

Delegated Report

Planning Ref: 24/00920/NMA
Applicant: Mr David Gray
Ward: Burbage, Sketchley & Stretton



Hinckley & Bosworth
Borough Council

Site: Land off Sketchley Lane, Burbage

Proposal: Non-Material Amendment to 21/01131/OUT. Amendment to the wording of Condition 22 (Offsite Highway Works) to allow offsite highway works to be implemented in full 9 months following first occupation of dwellings

1. Recommendations

1.1. Grant planning permission subject to:

- Previously imposed conditions on planning permission 21/01131/OUT.
- Amendments to Condition 22 of planning permission 21/01131/OUT.

2. Planning Application Description

- 2.1. This application proposes a non-material amendment to the allowed outline planning permission 21/01131/OUT, which was for the approval of up to 150 dwellings following the demolition of the existing poultry cattle buildings at the Land off Sketchley Lane, Burbage. This proposal only sought permission for the vehicular access into the site from Sketchley Lane.
- 2.2. The proposed non-material amendment seeks to amend the wording of Condition 22 of the allowed outline planning permission to enable the offsite highway works to be implemented in full nine months following the first occupation of the approved dwellings rather than prior to the occupation of the development.
- 2.3. The Applicant has sought this non-material amendment due to the forthcoming festive period and the associated restrictions on highway works during this time.

3. Description of the Site and the Surrounding Area

- 3.1. The 12.74ha application site is located to the southwest of, but outside of, the identified settlement boundary of Burbage in the designated open countryside. The application site benefits from outline planning permission following an allowed appeal, APP/K2420/W/22/3301735, against the refusal of planning application 21/01131/OUT for the provision of 150 dwellings with vehicular access from Sketchley Lane (Access only) and a subsequent approval of reserved matters for 127 dwellings via 23/01204/REM.

- 3.2. The application site is surrounded by a mixture of uses, some of which are at a higher level than the site, which include an extensive Business Park (Sketchley Meadows Business Park) that features tall utilitarian buildings to the west, a sprawling hotel complex (Sketchley Grange Hotel and Spa) to the north, the residential built form of Burbage to the north, east, and south, and the highly trafficked A5 to the southwest. Together these elements exert a very significant influence on the character of the site causing the site to display a classic urban fringe character.
- 3.3. The site is accessed via Sketchley Lane to the north, which is an adopted, but unclassified, public highway that is subject to a 30mph speed limit. A Public Right of Way (PRoW), Bridleway U67, runs north-to-south along the eastern side boundary of the site. A separate element of this Bridleway also runs from the south-eastern corner to the northern boundary of the application site between the three residential dwellings, Kinder Lodge, Sketchley Lodge and Sketchley Lodge Farmhouse on to Sketchley Lane. A further PRoW, Footpath U64, runs along the western boundary of the application site, which then proceeds northwest towards Watling Close.

4. Relevant Planning History

4.1 23/01204/REM

- Application for approval of Reserved Matters (relating to layout, scale, appearance and landscaping) of appeal decision APP/K2420/W/22/3301735 (outline planning application 21/01131/OUT) for the provision of 127 dwellings, a substation, public open space, an attenuation pond and associated works
- Permitted
- 17.05.2024

Planning condition 4 (Public Right of Way Construction Management Scheme) was discharged via 24/00543/DISCON.

4.2 22/00017/PP

- Demolition of existing poultry and cattle buildings and residential development of up to 150 dwellings with vehicular access from Sketchley Lane (Outline – vehicular access only)
- Allowed
- 04.01.2023

Planning conditions 9 (Materials), 10 (Electrical Vehicle Charging), 11 (Land Contamination), 13 (Tree Protection Plan), 17 (Waste and Recycling Collection Points), 18 (Construction Environmental Management Plan), 19 (Construction Tree Management Plan), 20 (Written Scheme of Investigation), 21 (Electronic Communications) have been discharged via 23/01208/DISCON, 24/00160/DISCON, 24/00327/DISCON, 24/00745/DISCON and 24/00763/DISCON.

4.3 21/01131/OUT

- Demolition of existing poultry and cattle buildings and residential development of up to 150 dwellings with vehicular access from Sketchley Lane (Outline – vehicular access only)
- Refused
- 16.06.2022

5. Publicity

- 5.1. No publicity is required for a Section 96A application, and none has been undertaken.

6. Consultation

- 6.1 A Section 96A application is not an application for a new planning permission, therefore, the existing Town and Country Planning (Development Management Procedure) Order, 2015, provisions outlined in Article 13 and Schedule 5 relating to publicity and statutory consultation do not apply.
- 6.2 The Local Planning Authority can exercise discretion in whether and how they choose to inform interested parties or seek their views. In this instance, the Local Planning Authority have consulted Burbage Parish Council and Leicestershire County Council as the Local Highway Authority (LHA) on the development.
- 6.3 Burbage Parish Council had no objections to the proposal.
- 6.4 The LHA did not object to the application. The LHA confirmed that the variation of Condition 22 was reasonable and nine months following first occupation was a suitable timeframe for the Applicant to programme the works to avoid any further conflicts with the hotel or any other highway works/ embargo, as well as implement the works.

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. The key issues in respect of this application are therefore:

- Assessment against strategic planning policies
- Conditions

Assessment against Strategic Planning Policies

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 Section 96A.

8.3 With the above in mind, it is necessary to consider what the existing planning permission is for including its uses, and its scale. The outline planning permission approved only the vehicular access to a residential development of up to 150 dwellings off Sketchley Lane, Burbage.

8.4 The proposal makes no material amendments to the final design of the development. The variation of the planning condition only seeks to extend the implementation period of the highways works and this is to avoid the festive period and the associated embargo on highways works within the County.

8.5 Whilst the original wording of Condition 22 of 21/01131/OUT was required in the interests of general highway safety, the Local Highway Authority have confirmed in writing that this amendment is reasonable and should provide suitable time for the offsite highways works to be implemented.

8.6 By virtue of these factors, the variation of Condition 22 of 21/01131/OUT to extend the time limit for the implementation of the offsite works is considered to be minimal and non-material to the extant planning permission and does not materially alter the approved development or cause any significant adverse impacts to the character of the area, or highway safety.

Conditions

8.7 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 reissue of the original planning permission, which still stands. However, it is necessary to determine if additional conditions are required or whether existing conditions need to be removed or altered.

8.8 Planning permission 21/01131/OUT was subject to 27 planning conditions. No additional conditions are necessary, and this application cannot grant further planning permission.

- 8.9 The amendments to Condition 22 within this application are to be read in conjunction with the plans submitted as part of the extant planning permission.

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. In line with the provisions of Section 96A of the Town and Country Planning Act, 1990, it is considered that the proposed amendments to the approved outline planning application at Land off Sketchley Lane, Burbage permitted under planning reference 21/01131/OUT is non-material in the context of the overall scheme.

- 10.2. It is considered that the proposed alteration to Condition 22 of allowed outline planning permission 21/01131/OUT does not have a material impact on the development as a whole and are non-material in the context of the overall scheme.

- 10.3. **This non-material amendment is not a separate planning permission and should be read in conjunction with extant permission 21/01131/OUT.**

11. Recommendation**11.1 Grant Non-Material Amendment** subject to:

- Previously imposed conditions on planning permission 21/01131/OUT.
- Amendments to Condition 22 of planning permission 21/01131/OUT.

11.2 Conditions and Reasons

1. The offsite works shown on Stantec drawing number 332010596-700-001 Rev A shall be implemented in full 9 months following the first occupation of the dwellings.

Reason: To mitigate the impact of the development in the general interests of highway safety and in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).