



**Report Reference Number:** 2020/0023/MAN2

**To:** Planning Committee  
**Date:** 5<sup>th</sup> February 2019  
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**Lead Officer:** Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2020/0023/MAN2	PARISH:	Selby Town Council
APPLICANT:	Persimmon Homes Yorkshire	VALID DATE: EXPIRY DATE:	10th January 2020 7th February 2020
PROPOSAL:	Non material amendment of 2015/0580/EIA Reserved matters application for the erection of No.44 dwellings, community facilities and retail units following outline approval 8/19/1011C/PA (CO/2002/1185)		
LOCATION:	Staynor Hall Abbots Road Selby		
RECOMMENDATION:	GRANT		

This application is seeking approval for a non-material amendment (Section 96A) to a major planning approval that included an Environmental Statement.

Non-material amendments to applications that were accompanied by an Environmental Statement are not listed as types of application that must go to Planning Committee, nor is there express reference that they can be determined by Officers. Given this position, officers are minded the most transparent approach is to refer the matter to Planning Committee for decision.

## 1 The Proposal

1.1 The current application comprises a Section 96A application to vary condition 14, (approved plans) of application 2015/0580/EIA. The revision does not impact on the house numbers which remains at 44. The affordable housing number remains unchanged in relation to previously approved levels. The main changes include:

- Design and Layout of Residential Element;
- Reconfiguration of Parking Areas;
- Design and Layout of Community Centre;
- Landscaping; and

- Introduction of a New Condition.

1.2 The proposed amendments are identical to those previously submitted within a Section 73 application (ref. 2018/0931/EIA) considered and found acceptable by Members at October 2019. This report will set out the remit and limits of a Section 96A application and whether the proposed changes can be considered non material, rather than minor material, and a decision issued on this basis.

## **2 CONSULTATION AND PUBLICITY**

2.1 Planning Practice Guidance (PPG) (Paragraph: 005 Reference ID: 17a-005-20140306) makes clear that non-material applications are not applications for planning permission and therefore the statutory provisions relating to consultation and publicity do not apply. Instead, local planning authorities have discretion on whether and how they choose to inform other interested parties or seek their views.

2.2 Whilst the Council are not statutorily obliged to undertake consultation, for the sake of transparency, the same parties consulted within the determination of the Section 73 application have been re-consulted.

2.3 At the time of writing, no responses to this application have been received.

## **3 POLICY CONSIDERATIONS**

3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states "if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". This is recognised in paragraph 11 of the NPPF, with paragraph 12 stating that the framework does not change the statutory status of the development plan as the starting point for decision making.

3.2 The development plan for the Selby District comprises the Selby District Core Strategy Local Plan (adopted 22nd October 2013) and those policies in the Selby District Local Plan (adopted on 8 February 2005) which were saved by the direction of the Secretary of State and which have not been superseded by the Core Strategy. On 17 September 2019 the Council agreed to prepare a new Local Plan. The timetable set out in the updated Local Development Scheme envisages adoption of a new Local Plan in 2023. Consultation on issues and options would take place early in 2020. There are therefore no emerging policies at this stage so no weight can be attached to emerging local plan policies 4.3

3.3 The National Planning Policy Framework (February 2019) (NPPF) replaced the July 2018 NPPF, first published in March 2012. The NPPF does not change the status of an up to date development plan and where a planning application conflicts with such a plan, permission should not usually be granted unless material considerations indicate otherwise (paragraph 12). This application has been considered against the 2019 NPPF.

3.4 Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework:

*“213....existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”*

### **Selby District Core Strategy Local Plan**

3.5 The relevant Core Strategy Policies are:

- SP1 Presumption in Favour of Sustainable Development
- SP2 Spatial Development Strategy
- SP4 Management of Residential Development in Settlements
- SP5 The Scale and Distribution of Housing
- SP8 Housing Mix
- SP19 Design

### **Selby District Local Plan**

3.6 The relevant Selby District Local Plan Policies are:

- ENV1 Control of Development
- ENV2 Environmental Pollution and Contaminated Land
- T1 Development in Relation to Highway
- T2 Access to Roads

3.7 It should be noted that Section 38(6) does not apply to an application under s.96A.

## **4 APPRAISAL**

4.1 The main issues to be taken into account when assessing this application are:

1. Principle of development
2. Summary of Proposed Changes
3. Consideration of Materiality

### **Principle of Development**

4.2 The power to make non-material changes to ‘planning permissions’ is provided by Section 96A of the Town & Country Planning Act 1990 (as amended) (“the Act”), which states:

- (1) *“A local planning authority 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.”*

4.3 This application seeks a non-material amendment of a reserved matters approval. Relevant to the consideration of this application is the High Court Judgement of R

(on the Application of Fulford Parish Council) v City of York Council [2019] EWCA Civ 1359 (“the Judgement”). This case confirmed that the statutory power conferred by Section 96A of the Act to make non-material changes to a planning permission includes the power to make non-material changes to conditional approvals of reserved matters.

4.4 At Paragraph 35 of the above Judgement, Lord Justice Lewison found that:

*“The “planning permission” to which section 96A refers is the package consisting of the grant of planning permission itself, together with any conditions to which the grant is subjected, whether the conditions are imposed at the time of or subsequent to the grant of permission. An application for an amendment to an approval (or conditional approval) of reserved matters is, in my judgment, an application for the alteration of an existing condition; which is expressly permitted by section 96A (3) (b).”*

4.5 Plainly put, in the context of outline consents/reserved matters a “planning permission” constitutes both the outline consents and reserved matters approval and that an alteration of a condition on a reserved matters approval is allowable under Section 96A – providing changes are truly non-material in themselves, or cumulatively alongside other Section 96A approvals.

4.6 Planning Practice Guidance (PPG) confirms there is no statutory definition of ‘non-material’. The PPG notes this is due to the need to consider the context of a scheme – an amendment that is non-material in one context may be material in another. In this instance, the context of this planning permission consists of a 1,200 dwelling site, this is a substantial permission and consequently the scale of changes that can be considered non-material increases in a proportionate manner.

4.7 In summary, case law confirms that conditions on reserved matters approvals can be amended under the provisions of Section 96A of the Act providing local planning authorities are satisfied that the amendment sought are non-material. The principle of the application is therefore acceptable.

4.8 There is no definition of what constitutes non-material and instead guidance allows for a pragmatic view to be taken on the scale of the change proposed in comparison to the parent planning permission. This report will go on to identify the proposed changes and consider whether they are non-material: providing this is the case, officers recommend that the Section 96A application be approved.

#### Environmental Impact Assessment (EIA)

4.9 Section 96A applications are not a subsequent application as defined in the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“the Regulations”) as it is not required by or under a condition of the planning permission and approval is not required before the development permitted by the permission is begun.

4.10 Therefore, Regulation 9(2) of the regulations does not apply. As such, there is no statutory need for either a new environmental statement or a reassessment of the previously submitted environmental statement.

#### **Summary of Changes**

### Design and Layout of Residential Element

- 4.11 Plots 25 – 27 now comprise three detached houses that front the road, whereas previously this consisted of one detached house and a pair of semi-detached houses together with a detached garage. Plots 35 – 38 now propose two detached houses and a pair of semi-detached houses instead of three detached houses. Plots 39 – 44 on the revised plan shows six different detached houses compared to 5 detached and one pair of semi-detached.
- 4.12 At each of these plots, Officers consider the proposal retains a satisfactory design and layout, does not change the amenity enjoyed by any residents and is therefore considered non-material.
- 4.13 The Chatsworth house type has been introduced, a substitution for the Rufford house type; the main difference being an increase in ridge height. It is not considered that the increase in ridge height is incongruous with that of surrounding properties, impacts on the character of the area, or harms amenity of future residents. This change is considered to be non-material.
- 4.14 The revisions also include a change to the type of bricks previously approved. The proposal now seeks to utilise Braithwell Brindle, Langold Buff and Anston Red bricks. These have been picked to replicate the bricks being used on Phase 3F (directly to the north and east of the site). It is considered that the use of brick types already present on site is appropriate and does not materially alter the planning permission.

### Reconfiguration of parking areas

- 4.15 It is proposed the on-site parking for two dwellings will be relocated within a remote car parking area, one additional parking space is provided as a result of this proposal. Remote car parking has already been found within the reserved matters consent – being a balance between minimising crime through layout considerations and providing a ‘visually pleasing street scene.’ The proposed change is considered non-material.

### Design and Layout of Community Centre

- 4.16 The general location of the community centre remains unchanged, and the repositioning is de minimis. The revised design removes the previously approved split roof; whilst this was considered to provide an element of visual interest it does not materially detract from the overall building and is considered acceptable as a non-material amendment.

### Landscaping

- 4.17 The changes to the location of certain house types and a drainage easement has necessitated changes to the position of some trees on site albeit the quantum of planting approved on the extant reserved matters has been maintained and remains acceptable. It is considered the changes to the positioning of the landscaping is acceptable and constitutes a non-material change.

## New Condition

- 4.18 Section 96A applications allow the addition of conditions to a planning permission. To address the absence of measures to improve air quality from the reserved matters consent it is considered reasonable to include a condition for the provision of electric charging in those dwellings that have a garage. This change would have a non-material effect on the planning permission.

## **5 CONCLUSION**

- 5.1 The extant reserved matters application granted consent for the erection of 44 dwellings, a community centre and shops.
- 5.2 This Section 96A application seeks revisions to the location of particular house types, the introduction of one house type, minor changes to the parking layout, amendment to the design and layout of the community centre and slight change to landscaping.
- 5.3 It is considered that these changes, by virtue of their scale and nature will not result in a development which is materially different from the existing planning permission, and in accordance with the requirements of Section 96A it is considered that the effect of the proposals are non-material to the extant permission

## **6 RECOMMENDATION**

- 6.1 This application is recommended to be GRANTED subject to the following conditions:
1. The development shall be carried out in accordance with the following plans:
    - Central/001 Rev O - Proposed Site Layout
    - Central/003 Rev F - Proposed Community Centre
    - AY-R / A3-Planning / 01 Rev B - Aycliffe Apartments & Ground Floor Retail Planning Drawing
    - Staynor Hall\_AI\_A1\_Planning 01 Rev A - Aidan House Type Plans
    - Staynor Hall\_AI\_A1\_Planning 02 Rev A - Aidan House Type Elevations
    - CCA-WD10 Rev G - Clayton Corner Plans & Elevations (Planning)
    - Staynor Hall / CA / A3-Planning / 01 - Clayton Planning Drawing
    - Staynor Hall\_ED\_A3-Planning 01 - Edlingham House Type Plans
    - Staynor Hall\_ED\_A3-Planning 02 - Edlingham House Type Elevations
    - Staynor Hall\_ES\_A3-Planning 01 - Escrick House Type Plans
    - Staynor Hall\_ES\_A3-Planning 02 - Escrick House Type Elevations
    - Staynor Hall\_FC\_A3-Planning 01 - Fenchurch House Type Plans
    - Staynor Hall\_FC\_A3-Planning 02 - Fenchurch House Type Elevations
    - Staynor Hall / GR / A3-Planning / 01 - Greyfriars Planning Drawing
    - Staynor Hall\_HE\_A3-Planning 01 - Henley House Type Plans
    - Staynor Hall\_HE\_A3-Planning 02 - Henley House Type Elevations
    - Staynor Hall\_MA\_A3-Planning 01 - Marlborough House Type Plans
    - Staynor Hall\_MA\_A3-Planning 02 - Marlborough House Type Elevations
    - Staynor Hall / MN / A3-Planning / 01 - Morden Planning Drawing
    - Staynor Hall / MS / A3-Planning / 01 - Moseley Planning Drawing
    - Staynor Hall\_OA\_A3-Planning 01 - Oakhurst House Type Plans
    - Staynor Hall\_OA\_A3-Planning 02 - Oakhurst House Type Elevations

- Staynor Hall\_TV\_A3-Planning 01 - Tiverton House Type Plans
- Staynor Hall\_TV\_A3-Planning 02 - Tiverton House Type Elevations
- CTWD10 Rev F - Chatsworth Plans & Elevations (Planning)
- Swept Path Analysis LTP/2598/T1/001/01 Rev O

Reason:

For the avoidance of doubt

2. Where houses are provided with a garage, one standard EV Charging Unit per dwelling shall be provided prior to the occupation of the dwelling to which it relates.

Reason:

In the interests of ensuring air quality and improve low carbon usage of the site.

## **7 LEGAL ISSUES**

### **Planning Acts**

- 7.1 This application has been determined in accordance with the relevant planning acts.

### **Human Rights Act 1998**

- 7.2 It is considered that a decision made in accordance with this recommendation would not result in any breach of convention rights.

### **Equality Act 2010**

- 7.3 This application has been determined with regard to the Council's duties and obligations under the Equality Act 2010. However it is considered that the recommendation made in this report is proportionate taking into account the conflicting matters of the public and private interest so that there is no violation of those rights.

## **8 FINANCIAL ISSUES**

- 8.1 Financial issues are not material to the determination of this application.

## **9 BACKGROUND DOCUMENTS**

- 9.1 Planning Application file reference 2020/0023/MAN2 and associated documents.

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**Appendices:** None

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