

Case Officer: Tom Webster

Recommendation: Approval

Applicant: Albion Land

Proposal: Variation to the description of development, removing the reference to number of units (proposed as non-material amendment to 22/02025/REM)

Expiry Date: 17 November 2023

Extension of Time: 1 December 2023

1. APPLICATION SITE

- 1.1. The application site is situated to the south of Bicester and forms a contained parcel of land 3.18ha in area and is positioned to the east of the A41, west of Wendlebury Road, north of an unnamed road leading to Chesterton and south of Shouler Way (which links Wendlebury Road to the A41/ Vendee Drive roundabout).
- 1.2. The site is an open grassland field and contains the unused slip way to the A41. The land is surrounded by mature hedgerows, except for the northern boundary and has greater levels of vegetation to the south of the site. The land is relatively flat with some variation across the site with levels increasing on the parcel to the south of the unused slip way to adjoin the unnamed road to Chesterton which itself rises to cross the A41 on a bridge.
- 1.3. To the north of the site is the Holiday Inn Express and to the north east is the Bicester Avenue Garden Centre. To the east of the site is a roundabout leading to an industrial park. To the south is open countryside (also including Bicester Trailer Park) and the site of the Alchester Roman Town Scheduled Ancient Monument is to the south east. To the west, beyond the A41 is the Bicester Park and Ride site and to the northwest is the residential led development at Kingsmere.

Constraints

- 1.4. The application site includes a public right of way which runs across the site in the south eastern corner between the unused slip way and the Wendlebury Road. The land might be contaminated and there is also some archaeological potential, particularly in the southern part of the site.
- 1.5. There are also drainage ditches close to the site and there is a Scheduled Ancient Monument (Alchester Roman Town) is to the south east of the site which gives the site an archaeological constraint.

2. DESCRIPTION OF PROPOSED AMENDMENT

- 2.1. This application seeks confirmation that the following amendment to planning permission ref. 22/02025/REM can be considered as non material:
- 2.2. Removal of the reference to 'up to 12' in the description of the development and insertion of the words 'up to' before the floorspace.
- 2.3. The description currently reads as follows with my added emphasis on the relevant wording:

Reserved Matters to 16/02586/OUT - Access, layout, scale, appearance and landscaping details for Phase 1B for up to 12 No knowledge economy units in Use Class E (former Use Class B) (14,972 sqm gross external area) with associated parking, landscaping, utilities and access.

- 2.4. The applicant has suggested the following description, with the removal of the wording as emphasised above, and contends that this would constitute a non material amendment:

Reserved Matters to 16/02586/OUT - Access, layout, scale, appearance and landscaping details for Phase 1B for knowledge economy units in Use Class E (former Use Class B) (up to 14,972 sqm gross external area) with associated parking, landscaping, utilities and access.

3. RELEVANT PLANNING HISTORY

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

*20/00293/OUT – Outline application (Phase 1B) including access (all other matters reserved) for up to 4,413 sqm B1 office space (47,502 sqft) GIA, up to 273 residential units (Use Class C3) including ancillary gym, approximately 177 sqm GIA of café space (Use Class A3), with an ancillary, mixed use co-working hub (794 sqm/] 8,550 sqft GIA), multi-storey car park, multi-use games area (MUGA), amenity space, associated infrastructure, parking and marketing boards - *Granted on the 1/4/2021**

*21/02723/OUT - variation of condition 16 (phasing plan) of 20/00293/OUT - To remove the requirement to deliver the mixed use co-working hub as part of the first residential phase – *Granted on the 12/10/2021**

*16/02586/OUT -Phase 1 of the proposed new business park ("Bicester Gateway") comprising up to 14,972 sq m (Gross External Area) of B1 employment based buildings, plus a hotel (up to 149 bedrooms), with associated infrastructure, car parking and marketing boards – *Granted on the 26/7/2017**

*22/02025/REM - Reserved Matters to 16/02586/OUT - Access, layout, scale, appearance and landscaping details for Phase 1B for up to 12 No knowledge economy units in Use Class E (former Use Class B) (14,972 sq m gross external area) with associated parking, landscaping, utilities and access– *Granted on the 11/11/2022**

4. APPRAISAL

4.1. Section 96A of the Town and Country Planning Act 1990 sets out the following:

(1) "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.

(2) 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.

(3) The power conferred by subsection (1) includes power—

(a) to impose new conditions;

(b) to remove or alter existing conditions."

4.2. As to whether the amendment sought is non material I firstly refer to the Planning Practice Guidance which 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 under section 96A of the Town and Country Planning Act 1990." (<https://www.gov.uk/guidance/flexible-options-for-planning-permissions#Making-a-nonmaterial-amendment>)

4.3. On the subject of a proposed change of description, I note the comments of Lord Justice Lewison, when presiding over a Court of Appeal case [Finney v Welsh Ministers & Ors (Rev 1) [2019] EWCA Civ 1868] which dealt with whether a S.73 application could as a result of the amendment, cause a change to the description of development. Although it was judged that it was outside the power of a S.73 application to change the description of the development, LJ Lewison in his ruling stated that S.96A is a potential route for the description of a development to be altered.

4.4. As a result of the above, it is clear in my view that it is within the powers of a S.96A application to alter the description of development. As such, the question that needs to be answered in terms of this application is whether the change described in the 'Proposal' section above would be material.

4.5. My view is that removing the reference to the number of units from the description would not materially alter the extant consent because the total sqm of employment floorspace, the layout, design, scale and siting of the development are controlled by condition 1 (Approved Plans) and the other conditions of the planning permission. Therefore, the development as approved, with the exception being reference to the number of units, would remain unchanged and the proposed amendment would have no bearing on what is required to be delivered, or the specifics of how it is controlled.

4.6. The applicant sought to include the words 'up to' before the reference to the GEA but this is considered unnecessary as the scheme that is approved by the proposed floor plans sets the floorspace approved, given this is the detailed scheme approved by reserved matters.

4.7. On the basis of the above I am of the opinion that the amended wording of the description, as confirmed below, would constitute a non material amendment. Therefore, I recommend approval of the application.

5. RECOMMENDATION

5.1. Under the provisions of Sec.96A of the Town and Country Planning Act 1990, it is considered that amending the wording of the description of development for reserved matters approval 22/02025/REM constitutes a non material amendment to planning permission 22/02025/REM. The amended description reads as follows:

Reserved Matters to 16/02586/OUT - Access, layout, scale, appearance and landscaping details for Phase 1B for knowledge economy units in Use Class E (former Use Class B) (14,972 sqm gross external area) with associated parking, landscaping, utilities and access.

Case Officer: Tom Webster

DATE: 30 November 2023

Checked By: Caroline Ford

DATE: 01 December 2023
