

DELEGATED DECISION OFFICER REPORT

AUTHORISATION		INITIALS	DATE
Planning Officer recommendation:		ML	25/09/2024
EIA Development - Notify Planning Casework Unit of Decision:	NO		
Team Leader authorisation / sign off:		JJJ	26/09/2024
Assistant Planner final checks and despatch:		ER	26/09/2024

Application: 24/01409/NMA **Town / Parish:** Mistley Parish Council

Applicant: Mr Steven Rose - Rose Builders Ltd

Address: Land South of Long Road Mistley Essex

Development: Non Material Amendment to 22/00958/FUL - swapping tenure type of four affordable dwellings, to improve management arrangements for the adjacent affordable housing provide, ensuring that two plots they are due to receive are adjoined to other existing affordable plots.

1. Town / Parish Council

n/a

2. Consultation Responses

n/a

3. Planning History

22/00958/FUL	Proposed local convenience store and 80 no. dwellings and associated roads, hardstanding, fencing, outbuildings and drainage.	Approved	17.03.2023
24/01409/NMA	Non Material Amendment to 22/00958/FUL - swapping tenure type of four affordable dwellings, to improve management arrangements for the adjacent affordable housing provide, ensuring that two plots they are due to receive are adjoined to other existing affordable plots.	Current	

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 are no neighbourhood plans in force for this location.

6. Relevant Policies / Government Guidance

n/a

7. Officer Appraisal (including Site Description and Proposal)

Site Description

The application site is located on the eastern edge of Lawford's settlement boundary, south of Long Road in Lawford. The site is in part behind a row of existing housing that fronts Long Road. East of the site are agricultural fields that have planning permission for 485 dwellings by Tendring Farms Ltd. Directly opposite the site, on the north eastern side of Long Road are more agricultural fields, although existing housing extends to the north-west as part of Lawford.

The application site was previously in agricultural use, however now it forms the eastern part of the wider housing development project called "Lawford Green", for 360 dwellings along with a community building, a new access to the school and a village green (ref: 15/00876/OUT). Work on this development (western section) is well underway. The eastern side of the site (including the application site) is therefore fenced off and forms part of the existing construction area.

Proposal

This application seeks a non-material amendment to application 22/00958/FUL to revise the approved affordable housing plan, as secured via Condition 2 (Approved Plans) on the original permission.

The revision is to swap the tenure of the following 4 affordable housing plots as follows:

Plot 372 - Shared Ownership to Affordable Rent
Plot 373 - Shared Ownership to Affordable Rent
Plot 374 - Affordable Rent to Shared Ownership
Plot 375 - Affordable Rent to Shared Ownership

All other aspects of the original scheme remain as approved, and the proposal does not seek to alter the quantum of affordable housing units overall. The swap of tenure is proposed due to a change in the affordable housing provider and a need to re-configure the siting of various tenures to accord with which plots each affordable housing provider is responsible for.

Assessment

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 affordable housing scheme are 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 respect of the three tests, no changes are proposed to the massing, scale or the general appearance of the development, the proposal would not cause any visual harm or detrimental impact on amenity and the changes do not result in the loss of any affordable housing provision or any changes to the tenure split. Consequently, no third parties or statutory consultees would be disadvantaged by these changes.

Conclusion

The change proposed is non-material to planning permission 22/00958/FUL and the requirements of the adopted development plan and are therefore recommended for approval.

8. Recommendation

Approval Non Material Amendment

9. Conditions

1 APPROVED PLANS & DOCUMENTS

CONDITION: The development hereby permitted shall be carried out in accordance with the drawings/documents listed below 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 subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard (except for Listed Building Consents). Such development hereby permitted shall be carried out in accordance with any Phasing Plan approved, or as necessary in accordance with any successive Phasing Plan as may subsequently be approved in writing by the Local Planning Authority prior to the commencement of development pursuant to this condition.

22/00958/FUL

- 21/33/01 (Approved Red Line Plan Drawing - received 31/05/2022)
- 21/33/02 A (Amended Proposed Site Layout Plan)
- 21/33/03 A (Amended Market Housing Key Plan)
- 21/33/06 (The Grace - Floor and Elevations Plan)
- 21/33/07 A (Amended The Albertine Floor and Elevation Plans)
- 21/33/08 A (Amended The Barbier Floor and Elevation Plans)
- 21/33/09 (The Cornelia - Floor and Elevations Plan)
- 21/33/10 A (Amended The Amelia Floor and Elevation Plans)
- 21/33/11 A (Amended The Damask Floor and Elevation Plans)
- 21/33/12 (The Damask - Floor and Elevations Plan)
- 21/33/13 A (Amended The Rosemary Floor and Elevation Plans)
- 21/33/14 A (Amended The Alexander Floor and Elevation Plans)
- 21/33/15 A (Amended The Victoria Floor and Elevation Plans)
- 21/33/16 A (Amended The Ophelia Floor and Elevations Plans)
- 21/33/17 A (Amended The Charlotte Floor and Elevations Plans)
- 21/33/18 (The Berkeley - Floor and Elevations Plan)
- 21/33/19 (The Chatsworth - Floor and Elevations Plan)

- 21/33/20 A (Amended Block A Shop and Units 417-422 Floor Plans)
- 21/33/21 A (Amended Block A Shop and Units 417-422 Elevations Plan)
- 21/33/22 A (Amended Outbuildings Plan)
- 21/33/24 A (Amended House Type A Floor and Elevations Plan)
- 21/33/25 A (Amended House Type B Floor and Elevations Plan)
- 21/33/26 A (Amended Block B - Flats 423-431- Floor Plans)
- 21/33/27 A (Amended Block B - Flats 423-431 - Elevations Plan)
- 21/33/28 A (Amended Block C - Flats 432-435 - Floor Plan and Elevations Plan)
- 21/33/29 (Cycle/Bin Store Plan)
- 21/33/32 A (Amended Refuse Strategy Plan)
- 21/33/33 A (Amended Parking Plan)
- 21/33/34 A (Amended Boundary Treatment Plan)
- 21/33/37 A (Public Open Space Plan)
- 9499-D-AIA (Tree Protection Plan)
- Circular Walk Plan (Dated 21/11/2022)
- JBA 19/163 - SK02 B (Amended Landscape Masterplan)
- JBA 19/163-07 B (Amended Detailed Soft and Hard Landscaping Plan)
- JBA 19/163-08 B (Amended Detailed Soft and Hard Landscaping Plan)
- JBA 19/163-09 B (Amended Detailed Soft and Hard Landscaping Plan)
- JBA 19/163-10 B (Amended Detailed Soft and Hard Landscaping Plan)
- K297-003 A (Access Plan)
- Phase 2 Ground Investigation - Report no. 19-2817r

24/01409/NMA

- 21/33/04 C (Amended Affordable Housing Key Plan)
- 21/33/05 C (Amended Accommodation Schedule)

REASON: For the avoidance of doubt and in the interests of proper phased planning of the development.

NOTE/S FOR CONDITION:

The primary role of this condition is to confirm the approved plans and documents that form the planning decision. Any document or plan not listed in this condition is not approved, unless otherwise separately referenced in other conditions that also form this decision. The second role of this condition is to allow the potential process of Non Material Amendment if found necessary and such future applications shall be considered on their merits. Lastly, this condition also allows for a phasing plan to be submitted for consideration as a discharge of condition application should phasing be needed by the developer/s if not otherwise already approved as part of this permission. A phasing plan submission via this condition is optional and not a requirement.

Please note in the latest revision of the National Planning Policy Framework (NPPF) it provides that Local Planning Authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used). Accordingly, any future amendment of any kind will be considered in line with this paragraph, alongside the Development Plan and all other material considerations.

Any indication found on the approved plans and documents to describe the plans as approximate and/or not to be scaled and/or measurements to be checked on site or similar, will not be considered applicable and the scale and measurements shown shall be the approved details and used as necessary for compliance purposes and/or enforcement action.

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 22/00958/FUL application which will contain a number of 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.

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

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