

DELEGATED DECISION OFFICER REPORT

AUTHORISATION		INITIALS	DATE
Planning Officer recommendation:		AN	29/08/24
EIA Development - Notify Planning Casework Unit of Decision:	NO		
Team Leader authorisation / sign off:		JJJ	30/08/2024
Assistant Planner final checks and despatch:		ER	30/08/2024

Application: 24/01182/NMA **Town / Parish:** Harwich Town Council

Applicant: Farleigh - Myriad Housing Ltd (c/o Jemma Farleigh)

Address: Land North of Williamsburg Avenue Harwich

Development: Non Material Amendment to 17/01658/FUL - Amendment to parking layout.

1. Town / Parish Council

Non received

2. Consultation Responses

N/a

3. Planning History

00/02080/ADV	3 x 48 sheet display panels each measuring 6.1m x 3.1m on 1.2m plinth with associated fencing	Approved	25.01.2001
02/00475/FUL	Variation of condition 2 of permission TEN/93/0206, Condition 1 of Permission TEN/96/1170 and Condition 1 of permission 99/00446/FUL to allow submission of reserved matters within an extended 3 year period to 6th April 2004.	Approved	23.05.2002
02/01497/FUL	Variation of Conditions 3 and 21 of TEN/93/0206 and to allow additional retail floorspace on the site. Renewal of planning permissions TEN/93/0206 TEN/96/1170 and 02/00475/FUL	Approved	31.10.2002
02/01516/FUL	Variation of illustrative masterplan to reallocate residential area as employment reference original outline planning permission TEN/93/0206 as amended and varied.	Withdrawn	09.09.2002
93/00206/OUT	Development of land for industrial/warehousing, retail units, fast food unit, petrol filling station (including DERV), hotel and residential uses including associated road network, service yards and parking (cars and HGV)	Approved	06.04.1994

93/00553/FUL	(Land at Iconfield, Parkeston) Open air market on Sundays only	Approved	04.08.1993
93/00796/FUL	(Land to south-east of Iconfield Roundabout, Dovercourt) Use of land as a motor cycle training area	Approved	14.09.1993
99/00446/FUL	Variation of Condition 02 of planning permission TEN/93/0206 and Condition 01 of planning permission TEN/96/1170 to allow submission of reserved matters within an extended 3 year period to 6th April 2002	Approved	09.07.1999
03/01835/DETAIL	Submission of reserved matters to 02/00475/FUL (99/00446/FUL, 96/1170 and 93/0206) affordable housing and associated works - Plot 2 Stanton Euro Park	Refused	09.12.2003
03/01836/DETAIL	Submission of reserved matters to 02/00475/FUL (99/00446/FUL, 96/1170 and 93/0206) affordable housing and associated works - Plot 2 Stanton Euro Park	Approved	01.04.2004
03/01837/FUL	Residential development. Provision of affordable housing and associated works including change of use to 02/00475/FUL - Plot 3 Stanton Euro Park	Refused	09.12.2003
03/01838/FUL	Mixed use development of A1, A3 and B1 units and children's nursery - Plot 3 Stanton Euro Park.	Approved	22.04.2005
03/02494/FUL	Variation of condition 1 of permission 02/00475/FUL to allow submission of reserved matters within an extended 3 year period to April 2007 (Plots 2/3)	Approved	01.04.2004
04/00454/FUL	Variation of condition 01 of permission 02/00475/FUL, Condition 02 of TEN/93/0206, condition 01 of permission TEN/96/1170 and condition 01 of permission 99/00446/FUL to allow submission of reserved matters within an extended period to 6th April 2006.	Approved	17.05.2004
04/00840/FUL	Variation of 21 of consent 93/00206 and varied in consent 95/01383 and 02/00475/FUL to allow A1 non-food to be 2137 sq metre and DIY Bulk to 3903 sq metres.	Approved	16.06.2004
04/02251/DETAIL	Submission of reserved matters for residential development (Pursuant to outline permission 93/00206 and varied by 96/1170, 99/0446, 02/00475/FUL and 04/00454/FUL) - Plot 2 Stanton Europark	Approved	08.02.2005

06/01362/OUT	Industrial units for employment use (including B1(b), B1(c), B2 and B8 use classes)	Withdrawn	17.11.2006
11/00243/FUL	Provision of 38 two and three bedroom houses in detached, semi-detached and terraced forms, plus associated car parking, paths, drives and landscaping.	Approved	20.03.2012
11/00339/NMA	Change of roof to plot 96 (from long ridge to short ridge) to address clash with roof on plot 97.		31.03.2011
11/00487/FUL	Erection of two dwellings (alterations to roofs of plots approved under 93/00206/OUT and 04/02251/DETAIL).	Approved	29.06.2011
11/00638/OUT	Development of warehousing (B8 use) and general industrial (B2 use) buildings including ancillary office accommodation together with car and lorry parking, landscaping and associated works.	Approved	22.03.2012
16/30001/PREAPP	Proposal for residential development of 38 units on the eastern parcel of land, and erection of convenience food store on western parcel of land.		08.02.2016
16/00504/FUL	Provision of 38 No. two and three bedroom houses in detached, semi-detached and terraced forms, plus associated car parking, paths drives and landscaping.	Approved	27.02.2017
17/01658/FUL	32 No. houses and 18 No. flats (C3 use class) with associated works.	Approved	13.12.2018
19/00930/DISCON	Discharge of conditions 3 (materials), 9 (construction method statement), 10 (surface water drainage), and 11 (surface water run-off mitigation) for approval 17/01658/FUL.	Approved	03.10.2019
21/00228/DISCON	Discharge of conditions 4 (landscape specification) and 7 (materials) for approval 17/01658/FUL.	Approved	11.03.2021
21/01005/DISCON	Discharge of conditions 3 (External Materials) of approved application 17/01658/FUL.	Approved	16.06.2021
23/00550/DISCON	Discharge of condition 3 (Materials) of application 17/01658/FUL.	Approved	05.05.2023
24/00516/NMA	Non Material Amendment to 17/01658/FUL - Juliet balconies and position of windows, with removal of timber cladding.	Approved	23.05.2024

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>

There is currently no neighbourhood plan for this area.

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 Country 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. In this case the proposed changes in relation to proposed parking on approved open space land, and reorientation of plot 1 90 degrees are considered to be material to development plan policies HP5 (Open Space, Sports and Recreation Facilities) and SPL3 (Sustainable Design). 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

The approved layout plan is AL(00)004-P - Proposed Site Layout, which the applicant seeks to amend with proposed plans 22053-GAA-00-DR-T- 0101 P04, 0104 P04, 0105 P03, and 0106 P03.

The description of development taken from the application form is amendment to parking layout. The stated reason for the change is: Layout was not consulted with the highways department prior to planning being granted, hence the approved layout cannot be implemented and the change is needed to provide parking for the proposed flats. However, 17/01658/FUL was subject to consultation with the Highway Authority as detailed within that delegated report.

Notwithstanding the applicant's limited description the amended plans also show reorientation of Plot 1 90 degrees, and private rear gardens added to plots 31-33 and 34-36. The proposed changes as shown on the plans are summarised below:

0101 P04 shows replacement of one parking space with soft landscaping to south west of plot 23; addition of one parking space on soft landscaped area to south of plot 23; reconfiguration of parking to front of plots 8 and 9, and plot 2; plot 1 reorientated 90 degrees.

0104 P04 shows removal of one parking space and reconfiguration of two parking spaces closer to the parking court; and knee rail fencing to the highway with an S bar gate for access to maintain the public open space.

0105 P03 shows larger front gardens to plots 49 and 50 and reconfiguration of their frontage off street parking closer to the highway and site boundary; reconfiguration of the parking court area between plots 46-48 and plot 49 from 18 parking spaces to 22 with this spreading closer to the highway.

0106 P03 shows three additional visitor parking bays opposite plots 28 and 29 in place of approved soft landscaping; removal of 6 parking bays to the south of plots 31-33; relocation of the two parking spaces serving plot 13 from the side to the front; fenced private amenity space added to rear of plots 31-33 and 34-36 on previous public open space.

Assessment

The reorientation of Plot 1 90 degrees is (as built) and shown on soft landscaping plans associated with 21/00228/DISCON but has not been formally approved by a variation of condition or full planning permission. Such a change cannot be approved under a non material amendment application as it is indisputably a material change to the existing planning permission.

The approved open space plan which accompanies the S106 for 17/01658/FUL excludes the area now proposed as rear gardens to plots 31-33 and 34-36. However, it includes the area now proposed for 3 parking spaces opposite plots 28 and 29. The proposed change to use this area for parking would therefore conflict with the provisions of Part B Open Space of the S106 dated 13 December 2018 and cannot therefore be considered non material to the existing planning permission.

21/00228/DISCON approved the soft landscaping plans for the development and is referred to in the S106 in respect of the open space land. Those approved plans show the changes to parking and soft landscaping around plots 2, 8, 9, 13, 23, 49-50, and the parking court. These changes are considered non-material in relation to the original approval, would not result in detrimental impact visually or in terms of amenity, and would not disadvantage the interests of any third party.

The changes in relation to provision of fenced rear amenity areas to plots 31-33 and plots 34-36 result in a minor reduction to the open space land (but not the open space land as defined under the S106) and therefore have potential to detrimentally impact upon both the visual and recreational amenity of surrounding residents when accessing this public land. These elements need to be assessed as part of a formal application (see below).

The changes relating to a new access to serve the public open space immediately adjacent plots 31-33 have the potential to detrimentally impact upon both the residential amenities of those residents. These elements need to be assessed as part of a formal application (see below).

The removal of 6 parking bays to the south of plots 31-33 would be compensated by two extra spaces in the parking court/plots 49-50 area and three opposite plots 28 and 29 which is on the open space

land so cannot be supported under an NMA as detailed above. However, in terms of the quantity of parking space provision provided this would not raise any concerns and would represent a visual enhancement through an enlarged open space area.

Habitats, Protected Species and Biodiversity Enhancement

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. Under the original permission 17/01658/FUL ecological surveys were undertaken and translocation of reptiles secured. An informative would be imposed on any further approval strongly encouraging the applicant to improve the biodiversity of the application site through appropriate additional planting and wildlife friendly features. 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 NMA applications this proposal is not therefore 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.

No representations have been received to this application.

Conclusion

The reorientation of Plot 1 90 degrees, and provision parking spaces on open space land secured under the S106 for 17/01658/FUL represent material changes to the existing planning permission which cannot be approved under a non material amendment application.

The changes in relation to provision of fenced rear amenity areas to plots 31-33 and plots 34-36 results in a minor reduction to the open space land and therefore has potential to impact upon both the visual and recreational amenity of surrounding residents when accessing this public land – this in itself but also in combination with the above results in the application falling well outside the scope of a non-material amendment. The changes relating to a new access to serve the public open space immediately adjacent plots 31-33 has the potential to impact upon the residential amenities of those residents and should be assessed as part of a formal variation of condition application/fresh planning application.

These changes therefore need to be considered under a variation of condition application, and a deed of variation to the legal agreement secured under 17/01658/FUL.

8. Recommendation

9. Reasons for Refusal

The proposed amendments comprising the reorientation of Plot 1 90 degrees, and the provision of three parking spaces on land secured as public open space under the S106 agreement dated 13 December 2018 represent material changes to the existing planning permission reference 17/01658/FUL.

The changes in relation to provision of fenced rear amenity areas to plots 31-33 and 34-36 results in a minor reduction to the open space land and therefore has potential to impact detrimentally upon both the visual and recreational amenity of surrounding residents when accessing this public land. The changes relating to a new access to serve the public open space immediately adjacent plots 31-33 also has the potential to detrimentally impact upon the residential amenities of those residents. On both accounts these potential impacts need to be assessed as part of a formal minor material amendment application(s).

These combined changes to the previously approved planning consent are considered to be significant in relation to the planning permission reference 17/01658/FUL. Therefore, a minor material amendment application (a 'Section 73 application') and a deed of variation to the legal agreement is required to be submitted to fully assess the proposed changes.

10. Informatives

Plans and Supporting Documents

The Local Planning Authority has resolved to refuse the application for the reasons set out above. For clarity, the refusal is based upon the consideration of the plans and supporting documents accompanying the application as follows, (accounting for any updated or amended documents):

22053-GAA-ZZ-00-DR-T-0101 P04
22053-GAA-ZZ-00-DR-T-0104 P04
22053-GAA-ZZ-00-DR-T-0105 P03
22053-GAA-ZZ-00-DR-T-0106 P03

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
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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

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