

Delegated Report

Planning Ref: 24/00430/NMA

Applicant: Cartwright Homes

Ward: Twycross Sheepy & Witherley

Site: Land West of 24 Orton Lane, Twycross, Leicestershire

**Proposal: Non-material amendment to planning permission 21/00203/FUL.
Amendments to plot 2, 8, 10 and 11.**

1. Recommendations

1.1. Grant Planning Permission subject to:

Previously imposed conditions on planning permission 21/00203/OUT.

2. Planning application description

2.1. The application seeks a non-material amendment to permission 21/00203/FUL, which was for the residential development of 16 dwellings including surface water attenuation basin.

2.2. The amendments are summarised by the agent as follows:

- Changes made to plots 2, 8, 10 & 11 in accordance with the recently introduced Part O (Overheating) requirement as part of UK building regulations.
- Window sizes changed to comply with Part O requirements.
- Number of opening lights amended to comply with Part O requirements.
- Some openings of windows have been restricted to comply with Part O requirements.
- Sizes of glazing within each system varies to accommodate for natural sunlight requirements as part of the Part O requirements.

2.3. Amendments assessed by the Officer as part of this assessment include:

- Plot 8 rear extension now flat roof instead of mono-pitched
- Plot 8 dormer window dimensions altered marginally
- Plot 8 materials altered
- Plot 10 brick header removed from rear French doors

2.3. The revised drawings are as follows:

- Plot 2 & 11 Planning Drawing Rev. 31E is to be superseded by Plot 2 & 11 Planning Drawing Rev. 31F.
- Plot 8 Planning Drawing Rev. 26F is to be superseded by Plot 8 Planning Drawing Rev. 26J.
- Plot 10 Planning Drawing Rev. 36D is to be superseded by Plot 10 Planning Drawing Rev. 36G.

A NMA was submitted and approved in 2023 (22/00039/NMA) for changes to the materials used for the development.

3. Description of the site and surrounding area

- 3.1. The application site is located adjacent to the northwestern boundary of the rural village of Twycross and to the north of Orton Lane. The site measures approximately 0.84 hectares and comprises part of a larger arable field the remainder of which lies to the north and west of the site. There are other arable fields to the south across Orton Lane and existing residential properties on 'Hallfields' lie to the east of the site. There is a mix of fencing and hedgerows marking the rear garden boundaries of the Hallfields properties to the east and a field boundary hedgerow along the highway boundary to the south. The north and west boundaries are currently open.

4. Relevant planning history

- 4.1. The application site has the following relevant planning history:

22/00039/NMA

- Non-material amendment to planning permission 21/00203/FUL to amend the approved materials
- Permitted
- 25.05.2023

21/01479/DISCON

- Application to discharge conditions 5 (Drainage – Long term maintenance), 13 (Landscape management plan), 17 (Gateway Feature), 20 (Highway Drainage), 24 (waste and recycling) of permission 21/00203/FUL
- Permitted
- 17.03.2022

21/01478/DISCON

- Application to discharge conditions 3 (drainage scheme), 4 surface water drainage), 6 (infiltration testing), 7 (Gas protection), 8 (CEMP), 9 (CTMP), 10 (Levels), 12 (Landscaping) of permission 21/00203/FUL
- Split Decision
- 04.03.2022

21/00203/FUL

- Residential development of 16 dwellings including surface water attenuation basin (Revised scheme 19/00798/FUL)
- Permitted
- 09.12.2021

19/00798/FUL

- Residential development of 20 dwellings including surface water attenuation basin
- Permitted
- 18.03.2020

5. Publicity

- 5.1. A Section 96A application is not an application for a new planning permission and the existing Town and Country Planning (Development Management Procedure) Order (DMPO) provisions (Article 13 and Schedule 5) relating to publicity and statutory consultation do not apply. Therefore, local planning authorities can

exercise discretion in whether and how they choose to inform interested parties or seek their views. In this case no publicity has been carried out.

6. Consultation

6.1. 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. This application was originally submitted as a Variation of Conditions application, however Officers considered that it would be more appropriately dealt with as a NMA. This followed consultation which took place as part of the original Variation of Conditions application as follows:

6.2. HBBC Waste – No comment.

6.3. LCC Highways – No objection

6.2. HBBC Drainage - No objection

6.3. HBBC Environmental Health – No comment.

6.4. LCC Archaeology – No objection.

6.5. NHS – No objection.

6.6. LCC Ecology – No objection

7. Policy

7.1. Core Strategy (2009)

- Policy 12: Rural Villages
- Policy 16: Housing Density, Mix and Design

7.2. Site Allocations and Development Management Policies DPD (SADMP) (2016)

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM4: Safeguarding the Countryside and Settlement Separation
- Policy DM7: Preventing Pollution and Flooding
- Policy DM10: Development and Design
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

7.4. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2023)

7.5. Other relevant guidance

- HBBC Good Design Guide (2020)

8. Appraisal

8.1. It is considered that the key issues in the determination of this application are:

- Assessment against strategic planning policies
- Design and impact upon the character of the area
- Conditions

Assessment against strategic planning policies

- 8.2. The Section 96A of the Town and Country Planning Act 1990 allows a non-material amendment to be made to an existing planning permission. 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. 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. 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 a development of 16 dwellings and surface water attenuation basin.
- 8.4. The main issues in respect of this application are whether or not the proposed amendments are considered to be non-material to the approved planning permission with regard to the visual appearance of the development.
- 8.5. Design and impact upon the character of the area
- 8.6. The proposed amendments would alter the external materials of plot 8, from smooth ivory through render, Staffordshire blue headers and sills, to facing render, brick sills. The rear single storey extension would now feature a flat roof instead of the original mono pitch roof, and the dormer windows are altered with different proportions, albeit very minor.
- 8.7. The changes to plots 2, 10 and 11 only concern window sizes/additional roof lights. The brick header above the French doors on the rear elevation of Plot 10 has been removed, which is regrettable but would not warrant refusal.
- 8.8. When comparing the approved materials layout plan against the proposed revised plan, the changes are considered to be minor and would be non-material in the context of the overall scheme and would not significantly alter the scheme such that it would affect the original consideration of the acceptability of the approved development.

Conclusion and Conditions

- 8.9. In 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. It is however necessary to determine if additional conditions are required or whether existing conditions need to be removed or altered.
- 8.10. The proposed minor amendments would not result in any material impacts on the development, would respect the character and appearance of the wider site and surrounding area, and would not result in any harm to the amenity of neighbouring dwellings. The scheme would remain in accordance with the Core Strategy and SADMP, as well as the overarching intentions of the NPPF and is therefore recommended for approval subject to the minor amendments to conditions 2 and 11 of approval 21/00203/FUL. No new conditions are necessary.

- 8.11. Planning permission 21/00203/FUL was subject to 29 planning conditions. Condition 2 specified the approved drawings and Condition 11 specified the approved materials. These conditions will need to be amended to alter the individual dwelling elevation plans and the materials layout plan submitted with this in light of the amendment, as this application cannot grant further planning permission.

9. Equality implications

- 9.1. Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

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 in the consideration 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. Recommendation

- 10.1. **Permit non-material amendment** subject to:

- Amendment of planning conditions 2 and 11 to planning permission 21/00203/FUL as outlined below

2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows:

- Plot 4 Floor Plans and Elevations Drawing No. 25g
- Plot 5 Floor Plans and Elevations Drawing No. 34g
- Plot 6 Floor Plans and Elevations Drawing No. 33f
- Plot 7 Floor Plans and Elevations Drawing No. 35h
- Plot 8 Floor Plans and Elevations Drawing No. 26j
- Plot 9 Floor Plans and Elevations Drawing No. 29j
- Plots 15 and 16 Floor Plans and Elevations Drawing No. 38e
- Plot 10 Floor Plans and Elevations Drawing No. 36g
- Plot 1 Floor Plans and Elevations Drawing No. 30g
- Plots 2 & 11 Floor Plans and Elevations Drawing No. 31f

- Plot 3 Floor Plans and Elevations Drawing No. 32g
 - Plots 12 & 13 Floor Plans and Elevations Drawing No. 44d
 - Plot 14 Floor Plans and Elevations Drawing No. 37f
 - Materials and Boundary Treatments Drawing No. 43h
- received 07/04/2022.

- Site Location Plan Drawing No. 00b
received by the local planning authority on 12 February 2021

- Street scene Drawing No. 39e
received by the local planning authority on 2 March 2021.

- Drainage Layout Drawing No. 1836-SCE-00-00-DR-C-0001
received by the local planning authority on 19 April 2021;

- Proposed Site Plan Drawing No. 024k
- Block Plan Drawing No. 42b
received by the local planning authority on 26 June 2021;

- Double Garages Drawing No. 22a
- Single Garages Drawing No. 15c
- Double Garage gable Drawing No. 16c
received by the local planning authority on 2 December 2021.

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).

11. The materials to be used on the external elevations of the proposed extension and alteration shall accord with the following approved plans:

- Plot 4 Floor Plans and Elevations Drawing No. 25g
- Plot 5 Floor Plans and Elevations Drawing No. 34g
- Plot 6 Floor Plans and Elevations Drawing No. 33f
- Plot 7 Floor Plans and Elevations Drawing No. 35h
- Plot 8 Floor Plans and Elevations Drawing No. 26h
- Plot 9 Floor Plans and Elevations Drawing No. 29j
- Plots 15 and 16 Floor Plans and Elevations Drawing No. 38e
- Plot 10 Floor Plans and Elevations Drawing No. 36g
- Plot 1 Floor Plans and Elevations Drawing No. 30g
- Plots 2 & 11 Floor Plans and Elevations Drawing No. 31f
- Plot 3 Floor Plans and Elevations Drawing No. 32g
- Plots 12 & 13 Floor Plans and Elevations Drawing No. 44d
- Plot 14 Floor Plans and Elevations Drawing No. 37f
- Materials and Boundary Treatments Drawing No. 43h received 07/04/2022.

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