

DELEGATED DECISION OFFICER REPORT

AUTHORISATION		INITIALS	DATE
Planning Officer recommendation:		OA	04.09.24
EIA Development - Notify Planning Casework Unit of Decision:	NO		
Team Leader authorisation / sign off:		JJJ	05/09/2024
Assistant Planner final checks and despatch:		ER	05/09/2024

Application: 24/01212/NMA **Town / Parish:** Great Bentley Parish Council

Applicant: Mr Nigel Bones - West Glen Ltd

Address: Fir Tree House Plough Road Great Bentley

Development: Non Material Amendment to 23/01312/FUL - to provide a cart lodge to the rear of the property.

1. Town / Parish Council

Great Bentley Parish N/A
Council

2. Consultation Responses

N/A

3. Planning History

99/01687/TPO	Lop branches of Eucalyptus tree which are touching house and growing through power lines	Approved	10.12.1999
12/01350/TPO	Eucalyptus - fell due to decay in base of trunk. No replacement planned.	Approved	04.01.2013
19/01773/FUL	Erection of detached dwelling with new Vehicular Driveway Access.	Withdrawn	06.04.2020
20/01618/FUL	Erection of detached dwelling with new vehicular driveway access.	Approved	23.02.2021
23/01312/FUL	Proposed erection of detached dwelling with new vehicular access.	Approved	21.12.2023
23/01687/DISCON	Discharge of condition 13 (Landscaping) of application 20/01618/FUL.	Approved	08.12.2023
24/01212/NMA	Non Material Amendment to 23/01312/FUL - to provide a cart lodge to the rear of the property.	Current	

4. Relevant Legislation

Section 96A of the Town and County Planning Act 1990

5. Relevant Policies

N/A

6. Officer Appraisal

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. 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 Drawing No. FTC/AG/2A and was for the erection of a detached dwelling with new vehicular access. The amended layout plan is Drawing No. 2409-03-P1 and elevations on Drawing No. 2409-05-01. This proposes for the erection of a cart lodge to the rear of the property as an addition to the approved development and a non-material amendment under Section 96A of the Town and Country Planning Act 1990.

Assessment

The erection of a cart lodge in the rear garden of the property 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 by the introduction of substantial new built form beyond the scope outlined above.

The proposed cart lodge has the potential to detrimentally impact upon both the visual amenity of surrounding residents and also on scale of the development/character of the site. These elements need to be assessed as part of a formal application (see below).

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. An informative has been imposed 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 applications for Listed Building Consent, Advert Consent, Reserved Matters, Prior Approvals, Lawful Development Certificates, householders, self builds, and other types of application which are below the threshold i.e. does not impact a priority habitat and impacts less than 25 sq.m of habitat, or 5m of linear habitats such as hedgerow). 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.

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.

Conclusion

The erection of a new cart lodge to the rear of the property represents a material change to the existing planning permission which cannot be approved under a non-material amendment application. This change therefore need to be considered under a variation of condition application of 23/01312/FUL or an application for householder planning permission.

7. **Recommendation**

Refusal Non Material Amendment

8. **Reason for Refusal**

The proposed cart lodge is considered to create an increased scale, bulk, form and massing which is considered to go beyond the scope of what could be considered a non-material amendment in the context of the site and planning permission reference 23/01312/FU. It will also create a significant change in terms of visual impact and how surrounding residential occupiers will perceive the development. Therefore, a minor material amendment application (a 'Section 73 application') is required to be submitted to ensure a public consultation of the changes can be carried out and to fully assess the impact of the proposed changes.

9. 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):

Drawing No. 2409-01

Drawing No. 2409-03-P1

Drawing No. 2409-04-P1

Drawing No. 2409-05-P1

10. 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)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

and ethnic or national origin)		
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

11. Notification of Decision

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