

Report to: PLANNING COMMITTEE
Date of Meeting: 07 February 2018
Report from: Assistant Director of Housing and Built Environment

Application Address: Former Ore Business Park, Farley Bank,
Hastings, TN35 5QA
Proposal: Variation of conditions 2 (approved drawings),
4 (soft landscaping), 6 (hard landscaping) and 7
(provision of drainage facilities) of planning
application HS/FA/13/00177 - Amendments to
allow for development phasing.
Application No: HS/FA/17/00798

Recommendation: Grant Full Planning Permission

Ward: TRESSELL
Conservation Area: No
Listed Building: No

Applicant: Mr & Mrs Harding and Sacker per Lewis and Co
Planning SE Ltd Lewis & Co Planning 2 Port Hall
Road Brighton BN1 5PD

Public Consultation

Site Notice: Yes
Press Advertisement: Yes - General Interest
Letters of Objection: 7
Petitions of Objection Received: 0
Letters of Support: 0
Petitions of Support Received: 0
Neutral comments received 0

Application Status: Not delegated - 5 or more letters of objection
received

1. Site and Surrounding Area

Description of site

The site comprises a steeply sloping area of land served by an access road which zig zags down from Farley Bank to Hurrell Road. The site was previously occupied by single storey

industrial units these have been demolished. Phase 1 of the approved application (Units 11-19) has been completed. It is understood that approximately 7 of the 9 units are now occupied. The basic structure of the new internal road is in place within the second phase of the site but not yet finished to a standard that would be considered usable to domestic traffic.

To the south-est and north-ast are residential properties in Farley Bank and Hurrell Road.

To the south-west at the upper level is an area where residential flats have been demolished; there was a previous planning permission for new residential development on this site. A little further away to the north east is a road leading from Frederick Road that was constructed by SeaSpace as an early stage of the development of the area, but which has not been further developed.

Background

Permission HS/FA/13/00177 permitted the erection of 19 dwellings at Ore Business Park. The first phase of the development (units 11 to 19) is considered complete, approximately 7 of the 9 units are occupied, and this is contrary to the provisions contained within the conditions and s106 of the extant planning consent. The applicant wishes to commence works to the remaining units 1-10. The occupation and delivery of the remaining units on the site is dependent on amending conditions to allow the phasing of the scheme and permit temporary access to the site from Hurrell Road to the north. The applicant has advised that the funding of the second phase of works is dependent on the release of capital from Phase 1 and agreement from the funding sources once the necessary amendments to the consent have been secured. Residents of Hurrell Road have complained that they have experienced some disruption during the construction phase of the project.

2. Proposed development

Description of proposal

Permission HS/FA/13/00177 permitted the erection of 19 dwellings at Ore Business Park. The planning permission is subject to a number of planning conditions; three of these conditions require discharging prior to occupation of the approved dwellings. These are:

4 – Soft Landscaping

6 – Hard Landscaping

7 (ii and iii) – Provision of drainage facilities

The first phase of the development (units 11 to 19) has now been completed and contracts are in place to start works on Phase 2 (units 1 to 10). Funding for Phase 2 is predicated on the sale of units in Phase 1 so conditions 4, 6 and 7 (ii and iii) require amending to reflect the fact that Phase 1 will be occupied prior to the completion of the whole development. As the amendment of the conditions will result in the generation of a new decision notice, a draft Section 106 agreement is also provided.

Phase 2 of the development involves: the erection of the 10 dwellings fronting Farley Bank (units 1 to 10), the landscaping of the site and the construction of the play area close to unit 1.

The landscaping and play area will be provided later in the development programme when the last 10 houses have been constructed. This is because construction traffic could harm any landscaping and make use of the play area unsafe. Similarly, whilst drainage is being provided for the site in accordance with details already approved by the Planning Authority, the entire drainage system for the whole site is not yet in place (as work on phase 2 has not yet commenced).

Construction work for Phase 2 is ready to commence, however, funding of Phase 2 is dependent on the pre-sale of the 9 houses in Phase 1 (units 11 to 19). Occupation of Phase 1 houses prior to the completion of Phase 2 requires the amendment of conditions 4, 6 and 7 (ii and iii) to allow temporary access to the site from Hurrell Road and a new s106 to provide an open space and play area prior to the occupation of units 1-10. The applicant has not provided a construction timetable to confirm the build timetable or when the temporary access will be closed off.

Relevant Planning History

- HS/FA/13/00177 Erection of 19 dwellings, car parking, new access route, play area and landscaping, subject to a legal agreement to provide play areas and open space prior to occupation.
- HS/FA/11/00460 Redevelopment of site to provide 37 residential units with car parking, refuse storage and open space. Resolved to be approved subject to a legal agreement 12 October 2011 but later Withdrawn 11 February 2013
- HS/FA/10/00078 Redevelopment of site to provide 48 residential units with car parking, cycle parking, refuse storage and open space. Refused 10 June 2010

National and Local Policies

Hastings Local Plan – The Hastings Planning Strategy (2014)

- DS1 - New Housing Development
- SC1 - Overall Strategy for Managing Change in a Sustainable Way
- SC3 - Promoting Sustainable and Green Design
- SC4 - Working Towards Zero Carbon Development
- EN3 - Nature Conservation and Improvement of Biodiversity
- H1 - Housing Density
- H2 - Housing Mix
- T3 - Sustainable Transport

Hastings Local Plan – Development Management Plan (2015)

- LP1 - Considering Planning Applications
- DM1 - Design Principles
- DM3 - General Amenity
- DM4 - General Access
- DM5 - Ground Conditions
- DM6 - Pollution and Hazards
- HN8 - Biodiversity and Green Space

Other Policies/Guidance

- Sussex Air Quality and Emissions Mitigation Guidance 2013

National Planning Policy Framework (NPPF)

The NPPF states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Para 14 sets out a general presumption in favour of sustainable development and states that development proposals which accord with the development plan should be approved without delay.

Three dimensions of sustainability given in paragraph 7 are to be sought jointly: economic (by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation); social (providing housing, creating high quality environment with accessible local services); and environmental (contributing to, protecting and enhancing natural, built and historic environment) whilst paragraph 10 advises that plans and decisions need to take local circumstances into account, so they respond to the different opportunities for achieving sustainable development in different areas.

Section 7 of the NPPF sets out the requirement for good design in development, Para 56 states: "The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people".

3. Consultation comments

Highways - **No Objection**. In principle the variation of conditions 4, 6 and 7 of planning application HS/FA/13/00177 are considered acceptable; however, concern is raised in relation to how access to units in Phase 1 (11 to 19) will be achieved during the remainder of the build. It is noted that bollards are in place allowing only emergency access to Hurrell Road (unadopted public highway). If this access is to be utilised for a temporary period this would need to be detailed with measures to accommodate turning whilst the remaining units and highway works are complete. The highway works fronting units 11 to 19 would also need to be completed prior to occupation with routing for units 1 to 10 maintained solely via Farley Bank. Once the works are complete the sole means of vehicles access shall be via Farley Bank, apart from in an emergency access. Modification to plan and clarification on access to Phase 1 and 2 requested. These have now been submitted, Plan No. BC-284-03-L.

Waste Services - **No Objection** – provided measures to manage on-street parking are in place.

Southern Water – **No objection**

Estates Services - **No comments received**

Environment Health - **No objection**.

Borough Arboriculturist- **No objection**.

Building Control – **No comments received**.

4. Representations

7 representations received from 6 different properties and from Cllr Chowney.

The 7 representations were objecting to the proposals on the following grounds:

- The primary concern is in relation to the impact on the unadopted access route, Hurrell and Broomgrove Road, the road is maintained by local residents and the developer does not contribute to this.
- Negative impact of development on condition of Hurrell and Broomgrove Road as a result of increased volume of traffic from new residents' vehicles and from construction traffic.
- Developer has ignored restrictions required in relation to access, volume and times of construction related operations to reduce impacts. No guarantee this will not continue.

- No restrictions to prevent construction traffic from entering Hurrell Road through the site.
- New access will encourage anti-social behaviour as witnessed by recent fire.

5. Determining Issues

The following other constraints have been identified:

- Access and highways impacts.
- Landscape impacts
- Delivery of scheme

a) Principle

Policy LP1 of the Hastings Local Plan - Development Management Plan (2015), paragraph 4.3 of the Hastings Local Plan – Planning Strategy (2014) and paragraph 14 of the NPPF set out a presumption in favour of sustainable development. The site is within a sustainable location with reasonable/good access to public transport, shops, services and facilities and as such the development is considered acceptable in principle subject to other local plan policies.

The principle of residential development on the site has been accepted when the scheme was approved, the main considerations are, therefore, access to and within the site, impact upon neighbouring residential amenities, parking restrictions and how the phasing can be managed and the timetable for the completion of the scheme.

The occupation of Units 11-19 is in breach of the extant planning permission, as Conditions 4, 6 and 7 required the development to be completed in one phase prior to the occupation of any dwelling.

b) Access, parking and highway safety matters

Highways have been consulted in relation to the phasing proposal and request to allow temporary access to the new units in Phase 1 (11 to 19). The temporary access at this northern point was considered acceptable provided the turning head identified on Plan BC-284-03-L is provided along with measures to restrict on street parking to allow waste vehicle movements. The highway works fronting units 11 to 19 would also need to be completed prior to occupation with routing for units 1 to 10 maintained solely via Farley Bank.

A barrier to prevent construction traffic moving from Phase 2 to Phase 1 should be provided by unit 11 (an updated plan has been submitted to accommodate this - BC-284-03-L.).

Once the works are complete, bollards shall be erected at Hurrell Road so that the sole means of vehicles access shall be via Farley Bank, apart from in an emergency access. Modification to plan and clarification on access to Phase 1 and 2 requested, provided in updated plan BC-284-03-L.

c) Impact on neighbouring residential amenities

The proposed amendment will permit residents of the new properties 11-19 access via Hurrell Road, for a temporary period until Phase 2 is complete and the internal road operational. This will have impacts on the residents in terms of noise and disturbance and the condition of the road as this is unadopted. Highways have not raised any objection to the additional level of vehicle traffic and its impacts on Hurrell and Broomgrove Road.

If the residents of the new properties are not permitted access to the site and their parking areas, it is reasonable to assume that they will simply park their cars on Hurrell Road and gain access to their homes on foot. This would add to additional parking stress on Hurrell Road and exacerbate the situation.

In order to minimise the impact on existing residents, the developer will place a barrier within the site by unit 11, identified on Plan BC-284-03-L, this will restrict all construction traffic to access off Farley back.

A condition will also be applied to time-limit the amendment to 24 months to ensure Phase 2 is built out quickly and any ongoing disturbance to residents limited. Provision is made within the s106 Legal Agreement to ensure the applicant undertakes a photographic condition survey of Broomgrove and Hurrell Road and that all necessary repairs, agreed in writing with the Planning Authority, are undertaken within 1 month of the access to Hurrell Road being closed.

d) Other

The applicant has experienced technical and operational issues in relation to the delivery of the site; the original intention to build the site out in one phase has not been possible. The applicant has requested that the planning authority take a pragmatic view on the temporary access arrangements to support the final phase of delivery for the scheme. The Council's planning policies support the delivery of housing; the failure to deliver a comprehensive scheme is not considered desirable, but the Local Planning Authority must balance this against the impact on the amenity of residents on Hurrell and Broomgrove Road.

e) Screening of Application under Habitats Regulations 2010 - Impact of Development on Ashdown Forest Special Area Conservation (SAC).

This application relates to an extant consent and will not in itself generate additional traffic movement. An appropriate assessment is not therefore required in this instance.

6. Conclusion

It is considered that through the use of a condition to time restrict the proposed access from Hurrell Road to Units 11-19 of the application site and provision within the s106 agreement to undertake reasonable repairs to Hurrell Road, the impact on residents and will be managed. On planning balance the application is, therefore, recommended for approval subject to conditions.

Condition 4

This condition currently states:

All planting seeding or turfing comprised in the approved soft landscaping scheme shall be carried out prior to the occupation of any part of the development, or with the written agreement of the Local Planning Authority, in the first planting and seeding seasons following the occupation of any buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

This to be amended, new Condition 1 so that it reads (amended text in bold):

All planting seeding or turfing comprised in the approved soft landscaping scheme shall be **carried out in the first planting and seeding seasons following the completion of the development. "Completion of the development" is defined as the first sale or occupation of any unit within units 1 to 10 of the approved scheme.** Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Condition 6

This condition currently states:

All hard landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.

This condition to be amended, new condition 2, so that it reads (amended text in bold):

All hard landscape works shall be carried out in accordance with the approved details. The works shall be carried out **prior to the first sale or occupation of any unit within units 1 to 10 of the approved scheme.**

Condition 7 (ii and iii)

Note that condition 7(i) stated:

Construction of the development shall not commence until details of the proposed means of foul sewerage and surface water disposal/management have been submitted to and approved in writing by the Local Planning Authority.

The details required under condition 7(i) have been approved under local planning authority reference HS/CD/16/00670. Works approved under 7(i) have been carried out insofar as they impact on phase 1 of the development (units 11 to 19), and this is confirmed with the Building Regulations approval (see Appendix 1 of submission letter).

Conditions 7 (ii and iii) state:

(ii) Development shall be carried out in accordance with the details approved under (i) and no occupation of any of the dwellings or flats hereby approved shall occur until those works have been completed.

(iii) No occupation of any of the dwellings or flats hereby approved shall occur until the Local Planning Authority has confirmed in writing that it is satisfied, that the necessary drainage infrastructure capacity is now available to adequately service the development.

On the basis that the drainage for Phase 1 has already been installed (as evidenced by the Building Regulations approval), Conditions 7 to be amended, new condition 3, to read (amended text in bold):

(i) Development of units 1 to 10 shall be carried out in accordance with the details approved under local planning authority reference HS/CD/16/00670 and no occupation of units 1 to 10 shall occur until those works have been completed.

(ii) No occupation of units 1 to 10 shall occur until the Local Planning Authority has confirmed in writing that it is satisfied, that the necessary drainage infrastructure capacity is now available to adequately service the development.

Section 106 Agreement

The original planning permission was subject to a Section 106 Agreement that dealt with the provision and future management of the play area located close to the side to unit 1.

The variation of conditions 4, 6 and 7(ii and iii) will generate a new decision notice with a new reference number. As the original Section 106 did not include provision for it to be binding on Section 73 permissions for variation of planning conditions, a new Section 106 is proposed to tie in with the revised consent and include provision to undertake agreed repair works to Hurrell Road.

A draft Section 106 is included with the application documents. Schedule 1 ("The Owners Obligations") is amended to reflect the phased nature of the development and the requirement to undertake agreed repairs to Broomgrove and Hurrell Road.

These proposals comply with the development plan in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004 which states:

"If 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".

The Human Rights considerations have been taken into account fully in balancing the planning issues.

7. Recommendation

Resolution to Grant Permission

A) That the Planning Services Manager be authorised to issue planning permission upon completion of a S106 Agreement to secure a play area and open space and highway repairs on Hurrell Road. In the event that the Agreement is not completed by 7th March 2018 that permission be refused on the grounds that the application does not comply with policies DM1, DM3, DM4 of the Hastings Local Plan, The Hastings Planning Strategy 2011-2028 unless an extension of time has been agreed in writing by the Planning Services Manager in consultation with the Chair and Vice Chair of the Planning Committee.

B) Subject to A) above:

Grant Full Planning Permission subject to the following conditions:

Grant Full Planning Permission subject to the following conditions:

1. All planting seeding or turfing comprised in the approved soft landscaping scheme, approved under planning permission HS/CD/16/00507 updated HS/CD/17/00836, shall be carried out in the first planting and seeding seasons following the completion of the development. "Completion of the development" is defined as the first sale or occupation of any unit within units 1 to 10 of the approved scheme. Any trees or plants which within a

period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

2. All hard landscape works shall be carried out in accordance with the approved details, approved under planning permission HS/CD/16/00507 updated HS/CD/17/00836. The works shall be carried out prior to the first sale or occupation of any unit within units 1 to 10 of the approved scheme.
3. (i) Development of units 1 to 10 shall be carried out in accordance with the details approved under local planning authority reference HS/CD/16/00670 foul sewerage and surface water and no occupation of units 1 to 10 shall occur until those works have been completed.
(ii) No occupation of units 1 to 10 shall occur until the Local Planning Authority has confirmed in writing that it is satisfied, that the necessary drainage infrastructure capacity is now available to adequately service the development.
4. Temporary protective fences to safeguard the trees and/or hedges to be retained on the site for Phase 2 works have been erected in accordance with the current BSI 5837 standards and to the satisfaction of the Local Planning Authority. All such fences shall be kept in a sound, upright and complete condition until the development has been completed and/or the Local Planning Authority confirm in writing that the works have been sufficiently completed for the fencing to be removed.
5. With the exception of internal works the building works required to carry out the development allowed by this permission must only be carried out within the following times:-

08.00 - 18.00 Monday to Friday
08.00 - 13.00 on Saturdays
No working on Sundays or Public Holidays.
6. The development shall be carried out in accordance with the approved details for the new estate road, approved under planning permission HS/CD/16/00929 updated HS/CD/17/00836. The new estate road will be completed and fully operational within two years of the award of this consent, at the time the new road is operational the barrier restricting access to Hurrell Road to emergency vehicles only will be installed and maintained as such by the freehold interest of the estate.
7. The development will be carried out in accordance with the approved Traffic Management Scheme, approved under planning permission HS/CD/16/00900.
8. During any form of earthworks and/or excavations that are carried out as part of the development, suitable vehicle wheel washing equipment should be provided within the site, to the approval of the Local Planning Authority, to prevent contamination and damage to the adjacent roads. The

development shall be carried out in accordance with the details approved under planning permission HS/CD/16/00900.

9. Development shall be carried out in accordance with the approved external building surface details, approved under planning permission HS/CD/17/00155 and HS/CD/15/00887.
10. The parking and garden areas for each plot shall be provided in accordance with the approved plans, approved under planning permission HS/CD/16/00507.
11. The Public Right of Way (Hastings 251) shall remain clear and unobstructed at all times during construction of the development, unless otherwise approved in writing by the Local Planning Authority.
12. Any damage caused to the Public Right of Way referenced in condition 11 above as a result of any construction of the site shall be put right and all Rights of Way markings and furniture shall be retained during construction unless otherwise approved in writing by the Local Planning Authority.
13. No materials shall be stored on the land forming the Public Right Of way referenced in condition 11 above unless otherwise approved in writing by the Local Planning Authority.
14. The development hereby permitted shall be carried out in accordance with the following approved plans:

Y048 G 001; 002; 003A; 004A; 005; 006; 007; 008; 009; 010; 011; 012; 013; 014, 017
BC-284-03-L - Site Layout Temporary Arrangement to allow phasing.
15. The development will be constructed in accordance with the details approved under planning permission HS/CD/16/00301, regarding contamination on the site.

Reasons:

1. In the interests of the visual amenity.
2. In the interests of the visual amenity.
3. To prevent increased risk of flooding.
5. To safeguard the amenity of adjoining residents.
6. To ensure that a reasonable standard of access is provided in the interests of pedestrian and traffic safety. To ensure amenity of residents of Hurrell Road is protected.
7. To ensure that a reasonable standard of access is provided in the interests of pedestrian and traffic safety.

8. To ensure that a reasonable standard of access is provided in the interests of pedestrian and traffic safety.
9. To ensure a satisfactory form of development in the interests of the character and amenity of the area.
10. To ensure a satisfactory form of development in the interests of the character and amenity of the area.
11. To ensure that a reasonable standard of access is provided in the interests of pedestrian and traffic safety.
12. To ensure that a reasonable standard of access is provided in the interests of pedestrian and traffic safety.
13. To ensure that a reasonable standard of access is provided in the interests of pedestrian and traffic safety.
14. For the avoidance of doubt and in the interests of proper planning.
15. To protect those redeveloping the site and any future occupants from potential landfill gases and soil contamination.

Notes to the Applicant

1. Failure to comply with any condition imposed on this permission may result in enforcement action without further warning.
 2. Statement of positive engagement: In dealing with this application Hastings Borough Council has actively sought to work with the applicant in a positive and proactive manner, in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.
 3. The applicant is advised that drainage associated with wastewater or sewage must be separate to, and not connected with, surface water drainage unless otherwise approved. Drainage misconnections can pollute rivers and beaches in Hastings. You must ensure that drainage from your properties does not cause pollution. Enforcement action could be taken to resolve this under the Building Act 1984. Drainage misconnections for new development which allow or cause pollution would also be contrary to Building Regulations. You are advised therefore to check your property is connected correctly and any plans for additional drainage connect to the correct foul or surface water system. You can get further advice on identifying your drainage and repairing misconnections at <http://www.connectright.org.uk/>.
 4. This permission is the subject of an obligation under Section 106 of the Town and Country Planning Act 1990 (as amended).
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Officer to Contact

Mr P Arthurs, Telephone 01424 783275

Background Papers

Application No: HS/FA/17/00798 including all letters and documents