

Non-material amendment to application 23/78/0025 for revisions to road layout, omission of plots 20 and 54 and planting of trees and hedgerows on land at Creedwell Orchard, Milverton

312362.125581

Non-Material Amendment

Proposal

This application seeks a non-material amendment to reserved matters approval 23/78/0025 (relating to outline planning permission 23/74/0011) for the erection of 80 dwellings on land off Creedwell Orchard, Milverton.

The amendments applied for are:

1. Priority junction between plots 17 and 71 removed and replaced with a curved road alignment.
2. Delete plots 13, 4, 15, 16 and associated accesses.
3. Parking court to east of site ("Orchard Court", adjacent to plot 20-27) altered to form a turning head.
4. Delete plots 20, 21, 22, 23, 24.
5. Access to lane north of plot 25 removed.
6. Plot 34 moved slightly to the west.
7. Turning head introduced to north of plots 37-39.
8. Shape of turning head adjacent to plots 46-48 altered.
9. Plot 54 removed.
10. Turning head introduced between plots 53 and 55.
11. Garage for plot 58 set further back (north).
12. Plot 59 set back slightly (north).
13. Replanting of previously removed Trees/Hedgerows.

Representations received

Milverton Parish Council

- Query what would happen next and whether conditions can be amended.
- Query whether an entire plan can be substituted as an NMA.
- Query whether the amendment would result in a brand new planning permission.
- TDBC must ensure that they are comparing the changes to the approved plan. The poor quality of the plans makes comparison challenging.
- It would be beneficial if TDBC made a definitive decision on what were the approved plans for the development as part of this process.
- In addition to the road layout, there are also further changes e.g.:
 - Garden boundaries along the south are now outside the line of the original approval;
 - Two houses are missing
 - One bungalow (Plot 34) has been moved further south (further to skyline);

- The agent's letter of 16th May 1979 agreed to change 3 bungalows for houses and they are now shown as 3 bedroom houses.
- Changes to the layout may affect other approved plans (landscaping, play areas, sewers, sections etc.)
- There is a potential for creep as more amendments are added or details lost.
- Plot numbering must be checked to ensure that the proposed house types have not changed.
- Better detail explaining the changes is required.
- Any further requests should be judged in cumulation, to avoid piecemeal changes being agreed by NMA.

Save Milverton Action Group

- The proposed drawing indicates the removal of footpaths not listed on the proposed amendments.
- The drawing shows only 8 garages in the northern part of the site; condition 9 of the outline planning permission requires 11.
- The Council has already given a legal view that drawing 7833/4B cannot be considered as a definitive layout plan.
- Even where an amendment in itself is not material, a series of amendments could amount to a material amendment.
- It would be unreasonable for the Council to consider the changes proposed until it is clear what other changes will be required to bring the development forward and, therefore, what the cumulative impact would be.
- The change to the S52 agreement to reduce to a single point of access does not alter the planning permission which still shows this.
- The approvals for the variations to the S52 agreement do not refer to the access points.
- The omission of one of the access points is a material amendment.
- The removal of the road widening requirement in the S52 addresses legal matters, but does not consider the planning reasons for the widening, which require an application for an amendment.
- The omission of the roadway within the southern section of Creedwell Close is not shown on the amended layout.
- Dwellings in the area of the Colesmore Estate are omitted entirely.
- The layout purports to be an amendment of drawing 7833/4B but does not show any of the sewer and lighting details on that plan.
- The Council has previously said (in 2011) that drawing 4B cannot be relied upon as a plan for determining the layout of plots. Therefore, it cannot be argued that drawing 7833/4B is an approved plan.
- Even if the application does not show the omission of the southern access point, a further amendment to this effect will be necessary in the future.

Ward Councillor (Cllr G Wren) raises the following points:

- The original scheme was for 80 dwellings; the new layout shows only 70. A 12.5% reduction in dwellings must be a material amendment.
- The areas beyond the boundary could not currently be developed, but they were an integral part of the permitted scheme. The removal of these areas would result in a much changed scheme from that originally permitted.
- The S52 is not specific about the number of entrances, it just requires off-site works. The site layout remains, unaltered and the removal of the second

point of access is another shift from what was originally approved.

- The requirement to deliver the play area within 2 years of the commencement of development should surely have been complied with immediately following the issue of the CLU. This should be addressed in an NMA.

8 letters of representation raising the following issues:

- There are changes to the layout and site area that cannot be considered non-material; some of the land is now owned by others.
- The accesses arrangements are significantly different to the approved scheme - there is now only one single point of access proposed. This is clearly a significant and material change.
- Alterations to the S52 agreement did not alter the number of approved access points.
- Other material changes to the design of the dwellings are required to bring the dwellings in line with current building regulations.
- The copying of drawing 1 to create drawing 4 would have distorted the dimensions on the plan, so it cannot be relied on as a definitive layout drawing.
- The omission of land to the east is a material change.
- It is no longer possible to carry out the development in complete accordance with the approved plan, so any change to it must be material.

The letters raise other matters relating to the overall impact of development and compliance with planning policies (existing and proposed schemes) but this is not relevant to the consideration of whether the changes are material or not. It is also alleged that the development was not commenced in time.

Determining issues and considerations

This application falls to be determined under S96A of the Town and Country Planning Act 1990. The legislation and Planning Practice Guidance confirms that in considering the application, the local planning authority must have regard to the effect of the change, together with any previous changes made under section 96A. They must also take into account any representations made by anyone notified. As this is not an application for planning permission, section 38(6) of the Planning and Compulsory Purchase Act 2004 – requiring the application to be determined in accordance with the development plan – does not apply.

The Encyclopaedia of Planning Law and Practice confirms that whether or not an amendment is material is material or not is a matter for the decision maker and that a decision would only be questionable on the grounds of Wednesbury unreasonableness. There does not appear to be any case law concerning the scope of what can be determined 'non-material'. It is, therefore, open for the Council as decision maker to use its reasonable judgement in determining the application and what may be material in one instance would not necessarily be material in another.

In this case, the consideration of the application first requires a judgement to be made as to what constitutes the approved plan. Only then can an assessment of the materiality of the amendments be made. This report is structured accordingly.

Defining the approved plans

This amendment relates to an aged planning permission, given reserved matters approval under a 1978 reserved matters application (23/78/0025). The approval gives the description of development as having been ‘...amended by letter dated 19th April 1979 and attached plans received on 23rd April 1979...’.

Unfortunately, not all of the plans listed on the letter of 19th April 1979 are on the file. Most importantly, the layout drawing “7833/1B” is missing. To complicate matters, of the drawings listed in the 19th April letter that do survive, most carry the note “revised March 2017”, which would pre-date a meeting described in the letter when the various amendments were agreed. That said Drawing 7833/4B, whilst stating Revised March 1979, also carries the note “Rev B General Revisions April ’79”, which suggests that it may post date the meeting. It also appears to match up to drawing 7833/2 (Revised March 79). It does appear, then, that drawing 7833/2 details the amendments in the letter of 19th April.

The Save Milverton Action Group (SMAG) have pointed out that neither drawing 7833/2 nor 7833/4B have been produced with the intention of defining the site layout; rather, they are copies with additional landscaping and highway details. Further, they were sent a letter in 2011 by the Council’s then Legal Services Manager suggesting that the Council would not be able to rely upon these drawings for the purposes of identifying the precise siting of the plots. Be that as it may, in the absence of any surviving definitive layout plan it is now necessary take a view over the approved form of the development. Your officers believe that any discrepancies between the missing drawing 7833/1B and the derived drawings 2 and 4B are likely to be very minor.

Your officers and solicitor have considered the situation, and in light of the above analysis, are of the opinion that it is reasonable to consider drawings 7833/2 and 7833/4B as representative of the approved development and the materiality of the proposed amendments will be considered accordingly.

Whether the amendments are material

During consideration of the application, a number of amended plans have been received. As originally submitted, the application proposed to delete the southern access point and removed some of the footpaths previously shown running through the development.

The southern access has now been reinstated, insofar as it reaches the site boundary although it is no longer shown as continuing off site. However, the absence of the off-site drawing does not make the access any less deliverable than it currently is (land ownership issues would likely prevent delivery in both scenarios). Fundamentally, there is no condition requiring the delivery of the southern access so if the extant scheme were built out as per the currently approved plan, the resulting development would be no different insofar as it relates to the termination at this point. The originally shown footpaths have also been reinstated.

This report will now consider each of the proposed amendments in turn.

- 1. Priority junction between plots 17 and 71 removed and replaced with a curved road alignment**
- 2. Delete plots 13, 4, 15, 16 and associated accesses**

The biggest changes are to the northeast of the site and relate to the two amendments above. Here, not all of the land subject to the 1970s permission is available to the current land owner; indeed some of it has already been developed as part of the Colesmore development. This part of the development is clearly different to that previously approved as fewer houses are now proposed and, in place of a priority junction with a road extending further to the east, a simple curve in the road is proposed. When building out a development, there is no requirement to build every plot shown on the approved plans: Theoretically, a developer could chose to leave out certain parts of the development, unless there was a condition specifically requiring their delivery.

Your officers consider that nothing in the extant planning permission requires this 'missing' section of the development to be completed and, therefore, the developer could chose to only build out those dwellings that are part of their current land ownership. For these reasons, the simple omission of various plots is not considered to result in a material change to the planning permission. With regard to the road re-alignment, the provision of a curve in place of a priority junction is a relatively minor difference. Furthermore, constructing the development as shown in the current application would not technically prejudice the completion of the development as originally permitted, should a future land owner chose/be able to in the future.

- 3. Parking court to east of site ("Orchard Court", adjacent to plot 20-27) altered to form a turning head**
- 4. Delete plots 20, 21, 22, 23, 24**

The same considerations as detailed for amendments 1 and 2 apply here – the amendments essentially details a partial implementation and the development could be completed as originally permitted, should the land be made available in the future.

- 5. Access to lane north of plot 25 removed**

The lane was originally proposed to be blocked up and obstructed by the development. In order to maintain access to the east, access was required to be provided to the north of plot 25. In the amended scheme, the lane will remain unaltered, so the access is not necessary. In terms of the overall impact of the development on surrounding property, it is considered that the change is not material.

- 6. Plot 34 moved slightly to the west**

The amendment moves the dwelling slightly further away from the neighbouring eastern site boundary. It is not considered that this would cause a material change in terms of the impact of the development.

- 7. Turning head introduced to north of plots 37-39**

- 8. Shape of turning head adjacent to plots 46-48 altered**
- 9. Plot 54 removed**
- 10. Turning head introduced between plots 53 and 55**

At the southern access point, the application now proposes to deliver an adoptable turning head in place of one of the dwellings (plot 54). There is a similar proposal in place of plot 38 elsewhere on the site.

The failure to build plot 54 and plot 38 would not result in a breach of the planning permission so your officers do not consider that this would be a material amendment to the permission. As with the north eastern part of the site, the omission of the plots is essentially a partial implementation of the planning permission. The new turning heads would clearly result in the provision of additional hard surface that was not previously proposed, but this is not considered to have a material impact upon the appearance or impact of the development overall. The application also proposes a new turning head part way along a cul-de-sac in the south eastern part of the site (to the north of plots 37-39) and a reshaping of the turning head adjacent to plots 46-48. Likewise, these alterations are not considered to materially affect the planning permission.

- 11. Garage for plot 58 set further back (north)**
- 12. Plot 59 set back slightly (north)**

These are very minor alterations to plot positions, set in from the site boundary. The changes will not have a material impact.

13. Replanting of previously removed Trees/Hedgerows

This does not require planning permission. Furthermore, it will have to happen if the development is to accord with the landscaping conditions imposed upon the planning permission, such that the resultant development appears as originally permitted. It is not considered to be a material change to the planning permission.

Other matters

Concerns have been raised with regard the potential for future NMAs to cumulatively significantly alter the scheme. Guidance on dealing with NMAs indicates that for each NMA application made, the cumulative impact should be considered. Concerns have also been expressed that there may be a number of other changes shown on the drawings due to the difficulties in comparing reproduction copies of pencil drawings with modern CAD produced drawings. However, it is considered that the list of amendments detailed on any decision letter, provided that it is sufficiently precise, would adequately define the scope of amendments being permitted.

Conclusions

The proposals show a number of changes to the extant planning permission. However, most of these are minor in scale and would not materially alter the impact of the development on adjoining property or the amenity of the area generally.

Where the changes are more noticeable, they can generally be regarded as a partial implementation of the planning permission, rather than a significant amendment. For these reasons, on balance, the changes proposed are considered to be non-material when considered individually and cumulatively and it is recommended that the application is approved.

RECOMMENDATION AND REASON(S)

Recommended Decision: Approval for

- 1. Priority junction between plots 17 and 71 removed and replaced with a curved road alignment.**
- 2. Delete plots 13, 4, 15, 16 and associated accesses.**
- 3. Parking court to east of site ('Orchard Court', adjacent to plot 20-27) altered to form a turning head.**
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Only the amendments listed above are hereby approved. Any other amendments that may be shown on the drawing are not approved.

RECOMMENDED CONDITION(S) (if applicable)

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

(A1) DrNo HBS-DR-C-(00)-400 Rev P4 Refuse Vehicle Tracking
(A1) DrNo HBS-DR-C-(00)-401 Rev P1 Refuse Vehicle Tracking
(A1) DrNo NMA01 Rev B Planning Layout

Reason: For the avoidance of doubt and in the interests of proper planning.

Notes for compliance (If applicable)

In preparing this report the Planning Officer has considered fully the implications and requirements of the Human Rights Act 1988.

CONTACT OFFICER: Mr M Bale