

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Case officer recommendation:	SCE	31.03.2023
Planning Manager / Team Leader authorisation:	JJ	31/03/2023
Planning Technician final checks and despatch:	ER	31/03/2023

**Application:** 22/01487/NMA **Town / Parish:** Clacton Non Parished

**Applicant:** Britton Developments Ltd

**Address:** Land West of A133 Brook Park West Roundabout Little Clacton Bypass

**Development:** Non-material amendment sought for application 21/01283/VOC to revise drawings relating to condition 19 to allow slight variations to unit 1 as built.

### 1. Town / Parish Council

N/A

### 2. Consultation Responses

N/A

### 3. Planning History

14/00107/FUL	Full planning permission for a cinema complex (including restaurants), superstore, petrol filling station, extension to Picker's Ditch walkway and associated parkland together with an extension to the existing Brook Country Park.		22.05.2014
14/00730/FUL	Full planning application for cinema complex (including restaurants), superstore, petrol filling station, extension to the Picker's Ditch walkway and associated parkland together with an extension to the existing Brook Country Park (duplicate application).	Withdrawn	30.08.2016
16/01250/OUT	Hybrid planning application comprising: - Detailed application for foodstore (A1), hotel (C1), family public house (A3/A4), restaurants (A1/A3/A5), retail warehouse units (A1), picker's ditch major open space and associated access, landscaping, car parking and associated works. - Outline application for residential (C3) and employment development	Approved	08.06.2017

	(B1 (a), (b), (c)) and associated access, landscaping, car parking and associated works (all matters reserved except access).		
17/00722/ADV	Proposed totem sign at entrance to Brook Park West.	Approved	23.06.2017
17/01187/DISCON	Discharge of conditions 2 (Phasing Plan), 3 (Programme of Archaeological Evaluation Work), 4 (Surface Water Drainage Scheme), 5 (Minimise the Risk of Offsite Flooding Scheme), 6 (Maintenance Plan), 8 (Foul Water Strategy), 11 (Details of bus stop/s and bus turn around facilities) and 19 (Local Recruitment Strategy) of approved planning application 16/01250/OUT.	Approved	14.05.2018
17/01223/ADV	Installation of freestanding 8 metre totem sign.	Approved	31.08.2017
17/01225/ADV	Installation of 6no. fascia signs.	Approved	31.08.2017
17/01226/ADV	Installation of site signage to include, 1no. gateway, 9no. freestanding, 1no. side by side directional, 1no. banner unit, and 16no. dot signs.	Approved	31.08.2017
17/01241/OUT	Variation of condition 21 of planning permission 16/01250/OUT - To amend the store design.	Approved	26.10.2017
17/01411/DISCON	Discharge of condition 09 (Construction Method Statement) and 13 (Ecological Management Plan) of planning permission 16/01250/OUT.	Approved	26.10.2017
17/01579/TELLIC	The installation of 1no. AC Electricity Generator enclosed within a weatherproof acoustic equipment housing enclosure with dimensions 1.75m long x 0.94m wide x 1.15m high. Concrete plinth, duct/s, cabling and ancillary development thereto.	Determination	02.10.2017
17/01589/DISCON	Discharge of Condition 15 (Hard and Soft Landscaping) of Planning Permission 16/01250/OUT.	Approved	23.10.2017
17/01612/DISCON	Discharge of condition 3 (Programme of Archaeological Evaluation Work) of approved planning application	Approved	26.10.2017

16/01250/OUT.

17/01879/ADV	Proposed advertisements are:- 1 no. wall mounted fascia sign, 3 no. building mounted hoardings, 2 no. free standing totem signs, 1 no. poster display unit, 1 no. free standing arrow sign, 4 no. free standing hoardings and 1 no. goalpost fascia sign.	Approved	04.01.2018
17/02037/DISCON	Discharge of conditions 9 (Construction Method Statement Revision A), 14 (Landscape Management Plan), 15 (Landscaping), 18 (Crime Prevention) of planning permission 17/01241/OUT.	Approved	28.02.2018
17/02038/OUT	Variation of conditions 15, 21 and 29 of Planning permission 17/01241/OUT to i) Substitute the landscape and planting scheme; ii) Modify the floor area and external elevations of the pub/restaurant; and iii) Change the internal arrangement and external elevations of the hotel/lodge.	Approved	02.07.2018
18/00174/DISCON	Discharge of conditions 14 (Landscape Management Plan), 15 (Landscaping) and 18 (Various Details) of approved application 17/01241/OUT for Phases 1, 1a, and 5.	Approved	27.06.2018
18/00250/DISCON	Discharge of conditions 18 (Various Details) of Phase 3 of approved application 17/01241/OUT.	Approved	20.04.2018
18/00921/DISCON	Discharge of condition 14 (Landscape Management Plan) for Phase 3 only of 17/01241/OUT.	Approved	15.06.2018
18/01250/DISCON	Discharge of conditions 4 (Surface Water) & 6 (Maintenance Plan) to Approved Planning Application 17/02038/OUT in relation to Phase 2b only.	Approved	25.10.2018
18/01308/DISCON	Discharge of condition 10(a) of 17/02038/OUT to provide a fourth arm of the A133/Britton Way roundabout for site access.	Approved	22.10.2018
18/01368/DISCON	Discharge of condition 17) Underpass, to approved planning	Approved	22.10.2018

application 17/02038/OUT.

18/01415/NMA	Non-material amendment to approved planning application 17/02038/OUT - to slightly reword Condition 10 to allow for the provision and or completion of some of these works at a slightly later phase in the developments implementation.	Approved	16.10.2018
18/01568/ADV	Relocation of the freestanding 8m totem sign, approved under 17/01223/ADV.	Approved	13.11.2018
18/01616/OUT	Application for a minor material amendment to Condition 14, 15, 21 & 23 under Section 73 of the 1990 Town & Country Planning Permission Ref. 17/02038/OUT.	Approved	25.06.2019
18/01645/DISCON	Discharge of condition 9 (Construction Management Plan) to approved Planning Application 17/02038/OUT in relation to Phase 2B only.	Approved	14.11.2018
18/01735/DISCON	Discharge of Conditions 14 (Landscape Management Plan) and Discharge of Condition 18 excluding Part A (External Details) of 17/02038/OUT.	Approved	21.01.2019
18/01830/DISCON	Discharge of condition 18A (CCTV) of application 17/02038/OUT in relation to Phase 2B only.	Approved	15.11.2018
19/00068/ADV	3 No. internally illuminated wall mounted signs with sequential LED lighting 'A' 'B' 'C' and 1 No. internally illuminated freestanding totem with sequential lighting 'D'.	Approved	22.02.2019
19/00069/ADV	4 No. internally illuminated 400mm cap individual LED letters with halo illumination fitted direct to wall 20mm standof fixings signs 'A' 'C' 'E' 'G', 3 No. internally illuminated single sided circular pictorial panels 'B' 'D' 'F', 2 No. externally illuminated double sided twin posts sign 'H' 'I' and 1 No. internally illuminated single post sign 'J'.	Approved	22.02.2019
19/01235/DISCON	Discharge of condition 3 (Archaeology - Phase 7) of approved application 18/01616/OUT.	Approved	19.05.2022

19/01397/ADV	Proposed 1no. double sided freestanding illuminated billboard panel.	Approved	19.11.2019
19/01890/FUL	Proposed road connecting the northern access of the residential site with T Grove to the east at Brook Park West.	Approved	20.03.2020
19/01920/ADV	Proposed installation of 4 No. new digital freestanding signs and 1 No. 15" digital booth screen.	Approved	12.02.2020
19/01931/DISCON	Discharge of conditions 4 (surface water drainage), 5 (offsite flooding), 6 (Maintenance Plan), 9 (CMS), 14 (Land Management Plan), 15 (Landscaping), 19 (Local Recruitment strategy) and 34 (Travel Plan) of approved application 18/01616/OUT.	Approved	28.09.2020
19/01945/DETAIL	Approval of reserved matters (relating to appearance, landscaping, layout and scale) for 200 dwellings pursuant to the residential development referred to within condition 31 of planning permission 18/01616/OUT at Brook Park West.	Approved	18.06.2020
20/00295/FUL	Proposed erection of retail unit (a1) and employment units (b1(a)/b1(b)/b1(c)/b8), connecting road and associated car parking and landscaping.	Approved	09.07.2020
20/01042/DISCON	Discharge of conditions 4 (walkover survey) and 18 (CMS) of approved application 20/00295/FUL.	Approved	25.09.2020
20/01506/ADV	4no. Internally illuminated flex face sign c/w printed skin; 2no. Internally illuminated roundel signs c/w decorated acrylic panel; 6no. Non illuminated poster frames c/w poster print; 4no. 10sqm Printed Roundels and 1no. Non illuminated flat printed deliveries disclaimer.	Approved	19.03.2021
20/01715/FUL	Proposed coffee shop with drive-thru facility, associated access road and car parking.	Approved	08.03.2021
20/01825/DISCON	Discharge of conditions 3 (Materials) and 5 (Landscaping) of	Approved	12.02.2021

	approved planning application 20/00295/FUL.		
21/30007/PREAPP	Proposed erection of a Primary Care Medical Centre with associated car parking and landscaping.	Withdrawn	01.04.2021
21/01283/VOC	Variation of conditions 21, 25, 26, 27 and 28 of application 18/01616/OUT to reconfigure the retail terrace to reorientate the units and car parking and also to facilitate the opportunity for the sale of food (convenience goods) from one of the units.	Approved	04.04.2022
22/00197/DISCON	Discharge of condition 17 (Details of the provision, siting, design and materials of screen walls and fences) of application 19/01945/DETAIL.	Approved	22.03.2022
22/00378/VOC	Variation of conditions 1, 2, 3 and 7, and removal of conditions 6, 8, 9, 10, 11, 13, 14, 17, 18, 19 and 20 of 19/01945/DETAIL to alter the design and layout for the development of 200 dwellings.	Approved	30.05.2022
22/00623/ADV	Proposed signage consisting of 3no. Fascia signs and 8no. Other signs.	Approved	22.06.2022
22/00652/NMA	Non-material amendment sought to 21/01283/VOC to amend wording of condition 10(b).	Approved	01.09.2022
22/00653/DISCON	Discharge of conditions 18 (Local Recruitment Strategy) and 29 (Acoustic Fence) of application reference 21/01283/VOC, dated 03/04/2022.	Approved	16.05.2022
22/01401/DISCON	Discharge of conditions 14 (Landscape Management Plan) and 15 (Scheme of hard and soft landscaping) of application 21/01283/VOC for Phase 4 only	Approved	02.11.2022
22/01411/DISCON	Discharge of condition 17 (Phase 4 only - Phasing Plan) of application 21/01283/VOC.	Approved	29.11.2022
22/01468/VOC	Removal of condition 3 and variation of conditions 4, 5, 6, 8, 9, 14, 15, 17, and 20 of application 21/01283/VOC so outline conditions under application 18/01616/OUT in relation to Phase	Approved	01.02.2023

7 refer to the approved consent ref 22/00378/VOC and to the agreed details for Phase 5.

22/01487/NMA	Non-material amendment sought for application 21/01283/VOC to revise drawings relating to condition 19 to allow slight variations to unit 1 as built.	Current	
22/01947/DISCON	Discharge of condition 10(b) (Pedestrian Link) of application 21/01283/VOC, as amended by 22/00652/NMA.	Current	
23/00094/DOVO5	Deed of variation, under the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, of the terms of the legal agreement dated 7th June 2017 linked to [outline] planning permission 16/01250/OUT, to amend the now overdue clauses in relation to spec and delivery of Pickers Ditch open space (Schedule 3).	Current	
23/00237/DISCON	Discharge of condition 7 (Cycle Parking) of application 22/00378/VOC.	Approved	22.02.2023
23/00238/DISCON	Discharge of condition 11 (Materials) of application 22/00378/VOC.	Approved	22.02.2023
23/00239/DISCON	Discharge of condition 4 (Estate Roads and Footways) of application 22/00378/VOC.	Current	
23/00421/DISCON	Discharge of condition 10 (SANGS) of application 22/00378/VOC.	Current	

#### 4. **Relevant Policies / Government Guidance**

N/A

#### **Status of the Local Plan**

Planning law requires that decisions on 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 (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), together with any neighbourhood plans that have been brought into force.

In relation to housing supply:

The Framework requires Councils boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, to account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible or if housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, Paragraph 11 d) of the Framework requires granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (what is often termed the 'tilted balance').

The Local Plan fixes the Council's housing requirement at 550 dwellings per annum. On 19 October 2021 the Council's Strategic Housing Land Availability Assessment (SHLAA) updated the housing land supply position. The SHLAA demonstrates in excess of a six-and-a-half-year supply of deliverable housing land. On 14 January 2022 the Government published the Housing Delivery Test (HDT) 2021 measurement. Against a requirement for 1420 homes for 2018-2021, the total number of homes delivered was 2345. The Council's HDT 2021 measurement was therefore 165%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to applications for housing.

## **5. Officer Appraisal (including Site Description and Proposal)**

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.

The key test as to the acceptability of an NMA application is whether the change is material to any development plan policy. The changes proposed are minor and not material to any development plan policy. Then 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?

### Proposal

Non-material amendment sought to application 21/01283/VOC to revise drawings relating to Condition No. 19 to allow slight variations to Unit 1 as built.

The proposed amendments are as follows:

- Relocation of trolley bays within the car park
- Relocation of parent and child bays
- Relocation of the escape doors on the front elevation and reduction in the height and quantum of glazing (including anti ram bollards in front of glazing)
- Inclusion of a small canopy within the service yard
- Relocation of doors on the side elevations, with double door relocated on service yard elevation.
- Removal of door on rear elevation
- Extension of service yard and relocation of fencing around service yard
- Inclusion of louvres and other vent and flue openings on the elevations
- Inclusion of small air conditioning unit at the rear of the building
- Relocation of recycling and plant area (with fence enclosure) within the service yard

### Assessment



The proposed changes are all considered to be minor in nature. Whilst they would result in minor changes to the visual appearance of the development, it is considered that it would not materially affect the overall character and appearance of the development. There would also be no greater amenity impact on the proposed neighbouring residents.

There were no objections to these elements of the approved development and no representations received to this NMA application. 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.

Taking all the relevant issues into account it is considered that the alterations proposed to planning permission 21/01283/VOC will not result in any significant change to the development overall.

## Conclusion

In this instance it is considered the amendments being sought are minor and are therefore acceptable as a non-material amendment.

## 6. Recommendation

Approval Non Material Amendment

## 7. Conditions

- 1 Condition No. 19 of 21/01283/VOC is amended as follows:

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

Retail Units and Drive-Thru  
Proposed Site Plan - 10942-200H  
Unit 1 Elevations - CLA001-A-406 P1  
Units 2 & 3 Elevations - 10942-302A  
Unit 4 Elevations - 10942-303  
Unit 1 Ground Floor Plan - 10942/104F  
Units 2 & 3 Ground Floor Plan - 10942-402B  
Unit 4 Ground Floor Plan - 10942-403A

Reason - For the avoidance of doubt, in order to ensure the development is carried out in accordance with the approved details in the interests of proper planning.

- 2 Condition No. 23 of 21/01283/VOC is amended as follows:

The terrace of Class E retail units as shown on Plan 10942-200H hereby permitted shall not cumulatively exceed 5,240sqm (56, 403sqft) Sales Area, with Gross Internal Area also restricted to this maximum quantum inclusive of any mezzanine floorspace. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting or amending that Order with or without modification), no additional mezzanine or other form of internal floor to create a first floor level shall be constructed in the terrace of retail units as shown on Plan 10942-200H, other than 1,601sqm (17,233sqft) (GIA) of mezzanine space to serve across Units 2 and 3 inclusive.

Reason - To minimise unnecessary direct competition with the retail and leisure offer in Clacton on Sea town centre to safeguard its continued vitality and viability whilst promoting economic growth in the town as a whole.

- 3 Condition No. 24 of 21/01283/VOC is amended as follows:

Notwithstanding the provisions of the Use Classes Order 1987 (as amended or re-enacted) no goods shall be sold from the terrace of Class E retail units as shown on Plan 10942-200H other than: materials for maintaining and repairing the dwelling; furniture and furnishings; tiles, carpets and other floor coverings; household textiles; major household appliances; small electrical household appliances; small tools and miscellaneous accessories; major tools and equipment; garden plants and flowers: audio visual, photographic and information processing equipment; motor and cycle goods; and pets, pet food and pet related products and services (including the provision of ancillary pet care and treatment services) except with respect of Unit 1 which may alternatively be used for the sale of convenience goods together with the sale of any other comparison goods subject to its sales area not exceeding 1,394sqm (15,000sqft) of which no more than 150sqm (1,615sqft) shall be used for the sale of comparison goods. The terrace of retail units shall be used for no other purpose, including any other use in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended or re-enacted).

Reason - To minimise unnecessary direct competition with the retail and leisure offer in Clacton on Sea town centre to safeguard its continued vitality and viability whilst promoting economic growth in the town as a whole.

4 Condition No. 25 of 21/01283/VOC is amended as follows:

None of the three units shown within the retail terrace identified on Plan 10942-200H shall be amalgamated with other units or subdivided to form separate units.

Reason - To enable the Local Planning Authority to retain control over the uses on the site in the interest of safeguarding the vitality and viability of Clacton on Sea town centre.

5 Condition No. 29 of 21/01283/VOC is amended as follows:

Prior to first occupation details of the 2.5m high fence along the rear of the service yards (along the western boundary) as indicated on drawing 10942-200H shall be submitted to and approved in writing by the Local Planning Authority. The fence shall be installed in accordance with the approved details prior to first occupation.

Reason - To protect amenities of the occupiers of nearby residential properties.

## 8. Informatives

N/A

<p><b>Are there any letters to be sent to applicant / agent with the decision? If so please specify:</b></p>		<p>NO</p>
<p><b>Are there any third parties to be informed of the decision? If so, please specify:</b></p>		<p>NO</p>