

Case Officer: Linda Griffiths

Recommendation: Approve

Applicant: L&Q Estates

Proposal: To allow tree clearance works to be undertaken where directly necessary to facilitate the carrying out of the Earthworks Strategy as approved under condition 50 (C32) (proposed as non-material amendment to 14/01932/OUT)

Expiry Date: 6 December 2021

Extension of Time: No

1. APPLICATION SITE AND APPROVED DEVELOPMENT

1.1. This application relates to the larger part of the strategic housing allocation under Policy Banbury 17 of the adopted Cherwell Local Plan 2011-2031. Outline consent has been granted for this part of the site for up to 1,000 dwellings, plus primary school, local centre and other strategic infrastructure necessary to serve the new development. Pre-commencement conditions have already been discharged in respect of the initial construction works. Several reserved matters applications have been submitted relating to some of the strategic infrastructure. The Developer hopes to commence development on site early in 2022.

2. DESCRIPTION OF PROPOSED AMENDMENT(S)

2.1. This application seeks to amend the wording to condition 32 of the outline consent, which relates to the protection of existing trees and hedgerows within the development site except in connection with the new vehicular access to Bloxham Road, the approved link road or in connection with an approval of reserved matters. The amendment sought here is to enable the earthworks to be implemented, which have previously been agreed by condition rather than as a reserved matter.

3. RELEVANT PLANNING HISTORY

3.1. The following planning history is considered relevant to the current proposal:

14/01932/OUT – outline consent for up to 1,000 dwellings and associated facilities and infrastructure;

20/03702/REM – reserved matters for spine road;

21/00283/DISC – discharge of conditions relating to a new vehicular access to Bloxham Road; and

20/01162/DISC – discharge of condition 50 (preliminary earthworks).

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. However, the following comments have been received:
- 4.2. Objection from a nearby resident, who raises concerns that no plans or other information identifying the items affected have been publicised. Given the current focus on the value of trees etc in respect of their effect on climate, the resident suggested that was not good enough. No trees or hedges should be removed without specific permission and must be limited in extent with operations properly monitored to ensure compliance.
- 4.3. Responses are available to view in full on the Council's website, via the online Planning Register.

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 a part of it. The benchmark for forming the judgement on materiality is always the original permission.
- 5.4. This application is required in order to regularise the minor areas of tree/hedgerow clearance required to be undertaken as part of the site-wide earthworks strategy, which has already been approved under condition 50 of the outline consent. The areas in question relate to a small section adjacent to the loop road and adjacent to the southern boundary swale and will need to be undertaken prior to the bird nesting season next spring, to ensure L&Q can keep to their delivery programme. The amendment to this condition therefore seeks to add wording to the end of the condition, which will allow these clearance works to be undertaken in connection with the approved earthworks.
- 5.5. The amendment as proposed to this condition 32 is required to support the critical implementation programme and to ensure the delivery of housing on this site and relates only to two small sections of hedgerow.

6. CONCLUSION

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

Case Officer: Linda Griffiths

DATE: 1 December 2021

Checked By: Andy Bateson

DATE: 2nd December 2021
