

LW/05/1049
Lewes
18.05.05

Outline application for development for mixed use scheme to provide B1 commercial and residential (resubmission of LW/04/1717) at land at Southdowns Road (on junction with Mayhew Road) for At Pace Ltd.

1. Proposal

- 1.1. The site is located at the junction of Southdowns Road and Mayhew Way. Covering an area of 1.19 hectares, the site is located within the planning boundary and opposite Malling Recreation Ground. The site is flat, sitting below the level of the adjacent roads, and covered in scrub vegetation. The site is situated on the western edge of the industrial estate and is identified within the Local Plan as being suitable for B1/B2/B8 uses.
- 1.2. It is proposed to redevelop this undeveloped site to provide a mixed use development. A mix of 125 one and two bed residential units together with 3069sq.m of B1 commercial office floorspace will be provided with parking for 202 cars. A landscaped buffer will be provided to the northern boundary of the site, adjacent to existing residential property in De Gray Close and Cranmer Close. The commercial floorspace will be provided in blocks located on the eastern part of the site adjacent to the existing industrial/commercial premises with the residential blocks situated on the north and western parts of the site. Access will be from Southdowns Road. None of the buildings on the site will exceed the height of Sackville House, located opposite and on the southern side of Southdown Road.
- 1.3. Because of the nature of the development and the inability to provide affordable housing within the scheme (for viability reasons) the application has been advertised as a 'departure' involving press and site notices.

2. Key Policies

- 2.1. LDLP: ST3 – Design Form and Setting.
E1 – Planning for Employment.
RES5 – Unidentified Residential Sites.

3. Relevant History

- 3.1 LW/04/1717 – Outline application for the development of a mixed use scheme to provide B1, live/work and residential - refused 14.10.04, appeal lodged. Inquiry scheduled for November 2005.
- 3.2 LW/99/0927 – B1/B1c light industrial development with associated car and lorry parking – withdrawn.
- 3.3 LW/95/1058 – erection of public house, restaurant and surface car park – refused 16.11.95.
- 3.4 Other history of permissions on file for various commercial developments on the site, none of which were implemented.

4. Representations Received

- 4.1 **Lewes Town Council** – considered the application to be a cynical re-submission of previous plans with no substantial change; the proposals being too high, a gross over-development of the site and in conflict with the Local Plan. Members also expressed concern that such proposals could seriously compromise the ability for businesses to relocate when other development proposals, such as North Street, came to pass.
- 4.2 ESCC Highways – objected to the original application due to inadequate car parking. Comments on the amendments to be reported.
- 4.3 Southern Water – no objection.
- 4.4 Environment Agency – no objection, subject to conditions.
- 4.5 Environmental Health – no objection, subject to conditions.
- 4.6 Malling Residents Association – overdevelopment of the site, should only be used for commercial development due to being in the flood plain.
- 4.7 Sussex Police Crime Prevention – no objection, secure residential accommodation but parking areas need further thought.
- 4.8 Seven letters received from local residents objecting to the proposal on the following grounds: increased risk of flooding, traffic congestion, loss of light, impact from construction work, overdevelopment, increased noise, alteration to landscape, loss of floodplain, contrary to local plan designation, loss of privacy/overshadowing, appearance not in keeping/character with neighbours, parking is excessive, impact on ecology, future flooding.
- 4.9 One letter of support, mixed development would be a better use of the land, excellent site for housing, other sites available and unused for employment.

5. Material Considerations

- 5.1 The site covers an area of approximately 1.19 hectares. The land was originally low lying land, drained by a series of ditches. It was used as a household refuse tip until the 1970's when the land was reclaimed and designated for commercial use, later being identified within the Local Plan as being suitable for employment purposes, specifically B1/B2/B8 uses. However, despite a number of planning applications the site has remained vacant. The applicants suggest that this is due to a number of factors (contamination, ground conditions and flood risk) which together render redevelopment of the site for commercial use economically unviable. This issue is considered later within the report.
- 5.2 The previous application was similar in form, proposing 92 residential units, of which 10 were live/work units and 24 were affordable, with 3080sq.m of commercial floorspace, 153 car parking spaces, with blocks varying in height from 3 to 6 storeys. The development was refused due to: failure to clearly demonstrate that the site is no longer viable for employment use; loss of employment land; scale and height would impact on residential

amenity; and layout would prejudice amenity of future occupiers.

- 5.3 The current application is in outline form and is seeking permission for the construction of a mixed development on the site, comprising of 125 residential units and 3069sq.m of commercial (B1) floorspace, together with 202 car parking spaces and landscaping. The current proposal seeks to address the previous reasons for refusal by the provision of a comprehensive economic analysis of the viability of the site for such a development (which has been independently assessed), provision of an element of employment use on the site complying with the objectives of Local Plan Policy, addresses issues of height, scale and impact on residential amenity and deals (through the layout) with issues of proximity to existing commercial operators.
- 5.4 With regard to the determination of this application it is considered that policy, viability, design, flood risk, impact on residential amenity, traffic and the necessity for legal agreements are the key material considerations relevant to the assessment of the application.

Policy

- 5.5 The site is located within the defined Planning Boundary. Within the Local Plan the site is identified and allocated (proposal LW3) for development within Use Classes B1/B2/B8. Policy E1 of the Plan states that planning permission will be refused for developments that result in the loss of land and premises used for business and industrial uses unless (i) *'there is no likelihood of a future, viable employment use of the land/premises being secured in the life of the plan'*. Issues of viability are dealt with below. It is my opinion that due to the extensive period of vacancy of the site, and taking into account the views of the District Valuer, it is very unlikely that the site will be developed for commercial development without some form of profitable enabling development being included within the development proposal. Therefore, provided that there is clear evidence of lack of viability for the allocated B1/B2/B8 uses, the allowance made at part (i) of Policy E1 would allow development such as that proposed, subject to complying with other relevant Policies within the Plan, without being a departure from Policy.
- 5.6 Notwithstanding the identified use for the site within the Local Plan, a mixed development with the residential development providing the 'enabling element', would retain some employment use of the site whilst at the same time providing increased housing accommodation within the town, and offsets pressure for release of greenfield sites elsewhere.
- 5.7 Local Plan Policy, in conjunction with Government Guidance, requires the provision of affordable housing for developments of a certain size. The scheme as submitted would require the provision of 31 affordable residential units. The District Valuer has confirmed in his assessment that this site is unlikely to be developed for B1/B2/B8 use without some form of enabling development. Therefore a balance has to be reached in minimising the amount of enabling development whilst maximising the amount of commercial floorspace on the site to comply with the Local Plan designation. Due to the high costs associated with bringing this site forward for redevelopment the provision of affordable housing would have the effect of either reducing/eliminating the commercial floorspace or, if

that floorspace is maintained, increasing the number of residential units on the site (and hence the height/scale of the development). It is therefore considered that the current proposal offers a balanced scheme that will bring about the redevelopment of this site for mixed development whilst maintaining a substantial element of commercial/employment floorspace within the town. On balance, it is considered preferable to realise the development potential in this site and to maintain some employment floorspace at the expense of the requirement to provide affordable housing and thus increasing the amount of development on the site and possibly losing the commercial element. Therefore it is considered that, given the abnormal costs associated with this site, the proposed development complies with the broad objectives of Local Plan Policy by maintaining some employment use on the site.

Viability

- 5.8 The fact that the site has never been developed would indicate that there are underlying problems that have prevented any redevelopment taking place, despite a concerted and continuing marketing regime that is documented back to 1990. A previous household refuse tip, the land was reclaimed in the 1970's. Despite some sporadic interest having been shown in the site development has never taken place on the land. The applicants have in their supporting information stated that the principal reasons for this are the economic cost associated with dealing with the contamination, underlying ground conditions, and the more recent issue of flooding in 2000. Whilst the last matter is no longer an issue due to the recently completed flood defences along the Ouse at Malling Brooks, the Environment Agency are still suggesting that a precautionary approach is adopted and that no residential accommodation is provided on the ground floor. This clearly has implications for construction costs and the layout of any development.
- 5.9 The applicant has submitted a detailed valuation with the application, breaking down the associated development costs for a variety of development options, including a total commercial development on the site. In order to accurately assess this information the Council has commissioned independent advice from the Valuation Office Agency (District Valuer Services) to carry out a thorough assessment of the submitted economic information. This has involved assessing the various cost elements including contamination and construction (including ground conditions and foundation design), and considering a total commercial development on the site and a mixed development as submitted. The District Valuer has, in assessing this information utilised the services of the Regional Building Surveyor and a Chartered Environmental Surveyor.
- 5.10 The case for enabling development normally rests on the existence of a deficit, when the land and development costs exceed the value of the asset post development. With regard to the current application with the current level of value attributable to business accommodation (which is the Council's desired outcome to protect employment sites) the District Valuer has concluded that a deficit would occur so as to justify the inclusion of more valuable residential development.

- 5.11 In assessing a total commercial scheme on the site of the size proposed, taking into account contamination, building costs and market evidence of rents and prevailing yields, purchase price of the land and gross development profit, the District Valuer has reached the conclusion that the cost of a pure commercial development would exceed the net value of the building by a substantial amount. Therefore in order to realise a commercial element of around 3000sq.m a developer would have to include the more profitable residential development to 'break even' allowing for the usual level of profit. Therefore, without that enabling development it is extremely unlikely that this site would be redeveloped for employment purposes, as allocated in the Local Plan.
- 5.12 The current proposal provided 125 residential units. A development of this size would normally require 31 units to be affordable. The District Valuer has concluded that if 31 affordable units were incorporated into the total number of flats the scheme would no longer provide a realistic developers profit. He concludes that if all the residential units are private the scheme becomes viable generating a realistic developers profit and allowing for straightforward payment of the anticipated Section 106 contributions.

Design

- 5.13 As the application is in outline form, to establish the principle of the development, no specific design elements are determinable at this stage. However, the illustrative information submitted as part of the application indicates a development ranging from 2 to 5 storeys in height with no part being higher than the ridge of Sackville House (opposite). On the advice of the Environment Agency the ground floor, which will be lower than the adjacent highway, will be retained for car parking. The illustrative material indicates a contemporary scheme with curved 'green' roofs to reflect the backdrop of the Downs, covered in sedum. It is proposed to use a limited, but high quality, palette of materials.
- 5.14 There is no specific built form in the locality upon which to model the design. With two storey traditional housing to the north, steel clad industrial sheds to the east and Sackville House, a brick and pitch roof three storey office building to the south, this is an opportunity to create a contemporary development, of an individual architectural form that sits well within the foreground setting of the Malling Downs to the east.
- 5.15 The variation in height of the blocks together with the form of the buildings, especially the roofs, will provide a modern development that will create a gateway to the industrial estate and Malling Recreation Ground. It is therefore considered, from the illustrative material submitted, that the proposed design is acceptable complying with Policy ST3. Whilst in outline form, with no specific design determinable at this stage, it is possible through conditions to restrict the maximum height of the development and to require that the details of the design, to be submitted at a later stage, broadly comply with the submitted illustrative material considered at the outline stage.

Flood Risk

- 5.16 The site was badly affected by the flooding in October 2000. However, the Environment Agency have recently completed the Malling Bushes Flood

Alleviation Scheme, which provides flood defence to a 1:200 year (0.5%) possibility flood count.

- 5.17 Accordingly, the Agency have no objection to the proposal on flood risk grounds. They do, however, recommend that any residential development does not include any habitable accommodation on the ground floor and that this floor shall be reserved for car parking, as shown on the submitted plans.

Impact on Residential Amenity

- 5.18 The closest residential properties are located to the north of the site in Cranmer and De Grey Close, with typical 10m long gardens backing onto the northern boundary of the site. The proposed layout has been amended to increase the separation between the proposed development and these gardens and dwellings, and to remove any issues of overbearing presence. The buildings on the application site are located, at their closest point, 23.5m from the nearest dwelling and 13m from the boundary of the site. The commercial element of the application will be provided within the blocks located on the eastern boundary of the site and will face east and west to avoid any overlooking. The nearest residential block has a north-south aspect, but being 2.5 storey in height and located 23.5m face to face, with a landscape area in between, it is not considered that there would be any issues of overlooking or loss of privacy to the existing occupiers. There is a greater separation between the existing and new development than exists between some of the existing residential properties to the north.
- 5.19 The three storey residential block, located to the west of the site adjacent to Mayhew Way, has been reconfigured and its northern element located further to the west to reduce any detrimental impact on the nearest residential dwelling.
- 5.20 The area between the rear boundary of the residential dwelling and the new buildings themselves will be retained as a 10m wide buffer strip which will be landscaped and used as amenity space for the residents of the new dwellings. This will be the subject of a condition to prevent any buildings, roads or car parking (other than that approved by this permission) to be constructed within this area in order to ensure that existing residential amenity is not prejudiced.
- 5.21 In terms of daylighting to habitable room windows, due to the height of the proposal and the separation distance between the buildings, the proposed development would not prejudice the residential amenity of the existing occupiers. In terms of sunlight, due to the orientation of the blocks there will be some overshadowing to the rear gardens at various times throughout the year (early morning and late afternoon/evening) due to the variation in the path of the sun, but that overshadowing would not result in the gardens being overshadowed to the detriment of residential amenity.
- 5.22 By restricting the commercial floorspace on the development to B1 office use only it is unlikely that there would be any impact on residential amenity from noise.

- 5.23 Whilst the construction of the development is likely to generate noise and other nuisances these can be controlled in terms of unreasonable impact by imposing a condition on hours of work.

Traffic

- 5.24 The vehicle access to the site will be gained from Southdowns Road. The scheme has been amended to provide a level of car parking required by the Highway Authority, of which 10 will be for the car club, and 5 will be designated for disabled users. Cycle parking will be provided at 8 locations within the development. Formal views from the Highway Authority on the amended plans will be reported in the meeting.

Legal Agreement

- 5.25 Under normal circumstances a development of this size would be liable for the provision of 25% affordable housing, and financial contributions towards open space, recycling and accessibility. However, as already explained within the report, there are clear reasons for not providing affordable housing. However it is considered that the scheme does provide a sufficient financial buffer to enable a financial contribution to be made to secure improvements to open space (£197,790), accessibility (£125,000) and recycling (£2,015). It is also considered necessary to secure, within the agreement, a program of phasing to ensure that the commercial floorspace is constructed on the site.

Recommendation

That, subject to the completion of the Departure Procedure including notification to the Secretary of State, and to the receipt of views from the Highway Authority on amended plans, planning permission is granted subject to the prior completion of a legal agreement to secure financial contributions towards open space, accessibility and recycling, and subject to the following conditions:

1. OUT.85* - Submission of Reserved Matters
2. OUT.86* - Commencement of Development
3. MAT.73a - Approval of External Materials **[(c,d,e) ST3]**
4. MAT.74 - Approval of Surfacing Materials **[ST3]**
5. HRS.55 - Hours of Construction Work **[ST3]**
6. LS.57 - Hard and Soft Landscape Works **[Reason (i) ST3]**
7. LS.58* - Implementation of Hard and Soft Landscape Works **[(b), Reason (i), ST3]**
8. LS.59 - Details of Boundary Treatment **[(a2), Reason ST3]**
9. LS.61 - Replacement of Trees **[(a) = 5 (b) = 6 months, Reason (ii) ST3]**
10. The landscaped buffer strip, adjacent to the northern boundary of the site, shall be retained as an amenity area of use of the occupiers of the residential units and shall not be used for parking or development of any kind without the written approval of the Local Planning Authority.

Reason: In the interests of residential amenity having regard to Policy ST3 of the Lewes District Local Plan.

11. Development shall not begin until details of finished floor levels in relation to the existing ground levels and Sackville House have been submitted to and

approved by the Local Planning Authority. The works shall then be carried out in accordance with these details.

Reason – In the interest of residential amenity and the character of the locality having regard to Policy ST3 of the Lewes District Local Plan.

12. DR.24 - Submission and Approval of Drainage Details [**ST3**]
 13. H.42 - No Occupation until Parking Spaces Provided [**Reason (b), ST3**]
 14. H.46 - Details of Roads, Drainage, Outfall, Lighting etc [**Reason (iv), ST3**]
 15. EC1 – Desktop
 16. EC2 – Method Statement
17. No deliveries shall be taken at or despatched from the B1 commercial premises outside the hours of 08.00 to 18.00 on Monday to Friday and 08.00 to 13.00 on Saturdays and not at any time on Sundays, Bank or Public Holidays.

Reason – To protect residential amenities having regard to Policy ST3 of the Lewes District Local Plan.

18. Upon completion of the remediation detailed in the Method Statement a report shall be submitted to the Local Planning Authority that provides verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and reporting shall also be detailed in the report.

Reason – To protect controlled waters by ensuring that the remediated site has been reclaimed to an appropriate standard having regard to Policies ST3 and ST17 of the Lewes District Local Plan.

19. The development hereby permitted shall not alter, obstruct or otherwise seal the existing gas venting trench to the boundary with Cranmer Close. Adequate access for maintenance of the gas venting shall be maintained.

Reason – In order to ensure safety of future residents of the site and surroundings having regard to Policy ST3 of the Lewes District Local Plan.

20. A scheme of sound insulation works to the separating structure between the proposed car parking areas and residential accommodation shall be submitted to and approved in writing by the local planning authority. The scheme as approved by the local planning authority shall be fully installed before the use hereby permitted commences.

Reason – To protect residential amenity having regard to Policy ST3 of the Lewes District Local Plan.

21. Clean, uncontaminated rock, subsoil, brick rubble, crushed concrete and ceramic only shall be permitted as infill material.

Reason – To prevent pollution of controlled waters having regard to Policy ST14 of the Lewes District Local Plan.

22. The method of controlling groundwater at the site during construction shall be carried out in accordance with a scheme to be submitted to and agreed in writing by the Planning Authority prior to any development commencing on site.

Reason – If de-watering operations are required for the construction of foundations, it is likely that contaminated groundwater will be encountered. Groundwater must be disposed of appropriately and full details of the operations must be forwarded. This water must be properly controlled and disposed of. Discharge of it to surface water drainage would constitute an offence under the Water Resources Act 1990 having regard to Policies ST3 and ST14 of the Lewes District Local Plan.

23. Development approved by this permission shall not be commenced unless the method for piling foundations has been submitted to and approved in writing by the Local Planning Authority. The piling shall thereafter be undertaken only in accordance with the approved details.

Reason – The site is contaminated/potentially contaminated and piling could lead to the contamination of groundwater in the underlying aquifer having regard to Policy ST14 of the Lewes District Local Plan.

24. RES.105 - Storage and Removal of Refuse **[ST3]**

25. Details to be submitted with regard to condition 1 of this permission shall be of a form to accord with those illustrative plans submitted with the application within the approved Design Statement.

Reason: To ensure a satisfactory development in keeping with the locality having regard to Policy ST3 of the Lewes District Local Plan.

26. No works shall take place on the site until a full and detailed survey has been carried out on the site in order to assess what flora and fauna inhabits the site. The survey shall be carried out by an independent expert and the survey shall be submitted to and approved in writing prior to the commencement of any works on the site. The report should include recommendations which shall be implemented prior to the commencement of any works on the site.

Reason: To provide satisfactory protection to flora and fauna on the site having regard to Policy ST10 of the Lewes District Local Plan.

Informative

A formal application to requisition water infrastructure is required in order to service this development. Please contact Southern Water's Network Development Team (Water) based in Chatham Kent or www.southernwater.co.uk.

Summary of reasons for decision and any relevant development plan policies/proposals

It is considered that the proposal meets the aims and objectives of Local Plan Policy and respects the character of the location, complying with Policies ST3 and E1 of the Lewes District Local Plan.