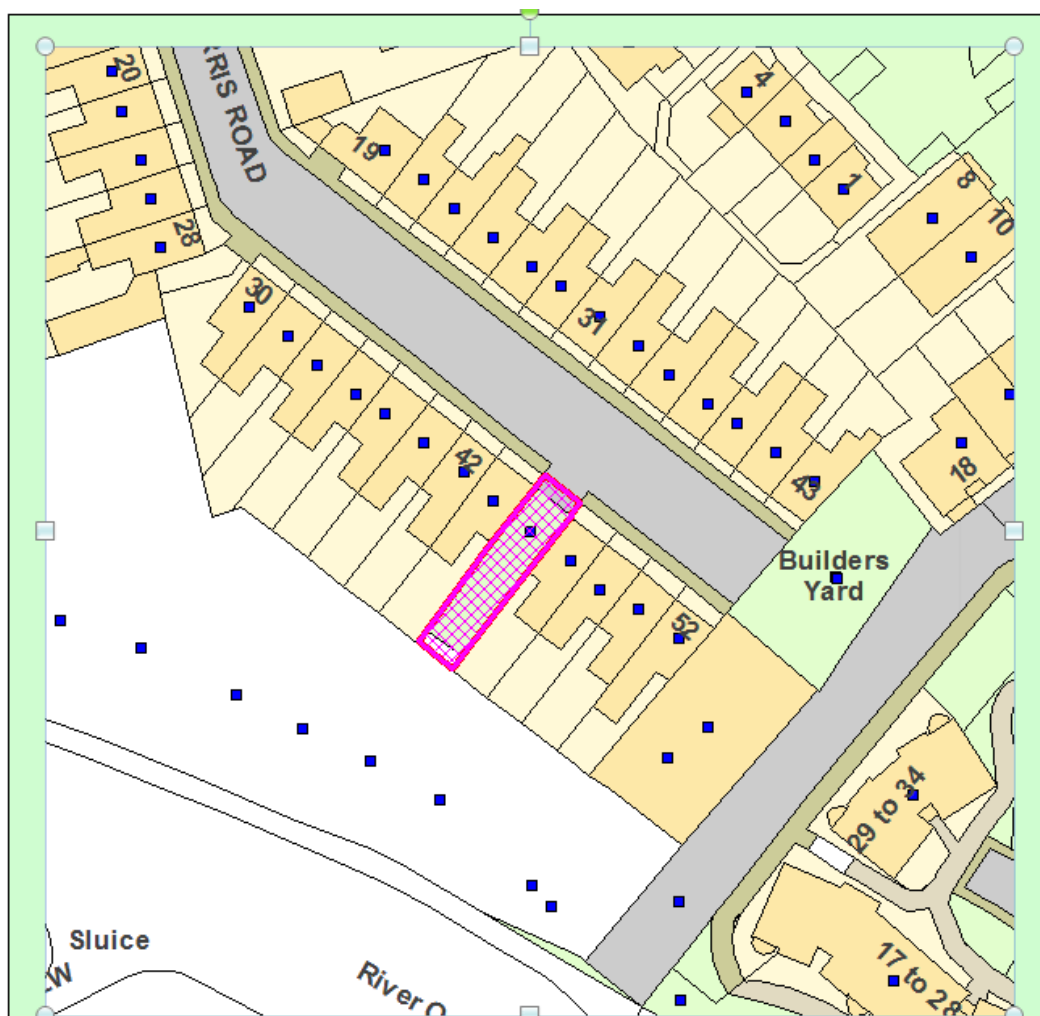


Report to: Planning Applications Committee
Date: 12 January 2022
Application No: SDNP/21/01724/CND
Location: 44A Morris Road, Lewes, East Sussex, BN7 2AT
Proposal: Variation of condition 15 of planning application SDNP/16/01310FUL to remove requirement for public thoroughfare to be retained.

Applicant: Rob Williams
Ward: Lewes
Recommendation: Permission is granted.
Contact Officer: **Name:** Christopher Wright
E-mail: christopher.wright@lewes-eastbourne.gov.uk

IMPORTANT NOTE: This scheme is CIL liable.

Map Location:



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1. **Executive Summary**

- 1.1 The applicant seeks the variation of condition 15 of application SDNP/16/01310/FUL such that the requirement for the public thoroughfare to be retained, is removed.

2. **Relevant Planning Policies**

2.1 National Planning Policy Framework

2.2 South Downs Local Plan

Core Policy SD1 - Sustainable Development

Strategic Policy SD19 - Transport and Accessibility

3. **Site Description**

- 3.1 The application site falls on the south side of Morris Road, a residential street accessed off Cliffe High Street, falling within the Lewes Conservation Area towards the eastern edge of the town. The site is within the South Downs National Park.
- 3.2 The site was a vacant space between two end of terrace, two storey properties, 44 and 46 Morris Road, and historically provided a secondary access to Chandlers Building Yard that formerly sat on the southern side of the Morris Road dwellings. This former builder's yard is currently being redeveloped with dwellings (LW/11/1284/NP) and as part of that approval the application site is maintained as a pedestrian access.
- 3.3 As well as falling within the designated Conservation Area the application site falls within the planning boundary of Lewes as defined by the Lewes District Local Plan and the South Downs National Park.
- 3.4 A dwelling has been constructed on the site, ref. SDNP/16/01310/FUL.

4 **Proposed Development**

- 4.1 It is understood that the applicant is having difficulties with the sale of the property owing to the passageway that goes underneath the first floor level of the house and connects Chandlers Wharf, a private development that is not part of the public highway, and Morris Road.
- 4.2 The applicant seeks the variation of condition 15 of application SDNP/16/01310/FUL such that the requirement for the public thoroughfare to be retained, is removed.

5 **Relevant Planning History**

- 5.1 SDNP/17/04876/FUL - Approved [Condition 11]
- 5.2 SDNP/16/01310/FUL - Approved [Condition 15]

6. Consultations

6.1 Main Town or Parish Council –

There was discussion regarding an application to discharge a condition attached to development consent. Members had spent some time assessing this matter and considered that the original condition should stand.

The condition originally stated:

'The development shall not be occupied until details for the surfacing and lighting of the path linking through to Chandlers Wharf have been submitted to and agreed in writing by the Local Planning Authority. The path shall then be constructed and completed to the satisfaction of the Local Planning Authority before the development is occupied and thereafter retained as a public thoroughfare at all times.'

Members, aware of local feelings of irritation that the route was obstructed by a locked gate, were also aware that there was a distinction between a public thoroughfare and the actual right of way to use it. They considered that the condition was applied for good reasons and should stand; but they ask the landowner to open the access for public use, acknowledging that it may be blocked periodically, for short periods, to prevent 'prescriptive rights' arising.

6.2 ESCC - Public Rights of Way

The passage is not a public right of way.

6.3 Lewes CAAG - Objection

7 Neighbour Representations

7.1 Twenty-three letters of objection have been received, the comments summarised below:

- Safe route for children
- Safe route to Cliffe High Street
- Link between Timberyard Lane and Morris Road
- Not in spirit of Neighbourhood Plan
- Loss of right of way
- Poor condition of Timberyard Lane
- Longer walk into town
- No pavement along Timberyard Lane
- No in the public interest
- Will discourage walking
- Applicant aware of situation from the outset

7.2 One letter has been received in support of the application:

- Passageway ends at boundary with Chandlers Wharf, which is a private development

- The passageway was created, paid for, and maintained, for the use of Chandlers Wharf owners
- There is no public right of way through Chandlers Wharf

7.3 Friends of Lewes – Objection

Friends of Lewes raised no objection to SDNP/16/01310/FUL because it made provision to retain a public thoroughfare for the benefit of the local community. The thoroughfare provides a safe route to Cliffe High Street for pedestrians especially children, the disabled and the elderly.

The applicant has profited greatly from this and other development locally and the Society objects to the removal of the condition.

8 **Appraisal**

8.1 Sec 38 (6) of the Planning Compulsory Purchase Act 2004 requires that regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

8.2 The NPPF also advises that there is a presumption in favour of sustainable development.

The site is located within the South Downs National Park and therefore determine by the SDNPA who further to the presumption in favour of sustainable development and sec 38 (4) of the statutory purposes and duty of the National Park are:

- o Purpose 1: To conserve and enhance the natural beauty, wildlife and cultural heritage of the area.
- o Purpose 2: To promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public.
- o Duty: To seek to foster the social and economic wellbeing of the local communities within the National Park in pursuit of our purposes.

8.3 Principle of Development

8.4 Condition 15 of application SDNP/16/01310/FUL reads as follows:

"The development shall not be occupied until details for the surfacing and lighting of the path linking through to Chandlers Wharf have been submitted to and agreed in writing by the Local Planning Authority. The path shall then be constructed and completed to the satisfaction of the Local Planning Authority before the development is occupied and thereafter retained as a public thoroughfare at all times.

Reason: In the interests of highway safety 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 2012."

8.5 Details of the surfacing and lighting of the pathway have been approved, ref. SDNP/20/02988/DCOND.

8.6 The error here appears to be the wording of condition 15, attached to application SDNP/16/01310/FUL, in referring to the passageway as a public thoroughfare. To establish why, it is necessary to look in detail at the history of the site.

8.7 When the application for 13 houses in Timberyard Lane (now Chandler's Wharf) was submitted, the passageway was included within the red edge plan. Submitted with application LW/11/1284/NP was a Transport Statement which described at paragraph 2.1.1 the site as having two access points:

The site is served by 2 accesses, one along Timberyard Lane, and one through to Morris Road, between Numbers 44 and 46.

8.8 At paragraph 3.1.5 the Transport Statement is quoted as saying:

The primary access to the site will be along Timberyard Lane. A secondary access, limited to pedestrians and cycles, links the site with Morris Road, between Number 44 and 46.

The area of land between 44 and 46 Morris Road was private land and formed part of the application site. The application proposed to keep the passage as an access point to the housing development - which is private. This is fine, because future residents of the housing development could use the access, but it does not mean necessarily that it could be used by any Member of the Public.

8.9 The Principal Rights of Way Officer at East Sussex County Council has confirmed that there is no public right of way between 44 and 46 Morris Road.

8.10 The Committee Report published in respect of application SDNP/11/1284/NP indicates that, at that time, the gap in Morris Road may have been obstructed. Paragraph 6.31 reads as follows:

By removing the existing buildings the existing gap between 44 & 46 Morris Road would become usable as a pedestrian/cycle link through to Cliffe High Street.

8.11 This suggests that the passage was not usable prior to the housing development being approved and being implemented.

8.12 Curiously, a number of objections were received in respect of the proposed pedestrian access via Morris Road, paragraph 5.12 of the Committee Report reading:

23 neighbour representations have been received. Two letters of broad support. 14 letters objecting to the proposal largely due to the proposed pedestrian access via Morris Road and concern over future vehicle access due to change in character of the road, prejudicing safety of children, and detrimental to amenity.

- 8.13 The permission was subsequently granted, and it is noted that there is no S106 Agreement requiring the passage to be provided as a public thoroughfare. However, condition 21 of the decision notice reads as follows:

The development shall not be occupied until details for the surfacing of the path linking through to Morris Road and lighting, and any width restrictions including bollards to prevent use by vehicle traffic, have been submitted to and agreed in writing by the local planning authority and the path shall then be constructed and completed to the satisfaction of the local planning authority before the development is occupied.

- 8.14 Technically the condition is worded in such a way that following compliance it would not be necessary to "retain the path as such thereafter" or other similar wording. Also, the path is not referred to as a public thoroughfare or right of way.

- 8.15 Condition 21 has since been complied with.

Moving forward to the approval of the infill dwelling, which is now subject to the current application, condition 15 of application SDNP/16/01310/FUL now refers to the passage needing to be retained as a public thoroughfare at all times. **This is understood to be the first reference to the passage as a public thoroughfare.**

- 8.16 In view of the above it is felt that the wording of condition can be altered.

- 8.17 Residents of Chandlers Wharf will continue to be able to use the passage, but will be issued with a code or keycard to do so. To reiterate, Chandlers Wharf is a private development and there is no public highway or right of way within it (with the exception of the riverside walk from Timberyard Lane).

- 8.18 Looking at the history of the site and its development, the wording of the condition to retain the passage as a "public thoroughfare at all times" does not meet the tests for Planning Conditions as set out in the National Planning Policy Framework.

- 8.19 It is not necessary or reasonable, and although it is relevant to planning and the development that was original permitted (i.e. the proposals for 13 houses now known as Chandlers Wharf) private access to residents is to remain. There was no planning reason for the passage to be labelled a public thoroughfare at the time the application for an infill dwelling between nos. 44 and 46 Morris Road was determined.

- 8.20 Access to the town centre will continue to be possible for other local residents via Timberyard Lane and South Street (although this is a slightly longer walk).

Against the proposals:

- o Loss of permeability through Chandlers Wharf into Timberyard Lane and Hillman Close
- o Loss of connectivity similar to a twitten, contrary to the historic layout of the town
- o Local residents (not of Chandlers Wharf) will face a longer walk into town
- o Loss of safe and quiet route into town for local residents (not of Chandlers Wharf)
- o A private agreement needs to be reached between local residents and owners of Chandlers Wharf in order to establish a right of way/access

From an amenity and sustainability viewpoint the loss of this passageway would be harmful to local residents and would make access to the town centre on foot longer, and along less well-laid roads and possibly with more traffic (South Road).

- 8.21 However, legally and factually, there is not actually a right of way here, and the passageway was intended to improve permeability and connectivity when Chandlers Wharf was built, and as this is a private road/development, strictly speaking only these residents should be using the passage.

The passageway can be gated, provided each household in Chandlers Wharf is given a key/code/keycard.

- 8.22 The views of local residents are noted and attract a great deal of sympathy. However, this is private land and technically local residents do not have the right to cross it, unless they reside in Chandlers Wharf.

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 On balance approval is recommended, subject to a condition requiring details of access for Chandlers Wharf residents (e.g. key/code/keycard).

10.2 Conditions

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

Plan Type	Reference	Date Received	Status
Plans - SITE LOCATION 1:500	0096.01 C	17.03.2016	Approved
Plans - Plans and Elevations	2015/18/PL2 E	20.05.2015	Approved
Application Documents -	ECOLOGICAL SURVEY	17.03.2016	Approved
Application Documents -	FLOOD RISK ASSESSMENT	12.04.2016	Approved
Application Documents -	HER CONSULTATION	01.04.2016	Approved
Application Documents -	HERITAGE STATEMENT	17.03.2016	Approved

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

2. The development hereby permitted began prior to the expiration of 9 June 2019, which would have been 3 years after the approval of application SDNP/16/01310/FUL.
3. The details reserved by condition 3 have been approved on 26 July 2017 under application ref. SDNP/17/02411/DCOND and on 15 June 2020 under application ref. SDNP/20/02051/CND.
4. The details reserved by condition 4 have been approved on 26 July 2017 under application ref. SDNP/17/02411/DCOND; on 15 June 2020 under application ref. SDNP/20/02051/CND; and on 15 October 2020 under application ref. SDNP/20/02988/DCOND.
5. The details reserved by condition 5 have been approved on 26 July 2017 under application ref. SDNP/17/02411/DCOND.
6. The details reserved by condition 6 have been approved on 26 July 2017 under application ref. SDNP/17/02411/DCOND.
7. The details reserved by condition 7 have been approved on 26 July 2017 under application ref. SDNP/17/02411/DCOND.
8. Hours of operation at the demolition and construction site should be restricted to 08:00 to 18:00 hours Monday to Friday and 09.00 to 13:00 hours on Saturdays. No working is permitted at any time on Sundays or Bank

Holidays. No machinery shall be operated, no process shall be carried out and no deliveries shall be made at the site outside of these specified times.

Reason: To protect the amenity of the locality in accordance with *policy SD5 of the South Downs Local Plan*.

9. The development permitted by this planning permission shall only be carried out in accordance with the approved undated FRA and the following mitigation measure detailed within the FRA:

- No habitable accommodation, as defined by section 0.30 of Approved Document M of the Building Regulation 2000, shall be included on the ground floor.

The mitigation measure shall be fully implemented prior to occupation, or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority

Reason: To reduce the risk of flooding to the proposed development and future occupants.

10. No fence or walling to be constructed to the front of the dwelling, as approved under condition 6 above, shall exceed 600mm in height.

Reason: In the interest of vehicular and pedestrian safety and to accord with the requirements of *policies SD5, SD19 and SD20 of the South Downs Local Plan* and to comply with the National Planning Policy Framework.

11. The dwelling hereby approved shall be occupied until the vehicle parking space shown on drawing 2015/018/PL2 Rev C has been provided and this space shall be made permanently available for that use.

Reason: To secure satisfactory standards of parking for the proposed development having regard to *policy SD22 of the South Downs Local Plan*.

12. The details reserved by condition 12 have been approved on 26 July 2017 under application ref. SDNP/17/02411/DCOND.

13. 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: In the interest of health & safety of the future occupiers of the site 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.

14. Notwithstanding the provisions of the Town and Country (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no development described in Classes A to E of Part 1 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 SD5 and SD31 of the South Downs Local Plan, policy PL2 of the Lewes Neighbourhood Plan*, and to comply with National Policy Guidance contained in the National Planning Policy Framework.

15. *Prior to the first residential occupation of the dwelling, the path linking between Morris Road and Chandlers Wharf shall be constructed and completed in accordance with the details approved on 15 October 2020 under application ref. SDNP/20/029889/DCOND. Notwithstanding that the passage shall be secured by gates, residents of Chandlers Wharf shall be given access to the linking passage, and the means to unclosethe gates by way of a key/code/keycard/fob. Such access shall be maintained thereafter.*

Reason: In the interests of highway safety and amenity having regard to policies SD5, SD19 and SD20 of the South Downs Local Plan and to comply with National Policy Guidance contained in the National Planning Policy Framework.

16. No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Reason: To ensure that the management of surface water does not result in the mobilisation of contaminants having regard to *policies SD5 and SD17 of the South Downs Local Plan* and to comply with National Policy Guidance contained in the National Planning Policy Framework.

17. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to

groundwater. The development shall be carried out in accordance with the approved details.

Reason: To prevent the mobilisation of contaminants or impact on controlled waters from the construction of deep foundations, including piling activities having regard to *policies SD5 and SD17 of the South Downs Local Plan* and to comply with National Policy Guidance contained in the National Planning Policy Framework.

11 **Background Papers**

11.1 None.