

DEVELOPMENT MANAGEMENT COMMITTEE – 4 MARCH 2020

Application Number	3/19/2227/VAR
Proposal	Variation of Condition 10 (scheme for affordable house) of planning permission ref: 3/14/2200/OP (Residential development for up to 85 houses including site access, public open space and landscaping. Amended proposal). To alter ratio of tenure for affordable and private housing.
Location	Land South of Froghall Lane, Walkern, Hertfordshire
Parish	Walkern Parish Council
Ward	Walkern

Date of Registration of Application	31 October 2019
Target Determination Date	4 February 2020
Reason for Committee Report	Variation of a Major Scheme
Case officer	Rachael Collard

RECOMMENDATION

That planning permission be **GRANTED** subject to a legal agreement/the conditions/the reasons set out at the end of this report.

That delegated authority be granted to the Head of Planning and Building Control to finalise the detail of the Legal Agreement and conditions.

1.0 Summary of Proposal and Main Issues

1.1 The site comprises 4.17 hectares of land located to the south west of Walkern. The site is bordered to the south by the rear gardens of properties on Moors Ley and to the east by the rear gardens of Aubries. To the west of the site is further agricultural land and woodland which comprises countryside between Walkern and Stevenage.

1.2 Permission was granted for the construction of 85 dwellings at appeal. Whilst the site at Froghall Lane does not form a strategic allocation within the District Plan, it is the subject of Policy 8 of the adopted Walkern Neighbourhood Plan.

1.3 The main issue for consideration is:

Whether the variation of condition 10 is acceptable having regard to Policy HOU3 of the District Plan and Policy 8 of the Walkern Neighbourhood Plan.

2 Site Description

2.1 The site is located adjacent to the village boundary of Walkern and is identified in the District Plan as being land beyond the Green Belt and an area of Archaeological Significance. The site is bordered to the south by the rear gardens of properties on Moors Ley and to the east by the rear gardens of Aubries. To the west of the site is further agricultural land and woodland which comprises countryside between Walkern and Stevenage.

2.2 The site has planning permission for the construction of 85 houses following the allowed appeal under reference 3/14/2200/OP and its subsequent reserved matters application 3/17/1558/REM, it should be noted that a subsequent application was submitted seeking to vary conditions seen under the original reserved matters application. A site visit has confirmed that the site is currently under construction.

3 Planning History

3.1 The planning history of the site comprises:

3/19/1955/VAR - Variation of condition 1 (Approved plans) of the LPA's approval 3/17/1558/REM (Approval of reserved matters for 3/14/2200/OP in respect of appearance, layout, scale and landscaping for the erection of 85 no. dwellings). External levels

staggered to plots 50, 51, 25, 26, 35, 36, 17 and 32, 19, 23, flats 1 to 8. Garage roof ridge and eaves levels changed to plots 60, 62, 73, 76, 77, 85, 81, 58, 59, 72. External chimney removed to plots 64, 83 and 84. – Granted 23rd January 2020

3/19/1962/NMA - Window header changed to soldier course to all plots. Window cills changed to brick cills to all plots. Front door profile changed to all plots. Rear door profile changed to all plots. Type A (Brick - plots 67 to 70 only) rear doors changed to French doors. Type A (Render plot 33 only) windows added to side elevation. Plot nos. 33 and 34 are shown in this house type as per approved dwg 16125(D)082 rev C. Type B (Plots 45 and 46 only) rear doors changed to French doors. Type C (Plots 50 and 51) garage changed to exposed roof truss eaves and front projected bay width is 400mm narrower than the approved elevations on all. Type C plots, Type D (Plots 17 and 32) canopy profile changed. Type F (Plot 58, 59 and 72) rear garage door removed and window above garage at side elevation removed. Type F (Plot 58, 59, 72 and 74) canopy profile changed, Type G (Plots 56, 57, 66 and 70) garage personnel door added, front elevation rooflight between dormers removed and rear elevation rooflight to the garage removed. Type J (Plots 64, 83 and 84) rear garage personnel door profile change and side window profile changed. Type K (Plots 54, 55, 61, 63, 78, 79 and 82) rear garage personnel door profile change. – Granted 24th December 2019

3/19/1377/NMA - A non-material amendment to 3/17/1558/REM - (Approval of reserved matters for 3/14/2200/OP in respect of appearance, layout, scale and landscaping for the erection of 85 no. dwellings). Splayed brick arches changes to straight brick soldier courses - Withdrawn

3/17/1749/REM - Application for Approval of Reserved Matters for 3/14/2200/OP in respect of Appearance, Landscaping, Layout and Scale for the erection of 85 dwellings – Granted 1st February 2018

3/17/1558/REM - Approval of reserved matters for 3/14/2200/OP in respect of appearance, layout, scale and landscaping for the erection of 85 no. dwellings – Granted 1st February 2018

3/14/2200/OP - Residential development for up to 85 houses including site access, public open space and landscaping. Amended proposal. – Refused, Appeal allowed.

4 Main Policy Issues

- 4.1 These relate to the relevant policies in the East Herts District Plan and the National Planning Policy Framework 2018 (NPPF) and the Walkern Neighbourhood Area Plan 2017-2033. The neighbourhood plan policies are material to the consideration of the planning application.

Key Issue	District Plan	Neighbourhood Plan	NPPF
Principle of development	GBR2, VILL1, INT1, DPS1, DPS2, DPS3, DPS4, DEL1, DEL2, CC1, CC2	Policy 1, Policy 8	Chapter 2 Chapter 6 Chapter 4
Delivery of Housing	HOU1, HOU2, HOU3, HOU7, HOU8	Policy 8, Policy 11	Chapter 5
Design Quality	DES2, DES3, DES4, DES5, CC1, CC2, WAT4, CFLR1, CFLR9	Policy 2, Policy 6, Policy 8, Policy 12	Chapter 12 Chapter 16
Impacts on neighbour amenity and occupiers	DES3, DES4, CFLR1, CFLR3		Chapter 16
Highway, parking and transport impacts	TRA1, TRA2, TRA3	Policy 17	Chapter 9
Flood risk and	WAT1, WAT2	Policy 16	Chapter 14

drainage	WAT3, WAT4, WAT5, WAT6		
Other Planning Considerations	NE3, NE4, CC1, CC2 EQ1, EQ2, EQ3, EQ4		Chapter 14
Viability and delivery of Infrastructure	DEL1, DEL2, CFLR1 CFLR3, CFLR7, CFLR9, CFLR10	Policy 19, Policy 20	Chapter 5

Other relevant issues are referred to in the 'Consideration of Relevant Issues' section below.

5 Summary of Consultee Responses

- 5.1 HCC Archaeology– No comments to make
- 5.2 CPRE– Concerns regarding this proposed variation to the tenure on this site. The proposed modifications will result in all of the affordable housing being located in the north east corner of the site, separating the affordable housing from the private market housing.
- 5.3 EHDC Housing – We support the proposal to vary the ratio of tenure for affordable and private housing.

(Note: EHDC, East Herts District Council; HCC, Hertfordshire County Council)

6 Town Council Representations

- 6.1 Walkern Parish Council –No comments received

7 Summary of Other Representations

- 7.1 The application has been advertised by neighbour consultation to local residents, by press and site notices. 5 responses have been received objecting to the proposal on grounds summarised as:

- Changing plans whilst the development is under way, why bother?
- Unclear as to what the applicant is proposing.
- It does nothing for integration and social cohesion by placing all the social housing at one end of the site.
- The development should be in accordance with the Walkern Neighbourhood Plan.

8 Consideration of Relevant Issues

Principle of Development

- 8.1 The application seeks a variation of condition 10 (affordable housing) of planning permission 3/14/2200/OP.
- 8.2 The original condition imposed by the inspector in the determination of the appeal states:
- 8.3 No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and been approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of the National Planning Policy Framework or any future guidance that replaces it.

The scheme shall include:

- a) The numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 40% of housing units.
- b) A tenure split of 75% affordable rent and 25% shared equity
- c) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing
- d) The arrangements for the transfer of the affordable housing to an affordable housing provider or such other arrangements for the

- management of the affordable housing if no Registered Social landlord is involved
- e) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing
 - f) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced. '

Whether the variation of condition 10 is acceptable?

- 8.4 This application seeks an amendment to condition 10 of planning application reference 3/14/2200/OP, which was granted for 'Residential development for up to 85 houses including site access, public open space and landscaping. Amended proposal'.
- 8.5 Condition 10 refers to the affordable housing provision for the development and seeks to ensure that at least 40% affordable housing is provided on site and further details.
- 8.6 A Section 73 application allows applicants to apply to vary one or more conditions attached to a planning permission, this results in a new permission with one or more conditions from an extant permission varied or removed. In determining an application under this section, the Council must have regard to the development plan and all other material considerations but the principle of development should not be re-assessed since that is not an issue in relation to the variation of the condition. There is no statutory definition of a minor material change but guidance given states that:
- 8.7 "A minor material amendment is one whose scale and nature results in a development which is not substantially different from the one which has been approved".
- 8.8 Since the granting of the outline permission and the subsequent reserved matters application, the District Plan, adopted and the Walkern Neighbourhood Plan have been adopted. As such the policies relevant to the application are different. As the site has an

extant permission which is under construction, the principle of development has been established and therefore there is no requirement to re-visit this under this application. Furthermore the proposal does not seek to alter the layout or appearance of the dwellings and therefore there is no requirement to re-assess this element of the scheme.

- 8.9 Policy HOU3 of the District Plan sets out the Council's affordable housing policy. Some of the objections received from members of the public suggest that the applicant is seeking to reduce the quantum of affordable housing below 40%. The applicant has confirmed in the supporting information that a reduction in the quantum of affordable housing is not being sought and in this instance the developer seeks to provide 4 additional units over the 34 units originally approved. Therefore a total of 38 units are to be provided equating to a proportion of 44%, the applicant has stated that these additional units have been facilitated by grant funding from Homes England. Therefore the proposed level of affordable housing is in excess of the HOU3 policy requirement and is considered to provide a mix of properties that complies with policy 11 of the Walkern Neighbourhood Plan.
- 8.10 The original condition at part b) sets out the tenure split, as a result of the additional units proposed, this element of the condition requires amending as the resulting tenure split would equate to 21% shared ownership and 79% affordable rent. These figures are closer to the tenure split the Council seeks in relation to affordable housing than those originally set out in condition 10. Under Policy HOU3 II, the tenure split is 16% and 84% by relevance to the SHMA and Table 14.2 of the District Plan.
- 8.11 The Council's Housing Officer has been notified of the application and supports the proposal to vary the ratio of tenure for affordable housing.

- 8.12 Additional objections received in relation to the application are in relation to the location of the affordable units on the site. With contributors concerned that the clustering of units in one location has an impact on integration and social cohesion. The proposal seeks to slightly re-arrange the on-site distribution and provides an extra 4 units. The original agreed location for the affordable housing was located in the eastern part of the site. The proposed affordable housing units are considered to be in broadly the same locations, with the exception that additional units are proposed. Therefore it is considered that the proposed changes would not justify a reason for refusal.
- 8.13 The affordable housing provision is considered to be acceptable and provides more affordable dwellings than previously agreed.

Other Matters

- 8.14 Should this variation application be approved, a new decision notice would be issued and it is that permission the applicant would accord with. As the previous outline application was accompanied by a Unilateral Undertaking setting out financial contributions, any new permission granted would require a separate legal agreement to ensure that these contributions are delivered. The applicant has agreed and is drafting a new document to accompany any permission granted. It is expected that this document delivers the contributions previously agreed and those that were considered to be justified and reasonable by the planning inspector.
- 8.15 In relation to conditions, it is not reasonable to impose a time limit as development has commenced. However it is considered necessary and reasonable to impose a condition linking the new permission to the variation application of the reserved matters application (3/19/1955/VAR), this ensures that development on site is carried out in accordance with the details already agreed and does not require a subsequent reserved matters application to be submitted. The condition relating to the affordable housing will be

altered in line with the details submitted as part of this application. All other conditions originally imposed will be re-instated but will reflect the details that have been agreed through the 'approval of details reserved by condition'.

RECOMMENDATION

That planning permission in relation to the detailed planning application is to be granted, subject to the following conditions and that delegated authority be granted to the Head of Planning and Building Control to finalise the detail of the Legal Agreement, the contributions to be contained therein and the conditions.

1. The development hereby approved shall be carried out in accordance with the Reserved Matters application 3/19/1955/VAR dated 23rd January 2020.

Reason: To ensure the development is carried out in accordance with the reserved matters application approved at the site.

2. The development hereby approved shall be carried out in accordance with the approved plans listed at the end of this Decision Notice.

Reason: To ensure the development is carried out in accordance with the approved plans, drawings and specifications.

3. No more than 85 dwellings shall be developed within the site.

Reason: To ensure that no more than 85 dwellings are constructed on site.

4. The development shall be implemented in accordance with the details approved as part of the application reference X/18/0324/CND in relation to condition 6 to the original planning application reference 3/14/2200/OP.

Reason: To ensure that suitable access is provided in accordance with policy TRA2 of the East Herts District Plan 2018.

5. The development shall be implemented in accordance with the details approved as part of the application reference X/18/0135/CND in relation to condition 7 to the original planning application reference 3/14/2200/OP.

Reason: To protect the living conditions of future occupants of the proposed development and the existing residents in accordance with policy WAT5 of the East Herts District Plan 2018.

6. The layout shall not include any built development within the south-west portion of the site affected by a 1 in 100 year surface water flood as shown on Enzygo plan reference SHF.1132.045.HY.D.004.2 dated November 2015.

Reason: To prevent flooding by ensuring the satisfactory storage of and disposal of surface water from the site in accordance with policy WAT1 of the East Herts District Plan 2018.

7. The development shall be implemented in accordance with the details approved as part of the application reference X/18/0226/CND in relation to condition 9 to the original planning application reference 3/14/2200/OP.

Reason: To prevent flooding by ensuring the satisfactory storage of and disposal of surface water from the site in accordance with policy WAT1 of the East Herts District Plan 2018.

8. The scheme for affordable housing shall be carried out in accordance with plan 419/18/2000 and shall consist of not less than 40% of housing units and shall achieve a tenure split of 79% affordable rent and 21% shared equity.

In addition a scheme for the provision of affordable housing as part of the development shall be submitted to and been approved in

writing by the Local Planning Authority prior to the occupation of dwelling. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of the National Planning Policy Framework or any future guidance that replaces it.

The scheme shall include:

- a) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing
- b) The arrangements for the transfer of the affordable housing to an affordable housing provider or such other arrangements for the management of the affordable housing if no Registered Social landlord is involved
- c) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing
- d) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced. '

Reason: To ensure that affordable housing is provided on site in accordance with policy HOU3 of the East Herts District Plan 2018

9. The development shall be implemented in accordance with the details approved as part of the application reference X/18/0091/CND in relation to condition 11 to the original planning application reference 3/14/2200/OP

Reason: To minimise and prevent pollution of the land and the water environment and in accordance with national planning policy guidance set out in section 11 of National Planning Policy Framework and in order to protect human health and the water environment in accordance with policies EQ1 and WAT2 of the East Herts District Plan 2018.

10. The development shall be implemented in accordance with the details approved as part of the application reference X/18/0091/CND in relation to condition 12 to the original planning application reference 3/14/2200/OP.

Reason: To ensure that any archaeological remains are appropriately considered in accordance with Policy HA3 of the East Herts District Plan 2018.

11. The development shall be implemented in accordance with the details approved as part of the application reference X/18/0268/CND in relation to condition 13 to the original planning application reference 3/14/2200/OP.

Reason: To contribute to sustainable development in accordance with policy TRA1 of the East Herts District Plan 2018.

12. The development shall be implemented in accordance with the details approved as part of the application reference X/18/0135/CND in relation to condition 14 to the original planning application reference 3/14/2200/OP.

Reason: In accordance with policy NE3 of the East Herts District Plan 2018

13. No site works, including the operation of all plant or machinery in connection with all demolition, preparation and all other works, shall be undertaken outside the hours of 07:30 and 18:30 Mondays to Fridays and 07:30 to 13:00 on Saturdays, and not at all on Sundays or Bank Holidays.

Reason: To minimise the impact of the construction process on residential amenity in accordance with policy DES4 of the East Herts District Plan 2018.

14. The development shall be implemented in accordance with the details approved as part of the application reference X/18/0135/CND in relation to condition 16 to the original planning application reference 3/14/2200/OP.

Reason: To minimise the impact of the construction process on the on local environment and local highway network in accordance with policies TRA2 and DES4 of the East Herts District Plan 2018.

15. All existing trees and hedges shall be retained unless otherwise approved in writing by the local planning authority.

Reason: To ensure the continuity of amenity afforded by existing trees and hedges, in accordance with Policy DES3 of the East Herts District Plan 2018.

16. The development shall be implemented in accordance with the details approved as part of the application reference X/18/0387/CND in relation to condition 18 to the original planning application reference 3/14/2200/OP.

Reason: To ensure the continuity of amenity afforded by existing trees and hedges, in accordance with Policy DES3 of the East Herts District Plan 2018.

17. The development shall be implemented in accordance with the details approved as part of the application reference X/19/0163/CND in relation to condition 19 to the original planning application reference 3/14/2200/OP.

Reason: To ensure the provision of a safe pedestrian environment, in accordance with policies DES4 of the East Herts District Plan 2018.

Summary of Reasons for Decision

East Herts Council has considered the applicant's proposal in a positive and proactive manner with regard to the policies of the Development Plan and any relevant material considerations. The balance of the considerations is that permission should be granted.

KEY DATA

Residential Development

Residential density	20 units/Ha	
	Bed spaces	Number of units
Number of existing units demolished		
Number of new flat units	1	7
	2	4
	3	
Number of new house units	1	
	2	16
	3	30
	4+	28
Total		85

Affordable Housing

Number of units	Percentage
38	44%