

# Arun District Council

<b>REPORT TO:</b>	Planning Committee
<b>SUBJECT:</b>	WA/57/22/NMA
<b>LEAD OFFICER:</b>	David Easton, Strategic Development Team Leader
<b>LEAD MEMBER:</b>	n/a
<b>WARDS:</b>	Walberton
<b>CORPORATE PRIORITY / POLICY CONTEXT / CORPORATE VISION:</b> n/a	
<b>DIRECTORATE POLICY CONTEXT:</b> n/a	
<b>FINANCIAL SUMMARY:</b> n/a	

## 1. PURPOSE OF REPORT

- 1.1. The report relates to the determination of the non-material amendment application submitted under reference WA/57/22/NMA.
- 1.2. Officers have had to use the Councils Committee report template and it is not possible to generate a report template for an NMA application with the Planning software. As a planning application report, many of the standard sections in the template have been deleted as they are not relevant.
- 1.3. WA/57/22/NMA seeks to amend the description of planning application WA/22/15/OUT to increase the number of dwellings from 400 to 405. Therefore, the amended description would read:

*Outline planning permission for up to 405 new dwellings, up to 500 sq. m of non-residential floor space (A1, A2, A3, D1 and/or D2), 5,000 sq. m of light industrial floorspace (B1 (b)/(c) and associated works including access, an internal road network, highway works, landscaping, selected tree removal informal and formal open space and play areas, pedestrian and cyclist infrastructure, utilities, drainage infrastructure, car and cycle parking and waste storage.*

## 2. RECOMMENDATIONS

- 1.4. It is recommended that the non-material amendment is approved.

## 2. EXECUTIVE SUMMARY

- 2.1. Application WA/57/22/NMA seeks to amend the description of planning approval WA/22/15/OUT to increase the number of dwellings from 400 to 405. This would be contrary to the Council's previously adopted guidance on what can be accepted

as a non-material amendment (Planning Committee November 2017). However, recent case law and legal advice secured by the Local Planning Authority has confirmed that in this case the amendment of the description to increase the total number of dwellings by 1.25% would not be fundamental and as such could be dealt with as a 'non-material amendment' despite the Council's adopted guidance note.

### **3. DETAIL**

- 3.1. This non-material amendment (NMA) application seeks to amend the description of outline planning approval WA/22/15/OUT to increase the total number of dwellings from 400 to 405.
- 3.2. The Council has adopted guidance which identifies that non-material amendments will only be accepted when the changes are insignificant and do not change the intensity, form, or description of the original planning permission. Nor should they change the intensity of the original planning permission, result in a change to the description of the application or conflict with any conditions of the original permission. Therefore, in this case the submitted NMA would fail to accord with the limitations imposed by the adopted Council guidance.
- 3.3. However, in the case of *R (Wet Finishing Works) v Taunton Deane Borough Council [2018] PTSR 26* it was concluded that an increase in the number of dwellings permitted under a planning permission from 83 to 90 (an increase of 8.4%) was not a fundamental modification to the terms of the Planning Permission, therefore it was lawful under the Section 73 procedure.
- 3.4. The Wet Finishing Works rationale was subsequently upheld in the case of *Finney v Welsh Ministers [2019] EWCA Civ 1898*, which upheld, at the Court of Appeal, that the use of a minor material amendment (Section 73) procedure for a 25% increase in size of permitted wind turbines.
- 3.5. The Finney case also addresses the issue of practicality, namely that an application under Section 73 cannot automatically override a restriction set out in the description of development. Therefore, to overcome this limitation a NMA application has been submitted to amend the description of the development by increasing the number of dwellings to up to 405.
- 3.6. The amendment to the description is not material as by itself it does not grant permission for any additional development (with the approved drawings and conditions remaining as originally approved). However, the amendment would allow for a Section 73 application to amend the layout/design of the development.
- 3.7. Any subsequent Section 73 would go through formal advertisement and consultation and allow for the amendment of the S106 agreement to secure increased financial contributions. However, the amendment of the description as proposed by this NMA application merely support the submission of this further application.

- 3.8. The 1.25% increase in the total number of dwellings by itself would be non-material. Any subsequent amendments to the approval would need to be considered as part of the minor material amendment process (Section 73).
- 3.9. The Local Planning Authority have sought legal advice in relation to this matter and it was advised that the increase in numbers would not be fundamental and as such would be 'non-material'.
- 3.10. Therefore, it is recommended that the application should be approved despite its conflict with the adopted guidance.

#### **4. CONSULTATION**

- 4.1. As a non-material amendment there is no requirement to undertake advertisement of the application as the proposals must not be material.
- 4.2. Despite this a letter of objection has been submitted on the application from a local resident raising the following objections:
- *The extra vehicles and residents will adversely impact upon existing infrastructure.*
  - *Fresh water supplies will suffer.*
- 4.3. These comments are noted but as the application is for a non-material amendment these cannot be given any weight in the consideration of the proposals. The consideration by the Council is limited to the matter of whether these alterations are non-material to the existing permission which has been granted.

#### **5. EQUALITIES IMPACT ASSESSMENT (EIA) / SOCIAL VALUE**

- 5.1. The proposal would have a neutral impact on protected characteristics.

#### **6. HUMAN RIGHTS IMPACT**

- 6.1. The proposal would have a neutral impact on protected characteristics.

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#### **CONTACT OFFICER:**

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#### **BACKGROUND DOCUMENTS:**