



Economy, Environment and Communities, Development Management

Planning Committee

Report of Head of Planning and Building Control on 07 September 2023

Plans List Item Number: 1

Reason for bringing to committee

Major Application and Significant Community Interest.

Application Details

Location: WIENERBERGER LTD, SANDOWN WORKS, 175, STUBBERS GREEN ROAD, ALDRIDGE, WALSALL, WS9 8BL

Proposal: APPLICATION UNDER SECTION 73 FOR THE REMOVAL OF CONDITION NUMBER 8 OF PLANNING PERMISSION 15/0303/FL (WHICH VARIED CONDITION 14 OF PLANNING PERMISSION 08/1338/FL AND CONDITION 14 OF BA17797P) TO ALLOW AN INCREASE IN THE LIMIT OF IMPORTED CLAYS FROM 95% TO 100%. SITE WITHIN THE PUBLIC RIGHTS OF WAY ALD1)

Application Number: 23/0118

Case Officer: Ann Scott

Applicant: Mr Richard Lord

Ward: Rushall-Shelfield

Agent: Mrs Sian Hayle

Expired Date: 17-Apr-2023

Application Type: Section 73: Removal or Variation of Conditions

Time Extension Expiry: 30-Sep-2023



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Recommendation:

Planning Committee resolve to Delegate to the Head of Planning & Building Control to Grant Planning Permission Subject to Conditions and subject to:

- No new material considerations being received within the consultation period.
- The amendment and finalising of conditions.
- No further comments from a statutory consultee raising material planning considerations not previously addressed.

Proposal

This Section 73 (S73) planning application is for the removal of condition number 8 of planning permission 15/0303/FL (which varied condition 14 of planning permission 08/1338/FL and condition 14 of BA17797P) to allow an increase in the limit of imported clays from 95% to 100%. The site is within the Public Rights of Way (Ald1)

8. The development hereby permitted shall only continue in association with the adjoining clay extraction operations such that no more than 95% of the clay used in the production of bricks each year shall be imported from elsewhere (i.e. sources other than Sandown Quarry). Confirmation of the tonnages of clay sourced from Sandown Quarry and imported from elsewhere (categorised by each source) annually (i.e. during the annual monitoring period 1st April-31st March) and the remaining clay reserves at Sandown Quarry at 31st March each year shall be submitted to the Mineral Planning Authority by the 1st May each year that the brickworks continues to operate. (old condition 8 to be deleted as this permission seeks it being removed).

Reason: To ensure that the brickworks, which are in the Green Belt and were permitted on the basis that the works remain ancillary to the adjoining quarry, only continue to operate in association with the quarry. Annual updates of clay supplies and usage and the extent of permitted clay reserves at Sandown Quarry are required to enable the Mineral Planning Authority to monitor compliance with the permission.

Site and Surroundings

The application site is an existing brick works manufacturing site situated on the North side of Stubbers Green Road Aldridge. This brickworks site, including brick and clay storage areas is adjacent to Sandown Quarry. The site is located within the Green Belt, with Stubbers Green Bog Site of Special Scientific Interest (SSSI) immediately to the south boundary and Stubbers Green Site of Importance for Nature Conservation across the road. Swan Pool and The Swag SSSI are 400m to the north.

The application site is within the vicinity of the adjacent clay quarry site which has a tandem application for a restoration scheme, reference 23/0120. The current application site utilises an existing vehicular access and there are no physical changes to the brickwork's application site proposed.

The application site is situated within flood zone 2 as defined on the Environment Agency flood map for planning. Near to the site is a definitive public right of way (Ald1) is not physically affected by the proposal to increase the importation of clay but runs around the existing quarry and is defined by existing fencing.. The application site also lies within the vicinity of a SSSI Risk Impact Zone. The site is situated in a low-risk area for Coal Mining legacy development.

Relevant Planning History

08/1338/FL Vary Condition 14 of planning approval BA17797P to Allow Increase of Limit on Imported Clays from 49% to 65% - Granted 4 November 2008

BA1779P – Erection of a brickworks – Granted 25 September 1986.

15/0303 - Application under section 73 for the variation of condition 14 of planning permission BA17797P, (as amended by 08/1338/FL) to allow an increase in the limit on the percentage of imported clays used in the production of bricks at the brickworks from 65% to 95% - Granted 08 September 2015.

23/0120 - Planning application for the restoration of Sandown Quarry through the importation of 3,100,000m³ of inert/non-hazardous material over a 20-year period, the construction of a

new site access and ancillary development. (Site within the Public Rights of Way Ald1) Sandown Quarry Stubbers Green Road Aldridge. – Pending consideration.

- BA17797P (September 1986) erection of brickworks. Condition 14 restricted the importation of clay to 49% of the total works usage in any year.
- 08/1338/FL (November 2008) allowed 65% of clay to be imported, with the condition varied by the granting of planning permission.
- 15/0303/FL (February 2015) allowed for a further 95% clay imports.
- 22/0826 (January 2023) EIA Scoping Opinion for restoration of 3,000,000m³ non-hazardous waste over a 20-year period (withdrawn)

Relevant Policies

National Planning Policy Framework (NPPF)

The NPPF sets out the Government's position on the role of the planning system in both plan-making and decision-taking. It states that the purpose of the planning system is to contribute to the achievement of sustainable development, in economic, social and environmental terms, and it emphasises a "*presumption in favour of sustainable development*".

Key provisions of the NPPF relevant in this case:

NPPF 2 – Achieving sustainable development

NPPF 4 – Decision Making

NPPF 6 – Building a strong, competitive economy

NPPF 7 – Ensuring the vitality of town centres

NPPF 8 – Promoting healthy and safe communities

NPPF 9 – Promoting sustainable transport

NPPF 10 – Supporting high quality communications

NPPF 11 – Making effective use of land

NPPF 13 – Protecting Green Belt land 12 – Achieving well-designed places

NPPF 14 – Meeting the challenge of climate change, flooding and coastal change

NPPF 15 – Conserving and enhancing the natural environment

NPPF 16 – Conserving and enhancing the historic environment

NPPF 17 – Facilitating the sustainable use of minerals

On **planning conditions** the NPPF (para 56) says:

Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

On **decision-making** the NPPF sets out the view that local planning authorities should approach decisions in a positive and creative way. They should use the full range of planning tools available and work proactively with applications to secure developments that will improve the economic, social and environmental conditions of the area. Pre-application engagement is encouraged.

National Planning Policy Guidance

On **material planning consideration** the NPPG confirms- planning is concerned with land use in the public interest, so that the protection of purely private interests... could not be material considerations

Reducing Inequalities

The Equality Act 2010 (the '2010 Act ') sets out 9 protected characteristics which should be taken into account in all decision making. The **characteristics** that are protected by the

Equality Act 2010 are:

age
disability
gender reassignment
marriage or civil partnership (in employment only)
pregnancy and maternity
race
religion or belief
sex
sexual orientation

Of these protected characteristics, disability and age are perhaps where planning and development have the most impact.

In addition, the 2010 Act imposes a Public Sector Equality Duty "PSED" on public bodies to have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality and to foster good relations. This includes removing or minimising disadvantages, taking steps to meet needs and encouraging participation in public life.

Section 149(6) of the 2010 Act confirms that compliance with the duties may involve treating some people more favourably than others. The word favourably does not mean 'preferentially'. For example, where a difference in ground levels exists, it may be perfectly sensible to install some steps. However, this would discriminate against those unable to climb steps due to a protected characteristic. We therefore look upon those with a disability more favourably, in that we take into account their circumstances more than those of a person without such a protected characteristic and we think about a ramp instead. They are not treated preferentially, because the ramp does not give them an advantage; it merely puts them on a level playing field with someone without the protected characteristic. As such the decision makers should consider the needs of those with protected characteristics in each circumstance in order to ensure they are not disadvantaged by a scheme or proposal.

Development Plan

www.go.walsall.gov.uk/planning_policy

Saved Policies of Walsall Unitary Development Plan

3.2 to 3.5 The Countryside and Green Belt
3.6 to 3.8 Environmental Improvement
3.9 Derelict Land Reclamation
GP2: Environmental Protection
GP3: Planning Obligations
GP5: Equal Opportunities
GP6: Disabled People
ENV7: Countryside Character
ENV9: Environmental Improvement Initiatives
ENV10: Pollution
ENV11: Light Pollution
ENV12: Hazardous Installations
ENV13: Development Near Power Lines, Substations and Transformers
ENV14: Development of Derelict and Previously Developed Sites
ENV17: New Planting
ENV18: Existing Woodlands, Trees and Hedgerows
ENV23: Nature Conservation and New Development
ENV24: Wildlife Corridors
ENV25: Archaeology
ENV26: Industrial Archaeology
ENV27: Buildings of Historic or Architectural Interest
ENV28: The 'Local List' of Buildings of Historic or Architectural Interest

ENV32: Design and Development Proposals
ENV33: Landscape Design

ENV40: Conservation, Protection and Use of Water Resources
JP8: Bad Neighbour Industrial Uses
5.3 to 5.11 Strategic Policy Statement
T1 - Helping People to Get Around
T8 – Walking
T9 – Cycling
T10: Accessibility Standards – General
T11: Access for Pedestrians, Cyclists and Wheelchair users
Black Country Core Strategy

CSP3: Environmental Infrastructure

EMP1: Providing for Economic Growth
EMP2: Actual and Potential Strategic High Quality Employment Areas
EMP3: Local Quality Employment Areas
EMP4: Maintaining a Supply of Readily Available Employment Land
TRAN4: Creating Coherent Networks for Cycling and for Walking
TRAN5: Influencing the Demand for Travel and Travel Choices
ENV1: Nature Conservation
ENV2: Historic Character and Local Distinctiveness
ENV3: Design Quality
ENV4: Canals
ENV5: Flood Risk, Sustainable Drainage Systems and Urban Heat Island
ENV6: Open Space, Sport and Recreation
ENV8: Air Quality
WM1: Sustainable Waste and Resource Management
WM2: Protecting and Enhancing Existing Waste Management Capacity
WM3: Strategic Waste Management Proposals
WM4: Locational Considerations for New Waste Management Facilities
MIN1: Managing and Safeguarding Mineral Resources
MIN2: Production of Aggregate Minerals
MIN3: Maintaining Supplies of Brick Clay
MIN4: Exploitation of Other Mineral Resources
MIN5: New Proposals for Mineral Development

Walsall Site Allocation Document 2019

IND1: Existing High Quality Industry
IND2: Potential High Quality Industry
IND3: Retained Local Quality Industry
IND4: Local Industry Consider for Release
LC5: Greenways
GB1: Green Belt Boundary and Control of Development in the Green Belt
EN1: Natural Environment Protection, Management and Enhancement
EN3: Flood Risk
EN4: Canals
W1: Future Waste Management Requirements
M1: Safeguarding of Mineral Resources
M2: Safeguarding of Minerals Infrastructure
M3: Secondary and Recycled Aggregates
M6: Brickworks- Future Supply Requirements
M7: Brick Clay Extraction- Stubbers Green
M8: Brick and Clay Extraction- Other Areas

Supplementary Planning Document

Conserving Walsall's Natural Environment

Development with the potential to affect species, habitats or earth heritage features

NE1 – Impact Assessment

NE2 – Protected and Important Species

NE3 – Long Term Management of Mitigation and Compensatory Measures

Survey standards

NE4 – Survey Standards

The natural environment and new development

NE5 – Habitat Creation and Enhancement Measures

NE6 – Compensatory Provision

Development with the potential to affect trees, woodlands and hedgerows

NE7 - Impact Assessment

NE8 – Retained Trees, Woodlands or Hedgerows

NE9 – Replacement Planting

NE10 – Tree Preservation Order

Air Quality SPD

Section 5 – Mitigation and Compensation:

Type 3 – Additional Measures

5.12 - Emissions from Construction Sites

5.13 – Use of Conditions, Obligations and CIL

5.22 - Viability

Consultation Replies

Environmental Protection – No objection

Environment Agency – No objection

Conservation Officer – concerns raised but these relate to the application for the quarry restoration application.

Public Rights of Way Officer – Concerns Raised with regard to the route of the public footpath 1 Aldridge. However, this application does not include any physical changes and the PROW will not be affected by this application.

Strategic Planning Policy – Support In the event of approval being granted, planning conditions should be included that allow for the sharing or pooling of stockpiled resources in-line with BCCS Policy MIN3.

Local Highways Authority – Concerns raised Clarification is sought on the types and size of HGV's expected to deliver clay and inert material to the two sites. Paragraph 9.4.2 of the Transport Assessment states that HGV's with 18t payloads will carry inert infill to the quarry and Paragraph 9.4.5 states that HGV's with 20t payloads will deliver the clay imports to the brickworks. Clearly it is important to fully understand the actual payloads being delivered as this impacts of the number and frequency of HGV trips and the years of operation.

Representations

3 letters from third parties regarding the following;

Close to the SSSI and Swan Pool

Sand from vehicles is transported onto the highway

The site entrance will bring lorries onto a narrow busy road.

Stubbers Green Road too small for HGV's

Concern about impact on the wildlife
Highway safety/accidents
Road already very congested.
Increase in pollution.
Air pollution
Air quality information is out of date.

Determining Issues

Principle of Development
Green Belt Assessment
Heritage Assessment
Amenity of Neighbours and Amenity of Future Occupiers
Highways
Ecology

Principle of development

Consideration of application through s73 of the Town and Country Planning Act (as amended)

Section 73 is often used where circumstances affecting the development have changed, meaning that the conditions which were originally imposed need to be amended. When considering an application under section 73 the LPA can decide that planning permission for the development should be granted without particular conditions or subject to different conditions to those which were attached to the original permission. In this case the conditions of the original permission have been reviewed; those conditions which are no longer relevant, e.g. commencement condition, materials, tree guards and landscape due to the development being implemented and established are not required to be imposed on any permission. Most of the ongoing operational conditions as originally approved are considered to continue to be necessary and are recommended. Some conditions which are now not considered to meet the 'tests' are not recommended.

In 1986 planning permission was granted subject to conditions for the erection of brickworks within the Green Belt which was justified by its reliance on the clay being extracted from the neighbouring Sandown Quarry. Planning permission was originally subject to a condition requiring that the brickworks will only be operated in association with the adjoining clay extraction operations such that no more than 49% of clay used in the production of bricks each year shall be imported from elsewhere. In 2008 Planning Committee approved a variation to increase the limit on imported clays to 65%. The current application proposes to increase that further, seeking imports from 95% to 100% per annum.

In their ES non-technical Summary, the applicant notes that 5% of the 10,000 tonne imported clays to the adjacent brickworks annual requirement is currently provided by Sandown Quarry. We would estimate this to be around 500 tonnes per annum. Given that this document also states that approximately 5 years supply remains (para 1.2.2) then this suggests total mineral reserves stand at around 2,500 cubic tonnes.

When the planning permission for the brickworks was approved it was intended that once reserves at the quarry had run out, the brickworks would cease operating. The application seeks to prolong the life of the brickworks by increasing the amount of clay imports and maintaining employment provision.

A tandem application for the restoration of the quarry has been submitted. The application for the restoration brings other separate issues not related to this application. The proposal to allow the increase in importation of clay from 95% to 100% would be necessary to ensure that the brickworks remain open and can continue to operate and provide employment opportunities for the local community.

Green Belt Assessment

The variation of condition would increase vehicle movements but would not have any further impact upon the openness and purpose of the Green Belt in the immediate future. The issue to consider is whether the reduced reliance on clay from the quarry would cause long-term harm to the Green Belt by prolonging use of the brickworks and the longer period in which restoration of the quarry will take place. Based on the quarry being permitted to be worked until 2042 the variation of this condition would not override this principle, condition regardless of extraction rates. It does appear that the quarry is very near the end of its workable life in terms of extraction rates and the amount of clay left to work. The remaining clay will be stockpiled within the storage area for the brick work site to maximise the remaining volume left and to ensure that there is sufficient supply for the brickworks to continue output at capacity for the interim time until they are able to secure the importation of 100% of clays for use in the brick making enterprise. In accordance with policies GP2 Environmental Protection of the UDP and GB GB1: Green Belt Boundary and Control of Development in the Green Belt of the Site Allocation document.

Heritage Assessment

The application proposed will not result in an adverse impact on any nearby heritage assets.

Amenity of Neighbours and Amenity of Future Occupiers

There have been responses to the proposal from nearby residents although limited to this application. The proposal would make a limited difference to the operation of the site other than an increase in the number of vehicular movements and the amount of clay imported to the site from existing suppliers. The operation of the site already has traffic routing measures in place to control the impact of vehicles to and from the brickworks to minimise the impact on the locality.

Currently there is only a restriction on the level of imports of clay to the brickworks and not the capacity of the site. With an increase in importation of clay to the site is an increase in vehicular movements. This is discussed further in the highways section of this report.

It is considered that the proposal would have a minimal impact on the existing amenities of nearby existing and future occupiers. The proposal is considered to accord with the Saved Unitary Development Plan Policy GP2 (Environmental Protection), and Policies DW1 (Sustainability), DW2 (Safe and Welcoming places) and DW6 (Legibility). Of the Designing Walsall SPD.

Highways

The supporting information advises that there will be an additional 2 deliveries per day during weekdays, this equates to an additional 304 daily two-way movements for delivery of clay over an above the existing delivery rates. Distribution methodology takes account of the flow of traffic for the delivery of clay over weekdays only and not on weekends or bank holidays. Highways advise that the brickworks use an existing access and that it is important to fully understand the actual payloads being delivered as this impacts of the number and frequency of HGV trips.

This proposal is being considered on its merits and in accordance with existing Development Plan Policies and National Guidance. The existing operational use at the brickworks is clearly managed to ensure that the additional vehicular movements will follow the existing agreed operational measures to minimise the impact of the increase on the highway network. Highways do not advise against the grant of planning permission and therefore the main issue is whether the increase in the number of vehicles from the resulting importation of an increase of 5% would be detrimental to the safe operation of the highway network. The increase is therefore considered to be acceptable in principle and subject to conditions there are no

highway safety objections to the increase in the level of importation of clay proposed by the variation of condition number 8 of Planning permission 15/0303/FL (which varied condition 14 of planning permission 08/1338/FL and condition 14 of BA17797P) to allow an increase in the limit of imported clays to 100%.

The application is considered to accord with “saved policies” T7 - Car Parking T13: Parking Provision for Cars, Cycles and Taxis, and the Black Country Core Strategy Policy TRAN2: Managing Transport Impacts of New Development.

Ecology

The proposal is not considered to adversely affect the existing ecological value of the site or nearby biodiversity or the SSSI and wildlife. Whilst the proposal does result in an increase in the level of vehicular movements to and from the site this is limited in its increase and unlikely to generate any significant impact on the ecology and biodiversity of the surrounding locality. In accordance with SPD ‘Conserving Walsall’s Natural Environment’ adopted 24 July 2013. Black Country Core Strategy policy ENV1: Nature Conservation (adopted 3 February 2011).

Conclusions and Reasons for Decision

Given that there are no material planning considerations to not support the proposals it is concluded that considering the above factors it is considered that the application should be recommended for approval.

Positive and Proactive Working with the Applicant

Officers have confirmed to the applicant’s agent that the submitted details are acceptable, and no further changes have been requested.

Recommendation – Delegate to the Head of Planning Services and Grant subject to conditions and no other material considerations.

1. This development shall not be carried out other than in conformity with the approved plans and documents approved under the terms of planning permission BA17797P, except as may be required by other conditions of this permission.

Reason: To ensure that the development undertaken under this permission shall not be otherwise than in accordance with the terms of the application on the basis of which planning permission is granted.

2. Noise levels emitted from operations carried out within the buildings (including external fixed plant and machinery) of the development hereby permitted, and measured at 1.0 metres from the nearest noise sensitive building shall not exceed: a) Between the hours of 0700 and 1900 hours a Leq (1 hour) of 50 d.B.A. with an A weighted slow maximum of 55 d.B.A at any one time b) Between the hours of 1900 and 2300 hours a Leq (1 hour) of 45 d.B.A. with an A weighted slow maximum of 50 d.B.A at any one time c) Between the hours of 2300 and 0700 hours a Leq (1 hour) of 40 d.B.A. with an A weighted slow maximum of 45 d.B.A at any one time.

Reason: To safeguard the amenity of surrounding occupiers.

3. No bricks shall be stored on the site to a height greater than 5 metres.

Reason: To safeguard the amenity of the area.

4. The premises shall be used for brickworks purposes and for no other purposes within the Town and Country Planning Use Classes Order 1987 (as amended).

Reason: The site lies within an area within which Green Belt policies apply and as such any other use may conflict with Green Belt policies.

5. Any quarry plant and machinery storage and repair compounds shall only be on concreted areas draining to oil and grease interceptors, details of which shall have previously been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

Reason: To ensure that the drainage of the site does not contaminate adjoining land and watercourse and to safeguard the quality of groundwater in the area.

6. There shall be no storage of clay within a distance of 5 metres from the south eastern boundary of the site.

Reason: To ensure that surface drainage water is diverted away from the adjoining Site of Special Scientific Interest and therefore prevent its contamination by the precipitation of suspended clay particles.

7. Office development on the site shall be limited to that required in connection with the operation of the brickworks development hereby permitted and shall be occupied only for office purpose which are ancillary to the brickworks and for no other purpose.

Reason: The site lies within an area within which Green Belt policies apply and as such any other use may conflict with Green Belt policies.

8. For the duration of the development hereby permitted facilities shall be provided, and thereafter maintained and utilised on site to prevent risk of mud being carried onto the public highway. Prior to implementation of any proposed changes to these measures details shall first be submitted for written approval by the Local Planning Authority.

Reason: To ensure that the development hereby permitted does not prejudice the flow of traffic or conditions of general safety along the adjoining highway.

10. Visibility splays of 9 metres by 95 metres shall be provided at the permitted points of entry to the site from Stubbers Green Road. No parking or other obstruction greater than 600mm in height shall be permitted within these splays.

Reason: In the interests of highway safety on Stubbers Green Road.

END OF OFFICERS REPORT