

Case Officer: Laura Bell

Recommendation: Approval

Applicant: Albion Land

Proposal: Non-material amendment to 21/03177/F - Application to amend the wording of condition 8 to reflect the required Tree Protection and Retention Plan

Expiry Date: 14 August 2023

Extension of Time: No

1. APPLICATION SITE AND APPROVED DEVELOPMENT

- 1.1. Planning permission was granted in February 2023 (allowed on appeal) for a flexible employment development, (Use Classes E(g)(iii), B2 and/or B8) comprising 5 units within 3 buildings and associated parking and servicing, landscaping and associated works.

2. DESCRIPTION OF PROPOSED AMENDMENT(S)

- 2.1. A non material amendment is sought to vary the approved documents referenced in Condition 8 (Tree Protection) to reflect the latest proposals for the Site and which are consistent with the details which have been approved via discharge of conditions and the Section 278 process.

3. RELEVANT PLANNING HISTORY

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

Application: 21/03177/F	Appeal Allowed	15 July 2022
	(Against Refusal)	

Full planning application for employment development (Use Classes E(g)(iii), B2 and/or B8) comprising 5 units within 3 buildings and associated parking and servicing, landscaping and associated works

Application: 23/01029/DISC	Permitted	27 July 2023
-----------------------------------	-----------	--------------

Discharge of Condition 4 - (Construction Method Statement) of 21/03177/F

Application: 23/01040/DISC

Discharge of Condition 5 (Construction Environmental Management Plan) of 21/03177/F

Application: 23/01031/DISC Permitted 27 July 2023

Discharge of condition 6 (segregated pedestrian and cycle path) of 21/03177/F

Application: 23/01032/DISC

Discharge of Condition 7 (access details) of 21/03177/F
(APP/C3105/W/22/3304021)

Application: 23/01033/DISC

Discharge of Condition 9 - (route of service connections) of 21/03177/F

Application: 23/01034/DISC Permitted 7 July 2023

Partial discharge of Condition 10 (BREEAM 'Very Good') of 21/03177/F
(APP/C3105/W/22/3304021)

Application: 23/01035/DISC Permitted 30 June 2023

Discharge of Condition 26 - (acoustic fences) of 21/03177/F

Application: 23/01038/DISC

Discharge of Condition 32 (Framework Travel Plan) of 21/03177/F
(APP/C3105/W/22/3304021)

Application: 23/01205/NMA Permitted 1 June 2023

Vary the list of approved plans set out in Condition 2 to alter Unit 4's loading door arrangements to accommodate the operations of tenants (proposed as non-material amendment to 21/03177/F)

Application: 23/01271/DISC Permitted 30 June 2023

Discharge of Condition 11 (details of visibility splays) of 21/03177/F
(APP/C3105/W/22/3304021)

Application: 23/01857/DISC

Discharge of condition 13 (landscaping) of 21/03177/F

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, given the nature of the changes proposed, the Council's Arboricultural Officer has been consulted.
- 4.2. Responses are available to view in full on the Council's website, via the online Planning Register.
- 4.3. CDC Arboricultural Officer: No comments received.

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 submission has been made in response to the S278 process, which identified that OCC has a requirement for greater visibility for pedestrians at the pedestrian crossing on Howes Lane. In order to provide this, 6 metres of hedgerow along Howes Lane needs to be removed. The Tree Retention and Protection plan approved as part of condition 8 states the following:

No development shall take place until any existing trees or vegetation to be retained have been protected in accordance with the approved Tree Protection Plan drawing number 10706_P08 Rev A and Arboricultural Method Statement (TG Report No. 10706_R11a_RA_CW) dated 20 August 2021 unless otherwise agreed in writing by the Local Planning Authority. The barriers shall be erected before any equipment, machinery or materials are brought onto The Site for the purposes of development and shall be maintained until all equipment machinery and surplus material has been removed from The Site. Nothing shall be stored or placed within the areas protected by the barriers erected in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavations be made, without the written consent of the Local Planning Authority.

As such, the wording of the above condition needs to be amended to reflect the amended Tree Retention and Protection Plan.

- 0897-RFM-XX-00-DR-L-0005 P05 Tree Retention and Protection Plan
- 10706_R12_Aboricultural Technical Note_JP06072023

- 5.5 The changes are required in order to satisfy the highway safety requirements of the S278 agreement. They are relatively minor in nature, but in any case, the highway safety requirements are considered to outweigh any minor detriment to the visual amenities of the immediate locality.
- 5.6 The arboricultural technical note submitted confirms that the conclusions and protection measures of the approved arboricultural method statement remain the same.
- 5.6 As such, it is considered that the wording of condition 8 be amended as follows:

No development shall take place until any existing trees or vegetation to be retained have been protected in accordance with the approved Tree Retention and Protection Plan drawing number 0897-RFM-XX-00-DR-L-0005 P05, Arboricultural Technical Note ref: 10706_R12 JP06072023 both received 17 July 2023 and Arboricultural Method Statement (TG Report No. 10706_R11a_RA_CW) dated 20 August 2021 unless otherwise agreed in writing by the Local Planning Authority. The barriers shall be erected before any equipment, machinery or materials are brought onto The Site for the purposes of development and shall be maintained until all equipment machinery and surplus material has been removed from The Site. Nothing shall be stored or placed within the areas protected by the barriers erected in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavations be made, without the written consent of the Local Planning Authority.

6. CONCLUSION

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

Case Officer: Laura Bell

DATE: 18 September 2023

Checked By: Caroline Ford

DATE: 29 September 2023
