

Delegated Report

Planning Ref: 26/00690/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 wording of conditions, 1, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 26, 30 to allow implementation of phased development and the addition of a phasing conditions.

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 the wording of conditions, 1, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 26, 30 to allow implementation of phased development and the addition of a phasing conditions.

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 I have included the key applications relating to this application:

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
- Phased development
- 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.

Phased development

8.5 The key amendments to the scheme relate to the proposed phasing of the development, which can be broken down to phase 1 which relates to the majority of the site and the market/affordable dwellings, and the subsequent phases splitting each self-build plot up independently.

8.6 The conditions included on the original application have not been materially altered, the only amendments relate to the phasing of the development, to allow the developer to proceed on site with phase 1.

8.7 As there are no material implications of the amending wording of the aforementioned conditions, it is therefore considered that the development is acceptable under this non-material amendment.

Conditions

8.8 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.

8.9 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 1, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 26,

30 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 1, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 26, 30 which are amended below to reflect the amended wording, alongside the addition of a phasing condition.

11.2 Conditions and Reasons

Reserved Matters

1. Details of the internal access arrangements, appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') relating to each phase of the development as set out within the Phasing Masterplan Drg No. HA955/PHM, shall be submitted to and approved in writing by the local authority before each phase of the development begins. Each phase of the development shall be carried out in accordance with the approved details thereafter.
2. Applications for approval of reserved matters shall be made to the local planning authority not later than 18 months from the date of this permission.
3. The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.

Plans and Design Code

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

Development Parameters

5. The reserved matters to be submitted in accordance with condition 1 will comply with the Parameters Plans identified in Condition 4 and, for the avoidance of doubt the following parameters:
 - A maximum of 3.9 hectares of land for residential development (including roads)
 - No less than 7 hectares of green infrastructure, including no less than 4 hectares of grassland
 - Buildings to be no more than 9 metres in height
6. All reserved matters applications shall be in general accordance with the Illustrative Master Plan drawing reference HAR102-4001G, other than in respect of the development parcel in the north-west corner of the site, and the Illustrative

Landscape Masterplan drawing reference P20-3536-EN0009 C 0001.

Contamination

7. Each phase of the development shall not begin, including works of site clearance and preparation (other than as required to be carried out as part of an approved scheme of remediation) until the land contamination assessment in accordance with the details approved under application 26/00615/DISCON (unless otherwise agreed in writing by the local planning authority) has been carried out, submitted to and approved in writing by the local planning authority. The scheme shall include details of how any contamination is to be dealt with for that phase. The approved scheme shall be implemented in accordance with the agreed details and any remediation works so approved shall be completed prior first use of that part of the site for the intended purpose
8. Any contamination that is found during the course of each phase of the development that was not previously identified, shall be reported immediately to the local planning authority. Development on the affected part of the site shall be suspended until an addendum to the scheme for the investigation of all potential land contamination and implementation pursuant to condition 7 above is submitted to and approved in writing by the local planning authority, which shall include details of how the unsuspected contamination shall be dealt with. Any remediation works so approved shall be carried out in accordance with the agreed implementation period before development on that part of the site is resumed or continued.

Ecology

9. An Ecological Constraints & Opportunities Plan, taking into account the findings of the Ecological Survey & Assessment PCAJ199/V2 dated Dec 2023, for each phase shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development within that phase. The ECOP should identify the following, in accordance with BS 42020:2013 Clause 5.4:
 1. Areas and features including appropriate buffer areas that, by virtue of their importance, should be retained and avoided by both construction activities and the overall footprint of each phase of development.
 2. Areas and features where opportunities exist to undertake necessary mitigation and compensation.
 3. Areas and features with potential for biodiversity enhancement, in line with the submitted Defra metric.
 4. Areas where ongoing ecological management is required to prevent deterioration in condition during construction/implementation.
 5. Areas needing protection on site during the construction process.
 6. Areas where biosecurity measures are necessary to manage the risk of spreading pathogens or non-native invasive species. Thereafter each phase of the development shall be carried out in accordance with the approved ECOP.
10. Details with respect to a Biodiversity Net Gain Plan (the Plan) taking into account the BNG Assessment PCAJJ83/BNG/V2/Final dated Dec 2023 shall be submitted to and approved in writing by the LPA. The Plan shall be based on the Biodiversity Net Gain metric spreadsheet completed by PCA Ltd. The Plan shall include the following details:
 - A) Location plan of the areas to be used for Biodiversity Net Gain;
 - B) Description of existing habitats on site;

- C) Description of planned habitat creation/enhancement, including species to be planted/sown;
- D) Timetable for implementation of habitat creation/enhancement;
- E) Habitat management and monitoring plan including timetable for management routines and reviews, and strategy for any remedial measures, if and when required;
- F) Mechanism for securing the implementation of the biodiversity off-setting and its maintenance/management for a period of 30 years in accordance with details approved in the Plan.

The Plan shall thereafter be implemented in accordance with the approved details.

11. Each phase of the development hereby permitted shall not commence until an Ecological Construction Environmental Management Plan for that phase has been submitted to and approved in writing by the Local Planning Authority. In discharging this condition, the Local Planning Authority expect to see details concerning pre commencement checks for badgers, otters, reptiles and breeding birds and appropriate working practices and safeguards for wildlife that are to be employed whilst works are taking place on site. The Construction and Ecological Management Plan as approved shall thereafter be implemented in full.

Waste

12. Each phase of the development hereby permitted shall not commence until a waste management plan for that phase has been submitted to and approved in writing by the LPA. The waste management plan for each phase of the development shall include a scheme of waste and recycling storage containers and collection which shall be submitted to and approved in writing by the Local Planning Authority. The scheme should provide details of accessibility to storage facilities and demonstrate that adequate space is provided to store and service wheeled containers. The approved site wide schemes of waste and recycling shall be implemented prior to the first occupation of each phase and retained in accordance with the approved scheme thereafter.

Archaeology

13. The development shall be carried out in accordance with the Written Scheme of Investigation (WSI) approved under application 26/00466/DISCON (unless otherwise agreed in writing by the Local Planning Authority). This condition shall not be discharged until the post-investigation assessment, analysis, publication and dissemination and deposition of resulting material has been carried out in accordance with the programme set out in WSI to the satisfaction of the Local Planning Authority

Materials

14. Details of the construction materials to be used in the each phase of the development shall be submitted to and approved in writing by the Local Planning Authority. This shall include samples of the types and colours of materials to be used on the external elevations of the dwellings. The development phases thereafter shall be implemented in accordance with those approved details.

Drainage Maintenance Scheme

15. Prior to the first occupation of each phase of the development full details of the long-

term maintenance of the surface water drainage system and sustainable urban drainage elements shall first be submitted to and approved in writing by the Local Planning Authority. The details shall include responsibilities and schedules for routine maintenance, remedial actions and monitoring of the separate elements of the system, and, procedures that may need to be implemented in the event of pollution incidents within the development phase. The development phases thereafter shall be carried out in accordance with the approved surface water drainage system maintenance plan.

Construction Environmental Management Plan

16. Prior to the commencement of each development phase hereby approved a Construction Environmental Management Plan for that phase shall be submitted to and agreed in writing by the LPA. The plan shall include detail of how the potential impact of dust, odour, noise, smoke, light and land contamination shall be prevented or mitigated. The plan shall detail how such controls will be monitored. The plan will provide a procedure for the investigation of complaints. Thereafter the phases of development shall be carried out in accordance with the approved Construction Environmental Management Plan.

Surface Water Management Plan

17. Prior to the commencement of each phase of development hereby approved a scheme to manage surface water on site during the construction of the development in that phase shall first be submitted to and approved in writing by the Local Planning Authority. The development phases thereafter shall be carried out in accordance with the approved details.

Infiltration Testing

18. Prior to the commencement of the development hereby approved there shall first be submitted to and approved in writing by the Local Planning Authority details of infiltration testing results (or suitable evidence to preclude testing) to confirm or otherwise, the suitability of the site for the use of infiltration as a drainage element.

Construction Traffic Management Plan

19. Prior to the commencement of each phase of development a Construction Traffic Management Plan for that phase, including as a minimum details of the routing of construction traffic, wheel cleansing facilities, vehicle parking facilities, and a timetable for their provision, shall be submitted to and approved in writing by the Local Planning Authority. The construction of the development phases shall thereafter be carried out in accordance with the approved details and timetable.

Arb Method Statement- Main Site

20. Prior to the commencement of each phase of development an Arboricultural Method Statement for each phase taking into account the Trevor Bridge Associates Arboricultural Impact Assessment Rev A dated December 2023, and including details of the position, species, size and condition of each existing tree and hedgerow on and adjacent to the site, and identifying those trees and hedgerows to be retained, shall first be submitted to and approved in writing by the local planning authority. This shall include full details of measures for the protection of trees and hedgerows to be retained during the course of development. The veteran ash (T5, T7, T8 and T42) trees, which meet Local Wildlife Site criteria, and the veteran oak

(T39) must be retained and protected during the course of the development. During the construction period of each phase, none of the trees or hedges indicated to be retained shall be cut down, uprooted or destroyed, nor shall be topped or lopped other than in accordance with the approved plans, without the written approval of the Local Planning Authority. If any of the trees or hedges to be retained are removed, uprooted or destroyed, or die, a replacement shall be planted at the same place and that tree or hedge shall be of such size and species, and shall be planted at such time, as maybe specified in writing by the Local Planning Authority. Thereafter the development phases shall be carried out in accordance with the approved Arboricultural Method Statement.

Ground Levels and Finish Floor Levels

21. The details to be submitted in accordance with condition 1, to be approved in writing by the local Planning Authority shall include existing and proposed ground levels and, where relevant, proposed finished floor levels, for each phase, to be submitted to and approved in writing by the local planning authority. The development phases shall thereafter be carried out in accordance with the approved details.

Noise Mitigation

22. The details to be submitted in accordance with condition 1, to be approved in writing by the Local Planning Authority shall include a scheme of noise mitigation protecting the proposed dwellings that are located within that phase identified in the Noise Impact Assessment by Spectrum Acoustic consultants dated 18 December 2023 as requiring protection, from noise from commercial operations and road traffic. The development phases shall thereafter be carried out in accordance with the approved details.

Restriction on Gates

23. Notwithstanding the provisions of Part 2 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no vehicular access gates, barriers, bollards, chains or other such obstructions shall be erected on private driveways within a distance of 5 metres of the highway boundary.

Hours of Work

24. Site preparation and construction shall be limited to the following days and times;

Monday – Friday 07:30 – 18:00

Saturday 08:00 – 13:00

No working on Sundays and Public and Bank Holidays

Housing mix

25. The reserved matters application submitted for approval by the LPA shall include details of the proposed housing mix for the development which shall be in general accordance with the Illustrative Master Plan drawing reference HAR102-4001G and the mix set out in the Ryan & May Planning Statement dated 18 December 2033.

Scheme of Hard and Soft Landscaping

26. The details to be submitted in accordance with condition 1 shall include a scheme

of hard and soft landscaping works in general accordance with the Illustrative Landscape Masterplan drawing reference P20-3536-EN0009 C 0001, including boundary treatments and street furniture, for the each phase. An implementation scheme shall also be submitted for each phase for approval by the LPA . The development phases shall be carried out in full accordance with the approved landscaping scheme. The soft landscaping scheme shall be maintained for a period of five years from the date of planting. During this period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted at which time shall be specified in writing by the Local Planning Authority.

Landscape Management

27. The details to be submitted in accordance with condition 1 shall include a landscape management plan, including long term objectives, management responsibilities and maintenance schedules for all landscape areas, other than small privately owned domestic gardens. The landscape management scheme shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development or any phase of the development, whichever is the sooner. The landscape management plan shall be carried out as per the approved details.

Off-site Works (Traffic Calming)

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 PO5 (or an appropriate amended scheme, following public consultation/ detailed design) have been implemented in full.

Access implementation

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 PO5 have been implemented in full.

Travel Plan

30. Prior to first occupation of each phase of development a full Travel Plan which sets out actions and measures with quantifiable outputs and outcome targets and is in general accord with the Stantec Draft Travel Plan REV B dated 13 December 2023 shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter the agreed Travel Plan shall be implemented in accordance with the approved details.

Sustainability commitments

30. The reserved matters application submitted for approval by the LPA shall include details of the proposed Sustainability Commitments that shall be in general accordance with the Energy Statement by Mainer dated 18 December 2023.

Phasing Plan

32. The hereby approved development phases shall be carried out and implemented in

accordance with the submitted Phasing Masterplan Drg No. HA955/PHM. The phasing plan shall not be amended without the written consent of the Local Planning Authority.