

12th June 2023



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Dear Ashley,

**LAND TO THE NORTH EAST OF KING GEORGE V PLAYING FIELDS, NORTHAW ROAD EAST, CUFFLEY, HERTFORDSHIRE, EN6 4RD
SECTION 73 APPLICATION FOR MINOR-MATERIAL AMENDMENTS TO OUTLINE PLANNING PERMISSION S6/2015/1342/PP**

We enclose on behalf of our client, Bellway Homes (North London) ('the Applicant'), an application made pursuant to Section 73 of the Town and Country Planning Act (TCPA) 1990, for a minor-material amendment to the outline planning permission (OPP) granted under LPA Ref. S6/2015/1342/PP, in relation to the above site. This minor-material amendment application seeks to amend the approved parameter plans to facilitate the submission of an updated Reserved Matters scheme to include 8 x 5 bed units and 2 x 3 bed units at plots 79-88.

1. The Site and Planning Background

The site measures approximately 5.52 ha and is located to the south Cuffley, Welwyn Hatfield. The site is currently in agricultural use.

The site is bound to the north by existing residential development and the grounds of Cuffley Primary School. The railway line and Northaw Road East (B156) form strong eastern and western boundaries respectively. On the opposite side of the road there are three pairs of semi-detached dwellings which are accessed from Colesdale to the north. The southern boundary is defined by a mature hedgerow and tree belt lining the Hertfordshire Way footpath.

Beyond the footpath to the south west of the Site and fronting Northaw Road East is the King George V (KGV) Playing Fields, comprising various sports clubs, and including three sports pavilions, a recreation area with hard surfaced MUGA, sport pitches and a small area of formal play equipment.

Outline planning permission was granted at the site (LPA Ref: S6/2015/1342/PP) on 31st March 2022 for the following development:

"Outline planning application for residential development of up to 121 dwellings associated infrastructure and a change of use from agricultural land to an extension of the King George V playing field. All matters reserved except for new vehicular access to serve the site, the provision of surface water discharge points and the levels of development platforms."

Following the granting of the aforementioned OPP, the applicant secured Reserved Matters approval on 10th March 2023 (LPA Ref No. 6/2022/1774/RM) for the following:

Offices and associates throughout the Americas, Europe, Asia Pacific, Africa and the Middle East..

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“Approval of reserved matters (appearance, landscaping, layout and scale) following outline planning permission S6/2015/1342/PP for residential development of up to 121 dwellings, associated infrastructure and a change of use from agricultural land to an extension of the King George V playing field. In addition, to approve details for Condition 9 (refuse and recycling), Condition 10 (noise), Condition 11 (air quality) and Condition 16 (LEMP).”

2. Proposed Scheme Revisions

This Section 73 application seeks to amend the approved parameter plans to facilitate future updates to the approved Reserved Matters scheme (LPA Ref. 6/2022/1774/RM) given the levels issues at the site. The amendments will allow for the redesign of houses in this area to revise the split level gardens. Referring to 2271-SK-1400-D approved building heights parameters; alongside P1848.11, this shows the insertion of a pink zone in part replacing the orange zone two storey, which will allow for “Up to 3 storey - 3m minimum to 14m maximum ridge height above adjacent ground level (+0.5m)”. This new zone is considered to be located in the best part of the site, as it utilises the site’s levels to include a third storey whilst ensuring that the relationship with the school to the north is unaffected. The three storeys will only affect the internal street scene as from the rear they will appear as two storey. The zone for three stories is off set from the northern boundary line.

With regards to the proposed relationship with the flatted blocks to the south:

- Section AA shows that Plot 88 will be 0.9m higher than Block 2 (previously it was 0.7m lower); and
- Section BB shows that Plot 81 will be 1.1m higher than Block 3 (previously it was 1m lower)

This change to the parameters would also facilitate a reduction in the amount of retaining walls required on the site, which is of significant benefit to the usability of the private landscaping. The gardens will now be on one level which in particular is better for those who may have alternative accessibility requirements. In addition the adjoining trees will have more retentions, along the northern boundary. An updated LVIA addendum has been prepared and demonstrates that this change is not material. The changes allow for an improvement in residential quality and a betterment to the housing mix. The changes to the parameters and the layouts, when considered against the scheme parameters and design as a whole are negligible and we do not feel that they materially alter the principles which are consented.

The benefits of this change are as follows:

- Maintains the same relationship in terms of height with the adjacent school
- Improves the boundary treatment with the school who would be looking at a concrete retaining wall
- Protects the trees on the boundary as retaining is not required and can allow trees to grow without impeding on their root growth
- Residents would benefit from better quality amenity space (on one level for residents (compared to unusable amenity areas with steps which will be problematic for a range of ages and disabilities)
- The street scene is improved as retaining walls are reduced. This is particularly beneficial to residents in the HA block where a lot of the retaining has been omitted, whereas previously some habitable rooms would be looking out onto a wall
- Improves health and safety on site as the step level houses use the rear wall of the house to retain the wall. This will allow the groundworks contractor to install the retaining first and excavate safely around it.

Pre-application Consultation with Officers

This application is submitted following pre-submission email correspondence with WHBC officers in Spring 2023, a meeting with Mark Peacock on 17th March 2023 and a meeting with Ashley Ransome on the 2nd June 2023 to discuss the proposed changes. During this meeting, it was confirmed that the change could be acceptable in principle, subject to some specific design amendments that have been taken on board and will be reflected in the forthcoming Reserved Matters application. Officers also confirmed that a Section 73 application would be the appropriate approach for securing these amendments to the outline permission.

3. Use of Section 73 Applications

Section 73 of the Town and Country Planning Act 1990 (as amended) allows for the variation or removal of planning conditions. *Armstrong v Secretary of State for Levelling-Up, Housing and Communities* [2023] EWHC 176 (Admin) confirms that Section 73 is clearly intended to be a provision in the 1990 Act which enables an applicant to remove or vary a condition, provided that the s73 application does not conflict with the operative part of the permission. The operative part of the planning permission being the description of the development granted and is confirmed in *Finney v Welsh Minsters* [2019] EWCA Civ 1868.

The judgment in *Armstrong* criticised the Planning Practice Guidance (PPG) which suggest that s73 applications are only for 'minor material amendments'. This is not the case. *Armstrong* confirms that there is nothing in the legislation that limits a Section 73 application to minor material amendments, or to amendments which do not involve a fundamental variation where there is no conflict with the operative part of the permission.

Planning Permission has been granted at the site with the following description: *'Minor material amendment and variation of condition 2 (in accordance with approved drawings) pursuant to planning permission dated 06/03/2021 ref. 2020/5053 (Alterations including erection of two storey rear and side extensions at the rear and side (plus roof), and alterations at second floor level fronting Augustus Road in connection with change of use of part of the first and second floors from office (Class E) to 3 x 1-bedroom flats (Class C3) with associated cycle and refuse storage) as varied by 2021/3173, to amend the layout of the third floor, reposition the chimney and extend gable at western end; amendments to the form and layout of fenestration on the rear elevation.'*

The variation of Conditions 3 (Approved Plans) would not conflict with the operative part of the permission and does not involve a fundamental variation of what has been permitted. On this basis, it is considered that this application to vary Condition 3 is fully acceptable, accords with the provision of Section 73 of the 1990 Act and the judgment in *Armstrong*.

4. Planning Policy Context

In accordance with Section 38(6) of the Planning Compulsory Purchase Act 2004, any planning application for new development should be judged in accordance with the development plan, unless material considerations indicate otherwise.

The adopted Development Framework for WHBC, which is of relevance to the site comprises:

- Saved Policies of the Welwyn Hatfield District Plan (adopted 2005);
- The Hertfordshire Waste Local Plan (adopted 2012-2014); and
- The Hertfordshire Minerals Local Plan (adopted 2007).

Welwyn Hatfield Council are currently undertaking a Local Plan Review. The Local Plan Examination remains ongoing. The latest update is that the Council consulted on Main Modifications for the Welwyn Hatfield Local Plan. The consultation closed on 15 February 2023. This was based on a housing supply of 13,392 dwellings, with a ten year supply of 9,209 dwellings.

5. Key Planning Considerations

Principle

The site is subject to a draft allocation in the emerging Local Plan under policy SADM33 (Site ref. Cuf6). The site is allocated for 108 residential units. Whilst the draft Plan is yet to be adopted and as such the allocation has not been formalised, the Inspector has found the site allocation to be sound. On this basis, Council do not consider granting of planning permission on this site to be premature.

The latest Welwyn Hatfield SHMA (2017) that forms part of the evidence base for the emerging local plan identifies a clear need for larger housing. The updated OAN indicates that approximately two thirds (64%) of households are likely to require at least three bedrooms, with around 23% likely to require two bedrooms.

Notwithstanding the above, outline planning permission was granted at the site (LPA Ref: S6/2015/1342/PP) on 31st March 2022 for 121 dwellings. Following the granting of the aforementioned OPP, the applicant secured Reserved Matters approval on 10th March 2023 (LPA Ref No. 6/2022/1774/RM) for 121 dwellings.

On this basis, the amendments to the scheme comprising the provision of 8 x 5 bed units and 2 x 3 bed units at plots 79-88 instead of 6 x 4 bed and 4 x 3 bed are considered wholly acceptable and in accordance with the identified housing needs within the borough.

Landscape and Visual Impact

At the local level, Policy D8 of the Local Plan states that Landscape should form an integral part of the overall design for new development proposals. Landscaping schemes should; respect the character of the area, include the planting of trees, hedgerows and shrubs and provide details of future maintenance. The policy also states that the retention and enhancement of existing key landscape features such as trees and shrubs, ponds and watercourses will be expected where feasible; where this is not possible, replacement planting should be carried out.

Policy RA10 of the Local Plan states that proposals for development in the rural areas will be expected to contribute, as appropriate, to the conservation, maintenance and enhancement of the local landscape character of the area in which they are located, as defined in the Welwyn Hatfield Landscape Character Assessment.

An Landscape and Visual Impact Assessment (LVIA) Addendum has been prepared by HDA. The Addendum confirms that The baseline condition of the site and surrounding landscape has not substantively changed since the 2016 LVA was submitted under S6/2015/1342/PP and, as such it is not anticipated that there would be changes to the assessed sensitivity of landscape or visual receptors.

The Addendum concludes that proposed changes are limited in extent and would only affect a small proportion of the site. It is considered that the proposed changes would not result in any change to the landscape assessment. With regards to the visual assessment, it is considered that the majority of visual receptor groups would not be affected by the changes proposed to the heights parameters..

The predicted landscape and visual effects are limited and are not considered to be significant in EIA terms. No further assessment nor evaluation is recommended with regards to the 2016 LVA.

6. Schedule of Revised Drawings

In order to capture the proposed changes to the outline permission, revised drawings are submitted. The tables below set out the previously approved plans and the replacement revised plans submitted for approval:

Drawing Title	Approved Outline Drawing Number	Proposed Revised Drawing Number
Illustrative Masterplan	2271-C-1005-B	P1848.IMP.01 Rev A
Proposed Levels Plan	2271-A-1000-D	10929-SK-001 Rev A
Parameter Plan - Building Heights	2271-SK-1400-D	P1848.12 Rev A

An updated illustrative housing mix is also submitted as part of the application.

7. Summary



It is considered that the proposed amendments to the approved parameter plans are both appropriate and acceptable, and are necessary in order to facilitate updates to an updated Reserved Matters scheme that will be submitted in due course. As outlined the revisions are required to address the site levels and buildability of the scheme, in turn they will allow for an improved quality of residential accommodation.

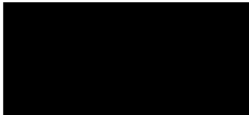
We are therefore satisfied that the proposals are in full accordance with national, regional and local planning policy and should be approved without delay.

The enclosed submission has been submitted via the Planning Portal (PP-12220893), and comprises the following information, in addition to this covering letter:

- Application Form, prepared by Savills;
- Site location plan, prepared by AAP;
- Updated heights parameter plan, prepared by AAP;
- Updated illustrative masterplan, prepared by AAP;
- Updated illustrative schedule and plot schedule, prepared by AAP;
- Updated proposed levels plan, prepared by Brookbanks;
- DAS addendum, prepared by AAP; and
- LVIA Addendum, prepared by HDA.

I trust that the enclosed is in order and I look forward to receiving prompt confirmation that the application has been validated. Please contact either myself or my colleague, George Daniel [REDACTED] of these offices in the first instance if you have any queries or would like to discuss.

Yours sincerely,



Laura Fletcher-Gray
Associate Director

Enc. As listed
Cc Fiona Flaherty, Bellway Homes (North London)