

<b>2.3 REFERENCE NO – 21/502533/NMAMD</b>			
<b>APPLICATION PROPOSAL</b>			
Non-material amendment: Internal and external changes to Block F - see covering letter dated 10 May 2021 for full details (relates to original application ref: 18/505151/REM).			
<b>ADDRESS</b> Land at Stones Farm The Street Bapchild Kent ME9 9AD			
<b>RECOMMENDATION</b> Approve			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The proposed amendments to one building within a scheme which currently benefits from reserved matters approval for 310 dwellings and 650sqm of neighbourhood shopping / community facilities are considered to be non-material.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Parish Council Objection			
<b>WARD</b> West Downs	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b>	Hyde New Homes
	Bapchild	<b>AGENT</b>	Mr Julian Moat
<b>DECISION DUE DATE</b>	<b>PUBLICITY EXPIRY DATE</b>		
10/06/21	N/A		

### Relevant 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      Decision Date: 22.12.2017

18/505151/REM

Approval of Reserved Matters for mixed-use development relating to appearance, landscaping, layout and scale of 310 dwellings and 650sqm of neighbourhood shopping/community facilities pursuant to outline planning permission 14/501588/OUT

Approved      Decision Date: 29.05.2020

### 1. DESCRIPTION OF SITE

- 1.1 In its entirety, the site extends to 33.4ha and lies immediately adjacent to the existing built up edge on the eastern side of Sittingbourne. The part of the site which benefits from reserved matters consent occupies, in broad terms, the south-western part of the wider site and extends to approximately 11 hectares.

- 1.2 The site as a whole 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 to the north and the Tonge Conservation Area to the east.
- 1.3 The part of the site to which this application relates would, when constructed, be located relatively close to the main access from the A2 (which has already been constructed). The approved details of this particular building (known as Flat Block F) show it situated on the north western side of what the previous application details have called ‘Stones Square’.

## **2. PROPOSAL**

- 2.1 This application seeks confirmation as to whether the following amendments, to ‘Flat Block F’, as approved under the reserved matters consent as referenced above, can be considered as non-material:
  - Opening up and levelling of the entire ground floor retail unit within Block F in order to form a single retail unit;
  - Re-location of both residential stair core entrances to serve residential apartments on upper floors of the building;
  - Changes to retail shop front fenestration and openings at Ground Floor level to suit single retail unit configuration.

- 2.2 The submitted details confirm that the overall scale and footprint of this building would remain unchanged.

## **3. CONSULTATIONS**

- 3.1 As this is an application for a non-material amendment and not an application seeking planning permission, the existing provisions related to statutory consultation and publicity do not apply. In addition the Planning Practice Guidance states that “*As by definition the changes sought will be non-material, consultation or publicity are unlikely to be necessary.*”
- 3.2 Having said the above, Bapchild Parish Council have commented on the application (as is their right to do so) and commented as follows (copied verbatim including highlighted text):

*“We have noted the above planning application to amend the outline approval 14/501588/OUT given on 22<sup>nd</sup> December 2017. The original permission encompassed the following elements to be developed at Stones Farm, Bapchild, particularly a neighbourhood shopping area.*

*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.*

*The Officers Report to the Planning Committee 28th May 2020 stated.*

*3. Neighbourhood Shopping Area: The Reserved Matters planning application complies with the outline consent in terms of location and quantity of commercial/community facilities, and will be built to ‘shell and core’ to ensure the residential above is delivered; and it will be marketed in due course to fulfil the requirements of the S106;*

*The attached letter from Chartway Group dated 10th May 2021 is requesting the enlargement of a ground floor unit to make a bigger single retail area, without any explanation for what is the intended final use of this floorspace.*

*However, there is an indication on the Hyde Housing website that the developer might be working with the Cooperative Group to open a new food retail outlet.*

*If this assumption is correct the Parish Council would ask for this application to be considered by the full planning committee for the following reasons.*

- *If a larger unit is created, then the retail area might become a destination, serving a wider area rather than the original intent of providing services to the local neighbourhood.*
- *A national retailer could have a negative effect on the existing traders in the village, the Budgen Convenience Store (Bapchild Service Station) and the Fruit Stall are all established local businesses. These retail shops are well used and can be easily accessed by most villagers without the need to cross the A2 main road.*
- *Larger traffic volumes could be generated if this application were approved because rather than Stones Farm residents walking to their neighbourhood shops the impact of increased car journeys by shoppers visiting from a wider geographical area could have a negative impact on the local environment.*

*The Parish Council recently held a site meeting with Councillor Bonney and County Councillor Lehmann to review the severe traffic congestion at peak hours through the village.*

*If Swale Council are minded to grant this application we would request the current Traffic Modelling Data and Travel Plans recorded in 2014 are revalidated to fully understand the full impact of this proposal.*

***Continuous Traffic Queue Fox Hill back towards Teynham 08.10 Hours 14th May 2021”***



#### 4. BACKGROUND PAPERS AND PLANS

- 4.1 The agent has submitted a Covering Letter setting out the changes which are summarised in the 'Proposals' section above and also stating the following:

*"Please note that the overall previously approved scale, height and position of Block F remains fundamentally the same as previously approved by 18/505151/REM; this is demonstrated by the red dashed outline on the submitted drawings which compare the changes back to the original planning approval baseline. Whilst the residential apartment entrances have been reconfigured as part of the changes to the ground floor retail unit, the same number and size of s106 affordable rented apartments remain within Block F and therefore do not make any changes to the delivery of affordable housing within the scheme."*

#### 5. APPRAISAL

- 5.1 I firstly refer Members to Section 96A of the Town and Country Planning Act 1990 which states the following:

*"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.*

*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.*

*The power conferred by subsection (1) includes power—*

*to impose new conditions;*

*to remove or alter existing conditions."*

- 5.2 Although the above wording relates to a change to any 'planning permission', in this case, it is noted that the amendment is proposing a change to the reserved matters consent, which in itself is not a planning permission. However, a recent Court of Appeal

decision (*R (Fulford Parish Council) v York City Council [2019] EWCA Civ 1359*) confirmed that S.96A can be used to alter a reserved matters approval and as such I will continue on this basis.

- 5.3 As to whether the amendments sought in this case are 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 In this specific context, it is important to note that the reserved matters consent relates to 310 dwellings and 650sqm of neighbourhood shopping/community facilities. The proposed alterations as described above are related to a part of a single building and in terms of the amendments which will be externally visible are restricted to changes to fenestration, essentially altering the position of windows and doors on the ground floor of this building. As such, new features will not be added to the building and I consider the amendments to be non-material.
- 5.5 The internal alterations, as a result of the entrance doors moving position, also require an alteration to the position of the internal stairwells. This then consequently requires an alteration to the layout on the first and second floor of the building. However, this essentially relates to part of the internal layout being flipped, with the stairwell now proposed to be located on the opposite side of the affected units. The scale of the units in question remain unchanged and this amendment in my view has no material impact.
- 5.6 The internal alterations also relate to the removal of internal walls within the 650sqm of neighbourhood shopping / community facilities. The approved drawings show the floorspace divided into units. However, of fundamental importance is that the overall floorspace which has been approved (650sqm) is not altering. There is no condition on either the planning permission or the reserved matters approval controlling the subdivision of the units and therefore the removal of the internal walls, and the effect of this in potentially allowing a single occupant is not a material consideration. I note the Parish Council's comments regarding the possibility of a particular operator trading from the site, however, the reserved matters consent controls the potential uses. This application seeks no change to these uses (or the hours of use) and the planning process has no control over specific commercial operators. In this case, the consideration which needs to be undertaken is whether the changes themselves are non-material. On the basis of the above discussion I consider this to be the case.
- 5.7 I also note that the Parish Council raise concern regarding the impact upon existing local retailers. However, the impact of the floorspace has already been approved by virtue of the grant of the original planning permission and to reiterate comments made above, this proposal is not seeking to increase the floorspace.
- 5.8 In addition, the Parish Council have also referred to the traffic data, considered as part of the original planning application, being reassessed. I am aware that this is a continuing ambition of the Parish Council, however, for the avoidance of doubt, and as confirmed to the Parish Council on a number of occasions, the traffic assessment will

remain valid all the while the planning permission remains extant. As a result, it is my view that retail or traffic impacts do not materially affect how this application for non-material amendments should be considered.

## **6. CONCLUSION**

- 6.1 In conclusion, the amendments as proposed do not in my view materially impact on the scheme as a whole. The specific block in question retains commercial units at ground floor level with residential units above. The matters raised by the Parish Council are noted but in my view are not relevant to the assessment which needs to be considered in this case. As a result I am of the opinion that the amendments sought are non-material and I recommend approval of the application.

## **7. RECOMMENDATION**

Under the provisions of Section 96A of the Town and Country Planning Act 1990, it is considered that the amendments as shown on drawings CON594 001; CON594-002; CON594-003; CON594-004 constitute non-material amendments to reserved matters approval 18/505151/REM.

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 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.

