

2.2 REFERENCE NO - 19/502967/NMAMD		
APPLICATION PROPOSAL Non Material Amendment Being Alterations to Wording of Planning Conditions 9 and 12, Please See Covering Letter for Wording, Subject to 14/501588/OUT		
ADDRESS Land At Stones Farm The Street Bapchild Kent ME9 9AD		
RECOMMENDATION Approve		
SUMMARY OF REASONS FOR RECOMMENDATION The proposed amendment to the wording of the conditions would still require adequate details to be submitted and approved by the Local Planning Authority prior to commencement of the elements of the scheme to which the conditions relate.		
REASON FOR REFERRAL TO COMMITTEE Parish Council objection		
WARD West Downs	PARISH COUNCIL Bapchild	APPLICANT C/O Agent AGENT Miss Rosie Cavalier
DECISION DUE DATE 11/07/19	PUBLICITY EXPIRY DATE 31/07/19	

Planning History**14/501588/OUT**

Hybrid application (part outline, part approval of detail) consisting of:

Outline application for the development of 550-600 houses and all necessary supporting infrastructure including roads, open space, play areas, neighbourhood shopping/community facilities (up to 650 sq m gross) and landscaping. All detailed matters are reserved for subsequent approval except (i) vehicular access to A2 Fox Hill; (ii) emergency access to Peel Drive; (iii) landscape buffer between housing and countryside gap and (iv) layout, planting, biodiversity enhancement and management of countryside gap, as amended by drawings 5257/OPA/SK001 Rev J (new red line plan), D119/52 (Swanstree Avenue Plan) and D119/53 (junction layout plan).

Approved: 22.12.2017

18/505151/REM

Approval of Reserved Matters for mixed-use development relating to appearance, landscaping, layout and scale of 311 dwellings and 650sqm of neighbourhood shopping/community facilities pursuant to outline planning permission 14/501588/OUT

Pending Consideration.

19/501212/FULL

Minor material amendment to 14/501588/OUT (Hybrid application (part outline, part approval of detail) consisting of: Outline application for the development of 550-600 houses and all necessary supporting infrastructure including roads, open space, play areas, neighbourhood shopping/community facilities (up to 650 sq m gross) and landscaping. All detailed matters are reserved for subsequent approval except (i) vehicular access to A2 Fox Hill; (ii) emergency access to Peel Drive; (iii) landscape buffer between housing and countryside gap and (iv) layout, planting, biodiversity enhancement and management of countryside gap.) to allow alterations to the configuration of 3no. off-road parking areas in front of 19 to 49 Fox Hill.

Pending Consideration

19/502176/FULL

Minor Material Amendment to 14/501588/OUT (Hybrid application (part outline, part approval of detail) consisting of: Outline application for the development of 550-600 houses and all necessary supporting infrastructure including roads, open space, play areas, neighbourhood shopping/community facilities (up to 650 sq m gross) and landscaping. All detailed matters are reserved for subsequent approval except (i) vehicular access to A2 Fox Hill; (ii) emergency access to Peel Drive; (iii) landscape buffer between housing and countryside gap and (iv) layout, planting, biodiversity enhancement and management of countryside gap, as amended by drawings 5257/OPA/SK001 Rev J (new red line plan), D119/52 (Swanstree Avenue Plan) and D119/53 (junction layout plan) - to accommodate changes to the detention basin, the ecological bunds and to show the location of the end poles for the powerlines.

Pending Consideration

1. DESCRIPTION OF SITE

- 1.1 The site extends to 33.4ha and lies immediately adjacent to the existing built up edge on the eastern side of Sittingbourne. The site is bounded by the A2 and existing residential units on Fox Hill to the south, Lansdowne Primary School and existing dwellings in Gladstone Drive, Salisbury Close and Peel Drive to the west, the railway line north and and Tonge conservation area to the east.
- 1.2 In terms of land levels, in broad terms the site slopes downwards from west to east, close to the A2 the site is raised above the highway making it prominent in short range views from the south. The one anomaly to the generally sloping site levels is the former brickfields which occupies part of the western area of the site. Due to previous brickearth extraction, this sits approximately 2-3m lower than the adjoining part of the Stones Farm site, which is demarcated by a sloping bank. As a consequence a number of the existing properties in Gladstone Drive and Salisbury Close are raised above the application site.
- 1.3 A line of well established planting is located along the western boundary and as such Lansdowne Primary School and the existing residential properties to the west are partially obscured from view. The site is crossed by two public footpaths and is easily visible from the A2 except where houses front the A2 along the western part of the site frontage. Housing opposite offers a good view across the site because it is largely set at an elevated position along the southern side of Fox Hill.
- 1.4 The site is crossed by two public footpaths, ZR191 in the eastern part of the site and ZR205 in the western part of the site.

2. PROPOSAL

- 2.1 This application seeks confirmation as to whether the following amendments to planning permission 14/501588/OUT can be considered as non-material:

- Revision to the wording of condition 9 and 12 to allow for those matters which already have detailed consent to commence prior to the details in respect of these conditions being submitted to and approved by the Local Planning Authority.

- 2.2 Condition 9 currently reads as follows:

“Prior to the commencement of the development hereby approved, full details of the method of disposal of foul water shall be submitted to and approved by the Local Planning Authority. The approved details shall be implemented before the first use of the development hereby permitted.”

Reason: In order to prevent pollution of water supplies and in order to prevent localised flooding; and to ensure that these details are approved before works commence.”

- 2.3 The application proposes to change the wording of condition 9 to the following (I have emboldened the text that is proposed to be altered for ease of reference):

“Prior to the commencement of the development (**save for (i) the vehicular access to A2 Fox Hill; (ii) the emergency access to Peel Drive; (iii) the landscape buffer between housing and countryside gap and (iv) the layout, planting, biodiversity enhancement and management of the countryside gap**) hereby approved, full details of the method of disposal of foul water shall be submitted to and approved by the Local Planning Authority. The approved details shall be implemented before the first use of the development hereby permitted.

Reason: In order to prevent pollution of water supplies and in order to prevent localised flooding; and to ensure that these details are approved before works commence.”

- 2.4 Condition 12 currently reads as follows:

No development shall take place until details have been submitted to, and approved in writing by the Local Planning Authority, which set out what measures will be taken to ensure that the development incorporates sustainable construction techniques such as rainwater harvesting, water conservation, energy efficiency and, where appropriate, the use of local building materials; and provisions for the production of renewable energy such as wind power, or solar thermal or solar photo voltaic installations. Upon approval, the details shall be incorporated into the development as approved.

Reason: In the interest of promoting energy efficiency and sustainable development; and to ensure that these details are approved before works commence.

- 2.5 The application proposes to change the wording of condition 12 to the following (again, I have emboldened the text that is proposed to be altered for ease of reference):

No development shall take place (**save for (i) the vehicular access to A2 Fox Hill; (ii) the emergency access to Peel Drive; (iii) the landscape buffer between housing and countryside gap and (iv) the layout, planting, biodiversity enhancement and management of the countryside gap**) until details have been submitted to, and approved in writing by the Local Planning Authority, which set out what measures will be taken to ensure that the development incorporates sustainable construction techniques such as rainwater harvesting, water conservation, energy efficiency and, where appropriate, the use of local building materials; and provisions for the production of renewable energy such as wind power, or solar thermal or solar photo voltaic installations. Upon approval, the details shall be incorporated into the development as approved.

Reason: In the interest of promoting energy efficiency and sustainable development; and to ensure that these details are approved before works commence.

3. CONSULTATIONS

- 3.01 **Bapchild Parish Council** object to the application and comment *“We would also point out the client has applied to change the clause relating to disposal of foul water. This must be resisted because as shown in the attached letter from Southern Water the protection of the drinking water aquifer and disposal of effluent needs to be fully understood.”*

- 3.02 **Southern Water** have stated that they *“have no objection to the Non Material Amendment submitted by the applicant. The comments in our response dated 26/08/2014 remain valid.”* [For clarity the letter from Southern Water is provided at Appendix 1]
- 3.03 The Council’s **Climate Change Officer** comments as follows: *“I am ok with this. It isn’t a change to the actual condition, just a change in the sequencing. The conditions don’t need to be achieved ahead of the infrastructure works.”*

4. BACKGROUND PAPERS AND PLANS

- 4.1 The agent has submitted a covering letter setting out that Section 96A of the Town and Country Planning Act 1990 allows the removal, alteration or imposition of conditions if the Local Planning Authority is satisfied that the change is non material. The covering letter goes on to set out that as the works to the elements of the scheme that have detailed consent do not entail any works to the foul water network (condition 9) and are not relevant to the sustainable construction techniques (condition 12) then it follows that altering the timings as to when the details are required to be submitted and approved is non material.

5. APPRAISAL

- 5.1 As referred to in the agent’s covering letter and subsequently in paragraph 4.1 above, I firstly refer Members to Section 96A of the Town and Country Planning Act 1990 which states the following:
- (1) *“A local planning authority in England may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material.*
 - (2) *In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.*
 - (3) *The power conferred by subsection (1) includes power—*
 - (a) *to impose new conditions;*
 - (b) ***to remove or alter existing conditions.*** [my emphasis]
- 5.2 As a result of the above, it is clear from the wording of the relevant section of the Act that it is possible to alter existing conditions by virtue of a non material amendment application.
- 5.3 As to the question of whether the amendment sought is non-material, I refer to the Planning Practice Guidance which states that *“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. 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.”*
- 5.4 I believe it is important to note that the planning permission granted under 14/501588/OUT, under which condition 9 and 12 were imposed, gave detailed consent to (i) vehicular access to A2 Fox Hill; (ii) emergency access to Peel Drive; (iii) landscape buffer between housing and countryside gap and (iv) layout, planting, biodiversity

enhancement and management of countryside gap and outline consent for the dwellings and retail units / community facilities.

- 5.5 In this case, it must be assessed as to whether altering the conditions, in effect to allow for development to commence on those details listed above which have detailed consent, prior to approving the details of foul water disposal and sustainable construction techniques would have a material impact. In relation to this, I firstly take into consideration that the conditions would be solely related to the elements of the scheme which benefit from outline consent. As such, allowing development to commence on those elements of the scheme which have detailed consent would have no bearing on the details required by these conditions.
- 5.6 Further to the above, any application to discharge these conditions would require the views of Southern Water and the Council's Climate Change Officer. As a result of this I have considered it sensible to obtain their views on this amendment. As Members can see from the consultations section above, neither consultee is raising an objection. In my view, the Climate Change Officer's comments summarise the situation quite succinctly insofar as this is not changing the requirements of the conditions or the need to satisfy them, it is simply changing the timings of when this needs to be done by.
- 5.7 I do note the comments of the Parish Council and firstly comment that protection of the aquifer would largely be a matter for the Environment Agency rather than Southern Water. However, along with the Parish Council I also consider that details relating to foul water are of fundamental importance. However, this application does not alter the requirement for details to be submitted and approved by the Local Planning Authority in relation to this matter. As set out above, this application is seeking to allow development to commence upon those matters which do not require disposal of foul water or sustainable construction techniques. However, these details will still need to be submitted and considered acceptable before works on those matters to which these conditions relate (namely the housing and retail / community facilities) can begin. On this basis I also recommend that words clarifying this are added into the reasons for the condition.

6. CONCLUSION

- 6.1 The proposed alteration to the wording of these conditions will still require satisfactory details to be submitted in respect of disposal of foul water and sustainable construction techniques, ahead of those elements of the scheme to which these details will relate. As such, the amendment is simply altering the timing of when these details will be required. Therefore, on this basis, and taking into account the comments of Southern Water and the Council's Climate Change Officer I believe that the alteration would have no material bearing on the scheme in respect of either the disposal of foul water or sustainable construction techniques. As a result I am of the opinion that the amended wording of conditions 9 and 12 as proposed above would constitute a non material amendment. I therefore recommend approval of the application.

7. RECOMMENDATION

Under the provisions of Sec. 96A of the Town and Country Planning Act 1990, it is considered that amending the wording of condition 9 and 12 imposed on planning permission 14/501588/OUT constitutes a non material amendment to planning permission 14/501588/OUT. The amended conditions read as follows:

- 9) Prior to the commencement of the development (save for (i) the vehicular access to A2 Fox Hill; (ii) the emergency access to Peel Drive; (iii) the landscape buffer between housing and countryside gap and (iv) the layout, planting, biodiversity

enhancement and management of the countryside gap) hereby approved, full details of the method of disposal of foul water shall be submitted to and approved by the Local Planning Authority. The approved details shall be implemented before the first use of the development hereby permitted.

Reason: In order to prevent pollution of water supplies and in order to prevent localised flooding; and to ensure that these details are approved before works on the relevant part of the scheme commence.

- 12) No development shall take place (save for (i) the vehicular access to A2 Fox Hill; (ii) the emergency access to Peel Drive; (iii) the landscape buffer between housing and countryside gap and (iv) the layout, planting, biodiversity enhancement and management of the countryside gap) until details have been submitted to, and approved in writing by the Local Planning Authority, which set out what measures will be taken to ensure that the development incorporates sustainable construction techniques such as rainwater harvesting, water conservation, energy efficiency and, where appropriate, the use of local building materials; and provisions for the production of renewable energy such as wind power, or solar thermal or solar photo voltaic installations. Upon approval, the details shall be incorporated into the development as approved.

Reason: In the interest of promoting energy efficiency and sustainable development; and to ensure that these details are approved before works on the relevant part of the scheme commence.

The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

