

Delegated Report

Planning Ref: 26/00614/NMA
Applicant: David Wilson Homes East Midlands
Ward: Barwell



Hinckley & Bosworth
Borough Council

Site: Land East Of The Common, Barwell

Proposal: Nonmaterial amendment to planning permission 23/01229/OUT. Amendment to the Site Access Drawing referred to in Conditions 4, 28 and 29 from 332610546/5501/001 P03 to 332610546/5501/001 P05.

1. Recommendations

1.1. Approve the non-material amendment(s) subject to:

- Previously imposed conditions on planning permission 23/01229/OUT decision.

2. Planning Application Description

- 2.1. This application proposes a non-material amendment to planning permission 23/01229/OUT, which was for outline planning for up to 95 dwellings with associated access, open space and landscaping following demolition of all buildings on site.
- 2.2. The proposed non-material amendment seeks to amend conditions 4, 28 and 29 to amend the site access drawing from reference 332610546/5501/001 P03 to 332610546/5501/001 P05.

3. Description of the Site and the Surrounding Area

- 3.1. The application site comprises approximately 10.92 hectares and is made up of nine field parcels, which are used as paddocks, divided by mature native hedgerows and trees and some sections of fencing. The site is accessed at present by field accesses taken from The Common and Dawson's Lane. The site slopes gently upwards towards Dawson's Lane.
- 3.2. To boundaries of the site are predominantly defined by existing hedgerows and sporadic tree planting. The site is bounded to the north by Dawson's Lane; to the west by the rear boundaries of the existing dwellings on The Common and The Enterprise Centre. Open countryside lies beyond the site boundaries to the east and south. The A47, Leicester Road, is located beyond the fields/paddocks located to the south of the site.
- 3.3. The site is located within the Hinckley/Barwell/Earl Shilton/Burbage Green Wedge, a multi-functional designation that provides recreational opportunities; performs an

agricultural role; provides opportunities for flora and fauna; and links urban areas with open countryside. Its primary function is to guide development form of urban areas in order to maintain settlement identity and prevent coalescence.

- 3.4. The site is located in Flood Zone 1 and is at low risk of fluvial flooding. The part of the site that is bounded by the A47 is at high risk of surface water flooding. There are also some areas at low risk of surface water flooding within the site which correspond with the existing settlement edges. There are no heritage assets within the vicinity of the site and the site is not subject to any Tree Preservation Order.

4. Relevant Planning History

The application site has been subject to a large volume of applications, for brevity only the key applications relating to this application are included below:

23/01229/OUT

- Outline planning application for up to 95 dwellings with associated access, open space and landscaping following demolition of buildings on site
- Refused – Appeal allowed
- 17.06.2024

5. Publicity

- 5.1. No publicity is required for a non-material 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.
- 6.2 No consultation was conducted as part of this application.

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
- Highways safety
- 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.

8.3 There is no statutory definition of 'non-material.' This is because it will be dependent on the context of the overall scheme – an amendment that is non-material in one context may be material in another. The local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under Section 96A of the Town and Country Planning Act 1990. This application type cannot be used to make a material amendment to an extant planning permission.

8.4 With the above in mind, it is necessary to consider what the existing planning permission is for including its uses, and its scale.

8.5 The non-material amendment seeks to amend the site access plan for the site updating from P03 to P05, in line with the appeal scheme, appellants statement of case and the LPA's statement of case. The amendment arises following an error in the conditions from the planning inspectorate. This amendment when reading the decision notice in conjunction with the statement of cases is not considered to materially alter the scheme and is considered to be non-material, and does not go to the heart of the permission.

Highway safety

8.6 As part of the planning appeal following the refusal of outline planning permission by the LPA, a appeal statement of case was provided. Within section 3.6 of the appeal statement, it confirmed the below:

8.7 "Reasons for refusal 2 related to an insufficiency of information, at the time of decision making, to allow the Council to reach a decision on matters of importance. Reason for refusal 2 related to highway safety and the impact that the appeal development would have on the highway network. Whilst the appeal has been ongoing the Appellant has since provided sufficient information to address the Highway Authority's concerns such that reason for Refusal 2 is considered to be addressed (CD-F-1). The current position of the Highway Authority is that it raises no objection to the appeal scheme provided that appropriately worded conditions are applied and a mechanism for securing planning obligations is available should the appeal be allowed. It is the view of the Council that Reason for Refusal 2 falls away and is no longer a matter of dispute in the context of this hearing".

- 8.8 Within the appellant statement of case it was identified within Appendix 10, within the 'Hearing Statement – Transport and Highways' prepared by Stantec, and within Appendix C, a revised site access drawing referenced: 332610546/5501/001 P05 was submitted and agreed.
- 8.9 Within the appeal decision, the planning inspectorate included within conditions 4, 28 and 29 that the original site access drawing as opposed to the agreed revised scheme under the appeal. Which as confirmed within the LPA's statement of case, was removed as a reason for refusal given the LHA's concerns have been addressed by the appeal scheme.
- 8.10 As such the development is not considered to be a material amendment to the scheme, but simply addressing the error within the appeal decision. The amendment to the condition would be materially in line with the approved decision.

Conditions

- 8.11 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.
- 8.12 Planning permission 23/01229/OUT (Appeal reference: APP/K2420/W/24?3348387) was subject to thirty one (31no.) planning conditions. Due to the amendment under this non-material amendment application, the amended conditions at the end of this report supersede conditions 4, 28 and 29 of the original approval and shall be read in conjunction with the remaining conditions.

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 planning application are non-material in the context of the overall scheme.
- 10.2. It is considered that the proposed amendment does 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 23/01229/OUT (Appeal reference: APP/K2420/W/24?3348387).**

11. Recommendation

- 11.1 **Approve the non-material amendment(s)** subject to:
- Previously imposed conditions on planning permission 23/01229/OUT (Appeal reference: APP/K2420/W/24?3348387), except conditions 4, 28 and 29 which are amended below to reflect the amended plan.

11.2 Conditions and Reasons

4. The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan: HAR102-1001D
Site Access drawing : 332610546/5501/001 P05
Parameters Plan HAR102-3051C
Design Code – dated 18 December 2023

Reason: For the avoidance of doubt and to ensure a satisfactory form of development in accordance with Policies DM1, DM10 and DM17 of the adopted

Site Allocations and Development Management Policies Development Plan Document (2016).

28. No part of the development shall be occupied until such time as the offsite works (traffic calming measures) shown on Stantec drawing number 332610546/5501/001 P05 (or an appropriate amended scheme, following public consultation/ detailed design) have been implemented in full.

Reason: In the interests of highways safety in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the National Planning Policy Framework (2026).

29. No part of the development hereby permitted shall be occupied until such time as the access arrangements, visibility splays and 2.0m wide footway to tie in to existing footway provisions on The Common shown on Stantec drawing number 332610546/5501/001 P05 have been implemented in full.

Reason: In the interests of highways safety in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the National Planning Policy Framework (2026).