

Delegated Report

Planning Ref: 25/00425/NMA
Applicant: Miss Sarah Allsop
Ward: Markfield, Stanton & Fieldhead



Hinckley & Bosworth
Borough Council

Site: Land South of 295 Main Street, Stanton Under Bardon

Proposal: Non-material amendment to planning permission 22/00527/OUT.
Amendment to condition 22 to Tree Survey, Arboricultural
Implications Assessment, Tree Retention & Removal Plan

1. Recommendations

- 1.1. **Grant planning permission** subject to:
- Previously imposed conditions on planning permission 22/00527/OUT.

2. Planning Application Description

- 2.1. This application proposes a non-material amendment to planning permission 22/00527/OUT, which was for outline approval for the proposed development of up to 50 dwellings with all matters reserved except access at Land South of 295 Main Street, Stanton Under Bardon.
- 2.2. The proposed non-material amendment seeks to amend the wording of Condition 22 of planning permission 22/00527/OUT to refer to the Tree Survey & Arboricultural Implications Assessment, Tree Retention & Removal Plan Revision A submitted to the Local Planning Authority (LPA) on 8 November 2022.

3. Description of the Site and the Surrounding Area

- 3.1. The application site is located adjacent to but outside of the southern settlement boundary of Stanton Under Bardon. Stanton Under Bardon is classified as a rural village within the adopted Core Strategy and is designated as lying within Charnwood Forest and the National Forest.
- 3.2. The site has previously consisted of agricultural land bounded by mature hedgerows to its northern and western boundaries. More recently, site works have begun on the application site for forthcoming residential development for up to 50 dwellings associated with 22/00257/OUT and 24/00828/REM. There is a Public Right of Way (PRoW) Footpath R19 that runs north-to-south through the centre of the site and passes along a private drive to link Meadow Lane and on to Main Street further north.
- 3.3. The village of Stanton Under Bardon is a largely linear settlement extending from the core vehicular route through the village, Main Street. Main Street flanks the western boundary of the application site beyond the mature hedgerow and beyond

Main Street are open agricultural fields. There are further open agricultural fields to the east and south of the site.

- 3.4. Immediately to the north of the site are a number of residential dwellings along Main Street and Meadow Lane, whose gardens flank the entire northern boundary of the site. There is a Wild Cherry tree of moderate retention priority located close to the shared boundary to the north of the application site, which has been identified for retention as part of the residential development.

4. Relevant Planning History

4.1 22/00527/OUT

- Outline application for proposed development of up to 50 dwellings (all matters reserved, except access)
- Planning Permission
- 26.06.2024

4.2 24/00858/NMA

- Non-Material Amendment 22/00527/OUT. Amendment to site access plan to reflect the correct land ownership boundary of 295 Main Street
- Permit Non-Material Amendment
- 09.12.2024

4.3 24/00828/REM

- Approval of reserved matters (layout, scale, appearance, landscaping and access other than vehicular access) of outline planning permission (ref: 22/00527/OUT) for residential development of 50 dwellings
- Planning Permission
- 28.03.2025

4.4 25/00069/DISCON

- Application to discharge C5 (Contamination), C7 (Surface Water Drainage Scheme), C8 (Surface Water during construction), C10 (Infiltration Testing), C16 (CTMP), C21 (PROW), C22 (Tree Protection), C23 (Broadband) attached to planning permission 22/00527/OUT
- Pending Consideration

5. Publicity & Consultation

- 5.1 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.

- 5.2 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. 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. The key issues in respect of this application are therefore:

- Assessment against strategic planning policies
- Conditions

Assessment against Strategic Planning Policies

- 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 Section 96A.
- 7.3. 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 granted outline permission for the proposed development of up to 50 dwellings (with all matters reserved, excluding access).
- 7.4. Condition 22 of the planning permission currently states that:

Before any development commences on site, including site works of any description, a Tree Protection Plan for the Category B Tree, T23, as identified within the submitted Tree Survey & Arboricultural Implications Assessment Tree Retention & Removal Plan (submitted: 01.06.2022), which has been prepared by a suitably qualified arboriculturist shall be submitted to, and approved in writing by, the Local Planning Authority. The plan shall include protective barriers to form a secure construction exclusion zone and root protection area in accordance with British Standard 5837:2012 Trees in relation to design, any trenches for services are required within the fenced-off areas, they shall be excavated and back-filled by hand and tree roots or clumps of roots encountered with a diameter of 25cm or more shall be left unsevered. The development shall be implemented in accordance with the approved Tree Protection Plan.

Reason: *To ensure that the Category B tree on site is retained and adequately protecting during and after construction in the interests of the visual amenities of the area and biodiversity in accordance with Policy DM6 of the Site Allocations and Development Management Policies Development Plan Document (2016), and Paragraph 180 of the National Planning Policy Framework (Dec 2023).*

- 7.5 The proposal is to replace the reference to the Tree Survey & Arboricultural Implications Assessment Tree Retention & Removal Plan (submitted: 01.06.2022) in Condition 22 to instead refer to the Tree Survey & Arboricultural Implications Assessment Tree Retention & Removal Plan Revision A (submitted: 08.11.2022). The Revision A version of the report was submitted during assessment of 22/00527/OUT and was intended to supersede the original version.
- 7.6 The Applicant's covering letter notes the likelihood that the current wording of Condition 22 was a drafting error. It is considered by the LPA that this is a reasonable assertion and that reference to the original report rather than the later revision was not likely intended.
- 7.7 Condition 22 pertains to the protection of Tree 23 identified within the Tree Survey & Arboricultural Implications Assessment Tree Retention & Removal Plan. Both the original version of the report, currently identified in Condition 22, and the Revision A version, proposed to be referred to in Condition 22, are consistent in their identification and classification of Tree 23.
- 7.8 The proposal makes no amendments to the design or layout of the scheme, and the proposed amendments to the wording of the condition would remain consistent with its original purpose and intent. The proposal remains compliant with Local and National Planning Policy. By virtue of these factors, the LPA are satisfied that the proposed amendments to the extant planning permission are not considered to materially alter the approved development or cause significant adverse impacts to the protection and retention of trees adjacent the application site.

Conditions

- 7.9 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.
- 7.10 Planning permission 22/00527/OUT was subject to 25 planning conditions. No additional conditions are necessary, and this application cannot grant further planning permission. However, planning condition 22 of the planning permission needs to be amended to state the following:
22. Before any development commences on site, including site works of any description, a Tree Protection Plan for the Category B Tree, T23, as identified within the submitted Tree Survey & Arboricultural Implications Assessment

Tree Retention & Removal Plan Revision A (submitted: 08.11.2022), which has been prepared by a suitably qualified arboriculturist shall be submitted to, and approved in writing by, the Local Planning Authority. The plan shall include protective barriers to form a secure construction exclusion zone and root protection area in accordance with British Standard 5837:2012 Trees in relation to design, any trenches for services are required within the fenced-off areas, they shall be excavated and back-filled by hand and tree roots or clumps of roots encountered with a diameter of 25cm or more shall be left unsevered. The development shall be implemented in accordance with the approved Tree Protection Plan.

Reason: To ensure that the Category B tree on site is retained and adequately protecting during and after construction in the interests of the visual amenities of the area and biodiversity in accordance with Policy DM6 of the Site Allocations and Development Management Policies Development Plan Document (2016), and Paragraph 180 of the National Planning Policy Framework (Dec 2023).

The revised planning condition should be read in conjunction with the conditions 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 Land South of 295 Main Street, Stanton Under Bardon permitted under planning reference 22/00527/FUL are non-material in the context of the overall scheme. 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.
- 10.2. **This non-material amendment is not a separate planning permission and should be read in conjunction with extant permission 22/00527/OUT.**

11. Recommendation

11.1 Grant Non-Material Amendment subject to:

- Previously imposed conditions on planning permission 22/00527/OUT.
- The amended wording of Condition 22 of 22/00527/OUT to ensure that the correct iteration of the Tree Survey & Arboricultural Implications Assessment Tree Retention & Removal Plan is referred to.