

**ITEM NUMBER: 5d**

<b>22/01583/NMA</b>	<b>Non Material Amendment to planning permission 21/04265/ROC (Variation of condition 2 (approved plans) attached to planning permission 4/00726/17/FUL for 2 x 3 bed dwellings.</b>	
<b>Site Address:</b>	<b>Land to the rear of 76-78 Belswains Lane, Hemel Hempstead</b>	
<b>Applicant/Agent</b>	<b>Mr Wingrove</b>	
<b>Case Officer:</b>	<b>Robert Freeman</b>	
<b>Parish/Ward:</b>	<b>Hemel Hempstead</b>	<b>Apsley and Corner Hall</b>
<b>Referral to Committee:</b>	<b>The application is referred to the Development Management Committee in accordance with Section 2.3.2 (1) of the Constitution and at the request of Councillor Peter. The proposal would result in changes to a scheme previously refused planning permission by the Development Management Committee.</b>	

1. **RECOMMENDATION** – That a Non Material Amendment to planning permission 21/04265/ROC is **GRANTED**

2. **SUMMARY**

2.1 The proposed amendment is minor and non-material in nature and does not fundamentally alter the conclusions reached in relation to 21/04265/ROC. The proposals remain appropriate in accordance with Policies CS11 and CS12 of the Core Strategy.

3. **BACKGROUND**

3.1 Planning permission was granted for the construction of two x three-bedroom dwellings under planning permission 4/00726/17FUL by the Development Management Committee at the meeting of the 17<sup>th</sup> August 2017.

3.2 A proposal to vary this planning permission (4/02726/18/ROC) was refused by the Development Management Committee on the 10<sup>th</sup> January 2019 contrary to the officer recommendation. This application was refused for the following reason:

*“The proposed two units by reason of their bulk and mass would result in overdevelopment, eroding the spacious character of the area. This would also result in the proposal failing to achieve sufficient separation distances to neighbouring residents. As a result, the proposed dwellings would appear cramped within its plot and would fail to maintain or enhance the quality and character of the surrounding area and fail to secure good standards of amenity for existing and future occupiers of land and buildings. The development is, therefore, contrary to Saved Appendix 3 of the Dacorum Local Plan (2004) and Policies CS11 and CS12 of the Core Strategy (2013), the National Planning Policy Framework (2018)”*

A subsequent planning appeal (APP/A1910/W/19/3221620) was granted on the 11<sup>th</sup> June 2019.

3.3 The applicants commenced construction of development in May 2021 in breach of conditions 3 (Contamination) and 5 (Landscaping) attached to appeal decision APP/A1910/W/19/3221620. These dwellings under construction were also not being constructed in accordance with the approved plans for either 4/00726/17/FUL or 4/02726/18/ROC.

- 3.4 The site has been subject to enforcement investigations (E/21/00181/BOC and E/21/00343/NAP).
- 3.5 Conditions 3 and 5 (iv), (v), (vi) and (vii) only were approved under application 21/02321/DRC in August 2021. This approval did not extend to landscaping details reserved by condition 5, points (i), (ii), (iii) and (viii) identifying root protection areas of retained trees on or adjacent to the site, areas for protective fencing and type, and finished levels and contours will need to be fully shown on any future landscape plan.
- 3.6 At the meeting of the Development Management Committee of the 10<sup>th</sup> February 2022, members subsequently approved application 21/04265/ROC for a variation to the approved plans for these properties. This plan incorporated two storey side extensions to both of the previous dwellings approved under 4/00726/FUL.
- 3.7 It has subsequently been identified that these plans are also not an accurate representation of the dwellings as constructed at the site. The dwelling closest to Belswains Cottages is approximately 1m closer to the boundary of the site than was previously identified.

#### **4. PROPOSALS**

- 4.1 The current application seeks permission for the retention of two x three-bedroom dwellings under construction at the site. Each of the proposed dwellings would be provided with two parking spaces.
- 4.2 The main difference between the approved scheme and the current proposals relates to the separation distance between plot 1 and the boundary with 1-2 Belswains Cottages. The gap between the two dwellings on the site has increased by 1m with a commensurate reduction in spacing to the boundary of the site. Plot 1 is located between 3.5m and 5m from the site boundary. Plot 2 is as set out in the approved plans.
- 4.3 This application does not extend to the construction of an outbuilding, shown on the location plan. This is subject to planning application 22/00603/FUL and is subject to separate consideration by the Development Management Committee.

#### **5. REPRESENTATIONS**

##### Neighbour responses

- 5.1 These are reproduced in full at Appendix A.

#### **6. CONSIDERATIONS**

##### Policy and Principle

- 6.1 This application has been submitted under Section 96A of the Town and Country Planning Act 1990 (As Amended). This section of the legislation allows for a local planning authority to approved changes to planning permissions that it has granted without resulting in the grant of a new planning permission or undertaking further public consultation.
- 6.2 Notwithstanding such matters, neighbouring parties to the site have been consulted in relation to this specific case given the associated planning history and the need for transparency.
- 6.3 Section 96A states that:

*“In deciding whether a change is material, a Local Planning authority must have regard to the effect of the change, together with previous changes made under this section, on the planning permission as originally granted”*

There is no statutory definition of ‘non-material’. This is because 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. These will normally relate to changes which are minor in nature and do not significantly change the planning permission. The term ‘non material’ is also likely to cover many schemes that may have previously been classed as *de-minimis* i.e. legally of *no consequence*. The local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under section 96A of the Town and Country Planning Act 1990.

- 6.4 The site already benefits from three planning permissions for residential development on the site (4/00726/17/FUL, 4/02726/18/ROC and 21/0465/ROC) and is located in an area where in accordance with Policies CS1, CS2 and CS4 of the Core Strategy appropriate residential development would be encouraged. The proposals are therefore acceptable in principle with the key considerations in this case relating to the impact of the change in spacing between properties upon the character and appearance of the area and upon residential amenity.
- 6.5 The local planning authority must have regard to the effect of the change, together with any previous changes made under section 96A. In this regard, it is important to note that this is the first non-material amendment application for this development.

#### Impact on Character and Visual Amenity

- 6.6 The dwellings subject to this application are no different in appearance to those approved under 21/0465/ROC and although plot 1 would be located closer to properties at Belswains Cottages, this would not be appreciably nearer than the extant permission. This is unlikely to be perceived from the public realm at Belswains Lane and Ebberrns Road, in view of the landscaping to the perimeter of the site, the existing properties to Belswains Lane and the limited views thereto. On this basis there would be no reason to reach a different conclusion as to the impact of development on the character and appearance of the area. The impact of the proposals on the character and appearance of the area remains acceptable in accordance with Policies CS11 and CS12 of the Core Strategy.

#### Impact on Neighbouring Properties

- 6.7 The changes to the proposed plans would involve the construction of plot 1 closer to the southern boundary of the application site and those properties at Belswains Cottages. The flank elevation of the building would be set back from 1 Belswains Cottages. It would now be located approximately 7.8m from a ground floor window towards the rear of the property some 8.2m from the centre of a bay window. The flank elevation would be between 7.5m and 8.3m from the flank elevation thereto. The flank elevation of the property remains largely obscured by the vegetation to the boundary of the adjacent footpath.
- 6.8 The outlook of 2 Belswains Cottages is currently dominated by a row of tall trees along the site boundary and these limit the views into the site throughout the year. They also result in a reduction in daylight to the windows at the front of Belswains Cottages. The change in siting of the property would have a negligible impact when considered against the extant approval both in terms of the impact of development upon privacy and the impact of development on light thereto and would not alter our conclusions in relation to the impact of development upon the residential amenity of neighbours.

### Impact on Trees

- 6.9 It has now been demonstrated that the dwellings have been constructed closer to the boundary of the application site and the trees thereon. The change in this distance would not result in a different conclusion being reached as to whether the impact of development on trees around the site is acceptable or otherwise. These trees are not subject to protection via a Tree Preservation Order and have been retained through the development of this site.

### Access and Parking

- 6.10 The proposed amendment has no effect on access and parking compared to the approved scheme.

### Developer Contributions and Infrastructure

- 6.11 The submitted scheme would not increase the size of the properties on the application site and as such there would be no need to recalculate the associated CIL bill which would be attached to the implemented planning permission (21/0465/ROC)

### Neighbours Comments

- 6.12 The neighbour's concerns regarding the impact of development upon their amenities is noted and dealt with in sections 6.7-6.8 of this report. It would be reiterated that this does not materially affect the conclusions in relation to this case.
- 6.13 The application seeks permission for a Non Material Amendment to planning permission 21/0465/ROC despite the requests from officers that a full application be submitted in relation to this site. It does need to be determined in accordance with planning policy and having regards to the advice in the Department for Levelling up, Housing and Communities publication on "Flexible Options for Planning Permissions" (March 2014) and the Town and Country Planning (Development Management Procedure) (England) Order 2015. The latter makes clear that this application for a non-material amendment is not an application for planning permission and as such local authorities have greater discretion in how they notify interested parties of the application.
- 6.16 The comments raised by 2 Bunkers Cottages regarding the consultation on this case are noted and consultation letters have been sent to neighbouring properties, notwithstanding the above advice. Any comments received will be reported to the Development Management Committee.

### Conditions

- 6.17 As the application is not an application for planning permission, there is no requirement to enter any planning conditions to this approval. The applicants are bound by the conditions to the original permission as set out in the associated planning informative.

## **7. RECOMMENDATION.**

- 7.1 That a Non-Material Amendment be GRANTED to planning permission 21/04265/ROC

## **INFORMATIVE**

The amendment shown on the submitted drawing is considered to be non-material to planning permission 21/04265/ROC; as the proposed changes are not significant, would not be materially different to that originally approved and would not contravene any planning policy.

This application has been approved for the amended drawing:

76BLHH-SITE Revision C

The conditions to planning permission 21/04265/ROC still apply.

## APPENDIX A: NEIGHBOUR RESPONSES

Address	Comments
2 Belswains Cottages	<p>We strongly object to this application because it will affect our right to light. The developer submitted a right to light diagram as part of application 4/02726/18/ROC which shows that if plot 1 is closer than 6.8m to the fence in front of a window of our property, it will affect our right to light. In that application, plot 1 was 8m from the fence. The current application shows only one window on our property, when in fact there are 4 large windows at the front, 2 upstairs and 2 downstairs. The other downstairs window looks out onto the centre of plot 1, which is 4.5m from the fence in this application. This obviously means our right to light will be affected and the application must be refused.</p> <p>Why were no neighbours informed of this application? At the planning committee meeting for 21/04265/ROC? Councillors raised concerns about plot 1 being closer to the fence than the 6m in those plans after seeing the photos. They commented that somebody should measure the distance as soon as possible and if it was "more than a millimetre out" the developer should be forced to rebuild the foundations. The case officer was present at this meeting so knows that this is a contentious issue, By not informing neighbours of this application it gives the impression that the case officer is trying to sneak it through under the radar.</p>