Appendix F-

Planning Inspectorate

Appeal Decision

Hearing held on 10 June 2025

Site visit made on 10 June 2025

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04th August 2025

Appeal Ref: APP/Q3820/C/25/3360233
Shaw House (The Newmark), Pegler Way, Crawley RH11 7RR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Windcatcher Holdings Limited and Kempton Carr Croft against an enforcement notice issued by Crawley Borough Council.
- The notice was issued on 3 January 2025.
- The breach of planning control as alleged in the notice is: Without planning permission, the change of use of offices to 10 one bedroom and 16 two bedroom residential flats.
- The requirements of the notice are to: Cease the use and/or not use the premises for residential use as 26 residential flats. Remove all internal partitions and other alterations that have resulted in the creation of 26 residential flats.
- The period for compliance with the requirements is: 9 (nine) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made under section 177(5) of the 1990 Act for the development already carried out, namely the change of use of offices to 10 one bedroom and 16 two bedroom residential flats at Shaw House (The Newmark), Pegler Way, Crawley RH11 7RR, as shown on the plan attached to the notice and subject to the conditions in the attached schedule.

Preliminary matters

2. A signed Statement of Common Ground was provided prior to the Hearing. This detailed matters concerning agreement on: Affordable housing; trees; biodiversity enhancements and biodiversity net gain (BNG); water use; the provision of outdoor space; and the provision of open space, sport and recreation. It was agreed that the matters relating to affordable housing provision, trees and the provision of open space and recreation would be covered by a legal agreement.

3. The site currently has de-minimis biodiversity value. While not subject to mandatory BNG, there is a policy requirement[1] for all sites with a low or zero existing biodiversity baseline to use the 'Urban Greening Factor' criteria to achieve appropriate improvements and gains to the environment. This would provide a way for such enhancements to be adequately measured. It was agreed that biodiversity

[1] Policy G13 of the Crawley Borough Council Local Plan 2023-2040

enhancement could be subject to control through an appropriately worded condition that would include ongoing maintenance.

4. The proposed site plan ref. DHA/35516/01 indicating an area of approximately 70sqm to be allocated as a communal outdoor amenity area was not considered to provide a usable high-quality space or pleasant environment for future residents. It was agreed by the parties that the opportunity to provide open space for all the occupiers of the building was available by using land within the appeal site and that this could be secured by an appropriately worded condition.

5. In light of the agreement on these matters, they no longer formed main issues, and it was not necessary for the Hearing to consider them in any more detail.

6. A completed Planning Obligation by Unilateral Undertaking under section 106 of the 1990 Act was submitted on 25 June 2025. This made provisions for affordable housing, off-site open space, sport and recreation, off-site green infrastructure and monitoring fees. I will return to this later in my decision.

The appeal on ground (a) and the deemed planning application

Main issues

7. The main issues are:

- The effect of the development on the integrity of the Arun Valley's Special Protection Area, Special Area of Conservation and Ramsar Site in terms of water neutrality.
- Whether the building would meet the sustainable design and construction requirements of Policy SDC1 of the Crawley Borough Local Plan 2023-2040 (the LP).
- Whether the development can demonstrate that it is "network ready" to connect to a district energy network.

Reasons

8. The appeal relates to a three-storey former commercial building with an under-croft car park and hard surfaced land to its rear. It is located within Crawley town centre and fronts onto the A2219. Prior approval was granted in November 2016 for a change of use under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to convert the office building to residential by creating 10 x 1-bedroom apartments and 16 x 2-bedroom apartments (ref CR/2016/0816/PA3). Although the internal building work is complete, it was not completed within three years as required by the granting of the prior approval.

Water neutrality

9. The Arun Valley Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site are vulnerable to pressures arising from groundwater abstraction to meet the needs of residents of new development. Due to the location of the appeal site within the Sussex North Water Supply Zone, adverse effects on the integrity of the SPA and SAC could arise from increased water abstraction as this cannot be ruled out as contributing to the decline of wildlife within the SPA and SAC. Consequently, any development with the potential to

increase the demand for water, both alone and in combination with other approved and proposed development, would have a likely significant effect on the integrity of these protected sites (the Arun Valley sites).

10. Natural England issued a Position Statement in September 2021 which advised that due to the additional demand for water abstraction it could not conclude, with the required degree of certainty, that new development in this zone would not have an adverse effect on the integrity of the site. Although the proposal would not be directly connected with or necessary to the management of the protected sites, it is likely to affect the integrity of the Arun Valley sites through water abstraction which would lead to changes in water level and flow.

11. Therefore, pursuant to section 63 of the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations), the competent authority may only grant planning permission for the appeal proposal after having ascertained that there is no reasonable scientific doubt as to the absence of adverse effects on the integrity of the Protected Sites. In order to demonstrate, beyond reasonable scientific doubt, that no adverse effect on the integrity of the Arun Valley sites would occur as a result of the appeal proposal, mitigation measures are required to achieve Water Neutrality. This means that the use of water in the supply area before the development would be the same or lower after the development is in place.

12. The Council considers that although the building was formerly in office use, as it has been vacant for some time, it has a nil water usage rate. On this basis the appellants would have to prove beyond reasonable scientific doubt that the development would result in a net zero increase in water use from zero water use. As retro-fitting to incorporate rainwater harvesting to a completed development is stated as being disruptive and expensive, the appellants rely on proposals for water neutrality either through private offsetting or through the local authority led offsetting scheme.

13. The Council is working to establish a wider strategic solution to provide offsetting to enable development to take place. This is known as the Sussex North Offsetting Water Scheme (SNOWS). While the Council state that considerable work has been undertaken to establish the structure and procedures for SNOWS, to date, no water savings have been delivered that would enable any development to be offset. There is no fixed date for SNOWS to become operational and there is uncertainty that SNOWS, even when it becomes operational, would have sufficient water credits to support the appeal proposal.

14. Policy H2 of the LP identifies the appeal site as a deliverable key housing site which is allocated on the Local Plan Map. These are considered to be critical to the delivery of future housing in Crawley and are identified as being ‘deliverable’ within the first five years of the Plan (2023/24 to 2027/28). SNOWS is being designed to support plan-led development only, thus it would appear that the development could be in a position to apply to SNOWS. However, the Council could not be certain as to what priority the development may be given. If the development was to provide 100% affordable housing, the Council considered that it might be able to mitigate the water use of the development by using water that the Council has saved/is saving through its retrofitting of council house stock with flow limiting devices.

15. The development is in the hands of the receivers, and I was informed at the hearing that they were in advanced discussions with Crawley Housing to buy the site, with a purchase price having been agreed subject to planning and necessary surveys. If the development was to be transferred to Crawley Homes, it was agreed that the building would be used to deliver 100% affordable housing. In these circumstances, the Council agreed that it would use Crawley Homes, who run an offsetting scheme themselves for their own sites, to deliver the building.

16. Overall, I consider that although there is no guaranteed scheme to provide offsetting, from discussions during the Hearing, it appears that there are credible schemes that may be available, whether that be through Crawley Homes or SNOWS, or there may be the prospect of other third-party providers of credits. In these circumstances, as it seems to me that the development has a reasonable prospect of applying for credits, a Grampian condition could be attached preventing occupation until a water neutrality scheme has been approved by the Council and implemented, or alternatively in the event that the Council has adopted a water neutrality off-setting scheme, the requisite number of water offsetting credits have been purchased. Consequently, such a condition would ensure that offsetting measures are agreed, and the Council has confirmed in writing that the development is considered to be water neutral. The measures secured by a Grampian condition would ensure that there is no reasonable scientific doubt that the development would be water neutral.

17. I conclude that, subject to the condition, the appeal proposal would not adversely affect the integrity of the Arun Valley SAC, SPA and Ramsar sites. Consequently, it would be consistent with Policy G12 of the LP which seeks to protect the hierarchy of designated sites and habitats, and Policy SDC4 of the LP which requires all development within the Sussex North Water Resource Zone to demonstrate water neutrality through water efficient design and offsetting of any net additional water use.

Sustainable design and construction

18. Policy SDC1 states that relevant proposals must be supported by a Sustainability Statement detailing the performance of the development against requirements including proposed approaches to achieving relevant Building Regulations, minimising the loss of embodied carbon and the avoidance of overheating. Developments should be designed and implemented as far as possible to minimise the amount of carbon emitted throughout the development process and to limit the loss of any existing embedded carbon onsite, including through consideration of the feasibility of retrofitting and re-using existing buildings. The incorporation of this approach within the development process should be detailed in the Sustainability Statement. There is a further requirement for residential developments including 10 or more new homes to implement ‘a recognised quality regime to ensure that ‘as built’ environmental performance matches the calculated design performance.’

19. The Council’s concern is in respect of the absence of information regarding the environmental performance of the development. It considered that an assessment of the building was necessary, and as required by Policy SDC1 of the LP, to provide information on energy demands and the potential for further sustainable enhancements.

20. The building was converted under prior approval for a change of use under permitted development rights. The development was said to have been carried out in accordance with the approved scheme in every respect other than it was not completed within three years. The appellants highlight the fact that the change of use was undertaken in line with the standards required in terms of sustainability and therefore acceptable at the time. Having been completed prior to the adoption of the current LP, there was no requirement for a sustainability statement to be prepared as part of the permission.

21. Notwithstanding this, some technical details have been provided in the form of Energy Performance Certificates (EPC) in respect of the individual flats and communal areas which give the building a C rating for energy efficiency. This, the Council considers is low in comparison with new domestic properties in Crawley (including new builds, conversions and changes of use). The information supporting the EPC includes some technical information such as the presence of low energy lighting, the nature of the heating system and the U-values for walls, floors and roofs. There is also information referring to the appropriate use of acoustic attenuation and ventilation which appears to have been considered acceptable by the Council to discharge condition 2 attached to the prior approval.

22. I acknowledge that the Council is looking to be carbon neutral by 2050, and the policy requirements aim to help mitigate climate change. Nonetheless, the conversion of the appeal building pre-dates the LP which was adopted in October 2024 and a completion certificate from Building Control dated 1 June 2022 was issued for the development which demonstrates that the works undertaken were done to the standard required at that time. Furthermore, at my visit, I observed that the development appeared to have been completed to a high standard as was evident by the fixtures and fittings. Nonetheless, the failure to submit the Sustainability Statement places the development in conflict with LP Policy SDC1.

Network ready

23. Policy SDC2 of the LP serves to promote the development of decentralized energy generation within the Borough and particularly within identified District Energy Network (DEN) priority areas. It is cross-referenced in policy SDC1. The detailed requirements of the policy are applicable depending on the location, and the type and scale of development. It applies to this development on the basis that it is a major development involving the creation of new dwellings within a DEN priority area.

24. However, currently there is no DEN either existing or planned in the immediate vicinity. Furthermore, the appellants argue that it would have to remove the existing heating system for the entire building and replace it with a completely new system, to demonstrate a potential future connection to a DEN. This, as considered by the appellants, would be inherently unsustainable.

25. Policy SDC2(iii) of the LP includes a potential alternative approach whereby a minimum 20% proportion of energy needs could be met from low or zero-carbon energy sources located on or near the site. While there was some scepticism expressed by the appellants regarding whether this could be achieved, and although the appellants questioned its necessity, it was maintained that a re-organisation of the parking area may provide the required space for photovoltaic panels. It was therefore agreed between the parties that the requirement for

renewable energy on the site could be the subject of a suitably worded condition to comply with the policy, and I have no reason to disagree.

Planning obligation

26. The planning obligation includes the provision of affordable housing, financial contributions towards green infrastructure, off-site open space, sport and recreation, and monitoring and management of compliance. I am provided with suitable evidence in this case that these are necessary to make the development acceptable in planning terms; being fairly and reasonably related in scale and kind to the development and directly related to the development.

27. The obligation would secure 25% affordable housing, and this would meet the requirements of Policy H5 of the LP. There is also a requirement in Policy G13 of the LP to provide one new tree to be planted for each new dwelling. As there would be 26 flats provided by the development, the requirement would be for 26 trees to be planted in the Borough. This is secured by way of the commuted sum.

Planning balance

28. While there would be conflict with Policy SDC1 of the LP, in view of the Government's objective to significantly boost the supply of housing, the development would provide 26 modern good quality homes in a town centre location with easy access to services, and in light of the particular circumstances of the development whereby the policy requirements were not anticipated at the outset, I consider that the policy conflict should only be given limited weight. Furthermore, the principle of the use of the building for residential purposes is considered acceptable by the Council and it is identified as a deliverable key housing site in the development plan.

29. There are also significant benefits for the borough provided by the development in terms of the valuable provision of affordable housing. Although there is a reasonable prospect that the development will provide more than the required affordable housing, even if this was not to happen, the development would make a important contribution to providing housing at a time where there is a nationwide shortfall. Furthermore, the development would provide financial contributions for tree planting for environmental enhancement and for open space and recreation, which would be beneficial for the physical and mental well-being of residents in the borough. The benefits of the proposal attract significant weight and as the conflict with the Development Plan is limited, I consider that in these circumstances the proposal is acceptable.

Conditions

30. The conditions were submitted in draft form by the Council and discussed at the hearing.

31. As the development has been completed, it is not necessary to impose a time limit condition. I have imposed a condition to ensure that the required details of mitigation measures to achieve water neutrality are submitted, approved and implemented, and that evidence is provided of their implementation, so as to make the development acceptable in planning terms and to avoid an adverse impact on the Arun Valley SAC, SPA and Ramsar sites. As the permission is being granted retrospectively, the occupation of the development is restricted by the condition to

secure the required mitigation measures. The condition will ensure that the development can be enforced against if the requirements are not met.

32. The plans show space given over to parking for both cars and cycles. Conditions are necessary to ensure future occupiers benefit from sufficient access to parking facilities to protect their living conditions and to provide alternative travel options to the car. A condition to provide refuse and recycling facilities is necessary to ensure that there are sufficient facilities, and in the interests of visual amenity. A condition is necessary to ensure the size and siting of outdoor amenity space for the residents is necessary to ensure it is acceptable in planning terms and to protect the living conditions of future occupiers. A condition is necessary for biodiversity enhancement in the interests of nature conservation. And a condition is necessary to ensure the development provides alternative low zero-carbon alternatives for energy needs to improve environmental performance.

33. In some cases I have amended the wording of the suggested conditions in the interests of clarity. As reasoned above, I have not included the suggested condition relating to the requirement for the development to be "network ready" instead opting for the condition requiring low zero-carbon alternative energy provision.

Conclusion

34. For the reasons given above I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice and the notice will be quashed. As the appeal has succeeded on ground (a) it follows that ground (f) and ground (g) do not fall to be considered.

S A Hanson

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the approved plans as listed below save as varied by the conditions hereafter:

   Site Location and Block Plan 4397-001-A
   Existing Site Plan DHA/35516/01-A
   Proposed Site Plan DHA/35516/01
   Ground Floor Plan A 4397-104-G
   Ground Floor Plan B 4397-104-L
   First Floor Plan 4397-003
   Second Floor Plan 4397-004
   Existing (as-built) Elevations (third floor plan) DHA/35516/02
   Existing (as-built) Elevations DHA/35516/03

2. No part of the development hereby permitted shall be occupied until:

   a. A water neutrality strategy including water offsetting measures has been submitted to and been approved in writing by Local Planning Authority.

   b. The approved water neutrality measures have been carried out and a report completed by a suitably qualified person verifying the same, has been submitted to and approved in writing by Local Planning Authority.

   The approved water neutrality measures will thereafter be retained for the lifetime of the development.

3. Before the development is occupied, a minimum of 24 car parking spaces shall be provided in accordance with the approved plans. The car-parking shall thereafter be retained for the lifetime of the development for use by the occupiers of the development hereby permitted.

4. Before the development is occupied, cycle parking shall be installed in accordance with details that have first been submitted and approved in writing by the Local Planning Authority. The cycle parking shall thereafter be retained in accordance with the approved details.

5. Before the development is occupied, refuse and recycling facilities shall be provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The refuse and recycling facilities shall thereafter be retained for use by the occupiers of the development.

6. Before the development is occupied, an outdoor amenity area shall be provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The outdoor amenity area shall thereafter be retained for the lifetime of the development, for use by the occupiers of the development.

7. Before the development is occupied, biodiversity enhancements shall be implemented in accordance with details that have first been submitted to and

approved in writing by the Local Planning Authority. The biodiversity enhancements shall thereafter be retained and maintained in accordance with the approved details.

8. At least 20% of the regulated energy needs of the development shall be provided from low or zero-carbon sources located on or near the site, in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The agreed scheme shall be implemented before the development is occupied and shall thereafter be retained.

- End of schedule -

APPEARANCES

FOR THE APPELLANTS

Mr Jonathan Buckwell	Director, DHA Planning
Ms Lauren Sinden	Planner, DHA Planning
Ms Nicola Gooch	Partner, Irwin Mitchell
Mr Nathan Hall	Director, Kempton Carr Croft, receivers on behalf of 2F2 Ltd

FOR CRAWLEY BOROUGH COUNCIL

Mr Marc Robinson	Principal Planning Officer
Mr Ian Warren	Senior Planning Officer