

Delegated Report

Planning Ref: 24/00783/NMA

Applicant: OWL HOMES

Ward: Ambien



Hinckley & Bosworth
Borough Council

Site: Land off Wood Lane, Higham on the Hill

Proposal: Non material amendment to planning permission 23/00712/REM to amend affordable housing plots

1. Recommendations

1.1. Approve the non-material amendment subject to:

- Previously imposed conditions on planning permission 23/00712/REM.

2. Planning application description

2.1. The application seeks a non-material amendment to the reserved matters approval 23/00712/REM to regularise the affordable housing provision in accordance with the approved Deed of Variation application 24/00651/DOV.

2.2. The amendments proposed are to:

- Condition 1 to refer to the updated drawing list, which includes a new Site Layout Plan showing the revised affordable housing provision; and
- Condition 4 to refer to the updated Site Layout Plan referenced in the condition.

3. Description of the site and surrounding area

3.1. The application site is located within Higham-on-the-Hill Parish, less than 1km north of the built-up boundary of Nuneaton. Immediately north and west of Higham on the Hill is MIRA Technology Park. The site is broadly square in shape, measuring approximately 2.5 hectares in size and consists of part of an arable field. The site is adjacent to Wood Lane to the north, the rear gardens of dwellings on Cherry Orchard Estate to the east, arable fields to the south and west.

3.2. The site is adjacent to existing built development on two sides; to the east are dwellings on Cherry Orchard Estate and to the north are dwellings along the northern side of Wood Lane. The dwellings to the north do not extend the full width of the site. The site is outside of but adjacent to the defined settlement boundary of Higham on the Hill and as such is located within open countryside. The Conservation Area is located in the centre of the village with its western boundary located 75m east of the eastern boundary of the site.

3.3. The site boundaries are defined by hedgerows to the north and west. To the east there is a hedgerow but it is lower and maintained for the most part. There are also 1.8 metre close boarded boundary fences to the rear of most of the residential properties.

4. Relevant planning history

24/00651/DOV

- Deed of variation to the S106 for application 21/01147/OUT
- Approved

24/00219/NMA

- Non material amendment to 21/01147/OUT. Amendment the wording of Conditions 13 and 14
- Approved
- 25.03.2024

23/00712/REM

- Approval of reserved matters (appearance, landscaping, layout and scale) of outline planning permission 21/01147/OUT (Residential development of up to 61 dwellings including a shop, open space, new access and associated works)
- Planning Permission
- 07.11.2023

21/01147/OUT

- Residential development for up to 61 dwellings, including a shop, open space, new access and associated works (Outline - access only)
- Planning Permission
- 18.01.2022

5. Publicity

- 5.1. The application is a non-material amendment and as such no site notice or public consultation has been undertaken.
- 5.2. No public comments have been received.

6. Consultation

- 6.1. No consultation is required for a non-material amendment.

7. Policy

- 7.1. Greater Flexibility for Planning Permissions Guidance (non-material amendments) states that the local planning authority must have regard to the effect of the change, together with any previous changes made under this section.
- 7.2. Since the original planning permission was issued there have been no significant changes to the policies within the development plan that would be material to the outcome of the assessment of the application in this case.

8. Appraisal

- 8.1. Key Issues
- Assessment
 - Conditions

Assessment

- 8.2. Section 96A of the Town and Country Planning Act 1990 allows a non-material amendment to be made to an existing planning permission. There is no statutory definition of 'non-material'; this is because it is so dependent on the context of the overall scheme. That which may be non-material in one context may be material in

another. It is for the Local Planning Authority to be satisfied that the amendment sought is non-material in order to grant an application under S96A.

- 8.3 Owl Homes initially had an agreement with Stonewater to deliver the affordable dwellings, however Stonewater withdrew citing capacity issues.
- 8.4 Owl Homes then approached 14 Registered Provider's (RPs) to seek offers on the affordable units. All 14 of the RPs rejected the approach due to reasons including capacity, non-priority location of the site, and the number of units being too low. Officers have seen evidence of the correspondence between Owl Homes and all of the RPs who were approached. The situation as outlined above reflects the position being experienced across the county, and wider. This leaves the local planning authority with the consideration of which of the possible alternatives to on-site provision it is willing to take.
- 8.5 Regarding the associated Deed of Variation Application, HBBCs Affordable Housing Officer made the following comments (no objection):

"There are currently 1,310 live applications on the council's housing register. Given the increasing numbers waiting for rented housing, and the current pressures on the use of temporary accommodation in the borough, the preference would be for delivery to support the need for affordable housing for rent. For this reason, changing the tenure type to a form of affordable home ownership would not be the first choice even though it would deliver a greater number of units on site.

Options to support the provision of rented housing would be either acceptance of gifted units transferred at nil value to the local authority, or a commuted sum to be given to the council to be used for affordable housing elsewhere in the borough. Both of these options do however deliver considerably fewer numbers of homes than sale to an RP as the developer does not receive a capital receipt for the affordable housing units."

The applicant has offered a combination of gifted units and commuted sums on this site, gifting 4 x 1 bedroomed flats to be added to the council housing stock, at a purchase price of £1, and transfer of a commuted sum of £210,074.78 to the council, both of which combined will leave the applicant neither better nor worse off than sale to an RP would achieve.

It is the opinion of the Strategic Housing and Enabling Officer that this would be the best outcome for this site given the priority for rented housing in the Borough and therefore the application for a deed of variation is supported."

- 8.6 Overall, the evidence submitted with the application shows a lack of interest from RPs which is regrettable. The proposed variation to the section 106 agreement is therefore judged to be acceptable in respect of affordable housing. It is also noted that failure to resolve the issue of affordable housing delivery would delay the construction development on the site and its role in contributing to housing in the Borough.
- 8.7 The Council accept there is a lack of interest from Registered Providers and that in this case the preferred option is the delivery of 4 x affordable homes as gifted units

on the development, plus a commuted sum of £210,074.78. The HBBC Affordable Housing Officer & S106 Compliance Officer have no objections to the proposed and officers are therefore satisfied that the Deed of Variation is acceptable.

- 8.8 This NMA seeks to regularise this variation through amendments of the associated plans relating to affordable housing provision. With the above points in mind, this is considered acceptable and non-material as essentially the amendments regularise the consent given through the DOV.

Conditions and compliance with S106

- 8.9 Under Section 96A of the Town and Country Planning Act 1990 any decision issued should only relate to the non-material amendments sought and is not a re-issue of the original planning permission, which still stands. Under section 96A(3) the LPA may impose new conditions or remove or alter existing conditions.
- 8.10 The decision notice for 23/00712/REM was subject to 12 conditions, and no additional conditions are necessary.

9. Equality implications

- 9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 9.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

- 9.3 There are no known equality implications arising directly from this development.

- 9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

- 10.1. The proposed amendments the reserved matters approval 23/00712/REM to regularise the affordable housing provision would not result in any material impacts on the approved development and would respect the character and appearance of the wider site and surrounding area. The amended scheme would remain in accordance with the relevant requirements of the Site Allocations and Development Management policies Development Plan Document as well as the Good Design Guide. No new conditions are necessary.

11. Recommendation

- 11.1 **Approve the Non-Material Amendment.**

Subject to the conditions as imposed on application 23/00712/REM except Condition 1 and 4 as detailed below:

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application drawings as detailed on the Drawing List received 12th August 2024.

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the Site Allocations and Development Management Policies Development Plan Document (2016).

4. The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with Owl Homes Drawing No. 1023-AD-002H. Thereafter the onsite parking provision shall be so maintained in perpetuity.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to on-street parking problems locally (and to enable vehicles to enter and leave the site in a forward direction) in accordance with Policy DM17 and DM18 of the adopted Site Allocations and Development Management Policies Plan.