

Delegated Report

Planning Ref: 23/01099/NMA

Applicant: Mrs Clare Mellor

Ward: Newbold Verdon With Desford & Peckleton



Hinckley & Bosworth
Borough Council

Site: Land East Of Peckleton Lane Desford

Proposal: Non-material amendment to planning application 18/01252/OUT. Reduction in width of public footpath that forms part of the S278 entrance works.

1. Recommendations

1.1. Grant planning permission subject to:

- Previously imposed conditions on planning permission 18/01252/OUT.

2. Planning Application Description

2.1. This application proposes a non-material amendment to planning permission 18/01252/OUT, which was for the approval of a residential development of up to 80 dwellings with associated works at the Land east of Peckleton Lane, Desford. This was an outline application that only sought planning permission for the site's access.

2.2. The proposed non-material amendment seeks to reduce the width of the proposed public footpath that forms part of the Section 278 entrance works from 2m to 1.5m.

2.3. The Applicant suggests that this amendment is to protect the majority of the existing hedge along the site entrance. The Applicant has also provided confirmation from the Local Highway Authority in writing from June 2023 that they are satisfied that the footway can be reduced to 1.5m.

3. Description of the Site and the Surrounding Area

3.1. The application site comprises some 3.76 hectares of land, which receive outline planning permission for the development of 80 dwellings via planning appeal against 18/01252/OUT and planning permission for the remaining reserved matters via 20/00347/REM. The approved development is still under construction.

3.2. Residential development and the defined settlement boundary of Desford forms the northern and western boundaries of the site, but the application site and its access are located outside of the settlement boundary. Several Use Class B2 and B8 commercial structures are also in construction to the west of the application, which were approved via planning permission 21/00619/FUL and form part of a northern extension of the existing Neovia and Caterpillar Employment Site. Open fields form the eastern and southern boundaries. Sporting facilities and employment uses lie further to the south and southwest of the site. These forms of development along Peckleton Lane give the area its verdant semi-rural character.

4. Relevant Planning History

4.1 21/01076/DISCON

- Application To Discharge Conditions 3 (Land Contamination) and 5 (Levels) on Appeal Decision APP/K2420/W/21/3269712 relating to planning application no. 20/00937/FUL
- Discharged
- 28.09.2021

- 4.2 **21/00482/NMA**
- Non material amendment to planning permission 20/00347/REM to change materials
 - Permitted
 - 14.07.2021
- 4.3 **21/00013/PP**
- Erection of 5 dwellings
 - Appeal Allowed
 - 01.06.2021
- 4.4 **20/00937/FUL**
- Erection of 5 dwellings
 - Refused
 - 04.02.2021
- 4.5 **20/00738/DISCON**
- Application to Discharge Conditions 8 (LEMP), 11 (Footpath Management Plan), 12 (Surface Water Management Scheme), 13 (Badger Mitigation), 16 (Footpath Signage), 17 (Waste and Recycling) attached to Appeal Decision APP/K2420/W/19/3235401 relating to planning application 18/01252/OUT.
 - Discharged
 - 24.12.2020
- 4.6 **20/00390/DISCON**
- Application to discharge conditions 7 (Tree Protection), 9 (Construction Environmental Management Plan) and 10 (Construction Traffic management Plan) attached to Appeal Decision APP/K2420/W/19/3235401 relating to planning application 18/01252/OUT
 - Discharged
 - 20.08.2020
- 4.7 **20/00347/REM**
- Approval of reserved matters (layout, scale, appearance and landscape) of planning permission ref: 18/01252/OUT for 80 dwellings and details of the Affordable Housing Scheme and On-Site Open Space Area Scheme
 - Permitted
 - 05.08.2020
- 4.8 **19/00027/PP**
- Residential development up to 80 dwellings with associated works (Outline – access only)
 - Appeal Allowed
 - 18.12.2019
- 4.9 **18/01252/OUT**
- Residential development up to 80 dwellings with associated works (Outline – access only)
 - Refused
 - 29.07.2019

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. 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 Nevertheless, Desford Parish Council have objected to the proposal in the interests of highway safety. Consequently, the Local Highway Authority were consulted on the development. However, the Applicant also provided confirmation from the Local Highway Authority in writing from June 2023 that they are satisfied that the footway can be reduced to 1.5m.
- 6.3 The County Council's Ecology Department had no objections to the development, but they requested that any vegetation removal is undertaken outside of the nesting bird season (March to September inclusive).

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. Planning permissions 18/01252/OUT and 20/00347/REM approved the provision of 80 residential dwelling and associated works.
- 8.4 The development makes no amendments to the vehicular access to the site, nor any of the residential properties within it.

- 8.5 Whilst the proposal reduces the width of the footway, it is noted that the pathway from the development links in to the existing 1.5m public footpath along Peckleton Lane into Desford.
- 8.6 Furthermore, the reduction in the width of the public footway prevents any loss or removal of the existing mature vegetation along the highway boundary of the site, which preserves the character of the site from the public highway.
- 8.7 In light of the above, the reduction in width of the proposed public footpath is in line with the width of the existing footpath into Desford and ensures that the mature vegetation along the site's boundary with the highway is retained. Therefore, the proposed amendments are considered to be acceptable and non-material in context to the extant planning permission. The reduction in width of the public footpath by 0.5m is not considered to materially alter the approved development, nor cause significant adverse impacts to the character of the site or the surrounding area, or to highway safety,

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 The allowed appeal decision for planning permission 18/01252/OUT and the planning permission 20/00347/REM were subject to 17 and 10 planning conditions respectively. No additional conditions are necessary, and this application cannot grant further planning permission. Due to the amended plan submitted identifying the reduced footpath, the submitted plans provided 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 the Land east of Peckleton Lane, Desford permitted under planning reference 18/01252/OUT are non-material in the context of the overall scheme.
- 10.2. It is considered that the proposed alterations do 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 18/01252/OUT.**

11. Recommendation

11.1 Grant Non-Material Amendment subject to:

- Previously imposed conditions on planning permission 18/01252/OUT.
- Reducing the proposed public footpath from 2m to 1.5m in width.

11.2 Conditions and Reasons

1. This non-material amendment is approved in accordance with the submitted application details received by the Local Planning Authority, as follows:
- Hedge Removal Plan, Drg No. c-1758-04 A (submitted: 20.11.2023)
 - S278 General Arrangement, Drg No. S2798-901 Rev G (submitted: 20.11.2023)

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