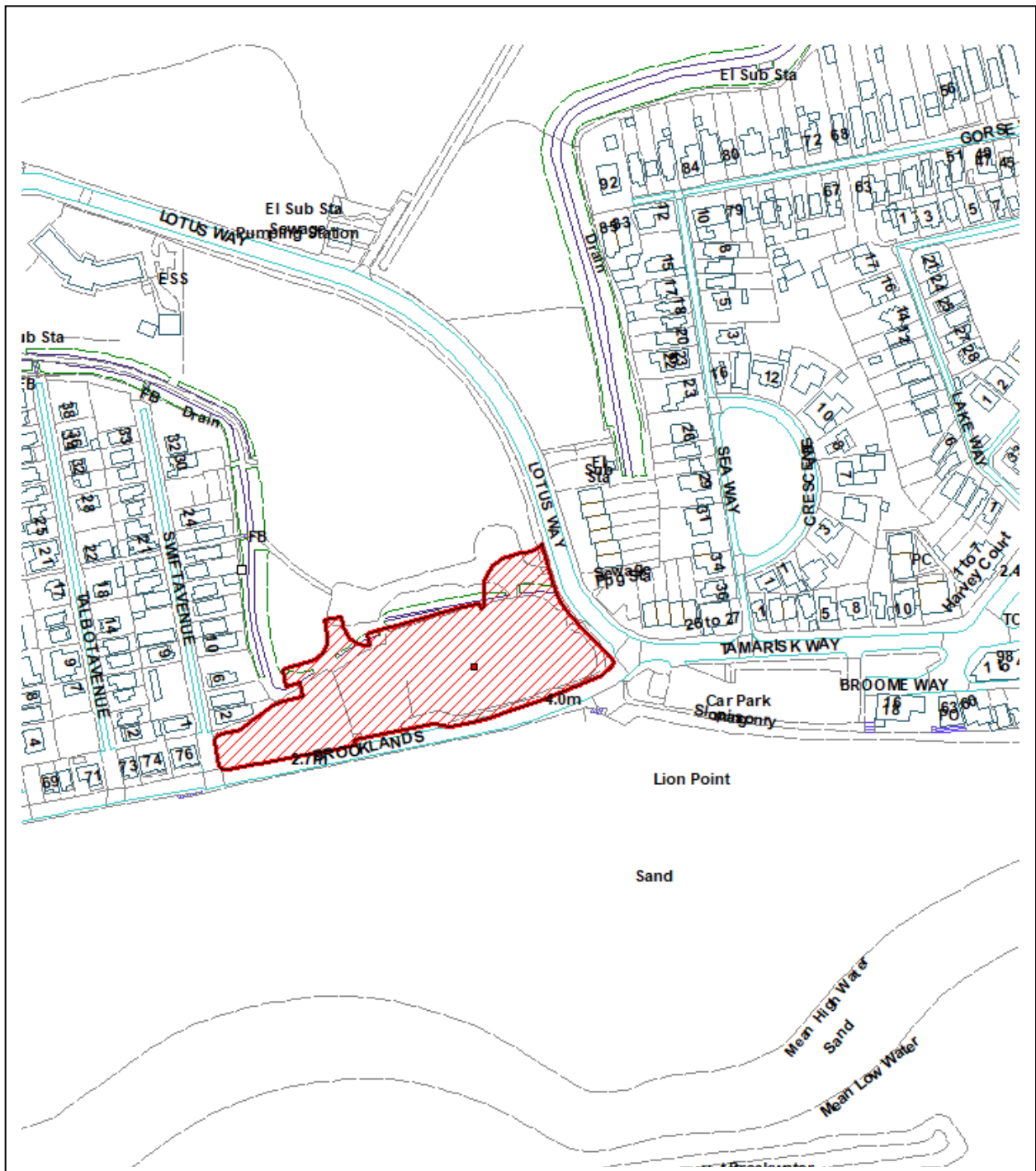


PLANNING COMMITTEE

23RD NOVEMBER 2021

REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

A.5 PLANNING APPLICATION – 21/01707/NMA – LAND ADJACENT TO LOTUS WAY AND BROOKLANDS JAYWICK CO15 2JE



DO NOT SCALE

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

Application: 21/01707/NMA

Town / Parish: Clacton Non Parished

Applicant: Tom Gardiner - Tendring District Council

Address: Land adjacent to Lotus Way and Brooklands Jaywick CO15 2JE

Development: Non-material amendments to permission 21/00871/FUL sought for access road and carpark landscaping shifted marginally to accommodate larger vehicle loading, with relocation of cycle storage and air source heat pump within landscape. Omission of large planters to south elevation and other minor changes to landscape and external fixtures and furnishings.

Omission of 4No rooflights, repositioning of rooflights and ventilation terminals, access hatch and personal fall protection equipment shown.

Roof level increased by +100mm at highest point and minor changes to canopy, with changes to position of 3No windows on first floor, and unit door arrangement on ground floor level South elevation.

Changes to cafe door arrangement on east elevation with omission of 2No vents on West elevation.

Changes to window arrangement to F.13 on first floor, and door arrangement to Unit G.09 on north elevation and minor changes to openings and facade detail on all elevations.

1. **Executive Summary**

- 1.1 This is an application for a Non-Material Amendment (NMA). As the Council is the applicant, and in accordance with our Constitution, the application is referred to Planning Committee for determination.
- 1.2 The description of development above details the proposed changes to the original planning permission. 21/00871/FUL approved 'Proposed business units, covered market, community garden, public WCs and associated public realm' on 9th July 2021 in accordance with Members recommendation at Planning Committee on 6th July 2021 (report Appended for Members' assistance).
- 1.3 Section 96A of the Town and County Planning Act 1990 says in deciding whether a change is material, a Local Planning Authority must have regard to the effect of the change on the planning permission as originally granted. The Planning Practice Guidance confirms there is no statutory definition of 'non-material'. 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.
- 1.4 The key test as to the acceptability of an NMA application is whether the change is material to any development plan policy. If the answer is 'no', as in this case, three further tests should be applied:
 1. Is the proposed change significant in terms of its scale, in relation to the original approval?
 2. Would the proposed change result in a detrimental impact either visually or in terms of amenity?

3. Would the interests of any third party or body who participated in, or were informed of, the original decision be disadvantaged in any way?

It is considered that the answer to all three points above is no and the application is therefore recommended for approval.

Recommendation:

That the Assistant Director for Planning be authorised to approve this non-material amendment for the development subject to:-

- a) The conditions stated in section 8.2

2. Planning Policy

- 2.1 Please see the attached committee report for the original permission 21/00871/FUL.
- 2.2 This proposal relates only to the non-material amendments sought, if approved it would not be a re-issue of the original planning permission, which still stands. The two documents should be read together.

Status of the Local Plan

- 2.3 Planning law requires that decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework 2021 (the Framework).
- 2.4 The 'development plan' for Tendring comprises, in part, the 'saved' policies of the 2007 Local Plan. Paragraph 219 of the Framework allows local planning authorities to give due weight to policies adopted prior to its publication according to their degree of consistency with the policies in the Framework. On the 26th January 2021 Section 1 of the 2013-2033 Local Plan was adopted and now also forms part of the 'development plan' for Tendring, superseding some of the more strategic policies in the 2007 Local Plan. Notably, the housing and employment targets were found sound and have been fixed, including the housing requirement of 550 dwellings per annum.
- 2.5 Paragraph 48 of the Framework allows weight to be given to policies in emerging plans, according to their stage of preparation, the extent to which there are unresolved objections to relevant policies, and the degree of consistency with the policies of the Framework. In this regard 'Proposed Modifications' to the emerging Section 2 of the 2013-33 Local Plan, which contains more specific policies and proposals for Tendring, has been examined and hearing sessions have now closed. The main modifications recommended to make the plan legally compliant and sound were considered at the Council's Planning Policy and Local Plan Committee on 29th June 2021. The Council held a six-week public consultation on the Main Modifications and associated documents which began on 16th July 2021. The consultation closed at 5pm on 31st August 2021 and adoption is expected later this year. Section 2 will then join Section 1 as part of the development plan, superseding in full the 2007 Local Plan. Section 2 of the 2013-33 Local Plan is therefore at a very advanced stage of preparation and should be afforded considerable weight.

3. Relevant Planning History

| | | | |
|-----------------|---|----------|------------|
| 91/00112/FUL | Continued use of Sunday market and car park 1 March to 31 December each year | Approved | 03.09.1992 |
| 91/00866/FUL | Use of site for Saturday car boot sale and Sunday market 1 March to 31 December each year with ancillary car park. | Approved | 03.09.1992 |
| 21/00871/FUL | Proposed business units, covered market, community garden, public WCs and associated public realm. | Approved | 09.07.2021 |
| 21/01743/DISCON | Discharge of conditions 3, (Hard and soft landscaping) 7, (CEMP) 10, (Details of new bus stop) 15 (Details of works to estate roads) and 24 (Details of external lighting) of application 21/00871/FUL. | Current | |

4. Consultations

ECC Highways
Dept

The Highway Authority does not object to the proposals as submitted.

Informative:

1: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to:

SMO1 – Development Management Team Ardleigh Depot, Harwich Road, Ardleigh, Colchester, CO7 7LT

2: On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area, it covers, and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

3: The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

TDC Tree &
Landscape Officer
15.10.2021

The application site is derelict land with large areas of concreted surfacing and low mounds of rubble and soil. The land has become colonised with rank and ruderal vegetation. It does not contain any trees or other significant vegetation.

Consequently, no trees or other vegetation will be adversely affected by the development proposal

No comments other than to ensure that new soft landscaping is secured to soften, screen and enhance the appearance of the development proposal.

5. Representations

None

6. Assessment

- 6.1 This is an application for a Non-Material Amendment (NMA). Section 96A of the Town and County Planning Act 1990 says in deciding whether a change is material, a Local Planning Authority must have regard to the effect of the change on the planning permission as originally granted. The Planning Practice Guidance confirms there is no statutory definition of 'non-material'. 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.
- 6.2 The description of development above details the proposed changes to the original planning permission. The changes proposed include rearrangement of the access road by moving the barrier further into the site and changing the type of barrier. The parking area has very minor changes, with no reduction in the number of spaces. Cycle parking is re-located to accommodate an air source heat pump enclosure. Landscaping at the front of the site to Lotus Way is removed to accommodate the cycle parking (a second area of landscaping remains). Three large planters to the front facing Brooklands are to be removed and there would be very minor change to the location of another area of cycle parking and an equipment store.
- 6.3 Changes to the building comprise an increase in roof level of 10cm at the highest point, and minor changes to the canopy. Removal of four rooflights, and repositioning of rooflights, ventilation terminals, access hatch and fall protection equipment. Changes to the position of three windows on the first floor, and the door arrangement on the ground floor on the South elevation. Changes to cafe door arrangement on the east elevation with omission of two vents on the West elevation. Changes to the window arrangement to F.13 on the first floor, door arrangement to Unit G.09 on the north elevation, and minor changes to openings and facade detail on all elevations.
- 6.4 The key test as to the acceptability of an NMA application is whether the change is material to any development plan policy. The changes detailed above are minor and are not material to any development plan policy as listed in the committee report for 21/00871/FUL, or the latest version of the National Planning Policy Framework (20th July 2021).
- 6.5 The proposed changes are not considered significant in terms of their scale, in relation to the original approval. The most significant change is the increase in height of the roof by up to 10cm (0.1m). In smaller proposals this would be considered material, but for such a large building well separated from its neighbours this is not considered to be a material change in this instance.
- 6.6 The proposed changes would not result in a detrimental impact either visually or in terms of amenity. The loss of the three planters and the planting bed fronting Lotus Way are unfortunate,

but given the large community garden on-site this is not materially harmful. The proposed building would be situated approximately 34 metres from the nearest dwellings to the east of the site and 53 metres from the dwellings located in Swift Avenue to the west. The changes to the building are very minor and would preserve the visual amenity of the development, and the residential amenity of surrounding occupiers.

- 6.7 The provisions relating to statutory consultation and publicity do not apply to NMAs. Therefore, local planning authorities have discretion as to whether they choose to inform other interested parties or seek their views. As by definition the changes sought will be non-material, consultation or publicity are unlikely to be necessary. However in this case the views of the Highway Authority and this Council's Tree and Landscape Officer were sought, and both raise no objection.
- 6.8 No third party comments were received for either this NMA or the original planning application, and there was also no objection to either application from statutory consultees. The comments made in relation to landscaping are covered by the soft landscaping condition on the original permission. The interests of any third party or body who participated in, or were informed of, the original decision would not therefore be disadvantaged in any way

7. Conclusion

- 7.1 The changes proposed are considered to be non-material to the development plan and the original planning permission 21/00871/FUL. The changes would not result in any detriment to visual or residential amenity, or highway safety, and would not disadvantage the interests of any third party who was involved in the original decision.

8. Recommendation

- 8.1 The Planning Committee is recommended to approve this non-material amendment subject to the following condition:

8.2 Conditions and Reasons

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 182_HAT_PL_100 P2 (Block Plan)
 - 182_HAT_PL_110 P1 (Proposed Ground Floor Plan)
 - 182_HAT_PL_111 P1 (Proposed First Floor and Roof Plan)
 - 182_HAT_PL_120 P1 (Proposed Streetscene)
 - 182_HAT_PL_121 P1 (Proposed East and South Elevations)
 - 182_HAT_PL_122 P1 (Proposed West and North Elevations)
 - 182_HAT_PL_130 P1 (Proposed Sections)

Reason - For the avoidance of doubt and in the interests of proper planning.

8.3 Informatives

None

9. Additional Considerations

Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
- 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.
- 9.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 9.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

Human Rights

- 9.8 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.
- 9.9 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).
- 9.10 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Finance Implications

- 9.11 Local finance considerations are a matter to which local planning authorities are to have regard in determining planning applications, as far as they are material to the application.

10. Background Papers

- 10.1 In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report) also form background papers. All such information is available

to view on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.