BRETT INCORPORATED
PLANNING AND DEVELOPMENT SERVICES
LIMITED

30 September 2024

Our Ref.: 1655.3

LPA's Ref.: DC/24/0465

PINS Ref.: APP/Z3825/W/24/3346736

Dear PINS,

RESPONSE TO LPA'S STATEMENT, 3RD PARTY APPEAL REPRESENTATIONS AND SUGGESTED CONDITIONS

Appeal by Mr & Mrs K Henley HHC Developments Ltd

DC/24/0465 - Demolition of existing buildings, cessation of commercial vehicle repair business use, provision of new access and erection of two buildings containing overall 3 x 2-bed dwellings and 2 x 2-bed apartments along with ancillary parking and a utility building for each unit.

Site at Paiges Yard, Nep Town, Henfield BN5 9DZ

LPA Statement

Disappointingly, it seems the LPA has not read the Appellants Submission Appeal Statement (ASAS) but merely rehearsed various comments set out in its Delegated Applications Assessment Sheet (DAAS) why it considers the appeal development unacceptable on the basis of the information it took into account

Brett Incorporated Ltd Brett Incorporated Ltd Brett Incorporated Ltd Brett Incorporated Ltd Brett Incorporated Brett Incorporated Ltd Brett Incorporated Ltd Brett Incorporated Ltd Brett Incorporated Ltd
MAILING ADDRESS: 18 SEAL ROAD, SELSEY, CHICHESTER, WEST SUSSEX, PO20 0HW.
Tel: 01403 258800 [redacted] e-mail: office@brettinc.co.uk
MANAGING DIRECTOR ~~~~~~~~~~ SIMON BRETT MRTPI
REGD OFFICE: 18 Seal Road, Selsey, PO20 0HW
REGD IN THE UK NO: 4869163
www.brettinc.co.uk

when determining the appeal application.

The evidence set out in the ASAS proves beyond any doubt the LPA did not take into account the statutorily required Design and Access Statement as well as a wealth of other important information and material considerations submitted in support of the appeal application which should have been afforded weight and put into the balance etc in arriving at a decision.

In these circumstances, it is difficult to see how the LPA can substantiate its refusal reasons that stem from an incomplete set of documents. It was open to the LPA to take all those documents it had 'missed' into account as part of this appeal process and reconsider its position, however slight, but it has not even done that, preferring to rehearse its original reasoning for refusal.

Whilst the LPA is not compelled to read an appellants appeal statement, had it done so in this instance, it would have been alive to the various serious failings in the validation, processing and determination of the appeal application. It is also oblivious to the offer contained within the ASAS seeking it to review its position about the appeal development in the light of all the facts and documents submitted in support of the appeal application that it effectively ignored when it determined the appeal application but which it could have taken into account at this appeal stage. The application was determined under delegated powers and the LPA's appeal response, which could have included review or withdrawal of unsubstantiated refusal reasons, could have proceeded under delegation also. In these circumstances, as suggested in the ASAS, an application for a full award of costs against the LPA for entirely unreasonable behaviour is submitted herewith.

The ASAS addresses in detail the refusal reasons pitched against this development by the LPA, particularly in the context of the comments set out in its DAAS. As it stands, the LPA has not contested the appellants appeal case in any way.

For example, the LPA does not contest the ASAS highlights the LPA's misdirection of its own policies regarding loss of employment space that is claimed to be contrary to policy in the first refusal reason. The LPA has not taken into account a host of material considerations captured by the Design and Access Statement and as amplified in this appeal to rebut the second refusal reason. Regarding the purported harmful impact of existing and future commercial use at Vinalls Business Centre (VBC) on the appeal dwellings promoted by the EHO and raised in the third refusal reason, no account has been taken by the EHO or LPA of the appellants case made at the time of the appeal application and at this appeal relative to this matter. This includes the legal definition of commercial E(g) (Formerly B1) users to not cause impact on residential amenity etc or the approval of DC/23/1734 referred to at paragraph 57 of the ASAS. The EHO had raised almost identical objections to that residential conversion scheme, which conjoins the north west corner of VBC. The approval of DC/23/1734 is at odds with the third refusal reason and the LPA does not contest the point. Similarly the LPA does not contest the appellants cases regarding the fourth and fifth refusal reasons.

The LPA's appeal statement merely rehearses its DAAS, which, as has been demonstrated, is based on incomplete information. The refusal reasons and the LPA's appeal case must both therefore be entirely flawed in the context of the requirements of s.38(6) of the 2004 Act, which requires all material considerations put forward by an applicant to be taken into account in determining an application and arriving at a balanced decision. The LPA has not sought to justify or explain its approach or to review its position in the face of the evidence and material considerations etc it has effectively ignored throughout this whole process and now drawn to its attention.

The LPA's DAAS has already been addressed and this response addresses the consequences of its lack of consideration of the ASAS. Overall, the LPA has refused the appeal application on false premise because it has ignored relevant

facts it was obliged to take into account. It cannot therefore substantiate its refusal reasons. It has effectively chosen to ignore those relevant facts during processing of the application and again during this appeal. Accordingly, it appears there is little point in making further comment on the LPA's appeal statement other than in relation to its proposed conditions in the event the appeal is allowed. It is however quite clear a full award of costs against the LPA for unreasonable behaviour is entirely justified. It is considered this appeal should be allowed for all the reasons set out on the appellants behalf.

Comments of Ms Ruth Freeman Nep Close

It appears many of the comments stem from a misunderstanding of the plans and rationale behind the scheme that will see the weight and amount of traffic reduce compared to its commercial counterpart. There will be 10 car parking spaces available rather than 4 as suggested with ample space to turn in order that vehicles can enter and leave the public highway in forward gear. Visibility at the new entrance will be much improved compared to the existing arrangement. There is no doubt the development seeks to optimise the amount of housing on the site that is considered beneficial and desirable in view of the existing severe shortfall in housing supply and the current high demand for this accommodation that has been worked up with a local housing agent to suit current needs of first time buyers and ambulant disabled etc. The scheme also allows for access through to VBC that will allow optimum development of that site in the event it is redeveloped for residential purposes to meet the aspirations of locals and the Parish Council.

LPA Recommended Conditions in the event the appeal is allowed

Although no doubt an oversight, a statutory time limit for implementation of 3 years is appropriate.

In other respects the following comments are made regarding the list of suggested conditions as they appear and in the light of the 6 tests.

2. A drainage strategy prepared by EAS Ltd was submitted with the application and whilst planning control should not replicate other controls there is no objection to this condition on the basis that the matters will be prepared to support an associated Building Regulation application that will be resolved well before building works commence.

3. No objection

4. There are no existing trees affected by this development and, apart from landscaping on and about the parking area to include any road frontage landscaping detailed in the ASAS it is considered that, other than lawns initially laid to grass seed or turf, landscaping for the individual dwellings should be left to the occupiers choice that will more likely be maintained in good order. There is no requirement for 10% BNG (by deemed or applied condition) in view of the submission date of the appeal application before such was introduced.

5. Considered unnecessary in view of these facilities shown on the submitted plans. A positive obligation to provide what is shown will be acceptable.

6. Considered unnecessary in view of such facilities shown on the plans. A positive obligation to provide what is shown will be acceptable.

7. Considered unnecessary in view of such facilities that are shown on the plans. A positive obligation to provide what is shown will be acceptable.

8. Considered unnecessary in view of such facilities shown on the plans. A positive obligation to provide what is shown will be acceptable.

9. Agreed

10. There will be a need for a Grampian type pre-commencement condition reflecting condition 4 of DC/23/2037 that is referred to on the first page of the

appellants Water Neutrality Statement. This will ensure details are approved by the LPA allowing for the collection of rainwater from the gutters of the appeal development and the adjoining premises that discharge over and into the red edged area of the appeal site in connection with the rainwater harvesting scheme that will support this development.

Yours sincerely,



Simon Brett