

Case Officer: Richard Greig

Recommendation: Approve

Applicant: Heyford Investments LLP

Proposal: Substitution of drawings to allow the removal of a Category C tree, referenced as T1158 on the previously approved landscaping and replacement planting (proposed as Non Material Amendment of 16/02446/F)

Expiry Date: 16 March 2023

Extension of Time: No

1. APPLICATION SITE AND APPROVED DEVELOPMENT

1.1. This application relates to land to the south of Camp Road, Upper Heyford wherein planning permission was granted under application reference 16/02446/F for a residential development, inclusive of 296 new dwellings, on a development parcel at the west end of Heyford Park known as Phase 9.

2. DESCRIPTION OF PROPOSED AMENDMENT

2.1. This application seeks a Non-material Amendment (NMA) to planning reference 16/02446/F.

2.2. The proposed NMA comprises two parts – (1) the removal of 1no 'category C' Silver Birch (ref: T1158) tree, located close to the western boundary of the site, adjacent to the bridleway; and, (2) the planting of 2no Field Maples trees to the north of T1158, as replacement for the tree being removed.

3. RELEVANT PLANNING HISTORY

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

Planning Application Ref: 16/02446/F:

- Erection of 296 residential dwellings (Use Class C3) comprising a mix of open market and affordable housing, together with associated works including provision of new and amended vehicular and pedestrian accesses, public open space, landscaping, utilities and infrastructure, and demolition of existing built structures and site clearance works.
- Approved 7 April 2020.

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. Having regard to the original permission, the development of 296 dwellings was permitted inclusive of a comprehensive landscaping scheme informed by a Tree Survey, Arboricultural Impact Assessment and Tree Protection Plan; and detailed planting proposals – in the interests of the visual amenities of the area and to ensure the creation of a pleasant environment for the development. The existing Silver Birch (ref: T1158) formed a part of the ‘pleasant environment’ to be created.
- 5.5. It is understood that a detailed engineering assessment has been undertaken wherein the applicants supporting submission states that the subject Silver Birch tree lies in *‘close proximity to extensive fixed surface infrastructure’*. The supporting submission goes on to highlight the route of the existing surface water sewer and the single potential alternative route to avoid the Silver Birch. However, it is stated that the alternative route considered was not feasible from a construction perspective as the substantial trench block required and diameter of surface water pipes would severely damage the roots of the Silver Birch in any case. As such, the removal is proposed.
- 5.6. The subsequent replacement trees (i.e. 2no Field Maples) would be planted just to the north of the Silver Birch, beyond the highlighted drainage easement area, to mitigate the potential loss.
- 5.7. Significantly, the intended ‘pleasant environment’ for the development, inclusive of a strong and meaningful landscaping scheme, would be retained and reinforced. The loss of the single Silver Birch would represent a minor change, having no tangible effect on the planning permission as originally granted, particularly with the replacement planting now proposed.

6. CONCLUSION

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

Case Officer: Richard Greig

DATE: 6 March 2023

Checked By: Andy Bateson

DATE: 7th March 2023
