

Case Officer: Linda Griffiths

Recommendation: Confirm NMA

Applicant: David Wilson Homes

Proposal: Non-Material Amendment to Condition 40 - condition states that non-residential buildings should meet BREEAM very good standard, however buildings such as changing rooms cannot be assessed under BREEAM. Therefore, the changing rooms will be constructed to meet Building Regulation Part L2 2021 instead.

Expiry Date: 24 March 2023

Extension of Time: No

1. APPLICATION SITE AND APPROVED DEVELOPMENT

1.1. The application relates to the strategic allocation under Policy Banbury 17 of the adopted Cherwell Local Plan 2011-2031. Outline consent was granted for this part of the site for up to 280 dwellings, with reserved matters also subsequently approved. Pre-commencement conditions have already been discharged and a number of dwellings are now built and occupied.

2. DESCRIPTION OF PROPOSED AMENDMENT(S)

2.1. The application seeks to amend the wording of condition 40 of the outline consent, which relates to BREEAM 'Very Good' standards for the proposed sports changing rooms. The application seeks to amend to construct the changing rooms to Part L of the building regulations.

3. RELEVANT PLANNING HISTORY

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

15/01326/OUT – outline consent for up to 280 dwellings and associated infrastructure;

19/00895/REM – reserved matters consent granted for 280 dwellings.

4. 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. BREEAM is an approach using a rating system to rate the sustainability of buildings whereas Part L of the Building Regulations sets the minimum standards for energy performance. Albeit Part L/SBEM will form part of the BREEAM rating assessment (relating to energy efficiency), the two are not directly comparable as BREEAM looks at the bigger picture of sustainability.
- 5.5. Having regard to the above, the applicant was requested to set out the justification for the request or an explanation for the proposed request in terms of what it means will be delivered in sustainability credentials, together with what had been advised by the applicant’s BREEAM assessor in this respect.
- 5.6. Further to the above, the applicant responded advising that BREEAM has been developed to assess the environmental performance of buildings that are designed, in whole or in part, for human occupation. Buildings that comprise only unoccupied spaces, such as multi-storey car parks, storage facilities and changing/wc blocks, which have no spaces occupied continuously for more than 30 mins, cannot undergo a stand-alone BREEAM assessment. The building in question is a small changing facility to serve a single football pitch only.
- 5.7. CDC Building Control department have given advice regarding the above and agree with the expressed position in this respect. The revised condition wording is therefore considered acceptable in respect of the changing facilities as proposed.

5. 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 March 2023

Checked By: Andy Bateson

DATE: 1st March 2023
