The Planning Inspectorate

Appeal Decision

Inquiry Held on 8 – 10 December 2020 and 11 January 2021

Site visit made on 23 February 2021

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2021

Appeal Ref: APP/Y9507/W/20/3257831
Eastmead Industrial Estate, Midhurst Road, Lavant, West Sussex PO18 0BP

- 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 Sebastian Kemp, Oakford Homes Limited against the decision of South Downs National Park Authority.
- The application Ref SDNP/18/03162/FUL, dated 12 June 2018, was refused by notice dated 17 February 2020.
- The development proposed is the demolition of existing buildings and erection of 58 dwellings and 420 sqm of Class B1 floorspace, with associated access and parking arrangements, landscaping and open space.

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and erection of 58 dwellings and 420 sqm of Class B1 floorspace, with associated access and parking arrangements, landscaping and open space at Eastmead Industrial Estate, Midhurst Road, Lavant, West Sussex PO18 0BP in accordance with the terms of the application, Ref SDNP/18/03162/FUL, dated 12 June 2018, subject to the conditions in the attached Schedule.

Procedural Matters

2. A signed Section 106 Planning Obligation (s106) has been submitted, dated 7 January 2021. I will return to this later on in my decision letter.

3. The affordable housing changed from the original application to a contribution of 16% as set out in the s106 agreement. The Inquiry therefore proceeded on this basis with evidence and examination to reflect this change. I have considered the appeal accordingly.

4. The revised National Planning Policy Framework (the Framework) was published on 20 July 2021. I gave the main parties the opportunity to comment on the revisions and I have taken these into consideration.

Main Issue

5. The main issue is

   - Whether it has been robustly demonstrated that the affordable housing provisions of 16% would accord with Policy SD28 of the South Downs Local Plan.

Reasons

6. The appeal site currently comprises an industrial estate consisting of a number of industrial units and parking areas. There is a two-storey commercial property located to the front of the site. The appeal site is accessed from Midhurst Road and is adjacent to a number of residential properties.

7. The proposed development would involve the demolition of the existing industrial units and the redevelopment of the appeal site with 58 dwellings and buildings for Class B1 industrial use. The industrial units would be located to the western part of the site with the residential dwellings occupying the remainder of the appeal site. Access would be from Midhurst Road as at present. The residential element would include an area of open space.

8. Policy SD28 of the South Downs Local Plan (2 July 2019) (SDLP) requires development proposals for new residential development to maximise the delivery of affordable housing to meet local need, with sites providing 11 or more homes to provide a minimum of 50% of the new homes as affordable homes on site, of which 75% will provide a rented affordable tenure.

9. The supporting text to Policy SD28 states that applications proposing a lower proportion of affordable home provision should present robust evidence to demonstrate constrained viability or other exceptional circumstances[1]. It then goes on to say that the robust viability appraisal should show that the cost of land reflects the existing value of land in its current use, plus a reasonable, but not excessive, uplift which provides an incentive for the land to be sold.[2]

10. It was accepted by the Authority during the Inquiry that Policy SD28 does not impose a blanket requirement of 50% affordable housing and that the Policy can be complied with if it can be demonstrated that this provision would make the development unviable. The Authority consider that, in contrast to their costs put forward, the Appellant has understated the costs and therefore, regardless of the description of the works, the understating of the costings would lead to a failure of the Appellant to demonstrate robustly that 50% affordable housing cannot be provided on the site.

11. Turning to Policy LNDP22 of the Lavant Neighbourhood Development Plan 2016 – 2031 (2017) (LNDP), the Appeal Site is allocated for mixed use development, comprising B1 industrial and C3 residential uses with a list of criteria to be met. It is not disputed between the main parties that the criteria within this Policy have been met and I have not been presented with any evidence which would lead me to conclude differently. Policy LNDP22 identifies the buildings as no longer fit for purpose[3].

[1] Paragraph 7.57
[2] Paragraph 7.64
[3] Paragraph 10.11 of the supporting text

12. Common ground between the main parties included the principle of development, and that highway safety, landscape and residential amenity[4] impacts would be acceptable. The key area of dispute was the financial viability of the scheme and whether it robustly justified a reduced affordable housing contribution in accordance with Policy SD28.

13. The Authority and Appellant agreed a number of the inputs which inform the viability assessment. Nevertheless, a dispute remains over the Existing Use Value (EUV) of the site, informing the benchmark land value (BLV). It has been agreed that in relation to the BLV premium this should be 10%. The Planning Practice Guidance states that EUV is the first component of calculating BLV and is the value of the land in its existing use. It is not the price paid for the land and should disregard hope value[5].

14. The Appellant reached an EUV of around £2.6 million and the Authority concluded that it should be a negative figure of around -£585,000. This was because it assessed the extent of works needed to achieve the agreed rental value required the use of an Alternative Use Value (AUV) rather than an EUV.

15. The Planning Practice Guidance (PPG) in the Viability Chapter provides guidance on the standardised inputs for viability assessments and in Paragraph 13[6] of this chapter the issue of EUV is considered. This paragraph states that a benchmark land value should be established on the basis of the EUV of the land plus a premium for the landowner. The Appellant highlights that paragraphs 13, 14 and 15 do not refer to the AUV as used by the Authority.

16. Paragraph 17 of the PPG[7] refers to AUV and identifies it as the value of land for other uses other than its existing use. It should be limited to certain circumstances and includes the premium to the landowner. Whilst this paragraph does not refer specifically to whether or not the AUV could be a negative figure, the fact that it should include the landowner premium suggest strongly that it cannot be a negative value. It has been suggested that a negative AUV would be a very unusual situation.

17. The RICS Guidance[8] states that where a property's EUV is subject to a potential major refurbishment, the value subject to this refurbishment will be considered to be an AUV. Therefore, it is essential to consider the level of works required and whether they would amount to repair or refurbishment to a level that would result in an AUV rather than an EUV.

18. Turning to the works required to achieve the rental values and yields projected by the Appellant, there are fundamental differences between the figures and requirements put forward leading to an issue around whether the costs are to such a level that they can be classed as repair costs or whether they should be deemed refurbishment.

19. The current buildings are in varied states of repair. I have been provided with documents from JLL[9] which assess the conditions of the buildings and the potential for the future of the estate. I have also been directed to a report from

[4] Full details provided in the agreed Statement of Common Ground and Statement of Common Ground (Viability)
[5] Planning Practice Guidance: Viability Paragraph: 015 Reference ID: 10-015-20190509
[6] Planning Practice Guidance: Viability Paragraph: 013 Reference ID: 10-013-20190509
[7] Planning Practice Guidance: Viability Paragraph: 017 Reference ID: 10-017-20190509
[8] RICS Professional Guidance, England: Financial Viability in Planning
[9] Fraser Castle MSc MRICS RICS Proof of Evidence – Appendix 8: JLL Existing Use Valuation 2020, Appendix 9: JLL Employment Assessment Report 8 June 2016 and Appendix 10: JLL Employment Assessment Report 12 April 2016

DVS considering the condition of the site and its potential for future uses[10]. From my site visit I could see the areas in poor repair and the overall condition of the site. The assessments carried out[11] accord with the findings of the earlier JLL reports. However, whilst two of these reports are from a number of years ago, and it is unlikely that in that time the building conditions will have improved without some degree of repair, it is still a matter of considering the level of works required to ensure that the buildings could be let to tenants at the agreed rents which is fundamental to the viability of the site.

20. The Authority's evidence[12] assessed the costs necessary to bring the property into a condition suitable for lettings on FRI terms (Full Repairing and Insuring Lease) assuming a letting of £2.50 per square foot for the Northern Block Units and £6 to £6.50 per square foot for the Southern Block. The Appellant looked at the works that would bring the building to a state of repair that would allow continued use by similar tenants and leases as at present in relation to IRI terms (Internal Repair and Insuring).

21. For example, the works to the roof have been calculated by the Authority to meet the requirements of Minimum Energy Efficiency Standards (MEES) and achieve a full FRI condition but failed to consider the works required to achieve an IRI standard or the potential for EPC/MEES exemption. Landlords will be exempt from having to comply with MEES if they can demonstrate that they meet one of four exemptions[13] and therefore I conclude that it is reasonable to consider this within the costings. Also, it was highlighted by the Authority that the windows and doors varied in style and would need full replacement to meet FRI conditions. I accept that a number of the windows and doors were in a poor state of repair, however they were not all in such a poor state to require full replacement. Similarly, the internal works and services would go beyond what would be required to let the buildings. The Authority's evidence also includes works to the external areas of the site. Whilst this partly has health and safety implications in terms of the surfacing and maintenance of the outdoor areas, I find it to also be cosmetic in part and therefore again seems to go beyond the works necessary.

22. The Authority considers a number of works which they deem to be necessary but would represent refurbishment works rather than just repair. It was accepted[14] that if some of the works referred to in evidence would go beyond repair then they would fall under the category of refurbishment. Also, that if a building was let on FRI terms then the tenant would expect a property of a higher standard.

23. There are no legal requirements to let a building on FRI terms. A number of the Authority's costings relate to cosmetic works rather than those necessary to bring the buildings to a reasonable letting standard, whether that be FRI or IRI terms. With regard to MEES and EPC ratings, I find that even if they are not factored in at this stage, they may be costs that arise in the future. Nevertheless, I find it reasonable that the costs contained in the Appellant's evidence should be to achieve a building that could be rented out in a similar way to its current use, and I accept that these additional elements have been

[10] Fraser Castle MSc MRICS RICS Proof of Evidence – Appendix 15: DVS Property Specialists for the Public Sector – Assessment of the Mixed-Use Proposed Development at Eastmead Industrial Estate 25 September 2017
[11] by Mr Utteridge and Mr Castle
[12] Edward Utteridge MSc MRICS Proof of Evidence paragraph 2.01
[13] Knight Frank – Minimum Energy Efficiency Standards (MEES) Protecting Your Assets
[14] Mr Utteridge in cross examination.

shown to be potentially exempt or excessive for the potential end users. I therefore find that the evidence put before me by the Appellant covers the necessary costs whereas some of the Authority's costs are beyond those reasonable or necessary.

24. I have considered the rents and yields put forward by the Appellant and am satisfied that the rents relate proportionally to the level of repair works factored in. I accept that the works put forward by the Appellant would deal with the immediate condition of the building and that further works may be necessary in the future. The difference between ongoing maintenance or major works would affect the value. However, taking into consideration the location of the site, the construction and configuration of the buildings there is likely to be a limit on the rents that could be secured in any event. Nevertheless, based on the evidence before me, the level of repairs proposed would be adequate and would be unlikely to be short-lived or result in the need for substantial refurbishment at a later date. I therefore accept the Appellant's approach in this regard.

25. The Appellant has put forward examples of other secondary and tertiary industrial sites which they consider provide useful comparables[15]. These show the price of the sites, the yield, the capital value, size of the sites and the rents. They also provide useful comments on each of the sites which identify similarities and differences to the Appeal site in order to support the Appellant's rents and costings and demonstrate that these types of site are capable of being income-producing assets with a value. The Authority have questioned these as they consider that the Appellant's costings are based on IRI terms however the other comparables to determine an appropriate level of rent and yield have been on an FRI basis. However, it has been highlighted by the Appellant that at least three of the comparable properties used are operating on IRI terms and accordingly I find these to be informative in providing evidence to support the Appellant's position. Indeed, it is not wholly clear about the IRI/FRI status of all of the properties from the evidence before me and I find that the examples provided, although from various areas, do illustrate the buoyancy of the market and support the Appellant's position.

26. I find that a negative AUV figure would mean that the site is a liability in its current condition and this is not supported by the evidence. Furthermore, whilst I noted the condition of the buildings and the contents of the JLL reports, I consider that requiring the works to be carried out to an FRI standard to be beyond those reasonable for the purposes of the viability of the proposed development. I therefore conclude that the Authority's estimates exceed those that would be incurred to repair the property and therefore I do not agree that in this instance the AUV approach should be favoured over the EUV approach. As such, I accept the Appellant's BLV inputs and calculations and their projected costings and I find that the assumptions informing their viability assessment to be sufficiently transparent.

27. Consequently, for the above reasons I find that although the proposed development would not provide the 50% affordable housing as required by Policy SD28 of the SDLP, it has been robustly demonstrated to me that the provision of a policy compliant amount of affordable housing would render the

[15] Rebuttal Proof of Evidence – Henry Howard-Vyse MRICS, Director JLL 26 November 2020 Appendix 1 – Schedule of Similar Industrial Transactions

development unviable in this instance. As such, the proposed development is acceptable with the reduced affordable housing of 16%.

Other Matters

28. A signed and dated Section 106 Agreement[16] makes provision for a financial transport contribution, an affordable housing contribution of 16%, equating to 9 units comprising plot numbers 45 – 50 inclusive and the submission of an Affordable Housing Scheme, a financial contribution towards the Solent Recreation Mitigation Strategy, the provision of on-site open space and managed land, restrictions on the occupation of the commercial units in relation to their construction and a monitoring contribution. In addition, the s106 Agreement sets out the obligations of the Authority in relation to the Solent Recreation Mitigation Strategy.

29. Having reviewed the contents and justification for the contributions in the s106 agreement, I am satisfied that these are necessary, directly related, and fairly and reasonably related in scale and kind.

30. The appeal site is located in proximity to the Chichester Harbour Special Protection Area (SPA) and the proposed development will result in an increase in residential accommodation and therefore may impact on this area as a result of increased recreational disturbance. The Conservation of Habitats and Species Regulations 2017 require competent authorities before granting consent for a plan or project to carry out an appropriate assessment in circumstances where the plan or project is likely to have a significant effect on a European site. An Appropriate Assessment has been carried out and Natural England have concluded that due to the agreed strategic solution in place, the Solent Recreation Mitigation Strategy, which they find to be ecologically sound, they are satisfied that the proposal will mitigate against the potential impacts if the appropriate financial contribution is secured. This has been secured via the submitted Section 106 agreement therefore I am satisfied that there would be no adverse effect on the integrity of the SPA.

31. A number of objection letters were received from the Parish Council and local residents and occupiers of the existing units concerning, in summary, difficulties in finding alternative premises, lack of need for additional housing in Lavant, concerns over unadopted roads and lack of site maintenance in new developments, that there will be inadequate parking, transport infrastructure will be inadequate, concern over integration into the community and inconvenience to residents from the industrial units. In addition, a letter of support has been received from a local resident.

32. I acknowledge that the development of this site will have implications for the existing tenants, and I have sympathy for this however this in itself does not justify the dismissal of this appeal. In relation to the lack of need for additional housing I have been presented with little evidence to support this and in any case the site is allocated within the LNDP for residential development. I have considered the concerns over parking, highway safety and impacts on transport infrastructure, however, the proposed development would provide suitable levels of parking and the impacts on the highway have not been sufficiently

[16] Planning Obligation under Section 106 of the Town and Country Planning Act 1990 Relating to Land at Eastmead Industrial Estate, Midhurst Road, Lavant between (1) Eastmead Industries Limited, (2) Oakford Homes Limited and (3) South Downs National Park Authority dated 7 January 2021.

adverse as to warrant concern from the local highways authority or the Authority and I have limited evidence that would lead me to disagree with their findings in respect of highway safety. The Section 106 makes provision for a transport infrastructure contribution. I have considered the impact on the industrial units on residents. The units will be sited to the western side of the site in accordance with the requirements of the LNDP and a condition will be imposed to restrict their use. In terms of the impacts on existing residents the number of industrial units will be reduced from existing and therefore impacts will not be exacerbated.

Conditions

33. A list of suggested conditions was provided and discussed during the Inquiry.

34. In addition to the standard time limit condition, I have imposed a condition requiring the development to be carried out in accordance with the approved plans as this provides certainty.

35. I have imposed conditions 4, 5, and 16 in the interests of the character and appearance of the development and the surrounding area. Conditions 6, 7 and 8 are necessary to ensure that the development does not adversely affect nearby habitats and biodiversity in the area. I consider Conditions 9, 11, 12, 13, 14, 27 and 28 necessary to ensure that the living conditions of neighbouring and future occupiers are protected. I have imposed conditions 19, 20 and 21 in the interest of highway safety and providing suitable access to and from the site. Conditions 15, 17, 18, 22, 23, 24, 25 and 26 are imposed in the interests of ensuring that the site is developed in a way in which it will be safe for its intended end use and to ensure that the development of the site will not adversely affect the surrounding area. Condition 10 is necessary to ensure that any archaeological remains that may be present on site are not damaged by the proposed development. Conditions 3 and 29 are necessary to ensure that the Authority retains a suitable level of control over the industrial use and the appearance of the site given its location in proximity to the SPA.

36. Conditions 4, 5, 7, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 are required to be pre-commencement as it is fundamental to have these details agreed upfront prior to any works commencing on the appeal site. The Appellant has agreed to these conditions being pre-commencement.

37. I have slightly amended the wording of condition 27 to secure the submission of the details in writing and have added an implementation clause to condition 16.

Conclusion

38. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be allowed.

R Norman

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: Drawing Numbers: 1493/108; 1493/301 Rev C; 1493/302 Rev B; 1493/303 Rev A; 1493/304 Rev B; 1493/305 Rev B; 1493/306 Rev B; 1493/307 Rev B; 1493/308 Rev B; 1493/309 Rev B; 1493/310 Rev B; 1493/311 Rev B; 1493/312 Rev B; 1493/313 Rev B; 1493/314 Rev A; 1493/315 Rev B; 1493/316 Rev B; 1493/317 Rev B; 1493/318 Rev B; 1493/319 Rev A; 1493/320 Rev A; 1493/321 Rev A; 1493/322; 1493/323; 1493/324 Rev C; 1493/325 Rev C; 1493/326 Rev C; 1493/327 Rev A; 1493/328 Rev A; 1493/329 Rev B; 1493/330 Rev A; A183-GA01 Rev E; A183-GA02 Rev E; A183-LA04 Rev A; A183-PP01 Rev E and A183-PP02 Rev E.

3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order (England) 2015, as amended by the Town and Country Planning (Use Classes) (Amendments) (England) Regulations 2020 (SI 2020 no. 757, (or any order revoking and re-enacting that order with or without modification), the commercial development hereby approved shall be used for purposes within Use Class E part (g) and for no other use as defined within this use class or its associated permitted change of use in the above Regulations.

4) No development shall commence until a schedule or materials and finishes and, where so required by the local planning authority, samples of such materials and finishes to be used on the building hereby approved shall be submitted to and approved in writing by the local planning authority. These details shall include, but not be limited to, the materials for walls, roofs, windows (including glazing, head, cill and window reveal details), doors, eaves, porches and rainwater goods. Thereafter the development shall be carried out in full accordance with the approved schedule and samples.

5) No development shall commence until further details on the Scheme of Soft and Hard Landscape Works have been submitted to and approved in writing by the local planning authority. These details shall include (but not be limited to):

    a. Written specifications and planting methods;
    b. Layout of new planting with schedules of plants and trees consistent with local landscape character and beneficial to biodiversity, noting species, planting sizes and proposed numbers/densities where appropriate;
    c. Tree pit design, materials and size and guying/support method;
    d. Retained areas of trees;
    e. Details of grasses and seeding for public open space area;
    f. Layout of hard surfaces and their materials, permeability, kerbs edges, and details of any steps, ramps and retaining walls where necessary;
    g. Boundary treatment details including gates and doors;

h. Any street furniture including seating and signage;

i. A schedule of landscape maintenance for a minimum period of 5 years, to include details of the arrangements for its implementation, including timetable;

j. All means of enclosure, including fencing, walls and gates.

The scheme of Soft and Hard Landscaping Works shall be fully implemented in accordance with the approved timetable and thereafter managed in accordance with the Landscape and Ecological Management Plan (condition 8) once approved. Any plant which dies, becomes diseased, or is removed within the first five years of planting, shall be replaced with another of similar type and size, unless otherwise agreed in writing by the local planning authority.

6) The development shall proceed in accordance with the measures set out in sections 5.2.1 and 5.2.4 of the Updated Extended Phase 1 Habitat Survey (by WYG, June 2018), unless otherwise agreed in writing by the local planning authority.

7) No development shall commence until a detailed scheme of biodiversity enhancements, such as bird and bat boxes, to be incorporated into the development is submitted to and approved in writing by the local planning authority. The development shall subsequently proceed in accordance with any such approved details and retained thereafter.

8) Prior to the occupation of any building, a Landscape and Ecological Management Plan (LEMP) which covers the whole application site shall be submitted to, and approved in writing by, the local planning authority. The LEMP shall follow the principles and objectives of the approved landscape scheme and biodiversity enhancements and include long term objectives for the site and management responsibilities. Once approved, the LEMP shall be fully implemented and used for the management of the development. The content of the LEMP shall include the following:

a. Description and evaluation of features to be managed;

b. Ecological trends and constraints on site that might influence management;

c. Aims and objectives of management;

d. Appropriate management options for achieving aims and objectives;

e. Prescriptions for management actions, together with a plan of management compartments;

f. Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);

g. Details of the body or organisation responsible for implementation of the plan;

h. Ongoing monitoring and remedial measures;

9) No development above the slab level shall be commenced until details of external lighting to be installed on the site are submitted to and approved in writing by the local planning authority. The lighting shall be installed, maintained and operated in accordance with the approved details unless

otherwise agreed in writing by the local planning authority. The lighting installation shall comply with the Institution of Lighting Professionals (ILP) 'Guidance Notes for the Reduction of Obtrusive Light" (2011) and the local planning authority's "Dark Skies" Technical Advice Note (2018). The lighting shall be maintained and operated in accordance with the approved details.

10) No development/works shall commence on the site until a written scheme of archaeological investigation of the site has been submitted to and approved in writing by the local planning authority. The scheme shall include proposals for an initial trial investigation and mitigation of damage through development to deposits of importance thus identified, and a schedule for the investigation, the recording of findings and subsequent publication of results. Thereafter the scheme shall be undertaken fully in accordance with the approved details, unless any variation is first submitted to and agreed in writing by the local planning authority.

11) No development shall commence until written documentary evidence has been submitted to and approved in writing by the local planning authority demonstrating that the dwellings will achieve a minimum 19% improvement over the 2013 Building Regulations Part L Dwelling Emission Rate (DER)/Target Emissions Rate (TER), and a further 4% reduction in CO2 emissions through the use of renewable sources and a maximum of 110 litres/person/day internal water use in the form of a design stage SAP calculations and a water efficiency calculator. The dwellings shall thereafter be constructed in accordance with these details.

12) Prior to the occupation of the 58th completed dwelling, written documentary evidence shall be submitted to and approved in writing by the local planning authority to demonstrate that the dwellings have achieved the standards required in Condition 11.

13) No development shall be commenced until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. Thereafter, the approved CEMP shall be fully implemented and adhered to throughout the entire construction period. The CEMP shall provide details as appropriate but not be restricted to:

    a. The anticipated number, frequency and types of vehicles used during construction and routing of vehicles;
    b. How deliveries would be managed in terms of vehicles entering and leaving the site and timings;
    c. The method of access and routing of vehicles during construction;
    d. The parking of vehicles by site operatives and visitors;
    e. The loading and unloading areas of plant, materials and waste;
    f. Dust suppression, mitigation and avoidance measures;
    g. Noise reduction measures;
    h. Details of site monitoring and logging of results;
    i. Hours of operation during construction;

   j. The storage of plant and materials used in the construction of the development;
   k. The erection and maintenance of security hoarding;
   l. The provision of wheel washing facilities; and
   m. A scheme for recycling/disposing of waste resulting from construction works.

14) Piling and using penetrative methods shall not be carried out other than with the written consent of the local planning authority. If these methods are approved, the development shall be carried out in accordance with the approved details.

15) No development shall commence until a scheme for managing any borehole installed for the investigation of soils, groundwater or geotechnical purposes is submitted to and approved in writing by the local planning authority. The scheme shall provide details of how redundant boreholes are to be decommissioned and how any boreholes that need to be retained, post-development, for monitoring purposes will be secured, protected and inspected. The scheme as approved shall be implemented prior to the occupation of any part of the permitted development.

16) No development shall commence until details of site levels and longitudinal and latitudinal sections through the site have been submitted to and approved in writing by the local planning authority. These shall show how the buildings and public realm are proposed to be set into the topography of the site, in comparison to existing levels. These details shall also show how spoil from excavations is intended to be used on site, including in the creation of the public open space. The works shall thereafter be carried out in accordance with the approved details.

17) No development shall be commenced until full details of the proposed connection to the sewerage mains system and its maintenance and management arrangements have been submitted to and approved in writing by the local planning authority. Thereafter, all development shall be undertaken in accordance with the approved details and no occupation of any of the development shall take place until the approved works have been completed. The foul drainage connection and system shall be retained as approved thereafter.

18) No development shall commence until the full details of the surface water drainage scheme have been submitted to, and approved in writing by, the local planning authority. The design should follow the hierarchy of preference for different types of surface water drainage disposal systems, as set out in Approved Document H of the Building Regulations and the SuDS Manual produced by CIRIA. Details of any flow exceedance routes within the drainage scheme shall also be provided. Winter groundwater monitoring, to establish the highest annual ground water levels, and percolation testing to BRE 365, or a similar approved method, will be required to support the design of any infiltration drainage.

    The design details shall include drainage calculations for the site, based on sustainable drainage principles, and the scheme must demonstrate that the surface water scheme can address runoff generated up to and including a 1 in 100-year event, plus a 40% allowance for climate change. The scheme must be supported by an assessment of the risks to controlled waters (the River Lavant).

The scheme shall include full details of the maintenance and management arrangements of the SuDS. These details should be set out in a site-specific maintenance manual and submitted to, and approved in writing by, the local planning authority. The manual is to include details of financial management and arrangements for the replacement of major components at the end of the manufacturer's recommended design life. Upon completed construction of the SuDS system, the owner or management company shall strictly adhere to and implement the recommendations contained within the manual.

19) The parking and access arrangements on site shall be completed in accordance with the approved plans prior to the development being first occupied and thereafter be used for such purposes at all times.

20) No part of the development shall be first occupied until electric vehicle charging technologies have been provided in accordance with Drawing Ref. 1493-330A.

21) The submitted Travel Plan (prepared by Paul Basham Associated Ltd. Dated 07.08.2019) shall be fully implemented following the first occupation of any building, unless otherwise agreed in writing by the local planning authority.

22) The submitted Phase 1 Preliminary Risk Assessment (reference 29768-R01 (00), dated June 2018) has identified potential contaminant linkages that require further investigation. No development, other than that necessary to meet the requirements, shall commence until a Phase 2 Intrusive Investigation Report has been submitted to and approved in writing by the local planning authority detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011+A1:2013 – Investigation of Potentially Contaminated Sites – Code of Practice. The findings shall include a risk assessment for any identified contaminants in line with relevant guidance.

23) If the Phase 2 report submitted pursuant to condition 22 identifies that site remediation is required then no development shall commence until a Remediation Scheme has been submitted to and approved in writing by the local planning authority detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. Any ongoing monitoring shall also be specified. A competent person shall be nominated by the developer to oversee the implementation of the Remediation Scheme. The report shall be undertaken in accordance with national guidance as set out in DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination CLR11. Thereafter, the approved remediation scheme shall be fully implemented in accordance with the approved details.

24) The development hereby permitted shall not be first occupied until a verification report for the approved contaminated land remediation approved under condition 23 has been submitted in writing to the Local Planning Authority. The report should be undertaken in accordance with national guidance as set out in DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination CLR11.

25) All development shall be stopped immediately in the event that contamination not previously identified is found to be present on the development site and details of the contamination shall be reported immediately in writing to Environmental Health. An investigation and risk assessment should then be undertaken by competent persons and in accordance with 'Model Procedures for the Management of Land Contamination CLR11'. A written report of the findings, to include a remediation statement, should then be forwarded to the local planning authority for appraisal. Following completion of remedial measures, a verification report should be prepared that demonstrates the effectiveness of the remediation carried out. No part of the development shall be occupied until:

   i. an investigation and risk assessment has been undertaken in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority, and:

   ii. Where remediation is necessary a remediation scheme must be submitted to and approved in writing by the local planning authority. Any remediation shall be fully implemented in accordance with the approved scheme before the development is brought into use, and;

   iii. A verification report for the remediation shall be submitted in writing to the local planning authority before the development is first brought into use and all remedial and validation works are complete and a Completion Certificate has been issued. This would ensure that no future investigation is required under Part 2A of the Environmental Protection Act 1990.

26) No development shall commence until:

   i. An assessment of the risks posed by any ground gases and/or vapours has been submitted in writing to, and approved in writing by, the local planning authority. Such an assessment shall be carried out in accordance with relevant guidance; and

   ii. Where the approved risk assessment identifies ground gases or vapours posing unacceptable risks, no development shall begin until a detailed scheme to protect the development from the effects of such contamination has been submitted in writing to and approved in writing by the local planning authority.

   Thereafter, unless otherwise agreed in writing with the local planning authority, the approved scheme shall be implemented and a verification report submitted to, and approved in writing by, the local planning authority before the development is first occupied.

27) No development above slab level shall commence until a scheme has been submitted to, and approved in writing by, the local planning authority, which details measures to secure internal sound levels within all habitable rooms that do not exceed 35dB LAeq, 16hours (07:00 – 23:00); that secure internal sound levels within all bedrooms that do not exceed 30dB LAeq, 8 hours (23:00 – 07:00) and a level of 45dB LA[F]max shall not be exceeded on a regular basis (10 times) during night-time (23:00 – 07:00) within bedrooms. The development shall thereafter be carried out in accordance with the approved details.

28) Prior to the commencement of development of the commercial units, a Noise Impact Assessment shall be submitted to and approved in writing by the local planning authority to demonstrate that appropriate standards in relation to noise are met for the approved use. Any external mechanical plant or neighbouring commercial activities shall be assessed in accordance with BS4142:2014 Methods for Rating and Assessing Industrial and Commercial Sound. Details of noise mitigation measures shall be presented, as required. Any approved noise mitigation measures shall thereafter be implemented prior to occupation and retained thereafter.

29) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 (or any order revoking or re-enacting that Order, with or without modification) no development falling within the following Classes of Schedule 2 of the Order shall be carried out without the prior written approval of the South Downs National Park Authority: Part 1 Classes A, B, C, D, E and F and Part 2 Class A.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr James Neill Counsel, Landmark Chambers

He called

Mr Fraser Castle MSc MRICS	Development Partner – Bruton Knowles LLP
Mr Edward Utteridge BSc RICS	Senior Chartered Building Surveyor – Bruton Knowles LLP
Mr Richard Ferguson BA MSc MRTPI	Development Management Lead - South Downs National Park Authority

FOR THE APPELLANT:

Mr Gwion Lewis QC, Counsel, Landmark Chambers

He called

Mr Henry Howard-Vyse MRICS	Director – JLL
Mr Patrick Barry Ba (Hons) MSc MRTPI	Director of Nova Planning Ltd
Mr Mark Walter MSc MRICS	Director - JLL

INTERESTED PERSONS

Mr James Pickford	Lavant Parish Council

DOCUMENTS SUBMITTED DURING THE INQUIRY:

ID1 – Authority's Opening Submissions

ID2 – Appellant's Opening Submissions

ID3 – Lavant Parish Council Statement from Mr J Pickford

ID4 – Knight Frank MEES Information Sheet

ID5 – DCLG A guide to EPC (2017)

ID6 – PPG Viability 2014 Version

ID7 – RICS Professional Guidance Note: Financial Viability in Planning 1st Edition

DOCUMENTS SUBMITTED AFTER THE INQUIRY:

Comments on the revised National Planning Policy Framework 2021 from both Council and Appellant.