


DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:		11 June 2018
Planning Development Manager authorisation:	SCE	12.06.18
Admin checks / despatch completed	AP	13/6/18

Application: 18/00601/NMA **Town / Parish:** Frinton & Walton Town Council

Applicant: Miss Hannah Short

Address: Land East of Halstead Road Kirby Cross

Development: Non-material amendment to vary wording of Condition 1 as follows: 'Details of the appearance, landscaping, and scale (herein after called the Reserved Matters) for each phase shall be submitted to and approved in writing by the Local Planning Authority before any development on that phase takes place and the development shall be carried out as approved.'

1. Town / Parish Council

Frinton & Walton Town Council Noted

2. Consultation Responses

None Undertaken

3. Planning History

15/30107/PREAPP Request for EIA screening opinion for residential development. 11.05.2015

15/30145/PREAPP Erection of up to 270 dwellings and 40 bed care home, with primary access from Halstead Road and secondary access from Woburn Avenue and Buckfast Avenue, plus car parking for the school and associated open space and play area, SuDs and other infrastructure works. 23.07.2015

15/01234/OUT Erection of up to 240 dwellings with a community hub including either a 40-bed space care home (Class C2) or a healthcare facility (Class D1) together with access from Halstead Road, Woburn Avenue and Buckfast Avenue; a parking Refused 07.12.2015

area for up to 30 vehicles; green infrastructure provision including children's play area, kick-about area, footpaths, structural landscaping and biodiversity enhancements; a sustainable drainage system including detention basin and swales and other related infrastructure and services provision.

17/30172/PREAPP	240 proposed dwellings, following on from appeal approval 15/01234/OUT. Pre-application advice for DETAIL application.		11.08.2017
17/01895/DETAIL	Phase 1 reserved matters application (49 units) for details of the appearance, landscaping, layout and scale.	Approved	07.03.2018
17/02145/DETAIL	Phase 2 reserved matters application for 28 bungalows on land off Woburn Avenue and Buckfast Avenue.	Approved	19.03.2018
18/00355/DISCON	Discharge of conditions 11 (Phasing Plan and Programme), 12 (Green Infrastructure Management Plan), 13 (Foul Water Strategy), 14 (Surface Water Drainage Strategy), 15 (Written Scheme of Archaeological Investigation), 16 (Construction Method Statement), 20 (Design Code) and 21 (Landscaping Details) of approved planning appeal APP/P1560/W/15/3140113 (planning application 15/01234/OUT).	Current	
18/00366/DISCON	Discharge of conditions 4 (Ground/Floor Levels, External Lighting, Means of Enclosure, Bicycle Parking and Refuse/Recycling Storage) of approved application 15/01234/OUT (allowed on appeal APP/P1560/W/15/3140113).	Current	
18/00414/DISCON	Discharge of conditions 4 (Levels, Street Lighting and Refuse details), 10 (Arboricultural Method Statement), 13 (Foul Water Strategy), 14 (Surface Water Drainage), 16 (Construction Method Statement), 20 (Phased Design Compliance Statement) and 21 (Landscape details) of approved planning appeal	Current	

	APP/P1560/W/15/3140113 to planning application 15/01234/OUT.		
18/00503/DISCON	Discharge of conditions 6 (roads & footways) and 11 (planning out crime) of 17/01895/DETAIL.	Current	
18/00601/NMA	Non-material amendment to vary wording of Condition 1 as follows: 'Details of the appearance, landscaping, and scale (herein after called the Reserved Matters) for each phase shall be submitted to and approved in writing by the Local Planning Authority before any development on that phase takes place and the development shall be carried out as approved.'	Current	
18/00615/NMA	Non-material amendment to 17/01895/DETAIL - amendment to proposed brick types.	Approved	04.06.2018
18/00898/DETAIL	Phase 3 reserved matters application for 91 dwellings.		

4. Relevant Policies / Government Guidance

N/A

Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan, despite some of its policies being out of date. Paragraph 215 of the NPPF allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 216 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft. Part 1 was examined in January 2018 with the Inspector's report awaited and whilst its policies cannot yet carry the full weight of adopted policy, they can carry some weight in the determination of planning applications. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 216 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

5. Officer Appraisal (including Site Description and Proposal)

From 1st October 2009 a new provision under Section 96A of the Town and Country Planning Act came into force allowing 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.

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?

APPRAISAL

The site is a large scheme of dwellings, the majority to be served from Halstead Road in Kirby Cross, and the original outline permission was intended to be a "phased" development.

The outline permission - allowed on appeal - was for the following:-

Erection of up to 240 dwellings with a community hub including either a 40-bed space care home (Class C2) or a healthcare facility (Class D1) together with access from Halstead Road, Woburn Avenue and Buckfast Avenue; a parking area for up to 30 vehicles; green infrastructure provision including children's play area, kick-about area, footpaths, structural landscaping and biodiversity enhancements; a sustainable drainage system including detention basin and swales and other related infrastructure and services provision.

In addition to detailed off-site highway improvements, the submitted outline application, included the following matters:-

- o 04677.00007.16.017.3 Location plan
- o 04677.00007.14.009.8 Illustrative layout
- o 04677.00007.14.014.2 Parameters plan: land use
- o 04677.00006.16.021.0 Parameters plan indicative heights, and
- o Design and Access Statement

The parameters Plan of land-uses and the Parameters plan of Heights, show that the development was to be carried out in 4 different phases and the design and access statement made specific reference to the Phasing stating:-

"It has been assumed that following planning permission in late Autumn/early Winter 2015, a start date for construction would be around late Summer 2016, allowing for the approval of Reserved Matters. The first dwellings might be available for occupation in early 2017. The expectation is that housing would be complete no later than the end of 2020."

The phasing of development is expected to involve the simultaneous construction of the dwellings served by Woburn Avenue and Buckfast Avenue (about 28 dwellings) and around 50 dwellings accessed from Halstead Road. Subsequent phases of development would be between 50 and 75 dwellings accessed from Halstead Road.

There would be the early delivery of a significant part of the sustainable drainage system to serve the proposed dwellings. Similarly, an early part of the implementation of the scheme would be the re-establishment of the former hedgerows and the native planting within the open space buffer between the built development and the agricultural and along the northern boundary of the field.

The off-site improvements to the junction of Frinton Road/Halstead Road identified at Figure 4.11 and the provision of the proposed car park indicated on Figure 4.5 would be delivered during the first phase of the development programme".

It is apparent from the submitted information, and the Inspectors decision - some of the conditions refer to Phasing - that the planning application and appeal was considered on a 'phased basic' and phasing generally allows on larger schemes, for the reserved matters on the earlier phases to be submitted first, and work commenced, whilst the detail of the later phases was applied for at a later date.

The Powergen High Court Case clearly established [in relation to outline permissions] that unless a phased development was specifically requested and conditioned accordingly, that all the reserved matters for all the site have to be submitted and approved before any development can commence.

The Inspectors decision states:-

The application was made in outline with all matters reserved except for access. Indicative 'parameters' drawings have been provided showing how the proposed internal roads and dwellings could be arranged and I have considered the appeal on this basis.

The parameters plan is the one which clearly shows the 4 intended phases, and the Inspectors conditions relate specifically to the heights contained for each phase within the parameters plan.

The Inspectors final decision however, utilises the 3 'standard' commencement and submission dates for the reserved matters, the wording of which in accordance with Powergen, would not allow for a phased submission of reserved matters, despite that being the intended route by the appellants.

The drafting of the conditions does not therefore allow for a phased submission of reserved matters despite that being the clear intention from the submitted information associated with the application and appeal.

The use of 'standard' outline conditions in the Inspectors decision, is at odds with his statement at paragraph 33 which refers to the location and parameters plans to be specified at this stage to ensure the arrangement is adopted and he goes on to say that in the interests of proper planning, the way in which the phasing takes place, needs to be controlled to avoid visually unacceptable piecemeal development.

The outline conditions do not allow for phased submission and subsequent commencement of the development.

It is proposed that the wording of the condition 1 - which states that the reserved matters be submitted before development commences [and therefore requires all of the reserved matters to be submitted before work can commence] be altered so as to read that the reserved matters on any phase, be submitted and approved before any development on that phase can be commenced.

This minor change to the wording of condition on of the appeal decision will then allow the phased submission of reserved matters and the phased development which was always the intention.

In relation to the 3 'tests' at the head of this report, it should be noted that:

1. That in relation to the scale and magnitude of the original proposal, there would be no change as it was clearly intended to develop the site on a phased basis, and the modest wording change to the condition allows for this
2. The change would not be detrimental in terms of the visual or amenity terms as it relates solely to how and when the development could proceed and there would be no detriment to either issue as the development remains the same as originally approved, and
3. No third parties to the application/appeal would be disadvantaged as 'phasing' was the original intention and it is merely a quirk of the Inspectors wording that prevents its implementation in that form, and the Inspector requires the development to be in accordance with the parameters plans. The triggers within the conditions relating to the provision of the off-site highway works as well as the affordable dwellings would be unaffected and the alterations to the highway were a key concern to the objectors.

This Non-material amendment proposes a change to the wording of the "standard" outline conditions, to require the submission of the reserved matters and the subsequent commencement of development 'on any phase' thereby allowing the phased basis as originally intended.

The change in relation to the actual development and the triggers when other matters are provided is unchanged and as the phased process was always intended, there is no material impact arising from the proposal, which is acceptable.

The proposal requires a change to condition 1 of the outline (appeal) permission and changes the phrase requiring the reserved matters to be approved before ANY development takes place, to one requiring that the reserved matters on any one phase, be submitted and approved before any development on that phase is commenced.

The proposed amendments would not result in any additional impact or harm to visual amenity and no third parties would be disadvantaged in any way as a result of the proposed alterations.

Conclusion

In this instance it is considered the amendments being sought are minor and are therefore acceptable as a non-material amendment to the approved plans (phased submission and commencement of reserved matters) attached to condition 1 of APP/P1560/W/15/3140113, dated 6th September 2016.

6. Recommendation

Approval Non Material Amendment

7. Conditions / Reasons

This NMA changes condition 1 of appeal permission APP/P1560/W/15/3140113, dated 6th September 2016, in the manner described above.

8. Informatives

N/A

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