

Appeal Decision

Hearing held and site visit made on 23 August 2016

by Terry G Phillimore MA MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 September 2016

Appeal Ref: APP/Y9507/W/16/3147296

Paris House, Frenchmans Road, Petersfield GU32 3AW

- 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 Lynwood Scientific Developments Executive Pension Fund against the decision of South Downs National Park Authority.
 - The application Ref SDNP/14/04736/FUL, dated 11 September 2014, was refused by notice dated 16 November 2015.
 - The development proposed is residential development comprising 47 dwellings following demolition of existing building.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Following the hearing a completed agreement containing a planning obligation on affordable housing pursuant to section 106 of the Act was submitted.

Main Issues

3. The main issues are:
 - a) whether there are circumstances to justify the loss of the site from employment use having regard to the development plan position;
 - b) whether the proposal would satisfy design requirements with respect to layout and boundary relationships.

Reasons

Employment use

Development plan position

4. The site of around 0.82ha is on the north-western edge of Petersfield town centre. It currently comprises a single large warehouse with ancillary showroom and office floorspace and external areas. The premises have been vacant since the beginning of 2015.
 5. The Petersfield Neighbourhood Plan was made in January 2016 and is the most recent part of the development plan. Its Table 7 lists 'Employment Site Allocations'. Site reference B4 is the appeal premises (Paris House), labelled as
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an existing site and given an area of 1.03ha. Policy BP1 indicates that permission will be granted for appropriate new employment development on the listed sites subject to other relevant policies being met. Alternative uses on the sites will not normally be approved except for separately listed Town Centre sites. Policy BP2 gives protection to existing employment sites. It states that proposals that result in the loss of business floor space whether through change of use or redevelopment will not normally be allowed unless it can be demonstrated that the premises are no longer suitable for business use and evidence has been submitted that demonstrates that the property has been actively marketed for at least 6 months on realistic market terms and it is shown that there is no prospect of new business occupiers being found.

6. Policy BP5 sets out that proposals for the redevelopment of the Frenchmans Road area (including site B4) will be approved provided other relevant policies are met. The policy adds that the Frenchmans Road area would be particularly suitable for a Business Enterprise Centre.
7. In the East Hampshire District Local Plan: Joint Core Strategy 2014, policy CP4 on existing employment land states that the use of employment land for alternative uses will be permitted where the site can be shown to be no longer suitable for employment use of some form and the alternative use complies with other policies. In the East Hampshire District Local Plan 2006, saved policy IB4 states that permission will be granted for the redevelopment of industrial or business sites for other uses only if the present use harms the character or amenity of the nearby area or the site has restricted potential due to factors such as: a) its size, shape, location or access; or b) proof of financial unviability for industrial or business use; and c) no reasonable offer having been received for sale or rent, following realistic and active marketing undertaken to the satisfaction of the local planning authority.
8. Paragraph 22 of the National Planning Policy Framework advises that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. The above approach of the development plan towards the employment use of the site is generally consistent with this guidance, including in terms of the recent allocation of the site in the Neighbourhood Plan. It was agreed at the hearing that the relevant policy tests include a requirement to consider options for employment use of the site generally, including by way of redevelopment, and not just whether there is a potential occupier for the premises in the existing configuration. There is no evidence in this case that employment use of the appeal site has given rise to harm to the character or amenity of the area.

Local employment land supply

9. The appellant submitted an Employment Land Study (by Regeneris Consulting) with the application. This referred to East Hampshire Council's 2013 Employment Land Review Update by Nathaniel Lichfield & Partners (NLP), prepared to inform the Joint Core Strategy for the period to 2028. The NLP Update found an employment land requirement across the District of between 18.8ha (under a labour demand scenario) and 38.6ha (under a past take-up scenario). The appellant's Study argued that, due to incorrect assumptions, the former scenario over-estimates floorspace demand by a minimum of 15%, and that the latter may not fully reflect the impacts of economic downturn and

- other changes. The total supply of employment land for the Plan period was given in the Study as 40.1ha, which included new allocations through the Joint Core Strategy of 21.5ha. From this analysis it was contended that there is sufficient supply of employment land across the District to meet the estimated future requirements, and that the release of the 0.82ha of existing employment land at the appeal site would not have a detrimental impact on the balance of employment land supply and demand within the District.
10. However, this analysis pre-dated the more local level Petersfield Employment Land Requirement assessment undertaken for the Council by NLP (final report November 2014). This found that Petersfield would have a potential shortfall of employment land of 3.5 to 10.4ha up to 2028 depending on the approach considered. The analysis was said in the NLP report to underline a need to identify additional land in Petersfield over the Plan period to ensure that the town's potential to accommodate both indigenous business growth, as well as inward investment opportunities as and when they arise, is not constrained by lack of spatial capacity in future. The report added that this conclusion is supplemented by more qualitative market feedback that Petersfield is one of East Hampshire's areas of strongest market demand for both office and industrial uses, describing it as a sustainable settlement and a key location for new commercial development.
 11. The report argued for the target allocation for Petersfield of 3ha being increased by at least another 2ha to provide a reasonable scale of additional land to accommodate employment development over the plan period. This recommendation is referred to in the Neighbourhood Plan which notes that, while additional allocations beyond the Plan area could not be allocated, it was believed there would remain an unfulfilled demand for employment land over the lifetime of the Plan.
 12. Turning to more specific aspects of the employment land market within Petersfield, the appellant's Regeneris Study argued that other main employment sites including in Bedford Road benefit from closer proximity to the A3 compared to the Frenchmans Road location of Paris House. The allocated site at Buckmore Farm was also identified as being of higher quality. It was contended that demand tends to be for small to medium sized units from local firms. The main gap in supply was identified as being good quality, modern industrial premises, particularly those which offer flexible uses in a range of sizes with the largest being around 10-15,000sqft. This was said to contrast with Paris House at 50,090sqft (including 33,753sqft of warehousing space) with a relatively inflexible configuration, therefore far surpassing the size deemed suitable to meet typical demand requirements from larger occupiers.
 13. The appellant's market report by Daniel Watney, also submitted at application stage, contained schedules of B1, B2 and B8 accommodation available on the market in Petersfield and of recent transactions in the town. Based on the extent of space available and the length of time before lettings, it was argued that there was an over supply to meet the demand, and no requirements for an industrial building of the size of Paris House.
 14. The appellant's market assessment was independently reviewed by the District Valuation Office (DVO) on behalf of the Authority. The DVO referred to its own research as indicating that most transactions in the Petersfield commercial

market involved second hand units with an average size of 3,600sqft. Many of the completed lettings for B1/B2/B8 units had been after a year of marketing, suggesting that 12 month-plus void periods are not uncommon. Taking into account the amount of space then available, with an average size of around 4,500sqft, the market was described as being "*sluggish at best*". Petersfield was said to be less popular for 'trade counter' type units than other nearby towns. However, despite this evidence, the review suggested that a thorough marketing process might produce a tenant for Paris House who needs the level of space it contains, with relatively few of these types of sites in and around Hampshire with good access.

15. More recently, the Authority says that its survey of business floorspace undertaken in June 2016 revealed a vacancy rate of 3.2% and an occupancy rate of 96% in Petersfield. It describes this as a very tight market, and asserts that the situation with availability of sites appears to be more acute in terms of meeting demands when compared with 2014. For industrial units on business parks and industrial estates, a 95.8% occupancy is claimed, the 4.2% vacancy representing 3 units. It is contended that the majority of the premises in the appellant's availability survey at the time of the application are now either let or under offer. Overall, the Authority argues that there is a vibrant local economy, which further reinforces the need to have marketed the site. In particular, Paris House is identified as being the only vacant unit in the Frenchmans Road industrial/office area, with easy access to the A3 and the mainline rail station, and which was occupied at the time of the application.
16. Finally, the appellant's Marketing Report of August 2016 says that the transactions which have completed over the last year or so in Petersfield have been centred on smaller units in modern industrial/office business parks in and around the Bedford Road area, which are located to the west of the town and more accessible in terms of the road networks. It describes a common sentiment from local agents that large established occupiers rarely consider Petersfield since the town is predominately residential in nature as part of the commuter belt with residents working in London, with a consequent shortage of local skilled labour.
17. This Report also states that, since the last market update, there have been a small number of transactions completing, with some new properties going under offer, but there continue to be extensive marketing voids and a proportion of units still available, particularly within the office market. Those that have been let are small units within an established business park. It is argued that, while there is a reduced number of available industrial properties within Petersfield itself, this further demonstrates that there is no suitable occupier for Paris House.
18. The Report updates the previous premises availability schedule provided at application stage. This appears mostly to match the Authority's update. There are also additions to the schedule, with some premises available and others under offer.
19. Taking all of the above into account, I consider that the evidence is not indicative of a general over-supply of employment land in Petersfield. While transactions can take some time to occur, the current position appears to be of a relatively limited extent of vacancy of business premises. However, this is variable by way of the size and type of premises. With the large-scale and

older nature of the accommodation of Paris House, it is likely to be the case that the market for the premises in its current form is limited, with what appears to be a stronger demand for smaller, more modern units.

20. In general terms there is no justification to depart from the policy protection given to the site as part of the local employment land supply, but particular factors relating to the site itself could warrant its release. Whether or not this is the case, and to take into account a reasonable range of options for use of the site, requires a consideration of the viability of its continued employment use and of the market testing that has been carried out. I now turn to the evidence on these matters.

Viability

21. Two quantitative viability analyses have been presented.
22. In the appellant's exercise, submitted at application stage, appraisals are carried out on a range of options for the site comprising refurbishment for B8 use, conversion to B1 or B2 use, and redevelopment for B1, B2 or B8 use. The values produced are all negative other than for refurbishment for B8 use. The latter option gives a positive value (£65,253) which is very low by comparison with an assumed existing use value of £1,342,249 (which itself is substantially below the purchase price of £1.8m paid for the site in 2008). Sensitivity testing by way of changes in rental values and yields shows some scope for higher values, but these still do not exceed the existing use value, and the testing also indicates the potential for considerably lower values at the other extreme. The conclusion drawn by the appellant is that even in the best case scenario the valuations produced fall well below those required to ensure that development/refurbishment for B1/B2/B8 use is viable. The position claimed for August 2016 is that there has been no material change in values but an increase in build costs would have further reduced potential returns. The appellant acknowledges that the analysis is a hypothetical exercise but argues that care has been taken to provide inputs which are as accurate as possible.
23. This exercise has not been specifically disputed by the Authority, but a separate appraisal has been undertaken on its behalf by the District Council for the appeal. This covers options of: refurbishment of existing buildings, redevelopment for industrial units, redevelopment for warehouse units, redevelopment for office and small industrial units (the offices with or without air conditioning). Again sensitivity testing by way of a range of rental values and yields are applied. The values derived are compared with a benchmark value of £1,289,040 as well as the purchase price of £1.8m. While the sensitivity testing indicates a range of outcomes, the surplus figures using the preferred inputs are claimed to indicate that development of the site for B1/B8 type use and B1a serviced offices would be financially viable. For example, the residual valuation for new build industrial units produces a surplus of £553,298 against the benchmark value.
24. In response the appellant has produced a critique of the inputs used in this analysis, including of the preferred rental values and yields, development costs and treatment of void periods. Reliance is placed by the appellant on the acceptance of the findings of the appellant's own market assessment by the DVO at application stage, which is taken to include endorsement of the input figures used in the appellant's analysis. However, the Authority has appropriately referenced precedents and sources in providing justification for

its preferred input values, covering rental levels and yields, rent holiday/incentives and build costs based on locally sourced evidence. This increases the degree of reliance that can be placed on the results. At the same time, the Authority recognises that the outcome of the residual appraisal greatly depends on the rental value, rental yield and existing use value. In particular, it is noted that the yield adopted greatly impacts on viability, and that there are limited comparable yields for new build business premises.

25. In this context I find the combined results of the appraisals underline the importance of viability factors in the potential of the site for continued employment use, but to be inconclusive as to whether a scheme would be likely to be carried forward. There is clearly a strong sensitivity to the nature of a scheme, and there could be other options that include employment use on the site which have not been tested. The recommendation of the DVO was that, before concluding that the site is not commercially viable, a thorough marketing process should be undertaken. That independent opinion was expressed in the light of the evidence submitted at application stage by the appellant, and I place particular weight on it. I deal next with the marketing evidence.

Marketing

26. The appellant submitted a Marketing Report dated August 2016 shortly before the hearing. The Authority confirmed it was satisfied that the hearing gave a fair opportunity to respond to the Report.
27. The Report sets out that the property has been marketed since December 2015 for 9 months, therefore complying with the temporal requirement of policy BP2.
28. The marketing carried out has comprised advertisements in national property publications, a marketing board outside the property, placing particulars and details on the website of the appellant's agent and on the website of a property industry-wide marketing tool, and regular monitoring of agents and occupiers requirements using estate agent sources. According to the Report, the response has been limited to a small number of property particulars issued and responses to advertisements and listings, only two inspections undertaken and one offer received.
29. I find no reason to doubt that the marketing exercise has been independent and genuine. The range of channels used and likely extent of coverage achieved through these can be regarded as an adequately comprehensive approach.
30. With respect to the terms offered, a rental level of £4.50 per sq ft for a leasehold interest is quoted. That is the amount paid by the previous tenant of the building, and the advertisement indicates some scope for negotiation. The terms for a lease of the premises therefore appear to be realistic.
31. However, reference is made in the marketing material only to the property being available on a leasehold basis. According to the Report, while the details do not explicitly state that the freehold is available, they clearly do not preclude enquiries being made. Further, it is stated that the marketing led to interest being received on a freehold basis, and that if there had been any requirement for a new built commercial unit on a pre-let basis this would have been pursued.

32. This approach apparently reflected the preference of the appellant to hold the asset as an income generating investment, and a concern that openly offering the freehold for sale would place too much emphasis on the development option rather than identifying an occupier. However, I consider the omission of a reference to the availability of the freehold to be a substantial flaw in the adequacy of the marketing that has been undertaken. The purpose of market testing in a case such as this must be to demonstrably expose the site to those who might potentially be interested in its acquisition, involving an exercise in explicitly drawing attention to the opportunity that exists. Reliance on an implied availability of the site and/or an assumption that potentially interested parties would seek out the opportunity of its acquisition themselves is not sufficient, since the marketing itself needs to be active and objective.
33. While a freehold offer of the site was received, and rejected due to being for a class C2 residential development and for only part of the site, this does not in itself demonstrate that other parties with a potential interest in the freehold would not have come forward had this been marketed. In particular, the manner in which the marketing has been carried out would significantly limit exposure with respect to a full range of refurbishment and redevelopment options including those that have been examined in the viability analyses.
34. I am therefore unable to conclude that the property has been actively marketed for at least 6 months on realistic market terms. Given the importance of market testing in the current case, as identified in each of the sub-issues considered above, that is a critical shortcoming.

Conclusion on employment land issue

35. The relevant policy context provides for protection of the existing employment use of the site, but subject to a test of there being a reasonable prospect of use of the site for that purpose. Land supply evidence is not indicative of a general over-supply of employment land in Petersfield, but local demand is variable by location and the size and type of premises. With the large-scale and older nature of the accommodation of Paris House, it is likely that the market for the premises in its current form is limited. Viability assessments covering refurbishment and redevelopment options are inconclusive, especially having regard to the variability of possible inputs and schemes. All of the above gives rise to a need for market testing, which should be adequate to fully expose the site to all potential employment options. The exercise that has been undertaken has not been sufficient, on the basis of its restriction to advertisement of the availability of the premises only for letting.
36. The report of the Neighbourhood Plan Examiner, in addressing a proposal that Paris House be added as a residential site, expressed the view that the site appeared to be a suitable and sustainable one for residential development but would be equally so for office development. He noted that the Plan and the local community value Petersfield as a town where people can both live and work. In these circumstances, he considered that the future of the site is best guided by policy BP2. I see no reason to take a different view on these matters. On the evidence before me, the relevant tests of this and other development plan employment policies have not been met such as to warrant a loss of the existing employment use, and it cannot be concluded that there is no reasonable prospect of such use of the site.

Design

37. The generally high quality of the design of the scheme, as recognised in the officer report, is not in dispute. However, there are specific concerns arising from the relationships of the development to the west and south boundaries of the site.
38. The long west boundary runs along the ends of the rear gardens of properties fronting Ruses Road. The proposed two-storey houses adjacent to this boundary would be sited with their main rear walls around 6.5-8m from it, but some would have rear projections extending closer to the boundary. The Ruses Road properties have deep gardens, and the minimum distance from windows in the rears of these neighbouring houses to windows in the new houses would be around 37m. This would be sufficient to prevent intrusion on privacy within the buildings. Having regard to the lengths of the gardens to the Ruses Road houses, and respective levels, the extent to which parts of these could be overlooked from the new houses would also not amount to a serious intrusion on residential amenity within the context of a built-up urban area.
39. At present the intervening boundary comprises a mix of fencing, wall and vegetation. The appellant proposes a row of planting along the inner edge of this to provide a higher quality and more uniform boundary treatment for the new development. It is suggested that the details of this could be the subject of a planning condition, but that the planting would have a width of around 0.6m. The effect of this would be to reduce the useable areas of the new gardens. Some of the Ruses Road gardens have trees at their ends and others could be planted, as is typical with long gardens of this nature. The pruning of such vegetation which is contained within the neighbouring gardens would be outside the control of the occupiers of the new development. Such vegetation could be expected to result in some overshadowing of the new gardens. In the cases of the proposed houses with additional rear projecting elements, the combined effect of these factors would be to significantly restrict the attractive useable areas of the gardens. The Council has no fixed standards for garden sizes or separation distances, but in my judgment the external areas of these houses would not achieve the quality that it would be reasonable to expect in this development.
40. An additional consideration with the new house proposed at the southern end of the development is the proximity of the tall neighbouring warehouse building which abuts the south boundary. The relationship of this structure to the house would not give rise to a serious adverse effect on rooms within the dwelling as no windows are proposed along the southern flank elevation and it would be peripheral to those in the rear elevation. However, in combination with the relatively short rear garden, the wall would have an overbearing and overshadowing relationship to the garden. Again, the standard of this external amenity area would be unreasonably poor.
41. Policy CP29 of the Joint Core Strategy deals with design, seeking a built environment that is of an exemplary standard and highly appealing. This includes by ensuring that the layout and design is appropriate to its setting including in its relationship to adjoining buildings, spaces around buildings and landscape features. In the Neighbourhood Plan, policy HP8 expects housing

developments to be of a high standard of design, layout and construction. The above aspects of the development fall short against these policy requirements.

Other Matters

42. The proposal would provide the economic and social benefits of new housing, including 13 affordable housing units which would be secured by the submitted planning obligation. These benefits carry significant weight. However, there is no challenge to the Authority's claimed adequacy of its five-year housing land supply. The up-to-date policies have regard to housing requirements, and there is no overriding reason to reach a conclusion other than in accordance with the development plan. In this respect I have also taken into account the officer recommendation in support of the grant of permission at application stage, but have made my own assessment having regard to the relevant policies and evidence.

Conclusion

43. For the reasons given above I conclude that the appeal should be dismissed.

T G Phillimore

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

John Pugh-Smith	Of Counsel
Charlotte Goodrum	Daniel Watney
John Harding	Daniel Watney
Hector Brown	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Richard Ferguson	South Downs National Park Authority
Angela Kiwanuka	East Hampshire District Council

INTERESTED PERSONS:

Mary Vincent	Petersfield Town Council
Fiona Incledon-Webber	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Full copy of Marketing Report dated August 2016
- 2 Petersfield Town Council statement
- 3 Suggested affordable housing condition

DOCUMENTS SUBMITTED AFTER THE HEARING

- 4 Section 106 agreement dated 19 September 2016 (4 parts)

Richborough Estates