

Item No	Application No. and Parish	8/13 week date	Proposal, Location and Applicant
(1)	13/03073/NONMAT Burghfield	24 March 2014	<p>Non-material amendment to Planning Permission 12/00623/FULD. (<i>Erection of a new detached dwelling house ...</i>)</p> <p><u>Amendments:</u> omission of decorative brickwork; amended window appearance.</p> <p>23 Woodlands Avenue, Burghfield Common, RG7 3HU</p> <p>Royal Park Homes</p>

To view the plans and drawings relating to this application click the following link:
<http://planning.westberks.gov.uk/rpp/index.asp?caseref=13/03073/NONMAT>

Recommendation Summary: To **DELEGATE** to the Head of Planning and Countryside to **APPROVE THE NON-MATERIAL AMENDMENT**

Ward Member(s): Councillor Carol Jackson-Doerge
Councillor Royce Longton

Reason for Committee determination: Petition received comprising at least 20 signatories;
Referral by Development Control Manager

Committee Site Visit: 5 March 2014

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1. INTRODUCTION

1.1 This application seeks a non-material amendment to approved application 12/00623/FULD, which granted planning permission for the erection of a new detached dwelling house, to the front of the existing dwelling house at the site. The development included the associated provision of hardstanding, enclosures and landscaping. The existing dwelling is to be retained to the rear of the site, to be accessed by a new access driveway to the side of the new dwelling.

1.2 The amendments sought in the application form are the omission of decorative brickwork, and an amended window appearance. However, on the plans it is also noted that the bargeboard is of a more simple appearance, and the shape of the porch roof has changed from a lean-to to a pitch.

2. PLANNING HISTORY

2.1 The following applications on the site all relate to the development hereby proposed.

11/01322/FULD Redevelopment of site allowing for two new three bedroom semi-detached houses with associated amenity space. Provision for off street parking, storage of refuse and recycling. Retention of existing dwelling house to rear of site. Withdrawn 16/11/2011.

11/02473/FULD Erection of a new detached dwellinghouse to the front of the existing dwellinghouse, and associated provision of hardstanding, enclosures and landscaping. Retention of existing dwellinghouse to the rear of the site, and the construction of associated access, hardstanding and enclosures. Refused 08/03/2012.

12/00623/FULD Erection of a new detached dwelling house to the front of the existing dwelling house, and associated provision of hardstanding, enclosures and landscaping. Retention of existing dwelling house to the rear of the site, and the construction of associated access, hardstanding and enclosures. Granted planning permission 24/05/2012.

12/02255/COND1 Application for approval of details reserved by Conditions 3 (samples of materials), 4 (replacement driveway), 5 (hard surfaces), 6 (fencing and enclosures), 7 (landscaping), 8 (ground and floor levels), 9 (cycle storage), 10 (refuse storage), 11 (construction method statement), and 14 (surfacing of access) of approved application 12/00623/FULD. Details approved 22/11/2012.

13/00361/FUL Section 73. Variation of Condition 2 - Approved Plans - vary to retain existing materials to the existing drive (in part) and proposed new surfacing and drainage to the entrance and turning area adjoining existing dwelling to the rear of the site - of planning reference 12/00623/FULD. Refused 12/04/2013.

2.2 As set out above, planning permission was granted on 24/05/2012 for the erection of the new detached dwellinghouse. Prior to this application the site was cleared, and a tarmac driveway was constructed without planning permission to the side of the proposed dwelling, providing a new access to the retained dwelling to the rear. This driveway was considered unacceptable on visual impact and drainage grounds.

2.3 The Council therefore negotiated a replacement driveway as part of the proposal; Condition 4 was imposed for the pre-approval of a replacement driveway and its completion before occupation of the new dwelling. The time limit for implementation was reduced to one year, instead of the usual three years, to ensure the timely resolution of this breach of planning control.

2.4 Details of the replacement driveway were agreed as part of the conditions submission (12/02255/COND1), and a subsequent application to vary these details (13/00361/FUL) was refused for the same reasons that the original driveway was considered unacceptable.

2.5 Since this time, it has been brought to the Council's attention that the development was not carried out in accordance with the approved plans. Following site inspections by officers, a number of breaches of planning control were identified. The development was considered to be in breach of Conditions 2, 4, 5, 6, 7, 9 and 10 of 12/00623/FULD. In view of these breaches the development is at risk of enforcement action being taken by the Council.

2.6 The identified breaches as of November 2013 are detailed in the table below, together with the applicant's proposed means of resolution. The new dwelling has not been constructed in accordance with the approved elevation drawings (reference MS/SB/23/11ND) because of breaches 1-4 below. The landscaping of the site has not been carried out in accordance with David Williams Landscape Consultancy Landscape Proposals Plan (reference 0127/L1C) because of breaches 5-7 below. The replacement driveway to the side of the new dwelling had not been constructed in accordance with the approved drawings, and the cycle and refuse storage had not been provided.

2.7 The latest status of the development and outstanding breaches will be reported to the committee on the Update Report.

2.8 The breaches of planning control are detailed for the purpose of context. However, the determination of this application must be limited to the consideration of whether the changes proposed are 'non-material' in relation to the development as a whole.

	Breach	Condition	Proposed resolution
1	The front porch was not constructed.	2	Porch recently under construction.
2	The brickwork detailing, including 'quoins' and the central 'I' detailing has not been carried out.	2	Submission of this non-material amendment application.
3	The decorative bargeboard has not been constructed.	2	A bargeboard has now been constructed, but not 'decorative' as per the plans.
4	The appearance of the installed windows differs from those approved	2	Submission of this non-material amendment application.
5	The 1.2 metre picket fence has not been erected to the front and side boundaries of the new dwelling.	7	To be provided before occupation.
6	The hedging has not been planted in accordance with the planting schedule to the front and side boundaries of the dwelling.	7	To be provided before occupation.
7	The existing close-boarded fence marking the boundary between the original and new dwellings, which was erected during the construction phase, has not been removed.	7	To be provided before occupation.
8	The replacement driveway has not been constructed in accordance with the approved details because the SGS Agrablock System was not installed to the replacement driveway, but instead gravel was simply overlain on a concrete base. The SGS Agrablock System appears to have been installed to the frontage of the new house, and would therefore be in accordance with the approved plans.	4 & 5	To be provided before occupation. The Council's Land Drainage Engineers shall be requested to carry out a site inspection to confirm whether, or to what extent, this breach has been resolved.
9	The cycle and refuse storage has not been provided in accordance with the approved details.	9 & 10	To be provided before occupation.

3. NON-MATERIAL AMENDMENTS

- 3.1 Section 96A of the Town and Country Planning Act 1990 was brought into force on 1 October 2009, via the commencement of Section 190 of the Planning Act 2008. It is a provision to provide a mechanism to make non-material amendments to existing planning permissions via a simple application procedure with a quick decision time.
- 3.2 There is no statutory definition of 'non-material'. This is because it is so dependent on the context of the overall scheme – what may be non-material in one context may be material in another. The local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under Section 96A.
- 3.3 The local planning authority must have regard to the effect of the change, together with any previous changes made under this section. They must also take into account any representations made by anyone notified (see Section 4 below), provided they are received within 14 days of notification. As this is not an application for planning permission, Section 38(6) of the Planning Act 2004 does not apply (the requirement to determine applications in accordance with the Development Plan unless material considerations indicate otherwise).
- 3.4 This procedure, which has no consultation requirements, and minimal notification requirements, cannot be used to make a material amendment. Section 96A allows new conditions to be imposed, or existing conditions to be removed or altered.
- 3.5 Decisions made by local authorities on non material amendment applications do not constitute an 'approval of the local planning authority' for the purposes of section 78 of the Town and Country Planning Act 1990. There is therefore no legal basis for an Inspector (on behalf of the Secretary of State) to hear an appeal or to make a decision in a non-material amendment case.

4. PUBLICITY

- 4.1 As an application under Section 96A is not an application for planning permission, the existing Town and Country Planning (Development Management Procedure) (England) Order 2010 (DMPO) provisions relating to statutory consultation and publicity do not apply. Therefore local planning authorities have discretion in whether and how they choose to inform other interested parties or seek their views. As by definition the changes sought will be non-material, the Government does not expect consultation or publicity to be necessary in the majority of cases, and does not anticipate effects which would need to be addressed under the EIA regulations.
- 4.2 Instead, before the application is made, the applicant must notify anyone who owns the land which would be affected by the non-material amendment, or where the land comprises an agricultural holding, the tenant of that holding. The applicant must also record who has been notified on the application form. Anyone notified must be told where the application can be viewed, and that they have 14 days to make representations to the local planning authority.
- 4.3 A petition has been submitted in objection to the application. The petition states:

“The new building in its present form with the plastic barge boards and lean to porch is considered a poor compromise and adds little to the street view. For this new building to make any contribution to the street view will require that it be built as the original approved plan and with decorative barge boards, full brick detailing, and original window size and style. The difference between 23a and the example built by Millgate Homes in Clayhill Road is significant with the latter making a positive addition to its surrounding area.

We urge West Berks Planning to ensure that every detail of landscaping that impacts on the street view be rigorously enforced, and ensure the best possible outcome for local residents and future occupiers.”

4.4 In accordance with the Council’s Constitution, following the receipt of a petition of at least 20 signatories the application has been referred to the Eastern Area Planning Committee for a decision.

6. APPRAISAL

6.1 As detailed in Section 3 above, the decision of the Local Planning Authority is to be based on whether there is a ‘non-material’ change to the development, and not on the planning merits of the proposal in terms of the Development Plan and other material considerations. As this building is not listed, it is conceivable that there may be such small variations to the approved plans without being considered ‘material’.

Decorative brickwork

6.2 The original plans (MS/SB/23/11ND) showed decorative brickwork comprising quoins on the corners of the walls, and a ‘T’ feature centrally located under the eaves of the gabled front elevation. The dwelling has been constructed, and the proposed replacement plans show, no such decorative brickwork.

6.3 It is considered that the prominence and the relatively small size of the variations in the brickwork (they appear to be individual bricks) do not have a material impact on the overall appearance of the building. It is considered that the proposed replacement plans would therefore have been approved as part of the original application without any material impact on the character and appearance of the dwelling.

Windows

6.4 The original plans (MS/SB/23/11ND) showed multi-pane casement windows, with possible lead effect. Casement windows have been installed comprising top and side hung openings, but without the finer grain indicated in the approved plans.

6.5 It is considered that such variations are of such a small scale in the context of the overall development, as to be regarded as non-material. In most circumstances, the fine detail of casement windows may be considered indicative because it is acknowledged that the purchasing of windows precisely matching those shown in approved drawings may not be possible.

6.6 It is important to take into account the fact that the windows could normally be replaced with any windows of materials that are “similar in appearance”, without planning permission once the dwelling has been occupied by virtue of permitted development rights.

Decorative / plain bargeboards

6.7 It is considered that the complete omission of any bargeboards would be a material variation from the approved plans. The absence of any bargeboards on this dwelling resulted in a ‘flat’ appearance of the front elevation. The installation of the plain bargeboards has given the front elevation some perceivable depth, and in its current form is not considered a material change from the approved plans.

Porch shape

6.8 It is considered that the complete omission of any porch would be a material variation from the approved plans. The absence of a porch on this dwelling resulted in a ‘flat’ appearance of the front elevation. The installation of a porch, albeit with a different roof shape, has provided some articulation and depth to the front elevation, and in its current form is not considered a material change from the approved plans.

7. CONCLUSION

7.1 For these reasons detailed in Section 6, it is considered that the changes proposed are non-material in the context of this development.

7.2 Overall, it is considered that the dwelling, as constructed, has been causing material harm to the character and appearance of the area, and as such detracts from quality of the street scene. However, it is considered that the individual elements that are the subject of this application are not the reasons for this harm. Rather, it is considered that the harm originally resulted from the complete omission of bargeboards (causing a ‘flat’ appearance to the front elevation), and the failure to complete the approved hard and soft landscaping. Whilst the elements under consideration would be welcome if carried out, they are not considered to be of such significance so as to be material in this instance.

7.3 As such, it is recommended that the application for a non-material amendment is approved as set out in the full recommendation of Section 8.

8. FULL RECOMMENDATION

DELEGATE to the Head of Planning & Countryside to **APPROVE THE NON-MATERIAL AMENDMENTS** to Planning Permission 12/00623/FULD as shown on drawing numbers 013264/13C, 013264/19C, 013264/10B and 013264/13B.