

COMMITTEE REPORT

Date: 11 October 2018 **Ward:** Fulford And Heslington
Team: Major and **Parish:** Fulford Parish Council
Commercial Team

Reference: 17/02687/NONMAT
Application at: Germany Beck Site East Of Fordlands Road York
For: Non-material amendment to permitted application
12/00384/REMM to alter approved plans, to vary condition 9
to amend approved bat mitigation strategy and to remove
condition 13
By: Persimmon Homes Yorkshire
Application Type: Non Material Amendments
Target Date: 1 December 2017
Recommendation: Approve

1.0 PROPOSAL

1.1 This proposal is not a planning application. It is a request for consent to make non-material amendments to an existing planning permission pursuant to Section 96A to the Town and Country Planning Act 1990. In Local Planning Authorities, such non-material decisions would ordinarily be processed using delegated powers. However, the scope of delegation provided for in the wording of York's Constitution has been queried by Fulford Parish Council, on the grounds that S96A is not expressly referred to in the Council's Constitution as being excluded from reservation to Committee, (unlike repeat and S73 applications). The request is therefore being brought to Committee for approval to protect the Council from any challenge to the decision making process on procedural grounds. A Report is intended to be brought to Committee proposing amendment to the Constitution for Members consideration and referral to Full Council, so that in future it is clear that such requests are within the scope of delegation to Officers.

The request seeks consent to make the following amendments to a planning permission for 655 dwellings (12/00384/REMM, approved 9.5.2013) to allow changes to the approved house types and layout of phases 1 and 2 and to amend the timing of an approved bat mitigation strategy agreed under condition 9 of the reserved matters. The original request to remove condition 13 has now been omitted from the application. Changes to phase 3 of the scheme have also been omitted from this S 96A non-material amendment request.

1.2 This application follows a previous submission made by the developer in April 2017 under Section 73 of the Town and Country Planning Act 1990 to vary conditions 9 and 13 (ref. 17/00971/FUL), which was withdrawn in February 2018.

1.3 The planning permission for the residential development has been implemented with the construction of the access junction and initial section of internal spine road and the excavation of the compensatory flood storage ponds. Work has recently commenced on the internal roads and some of the foundations for plots in phase 1.

2.0 POLICY CONTEXT

National Planning Policy Framework (July 2018)

2.1 At the heart of the NPPF is the presumption in favour of sustainable development. It goes on to state in paragraph 59 that in order to support the Government's objective of significantly boosting the supply of homes, it is important that, inter alia, land with permission is developed without unnecessary delay. It requires that local planning authorities 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 (paragraph 130). Refusal is advised where there is significant harm to biodiversity unless it can be adequately mitigated (paragraph 175).

City of York Draft Local Plan (2005)

2.2 The City of York Draft Local Plan Incorporating the Fourth Set of Changes was approved for Development Management purposes in April 2005 (DCLP). Whilst the DCLP does not form part of the statutory development plan, its policies are considered to be capable of being material considerations in the determination of planning applications where policies relevant to the application are consistent with those in the NPPF as revised in July 2018, although the weight that can be afforded to them is very limited. Those policies relevant to the determination of the section 96A application are:

- GP1 – Design
- GP3 – Designing out crime
- GP9 – Landscaping
- NE6 – Species protected by law
- H3c – Mix of dwellings on housing sites

City of York Council Pre-Publication Draft Local Plan (2017)

2.3 In accordance with paragraph 48 of the NPPF as revised in July 2018, the relevant 2018 Draft Plan policies can be afforded weight according to:
-The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

- The degree of consistency of the relevant policies in the emerging plan to the policies in the previous NPPF published in March 2012. (NB: Under transitional arrangements plans submitted for examination before 24 January 2019 will be assessed against the 2012 NPPF).

2.4 The evidence base underpinning the 2018 Draft Plan is capable of being a material consideration in the determination of planning applications.

2.5 The Proposals Map accompanying the 2018 plan includes the site as lying largely with the main urban area of York with the nature park and access road falling within Green Belt land around York. Those policies relevant to the determination of the Section 96A application are:

- H3 – Balancing the housing market
- D1 – Placemaking
- D2 – Landscape and setting
- GI2 – Biodiversity and access to nature

2.6 It should be noted that Section 38(6) does not apply to an application under Section 96A.

3.0 CONSULTATIONS

3.1 No consultation is required to be undertaken for non-material amendment applications, but the following comments have been received:

INTERNAL

Design Conservation and Sustainable Development (Countryside and Ecology)

3.2 The revisions to the Bat Mitigation document relate to the timing of the implementation of the mitigation specifically the installation of bat 'hop-overs'. The revised strategy has also taken account of the removal of additional vegetation which has been required during the course of construction following commencement in 2016. The removed vegetation will be replanted using a native species-rich hedgerow mix during the next suitable planting season after completion of works, which based on this being June 2018 would mean planting in winter 2018/19.

3.3 The Bat Mitigation Strategy Addendum includes a reasoned statement as to why the changes are required and why they will not result in any significant adverse effects on bats. The change in the timetable of works is not considered to impact on bats as it will still be established before the road is operating at full capacity, noting that bats are generally inactive between November and March. The revised strategy has been supported by bat activity surveys undertaken in summer 2016 to update existing information, but no new substantive information has been submitted.

Concludes that the addendum addresses the changes to the timing of the bat mitigation works and still meets the requirements of Condition 9 of reserved matters 12/00384/REMM.

Housing Strategy and Development

3.4 In accordance with the Section 106 requirements for the Germany Beck application reference 01/01315/OUT, an amended Affordable Housing Plan has been provided which is consistent with the updated layout in 17/02687/NONMAT. This does not alter the amount, tenure or housing type mix of the affordable housing provided for this application, and meets in full the relevant Section 106 obligations. Accordingly there is no objection to the application from the Housing Development Team.

EXTERNAL

Fulford Parish Council

3.5 Two letters have been received from the Parish Council raising following concerns/queries:

- The plot substitutions and layout changes are significant and should not be treated as non-material;
- The delay to the implementation of the bat mitigation strategy;
- A decision under delegated authority is contrary to the Council's constitution;
- Question whether Section 96A amendment can be made to reserved matters approval after LPA confirmed that Section 73 application cannot be;
- Raises alleged breaches of conditions regarding the construction of the spine road.

3.6 A further letter from Walton & Co. Solicitors on behalf of the Parish Council has been received which states that it would be unlawful and irrational for the Council to grant consent for the wide range of amendments sought as a non-material amendment. In their view, the range of amendments sought is outside the powers bestowed on the Council pursuant to Section 96A of the Town and Country Planning Act 1990. They consider an inevitable prospect of success in the High Court to quash such decision if the application is approved.

Local residents

3.7 Letter received from occupants of Osbourne House, 7 School Lane, requesting the plans be amended to remove a tree from the new access road to their property, restore its width and correct the 30m standoff distance line. They highlight that plot numbers have changed, plot 47 is within the 30m standoff, a hedge is replaced by a fence between plots 48 and 49 and properties now encroach on the Parish Land extension (plots 49-53) or narrow the green corridor from 30m to 26m.

4.0 APPRAISAL

4.1 The main issue for the Local Planning Authority is whether it is satisfied that the proposed amendments are not material, having regard to the effect of the changes, together with any previous changes made under Section 96A, on the planning permission originally granted.

4.2 Section 96A of the Town and Country Planning Act 1990 (as amended)("1990 Act") allows a local planning authority to make a change to any planning permission relating to land in their area if they are satisfied that the change is not material. It requires that, in deciding whether a change is material, regard be given to the effect of the change together with previous changes on the planning permission as originally granted. It confers power to impose new conditions and existing conditions to be removed or altered. The Decision Letter in respect of any approval of a Section 96A application sits alongside the original planning permission to be read together (unlike a S73 application which results in a further alternative planning permission being issued).

4.3 Further explanation of the provision is set out in the Government's Planning Practice Guidance (March 2014). This explains that there is no statutory definition of 'non-material', because it will depend on the context of the overall scheme. Therefore, what is non-material or material will differ depending upon the proposal.

ENVIRONMENTAL IMPACT ASSESSMENT

4.4 The application does not seek to provide works that were not previously agreed by the planning permission or conditions attached to it.

4.5 The outline application for the residential development considered the environmental impacts of the proposal through the submission of an Environmental Impact Assessment ("EIA"), which was updated through the course of the application. Such information was taken into account in the Secretary of State's decision to grant outline planning permission in 2007 following a public inquiry in 2006. The EIA was updated as part of the reserved matters application, as it constituted a 'subsequent application' under the then Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ("EIA Regs").

4.6 A S96A application is not a subsequent application under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("EIA Regs 2017") as it is not required by or under a condition of the planning permission and approval is not required before the development permitted by the permission is begun. To fall within S96A the changes must be non-material, and it follows that the changes could not be of such a degree as to give rise to the need for further environmental information if they were non-material. In considering the effects of the changes there was and still is considered to be adequate environmental information to assess whether there are any significant effects of the development as changed on

the environment. Therefore, no further information is sought and no additional publicity is required.

SUMMARY OF PROPOSED CHANGES

4.7 There are two different aspects to the section 96A non-material amendment application, both of which relate to phases 1 and 2 of the approved residential housing development.

(ii) Changes to house types and scheme layout

- Replacement of Hogg the Builder houses with Persimmon products following Hogg the Builders, a partner in the original residential scheme, relinquishing its option to build a proportion of the houses in 2013 after its decision to cease house building.
- Realignment and re-positioning of houses and garaging following replacement of Hogg with Persimmon products and after further detailed assessment of layout and conveyancing arrangements, including loss of one plot, moving one plot from Phase 2 to Phase 1, loss of pedestrian link within Phase 2 and changes to landscaping within the phases.
- Re-positioning of plot 49 (formerly plot 48) further east from 1 School Lane and north in line with fence line of properties to the east and the omission of a pedestrian footpath link between phase 1 and the Parish land extension to the north, following the extension of garden of 1 School Lane into the application site since outline permission was granted in 2007.
- Highway layout alterations as a result of further detailed engineering design and after discussion with the Local Highway Authority as part of the Section 38 Highway Agreement process.

(ii) Changes to bat mitigation strategy

4.8 The proposed changes to the agreed bat mitigation strategy relate largely to timing for the provision of the mitigation works, being the provision of hop-overs. The hop-overs are in the process of being provided on site. The access road that the hop-over crosses is being used by construction vehicles in daylight hours and is not in use when bats are emerging around sunset. The Council's Countryside and Ecology Officer has been kept updated and is satisfied that the revised strategy raises no new substantive information and would not adversely impact on bats.

Consideration of materiality

4.9 The application does not propose new development that would not have been provided as part of the approved residential scheme. The changes would not materially affect the overall layout of the approved scheme including the general extent of built areas, general arrangement of open spaces and the general network

and hierarchy of roads. The variation to the house types and layout within phases 1 and 2, although dimensions of houses differ and in some instances increase, would not have a materially different visual or physical impact outside the site in the context of the development as a whole. No changes are proposed that would move houses closer to existing properties abutting the site or materially change the design of such properties other than the separation of garages from the houses.

4.10 The plans have been amended to reinstate the new access road to Osbourne House at 3.1m and remove the tree shown within it. The 30m standoff distance is correctly indicated.

4.11 The changes to phase 2 have resulted in the loss of one dwelling. The outline consent approved a residential scheme of approximately 700 dwellings. This reduced to 655 following detailed design at reserved matters stage and the proposed amendments would reduce this to 654. The change from Hogg to Persimmon properties would result in an increase in the number of three and five bedroom dwellings and a decrease in the number of two and four bedroom dwellings within phases 1 and 2. The removal of one dwelling in the context of the approved development as a whole and the effect of the change in the mix of the houses is not material. The development would retain a range of property types and sizes. It is noted that the Council's Housing team is satisfied with the mix to the open market and affordable units.

4.12 There has been one prior non-material amendment approved to the reserved matters consent, which was to remove 7 no. 5m high lighting columns from Germany Lane, south of plots 1 to 8 in phase 1 (15/00717/NONMAT). A non-material change was also agreed to the outline consent to allow the installation of drainage outfalls and the extension in the length of access road built prior to the completion of the primary junction with the A19 (17/02686/NONMAT).

4.13 Taking into account the scheme as a whole and the previous amendments agreed to it under Section 96A, the changes proposed are considered not to be material to the original consent. This judgement is based on the information submitted with the application. There is no difference to the impact of the scheme on the environment or local area.

5.0 CONCLUSION

5.1 The proposed changes to reserved matters consent 12/00384/REMM are considered to be modest in scale and nature in the context of the overall residential scheme. Taking into account the previously agreed amendments to the original planning permission, the proposal would not materially impact upon the previously approved scheme as a whole. The proposed works do not constitute EIA development nor change the environmental impacts of the approved scheme. In exercising planning judgement, it is concluded that the amendments are non-material and, therefore, the application is recommended for approval. As well as an

updated plans condition, conditions 7 and 11 of the reserved matters approval need to be amended to reflect the change of plots numbers.

6.0 RECOMMENDATION:

1 The development hereby permitted shall be carried out in accordance with the following plans and other submitted details:-

Drawing numbers PL_600_101 rev.D Proposed Site Layout, PL_600_101_PH1 rev.B Proposed Site Layout – Phase 1, and PL_600_101_PH2-3 rev.C Proposed Site Layout – Phase 2 & 3;

Drawing no. 1939/20 Landscape Proposals Phase 1 & 2;

Heritage House Type Drawing numbers 600_200_GB4, 600_201_GB5, 600_202_GB6, 600_203_GB7, 600_204_GB8, 600_205_GB9, 600_206_GB10, 600_207_GB11, 600_208_GB13, 600_209_GB15, 600_210_GB17 Plan, 600_222_GB17 Elevations, 600_211_GB18 Plan, 600_223_GB18 Elevations, 600_212_GB19, 600_213_GB20; 600_215_GB22; 600_216_GB23; 600_216_GB26; 600_GB44; and, 600_219_GB50;

Rural House Type Drawing numbers 600_300_GB6; 600_301_GB7; 600_302_GB10; 600_303_GB11; 600_304_GB13; 600_305_GB15; 600_306_GB19; 600_307_GB20; 600_308_GB21; 600_309_GB23; 600_310_GB24; 600_311_GB26; 600_314_GB46; 600_315_GB47; 600_316_GB48; 600_317_GB49; 600_321_GB53; and, 600_323_GB56;

Drawing no. 600_GB Garages.

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

2 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order), development of the type described in Classes A (Extensions), B (Alterations to roof) and E (Outbuildings) of Schedule 2 Part 1 of that Order shall not be erected or constructed for plots 38-49 (inclusive) and 643 to 655 (inclusive).

Reason: In the interests of the amenities of the adjoining residents the Local Planning Authority considers that it should exercise control over any future extensions or alterations which, without this condition, may have been carried out as "permitted development" under the above classes of the Town and Country Planning (General Permitted Development) Order 1995.

3 Prior to the commencement of development of plots 40, 41 and 43, the boundary hedge shown along the rear boundaries of these plots shall be planted in

Application Reference Number: 17/02687/NONMAT Item No: 4a

accordance with the approved plans. A temporary boundary enclosure shall be provided adjacent to the line of the hedge during construction. The hedge shall thereafter be retained at all times.

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Reason: In the interests of protecting the amenity of the residents of Osborne House.

7.0 INFORMATIVES:

Notes to Applicant

1. Please note that this decision only relates to the non-material amendment sought. It is not a re-issue of the original planning permission, which still stands. The two notices should be read together along with any other agreed changes. The only deviation permitted (from the original approved plans) is that as described above, and indicated on the revised submitted information. All other conditions of approval for the scheme shall be complied with.

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