



St Edmundsbury
BOROUGH COUNCIL

Development Control Committee 1 September 2016

Application for Non-material Amendment NMA(B) 12 0461 Land East of The Granary, Clare

Date 5 May 2016 **Expiry Date:** 2 June 2016, but
Registered: extended by agreement
with the applicant

Case Dave Beighton **Recommendation:** Approve
Officer:

Parish: Clare Town **Ward:** Clare

Proposal: Non-Material Amendment to SE/12/0461/FULCA – Amendment to the landscaping scheme around the lagoon areas and site frontage.

Site: Land East of The Granary, Stoke Road, Clare

Applicant: Charles Church Anglia

Synopsis:

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and Associated matters.

Recommendation:

It is recommended that the Committee determine the attached application and associated matters.

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Background:

This application is presented to the Development Control Committee as it relates to a major application against which there is an outstanding objection from Clare Town Council.

The proposal relates to an application for a 'non-material amendment' to the original proposal. Ordinarily, these are applications upon which the Authority does not undertake consultation, and which Officers routinely determine under delegated powers based on whether the changes that are sought are suitably de-minimus in planning terms.

However, given the interest in this site, and noting that the regulations allow Authorities the discretion of consulting, comments have been sought from the Clare Society and from Clare Town Council. In light of the objection that remains from Clare Town Council the decision has been taken to report this matter to the Development Control Committee for determination.

The application is recommended for approval.

Proposal:

1. A non material amendment to the original plans is sought. The scheme as originally approved included a post and chain link fence around the lagoons at the front of the site. This proposal seeks to resite this fence and, following negotiation with officers, now seeks to replace it with metal railings. The proposal originally sought the resiting of the post and chain fence and its replacement with a timber fence, plus the inclusion of a timber knee rail fence, but the proposal now proposes the use of black metal railings following negotiations undertaken as part of the consideration of this proposal.
2. Changes have also been sought to increase the extent of soft landscaping around the lagoons.

Site Details:

3. The application site is an approved and built out housing site fronting Stoke Road, Clare. The part of the site in question relates to the attenuation lagoons located either side of the entrance road to the site, facing Stoke Road. The site lies within the Clare Conservation Area.

Relevant Planning History:

4. SE/12/0461/FULCA – Approved - Planning Application - (i) Erection of 60 no. dwellings (18 no. affordable) (ii) construction of new vehicular access and (iii) associated infrastructure amended design as per drawing no's 09044-01, 02, 07E, 09, 100A, 102A, 103A, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117B, 118B, 120, 121, 122 & 123 and additional information on drainage and flood risk received on 31st August 2012 and as per the amended layout plan received on 1st November 2013 revising the road position.

Consultations and Representations:

5. This is an application for a Non-Material Amendment. The Regulations do not require consultation to take place. However, in this instance, noting the wider interest in this site, consultation has taken place with the following responses received.
6. Clare Town Council: Original Comments dated 3 June 2016 – Object – Comment that the replacement fencing is inappropriate and not in keeping with the local area and that it does not match townscape.
7. Clare Town Council: Revised comments dated 21 July 2016.

In response to your email of 8th July, the Town Council objects to the revised plan because:

The Town Council believes the proposed railings, although more in keeping than those previously proposed, would be more appropriate if they were vertical rather than horizontal - all black railings in the Conservation Area of Clare are vertical in their design.

From a health and safety perspective, vertical railings would also be more appropriate in terms of the safety of small children and in particular the prevention of serious incidents from children gaining access to the ponds. An assumption has been made that the proposed railings meet with safety standards for the prevention of incidents involving young children but no information is provided to confirm this.

The planting scheme does not meet the requirements of the original planning application and is not sufficient (Officer Note – the planting scheme has been supplemented further since these comments were received).

8. Clare Society: Initial comments dated 3 June 2016:
Thank you for your letter of 13 May 2016. We have studied the revised landscaping scheme around the lagoons on the Stoke Road frontage of the Persimmon/Charles Church site.

What is proposed is infinitely better than the messy appearance which has been there for many months and been negatively

commented upon by both members of the Clare Community and Visitors.

We are broadly in agreement with the new plans but have some concerns on the details involved.

HEDGES

These are a good idea along the housing edges of the lagoons, provide a green break to the stark line of the houses and helps to obscure the lagoons from the ground floor view of the four houses. As we understand the plans the hedges will meet the fences on either side of the site so that the privacy of the drives is maintained and there will be no access to the drives from the Granary green sward and at the other side of the site.

GRASS VERGES

Moving the fence lines to the top of the bank slopes is a good idea to create at either end of both lagoons flat grass areas that will look more attractive and can be easily maintained.

PLANTS

What is proposed looks appropriate. Whilst wild flowers sound attractive they must be cut at the right time of year to survive and this may be asking too much of a council maintenance team. "Wetland wild flower meadow grass" would probably work, but only on the lagoon slopes not on the flat grass areas which need to be cut regularly.

FENCES

The lagoons are large and deep and potentially dangerous for children and those who are unsteady on their feet. Neither the current post and rail fencing, nor this and/or the suggested post and rail "Timber Knee Rail" provide the necessary level of safety and timber posts straight into the ground will deteriorate and look unsightly. We agree with the re-alignment of the fence line along the top of the lagoon bank slopes but feel strongly that the best way to achieve safety and an attractive look to the entrance of this new estate is that the lagoon perimeter fences are black metal railings at least one metre high, which are constructed to discourage children from climbing them and getting into the lagoons. Metal railings are used on the frontage of houses elsewhere in Clare, such as Stoke Road and Nethergate Street. We appreciate that metal railings would be more expensive than wooden posts and that all the houses have been sold but feel that, in the overall site cost equation, the extra cost to Persimmon/Charles Church would be sensible and justified to ensure that their latest site in Clare has an attractive approach recognised by the Clare Community and Visitors alike. Such metal railings surrounding the lagoons will eliminate the need for the ugly metal bar structures on the brick outfall walls which will encourage children to play on them and increase the chance of an accident.

MANAGEMENT

During the build the lagoon surroundings have not been managed. It is not clear who will be responsible for the management of these and the communal area in the centre of the estate - please advise who will undertake this task to ensure that they remain well kept?

9. Clare Society: Revised comments dated 19 July 2016

Many thanks for sending us the revised plan for the surrounding to the lagoons. We are pleased that The Clare Society's suggestion of iron railings has been adopted. This will make it safer and a more attractive entrance to the new houses and to Stoke Road, which is the major route into the centre of Clare.

We hope that this revised plan can be finalised and put into place ASAP. Once completed it is crucial that the area is tended and managed properly. After Persimmon/Charles Church leave the site please advise who will be responsible for the upkeep? (Officer Note – there is an agreed management plan for the site. This will either be undertaken by a management company or, if the site is accepted for adoption, by the Borough).

10. Conservation Officer: The proposed railings are acceptable from a Conservation Area point of view.

11. Neighbours:

Three letters of representation have been received (two from the same address) which, between them, raise the following summarised comments

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- The replacement fencing is not in keeping with the local area.
- The re-alignment of the fencing along the top bank of the attenuation pond along with managed grass area at the top of the banks is dangerous for the public, especially young children.
- The grassed areas and iron railings are a definite improvement to the weeds, long grass and wild flower mess.
- The hedging will look smart and improve the frontage.
- I would suggest the iron railings be vertical rather than horizontal. All of the other iron railings on the development, including those on our rear drive are vertical. I have already had to ask people not sit on the chains between the fences. If the railings are horizontal then that will encourage more people to do it, something I would prefer not happen outside my house. It would also appear from the pictures that small children could climb through them and gain access to the pond. Vertical railings would prevent this.
- I am not keen on the sowing of more Wild Flowers inside the iron railings. Wild flower meadows look an absolute mess most of the time and cause debris everywhere when strimmed, as has just happened. If there must be wild flowers then they should be well within the bowl and not close to the railings, where they will grow through them and look very untidy.
- Iron railings are advantageous as they will not degrade like the

current fencing, however, other iron railings in the conservation area are vertical railings, therefore the look of the railings is not consistent with the existing town scape. Charles Church have installed some iron railings already on the site and these are also vertical railings. It would be advantageous if the railings around the lagoon were vertical and could match those already installed on site and other iron railings in the conservation area. Horizontal railings will encourage children to climb the fencing, and sit on it, which will increase the likelihood of someone falling into the lagoons. They therefore pose a health and safety issue.

- The number of aquatic/marginal plants on drawing 09044-EDP-AP01 has been reduced compared to the plans submitted to St Edmundsbury for the non-material amendment (Iris pseudacorus minus 13 plants, Mentha aquatica minus 2 plants, Typha angustifolia minus 2 plants, Caltha palustris minus 2 plants). Interestingly the spacing of all the plants is the same for both plans, with the exception of Iris pseudacorus which has been reduced from 5/m² to 3/m². Is there a specific reason why the planting has been reduced? *Officer Note – the planting has now been increased again in the latest iteration of the plans.*

Policy:

12.The following policies of the Joint Development Management Policies Document and the Forest Heath Core Strategy 2010 have been taken into account in the consideration of this application:

13.Joint Development Management Policies Document:

- Policy DM1 (Presumption in Favour of Sustainable Development)
- Policy DM2 (Creating Places – Development Principles and Local Distinctiveness)
- Policy DM17 (Conservation Areas)
- Policy DM22 (Residential Design)

14.St Edmundsbury Core Strategy 2010:

- Policy CS3 (Design Quality and Local Distinctiveness)

15.Rural Vision 2031

- Policy RV3
- Policy RV11

Other Planning Policy:

16. National Planning Policy Framework (2012)

17.National Planning Practice Guidance

Officer Comment:

18.Section 96A of the 1990 Town and Country planning Act allows a local planning authority in England to allow a change to any planning

permission relating to land in their area if they are satisfied that the change is not material. 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.

19. The power conferred by this section includes power to impose new conditions or to remove or alter existing conditions.
20. In relation to the exercise of this power the National Planning Practice Guidance states that 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 local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under section 96A of the Town and Country Planning Act 1990.
21. What this means in practice is that changes can be effected to approved developments following the grant of permission, providing that, in the context of the approval, the changes can be considered de-minimus, so as not to take the development in a direction, or to a form or impact, not readily anticipated at the time the original approval was granted. The reality is that the provisions of Section 96A are very useful for agreeing a potential wide range of changes, alterations or modifications to developments where, in many cases, the need for such only come to light as development is proceeding. The use of section 96a removes the need to apply for a fresh planning permission. Plainly, where the changes sought are significant, or introduce effects or impacts not anticipated at the time of the original consent, then it can be determined that the requested changes are not 'non material' and these applications can be refused. As the guidance notes, the exercise of these powers is up to the Authority, with no prescriptive further guidance, reasonably so given that what is material in one circumstance might very well not be in another.
22. In support of this proposal the agent has provided a written response on the matters sought, including in relation to the revised railings and the revisions to the landscaping scheme.

Horizontal railings:

RoSPA advised that the post and chain boundary treatment was unsuitable on health and safety grounds and, following their recommendation, a 3-rail timber fence was submitted as part of the NMA. This form of boundary treatment was not considered aesthetically appropriate by consultees and so the horizontal railings were submitted as an alternative proposal following advice taken from the Conservation Officer. The Conservation Officer advised that vertical railings could appear too formal around the lagoon and are more appropriate for property boundaries. It is considered that the horizontal railings provide for a classic and aesthetically pleasing form of boundary treatment that complements the character of the Conservation Area. With regards to health and safety, the horizontal railings are in accordance with

advice taken from RoSPA and therefore comply with their health and safety requirements. Indeed the 3-rail timber fence, which has horizontal rails, was originally submitted following advice taken from RoSPA.

Planting:

The NMA was submitted following concerns that the lagoon and site frontage were looking overgrown and undermanaged. Therefore with regard to planting the idea is not to over plant and allow for natural colonisation / regeneration. The aim is for individual species to form good size blocks and allow for natural colonisation between groups i.e. Iris and Typha will form solid blocks/groups - Mentha & Catha will have grasses and local species interweaving within groups but should remain the dominant species. The Iris planting rate has been reduced to aid management in the short and medium term as they can take over a space relatively quickly and will need to be routinely thinned out / removed.

Please find attached an updated drawing with an extra 13 plants added which are as follows:

- ♦ 5 Iris pseudacorus group of 5 added (not labelled on drawing)*
- ♦ 2 Iris pseudacorus added to group - from 1 to 3 plants*
- ♦ 2 Mentha aquatica added to group - from 5 plants to 7*
- ♦ 2 Catha palustris added to group - from 5 plants to 7*
- ♦ 2 Typha angustifolia added to group - from 7 plants to 9.*

Therefore a balance has been sought in order to provide for a landscaping strategy which possesses both amenity and biodiversity value but is manageable and easy to maintain.

Persimmon has sought to address, as far as reasonably practicable to do so, the various comments received from the Council, Clare Town Council, The Clare Society and local residents in order to secure an improved landscaping scheme to the lagoons and frontage of the site.

23. The proposed changes relate to a modest but visually prominent part of the site, but do not seek, in the opinion of officers, to introduce changes that are material within the context of this development as a whole. The landscaping changes are proposed in an attempt to improve the range of species and appearance of the site, over and above the approved landscaping scheme but, in any event, do not seek significant changes that would fundamentally or even modestly alter the appearance and appreciation of this area of the site. The proposed alternative boundary treatments and location at the front was in response to health and safety concerns raised in respect of the originally agreed post and chain fence. The originally proposed solution had been to provide a timber post and rail type fence but, in consultation with the Conservation Officer, this has been amended to include black metal railings of a type, and in a location, that will have a satisfactory impact upon the Conservation Area and the setting and appearance of the site.

Conclusion:

24. For these reasons therefore, and within this context, Officers consider that the changes are a pragmatic response to a normal range of issues that have arisen during development and which require the originally approved development to be adapted in response. The nature, scope and extent of changes proposed, within the context of this development site, are considered non material and capable of approval through the provisions of section 97a of the 1990 Town and Country Planning Act.

Recommendation:

It is **RECOMMENDED** that the Non-Material Amendment be **Approved**:

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online.

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=O6P821PD05M00>

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