

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Case officer recommendation:	ML	03/11/2023
Planning Manager / Team Leader authorisation:	AN	06/11/23
Planning Technician final checks and despatch:	BB	06/11/2023

Application: 23/01473/NMA **Town / Parish:** Brightlingsea Town Council

Applicant: Artemis (Brightlingsea) Ltd

Address: Lower Farm East End Green Brightlingsea

Development: Non Material Amendment to planning permission 19/00188/FUL to alter the trigger for Conditions 6 (surface water drainage scheme), 8 (surface water drainage maintenance), 14 (revised road junction design), and 28 (local recruitment strategy) to be above slab level rather than pre-commencement.

1. Town / Parish Council

Brightlingsea Town Council No comments received

2. Consultation Responses

n/a

3. Planning History

89/02059/FUL	(Robinson Road, Brightlingsea) Restoration of sand and gravel workings - Renewal of permission TEN/1088/87	Approved	22.05.1990
02/01789/TELCO M	Installation of telecommunications mast and ancillary equipment.	Determination	07.11.2002
12/00127/LUEX	Certificate of existing lawful use for recreational fishing.	Granted	23.03.2012
19/00188/FUL	Mixed use tourist and residential scheme comprising enabling development of retirement living apartments (36 units), detached farmstead houses (5 units) and a lodge or club house serving a number of timber holiday lodges (104 units) and ancillary activities such as glamping, toilet facilities and play areas which will be the main focus of the development.	Approved	11.03.2021
23/01196/FUL	Mixed use tourist and residential	Current	

development of retirement living lodges with an ancillary social hub, detached farmstead houses, and holiday lodges along with separate communal buildings providing dining, leisure and recreation facilities and ancillary activity uses such as glamping, a multi-use games area, events space and nature play areas with associated infrastructure works.

23/01473/NMA

Non Material Amendment to planning permission 19/00188/FUL to alter the trigger for Conditions 6 (surface water drainage scheme), 8 (surface water drainage maintenance), 14 (revised road junction design), and 28 (local recruitment strategy) to be above slab level rather than pre-commencement.

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), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) 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.

Neighbourhood Plans

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

5. Officer Appraisal (including Site Description and Proposal)

Site Context

The application site is situated to the north-eastern edge of Brightlingsea on land to the north of Robinson Road. The site comprises approximately 81 acres of former gravel workings which established a low-level restoration profile. On the cessation of quarrying operations in the late 1980's the former quarry workings were backfilled with site sourced overburden and silt washings. Limited subsoil or topsoil was used to restore the site. The site has been left to self-seed, which has created areas of open scrub, grassland and woodland around three former silt lagoons, which have formed five open lakes with a total footprint of approximately 15 acres within the low-level landscape.

Access to the site is from the B1029 (which is defined as a B road of importance) and along Red Barn Road/Robinson Road. Direct access to the site is from the former quarry entrance along Robinson Road.

The site is bounded to the north by Marsh Farm (Grade II Listed) and arable fields that extend to Lower Farm to the east of the site. The southeast of the site is bounded by grassland and Freelands Road, which runs around to bound the south of the site as Robinson Road. The southwest and west of the site is bounded by Robinson Road and the residential fringes of Brightlingsea. Directly on the southern side of Robinson Road is a recently constructed housing development.

Topographical data provided shows that natural ground levels surrounding the site form a plateau of higher ground around the northern, western, and south-western boundaries of the site. The ground levels within the site generally fall in a northerly and north-easterly direction. Across the eastern area of the site ground levels fall from the raised plateau in a south-easterly direction.

Proposal

This submission represents an application for a non-material amendment (Section 96A) of Planning Permission 19/00188/FUL to revise the trigger and wording on Conditions No's. 6 (Surface water drainage scheme), 8 (surface water drainage maintenance), 14 (revised road junction design) and 28 (local recruitment strategy). The changes to the trigger points seek to discharge these details prior to any work above slab level rather than prior to commencement of any development on site.

The proposed changes to the wording of Condition Nos. 6, 8, 14 and 28 are sought to enable the implementation of the planning permission, following the discharge of the remaining pre-commencement conditions, satisfaction of relevant legal obligations and the commencement of a material operation on site.

Assessment

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 proposed changes to the wording of the above-noted conditions are, in relation to the scale and size of the whole development, considered to be 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?

In this instance it is not considered necessary for these planning conditions to be pre-commencement. It is acceptable for the relevant information to enable discharge to be provided prior to any development above slab level taking place at site. It is noted that all these conditions relate to the operational phase of the development and these details are not required to enable the slab construction to commence. Other conditions that pertain to the construction phase (i.e. construction drainage scheme, pipe clearance details and the construction method statement) remain to be discharged prior to any works commencing on site.

As such when considered in the context of the full planning permission, it is considered that these matters are non-material and as such can be dealt with via the NMA process. The re-worded conditions are included as part of the recommendation.

Conclusion

It is considered that the changes to the wording of the 4 conditions outlined would not disadvantage the interests of any third party or body who participated in, or were informed of, the original decision in anyway. In summary the changes to the relevant conditions are non-material to 19/00188/FUL and the requirements of the adopted development plan and are therefore recommended for approval.

6. Recommendation

Approval – Non-Material Amendment

7. Conditions

- 1 No works above slab level shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
 - Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure.
 - Limiting discharge rates to 7.7l/s for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change.
 - Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
 - Demonstrate that features are able to accommodate a 1 in 10 year storm events within 24 hours of a 1 in 100 year event plus climate change.
 - Final modelling and calculations for all areas of the drainage system.
 - The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach within the CIRIA SuDS Manual C753.

- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented prior to occupation.

Reason - To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site. To ensure the effective operation of SuDS features over the lifetime of the development. To provide mitigation of any environmental harm which may be caused to the local water environment and to prevent a system being installed that is not sufficient to deal with surface water occurring during rainfall events and may lead to increased flood risk and pollution hazard from the site.

- 2 No works above slab level shall take place until a Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority.

Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided.

Reason - To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk.

- 3 No development above slab level shall commence until a revised road junction design with Robinson Road has been submitted with a Stage 1 Road Safety Audit and agreed in writing with the Local Planning Authority and in conjunction with the Highway Authority. The junction shall be constructed at right angles to the highway boundary and to the existing carriageway to a carriageway width of 5.5 metres with minimum radius kerbs of 6 metres; with a flanking single footway 2m in width returned around the radius kerb only with tactile paving to provide a pedestrian link to the existing footway on the opposite side of Robinson Road.

Reason - To ensure that all vehicular traffic using the junction may do so in a controlled manner and to provide adequate segregated pedestrian access, in the interests of highway safety.

- 4 No development above slab level shall commence until a Local Recruitment Strategy has been submitted to and approved, in writing, by the Local Planning Authority. The Local Recruitment Strategy shall include details of how the applicant/ developer shall use their reasonable endeavours to promote and encourage the recruitment of employees and other staff in the locality of the application site, for the construction of the development. The approved Local Recruitment Strategy shall be adhered to therein after.

Reason - To promote and encourage the recruitment of employees and other staff in the locality of the application site.

8. Informatives

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