

2.5 REFERENCE NO 23/505421/NMAMD		
PROPOSAL Non-material amendment to application 17/505711/HYBRID to alter the boundary of the proposed primary school and open space.		
SITE LOCATION Land At Wises Lane Borden Kent ME10 1GD		
RECOMMENDATION Approve non-material amendment		
APPLICATION TYPE Non-material amendment		
REASON FOR REFERRAL TO COMMITTEE Objection from Borden Parish Council and request from Councillor Baldock		
Case Officer Simon Greenwood		
WARD Borden and Grove Park	PARISH/TOWN COUNCIL Borden	APPLICANT BDW Kent AGENT DHA Planning
DATE REGISTERED 30.11.2023	TARGET DATE 28.12.2023	
BACKGROUND PAPERS AND INFORMATION: Documents referenced in report are as follows: - Land Use Plan 1659.80 (uploaded on 28.11.2023) Covering letter ref. LW/OK/15742 dated 16.11.2023 (uploaded on 28.11.2023) Further information letter dated 22.03.2024 (uploaded on 24.03.2024) The full suite of documents submitted pursuant to the above application are available via the link below: - https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=S4UCRBTYHK300		

1. SITE LOCATION AND DESCRIPTION

- 1.1. The application site consists of a large area of land to the south and west of Sittingbourne, covering an area of some 47.5 Hectares in total. The site extends from Chestnut Street to the west, to Borden Lane to the east. Wises Lane crosses the site from north to south, and Cryalls Lane is sited within the southern and eastern extents of the site boundary.
- 1.2. The site falls wholly within the parish of Borden, and Borden village lies to the south of the site.

2. PLANNING HISTORY

- 2.1. Hybrid planning permission was granted at appeal in April 2021 for a scheme comprising outline planning permission for up to 595 dwellings, 2FE primary school and associated infrastructure, and full planning permission for Phase 1A comprising the erection of 80 dwellings and associated infrastructure (LPA ref. 17/505711/HYBRID; PINS ref. APP/V2255/W/19/3233606).
- 2.2. Approval of reserved matters relating to a sub-station and a stretch of roadway was granted in January 2023 under application ref. 22/504822/REM.
- 2.3. Approval of reserved matters relating to a link road and associated landscaping was granted in August 2023 under application ref. 22/504823/REM.
- 2.4. A non-material amendment to planning permission ref. 17/505711/HYBRID was granted in October 2023 under application ref. 23/504489/NMAMD. The amendments involved a revision to the roof design of one of the house types and corrections to the accommodation schedule for Phase 1A.
- 2.5. Approval of reserved matters (appearance, landscaping, layout and scale) for phases 1B, 2A, 2B and 2C was granted in November 2023 under application ref. 22/504937/REM.
- 2.6. Approval of reserved matters relating to the Sittingbourne Rugby Club pitches and facilities was granted in November 2023 under application ref. 23/500263/REM.

3. PROPOSED DEVELOPMENT

- 3.1. Condition 8 of hybrid planning permission 17/505711/HYBRID requires the reserved matters details to accord with a set of parameter plans. The hybrid proposal was granted outline planning permission for a 2-form entry primary school, the location of which was identified on the Land Use Parameter Plan (ref. 2574-300 Rev N) which is listed under Condition 8. It has since come to KCC Education's attention that the location of the primary school land is intersected by Public Right of Way (PROW) ZR117. Due to safety concerns KCC Education would not be able to bring forward a primary school on a site with a Public Right of Way (PROW) running through it. In order to ensure that the school can be delivered and avoid the need to divert the PROW it is proposed to amend the primary school land parcel such that it would avoid the PROW. The proposed amendment would also allow the retention of an established hedgerow which would need to be removed if the PROW were diverted around the current school land parcel.
- 3.2. It is proposed that the southern area of the school land would be designated as open space and the edge of the PROW would then form the school site's southern boundary. Additional primary school land would then be taken from the open space to the east. Retention of the hedgerow would provide a distinct

separation between the school land and the open space to the south. The proposed amendment would result in no changes to the amount of land provided for the delivery of a 2FE primary school and for open space. The application advises that the proposed amendment has been agreed with KCC Education.

4. CONSULTATION

4.1. An application to make a non-material change under s.96A is not an application for planning permission, so the existing Town and Country Planning (Development Management Procedure) Order 2015 provisions relating to statutory consultation and publicity do not apply. However, one letter of was received in relation to the application. The comments received are detailed as follows:-

Comment	Report reference
<p>The cover letter makes reference that KCC Education are in agreement with the proposed changes in the school boundaries. To ensure transparency in this agreement then written confirmation should be obtained and posted on the portal, from KCC Education.</p> <p>In addition, Borden Parish Council would probably be the best suited group to comment and approve the change to open space boundaries.</p> <p>This open space should also carry a legal agreement that it will never be developed in the future to ensure the open space remains.</p>	<p>Para. 6.10</p>

4.2. **Borden Parish Council** were consulted and objected to the application on the following ground: -

Comment	Report reference/ clarification
<p>Proposal represents a material change which changes the nature of the heart of the development isolates the commercial centre from the amenity land and for these reasons, it has a negative impact on the development.</p>	<p>Para. 6.6</p>

5. REPRESENTATIONS

5.1. **KCC Infrastructure:** - The County Council has assessed the implications of this proposal in terms of the delivery of its education provision and fully supports the amendments proposed to the school land by the applicant. These are demonstrated on the updated land use plan.

5.2. **KCC Education:** - No response received.

5.3. **KCC PROW:** - No response received.

5.4. **Swale Footpath Group:** - Why did the "Land Use Plan" not show all Public Rights of Way as such, on their present alignments and numbered? This would have made it easier to come to an informed conclusion. As always, privacy and security issues (and I recognise their importance, not least for schools) need to be addressed at the planning stage (as seems to be the case here).

6. ASSESSMENT

6.1. This application is reported to the Committee at the request of Cllr Baldock and because Borden Parish Council have objected to the proposal.

6.2. The application seeks approval under s.96A(4) of the Act for non-material changes to MMA4. Section 96A(1) states:

"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."

6.3. Section 96A(2) states:

"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."

6.4. There is no statutory definition of 'non-material'. It is 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 s.96A.

6.5. If a Section 96A non-material amendment application is refused then there is no opportunity to appeal the decision. The applicant could subsequently submit an application under Section 73 of the Town and Country Planning Act (1990) as amended to seek approval of the proposed revision as a 'minor material amendment'. A Section 73 application can be the subject of an appeal.

6.6. The parameter plan approved as part of the outline component of planning permission ref. 17/505711/HYBRID indicated land use parcels which would accommodate the approved scheme. A grant of outline planning permission typically represents a relatively high-level approval addressing the principle of a proposed development, with the details of the development following at reserved matters application stage. In this regard it can be considered that there is a relatively broad scope for amendments to an outline planning permission to be treated as 'non-material'. The configuration of development on the site will be

amended under the application proposal but there will be no changes to the quantum of land allocated to open space and school use. Furthermore, the proposed amendment will not materially impact any existing nearby occupiers.

- 6.7. The applicant has provided some clarification in response to the comments received from the Parish Council. It is stated that there was never an intention for a connection between the commercial area and the open space, and an internal road was always intended to intersect these areas. Furthermore, it is intended that retail development would address the spine road rather than the open space in order to attract footfall. There would be no loss of connectivity as a result of the proposed changes and pedestrian and cycle connections will be provided between the open space and the commercial area.
- 6.8. The proposed revisions to the land parcels would secure the delivery of the school site, retain the existing PROW on its current alignment and the existing hedgerow and would provide a single larger area of consolidated open space on the southern edge of the development. It is considered that the proposed revision is minor and can be considered non-material in the context of the development granted hybrid planning permission.

Other matters

- 6.9. A representation has been received from a local resident asserting that there should be transparency from KCC Education regarding the proposed amendment. KCC Education did not respond to the Council's consultation; however, KCC Infrastructure have confirmed support for the proposals. The application makes clear that a school cannot be delivered with a PROW running through the site. The representation also suggests that Borden Parish Council should approve the changes to open space boundaries; however Borden Parish Council does not have the relevant authority and it is a matter for the Local Planning Authority. They have, however, had the opportunity to comment on the application. Finally, the representation suggests that the open space should be protected by legal agreement. The Section 106 agreement attached to planning permission ref. 17/505711/HYBRID did secure the open space provision within the scheme.

Conclusion

- 6.10. Having regard to all the above, the proposed amendments are considered to be non-material and the application satisfies Section 96A of the Town and Country Planning Act (1990) as amended.

RECOMMENDATION: Approval of non-material amendment subject to the following condition:

Conditions/Reasons

1. Condition 8 of planning permission ref. 17/505711/HYBRID is amended as follows:

The reserved matters details submitted pursuant to condition 2 shall accord with the Masterplan Parameter Plans, Building Heights Parameter Plan 2574-304 Rev P; Land Use Plan 1659.80; Density Parameter Plan 2574-303 Rev P; Route Infrastructure Parameter Plan 2574-302 Rev S; David Williams Report APP/V2255/W/19/3233606 <https://www.gov.uk/planning-inspectorate> Page 130 Landscape Consultancy Indicative Landscape Strategy Plan (Addendum LVIA Figure 10.8, Drawing No L8 Revision E (For the avoidance of doubt this replaced the Landscape and Ecology Masterplan previously submitted)).

Informatives

1. The application satisfies Section 96A of the Town and Country Planning Act (1990) as amended. The proposed amendments constitute non-material changes to that planning permission and will result in a development that is substantially the same as was originally granted planning permission.
2. This decision notice only relates to the non-material amendments sought. It is not a reissue of the original planning permission, which still stands. This decision notice must be read in conjunction with the planning permission referred to in the description above (and any other non-material amendments that may have been granted).

