

Case Officer: Saffron Loasby

Recommendation: Approve

Applicant: Hayfield Homes Construction Limited

Proposal: Changes proposed to the landscaping details, to replace the timber knee rail around the area of 'EM2 Standard General-Purpose Meadow Mixture' with a 1.0m high stock-proof timber post and rail fence, along the eastern edge of the development (proposed as non-material amendment to 22/00959/REM)

Expiry Date: 3 August 2023

Extension of Time: No

1. APPLICATION SITE AND APPROVED DEVELOPMENT

1.1. This outline application sought planning permission for a residential development of up to 40 dwellings. All matters were reserved for later approval apart from access, which required consideration under the above planning reference. The application was accompanied by a range of information, including technical assessments and an indicative layout to demonstrate that the development applied for can be accommodated. The subsequent Reserved Matters application proposed development comprising the construction of 40 mixed-tenure open market and affordable homes, with car parking and landscaping public open space, together with associated S106 obligations and S38 and S278 highway works. The 4- hectare site lies on land to the north side of Berry Hill Road, on the southern edge of Adderbury.

2. DESCRIPTION OF PROPOSED AMENDMENT(S)

- 2.1. The proposed change relates to the landscaping details, specifically to replace the timber knee rail around the area of 'EM2 Standard General-Purpose Meadow Mixture' with a 1.0m high stock-proof timber post and rail fence, along the eastern edge of the development (proposed as non-material amendment to 22/00959/REM).
- 2.2. This was originally approved under 19/00963/OUT, again in more detail under 22/00959/REM, again under a discharge of condition application 22/03437/DISC and later amended to consider a biodiversity enhancement under 23/01777/DISC.

3. RELEVANT PLANNING HISTORY

- 3.1. The following planning history is considered relevant to the current proposal:
- 3.2. 19/00963/OUT – Outline application for the erection of 40 homes, public open space and other infrastructure, with all matters reserved except access – Allowed at appeal (Ref: APP/C3105/W/20/3255419) 20 January 2020.
- 3.3. 22/00959/REM – Reserved matters approval for 40 dwellings, including appearance, landscaping, layout and scale pursuant to planning permission 19/00963/OUT – Approved 12 November 2022.

- 3.4. 22/03437/DISC - Discharge of Conditions 14 (arboricultural protection), 17 (landscaping), 18 (landscape management) and 20 (air quality assessment) of 19/00963/OUT (granted consent under appeal Ref: APP/C3105/W/20/3255419) – Permitted.
- 3.5. 23/01777/DISC - Discharge of Condition 11 (Biodiversity Impact Assessment) of 22/00959/REM – Permitted.

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. The scheme already benefits from an approved timber knee rail around the revised areas of EM2 General Purpose Meadow Mixture across the site. The proposed change would see the knee rail replaced with a 1m high stock proof timber post and rail fence.
- 5.5. The new fencing would complement the existing approved scheme and assist in continuing to protect the biodiversity enhancements across the site. The change would not raise any new issues and does not contradict previous agreements or amendments. All the proposed changes are within the site as defined by the site edged red.

6. CONCLUSION

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

Case Officer: Saffron Loasby

DATE: 13 February 2024

Checked By: Nathanael Stock

DATE: 14.02.2024
