

Delegated report

Planning Ref: 24/00219/NMA

Applicant: Owl Homes

Ward: Ambien



Hinckley & Bosworth
Borough Council

Site: Land Off Wood Lane, Higham on the Hill

Proposal: Non-Material Amendment to 21/01147/OUT. Amendment to the wording of Conditions 13 and 14

Recommendations

- 1.1. **Grant Planning Permission** subject to:
- Previously imposed conditions on planning permission 21/01147/OUT

Planning application description

- 2.1. The application seeks a non-material amendment to planning permission 21/01147/OUT. The amendments proposed are as follows:

- Change the wording of conditions 13 and 14 which currently read:

13. a) No development shall take place until a scheme for ventilation of the shop premises, which shall include installation method, maintenance and management has been submitted to and agreed in writing with the Local Planning Authority.

b) The approved scheme shall be implemented in accordance with the agreed details before the shop premises are first brought into use for the development hereby approved and maintained in use thereafter.

14. Development shall not begin until a scheme for protecting the proposed dwellings from noise from the proposed commercial uses has been submitted to and approved by the Local Planning Authority; and all works which form part of the scheme shall be completed before any of the permitted dwellings are first occupied.'

To be amended to read as follows:

13. a) No construction of the shop premises shall take place until a scheme for ventilation of the shop premises, which shall include installation method, maintenance and management has been submitted to and agreed in writing with the Local Planning Authority. b) The approved scheme shall be implemented in accordance with the agreed details before the shop premises are first brought into use for the development hereby approved and maintained in use thereafter.

14. No construction of the shop premises shall take place until a scheme for protecting the approved dwellings from noise from the proposed commercial uses has been submitted to and approved by the Local Planning Authority; and all works which form part of the scheme shall be completed before the shop premises is first occupied.'

Description of the site and surrounding area

- 2.2. The application site is located within Higham-on-the-Hill Parish, less than 1km north of the built-up boundary of Nuneaton which falls under the jurisdiction of Nuneaton and Bedworth Borough Council. Hinckley is located approximately 3km to the south east and Stoke Golding is approximately 2.4km to the northeast. Immediately north and west of Higham on the Hill is MIRA Technology Park and one of Europe's largest automotive research and development locations, which is an enterprise zone. 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.
- 2.3. 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.
- 2.4. 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.
- 2.5. The land slopes in a north-south direction from its centre. There is one existing field gate access points to the site from Wood Lane at the north-eastern corner of the site.

3.0 Relevant planning history

21/01147/OUT

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

23/00712/REM

- Approval of Reserved Matters (Appearance, Landscaping, Layout and Scale) of outline planning permission 21/01147/OUT) Residential development for up to 61 dwellings, including a shop, open space, new access and associated works
- Permission
- 07.11.2023

4.0 Publicity

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

5.0 Consultation

- 5.1 No consultation is required for a non-material amendment, however the LPA sought comments from the Environmental Health (Pollution) Team who have no objections to this application.

6.0 Policy

- 6.1 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.
- 6.2 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.

7.0 Appraisal

- 7.1 Key Issues
 - Assessment against strategic planning policies
 - Conditions

Assessment

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 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.

During the determination of the preceding Reserved Matters application, details were not submitted to discharge conditions 13 and 14 as the applicant is yet to find an occupier for the shop, and therefore does not know what the specific ventilation requirements will be. It was agreed that the reserved matters in respect of the layout, scale, appearance, and landscaping of the shop premises could be approved without this information in light of the size and scale of the shop premises with any ventilation, plant and machinery likely to be very modest and could be suitably mitigated at source to achieve the aims of the conditions.

Notwithstanding the above, condition 13 requires the ventilation scheme prior to commencement of any development on the site, and installation prior to occupation of the shop, and condition 14 requires a scheme for protecting dwellings from noise from the shop prior to commencement, and all works being completed prior to occupation of any dwelling.

The current wording of the conditions is problematic in the sense that it prohibits the delivery of the residential development as the details of the ventilation scheme will not be known until a prospective tenant is found for the shop premises.

The proposed revised condition will allow for the commencement of the development of the wider site, whilst final details for the shop (including ventilation and a scheme protecting dwellings from potential noise) will be agreed before the commencement of development of the shop.

Conditions and compliance with S106

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.

The decision notice for 21/01147/OUT was subject to 35 conditions. No additional conditions are necessary to impose in light of the amendment, however minor amendments are proposed to the wording of conditions 13 and 14.

8.0 Equality implications

8.1 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.

8.2 Officers have taken this into account and given due regard to this statutory duty in the consideration of this application. There are no known equality implications arising directly from this NMA of the development. 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).

9.0 Conclusion

9.1 The proposed minor amendments would enable the timely delivery of the scheme and would not result in any material impacts on the development, would respect the character and appearance of the wider site and surrounding area, and would not result in any harm to the amenity of neighbouring dwellings. The scheme would remain in accordance with the Core Strategy and SADMP, as well as the overarching intentions of the NPPF and is therefore recommended for approval subject to the minor amendments to conditions 13 and 14 of outline approval 21/01147/OUT. No new conditions are necessary.

10.0 Recommendation

10.1 **Grant Non-Material Amendment** subject to:

- Previously imposed conditions on planning permission 21/01147/OUT and amendments to conditions 13 and 14 as below.

10.2 Conditions and Reasons

13. a) No construction of the shop premises shall take place until a scheme for ventilation of the shop premises, which shall include installation method, maintenance and management has been submitted to and agreed in writing with the Local Planning Authority.
- b) The approved scheme shall be implemented in accordance with the agreed details before the shop premises are first brought into use for the development hereby approved and maintained in use thereafter.

Reason: To safeguard amenities of neighbouring properties in accordance with Policy DM7 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

14. No construction of the shop premises shall take place until a scheme for protecting the approved dwellings from noise from the proposed commercial uses has been submitted to and approved by the Local Planning Authority; and all works which form part of the scheme shall be completed before the shop premises is first occupied.'

Reason: To ensure that the proposed use does not become a source of annoyance to nearby residents in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).