

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Case officer recommendation:	AL	09/01/2024
Planning Manager / Team Leader authorisation:	JJ	09/01/2024
Planning Technician final checks and despatch:	J	10/01/2024

Application: 23/01769/NMA **Town / Parish:** Brightlingsea Town Council

Applicant: Mr Raymond Raymond - NEEB Holdings Ltd

Address: Land North of Samsons Road Brightlingsea

Development: Amendment to the wording of Condition 2 of outline planning permission reference 23/00860/OUT to allow for the separate submission and approval of the reserved matters details on a plot-by-plot basis.

1. Town / Parish Council

No comments required.

2. Consultation Responses

ECC Highways Dept
04.01.2024

Having reviewed the submitted information, it is noted that proposed changes to the wording of the condition are minor, however, the revised wording will allow the separate submission and approval of reserved matters details for each of the dwellings. This will allow the self/custom build individuals, or persons working for them, to progress the approval of their reserved matters details and, subsequently, the construction of their self/custom build home without being dependent on others to do so at the same time, considering these factors:

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

2: 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.

Environmental Protection
08.01.2024

I can confirm the EP Team have no comments to make.

Essex County Council No ecological objection.
Ecology
03.01.2024

Summary

We have reviewed the submitted information relating to the likely impacts of the non-material amendment on designated sites, protected and Priority species & habitats and identification of appropriate mitigation measures.

We are satisfied that there is sufficient ecological information available for determination of this application.

This provides certainty for the LPA of the likely impacts on designated sites, protected and Priority species and habitats.

This will enable LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006.

Essex County Council
Archaeology
19.12.2023

Thank you for consulting the Historic Environment Consultant to Tendring District Council on the above amendment application.

The proposed amendment has no archaeological implications and as a result this office has no comment.

If you have any questions about this advice, please do not hesitate to contact me.

Tree & Landscape Officer
19.12.2023

No comments on the proposed amendment to the timing of the submission of reserved matters applications.

3. **Planning History**

23/00860/OUT	Outline Planning Application (all matters reserved) for 3 no. self/custom-build dwellings.	Approved	29.09.2023
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4. **Relevant Policies / Government Guidance**

- Section 96A of the Town and Country Planning Act
- National Planning Policy Guidance (NPPG)

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.

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

Overview and Main Considerations

Section 96A of the Town and Country Planning Act allows a Local Planning Authority, on application, to make a change to any planning permission if it is satisfied that the amendment proposed is non-material (NMA).

The key test as to the acceptability of an application for a non-material change is whether the change is material to any development plan policy. If the answer is 'no', three further tests should be applied:

1. Is the proposed significant in terms of its scale (magnitude, degree etc.), 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?

Proposed Amendment

Outline planning permission reference 23/00860/OUT was approved on 29th September 2023 for 3 no. self-build / custom-build dwellings subject to 11 conditions, including the standard approval of reserved matters requirement (Condition 2) and time limit for submission and commencement (Condition 1).

Condition 2, as approved, has the following wording:

CONDITION: No development shall commence until approval of the details of:-

- *the Appearance of the building(s) and place,*
- *Scale of the building(s),*
- *Layout of the building(s) and site,*
- *the means of Access*
- *Landscaping*

(hereinafter called "the reserved matters") have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Even though the above planning condition will allow for the said details (as outlined above) to come forward on a plot-by-plot basis through the submission of 3 individual reserved matters applications (one for each plot), this non-material amendment (NMA) application was nevertheless submitted in mid-December 2023 and the LPA is duty bound to consider it. It seems that the overarching motivation behind the submission of the NMA application is to allow individuals to submit reserved matters details for approval on a plot-by-plot basis, and to therefore allow for the approved dwellings to come forward individually (due to their self-build nature). However as set out above this is already possible through the submission of 3 separate reserved matters applications as per condition 2 of outline approval 23/00860/OUT.

The proposed wording sought by the applicant is:

CONDITION: No development shall commence on a dwelling approved under this permission until the details of:

- *the appearance of the building(s) and place*
- *scale of the building(s)*
- *layout of the building(s) and plot(s)*
- *the means of access*
- *landscaping*

(hereinafter called "the reserved matters") for that dwelling and its plot have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Assessment and Conclusion

The degree of change proposed compared to the approved development would not be significant and would continue to allow the flexibility for the submission of the reserved matters the agent is seeking under this NMA.

The proposed change is immaterial in terms of development plan policy and would not trigger the requirement for re-assessment against any of the policies originally considered.

The change relates to the timing of the submission of the reserved matters on a plot-by-plot basis and would not result in any detrimental impact either visually or in terms of amenity nor would it disadvantage the interests of any third party or body who participated in the original decision.

Therefore, officers are satisfied that the proposed amendments fall under the considerations set out within Section 96A of the Town and Country Planning Act and are considered as a non-material amendment to the outline permission reference 23/00860/OUT.

Other Matters

The cover letter accompanying the application expresses concerns with the handling of the original application and wording of the conditions thus triggering the requirement for this application. The cover letter also requests a refund of the application fee associated with this Non-material Amendment application. A response to the points raised have been provided to the agent via separate correspondence, a copy of which is scanned to the application file.

6. Recommendation

Approval Non-Material Amendment

7. Conditions

1. APPROVAL OF RESERVED MATTERS

CONDITION: No development shall commence on a dwelling approved under this permission until the details of:

- the appearance of the building(s) and place
- scale of the building(s)
- layout of the building(s) and plot(s)
- the means of access
- landscaping

(hereinafter called "the reserved matters") for that dwelling and its plot have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

REASON: To enable the Local Planning Authority to secure an orderly and well-designed development in accordance with the character and appearance of the neighbourhood and in accordance with the Development Plan. This condition is required to be agreed prior to the commencement of any development in accordance with proper planning principles to allow public engagement on the outstanding reserved matters and ensure no significant adverse harm results.

NOTE/S FOR CONDITION:

This condition requires approval of all reserved matters as may be listed to agreed in writing prior to any commencement of the approved development. Failure to comply with this condition may result in the permission becoming lapsed and unable to be carried out.

The reserved matters that may be listed above are further defined under government guidance as follows:-

APPEARANCE: The aspects of a building or place within the development which determine the visual impression the building or place makes, including the external built form of the development, its architecture, materials, decoration, lighting, colour and texture.

SCALE: The height, width and length of each building proposed within the development in relation to its surroundings.

LAYOUT: The way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development.

ACCESS: The accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network.

LANDSCAPING: The treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes: (a) screening by fences, walls or other means; (b) the planting of trees, hedges, shrubs or grass; (c) the formation of banks, terraces or other earthworks; (d) the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and (e) the provision of other amenity features.

8. Informatives

Non-Material Amendment Informative

This decision is for a non-material minor amendment to the original permission and this decision should be read in conjunction with the decision notice for application 23/00860/OUT which will contain several conditions and informatives that still apply. Any original conditions that refer to the submission of the reserved matters details under Condition 2 of 23/00860/OUT should be read in conjunction with the information forming part of this Non-Material Amendment application.