

Delegated Report

Planning Ref: 25/00104/NMA
Applicant: Ms Esther Wiles
Ward: Burbage, Sketchley & Stretton



Hinckley & Bosworth
Borough Council

Site: Land south of Sketchley Grange Hotel,
Sketchley Lane, Burbage

Proposal: Non-material amendment to planning permission 23/01204/REM.
Amendment to location of private drive, widening of PROW U67
and relocation of the area of Play

1. Recommendations

1.1. Refuse the non-material amendment(s) subject to:

- Planning reasons detailed at the end of this report.

2. Planning Application Description

- 2.1. This application proposes a non-material amendment to planning permission 23/01204/REM, which was for the approval of Reserved Matters (relating to layout, scale, appearance, and landscaping) of the allowed appeal proposal 21/01131/OUT for the provision of 127 dwellings, a substation, public open space, an attenuation pond, and associated works at the Land south of Sketchley Grange Hotel, Sketchley Lane, Burbage.
- 2.2. The proposed non-material amendment seeks to amend the design of Plots 38 to 40 inclusively and their associated private drives, widen the Public Right of Way U67 to 3m in width, and the subsequent relocation of the area of play. The Applicant has identified that these works would require amendments to Conditions 01 (Approved Plans), 05 (Treatment of the Public Right of Way) and 07 (Link to Troon Way).
- 2.3. The Applicant has sought this non-material amendment due to the presence of an unidentified drainage easement within the site, a formal request from the Local Highway Authority, and due to issues with levels of the originally proposed play area respectively.
- 2.4. The Case Officer raised concerns with the scheme to the Applicant on Thursday 27 February 2025. No further communication or plans have been received since 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.
- 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 24/00920/NMA

- 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 following first occupation of dwelling
- Permitted
- 11.11.2024

4.2 24/00424/DOV

- Deed of Variation to S106 agreement on planning application 21/01131/OUT
- Awaiting Decision
- TBD

4.3 23/01204/REM

- Application for approval of Reserved Matters (relating to layout, scale, appearance, 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
- 15.07.2024

The following conditions have been discharged from this Reserved Matters application:

- Condition 04 (PRoW Construction Management) (24/00543/DISCON)

An application (24/00746/DISCON) is currently being determined by the Local Planning Authority for the discharge of Conditions 05 (Treatment of PRoWs) and 10 (Cycle Parking) of this Reserved Matters permission.

4.4 **22/00017/PP**

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

The following conditions have been discharged from this allowed appeal decision:

- Condition 09 (Materials) (24/00763/DISCON)
- Condition 10 (Electrical Vehicle Charging) (24/00745/DISCON)
- Condition 11 (Land Contamination) (24/00327/DISCON)
- Condition 13 (Tree Protection Plan) (23/01208/DISCON)
- Condition 16 (Long Term Water Management) (24/00327/DISCON)
- Condition 17 (Waste and Recycling Collection) (24/00745/DISCON)
- Condition 18 (CEMP) (24/00327/DISCON)
- Condition 19 (CTMP) (23/01208/DISCON)
- Condition 20 (WSI) (24/00160/DISCON)
- Condition 21 (Electronic Infrastructure) (24/00745/DISCON)

An application (24/00847/DISCON) for the discharge of Condition 15 (Surface Water Drainage) of this appeal decision is currently being determined by the Local Planning Authority.

4.5 **21/01131/OUT**

- Demolition of existing poultry and cattle buildings and residential development of up to 150 dwelling 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 therefore 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. The Local Planning Authority can exercise discretion in whether and how they choose to inform interested parties or seek their views. In this instance, no publicity or consultations have been undertaken.
- 6.2 In this instance, the Local Planning Authority consulted Leicestershire County Council as the Local Highway Authority and the Council's Section 106 Monitoring Officer.
- 6.3 The Council's Section 106 Monitoring Officer requested that the equipped play area was set back from the Public Bridleway U67 in the interests of public safety.
- 6.4 The Section 106 Monitoring Officer also highlighted that the public open space area for equipped children's play did not meet the requirements agreed within the Section 106 Agreement of the appeal decision of planning application 21/01131/OUT.

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.

- 8.3 There is no statutory definition of 'non-material'. This is because it will be dependent on the context of the overall scheme – an amendment that is non-material in one context may be material in another. The local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under Section 96A of the Town and Country Planning Act 1990. This application type cannot be used to make a material amendment to an extant planning permission.
- 8.4 With the above in mind, it is necessary to consider what the existing planning permission is for including its uses, and its scale. The planning permission approved the Reserved Matters relating to layout, scale, appearance, and landscaping for the provision of 127 dwellings, a substation, public open space, an attenuation pond, and associated works at the Land south of Sketchley Grange Hotel, Sketchley Lane, Burbage
- 8.5 Contrary to the assertions within the submitted Covering Letter, the width of Public Bridleway U67 has not been increased from 2m to 3m within any of the submitted plans. It is also noted that further amendments have been made to the development that have not been declared by the Applicant, such as the replacement house type and garden arrangement for Plot 26. Therefore, the Applicant has failed to demonstrate that their proposed amendments to 23/01204/REM are non-material in context of the extant planning permission.
- 8.6 Furthermore, the current proposal relocates the Equipped Children's Play Space. It is noted that a revised Public Open Space Categorisation Plan was not submitted as part of this application. This relocation removes the Casual Informal Play Space surrounding the original Equipped Children's Play Space from the site and reduces the size of the Equipped Children's Play Space from 457.2sqm to 196.5sqm. This diminishes the provision of Equipped Children's Play Space by over half and has a significant detrimental impact on the provision of Casual Informal Play Space. This is considered to represent a material amendment to the extant permission and therefore, the proposal is contrary to, and in conflict with, Policies 3 and 19 of the adopted Core Strategy, Policy DM3 of the SADMP, Paragraph 98 of the NPPF, the legal agreement signed as part of the allowed outline planning permission 21/01131/OUT, and the provisions of Section 96A of the Town and Country Planning Act 1990.
- 8.7 To summarise, the proposed amendments to the approved Reserved Matters application at Land south of Sketchley Grange Hotel, Sketchley Lane, Burbage permitted under planning reference 23/01204/REM are material in the context of the overall scheme. Therefore, the proposal is contrary to, and in conflict with, provisions of Section 96A of the Town and Country Planning Act 1990.

Conditions

- 8.8 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.

- 8.9 Planning permission 23/01204/REM was subject to 12 planning conditions. No additional conditions are necessary, and this application cannot grant further planning permission.
- 8.10 Should the amendments to 23/1204/REM be recommended for approval, Planning Conditions 01 (Approved Plans), 05 (Treatment of Public Rights of Way), 07 (Public Bridleway U67), 09 (Parking and Turning Facilities), 11 (Hard and Soft Landscaping), and 12 (Equipped Children's Area of Play) would need amending to reflect the revised plans that identify the latest changes to 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 By virtue of the submitted details, the proposed amendments to the approved Reserved Matters application at Land south of Sketchley Grange Hotel, Sketchley Lane, Burbage permitted under planning reference 23/01204/REM are material in the context of the overall scheme. Therefore, the proposal is contrary to, and in conflict with, provisions of Section 96A of the Town and Country Planning Act 1990.

11. Recommendation

- 11.1 **Refuse (the) non-material amendment(s)** subject to:

- Planning reasons detailed at the end of this report.

11.2 **Reasons**

1. The proposed amendments to the approved Reserved Matters application at Land south of Sketchley Grange Hotel, Sketchley Lane, Burbage permitted under planning reference 23/01204/REM significantly reduce the provision of public open space within the site and are material in the context of the overall scheme. Therefore, the proposal is contrary to, and in conflict with, provisions of Section 96A of the Town and Country Planning Act 1990.