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FINAL COMMENTS CONCERNING

APPEAL AGAINST THE NON-DETERMINATION OF APPLICATION DC/26/0024

FOR

CHANGE OF USE OF BUILDING TO PROVIDE 9 C3 RESIDENTIAL UNITS

**BENTLEY HOUSE, NORTH HEATH LANE INDUSTRIAL SITE, HORSHAM,
RH12 5QE**

D&M REF: 243/25/MS
PINS Ref: 6007051
May 2026

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1.0 INTRODUCTION

- 1.1 This statement provides final comments in direct response to those submitted by Horsham District Council ('the Council') in relation to the Appeal Against Non-Determination (PINs reference 6007051).
- 1.2 The application concerned the proposed change of use of the property to provide 9 residential C3 dwellings and was allocated the reference DC/26/0024 by the Council. We have previously submitted an initial statement which expanded on those points raised within the originally submitted Planning Statement for which the Inspector should have a copy.
- 1.3 This response will cover five main points to assist the Inspector in reaching their conclusions on the merits of the appeal. Firstly, we will provide a factual update concerning the site and the examination of the emerging Horsham District Local Plan. We will then review the proposed reasons for refusal before providing a response and concluding remarks to such. We will then provide a final section on the suggested conditions. The content of this statement will be supported by appendices where relevant.
- 1.4 Within this Introduction we also seek to comment on the Council's Covering Letter which seeks to justify why the application was not determined within the agreed time period. This is addressed separately from the main matters of consideration for clarity of the Inspector.

RESPONSE TO COVERING LETTER

- 1.5 The Council's Covering Letter provides their justification as to why the application ran longer than the agreed period of time for its determination
- 1.6 The applicant does not, in the first instance, dispute the chronology set out by the Council in relation to the queries raised by the Council's Environmental Health Officer. While these comments were raised late within the original determination period, in the

spirit of proactive and positive working the applicant addressed these comments; these comments related more to matters of clarity around the data provided than anything else. We note that the Council's questionnaire appears to be missing the EHO comments so these have been appended to this statement.

- 1.7 Following the receipt of said comments the officer sought to agree, as required by law, the relevant pre-commencement condition which was duly agreed. The application then appears to have been passed for internal review whereby the officer's original recommendation appeared to have been reviewed by senior colleagues who ultimately raised concerns as set out within the Council's Covering Letter.
- 1.8 In an email exchange with officers, we sought greater clarity on exactly what information was being requested to address the concerns. In repeated questions officers simply reiterated a generic need for *robust and compelling evidence to demonstrate that such uses are no longer needed and/or viable, in accordance with Policy 9*. As will be set out below it is the appellant's consideration that this had been provided from outset. In the absence of specific points or comments regarding the information as submitted it was considered that the question could remain open-ended with a continued request for more and more despite this being previously provided.
- 1.9 No specific detail was received prior to the submission of the appeal; the specifics that were received in a subsequent email are also set out within the Council's Statement which will be addressed in later sections of this statement.
- 1.10 While this context provides some clarity for the Council's position we would make the following further submission. At the start of the second page of the covering letter the Council seek to explain that they sought to avoid unnecessary refusal and to provide opportunities for further dialogue to have occurred. Despite this statement the Council have sought to introduce two additional reasons for refusal beyond that concerning Policy 9.
- 1.11 Whilst it is at the discretion of the Inspector to determine whether the Council has acted unreasonably in the handling of the application, we will, throughout this statement,

highlight what we consider to be unreasonable aspects of the Council's Statement of Case. These matters are summarised in the concluding part of the statement.

Structure of Final Comments

- 1.12 As set out above the remainder of this statement will seek to provide a factual update on the emerging Horsham Local Plan in relation to the site before providing comments on the Council's Statement of Case and then provide comments on the suggested conditions.
- 1.13 As with the initially submitted appeal statement, this statement will seek to cross reference where necessary to relevant documents already submitted to the Inspectorate.

2.0 FACTUAL UPDATE

- 2.1 Since the appeal was initially submitted at the end of March the Council has hosted the initial sessions for the reopening of the examination of the emerging local plan. One of the sessions held, Matter 4, specifically considered the economic policies within the emerging plan including Policy 30 contained within as referenced within the Council's statement.
- 2.2 The examination sessions were held between 21st and 24th of April and covered four subject matters. The fourth of these was held on the afternoon of 23rd April and related to *Business and Industrial Needs*. As set out in the original submission the appellant had made submissions as part of the Regulation 19 stage of the Plan.
- 2.3 On the reopening of the Examination the Inspector invited further comments concerning the four Matters. On behalf of the appellant these were duly submitted on 9th April, after the appeal for non-determination was submitted. A copy of this submission is made available at **Appendix 1**. This submission sought to challenge the wider policy framework with a specific focus on the suggested allocation of North Heath Lane Industrial Site as a Key Employment Area as proposed by Policy 9 of the Plan. It is our position, as set out in the submission, that such allocation would be unsound.
- 2.4 During the examination session on the Matter, the Inspector gave specific regard to the submissions as made by the appellant. A transcript of this examination is provided at **Appendix 1** with the specific part highlighted at time stamp 5:07 – 5:10. As is clear the Inspector set out that

Taking that last point first. If you've got a site in a particular location that has a mix of uses but there are constraints on the operation of that site the policy doesn't quite fit it there could be a soundness issue there couldn't it. Because the policy could be ineffective or you'd be preventing development from occurring that would be in accordance with the NPPF. So there is potential soundness there but I'm going to ask

you to look at that one, because though I've read those representations I need to know more to say for sure what I think there.

- 2.5 During the examination the Inspector made clear that he would provide a list of post-hearing points for reference by the Council in the progression of the plan. Following this comment, we wrote to Planning Policy of the Council, copying in the Programme Officer, expressing our openness to further discussions. In response to this the Programme Officer responded stating:

I have made the Inspector aware of the contents of your email. Once he has summarised the action points, this site will be a matter for the Council to address.

This email is also within **Appendix 1**

- 2.6 Subsequently the Inspector published their *Post Hearing Letter* which included interim conclusions and action points, again this is attached at **Appendix 1**. As is clear from the Letter there is a clear need for additional housing to be delivered over the plan period increasing the annualised figure from 777dpa published in the emerging plan (890 from the relevant standard method formula) to the region of 1,189 dpa (to address Crawleys unmet need) + any unmet need from the south coast.
- 2.7 In the Appendix of the Letter the Inspector set out detailed actions points concerning Matters 3 and 4. Of specific reference to the site one such requirement is to review the wording of Policies 29 and 30 to ensure that it is worded more positively. Of greater reference is the last which states (clearly in reference to North Heath Lane) *Address concerns with sites where existing restrictions means likelihood of vacancies in coming years particularly in existing KEA allocations.*
- 2.8 We consider that the above represents a factual update to the status of the emerging plan in relation to the proposal. We are somewhat surprised that the Council did not

seek to make any reference to the examination within their own statement despite their submissions about the relevant emerging policy.

- 2.9 As we will set out in the subsequent sections of this statement therefore, we consider that, in line with paragraph 49 of the NPPF, any weight to be afforded to the relevant emerging policies should be severely tempered by virtue of the unresolved objections and the absence of consistency with the Framework. We highlight that the outstanding unresolved matter on this policy is not just on its wording but on the evidence base that has informed the allocation. This unresolved matter is clearly something the Inspector considers as a matter of soundness.
- 2.10 To this extent we do not consider that any real weight can be given to the evidence base concerning the site contrary to the position taken by the Council

3.0 SUGGESTED REASONS FOR REFUSAL

- 3.1 Between Paragraphs 1.3 to 1.6 and again within the recommendation the Council have suggested three reasons for refusal.

Reason 1

- 3.2 The first reason is to do with the loss of the employment space stating that it is *unjustified* and that *insufficient evidence has been provided to demonstrate the site is no longer required or viable for employment use*.
- 3.3 It also goes on to state that the proposal would undermine the continued function of the wider employment area. This we contend is a significant overlap with suggest reason 2 addressed in more detail below.
- 3.4 The policy conflict reference is policy 9 of the Horsham District Framework and emerging policy 30 of the emerging Local Plan. It also gives references to the economic objectives on the NPPF though does not specify any paragraph numbers.
- 3.5 As will be demonstrated in greater detail we consider that more than enough evidence has been provided to demonstrate that the site is no longer suitable for the lawful employment use. As we will highlight the evidence provided is consistent with the level of detail provided to the Council and the Planning Inspectorate in reaching determinations to accept the loss of employment space. Further, it will be highlighted that the various scenarios presented by the Council appear to demonstrate a lack of understanding regarding the planning conditions currently covering the use and operation of the building and wider estate and therefore do not appear evidence based.

Reason 2

- 3.6 The second suggested reason for refusal significantly overlaps with part of the first in that it states that the development would result in an incompatible relationship between

uses which would likely place pressure on surrounding businesses *through complaints relating to noise, disturbance and operating conditions*.

- 3.7 The policies references are Policies 9 and 33 of the District Planning Framework.
- 3.8 As will be set out we contend that if regard is given to the existing conditions on site, then it can reasonably be determined that, subject to condition, the relationship between the uses would be acceptable. We will give regard to both the site layout, the existence of neighbouring residential uses and the compatibility of Class E uses with residential.
- 3.9 Alongside this we will highlight that existing planning conditions already significantly hinder the hours of operation and uses permitted within the estate to the extent that any disturbance outside of normal key working hours would be non-existent and enforceable through existing condition framework.

Reason 3

- 3.10 The third reason for refusal relates to the relationship of the two uses on the site and how this would prejudice the living conditions of future occupiers. Specific regard is given to *commercial activity, vehicular movements, and associated noise and disturbance*. It is stated that insufficient information has been provided to demonstrate how future occupiers would be protected from such impacts.
- 3.11 The policy cited in the suggested reason is Policy 33 and the objectives of the NPPF. Again, no specific paragraph of the NPPF is referenced.
- 3.12 As set out under Reason 2 it will be highlighted that there are existing checks and measures on the use of the wider industrial estate which are enforceable which would protect the amenity of future occupiers.

Policies Referenced

- 3.13 For the avoidance of doubt the following policies of the Development Plan are referenced in the suggested reasons for refusal.

Policy 9: Employment Development

Policy 33: Development Principles

- 3.14 The suggested reasons also reference Policy 30 of the emerging Local Plan which concerns *Enhancing Existing Employment*.

- 3.15 The reasons also reference general economic and amenity objectives of the NPPF without giving reference to specific paragraphs or sections. The Council has also not included any reference to any supporting guidance, advisory notes etc.

4.0 RESPONSE TO COUNCIL'S FULL STATEMENT OF CASE

4.1 Within this section of the statement we will seek to make reference to the main planning matters as they relate to the Council's Full Statement of Case. We acknowledge that the Council has not raised concern regarding the impact of the proposal in terms of ecology/biodiversity, highways, water efficiency, climate change and therefore any comments on these matters would be limited.

4.2 In addressing the Council's comments we will give regard to the following main considerations:

- Policy Background
- Principle of Development
 - o Location of Development and Previously Developed Land
 - o Housing Land Supply
- Loss of Employment
- Impact on Wider Industrial Estate
- Standard of Accommodation and Compatible Uses
- Other Matters

Policy Background

4.3 Before engaging in submissions regarding the main planning merits we consider it important to review the Council's position on relevant policies and to make submissions on such matters. This is particularly in relation to the emerging policies and evidence base.

4.4 There is agreement between parties that the relevant plan for determination is the Horsham District Framework (2015) and that this should be read alongside the National Planning Policy Framework (2024) as well as the National Planning Policy Guidance (NPPG).

- 4.5 It is also recognised that the Council are in the process of looking to adopt a new Local Plan. We have provided a factual update on the examination of this above. At paragraph 2.11 of the Council's Full Statement of Case the Council acknowledge that *the emerging policies carry only limited weight in decision making*.
- 4.6 The appellant recognises, in line within paragraph 49 of the NPPF, weight can be given to emerging policies in the decision-making process. The weight to be afforded by such is based on three factors.
- a) The stage of preparation of the emerging plan – the more advanced the greater the weight
 - b) The extent to which there are unresolved objections, the less objections the greater the weight. Conversely the more objections the lesser the weight
 - c) The degree of consistency between the relevant emerging policies and to the Framework.
- 4.7 Critically for the third of these points it is highlighted that the emerging plan is being assessed against the September 2023 version of the NPPF. We also highlight in this regard that the Council is in the position that in line with the requirements of the NPPF the Council must start work on a new plan this summer whilst the current emerging plan is under consideration.
- 4.8 Addressing these three stages we make the following points.
- The plan is at examination stage. This had been put on hold for a considerable time but had been reopened earlier this year. The initial hearings focused on four matters with future hearings scheduled for later in the year. In the interim the Council are expected to undertake a significant amount of work including identifying the quantum of housing to be delivered, to identify additional housing sites, review the economic policies etc. (a full list is set out in **Appendix 1**).

- As per the submissions made above and evidenced in Appendix 1 there remains significant objections to the plan when read as a whole. This includes the wider housing requirements and those specific to the site (Policy 30).
- The Inspector has clearly raised concerns regarding the consistency between the wording of policies and the wording of the September 2023 version of the NPPF. This is evident in the matters set out in Appendix 1 in the letter by the Inspector.

4.9 Having regard to the above we contend that the weight to be afforded to the policies should at best be very limited. This is particularly in relation to any reliance on the weight to be given to the proposed allocation of the site as a Key Employment Area. We highlight that the Inspector has found that the allocation could be a matter of soundness, as the evidence to justify such is being challenged to the extent the policy would be ineffective. As we will set out further later, we therefore consider that some of the Council's points which rely on such evidence should be tempered by this question.

4.10 We also highlight that paragraph 50 of the NPPF states:

However, in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:

- a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and*
- b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.*

We highlight that the development clearly is not of such substantial size that it would undermine the plan-making process both at large and in relation to the specific policies of the plan that concern the site. This, we contend, therefore would further undermine

the weight to be given to the emerging policies of the plan; this position is further by consideration of the housing land supply set out below.

- 4.11 As set out in policy paragraph 2.12 the Council is *currently unable to demonstrate a five-year supply of deliverable housing sites*. Accordingly, as recognised by the Council, the presumption in favour of sustainable development set out within paragraph 11d) of the NPPF is engaged. As well as applying the tilted balance, this requires the decision maker to give regard to the weight to be afforded to existing policies based on the consistency of such policies with the NPPF.
- 4.12 Within paragraph 2.12 the Council state that they consider Policies 7, 9 and 33 of the Development Plan to be broadly consistent with the Framework's objectives relating to *economic growth, protection of employment land and securing high quality development*. Accordingly, it is the Council's position that these policies should attract significant weight.

Policy 7

- 4.13 We make the following submission on these policies. Policy 7 is a strategic policy relating to economic growth. While we do not disagree that the policy is broadly aligned with the NPPF we would question its relationship to the determination of the proposed development. We highlight that the Council have not referenced the policy in the suggested reasons for refusal.

Policy 9

- 4.14 Policy 9 concerns Employment Development. For the purposes of the application, we highlight that the site is not designated as a Key Employment Area under the 2015 plan and as set out above we do not consider that any weight should be given at this time to its potential allocation as part of the emerging local plan. The relevant test of Policy 9 is that contained within part 2. of the policy.
- 4.15 At this juncture we highlight that the NPPF does not include any specific policy to resist the loss of employment floorspace. It is recognised that Section 6 of the NPPF seeks to

promote economic development to encourage employment opportunities and investment. It does not, however, include any paragraph resisting the loss of such, this is in contrast to other policies within the NPPF which are clear on such matters (heritage, landscape etc.).

- 4.16 In such circumstances the requirement is to read the NPPF as a whole to establish the degree of compliance. In relation to Policy 9 we give specific reference to those policies contained within Section 11 of the NPPF and making an effective use of land. Specifically, paragraph 124 sets out that *Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses*. It continues at paragraph 125 to set out other considerations for such.

- 4.17 Paragraph 125 c) states:

give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;

We highlight that at no point within the Council's statement has this balancing exercise been undertaken. Further, as we will address later the NPPF specifies that *substantial weight* should be given to the value of such, despite this the Council has only afforded moderate weight to such.

- 4.18 We also set out that paragraph 125 d) states:

promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure).

Whilst Policy 9 seeks to resist the loss of employment space unless it is evidenced we highlight that this is more restrictive than 125 d) which requires the decision maker to *promote and support* the development of buildings and land which are under-utilised particularly in circumstances where there is a clear need for housing (as is the case for the Horsham). We consider under-utilised is materially different from *no longer needed and/or viable for employment use* as referenced in Policy 9.

- 4.19 We therefore consider that whilst the wider objectives of Policy 9 could be considered to be broadly aligned with the NPPF there are conflicts with other elements particularly in relation to where the loss of such space would help address identified housing needs.
- 4.20 It is also highlighted at this juncture that Policy 9 (nor any supplementary guidance) does not, unlike many other development plans, include any specification as to how it would be expected to demonstrate that a *site/premises is no longer needed and/or viable for employment use*. To this extent any attempts to address this matter can only be informed by a review of previous determinations by the Council or at appeal. As will be set out later in Appendix 2, we consider the evidence provided to be consistent with that previously considered sufficient in the determination of similar applications.

Policy 33

- 4.21 We recognise that Policy 33 is largely aligned with the NPPF.

- 4.22 Within the remainder of this section the majority will deal with the main planning considerations. These comments are made in light of the policy considerations above and supported by relevant analysis and appendices.

Principle of Development

- 4.23 As set out in paragraph 4.1 of the Council's Statement of Case the site is located within the defined built-up area boundary of Horsham. Policy 2 of the Development Plan identifies that Horsham should be the main focus for development within the district.

- 4.24 Bentley House is currently within an employment use. Said use whilst falling within Class E is restricted by way of condition which limits its use to that of an office. As per the submission included at Appendix 1, 2e highlight to the Inspector at this juncture that emerging policy 30 seeks to allocate the site as a Key Employment Area for B2 and B8 purposes, not for Class E office use.
- 4.25 As set out in paragraphs 4.3 and 4.4 of the Council's Statement, Policy 7 and 9 set out the Council's policies in relation to economic development. Policy 33, as reference in paragraph 4.5, sets out general development principles.
- 4.26 At paragraph 4.6 and 4.7 the Council make representation that weight should be afforded to the emerging Local Plan policies and that full weight should be afforded to the employment policies of the existing plan. We have, above, provided our contention on these matters and continue to assert that only very limited weight should be given to the emerging allocation as a Key Employment Area.
- 4.27 For absolute clarity we highlight that the site is not designated as a Key Employment Area under the 2015 Plan.
- 4.28 We will under separate sub-header below address the loss of employment space as a separate matter. We of course recognise that this forms part of the principle of development but given the focus of such we have separated from other matters.

Location of Housing and Previously Developed Land

- 4.29 As per the Spatial Strategy the site is located within the built-up area boundary of Horsham. Policy 2 of the Development Plan identifies such settings as being the focus of development within the plan area. This is confirmed in Policy 3 which sets out the Development Hierarchy for the Plan.
- 4.30 As is clear Policy 3 puts the built-up area boundary of Horsham as the highest rung on the hierarchy of settlements. It describes Horsham as

Settlement with a large range of employment, services and facilities and leisure opportunities, including those providing a district function. Strong social networks, with good rail and bus accessibility. The settlement meets the majority of its own needs and many of those in smaller settlements

- 4.31 The location of the site within Horsham is therefore clearly considered to be inherently sustainable. In addition to this, specific to the proposal itself, we highlight that the site is within a close proximity to a number of amenity provisions. There are local shops within the immediate vicinity, open space, schools, a public house as well as public transport connections such as bus stops and Littlehaven train station.
- 4.32 It is therefore evidently clear that the site is in a fundamentally sustainable location. This provision evidently accords with the objectives of the NPPF. This we consider weighs in favour of the proposal.
- 4.33 We also highlight that when regard is given to the glossary of the NPPF the site is clearly a site fitting the definition of brownfield land/previously developed land. This is recognised by the Council in paragraph 5.5 of the Council's Statement of Case.
- 4.34 Given that the site is defined as being previously developed land then there is a requirement for the decision maker to engage in those policies set out within the NPPF and the Development Plan.
- 4.35 To this extent Policy 2 of the Development Plan for example states: *Encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value.* Further, Policy 33 states: *developments shall be required to... Make efficient use of land, and prioritise the use of previously developed land and buildings whilst respecting any constraints that exist;*
- 4.36 As highlighted above Section 11 of the NPPF gives substantial weight to making the effective use of land. Specifically, paragraph 125 requires substantial weight to be given the re-use of under-utilised buildings/land particularly where these are considered to be

previously developed land within settlements. On this matter paragraph 125 c) of the NPPF sets out the requirement for decision makers to engage in a balancing exercise. It states:

Decisions should...give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;

The Council have failed to engage with this in their statement. We contend that this clearly demonstrates the Government's prioritisation of re-using previously developed land in sustainable locations to deliver housing. The proposal would evidently deliver such, as recognised by the Council at 5.5, yet the weight afforded to such is limited to *moderate*.

- 4.37 We consider that the principle of development in that is consists of the redevelopment of previously developed land, making an effective use of an under-utilised building within a sustainable settlement location weighs significantly in favour of the scheme. These are clear significant benefits that need to be considered in the balance.

Housing Land Supply

- 4.38 In addition to the above comments we highlight that as referenced above, the Council have acknowledged at paragraph 2.12 of their statement that the Council is unable to demonstrate a five-year housing land supply and as such Paragraph 11d) of the NPPF is engaged. The statement, however, does not identify the extent of this under provision.
- 4.39 The latest publication of the Monitoring Report, December 2025, attached at Appendix 3, sets out that the Housing Land Supply Position is equivalent to 1.7 years' worth of supply. This equation is based on the annualised need of 1,338 dwelling per annum (even greater than that referenced in the Inspector's examination letter). This figure

does not account for meeting any unmet needs that may be required from Crawley or the South Coast.

4.40 It is therefore clear that the Council has a sustained, significant and chronic under delivery of housing. Having regard to such an under-delivery it is our contention that the provision of housing should be considered a significant benefit, not the *moderate benefit* that the Council set out at paragraph 5.4 of the Statement. The weighting to be given to this benefit as significant is consistent with decisions made at appeal across a variety of authorities. We highlight that significant weighting has been afforded to the delivery of housing regardless of the number of units proposed and/or whether the Council has a suitable supply of housing or not – examples of such appeals are attached at Appendix 4.

4.41 As we will set out later, we contend that the Council have unreasonably afforded a reduced level of weight to the provision of housing to the extent that the balance exercise required by paragraph 11d and 125c of the NPPF has not been reasonably engaged.

Concluding Remarks

4.42 In terms of the principle of development it is therefore clear that the delivery of housing would clearly conform with the objections of Section 5 and 11 of the NPPF which clearly weighs in favour of the scheme. We highlight that at paragraph 4.8 the Council clearly set out that the *residential development is generally acceptable in spatial terms*.

4.43 Whilst there is a necessity to consider the loss of employment space as part of the principle of development, we highlight that the Council's statement of case is bereft of any detail considerations of the wider matters that must factor into the decision-making process. We consider the omission of these matters to be unreasonable to the extent that they have undermined the suggested balancing exercise.

Loss of Employment Space

- 4.44 The first suggested reason for refusal set out in the Council's statement of case is in relation to the loss of the employment space with the Council stating that it has not been suitably demonstrated that the loss of the space is justified. This consideration is referenced in line with Policy 9 with the Council stating that the evidence is insufficient to demonstrate that the employment space is no longer needed and/or that it would be unviable.
- 4.45 The Council's position is that Policy 9 seeks to *safeguard employment sites and premises unless it can be satisfactorily demonstrated that they are no longer needed and/or viable for employment purposes*. As set out we consider that the NPPF does not include any specification for the justification of the loss of employment space and the only reference is to under-utilised buildings as included within Section 11 of the NPPF.
- 4.46 We highlight that Policy 9 does not, unlike many other development plans, specify how the threshold of justification can be met. In light of such in preparing the application the appellant reviewed a number of other decisions to establish what the Council and Inspectors have previously considered sufficient. This review was supplemented by the commercial agents experience in providing similar such reports.
- 4.47 For the benefit of the Inspector we attached at Appendix 4 a number of examples of schemes approved which have resulted in a loss of employment space and the Council/Inspectors commentary on such. The table below provides a brief summary of these. It is highlighted that the majority of permissions for change of use of commercial to residential within the district has been undertaken by way of the prior approval regime which have been excluded from the examples below.

Reference	Site	Commentary
DC/25/0905	24 Carfax, Horsham, West Sussex, RH12 1EB	Loss of commercial floorspace accepted despite objection from economic officer with little justification. Officer's Report seemingly

		identifies that this was acceptable because a ground floor retail was being retained
DC/25/0813	Truffles, High Street, Henfield, West Sussex, BN5 9DA	Despite objections from economic officer, the residential use was considered acceptable as some commercial remained and the site was in a sustainable location for residential.
DC/23/0345	75A Crawley Road, Horsham, West Sussex, RH12 4DS	Not considered viable to upgrade commercial units to sufficient standard. The evidence for this, also prepared by Crickmay, is attached. There is no detailed viability assessment, nor any marketing information.
DC/21/2840	Old House Mews, 24 London Road, Horsham, RH12 1AY	Officer's Report states: <i>A supporting letter from Crickmay Letting Agency confirms that the premises has been marketed for the last 6 months following the current tenant's decision to relocate to a home-based office. The premises has not attracted any interest, with the perceived reason being the building's poor layout and energy performance rating.</i>
DC/24/0796	The Old Dairy and The Granary, Crosby Farm, RH13 0RX	Acceptance that two years of unsuccessful marketing was sufficient to justify the loss of the commercial building.
3375491	32 High Street, Steyning, West Sussex, BN44 3YE	Paragraph 7: <i>The property has now been on the market for approximately three years with significant reductions in asking price made during this period. Whilst the reasons for each of the viewings not being carried forward have not been explained, it is clear that an offer for the</i>

		<i>property was accepted only for the buyer to subsequently withdraw. Subsequent viewings have also not resulted in any further offers. Although the Council seeks further marketing information and financial assessment, the details provided by the appellant reasonably show that the property has been marketed over a lengthy period and that, despite numerous viewings and one subsequently withdrawn offer, no buyer has been found.</i>
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- 4.48 What is clear from these examples is that the Council has relied predominately on evidence that demonstrates a property has been marketed for a sustained period of time without success. We draw particular attention to the recent appeal decision at 32 High Street, Steyning, wherein the Inspector gave significant regard to the three period of marketing without success to justify the loss of the employment space.
- 4.49 We emphasise that Bentley House, like these other examples, is not within an area designated as Key Employment as part of the relevant Development Plan. Like many of the examples it is located within sustainable locations that accord with the Spatial Strategy. It is further highlighted that the same commercial agent Crickmay, who prepared the evidence for Bentley House, was involved with these examples.
- 4.50 The Inspector will have a copy of the submitted information that was submitted alongside the application. This includes a detailed report about the wider estate including specific reference to Bentley House as well as a covering letter providing a specific update on the marketing efforts of the property.
- 4.51 The Council confirms at paragraph 4.10 that they recognise that Bentley House has remained vacant for a number of years and that a marketing exercise has been undertaken include *a range of advertising platforms, marketing boards, circulation to commercial agents, flexible leasing arrangements and varying rental approaches*. The

Council also recognise that the report includes concerns about the wider market in explaining why the property remains vacant.

4.52 Despite this recognition at paragraph 4.11 the Council states that *Officers are not satisfied that the evidence submitted robustly demonstrates that the premises are no longer needed and/or viable for employment use in accordance with Policy 9. It goes on to recognise that whilst the marketing exercise demonstrates difficulty in securing a tenant for the building in its current form and condition, the evidence provided is largely focused on prevailing market conditions...*

4.53 At paragraph 4.12 the Council's statements set out the specific concerns stating that limited evidence has been provided *regarding alternative employment scenarios, refurbishment options, reconfiguration opportunities, or whether the building could viably support smaller scale or flexible employment uses that may better reflect modern occupier requirements....no detailed financial viability specific to Bentley House has been submitted as part of the application to demonstrate that continued employment use, refurbishment or adaptation of the building would be unviable*

4.54 We consider that this clearly fails to give due regard to the evidence as submitted. Indeed, it is even highlighted that in the preceding paragraphs of the Council's statement at 4.10 it is recognised by the Council that attempts to market the property with *flexible leasing arrangements and varying rental approaches* has been undertaken. It is highlighted that the supporting letter from Crickmay clearly states that they...

Have continued to offer the premises in flexible configurations to include the whole building and offering on a floor-by-floor basis along with clearly advertising that consideration would be given to the further sub-division of floors and alternative uses

4.55 It is therefore wholly unclear to the appellant why or indeed how the Council is seeking to justify their position as held in paragraph 4.12 that the marketing has not considered alternative approaches. Such commentary is contradictory to their own comments set out in the statement.

- 4.56 Furthermore, as is clear from a site visit, the building has been maintained to a high standard with recent refurbishment undertaken to assist in the marketing without avail.
- 4.57 It is acknowledged that a site-specific financial viability assessment has not been submitted with the application, however, it is highlighted that the Policy does not reference such requirements, only that it needs to be demonstrated that the site is unviable. Evidence of viability can include financial considerations but can also be based on market conditions, constraints on the land, level of interest etc. It is further highlighted that in the examples provided above no detailed financial viability was submitted. Accordingly, we consider it an unreasonable matter of inconsistency that the Council have raised the absence of such as a justification to object to the proposed development.
- 4.58 Fundamentally, if the two submissions by Crickmay are read fairly and in full then it is clear that Bentley House has been marketed without success for more than six years during which time it has remained vacant. The report identifies the various efforts to market the property including how it has been advertised and the flexibility afforded to potential occupiers.
- 4.59 Of greatest significance to the continued vacancy of the property are those circumstances set out within the Crickmay report. Specifically, the report identifies that the planning conditions on the site which limit the hours of operation, the specific use within Class E (as acknowledged in paragraph 2.8 of the statement), and the availability of higher quality alternative stock within the area have meant that opportunities to let Bentley House have been unsuccessful. We have also highlighted in various submissions that the Council has actively sought in the past to resist attempts to vary these conditions and to actively enforce against breaches of the conditions relating to operational hours. On the matter of operational hours, it is highlighted that this is a restriction not just on the hours of work but on movements within the estate meaning that the accommodation is clearly not suitable for modern office use as it would go so far as to limit out of hours cleaning or flexible working patterns.

- 4.60 The Council's statement does not address these matters in any specific manner. In light of this we consider that the Council have unreasonable failed to give full regard to the evidence as submitted. This failure of duty has resulted in a position which we consider does not stand up to scrutiny as clearly evidenced by the contradictions within the Council's own statement. We contend that the information provided is much more substantial than that provided in the determination of any of the other examples set out above and thoroughly demonstrates that the site is not viable as an employment provision. Simplistically we consider that given the length of time that the property has been marketed for and the detailed manner in which this has been undertaken including flexible options then it is clear that the market itself has determined that the employment use is unviable.
- 4.61 For the reasons set out above we do not consider that the main part of the first reason for refusal in so far as it relates to the loss of the employment space does not stand up to scrutiny. It is our position that the loss accords with Policy 9 (2) in that it has been reasonably justified by the submitted evidence.
- 4.62 As recognised by the Council it is the decision makers duty to determine applications in accordance with the Development Plan unless material considerations justify an alternative. The only material consideration the Council presents to counter the Policy is the emerging designations within Policy 30 of the emerging Plan. Above we have provided detailed commentary, in accordance with paragraph 49 of the NPPF, on why we do not consider that this should be afforded any real weight in the decision-making process. Briefly put there remains significant challenge to the proposed designation including the evidence which informs the approach, and the Inspector has specifically requested that the Council review such.
- 4.63 We acknowledged that the first reason for refusal includes secondary part regarding the impact on the wider Industrial Estate. We consider that this part has substantial overlap, in an economic sense, with the suggested second reason which we address under separate header below.

Impact on Wider Industrial Estate

- 4.64 As set out the secondary part of the suggested first reason for refusal and the second reason for refusal as a whole concern the potential impact that the change of use could have (in the Council's opinion) on the wider Industrial Estate.
- 4.65 As per paragraphs 4.14 and 4.15, it is the Council's concern that if the application were approved it would *give rise to concerns regarding the integrity and long-term function of the wider industrial estate*. By virtue of the wording of the second reason of refusal this concern is sufficient that it would conflict with Policies 9 and 33 of the Development Plan.
- 4.66 The Council consider that the introduction of the residential use would have the potential to *create land use conflicts between future occupiers and surrounding commercial activity*. This concern is made in specific relation to *noise, disturbance, servicing arrangements, vehicle movements and the lawful operation of surrounding employment uses*.
- 4.67 The Council acknowledges at paragraph 4.16 that *mitigation measures could potentially address aspects of internal living conditions*. This is consistent with the commentary and consultation response from the Council's Environmental Health Officer who suggested conditions as per the email attached at Appendix 5 and the response at Appendix 7. This condition is included within the submitted list as part of this appeal. Accordingly, it is evident that from the perspective of the Environmental Health Officer whilst there would be some concerns this could be overcome by way of a condition. In reviewing the comments from the EHO we also note that they have not taken into account the conditions on the estate limiting use and therefore there would be no real prospect of the buildings being used for *gymnasiums and dance studios* and that such concerns are pure speculative hyperbole.
- 4.68 Despite this the Council's statement goes on to state *officers remain concerned that the introduction of residential use in this location could prejudice the continued operation, flexibility and evolution of the wider employment area*. This concern is amplified when

considered cumulatively alongside the wider context of the estate and the potential precedent such development may establish.

- 4.69 This concern is reiterated in paragraphs 4.42, 4.43 and 4.44. In the last of these the Council reintroduce the concept of a precedent being set. Paragraph 4.42 expands the concerns being that *the proposal would create the potential for future conflict arising from noise, disturbance, servicing operations, vehicle activity, hours of operation and other impacts typically associated with the lawful functioning of an employment area.*
- 4.70 We firstly highlight, in response to the matter of precedent, that it is a clear established position of the planning process that each application must be assessed on its own merits. While the change of use would introduce residential use within the industrial estate it does not automatically mean that the whole of the employment uses would be lost. Indeed, it is highlighted that if an application were submitted on the basis of precedent being established elsewhere then in our experience the Local Planning Authority would not recognise such stating that each application must be assessed on its own merits.
- 4.71 We further highlight that the position the officers of the Council is taking appears to be that despite the comments of their own expert consultants they remain concerned. The Council have not introduced any specific evidence to support their concern only that there might be an issue in the future with the council's view being in relation to what they consider to be activity and impacts typical of employment areas. Notwithstanding that the site is not designated as a key employment area, it is crucial to note that the Council's concerns do not appear to be specific to North Heath Lane Industrial Estate. This is clear as the Council have not evidenced how the proposed development would impede on the continued operation of the industrial estate itself. Further, we highlight that the term *other impacts* is incredible vague and generalised and is unsupported by any evidence. The absence of evidence with objections based on generalised comments is a clear example of unreasonable behaviour as set out in the NPPG, and we invite the Inspector to review this in line as to whether costs should be awarded against the Council.

- 4.72 Notwithstanding the absence of the evidence, we set out below our contentions as to why the proposed use would not impede on the employment operation of the Industrial Estate either in its current form or that which could be undertaken in the future. We have focused these comments on those matters set out within the Council's statement concerning *noise, disturbance, servicing operations, vehicle activity, hours of operation and other impacts*. These comments have some inevitable overlap with the suggested third reason for refusal we, however, focus this section on the interaction to the commercial units.
- 4.73 Firstly we highlight that Bentley House is located towards the edge of the Industrial site. To the east of the building is a parking area with the residential development of Barnsnap Close beyond and to the south. To the west is a similar building also falling within a lawful office use. The use of this building like Bentley House is conditioned so that it cannot change to any other use other than an office without the benefit of express planning permission. To the north-east of the site is another office building also with conditions limiting the use to such. To the north are three units falling within a light industrial use (use class E(g)). Within the wider estate the majority of the units are also within a Class E(g) use consisting of office accommodation, light industrial and research and development uses. Pages 2 and 3 of the Crickmay Report provide a detailed list of the tenants on site and the uses.
- 4.74 Accordingly, whilst the site is described as an Industrial Estate it is an estate where all of the uses fall within the wider Class E(g) provision. Class E (g) is defined within the Order as *Uses which can be carried out in a residential area without detriment to its amenity*. There is clearly recognition at national level therefore that the uses falling within Class E(g) are inherently by definition compatible with residential to the extent that neither would adversely impact on one another. It is further highlighted, as recognised in the Council's statement and as per the wider submission on the emerging plan, that there are existing conditions across the site which restrict a change of use of the buildings without the benefit of express planning permission. In this regard the Council are already in control of the uses of the buildings to the extent that any future development can reasonably be controlled ensuring that the residential use does not prejudice the future operation of the estate.

4.75 Further, it is highlighted that the hours of operation are already controlled by way of condition. A copy of the various permissions on the site is included at Appendix 6 – it is highlighted that due to the age of such permissions the Council has unfortunately not kept records of all relevant documents. Said conditions limits not just the hours that the businesses can operate but the hours that vehicles including deliveries can access the estate. There are various permissions limiting the hours of operation but essentially any use of the buildings or the wider estate (including vehicle movements) is limited to be being between the following hours:

- 7am – 7pm – Monday to Friday (vehicle movements allowed until 9pm)
- 7 am – 1pm – Saturday
- No hours - Sunday

Accordingly, there are existing constraints to limit the hours of work within the estate. Applications have previously been made to vary/remove these conditions which the Council have refused so as to ensure protection of the amenity of the adjoining residential properties. It is therefore our position that there are already conditions in place which effectively control and limit the existing commercial operations of the estate regardless of the proposed development. The application therefore would not give any greater prejudice to the wider commercial operation of the estate than is already in place.

4.76 Furthermore, the existing conditions effectively already limit the impact arising from noise, disturbance, serving, vehicle activity and hours that is undertaken on the Industrial Estate. It is these same limits that the Inspector in the examination of the plan has raised as causes of concerns to the extent that they could lead to an issue of soundness hence the instruction to the Council to review the potential designation in emerging policy 30. These matters are specific to the North Heath Lane Industrial Site and, as per submission on the emerging Local Plan, cannot be considered typical of other industrial estates. This clearly demonstrates further that the assessment from the Council on this matter relies on vague and generalised comments without any specific regard to the site itself.

- 4.77 The planning conditions on site effectively limit not just the current activities but any future changes that go beyond the scope of what has been consented (use and hours). The Council therefore would continue to have control over any operation within the estate. Should permission be approved then this would simply become a factor in the determination process to be assessed on its own merits at the time of application.
- 4.78 We highlight to this extent that the site is already surrounded by other residential properties. The protection of the amenities of these properties has consistently been the reason why the Council has imposed conditions in the first place, refused to alter them subsequently and pursued active enforcement when breaches have occurred. This again highlights that the wider economic of the estate is already operating in an environment which limits its uses.
- 4.79 For the reasons set out above we do not consider that the position taken by the Council in respect to the compatibility of use and the potential impact on the employment use within the wider industrial estate stands up to scrutiny. The uses as consented and controlled by the existing conditions all fall within use class E(g) which by definition can operate within a residential area with impact on the amenity. In addition to this, other conditions limiting the hours of operation exist to protect the amenity of residents in the area already. To this extent we contend that the proposed development would not result in any greater pressure on the surrounding businesses and that the two should be able to exist harmoniously as is the case with the existing wider residential context of the site.
- 4.80 We go further to state that the Council's position on these arguments relies solely on generalised and vague assertions which are not supported by any site-specific evidence. Such an approach clearly constitutes unreasonable behaviour as defined within the NPPG.
- 4.81 It is therefore our position that the suggested second reason for refusal does not stand up to scrutiny and that the proposal in this regard would accord with the development plan.

Standard of Accommodation and Compatible Uses

- 4.82 As set out above there is an inherent overlap between the Council's second and third suggested reasons for refusal. While the second reason is effectively that the arrangement will put pressure on the economic activities through complaints the third is that the standard of accommodation would be compromised to the extent that those complaints would occur in the first place.
- 4.83 The comments set out above regarding the definition of uses falling within Classe E(g) and the existing conditions to limit which uses can be undertaken within the site and the hours of such uses remains valid in this regard too. This is to say that by definition the uses within Class E(g) are ones which Government has determined are not incompatible with the amenities of residential properties.
- 4.84 This approach is further evidenced by the approach taken to the General Permitted Development Order (Part 3, Class MA) which permits the change of use of Class E floor space to residential with little regard to the wider context of the site other than noise impacts and natural light, unless the site is within an *important for general or heavy industry, waste management, storage and distribution, or a mix of such*. In this instance the site is clearly not in such an area, the site is not currently designated as a key employment area and is not used for any of those uses as specified. If it were the Government's view that Class E uses were fundamentally incompatible with residential amenity, as suggested in the Council's statement of case, then the definition within the use class order of E(g) would not be there, and permitted development rights would not be afforded as they currently are.
- 4.85 Notwithstanding these points, it is recognised that the Council in their statement considered that the amenity of the residential properties would be impacted by noise from the industrial estate which would result in occupiers having to *rely heavily on*

closed-window ventilation and mechanical systems to achieve acceptable internal conditions, which is not indicative of a high-quality residential environment.

- 4.86 Further, in paragraph 4.34 the Council identify the absence of private amenity space or balconies to further impact the quality of accommodation. The Council recognise the proximity to Pondtail Park but do not consider this sufficient to address the question of the residential amenity. The issues in 4.34 are summarised as *noise exposure, limited external space, and reduced perception of residential tranquility*. Owing to such the Council consider that future occupiers would not benefit from suitable living environment and there would be *conflict with criterion 2 of Policy 33 and the objective of ensuring high standards of residential amenity*.

- 4.87 Criterion 2 of Policy 33 states:

Ensure that it is designed to avoid unacceptable harm to the amenity of occupiers/users of nearby property and land, for example through overlooking or noise, whilst having regard to the sensitivities of surrounding development;

- 4.88 Firstly, it is our contention that a fair reading of this condition is to ensure that proposed development does not result in harm to the amenity of neighbouring properties and is not a policy intended to secure a certain standard of accommodation. On this matter, we highlight that the Council's plan does not include any specific policy (nor criterion of any other policy) to secure the standard of accommodation. It is clear that the plan read as a whole does not require, for example, that new dwellings accord with the Ministerial Space Standards (the dwellings exceed this standard in any regard).

- 4.89 The plan is also silent on any requirement for external space. It is highly notable that the Ministerial Space Standards and the NPPF both of which form material considerations for the decision maker to give regard to are also silent on this requirement. We also emphasise that the General Permitted Development Order for such change of uses is also silent on such matters with requirements being linked to noise, natural light and compliance with the space standards. We contend that this

clearly reflects the Government's approach to similar proposals, namely, that the assessment of whether such change of uses is acceptable is based on these factors. As per the requirements of Section 38(6) *Planning and Compulsory Purchase Act*, proposals must be determined in accordance with the development plan unless material considerations indicate otherwise.

- 4.90 Fundamentally, it is our position that the adopted development plan does not include any policy that seeks to secure a certain standard of accommodation. Whilst material considerations can be informed by numerous documents as set out above there appears no justification on this matter to raise objection regarding external amenity on such. Notwithstanding this, we reiterate that Pondtail Park is within the immediate context of the site and provide opportunity for outdoor recreation and enjoyment.
- 4.91 There is no dispute from the Council that the dwellings accord with the relevant space standards or that there would be sufficient natural light. Of the three items within the General Permitted Development Order the only concern raised is that of noise. On this matter we highlight that at paragraph 4.16 under a separate header the Council acknowledge that mitigation measures controlled by way of condition would be sufficient to overcome such concerns, this point is not repeated within the assessment of the standard of accommodation. It therefore appears evident that the Council are satisfied that the impact of noise can be overcome by way of suitably worded conditions – such wording is proposed within the Council's Statement of Case.
- 4.92 For the above reasons it is our contention that if due regard is given to the adopted Development Plan and material considerations that the proposal would deliver a high standard of accommodation.
- Firstly, it is highlighted that whilst located within an Industrial Estate the lawful uses within such (and the uses currently being undertaken) fall within Class E(g) of the Use Class Order. Such uses are, by definition, uses which would not adversely impact on neighbouring residential amenity.
 - Secondly, it is highlighted that there are existing conditions and controls within the site that limit the wider operations including timings and use. The Council

has continually sought to actively enforce these conditions and resist applications to vary/remove such. The result of such is that the Industrial Estate has functioned without concerns being raised regarding the neighbouring residential development outside of the estate.

- Any noise impacts could be overcome by way of condition as recognised by the Council's Environmental Health Officer to ensure that the recommendations set out within the submission are secured. Whilst the Council may be inclined to resist mechanical ventilation there is no policy within the adopted development plan nor material consideration that would justify objection to such. We highlight that the application submission included a detailed Noise Assessment which subject to the suggested recommendations ultimately concluded *having followed a 'good acoustic design process' as referenced with the ProPG, PJA believes that the noise impact on future occupants at the proposed development can be controlled to an acceptable level*. Said report identifies that the accommodation can be provided to a level accepted by the industry and the relevant British Standard 8233:2014 and ProPG: Planning & Noise (2017).
- In respect of external amenity, the Council do not have any policy within the plan to specify a certain provision. Neither the NPPF, Ministerial Space Standards or indeed the General Permitted Development Order include such either, all which are clear material considerations to the position of central Government on such matters. The absence of policy within the adopted development plan is clearly a consistent matter, and we again highlight that Criterion 2 of Policy 33 is not related to the standard of accommodation for future occupiers. This part of the policy is clearly worded to ensure that the amenity of neighbouring off-site properties is not adversely impacted by the proposed development.

4.93 For these reasons we do not consider that the Council's third reason for refusal stands up to scrutiny. We would go further to highlight that it is a position again unreasonable made based on vague and generalised comments without due regard to the specifics of the North Heath Lane Industrial Estate including existing planning conditions and the uses on site.

Other Matters

- 4.94 While we consider the matters within this section of the statement above to be comprehensive in how they address the suggested reasons for refusal raised by the Council we consider it pertinent to make a number of other observations on the submitted statement of case.
- 4.95 As has been set out throughout the above there is a general lack of consistency between the Council's position on the subject matter. For example, at paragraph 2.8 there is a recognition from the Council that there are conditions limiting the use of buildings within the estate, whilst this is the case the full statement of case does not consider this in the wider considerations of the applications merits. We contend this to be highly relevant for the reasons set out above and results in an ill-informed position on the potential future of the estate.
- 4.96 Such inconsistency has also stretched to the considerations regarding the approach to Policy 9 and the required evidence base which is inconsistent with the approaches set out above and again is not supported by any specific policy wording or supporting documents. The same is true of the emerging policy 30, while the Council recognise that limited weight can be afforded to such policy the sites potential designation as a Key Employment Area appears to have strongly influenced the Council's justification. There is no recognition within the statement of the implications of the hearing sessions that have been undertaken on these matters including that the Inspector has made suggestions that the allocation could be a matter of soundness and have asked the Council to review the proposed allocation.
- 4.97 We also note that in paragraph 4.27 the Council set out that there would be a *modest benefit in terms of perceived security* throughout the introduction of natural surveillance outside of traditional working hours. This benefit is not referenced within the later balancing exercise. Nor has any benefit been attributed to the re-use/conversion of the building in terms of sustainability and the impact on embodied carbon emissions. We

highlight here that the Council declared a climate and ecological emergency in 2023, and one of the points to address such is *Minimise carbon emissions by ensuring new developments are designed and constructed in such a way that helps achieve net zero carbon emissions*. Evidently, there is a benefit from such which is recognised in the NPPF throughout the encouragement of reusing existing buildings.

- 4.98 Within the balancing exercise at paragraphs 5.4, 5.5 and 5.11 the Council afford only moderate weight to the provision of housing and the reuse of existing vacant buildings. This is clearly inconsistent with the wider approach to housing shown at both appeal decisions and those of the Council wherein *significant* weight has been given to such provisions. It is also inconsistent with policies consider the reuse of existing vacant buildings which the NPPF is clear should be afforded *substantial weight*.
- 4.99 At paragraph 5.8 the Council again rely on wording caveated by the term *would likely* which is not supported by evidence and instead relies on generalised and vague assertions. This is not only unreasonable but is clearly contrary to the evidence submitted by the appellant in the noise assessment etc,

5.0 CONCLUSIONS AND BALANCING EXERCISE

- 5.1 The comments above set out a comprehensive response to the Council's full statement of case.
- 5.2 As the Inspector will no doubt be aware Section 38(6) of the Planning and Compulsory Purchase Act requires applications to be determined in accordance with the development plan alongside any material considerations. The Council agree that the relevant development plan is the 2015 Horsham District Planning Framework. The Council's position is also that only limited weight could be given to the emerging plan including Policy 30. We contend that, having regard to Paragraph 49 of the NPPF and the Inspectors interim findings, only very limited weight at best can be given at such time as significant objections remain outstanding. We are indeed somewhat surprised to find that the Council did not give any regard to this in their submitted statement.
- 5.3 As has been set out above, in response to the Council's suggested reasons for refusal it is our contention that the proposal would accord with Policy 9 and 33 of the Horsham District Planning Framework as identified within the reasons for refusal.
- 5.4 As set out we consider that sufficient evidence has been provided in the supported information to comply with criteria 2 of Policy 9, we stress that the evidence submitted is consistent with that of other schemes accepted by the Council or at appeal with a particular focus on the fact it has been vacant, despite the marketing efforts, for 6 years. It has also been set out that Policy 33 as referenced does not seek to provide any relevant framework for the assessment of the standard of accommodation and the proposal does not conflict with any specific material considerations in this regard. It has also been set out that if regard is given to the specifics of the site that the proposal would not result in an incompatibility of use as is clear demonstrated by the definitions of Class E(g) of the Use Class Order.

- 5.5 Given that the proposal would accord with the Development Plan the NPPF is clear that planning permission should be granted, and we see no reason why there should be any deviation from this.
- 5.6 Should, however, the Inspector disagree with this position then we highlight that the tilted balance is engaged not only by virtue of the absence of suitable housing land supply (paragraph 11d) of the NPPF) but also by virtue of paragraph 125 c) of the NPPF. We highlight that the Council have failed to engage in the latter of these.
- 5.7 In terms of the benefit of the proposal we consider that these are significant when considered cumulatively.
- 5.8 The proposal would provide 9 residential units in a sustainable location that accords with the spatial strategy set out within the development plan and generally recognised within the NPPF. The provision of 9 residential units is against the backdrop of a significant undersupply of housing made further acute by the Inspector's position that the housing requirements of the emerging plan should be much greater. We therefore consider that the provision of such units should be afforded significant weight. This weighting is consistent with various decisions made by the Council and by Inspectors at appeal. This is far greater weight than the 'moderate' positions by the Council at paragraph 5.4.
- 5.9 The proposal would also make use of a brownfield site within a settlement for the provision of housing. The NPPF makes a clear instruction at 125 c) that this should be afforded substantial weight. This is clearly a greater weighting than the *moderate* identified within paragraph 5.5. We go further to highlight that the weighting afforded to such benefit is one of instruction from the NPPF not judgement and therefore the Council have acted unreasonably in this regard.
- 5.10 The proposal in reusing the existing building would also deliver benefits in the form of reducing the energy needs and making the best use of embodied carbons. This we contend would assist in meeting the Council's action points set out within the declared

Climate and Ecological Emergency. This we contended should be afforded moderate weight as a benefit to the proposal.

- 5.11 Further, as identified by the Council in paragraph 4.27 the scheme should be afforded *modest weight* in recognition of the natural surveillance that would result from such.
- 5.12 In considering the negative impacts of the proposal we contend that these are very limited in both number and weight. The Council have identified the permanent loss of the established employment provision. This loss of space is equivalent to circa 600sqm of floorspace. Crucially this floorspace, despite the varying approaches and continued marketing, has been vacant for six years. Given our contention that the evidence accords with Policy 9 criteria 2, we would afford such loss as a neutral or limited impact in that it is justified as per the requirements of the policy. Furthermore, while the Council's objectives are to sustain employment provision it is also to ensure that the employment floorspace is of a high quality that is occupied which is clearly not the case in this instance. While the Council has given regard to Policy 30 of the emerging plan given the outstanding objections, we do not consider that this would amount to anything like significant nor demonstrable harm.
- 5.13 The Council also considered that the alleged incompatibility of use would be tantamount to a significant harm both to the wider employment use and the standard of accommodation. As has been set out above it is highlighted that the proposed interrelationship is, by definition of Class E(g), wholly appropriate. It is also highlighted that there are a number of conditions on the existing estate which would afford significant protection to both uses and would reduce any potential impacts. It is also highlighted that the Council's objection on these matters appears to be unreasonably reliant on generalised and vague assertions which are not supported by evidence to the extent they run contrary to the detailed evidence provided at application stage. Given that it has been demonstrated by the appellant that the proposed uses could exist harmoniously we do not consider any weight should be afforded to this position. This therefore cannot be considered to be a significant, and more noticeable, nor can it

be considered a demonstrable harm – this is to say the harm has not been demonstrated by any evidence.

- 5.14 We further highlight that part of the Council’s objection to the uses on site is based on the potential to set a precedent within the estate. We do not consider this to be valid as all applications must be assessed on their own merits. This therefore cannot be considered to be a significant nor demonstrable harm.
- 5.15 In terms of the standard of accommodation it is our position that, in the absence of any specific requirement within the Development Plan, the proposal would accord with relevant material considerations. This is to say that the dwellings would all exceed or conform with the Ministerial Space Standards. Further, the dwellings would benefit from suitable natural light as required to be assessed under the General Permitted Development Order. Finally, the proposal, subject to conditions, would accord with the relevant British Standards and guidance in regard to the exposure of noise to future occupiers. Again, therefore we consider that this is not an identified harm.
- 5.16 Having regard to all of the above we contend that if due regard is given to the titled balance as required by Paragraph 11d) and Paragraph 125 c) of the NPPF then it is clear that there are significant and demonstrable benefits (housing, reuse of brownfield site, reuse of vacant building, surveillance etc). In consideration of the harms, we consider these to be limited and not demonstrable. The Council relies largely on generalised and vague assertion without any specific evidence and in conflict with expert submissions made by the appellant. Any harm arising from the loss of the floorspace is significantly tempered by the fact the building has been vacant for 6 years despite the continued marketing clearly demonstrating that the market has determined it is either unviable or no longer needed.
- 5.17 We therefore consider that proposal should be approved. The harms do not significantly and demonstrably outweigh the significant benefits as presented. In light of such we respectfully request that the Inspector allow the appeal and grant planning permission.

Given the potential fluidity of the emerging local plan, we will seek to provide any further factual updates on such process so as to inform the Inspector's decision making.

D&M PLANNING LIMITED
Chartered Town Planners

6.0 COMMENTS ON CONDITIONS

- 6.1 Within this section we have provided commentary on the suggested conditions as presented by the Council. These are addressed in the order as presented by the Council.

Condition 1

- 6.2 Agreed.

Condition 2

- 6.3 Agreed.

Condition 3

- 6.4 We highlight to the Inspector that the proposal is for a change of use of the building and not for any significant construction or any demolition. We therefore question whether there is a need for such condition to be attached to the decision.

Condition 4

- 6.5 We note that this condition has been suggested by virtue of the water company. We are not in dispute of the need to provide such for foul drainage but given the limited changes the need for surface water appears somewhat excessive as there would be no change to this.
- 6.6 The supporting statement from the Council appears to suggest the justification for such is on the basis of potential changes to the areas of hardstanding surrounding the area. If this is the case, we would suggest the condition should be worded along the basis of *prior to any works to the hardsurfacing...* This would also mean that if, in future, changes are made those changes would be in compliance with the aims of the Council.

Condition 5

- 6.7 We are in agreement with the objectives of the suggested conditions. It is, however, highlighted that the submitted Noise assessment includes such recommendations.

Condition 6

- 6.8 This is agreed.

Condition 7

- 6.9 This is agreed.

Condition 8

- 6.10 This is agreed.

Condition 9

- 6.11 This is agreed.

Condition 10

- 6.12 This is agreed.