

Delegated Report

Planning Ref: 25/01056/NMA

Applicant: Midland Heart

Ward: Earl Shilton



Hinckley & Bosworth
Borough Council

Site: Ashby House, Hill Top Farm, Hill Top, Earl Shilton

**Proposal: Non material amendment to planning permission 25/00266/CONDIT.
Changes to retaining wall that runs from the parking bays to plot 49, along the side of plot 50 and along the rear of plots 50-40 until it meets the brickwork faced concrete block wall at the rear of plots 39 and 38**

1. Recommendations

1.1. Approve the non-material amendment subject to:

- The conditions of application 25/00266/CONDIT except where conditions are amended by the non-material amendment as detailed below.

2. Planning application description

- 2.1. The application seeks a non-material amendment to application 25/00266/CONDIT which in itself varied the approved plans and landscaping details from application 23/01201/CONDIT which varied the original planning permission 20/00916/FUL. Application 25/00266/CONDIT permitted the construction of 50 dwellings with associated infrastructure.
- 2.2. The application seeks to amend the materials utilised in the construction of the approved retaining wall running from the parking bays to Plot 49, along the side of plot 50 and along the rear of plots 50-40 until it meets the approved retaining wall at the rear of plots 39 and 38. As approved the retaining wall would be constructed from the Tobermore Secura System and the applicants seek to change this to a concrete block retaining wall but with a brickwork face in Ibstock Alderley Red Multi.
- 2.3. No amendments are sought to the height or position of the retaining wall.

3. Description of the site and surrounding area

- 3.1 The application site extends to 1.6 hectares approximately and lies to the northern edge of Earl Shilton, outside but adjacent to the settlement boundary. The eastern boundary of the site is Leicester Road and the western edge of the site follows a curving hedge line. The southern boundary is irregular and runs along part of an embankment and also an outbuilding retained with Hill Top House. Open countryside currently lies to the north, however, the field parcel immediately to the north of the site is part of a wider development of 140 dwellings. The reserved matters application for the adjacent development has been permitted since consideration of application 23/01201/CONDIT and work has commenced on this site. Furthermore the field parcel to the west of the site has now received a resolution to grant outline planning permission (all matters reserved except scale and access) for 10 bungalows subject to the completion of a legal agreement.
- 3.2 The site topography falls generally from north to south, some areas have been levelled for now demolished farm buildings most notably at the southern end of the site.

- 3.3. The application site is a mixed greenfield and brownfield site and the site is within Flood Zone 1 (low risk of fluvial flooding) and at low risk of surface water flooding.

4. Relevant planning history

80/00784/4

- Removal of agricultural restriction on dwelling house
- Refused 22.07.1980

20/00916/FUL

- Demolition of farm buildings and Ashby House and development of 50 dwellings comprising 49 no. affordable houses and 1no. bungalow to replace Ashby House, with access road off Leicester Road, open space, landscaping, drainage basin, and foul pumping station.
- Permitted 10.11.2022

23/01201/CONDIT

- Variation of conditions 2 (Approved plans) and 19 (Hard and soft landscape) for planning permission 20/00916/FUL (Demolition of farm buildings and Ashby House and development of 50 dwellings comprising 49 no. affordable houses and 1no. bungalow to replace Ashby House, with access road off Leicester Road, open space, landscaping, drainage basin, and foul pumping station)
- Permitted 20.03.2024

25/00266/CONDIT

- Variation of conditions 2 (Approved plans) and 19 (Hard and soft landscape) for planning permission 23/01201/CONDIT. Amendments to the highway/footpath width, retaining walls along the site boundary and landscaping
- Permitted 13.06.2025

Various discharge of condition applications which are not listed for brevity.

5. 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.

6. Consultation

- 5.3. The application is a non-material amendment and as such no consultation has been undertaken.
- 5.4. No comments have been received.

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. The revised NPPF was issued in December 2024, however, in the context of this non-material amendment application there are no relevant significant changes.

8. Appraisal

8.1. Key Issues

- Assessment
- Conditions

Assessment

- 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 S96A.
- 8.3 The amendment to the use of concrete blockwork with facing brick would not represent a material change to the development considering that this material and finish is present on other retaining structures surrounding the site. The concrete block construction technique has been opted for against the Tobermore Secura wall due to its stability. No change is proposed to the height or siting of the wall and the proposed brick will retain the quality of the design. The Tobermore wall system remains elsewhere on the site to provide variety in the material finish of the retaining walls.
- 8.4 In the context of the development, the amendments would have little impact on the overall design and appearance of the site.
- 8.5 The proposal is therefore judged to be non-material in this regard.

Conditions and compliance with S106

- 8.6 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.
- 8.7 The decision notice for 25/00266/CONDIT was subject to a number of conditions, condition 2 required compliance with the submitted and approved plans and condition 28 required compliance with the Retaining Walls Facing Materials Schedule. This NMA application requires both conditions to be updated ensuring that the proposal is carried out in accordance with the newly approved drawings. All other conditions remain.

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. The proposed amendments to the retaining walls 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.

11. Recommendation

- 11.1 **Approve the Non-Material Amendment** subject to the conditions on application 25/00266/CONDIT except where varied below.

11.2 Conditions and Reasons

- 2. The development hereby permitted shall not be carried out other than in accordance with the following plans:

Site Location Plan drawing number 40963 005
 Oakley Architects External Works Plan drawing no. 202305/**01W**
 Boundary Treatment drawing no. 202305/05
 Birmingham 2B4P and Bromwich 2B4P drawing number 40963 010 Rev D
 Birmingham 2B4P and Bromwich 2B4P drawing number 40963 011 Rev D
 Birmingham 2B4P x3 drawing number 40963 014 Rev C
 Birmingham 2B4P x2 drawing number 40963 016 Rev D
 Birmingham 2B4P x2 Hipped drawing number 40963 017 Rev B
 Birmingham 2B4P x2 Rendered drawing number 40963 018 Rev B
 Cosford 3B5P x2 Hipped drawing number 40963 020 Rev D
 Cosford 3B5P x2 drawing number 40963 022 Rev B
 Cosford 3B5P x2 Rendered drawing number 40963 023 Rev B
 Material Distribution Plan drawing number 40963 024 Rev G
 Cosford 3B5P x2 Hipped and Rendered drawing number 40963 025 Rev C
 Bungalow drawing number 40963 026 Rev C
 Birmingham 2B4P and Bromwich 2B4P OP drawing number 40963 028 Rev C
 Birmingham 2B4P+Bromwich 2B4P hipped drawing number 40963 030 Rev C
 Birmingham 2B4P and Bromwich 2B4P x3 drawing number 40963 040 PDP Associates
 Detailed Landscape Proposals drawing no. c-2191-01 Rev C
 Oakley Architects Site Sections drawing no. 202305 04A
 Road adoption/Land use drawing number 40963 043 Rev D
 Birmingham 2B4P and Bromwich 2B4P drawing number 40963 044

Birmingham 2B4P and Bromwich 2B4P drawing number 40963 045

Patrick Parsons S104 Approval Drainage Layout drawing no. HTF-PPC-00-XX-DR-C-0501-P12

Patrick Parsons External Levels Layout Sheet 1 of 3 HTF-PPC-00-XX-DR-C-0601 P10

Patrick Parsons External Levels Layout Sheet 2 of 3 HTF-PPC-00-XX-DR-C-0602 P9

Patrick Parsons External Levels Layout Sheet 3 of 3 HTF-PPC-00-XX-DR-C-0603 P11

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

28. The external finishes and appearance of the retaining walls shall be constructed in accordance with the submitted Retaining Walls Facing Materials Schedule- Updated October 2025 submitted to the Local Planning Authority on 30 October 2025. Thereafter the retaining walls shall be retained in accordance with the approved details in perpetuity.

Reason: To ensure a satisfactory form of development in accordance with Policies DM4 and DM10 of the Site Allocations and Development Management Policies DPD (2016).