

Case Officer: Suzanne Taylor

Recommendation: Approval

Applicant: Cala Cotswolds Ltd and Desiman 2 Ltd

Proposal: To change the wording of Conditions 2, 4, 7, 8, 9, 10, 11, 13, 14, 18 and 36 :- - Remove the requirement for the first phase RM application to be a "Residential" RM (Condition 2) - To tie commencement of development to the first phase of the development rather than the first "Residential" phase (condition 4) - Change the timing of the submission of details required to discharge conditions 7, 8, 9, 10, 11, 13, 14, 18 and 36 - To allow subsequent variations to any approved Phasing Plan to be submitted to and approved by the LPA (Condition 7) (proposed as non-material amendment to 14/02121/OUT)

Expiry Date: 19 December 2022

Extension of Time: No

1. APPLICATION SITE AND APPROVED DEVELOPMENT

- 1.1. The application site is situated to the north west of Bicester, north of Middleton Stoney Road and west of Howes Lane and it forms part of the wider NW Bicester Eco Town area within the extent of the site allocated by Policy Bicester 1. The land sits detached from the Western extent of the town and is separated from it by Howes Lane and a parcel of land also part of the allocated site, which benefits from planning permission and on which commercial development has been provided. A property called Lovelynch House sits outside the site boundary but is within the overall allocated site and it is a private residence. The land extends to approximately 90.3ha and is currently agricultural land divided by field hedgerows.
- 1.2. Outline planning permission was granted by 14/02121/OUT for 1700 houses, including affordable housing, supporting infrastructure including a primary school, non-residential uses and open space. The development is proposed to meet true zero carbon standards. All matters are reserved. A previous NMA (ref: 22/02375/NMA) has also been approved which allowed the re-wording of conditions 7-11 to allow them to be complied with either prior to or alongside the submission of the first reserved matters application rather than only prior to.

2. DESCRIPTION OF PROPOSED AMENDMENT(S)

- 2.1. This application seeks permission for the re-wording of Conditions 2, 4, 7, 8, 9, 10, 11, 13, 14, 18 and 36 to allow the removal of the requirement for the first phase RM application to be a "Residential" RM (Condition 2); to tie the commencement of the development to the first phase rather than the first "Residential" phase (condition 4); to change the timing of the submission of details required to discharge conditions 7, 8, 9, 10, 11, 13, 14, 18 and 36; and to allow subsequent variations to any approved Phasing Plan to be submitted to and approved by the LPA (Condition 7).
- 2.2. See section 5. Appraisal below for more details.

3. RELEVANT PLANNING HISTORY

- 3.1. The following planning history is considered relevant to the current proposal:
- 3.2. 14/02121/OUT – Development to provide up to 1, 700 residential dwellings (Class C3), a retirement village (Class C2), flexible commercial floorspace (Classes A1, A2, A3, A4, A5, B1 and C1) social and community facilities (Class D1), land to accommodate one energy centre and land to accommodate one new primary school (up to 2FE) (Class D1). Such development to include provision of strategic landscape, provision of new vehicular, cycle and pedestrian access routes, infrastructure and other operations (including demolition of farm buildings on Middleton Stoney Road). Permitted.
- 3.3. 22/02375/NMA - To change the wording of Conditions 7-11 of application reference 14/02121/OUT to include 'Prior to or alongside the submission of the first application for approval of reserved matters' in place of the words 'Prior to the submission of the first reserved matters' on each of the noted conditions and update to the relevant condition title. (Proposed as non-material amendment to 14/02121/OUT). Approved.

4. PUBLICITY AND CONSULTATION

- 4.1. There is no statutory requirement to consult on, or publicise, applications seeking approval for non-material amendments to an existing planning permission.

5. APPRAISAL

- 5.1. The key issue for consideration in this case is whether the proposed change(s) can be accepted as non-material; there is no consideration of the planning merits of the proposed changes.
- 5.2. Section 96A of the Town and Country Planning Act 1990 (as amended) states that: "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". It is also stated that: "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".
- 5.3. The National Planning Practice Guidance 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". The judgement on materiality in any particular case is one of fact and degree, also taking into account the likely impacts of the amendment. Materiality is considered against the development as a whole, not just part of it. The benchmark for forming the judgement on materiality is always the original permission.
- 5.4. Condition 2 would be re-worded as follows to delete 'residential':

In the case of the reserved matters, application for approval shall be made for the first residential phase of development not later than the expiration of three years beginning with the date of this permission.
- 5.5. It is acknowledged that that there is no legislative requirement for an outline planning permission to specify the nature of the first RM application and this would allow the developer the flexibility to bring forward an 'infrastructure only' first phase RM application.

- 5.6. Condition 4 would be re-worded as follows to delete 'residential':

The development to which this permission relates shall be begun not later than the expiration of two years from the approval of the first ~~residential~~ phase reserved matter and for all subsequent phases two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved for that phase.

- 5.7. This would make condition 4 consistent with condition 2.

- 5.8. Condition 7 (already amended by NMA 22/02375/NMA) would be re-worded as follows to allow the phasing plan to be submitted alongside any RM for the first phase of the development and to allow subsequent amendments to be made to the phasing plan:

Prior to or alongside the submission of ~~the first~~ any application for approval of reserved matters for the first phase of development, a phasing plan covering the entire site the subject of this application, shall be submitted to and approved in writing by the Local Planning Authority prior to the determination of the ~~first~~ reserved matters application for the first phase. Thereafter each reserved matters application shall refer to a phase, phases, or part thereof identified in the approved phasing plan and development shall proceed in accordance with the approved phasing. Any variations to the approved phasing plan shall be submitted to and approved in writing by the LPA.

- 5.9. The condition does not currently allow for any alternative phasing plan to be submitted and approved and means that it does not need to be submitted alongside the first RM application (already made by Countryside and therefore the trigger has been passed). It also removes the tie between the submission of the phasing plan and the first RM and would allow the phasing plan to be submitted alongside the first phase application. The new wording would ensure that LPA still retains control over the phasing of the development whilst providing future flexibility to amend the phasing if circumstances require it.

- 5.10. Condition 8 (already amended by NMA 22/02375/NMA) would be re-worded as follows to allow the submission of an agreed infrastructure only application without triggering the need to submit a Masterplan and Design Code (should that be proposed):

Prior to or alongside the submission of ~~the first~~ any application for approval of reserved matters for the first phase of the development apart from where the first phase relates to an agreed infrastructure only phase (and other than on the area annotated as 'Other Uses' on Land Use Parameter Plan 4 drawing number 592-PL-103 Rev K where a Masterplan has been approved for that area pursuant to condition 9), a site wide Masterplan and Design Code shall be submitted to and approved in writing by the Local Planning Authority prior to the determination of ~~the first~~ any reserved matters application for the first phase of the development apart from where the first phase relates to an agreed infrastructure only phase. The Masterplan and Design Code shall set out the urban design approach for the site to include a regulating plan and supporting information to include:

- Details to provide continuity with adjacent development
- A detailed masterplan for the area fronting the Middleton Stoney Road annotated as 'Other Uses' on Land Use Parameter Plan 4 drawing number 592-PL-103 Rev K showing the location of each of the land uses
- Key approaches to deliver sustainable development that as a minimum meets the Eco Town PPS standards
- The identification of Character areas and for each, the built form and green

- spaces to include their key features, density, block layout and principles, structure and permeability*
 - Movement network and principles of streetscape including access locations, hierarchy, street type, form and design, cross sections, surface materials and landscaping, cycleways, footways, crossing points, street furniture, bus routes and stop locations*
 - Parking strategy including car and cycle parking standards and approach for residential and non-residential uses*
 - Public realm*
 - Building heights, scale, form, design features materials, architectural details and frontages*
 - Boundary treatments*
 - Key views, vistas, landmarks*
 - Landscape character, landscape types, green infrastructure, amenity spaces, public open space, play areas including their distribution, existing trees and retained hedges and biodiversity measures*
 - Provision and details of buffers to retained hedgerows and dark corridors for biodiversity*
 - Legibility and diversity of built form and landscape*
 - Landscape and boundary treatment principles for the buffer surrounding Himley Farm*
 - Drainage including sustainable urban drainage features*
 - Adaptability*
- All reserved matters applications and the development shall thereafter be carried out in accordance with the principles of the approved Masterplan and Design Code.*

- 5.11. This new wording would make Condition 8 consistent with Condition 7 and allow an infrastructure only phase to be brought forward without triggering the need to submit a Design Code or agree the detailed residential layout and architectural principles. In doing so it is noted that the LPA can maintain control of the extent of Phase 1 via Condition 7 to ensure that this would not prejudice the way that the development is brought forward prior to the approval of the Masterplan and Design Code.
- 5.12. The applicants had originally suggested that Conditions 8 (and 9 below) be re-worded to refer to “the first phase of the development that includes the construction of any new buildings”. However, there was some concern that this could potentially allow for the submission of one or more RMs which, though not including new buildings, could cover more extensive elements of the scheme (such as all the green infrastructure or road layout). This could prejudice the way the development comes forward instead of allowing full consideration via the Design Code and Masterplan. The replacement of this wording with “*for the first phase of the development apart from where the first phase relates to an agreed infrastructure only phase*” makes it clearer that the LPA will need to agree the extent of any ‘infrastructure only first phase’ (in accordance with condition 7) thereby reducing any potential conflicts with the design principles for the development.
- 5.13. For the same reasons Condition 9 (already amended by NMA 22/02375/NMA) would be re-worded as follows to allow an infrastructure only phase to come forward without triggering the need for a Masterplan to be submitted and approved (should that be proposed):

Prior to or alongside the submission of ~~the first~~ any application for approval of reserved matters for the first phase of the development apart from where the first phase relates to an agreed infrastructure only phase and in the event that the Design Code has not been approved, a detailed masterplan for the area fronting the Middleton Stoney Road annotated as ‘Other Uses’ on Land Use Parameter Plan 4 drawing number 592-PL-103 Rev K, shall be submitted to and approved in writing by

the Local Planning Authority prior to the determination of ~~the~~ any ~~first~~ reserved matters application for the first phase of the development apart from where the first phase relates to an agreed infrastructure only phase. The masterplan shall show the location of each of the land uses, access and parking locations, key frontage and public space conditions and landscape principles. All reserved matter applications for the area covered by the Masterplan approved by this condition 9 shall be made and the development shall thereafter be carried out in accordance with the principles of the approved Masterplan.

- 5.14. Condition 10 (already amended by NMA 22/02375/NMA) would be re-worded as follows so that the submission of the Bio Diversity Strategy is only triggered by a RM application for Phase 1:

Prior to or alongside the submission of ~~the first~~ any application for approval of reserved matters for phase 1, a Bio Diversity Strategy for the site shall be submitted to and approved in writing by the Local Planning Authority prior to the determination of the ~~first~~ reserved matters application for phase 1. Each reserved matter application shall be accompanied by a statement setting out how the proposed development will contribute to achieving the Bio Diversity Strategy and net biodiversity gain. The development shall be carried out in accordance with the approved Bio Diversity Strategy.

- 5.15. This would bring condition 10 into line with condition 7.

- 5.16. Similarly, Condition 11 (already amended by NMA 22/02375/NMA) would be re-worded as follows so that the submission of a surface water drainage scheme is only triggered by a RM application for Phase 1:

Prior to or alongside the submission of ~~the first~~ any application for approval of reserved matters for phase 1, a full surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, shall have been submitted to and approved in writing by the local planning authority prior to the determination of any ~~the first~~ reserved matters application for phase 1. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall also include:

- Discharge Rates*
- Discharge Volumes*
- Sizing of features - attenuation volume*
- Infiltration in accordance with BRE365*
- Detailed drainage layout with pipe numbers*
- SUDS - Swales, Ponds, Permeable Paving, Filter Strips, Rain Gardens*
- Network drainage calculations*
- Phasing*

- 5.17. Conditions 13, 14, 18 and 36 would all be reworded as follows so that they are only triggered if the phase includes new buildings:

- 5.18. Condition 13:

Each reserved matters application that includes the construction of any new buildings shall be accompanied by a statement setting out how the design of buildings and the layout has taken account of future climate impacts, as identified in TSB research 'Future Climate Change Risks for NW Bicester', or any more recent assessment that has been published, and how the proposed development will be resilient to overheating, changing rainfall patterns and higher intensity storm events.

5.19. Condition 14:

Each reserved matters application for a phase that includes the construction of any new buildings shall consider whether any area of that phase is subject to elevated levels of noise, principally from road traffic sources as set out in the Environmental Statement. Any dwellings that are to be constructed in any affected area within that phase shall be identified and confirmation provided that they will be designed and constructed in such a manner that they will contain elements of sound insulation that will ensure that the internal noise levels contained within BS 8233:2014 Table 4 can be achieved.

5.20. Condition 18:

Each reserved matters application for a phase that includes the construction of any new buildings shall be accompanied by a Travel Plan setting out how the development will enable at least 50 per cent of trips originating within the development to be made by non-car means, with the potential for this to increase over time to at least 60 per cent, in accordance with the Eco Towns PPS ET 11.2 (a). The Travel Plan shall be submitted to and agreed in writing by the Local Planning Authority prior to any occupations within the relevant phase and the actions of the Travel Plan shall thereafter be delivered in accordance with the Travel Plan.

5.21. Condition 36:

Prior to the commencement of ~~the~~ any development in a phase that includes the construction of any new buildings, details of the strategy to work towards water neutrality, in accordance with the Eco Towns PPS shall be submitted to and approved in writing by the Local Planning Authority. Each reserved matters application that includes the construction of any new buildings shall demonstrate how it contributes to and is in accordance with the approved strategy.

6. CONCLUSION

6.1. The proposal is considered to be non-material and the application is therefore recommended for approval.

6.2. It should be noted that whilst the LPA would not normally want to delay the submission of a Masterplan and Design Code until after the submission of a Reserved Matter application there are particular circumstances in this case which would justify a pragmatic approach to facilitate the delivery of this development. The submission of a RM is required by 30 January 2023 to accord with condition 2 of the outline. Rather than rush the submission and approval the Masterplan and Design Code in order to comply with this time limit and prevent the outline permission from lapsing, this will allow thorough consideration and development of the overriding design concepts for the scheme. Furthermore, it is noted that the LPA will retain control over the approval of the Phasing Plan which will ensure that only a discrete infrastructure element can be approved prior to the approval of the fundamental design principles which would not significantly prejudice the design and layout of the development. It is also noted that the applicant is already in the process of preparing the Masterplan and Design Code documents and that there appears to be no intentional delay in agreeing these principles or in the delivery of the scheme.

Continued...

Case Officer: Suzanne Taylor

DATE: 19 December 2022

Checked By: Caroline Ford

DATE: 19/12/2022
