

Our ref: CN/5197

20 November 2024

Planning Department
North Hertfordshire District Council
Council Offices
Gernon Road
Letchworth Garden City
SG6 3JF

Dear Sir/Madam

Land East of Garden Walk and North of Newmarket Road, Royston

Section 73 Application (Town & Country Planning Act 1990) in relation to the Phase 1 Reserved Matters planning permission (17/02627/1), as amended by 18/02302/NMA approved 29.10.18, 21/00996/NMA approved 16.12.21, and 21/02194/S73 approved 03.12.21.

We are instructed by Vistry Central Home Counties in relation to the above site to submit a Section 73 application in relation to the Phase 1 Reserved Matters planning permission as referenced above. This application was subject to two previous Non-Material Amendment applications: 18/02302/NMA approved 29 October 2018 and 21/00996/NMA, approved 16 December 2021, and a Section 73 application (21/02194/S73) which was approved on 3 December 2021.

Background

The development of this site was first established through the allocation for residential development within the now adopted Local Plan (Policy RY10).

The overall scheme comprises three phases of development, with the third and final phase well under construction. The third phase of the development is more complex in terms of ground levels, with the layout and orientation of the plots working with the site contours, facing onto the Community Open Space (COS), which rises up from the 80m contour. The COS provides an area of chalk grassland, which delivers on both biodiversity and informal recreation objectives as established through the original outline consent. The COS falls within Phase 1 of the development, which included all the structural sustainable drainage, landscaping and open space provisions serving the overall development.

Purpose of the Community Open Space

The provision of the Community Open Space (COS) was envisaged as part of the original outline application, to be located above the 80m contour line, above which it was considered that built



development should be restricted, so as to reduce the visual impact of the proposals in longer views to the north and west. It was also recognised that this part of the site should be developed as an area of chalk grassland. In assessing the Outline Application, the proposals were considered against the NPPF requirements of para 69 (as it was at the time), which sought to achieve safe and accessible developments containing clear and legible pedestrian routes and high-quality open space. The Committee Report covering the Outline Application considered that the combination of the circular pedestrian route around the perimeter of the site and the public open space provided by the COS met these objectives. This confirms that the COS plays a clear role in terms of informal open space, and this was carried through within the Phase 1 Reserved Matters application.

In considering the Phase 3 RM application (19/02866/RM), it is noted within the Committee Report that the *'the main purpose of the community open space in the location proposed... was to provide a use above the 80m contour line that is not residential development... Subsidiary benefits of the community open space were identified as relating to biodiversity and natural conservation, as well as allowing some informal recreation activity'* (para. 4.3.11). It also noted that surfaced paths should be discouraged to prevent adverse effects on biodiversity interest.

It is clear that the COS was always intended to have a multi-purpose function delivering on biodiversity and informal open space objectives, which is not unusual for such a space.

The Proposals

This application is seeking a minor material change to the levels within the Phase 1 COS, which were most recently approved under the non-material amendment application 21/00996/NMA. The changes comprise the permanent relocation of chalk from within the Phase 3 site, to be remodelled over the COS.

This application follows the submission of a Non-Material Amendment application (24/01235/NMA) in May 2024. As part of this application discussions took place with the Case Officer, including a site meeting, and although not formally determined, Vistry has been advised via email correspondence that the remodelling works are considered to be more than non-material due to the extent of the proposed changes.

In response to this feedback, Vistry and the design team have reviewed the proposals and have remodelled the chalk redistribution so as the proposed levels are more moderate and in keeping with the previously approved position. The comparison is shown on the plans that have been submitted to support this application.

The proposals to be considered as part of this revised application include a further step free access route from Phase 3. The gradient of this additional path is proposed at a maximum gradient of 1:15 for a length not exceeding 10m, with intermittent flat landings between the ramp sections which are 2m in



length. This is in accordance with Section 1.7 (External Ramps Forming Part of an Approach Route) of Part M Building Regulations requirements. The COS perimeter walk previously proposed (and replicating the existing informal relationship) will also be retained.

It is considered that this proposal has several benefits including:

- The revised gradient of the COS will still enable access to the space for residents to use and enjoy.
- An informal path along the base of the slope, which links in with the wider circular walk will be enhanced with a further step free access point.
- Maintaining the material on site will deliver substantial sustainability benefits in terms of noise, air quality and highway movements, avoiding a significant amount of HGV trips to remove the material from site.
- It is estimated that if the stockpiled material placed on the POS were to be carted off site, this would require circa 6,200 lorry loads.
- The phased construction nature of the site means there are already residents living in Phase 3 of the development who would be directly affected by the HGV movements and regathering and stockpiling of the chalk to remove it.

The overall proposed ground levels (indicated in orange) remain more in keeping with the existing levels (indicated by the dotted green line) than previously proposed (indicated by the blue line). It is also intended that the COS levels closest to the Phase 3 development will remain largely unaltered from those secured by the previous non-material amendment (indicated in red). This will ensure that the outlook and views from those properties in Phase 3 facing directly onto the COS will not be altered from what was previously proposed, and the change in gradient further up the slope will not be visible from these properties. It is considered that visually, the changes in ground levels proposed will not be discernible to the eye once complete and the chalk grassland has established. It should also be noted that maximum ground level at the peak of the COS will not alter from that originally proposed, therefore in longer views, there will also be no change.

Overall, it is considered that the proposed changes represent an improvement in terms of accessibility compared to the existing approved design, with the addition of the extra access point, and in terms of visual impact and biodiversity, the impact is neutral.

Use of a Section 73 Application

Advice is set out within Government Guidance (para: 013 Reference ID: 17a-013-20230726) on when it is appropriate to make changes to a planning application under section 73 of the Town and Country Planning Act 1990. It states that it can be used to make a material amendment to a planning permission by varying or removing conditions. The guidance confirms that there is no statutory limit on the degree of change permissible under s73, as long as it does not seek to alter the operative part of



the permission, i.e, the description of development. Previous advice from Government that s73 applications only related to 'minor' changes was found to be misleading in the case of *Armstrong v Secretary of State for Levelling-up, Housing and Communities & Anor* [2023] EWHC 176 (Admin). This case concluded that as long as the proposed changes did not conflict with the operative part of the planning permission, the planning merits of the proposed change can be assessed on its merits, therefore whether the proposed change (fundamental or otherwise) is acceptable or not in planning terms, and not whether the change is considered 'minor material' as had previously been led to believe. It is also down to the discretion of the local planning authority as to whether the scale or nature of the change warrants consultation, and which interested parties to inform.

Conclusion

In this case, the variation is sought to Condition 1 of 17/02627/1 and the approved plans listed on the decision notice. The operative element of the planning permission is as follows:

Application for approval of reserved matters comprising of access, landscaping, layout, scale and appearance of Phase 1 the development (pursuant to Outline application 14/02485/1 granted 07/12/2016) as amended by plans received on 22 December 2017; 30 January 2018; 27 March 2018; 18 April 2018; and 02 May 2018

It is considered that the changes proposed to the gradient of the COS would not fundamentally alter the purpose and intent of the described development, and therefore it is entirely appropriate that the proposed changes can be addressed through the submission of a s73 application.

The planning merits of the case have been set out above and assessed against the objectives of the Community Open Space. It is concluded that these objectives are not comprised, and therefore the space will continue to meet the purposes for which it was proposed. Matters relating to visual impact, landscape and ecological impacts have also been considered and it has been demonstrated that none will be negatively impacted by the proposals.

The accompanying Document Schedule sets out the amendment plans.

I trust the information provided is sufficient for you to approve this application, however, if you require further information, please do not hesitate to contact me.



Yours sincerely,



CLAIRE NEWBURY,
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FOR VINCENT AND GORBING
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Encs

Proposed Plans	Plans to be superseded from 21/00996/NMA
66200295-SWE-ZZ-XX-D-C-4150 P03	
66200295-SWE-ZZ-XX-D-C-4151 P03	
66200295-SWE-ZZ-XX-D-C-4152 P03	
66200295-SWE-ZZ-XX-D-C-4153 P05	
66200295-SWE-ZZ-XX-D-C-4154 P03	
	6100681-MLM-ZZ-XX-DR-C-0120-P07
	6100681-MLM-ZZ-XX-DR-C-0300-P02

