

Delegated Report

Planning Ref: 24/00353/NMA

Applicant: JELSON LTD

Ward: Markfield Stanton & Fieldhead



Hinckley & Bosworth
Borough Council

Site: Land off Captains Lane, Markfield, Leicestershire, LE67 9UY

**Proposal: Non material amendment to planning permission 24/00074/CONDIT.
Amendment to change the amend the trigger to submit details of play equipment and signing scheme for public right of ways until prior to occupation of phase 2 of the development**

1. Recommendations

1.1. Approve the non-material amendment subject to:

- Previously imposed conditions on planning permission 24/00074/CONDIT which with the updated conditions to amend the trigger point for play equipment and public rights of way.

2. Planning application description

- 2.1. The application seeks a non-material amendment to application 24/00074/CONDIT which in itself is linked to application 20/01283/FUL which permitted 282 dwellings with associated open space and infrastructure.
- 2.2. The application seeks to change the trigger points for submitting details of the play equipment under Condition 30 and the public right of way signage in respect of condition 33 until prior to occupation on Phase 2 of the development. At present both conditions require submission of these details prior to occupation of the development as a whole.
- 2.3. The applicant makes the case that phase 1 of the development does not have any play areas or public rights of way therefore there is no reason to submit these details at this stage of development.
- 2.4. Phasing of the development is controlled through a Phasing Plan which is secured via condition 2 of 24/00074/CONDIT, no amendments are proposed to the phasing itself.

Description of the site and surrounding area

- 3.1. The application site is situated to the south of London Road, adjacent to the village of Markfield. The application site comprises of approximately 18.3 hectares of a number of irregular fields defined by boundary hedgerows and field trees, divided by a watercourse. The site is largely within the settlement boundary of Markfield as defined in the Neighbourhood Plan, with the exception of the central area abutting the watercourse which remains as open space.
- 3.2. Public Right of Way R4 runs through the application site, from London Road and meets Thornton Road to the south east. Public footpath R29 runs through the middle of the application site along a mature tree lined track from London Road (known as Captains Lane) towards Thornton Lane to the south. The Leicestershire Round recreation route footpath R2 is located along the boundary of the site to the west.

The application site is situated within the National and Charnwood Forest, and is bound to the north by residential dwellings, including the 'farmlands' development. The neighbourhood centre of Markfield is situated approximately 600 metres north,

which provides a medical centre, a post office, Co-op, library and hairdressers. Mercenfield Primary school is also located approximately 800 metres north of the application site.

3. Relevant planning history

20/00309/EAS

- EIA Screening Opinion for 450 dwellings
OPISS
08.04.2020

20/01283/FUL

- Residential development of 282 dwellings (Class C3) including provision of public open space, associated infrastructure and engineering works and demolition of Vine Cottage
PER
30.09.2021

21/01302/DISCON

- Application to discharge conditions 3 (Phasing Plan), 6 (Surface Water Management during Construction), 8 (Infiltration Testing), 21 (Land Contamination), 24 (Construction Environmental Management Plan), 30 (Ground Site Levels) and to partially discharge condition 5 Phase 1 (Surface Water Drainage Scheme), attached to planning permission 20/01283/FUL
SPLDIS
31.03.2022

21/01467/DISCON

- Application to discharge conditions 4 (materials), 11 (Tree Protection Plan), 16 (Bin Storage and Collection), 19 (Noise), 26 (Electronic Communications) and to partially discharge the following conditions for phase 1 only; 9 (Biodiversity Landscape Management Plan), 10 (SuDs Wildlife Habitat), 15 (Badger Survey), 17 (Ventilation), 18 (Boundary Treatment), 28 (Public Right of Way), 29 (hard and Soft Landscaping) attached to planning permission 20/01283/FUL
SPLDIS
23.08.2022

23/00117/CONDIT

- Variation to condition 2 of planning permission 20/01283/FUL. Amendments to revise layout and substitute house types.
PER
30.03.2023

24/00074/CONDIT

- Variation of Condition 1 of planning application 23/00117/CONDIT. Revision of site layout and substitute house types

PER

12.04.2024

4. 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.

5. Consultation

- 6.1. Whilst no consultation is required for a non-material amendment comments have been sought from LCC highways in relation to the amendments of condition 33. They have raised no objection to this amendment.

6. 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.

7. Appraisal

- 8.1. Key Issues
 - Assessment
 - Conditions

Assessment

- 7.2. 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.
- 7.3. At present both condition 30 and 33 require the submission of details prior to first occupation of the development. In both cases the details required are not relevant for the first stage of development and therefore it is acceptable for these details to be provided in advance of occupation of Phase 2 of the development. Such a change is judged to be non-material in the context of the development as details of the play equipment and PRoW signage will still be submitted and then assessed/approved in advance of the relevant phases of the development. The changes are overall considered to be non-material.

Conditions and compliance with S106

- 7.4. 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.

- 7.5 The decision notice for 24/00074/CONDIT was subject to a number of conditions, condition 30 and 33 require varying under this NMA but no additional conditions are judged to be required.

8. 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, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

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

- 8.4 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).

9. Conclusion

- 10.1. The proposed amendments to the house types would not result in any material impacts on the approved development. The amended scheme would remain in accordance with the Development Plan, and the overarching intentions of the NPPF and is therefore recommended for approval.

10. Recommendation

- 11.1 **Approve the Non-Material Amendment** subject to:

- The amended planning condition 30 and 33 of 24/00074/CONDIT at the end of this report.

11.2 Conditions and Reasons

30. Prior to first occupation of any dwelling within Phase 2 of the development hereby approved, full details of the equipment to be provided within the designated equipped play spaces as indicated on:-

Detailed Planning Layout (1 of 4) - Drg No. 6675-A-01H received 12 March 2021
Detailed Planning Layout (2 of 4) - Drg No. 6675-A-02G received 12 March 2021
Detailed Planning Layout (3 of 4) - Drg No. 6675-A-03H received 12 March 2021
Detailed Planning Layout (4 of 4) - Drg No. 6675-A-04H received 12 March 2021

Shall be first submitted to and agreed in writing by the Local Planning Authority. The agreed play equipment shall be provided in full within one month of the final dwelling being occupied.

Reason: To ensure that the development has a satisfactory external appearance in accordance with Policies DM4 and DM10 of the Site Allocations and Development Management Policies Development Plan Document (2016) and Policy 19 of the Core Strategy.

33. Prior to first occupation of any dwelling within Phase 2 of the development hereby approved, a signing scheme in respect of the Public Rights of Way, should be submitted to and approved in writing by the Local Planning Authority. The agreed signing scheme shall be completed prior to first occupation of the development.

Reason: To ensure the path is easy to follow through the development in the interests of protecting and enhancing Public Rights of Way and access in accordance with Paragraph 104 of the National Planning Policy Framework 2023.