

**Case Officer:** Tom Webster

**Recommendation:** Approval

**Applicant:** Peveril Securities Ltd

**Proposal:** As a result of Distribution Network Operators requirements and to facilitate the preferred cable route, it is proposed to narrow the width of the access road and add security gates. The timber knee rail fence has also been removed (proposed as non-material amendment to 23/01711/REM)

**Expiry Date:** 20 May 2024

**Extension of Time:** No

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## 1. APPLICATION SITE AND APPROVED DEVELOPMENT

- 1.1. The application site comprises an irregular shaped parcel of land that forms part of a wider piece of arable land, which has been allocated in the Cherwell Local Plan 2015 as 'Bicester 4' for the creation of an office park.
- 1.2. The application site is adjacent to a Tesco superstore, and Lakeview Drive, a private road that provides access to the wider Bicester 4 site and the new Tesco store. A combination of trees, hedgerows, and woodland form the eastern boundaries together with a network of drainage ditches. An existing ditch passes through the site from Lakeview Drive and feeds a pond just beyond the southern boundary of the site.
- 1.3. To the east of the site lies Langford Brook and beyond this the sewage treatment works. To the south lies the remainder of the Bicester 4 Site (almost 13.1ha of arable land). The land between the eastern boundary of the site and Langford Brook is all within the floodplain.
- 1.4. The site sits outside of a conservation area, it is not near any listed buildings and is inside flood zone 2.

## 2. DESCRIPTION OF PROPOSED AMENDMENT(S)

- 2.1. This application seeks confirmation that the following amendment to planning permission ref. 23/01711/REM can be considered as non material:
- 2.2. Replacing drawings F101 Rev A (Proposed Site Layout) and F102 Rev B (Proposed Landscaping Plan), secured under condition 1 with the following revised drawings:
  - F101 Rev C - Proposed Site Layout
  - F102 Rev D – Proposed Landscaping Plan
- 2.3. In their covering letter, dated 18<sup>th</sup> April 2024, the applicants' planning agent explained that, *"since the grant of Planning Permission Reference: 23/01711/REM, the Applicant's design team have been reviewing matters through the ongoing design process and as a result of Distribution Network Operators requirements and to facilitate the preferred cable route, it is proposed to narrow the width of the*

*access road and add security gates. The timber knee rail fence has also been removed. “*

- 2.4. Both revised plans indicate that the width of the access road would be reduced from 7.3m down to 5m.

### **3. RELEVANT PLANNING HISTORY**

- 3.1. The following planning site history is relevant to this application:

- 3.2. Land North Of Bicester Avenue Garden Centre Oxford Road Bicester

*23/01711/REM – Reserved matters approval for 17/02534/OUT - Proposed construction of a sub-station with all associated works – Granted planning permission on the 17 November 2023*

*17/02534/OUT - OUTLINE - The erection of a business park of up to 60,000 sq.m (GEA) of flexible Class B1(a) office / Class B1(b) research & development floorspace; associated vehicle parking, landscaping, highways, infrastructure and earthworks – Granted planning permission on the 6 May 2020 and amended by 23/01080/OUT.*

### **4. APPRAISAL**

- 4.1. Section 96A of the Town and Country Planning Act 1990 sets out 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.”

- 4.2. As to whether the amendment sought is non material I firstly refer to the Planning Practice Guidance which states that “There is no statutory definition of ‘nonmaterial’. 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.” (<https://www.gov.uk/guidance/flexible-options-for-planningpermissions#Making-a-nonmaterial-amendment>)

- 4.3. On the subject of a proposed change of description, I note the comments of Lord Justice Lewison, when presiding over a Court of Appeal case [Finney v Welsh Ministers & Ors (Rev 1) [2019] EWCA Civ 1868] which dealt with whether a S.73 application could as a result of the amendment, cause a change to the description of development. Although it was judged that it was outside the power of a S.73 application to change the description of the development, LJ Lewison in his ruling stated that S.96A is a potential route for the description of a development to be altered.

- 4.4. As a result of the above, it is clear in my view that it is within the powers of a S.96A application to amend the proposed site layout and proposed landscape plans which had been secured under condition 1 of 23/01711/REM. As such, the question that needs to be answered in terms of this application is whether the changes proposed in the revised plans listed above would be material.
- 4.5. During the course of this application, I sought the opinion of Oxfordshire County Council's Highways. The Highways officer, in his response (dated 13 May 20224), commented that whilst the revised plans notably reduces the width of the access road from 7.3m wide to 5m wide, he is comfortable that the sub-station shall not be attracting a substantial level of vehicular movements except the occasional operational/ maintenance trips.
- 4.6. Moreover, the Highways officer advised me that the likelihood of these trips being made by HGV's and large vehicles is low. His view is that for the occasional situation of a car needing to pass a large vehicle in opposite directions, he is confident that a 5m wide access road is sufficient to safely accommodate such a situation.
- 4.7. The applicants are also proposing to remove the timber knee rail fence and replace it with security gates. Presumably these security gates will be coloured the same green colour as shown on the Elevation drawing GAD-14 Rev 2 (Secured under Condition 1 of 23/01711/REM).
- 4.8. Consequently, my view is that the nature of the amendments being proposed to the Site Layout and Landscape Plan is very minor in nature and would not materially alter the layout, design, scale and siting of the development which are, in any event, controlled by condition 1 (Approved Plans) and the other conditions of the planning permission.
- 4.9. Therefore, the development as approved, with the exception being the revised Site Layout Plan and Landscape Plan, would remain unchanged and the proposed amendments would have no bearing on what is required to be delivered, or the specifics of how it is controlled.
- 4.10. On the basis of the above I am of the opinion that the amended Proposed Site Layout and amended Proposed Landscape Plans would constitute a non material amendment. Therefore, I recommend approval of the application.

## **5. CONCLUSION**

- 5.1. Under the provisions of Sec.96A of the Town and Country Planning Act 1990, it is considered that amending the Proposed Site Layout and Proposed Landscaping Plan as set out on the submitted plans, secured under condition 1 of reserved matters approval 23/01711/REM, constitutes a non-material amendment to planning permission 23/01711/REM.

Case Officer: Tom Webster

DATE: 17 May 2024

Checked By: Caroline Ford

DATE: 20 May 2024

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