10th May 2024
Delivered via the Planning Portal

Ref: BERS3014

Matthew Porter
Horsham District Council
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Dear Matthew

NON-MATERIAL AMENDMENT APPLICATION TO AMEND THE DESCRIPTION OF DEVELOPMENT OF PLANNING PERMISSION DC/18/1246.
BERKELEY HOMES DEVELOPMENT SITE WORTHING ROAD SOUTHWATER WEST SUSSEX (BROADACRES PHASE 4).

On behalf of our clients, Berkeley Homes (Southern) Limited, we are pleased to submit an application to Horsham District Council (HDC) for a Non-Material Amendment (NMA) to the development approved under Reserved Matters (RM) application DC/18/1246 for the Berkeley Homes Development Site - otherwise known as Broadacres Phase 4 - Worthing Road, Southwater, West Sussex.

This NMA seeks to amend the description of development to remove the unit number (214) from the description of development, and to apply a new planning condition which restricts the permitted number of units to the described 214.

BACKGROUND

Outline planning permission was granted for up to 594 dwellings at Southwater in 2015 under application reference DC/14/0590. Reserved Matters approval has subsequently been granted for phases 1, 2, 3 and 4, totalling 514 units. Phases 1, 2 and 3 have now been completed. Phase 3.2 and Phase 4 was consented under application reference DC/18/1246 for 213 homes, with the following description of development:

> *"Reserved matters approval sought for layout, appearance, landscaping, scale and access for the erection of 214 dwellings (including 61 affordable dwellings) with associated access, parking and landscaping works pursuant to phases 3.2 and 4 of outline planning permission DC/14/0590."*

Note there is an error within the description of development, which referenced 214 homes, and did not keep pace with the approved layout which was amended during the course of the application to relate to 213 homes.

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The Phase 3.2 and Phase 4 reserved matters application has now been implemented in part with Phase 3.2 completed and largely occupied to relate to 56 of the 213 homes (including 6 affordable homes). No work other than an internal access road to base course have been completed within Phase 4.

Phase 5 relating to 80 dwellings was submitted as a separate full standalone planning application in December 2019 (within the parameters of the outline permission, despite the time period for submission of reserved matters applications being lapsed) and received resolution to grant at committee in September 2020 (DC/19/2464). Before the Section 106 Agreement was signed, Natural England issued their position statement (September 2021) requiring all new developments to be water neutral, this also prevented planning condition discharge. The scheme was heard at committee on a further occasion (1st November 2022) to review the water neutrality strategy, again receiving resolution to grant subject to a s106. However, the lack of agreed water neutrality strategy has prevented the Phase 5 Section 106 Agreement from being signed, and permission being issued to date. The application therefore remains live.

As a result of changing market conditions, Berkeley Homes are proposing some amendments to both Phases 4 and 5 at Broadacres. The total number of units is the same, albeit a number of homes are proposed to move from Phase 4 to Phase 5.

As set out above, the description of development for the current reserved matters consent (DC/18/1246) specified the number of dwellings to be consented. As an initial step this application for a non-material amendment is submitted to remove the number of dwellings from the description of development and instead include a condition detailing this. There would be no changes to the scheme at this stage and the application would be a purely procedural matter.

NON-MATERIAL AMENDMENT PROPOSAL

The current NMA application seeks permission to amend the description of development of permission DC/18/1246 as follows:

> *"Reserved matters approval sought for layout, appearance, landscaping, scale and access for the erection of ~~214~~ residential dwellings (including ~~61~~ affordable dwellings) with associated access, parking and landscaping works pursuant to phases 3.2 and 4 of outline planning permission DC/14/0590."*

It is recognised that the inclusion of the unit numbers within the description of development provides the local planning authority with control over the form and quantum of development brought forward and accords with the quantum of development assessed as part of the planning application determination.

To provide the same level of control it is suggested that a new planning condition be imposed which restricts the number of units to the permitted 214. The suggest wording of the condition is as follows:

- The development hereby approved comprises 214 residential dwellings.

The imposition of a condition would enable Berkeley Homes (Southern) Ltd to submit a subsequent application (under Section 73 of the Town and Country Planning Act (1990)) to amend the condition for the quantum of dwellings and the approved plans to reflect the proposed revisions to the scheme. Through this future Section 73 application, the local planning authority would be able to further assess the impact of any the proposed changes to the layout and mix, in addition to the pre-application advice already provided, including engagement with relevant consultees.

WHETHER THE PROPOSED AMENDMENTS ARE NON-MATERIAL

Section 96A of the Town and Country Planning Act outlines that 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. No definition of what constitutes a non-material change is provided in the legislation nor in the National Planning Practice Guidance, instead it states:

> *"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 proposed changes under this amendment are considered to be non-material as they do not involve works which materially affect the principles, content or impacts of the originally approved proposal. Instead, the amendments would simply relocate the mechanisms to control the scale and use of the development within the permission granted.

Consequently, in this case, the application can be considered a Non-Material Amendment and an acceptable amendment to facilitate the delivery of development.

This strategy has been accepted and successfully implemented in a number of other cases by both Berkeley Homes and Turley since the case of *Finney* and has been the subject of legal advice on behalf of Berkeley Homes confirming the approach proposed in this instance. This includes but is not limited to the following schemes, further details on which can be provided if required:

- Worthing Gasworks, Worthing Borough Council, Berkeley Homes – AWDM/1446/23. Application approved 07/12/2023.
- Land east of Marshgate Drive, East Hertfordshire District Council, Berkeley Homes – 3/23/1864/NMA. Application approved 07/11/2023.

FUTURE SECTION 73 APPLICATION

Subsequent to this we will be submitting as S.73 application to vary the housing mix and number of homes within Phase 4 and amend the pending Phase 5 application, whilst not exceeding the total number of homes within Southwater that are approved or resolved to be approved under the existing Phase 4 and Phase 5 application.

INFORMATION SUBMITTED

To enable the Council to determine the application please find enclosed the following information which has been submitted via the planning portal under reference PP-13044277:

- Non-Material Amendment Application Form
- Covering Letter

The application fee £363 has been paid via the Planning Portal. I trust you will find the application documentation to be in order and look forward to confirmation of validation.

Should you require any further information or clarification please do not hesitate to contact me or my colleague Donna Brearley (donna.brearley@turley.co.uk).

Yours sincerely,

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Assistant Planner

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