any time.
- 9) The units hereby permitted shall not be operated, no process shall be carried out, no deliveries shall be taken or dispatched and shall not be open for

trade or business except between the hours of 0700 and 1800 hours Monday to Fridays and 0700 to 1300 Saturdays and no working on Sundays, Bank or Public Holidays.

- 10) The noise level from the development hereby approved shall not exceed 35dB LAeq over 1 hour measured from the nearest residential property at any time following first occupation of any part of the development hereby approved.
- 11) The doors to any unit hereby approved shall be kept closed while machinery, power or hand tools are in use in that unit and no works requiring the use of machinery, power or hand tools shall take place in the open air.

Appeal B: 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: RML/4, RML/5, RML/6 except in respect of the parking and turning arrangements shown on plan RML/5.
- 3) The development hereby approved shall not be occupied or brought into use until foul and surface water drainage has been installed and is operational, in accordance with a drainage strategy that has been submitted to and approved in writing by the Local Planning Authority.
- 4) No part of the development hereby approved shall be occupied or brought into use until parking and turning facilities have been provided within the site in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. The parking and turning facilities shall thereafter be retained as such.
- 5) The development hereby approved shall not be occupied or brought into use until full details of all hard and soft landscaping works have been submitted to and approved, in writing, by the Local Planning Authority. The details shall include plans and measures addressing the following:
 - i) details of all existing trees and planting to be retained;
 - ii) details of all proposed trees and planting, including schedules specifying species, planting size, densities and plant numbers and tree pit details;
 - iii) details of all hard surfacing materials and finishes;
 - iv) details of all boundary treatments;
 - v) details of all external lighting.

The approved landscaping scheme shall be fully implemented in accordance with the approved details within the first planting season following the first occupation of the development hereby approved. Unless otherwise agreed as part of the approved landscaping details, no trees or hedges on the site shall be wilfully damaged or uprooted, felled/removed, topped or lopped without the previous written consent of the Local Planning Authority until 5 years after completion of the development. Any proposed planting, which within a period of 5 years, dies, is removed, or becomes 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.

- 6) The development hereby approved shall not be occupied or brought into use unless and until provision for the storage of refuse/recycling has been made for the development in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. These facilities shall thereafter be retained for use at all times.
- 7) No works for site clearance, ground works or construction of the development hereby approved shall take place outside of 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays nor at any time on Sundays, Bank or Public Holidays unless the Local Planning Authority gives written consent to any variation.
- 8) No external storage of any materials or waste shall take place at any time.
- 9) The premises hereby permitted shall not be operated, no process shall be carried out, no deliveries shall be taken or dispatched and shall not be open for trade or business except between the hours of 0700 and 1800 hours Monday to Fridays and 0700 to 1300 Saturdays and no working on Sundays, Bank or Public Holidays.
- 10) The noise level from the development hereby approved shall not exceed 35dB LAeq over 1 hour measured from the nearest residential property at any time following first occupation of the development hereby approved.
- 11) The doors to the unit hereby approved shall be kept closed while machinery, power or hand tools are in use in that unit and no works requiring the use of machinery, power or hand tools shall take place in the open air.