

Report to: Planning Applications Committee
Date: 8 December 2021
Application No: LW/21/0160
Location: Former Hamsey Brickworks, South Road, South Common, South Chailey
Proposal: Variation of condition 27 in relation to planning approval LW/14/0712.
Applicant: Antler Old Hamsey LLP
Ward: Chailey, Barcombe & Hamsey
Recommendation: That the Variation of Planning Condition is approved subject to a Deed of Variation.
Contact Officer: **Name:** Julie Cattell
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IMPORTANT NOTE: This scheme is CIL Liable.

Map Location:



1. **Executive Summary**

- 1.1 The proposal is considered to be acceptable and is recommended for approval subject to a Deed of Variation in respect of the s106 for the original planning permission LW/14/0712.

2. **Relevant Planning Policies**

2.1 National Planning Policy Framework

- Achieving sustainable development
- Building a strong, competitive economy

2.2 Lewes District Local Plan

- LDLP: – SP1 – Provision of housing and employment land
- LDLP: – CP4 – Economic Development & Regeneration

2.3 Hamsey Neighbourhood Plan

- LE4: - Support for new employment related developments

3. **Site Description**

- 3.1 The application site, known as the Old Hamsey Brickworks, is located in open countryside on the eastern side of the A275, approximately 5km to the north of Lewes and 1.2km to the south of South Chailey.
- 3.2 Works relating to the development approved under LW/14/0712 are well underway.

4. **Proposed Development**

- 4.1 The application seeks consent to vary condition 27 of LW/14/0712, which stated the following:

“No more than 50% or 24 residential units hereby approved shall be occupied until the B1 commercial units approved as part of this permission have been constructed in accordance with the approved details and made available for occupation

Reason: In order to ensure compliance with Local Plan Policy to secure employment floorspace on the site having regard to Policy E1 of the Lewes District Local Plan and to comply with National Policy Guidance contained in the National Planning Policy Framework 2012.”

- 4.2 This condition was varied under application ref. LW/18/0098 and states:

“No more than 50% or 24 residential units hereby approved shall be occupied until one of the B1 commercial units approved as part of this permission have been constructed in accordance with the approved details and made available for occupation.

Reason: In order to ensure compliance with Local Plan Policy to secure employment floorspace on the site having regard to Policy E1 of the Lewes District Local Plan and to comply with National Policy Guidance contained in the National Planning Policy Framework 2012.”

- 4.3 Originally, the application sought to remove condition 27 entirely, which was considered to be unacceptable. Following negotiations with officers, the application was amended to a variation with the following wording:

"No more than 85% or 42 residential units hereby approved shall be occupied until one of the B1 commercial units approved as part of this permission have been constructed in accordance with the approved details and made available for occupation".

The applicant's justification for seeking this variation is to reflect various changes in circumstance since the original application was approved and subsequently varied, as set out below in section 8.

5. Relevant Planning History

- 5.1 LW/14/0712 - Redevelopment of industrial estate with 8 x B1 (business) units and enabling residential development of 37 open market houses and 12 affordable dwellings – Approved 13 February 2015.

- 5.2 LW/17/0117 - Removal of condition 27 attached to planning approval LW/14/0712 – Refused 27 March 2017 for the following reason:

"It is considered that the removal of the condition would be likely to result in a residential development being built without any commercial floorspace, creating a development that would not accord with the site allocation HY1 within the Lewes District Local Plan 2003 (LDLP) and the Joint Core Strategy 2010-2030 for employment use, which specifically identifies the site for B1, B2 and B8 uses, and would undermine the enabling justification put forward with the original application which justified the need for residential units to enable the provision of the commercial floorspace"

- 5.3 LW/18/0098 - Variation of condition 27 relating to planning approval LW/14/0712 whereby the wording of the condition be changed to: "No more than 50% or 24 residential units hereby approved shall be occupied until one of the B1 commercial units approved as part of this permission have been constructed in accordance with the approved details and made available for occupation " - Approved 6 April 2018.

6. Consultations

6.1 Planning Policy

- 6.1.1 Original proposal: It is considered that from a policy point of view nothing has changed since the 2018 refusal to remove the condition. Ultimately it is still considered that the original permission was granted on the basis that the housing would enable the continued employment use of the site, to remove the condition would likely result in the commercial units not being built out and the benefit of delivering the commercial units is compromised if this condition is removed
- 6.1.2 Amended proposal: I don't have an issue with 85%, which is actually 42 units occupied as they are referring to 29 market units – 8 units remaining.

6.2 Town or Parish Council

- 6.2.1 Hamsey PC takes issue with many of the arguments in the submission letter dated 16/6/21, which contain contradictory, and often irrelevant points. HPC would make 2 particular points of challenge – firstly that the condition at issue is not the cause of withholding housing supply, but the applicants. Approving the application is not the only way of increasing the supply of homes – the applicant could do so by constructing only 1 commercial unit – and yet the applicant claims to be poised to construct 3 of the units. Secondly, the applicant argues that the condition is not effective in that it does not lead to the construction of the business units, but that is precisely its current effect.
- 6.2.2 We are not persuaded by the marketing information, partly because the applicants do intend to construct a business unit, but also because, on their own admission, covid is creating uncertainty, and in the medium term, unforeseen post-covid opportunities are likely to emerge to justify strong demand for commercial floorspace in rural locations.
- 6.2.3 Refusal would have a sound policy basis in the employment policies of Hamsey NP, Lewes Local Plan and the NPPF. While the NPPF emphasises housing delivery as a key priority, employment in rural areas is also a NPPF objective, so decision makers should balance the two priorities in decision making.
- 6.2.4 The question is whether or not increasing the percentage of homes that can be occupied before 1 business unit is constructed from 50% to 85% is reasonable. While raising the bar to 85% still provides an incentive, it is clearly a lesser incentive. It also raises the prospect of a further application for removal of the condition at a later date. We are not convinced by the financial arguments, and it seems that the applicant is on track to provide the business units anyway, so rendering the variation of condition unnecessary.
- 6.2.5 However, in a spirit of co-operation we reluctantly **withdraw our objection** but wish to record our continued support for business/mixed use development on the site and urge the construction of the business units as approved. We also wish to signal our strong opposition to any further erosion of the condition under question, or its removal.

6.3 ESCC Archaeology

- 6.3.1 No comments on proposal.

6.4 ESCC Highways

- 6.4.1 Given that the S278 Agreement for the off-site highway works has been agreed, signed, a bond in place and works commenced on site a highway, an objection in this instance would not be justified.

6.5 Sussex Police

- 6.5.1 From a crime prevention perspective, Sussex Police have no objection to the removal of condition 27.

- 6.6 Natural England
6.6.1 Natural England currently has no comment to make on the removal of condition 27.
- 6.7 East Sussex Waste & Minerals
6.7.1 No comments on proposal.
- 6.8 Southern Gas Network
6.8.1 Our gas pipe locations are now available online at www.linesearchbeforedig.co.uk Not only can you access information about the location of our gas pipes in your proposed work area, but you can also search for information on other utility companies assets at the same time All requests for maps and plant location information must now be submitted through this online service.
- 6.9 Southern Water
6.9.1 No comments on removal of condition 27 submitted by the applicant.
- 6.10 British Telecom
6.10.1 No response.
- 6.11 District Valuer
6.11.1 No response.
- 6.12 Environmental Health
6.12.1 No response.
- 6.13 UK Power Network
6.13.1 No response.
- 6.14 East Sussex Fire Authority
6.14.1 No response
- 6.15 Early Years Development Childcare
6.15.1 No response.
- 6.16 Housing Needs & Strategy Division
6.16.1 No response.
- 6.17 Sussex Community National Health Service
6.17.1 No response.
- 6.18 Sussex Wildlife Trust
6.18.1 No response.
- 6.19 Tree and Landscape officer
6.19.1 No response.
- 6.20 District Services
6.20.1 No response.

7. Neighbour Representations

- 7.1 One representation has been received a local resident commenting that the since the pandemic, more people have been working from home and that the commercial units should be marketed as co-worker space or made into smaller units that would attract those who can't work from home.

8. Appraisal

8.1 Background

- 8.1.1 The development site was originally in industrial use. The original decision to develop the site for a mix of residential and commercial uses was against a background of the council having a lack of 5-year housing supply. Condition 27 sought to retain an element of employment floorspace on the site to meet the requirements of policy E1 of the Local Plan that was extant at the time. Policies SP1 and CP4 of the LDLP Part 1 have replaced this policy.
- 8.1.2 The applicant's justification behind the first application to remove condition 27 (LW/17/0117) was based on the assertion that the condition did not meet the NPPF tests; that there was limited demand for office (sic) space in the area; there is "*virtually*" no supply of office accommodation outside of the larger towns of Lewes and Uckfield because "*it is anticipated that there is no demand; and that levels of commercial rents within a 5 mile radius of the site "do not make the development of new office space viable"*". A marketing appraisal from a local commercial agent was submitted in support of the application.
- 8.1.3 It was argued that the requirement to restrict that only 50% of the residential units be occupied before the B1 units are available for occupation was unreasonable and that it would be "*more practical*" to complete and occupy all of the residential units prior to developing the commercial units whilst a marketing exercise (for the commercial units) continues.
- 8.1.4 A final argument in favour of removing the condition was the requirement for the developer to fund off site highways works that were not included in the original viability appraisal.
- 8.1.5 The application was nonetheless refused – see section 5 above.
- 8.1.6 Application LW/18/0098 sought to vary the condition to require that just one of the units be completed and available for occupation. The applicant had, in advance of the application, sought and secured the support of Hamsey Parish Council.
- 8.1.7 This application was approved.

8.2 Current application

- 8.2.1 As noted above, the current application as originally submitted, sought to remove condition 27 entirely. The applicant's justification again cited the "*unreasonableness*" of the condition, housing supply/delivery and lack of interest in the commercial units. An

updated marketing report was supplied to underpin the latter, including the impact of the pandemic.

8.2.2 As before, this approach was considered to be unacceptable due to the lack of certainty surrounding the delivery of the commercial units

8.2.3 Following negotiations with officers, the application was amended to alter the percentage of residential units that could be occupied increased from 50% to 85%. This is acceptable to all parties.

8.3 Considerations

8.3.1 The main consideration is whether the aims and objectives of the council's economic strategy as manifested in the above-mentioned policies will continue to be met if this condition is varied.

8.3.2 It is considered that the evidence submitted with the application, taken together with the impact that the pandemic will inevitably have on working patterns, is sufficient to justify this further variation to condition 27.

8.3.3 If the committee is minded to grant approval, a Deed of Variation to the s106 attached to the original planning permission will need to be secured, following which the decision can be issued by officers.

8.3.4 A suite of conditions is attached to this decision, comprising those that have not yet been discharged and those which are to remain on the planning permission.

8.3.5 The PC comments are noted. Any further applications to vary the condition will be considered against circumstances prevailing at the time.

9. **Human Rights Implications**

9.1 The impacts of the proposal have been assessed as part of the application process. Consultation with the community has been undertaken and the impact on local people is set out above. The human rights considerations have been taken into account fully in balancing the planning issues; and furthermore the proposals will not result in any breach of the Equalities Act 2010.

10. **Recommendation**

10.1 In view of the above the proposed development is considered to be acceptable and approval is recommended subject to a Deed of Variation in respect of the s106 for the original planning permission LW/14/0712 and the following conditions.

10.2 Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved documents:

PLAN TYPE	DATE RECEIVED	REFERENCE
Additional Documents	16 June 2021	Covering letter/statement
Additional Documents	16 June 2021	Marketing Report

Reason: For the avoidance of doubt and in the interests of proper planning.

2. No more than 85% or 42 residential units hereby approved shall be occupied until one of the B1 commercial units approved as part of this permission have been constructed in accordance with the approved details and made available for occupation.

Reason: In order to ensure compliance with Local Plan Policy to secure employment floorspace on the site having regard to policies SP1 and CP4 of the Lewes District Local Plan, policy LE4 of the Hamsey Neighbourhood Plans and to comply with National Policy Guidance contained in the National Planning Policy Framework.

3. No part of the development hereby permitted shall be occupied until works for the disposal of sewage have been provided on the site to serve the development, in accordance with details which have first been submitted to and approved in writing by the local planning authority.

Reason: In the interests of amenity of future occupiers of the development having regard to policies CP11 and DM25 of the Lewes District Local Plan and to comply with National Policy Guidance contained in the National Planning Policy Framework.

4. If within a period of 5 years from the date of planting any tree (or tree planted in replacement for it) dies, is removed or becomes seriously damaged or diseased it shall be replaced in the next planting season with another of similar size and species, unless the local planning authority gives written approval to any variation.

Reason: In the interests of amenity of the wider area having regard to policy DM27 of the Lewes District Local Plan and to comply with National Policy Guidance contained in the National Planning Policy Framework.

5. The development shall not be occupied until all the parking spaces and turning areas have been provided in accordance with details which have been submitted to and approved in writing by the Planning Authority and the areas shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles.

Reason: To ensure the safety of persons and vehicles entering and leaving the access and proceeding along the highway having regard to policy CP13 of the Lewes District Local Plan and to comply with National Policy Guidance contained in the National Planning Policy Framework.

6. Demolition or construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0830 hours to 1300 hours on Saturdays and works shall not be carried out at any time on Sundays or Bank/Statutory Holidays.

Reason: In the interests of local amenity having regard to policies CP11 and DM25 of the Lewes District Local Plan and to comply with National Policy Guidance contained in the National Planning Policy Framework

7. No external lighting or floodlighting shall be installed on the buildings hereby permitted or the wider site without the prior written approval of the local planning authority.

Reason: In the interests of local amenity having regard to policies CP11 and DM25 of the Lewes District Local Plan and to comply with National Policy Guidance contained in the National Planning Policy Framework

8. Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no development described in Part 1 Classes A to F of Schedule 2, other than hereby permitted, shall be undertaken unless the Local Planning Authority otherwise agrees in writing.

Reason: A more intensive development of the site would be likely to adversely affect the appearance and character of the area having regard to policies CP11 and DM25 of the Lewes District Local Plan and to comply with National Policy Guidance contained in the National Planning Policy Framework

9. Prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors having regard to policy DM25 of the Lewes District Local Plan and to comply with National Planning Policy Framework.

10. Reports on monitoring, maintenance and any contingency action carried out in accordance with a long-term monitoring and maintenance plan shall be submitted to the local planning authority as set out in that plan. On completion of the monitoring programme a final report demonstrating that all long-term site remediation criteria have been met and documenting the decision to cease monitoring shall be submitted to and approved in writing by the local planning authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with

those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors having regard to policy DM25 of the Lewes District Local Plan and to comply with National Planning Policy Framework.

11. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors having regard to policy DM25 of the Lewes District Local Plan and to comply with National Planning Policy Framework.

12. There shall be no deliveries or departures of goods from the new proposed commercial units other than between 07:00 to 19:00 hours Monday to Friday, 08:00 hours to 16:00 hours Saturday, Sundays and Bank Holidays.

Reason: In the interests of local amenity having regard to Policy ST3 of the Lewes District Local Plan and to comply with National Policy Guidance contained in the National Planning Policy Framework.

11. **Background Papers**

- 11.1 None.