

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Planning Officer recommendation:	AN	10/04/24
Team Leader authorisation / sign off:	ML	10/04/2024
Assistant Planner final checks and despatch:	ER	11/04/2024

**Application:** 24/00168/NMA **Town / Parish:** Clacton Non Parished

**Applicant:** Mr Stuart Willsher - Persimmon House

**Address:** Oakwood Park Land East of Thorpe Road Little Clacton

**Development:** Non Material Amendment to application reference 20/00179/FUL to add bollards to block plan to prevent vehicles taking short cut over the footpath/landscaping outside Plot 32.

### 1. Town / Parish Council

N/a

### 2. Consultation Responses

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](mailto: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.

### 3. Planning History

20/00179/FUL	Detailed planning application for residential development to provide 50 no. residential dwellings (Use Class C3), comprising 40 houses (2 - 2.5 storeys) and two buildings containing ten apartments (up to 3 storeys), associated car parking, cycle parking, public open space and pedestrian/cycle infrastructure, formation of pedestrian and cycle links and other associated works and improvements at land at Oakwood Park.	Approved	18.01.2022
21/00324/FUL	Erection of 1.8m brick entrance piers at entrance to residential development	Approved	15.04.2021

24/00168/NMA      Non Material Amendment to application      Current  
reference 20/00179/FUL to add bollards  
to block plan to prevent vehicles taking  
short cut over the footpath/landscaping  
outside Plot 32.

#### **4. 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 Local Plan 2013-33 and Beyond (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 made and the Minerals and Waste Local Plans adopted by Essex County Council.

#### **5. 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>

The site is located within an area that is not subject of any emerging or adopted Neighbourhood Plan.

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

N/a

#### **7. 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 proposed change is 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?

#### **Assessment**

This application arises as a result of a highway safety issue on this new housing development. Vehicles have been shortcutting from the spine road directly over the footpath/landscaping to the south of Plot 32. To prevent this and to protect the footpaths, landscaping and pedestrians, bollards are proposed to the rear of the visitor parking bays and along the grass verge of the road.

Six bollards in total are proposed it is considered that this is the most practical solution for the problem. Bollards exist elsewhere on the development, and they will ensure that the footpaths and landscaping remain open and easily accessible to pedestrians and cyclists, resulting in no material harm to visual amenity and allowing the soft landscaping to be reinstated.

The developer had discussed the proposal with the Highway Authority who have no objection.

Neighbours aggrieved by the issue had contacted the developer to resolve it. It is considered that the proposal would result in no material harm to residential amenity and the development would then be accessed in the manner it has been approved which would remove the current inappropriate vehicular movements for residents at this end of the cul de sac. No representations have been received to this application and it is not considered the interests of any third party related to the original decision would be disadvantaged.

## Habitats, Protected Species and Biodiversity Enhancement

### **Ecology and Biodiversity**

#### **General duty on all authorities**

The Natural Environment and Rural Communities Act 2006 amended by the Environment Act 2021 provides under Section 40 the general duty to conserve and enhance biodiversity: "For the purposes of this section "the general biodiversity objective" is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England." Section 40 states authorities must consider what actions they can take to further the general biodiversity objective and determine policies and specific objectives to achieve this goal. The actions mentioned include conserving, restoring, or enhancing populations of particular species and habitats. In conclusion for decision making, it is considered that the Local Planning Authority must be satisfied that the development would conserve and enhance.

This development is subject to the general duty outlined above. The wider development was subject to detailed ecological surveys at various stages and includes biodiversity enhancement features which will remain unaffected by the proposal. The current proposal is very minor, and de minimis in terms of its impact on biodiversity. Therefore the development on balance, with consideration of the impact of the development and baseline situation on site, is considered likely to conserve and enhance biodiversity interests.

#### **Biodiversity net gain**

Biodiversity net gain (BNG) is an approach that aims to leave the natural environment in a measurably better state than it was beforehand. This excludes some applications. This proposal is not applicable for Biodiversity Net Gain.

#### **Protected Species**

In accordance with Natural England's standing advice the proposed development site and surrounding habitat have been assessed for potential impacts on protected species. It is considered that the proposal is unlikely to adversely impact upon protected species or habitats.

**Conclusion:** In accordance with the overarching duty outlined above, this development is considered to accord to best practice, policy, and legislation requirements in consideration of the impacts on ecology interests.

## **8. Recommendation**

Approval Non Material Amendment

## **9. Conditions**

## 1. APPROVED PLANS AND DOCUMENTS: REVISION TO CONDITION 17 OF 20/00179/FUL

CONDITION: The development hereby permitted shall be carried out in accordance with the following approved drawings / documents, and / or such other drawings / documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings / documents as may be subsequently approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard:

24/00168/NMA Approved drawing: PH-156-002D Master Plan

Superseding the following drawing attached to 20/00179/FUL: PH-156-002C Master Plan

REASON: For the avoidance of doubt.

## 10. **Informatives**

### Non-material Amendment Informative

You are advised that this decision is for minor amendments only and should be read in conjunction with the decision notice for application 20/00179/FUL which will contain several conditions and informatives that still apply. Any original conditions that refer to previously approved plans should be read in conjunction with the corresponding updated plans and information forming part of this Non-material Amendment Application.

### Highways informatives:

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](mailto: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.

## 11. **Equality Impact Assessment**

In making this recommendation/decision regard must be had to the public sector equality duty (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 that in summary include A) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; B. Advance equality of opportunity between people who share a protected characteristic\* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic\* and those who do not, including tackling prejudice and promoting understanding.

It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.

In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic\* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

**12. Notification of Decision**

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