

BRETT INCORPORATED

PLANNING AND DEVELOPMENT SERVICES

LIMITED



29 July 2025

Our Ref.: 1655.4

Application to Discharge Planning Agreement 141 dated 21 January 1992 relating to:

- (a) Land on the east side of A2037 Henfield Road, Henfield,**
- (b) Milcot West End Lane, Henfield,**
- (c) Builders Yard (now known as Vinalls Business centre) Neptown, Henfield**

Background

Planning permission was sought under DC/24/0465 for the residential redevelopment of the commercial premises known as Paiges Yard, Nep Town, Henfield, which adjoins VBC (Vinalls Business Centre) that is the subject of the above 1992 planning agreement. The application was refused under delegated powers on 20/05/2024 and the subsequent appeal dismissed on 24 February 2025. In dismissing the appeal, at paragraph 24 of the decision letter, the Inspector states:

There is no detail before me of the relocation premises or the extant planning agreement from 1992 that encourages residential development at the site. There is no substantive evidence before me of any intention to bring forward residential development at the Vinalls Business Centre that would weigh in favour of the proposal.

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This is not surprising because examination of the Planning Register for the application demonstrates the Council did not include the supporting, statutorily required, Combined Design and Access Statement and Heritage Impact Assessment (CDASHS) or the two extra copies of it that were supplied soon after registration when it was noted this crucial document was missing off the Planning Register and without which public consultation had taken place. The application should not have been validated absent of that document, in particular by virtue of Article 9 of the T&CP (Development Management Procedure)(England) Order 2015 (as amended) and the NPPF. In the event, the Delegated Applications Assessment Sheet and other file documents show conclusively the Council did not take the CDASHS into account at the time of publicising and determining the application.

An opportunity was therefore given to the Council in the Appellants' appeal statement, which included a further copy of the CDASHS for good measure and which is now on the Planning Register dated 20/06/2024 being the date the refusal was appealed, to review its position in the light of the various important matters and the 1992 Agreement etc. referred to therein, which it thought it would welcome. However, the Council did not review its position or otherwise make any comment at all about the situation. In this respect, it appears it was none the wiser about the offer, possibly because it had not read the appellants' appeal statement.

The CDASHS for DC/24/0465 explains that:

"The applicants purchased this site, known as Paiges Yard, through their company HHC Developments Ltd, towards the end of 2023.

As far as can be ascertained, in 1874 the current application site formed part of a larger sandpit to the east and west although active sand extraction appears to have ceased by 1897. Buildings had been erected on the southern boundary of

this site by 1911 but these were later extended during 1955 with further buildings, some replacements, subsequently erected on and about the site. By 1969 the site appeared generally as it does today, albeit that the buildings, some of which appear to have existed since 1911, have since fallen into disrepair and are ramshackle in appearance.

Following cessation of use as a sandpit the only known subsequent primary uses that are known about have been as a coal merchant and the latest vehicle repair use carried on by N & R Motors. There is a lease dating from 2006 but it is understood the company took up occupation before that. There are no planning records relating to the site. The use is now lawful and not subject to conditional planning controls limiting working hours or preventing outside working etc, having carried on for a period well in excess of 10 years.

Regarding Vinalls Business Centre (VBC) to the west, the essence of Planning Agreement 141 dated 21 January 1992 reserved 'yellow land' at the then newly formed Henfield Business Park (HBP) being developed by R Vinall (Henfield) Ltd (RVHL) that enabled relocation of various non-conforming commercial users out of residential areas in the village to the BP. The Agreement included an intent to relocate the commercial uses from VBC, which was rented by RVHL, if the opportunity arose to allow redevelopment of the site for residential purposes. There are 'yellow land' premises reserved at the now fully developed HBP to allow relocation in accordance with the agreement in the event the opportunity arises etc. However, 30 years later, VBC is currently fully let out to businesses that cause no apparent direct harm to their immediate residential neighbours and are in a reasonable state of repair with necessary facilities so it is currently intended the use will continue. It is accepted the premises are visually incoherent with their surroundings so it is hoped, as originally intended, a more sympathetic residential solution can be found for that site in the future. However, in stark contrast there is a pressing need to resolve the future of Paiges Yard, which is an eyesore and contains a use that has the potential to cause

nuisance to neighbours, particularly if used to its unencumbered maximum, if it has not done so already. It is certainly a visual eyesore in the street scene.

In this respect, N & R Motors tenancy came to an end before being purchased by the applicants and the business has decided to move to pastures new, which throws up a much needed opportunity to address the future of the site.

The buildings are old and in a very poor state of repair, lack even basic facilities demanded by modern industry and do not comply with current market requirements that would allow for new rental agreements or freehold occupation etc. There will have to be considerable investment if commercial use of the site is to continue, which will generate a need for larger buildings akin to those at HBP, a good proportion of which were designed specifically to cater for the needs owner/occupiers, to enable a viable venture and return on the investment through rental or sale etc.

This application therefore seek to address the future of the site in a manner that is not harmed by nor compromises the continued viability of VBC or prevent its redevelopment for residential purposes in the future should the opportunity arise, which will contribute in part to the housing needs of the village, enhance the amenities and outlook etc of residential neighbours and make a positive contribution to enhancement of the character of the Built up Area and the Conservation Area within which it is located the line of which run along the southern boundary of the site.”

The CDASHS, along with the subsequent appeal, explained the rationale behind the layout of the development. The Transport Statement explained that the new optimum positioned private drive located centrally in the site to ensure maximum visibility could be upgraded and extended to serve also the residential redevelopment of VBC to the west, which is sought by the above 1992 Planning Agreement. In turn, this would have allowed for the removal of the existing substandard access into VBC that has exceptionally poor vertical

alignment with the public highway and lacks visibility splays that are mostly prevented by parking along the road frontage. It is only through the proposed housing and parking layout, which enabled viable return for this commercial site, that threw up the opportunity to have facilitated road frontage housing development along the entire length of VBC, which would have enhanced considerably the character of this part of the Conservation Area and resolved highway danger by removing road frontage parking etc.

In good faith and at considerable expense, the applicants purchased the freehold of Paiges Yard and VBC in June 2023 with a view to meeting the spirit of the Council's intention since 1992 of redeveloping both conjoining sites for residential purposes and facilitating relocation of the existing commercial users at VBC into the "yellow land" premises reserved for this purpose at HBP.

The applicants consider the purchase of Paiges Yard along with the preparation and submission of DC/24/0465 for its residential redevelopment that allowed for the viable redevelopment of that site along with optimum redevelopment of VBC was therefore a thoroughly wasted effort. There appears no doubt that the Council has no regard at all to the 30 year objective of the Council to redevelop VBC with housing that would have been facilitated to far greater satisfaction by the DC/24/0465 scheme that allowed for the comprehensive development of the whole made possible by single ownership of both sites.

In the light of the above and that the primary view of the Council is that Paiges Yard should be developed with road frontage development, which is simply not financially viable and would prevent optimum access to both sites and facilitate road frontage development to VBC etc., the site has now been sold on to another commercial user who, it is understood, intends to carry on commercial use.

In these circumstances, the applicants, who have retained VBC, intend to continue the commercial use of VBC for the foreseeable future. Accordingly,

they now seek to discharge the 1992 Agreement because it is effectively spent. Its objectives to redevelop HBP, allow the subsequent relocation of commercial users from Milcot, West End Lane, Henfield to HBP that facilitated residential redevelopment of that site, to control occupiers of the initial units at HBP, reserve “yellow land” at HBP for VBC occupiers in the event of residential redevelopment of that site have either been achieved or associated time limits expired (the Agreement applies for a period of 25 years from the commencement date of HBP that occurred in the early 1990’s) or the company and individual who agreed terms for unit occupation of HBP, to use best endeavours to redevelop VBC for residential purposes and the “yellow Land” no longer trade or have died.

In this respect, it is understood the Agreement’s First Applicant, R Vinall (Henfield) Ltd, ceased trading in the late 1990’s. The Second Applicant, Peter Gander, died on 08/10/2012.

Neither the First Applicant nor the Second Applicant owned VBC but merely rented it off Mrs Mabel Gander, a position endorsed by Recitals (a) of the Agreement, who also owned Paiges Yard. When she died, the current applicants to this application had the opportunity to purchase both sites under the name of HHC Developments Ltd.

The commencement date for the various terms of the Agreement is set out at 1.8 of Definitions, which means when the development of the red land (now HBP) began, which was in the early 1990’s and certainly no later than 1995 by which time a good number of units had been built and occupied for some years. The provisions of the Agreement relating to the red land (4) i.e. HBP ceased about 5 years ago by virtue of clause 4.1.8.4 although the First Applicant for the purposes of Clause 4.1 ceased to exist in the later 1990’s. Whilst the terms of the Agreement were still acknowledged by the current applicants, it is doubtful whether they could have been enforced beyond 2000.

The provisions of part 5 relating to the blue land (Milcot) have been achieved in that the site has been redeveloped for residential purposes many years ago.

Part 6 applies to the green land and what is now known as VBC. The First Applicant ceased trading in the late 1990's with Peter Gander also dying on 08/10/2012. Neither was owner of the site, which reflects the best endeavours element to use the site for residential development. The site is now in new ownership by HCC Developments Ltd against which the Agreement cannot be enforced. Nevertheless, the new owners and applicants sought to honour the objectives of the Council when they had the opportunity to purchase the site and Paiges Yard, it transpires to no avail.

The yellow land is dealt with by Part 7 of the Agreement and allowed for the relocation of businesses from VBC in the event that site was redeveloped for residential purposes. At various stages, the yellow land has been altered, in agreement with the Council, to enable the development of the site for owner/occupier units whilst retaining a reduced yellow land area that is limited to a single commercial unit. This Part of the Agreement is however no longer enforceable by virtue of clause 7.1.2 even though, in good faith, a unit has since been reserved for these purposes. Since the refusal of the Paiges Yard, which influences in no small measure the future of VBC, the "yellow" unit will now likely be sold off.

In all the circumstances it is anticipated the Council will now discharge the Agreement because it is effectively spent and no longer of effect. This will allow the "yellow" unit at HBP, also owned by HHC Developments Ltd, to be sold away with purchasers having certainty the Agreement no longer applies to the unit. It will also be clear that VBC is unencumbered by the Agreement, that might otherwise prejudice its sale for commercial purposes in the event residential redevelopment is no longer pursued. It will also allow investment in the commercial site to cater better for market needs.