Development Management – Delegated Officer Report

Application Number: AWDM/1307/22 Recommendation: APPROVE

Site: Free wharf, Brighton Road, Shoreham West Sussex

Proposal: Application for a Non-Material Amendment to previously approved AWDM/1497/17 to amend the description of works to read: Redevelopment of the site to provide ten buildings, containing new homes, commercial floorspace at ground floor level within use class E (a, b, c & g) and Yacht Facility (88sqm) . The development also includes parking spaces, reconstruction of the river wall, construction of mooring pontoons and observation platform at the end of Humphrey's Gap, provision of a riverside pedestrian/cycle route, areas of semi-private and publicly accessible open space, internal access roads, cycle parking spaces and associated ancillary areas.

Neighbours consulted: N

Site and Surroundings

The 2.95 ha river-front site also has partial frontage with the A259 Brighton Road. It is a former industrial/wharf area, which is currently undergoing the first phase of redevelopment (3 blocks G, G1 & H) following the grant of planning permission in 2018 for 540 dwellings and commercial spaces within nine new blocks (AWDM/1497/17). Original buildings have been demolished and river wall repair & replacement works undertaken, together with ground remediation. The site is situated within the Western Harbour Arm of the Shoreham Harbour Regeneration Area, subject of the Joint Area Action Plan of 2019, (JAAP)

To the west/north west is Humphreys Gap, Surry Hard and other Brighton Road premises including the 'Frosts' car dealership and other business premises.

Approved scheme

As mentioned, planning permission AWDM/1497/17 was granted for the nine residential & commercial blocks in August 2018, following completion of a s.106 Agreement, for:

Redevelopment of the site to provide ten buildings, containing 540 new homes (of which two will be studios, 179 x one bed, 323 x two bed and 38 x three bed), 2,707sqm of commercial floorspace at ground floor level within use classes,

A1 (retail), A3 (cafes and restaurants), B1 (business) and D1 (non-residential institutions). The development also includes 512 parking spaces, of which 438 will be for residents and 74 will be for the commercial space/visitors, reconstruction of the river wall, construction of mooring pontoons and observation platform at the end of Humphrey's Gap, provision of a riverside pedestrian/cycle route, areas of semi-private and publicly accessible open space, internal access roads, 596 cycle parking spaces and associated ancillary areas.

The description includes the quantum of development and use classes.

It is noted that a committee resolution in relation to planning application AWDM/2037/20, in March 2021, supported the addition of eight more apartments (by redeployment of mezzanine commercial floorspace), taking the total to 548. The formal decision awaits completion of a s.106 / Deed of Variation. However, this current non-material amendment application relates to the original 2018 permission, not to the subsequent pending application.

Proposed amendments

A non-material amendment (NMA) is sought to AWDM/1497/17 to amend the description to:

Redevelopment of the site to provide ten buildings, containing new homes, commercial floorspace at ground floor level within use class E. The development also includes parking spaces, reconstruction of the river wall, construction of mooring pontoons and observation platform at the end of Humphrey's Gap, provision of a riverside pedestrian/cycle route, and areas of semi-private and publicly accessible open space, internal access roads, cycle parking spaces and associated ancillary areas.

The application also proposes to insert a new planning condition (Condition 34) as follows:

The development is to be delivered in accordance with the drawings and plans listed within Condition 1 and shall include

- *540 residential dwelling (class C3);*
- *2,707sqm of flexible Class E floorspace;*
- *438 residential car parking spaces;*
- *74 commercial parking spaces; and*
- *596 cycle parking spaces.*

Representations:

None received

Relevant Planning Policies

Adur Local Plan 2017: Policies 8, 15-22, 25, 28-36
Shoreham Harbour Regeneration Area Joint Area Action Plan 2019, (JAPP): Policies including CA7, SH1 – SH9 & SH10
National Planning Policy Framework, 2022
National Planning Practice Guidance (NPPG, 2021)
WSCC Guidance on Parking at New Developments, 2019

Planning Assessment

Section 96A of the Act allows a non-material amendment to be made via application. There is no statutory definition of 'non-material', which depends on the nature and context of a particular development. The NPPG advises regard to the effect of the change, together with any previous changes made under s.96A. They must also take into account any representations made by anyone notified, within the notification period.

Although it is not an application for planning permission and therefore s.38 (6) of the Planning Act 2004 does not apply it is material to consider the extent to which the proposed amendments comply with the Development Plan policies.

Amended Description

The proposed description removes references to the quantum of dwellings and their sizes, also the quantum of commercial floorspace. It also transposes the uses of the approved commercial spaces into their equivalent uses as defined in the national Use Class Amendments of 2020.

The approved quanta for each component of the development would be contained in the proposed additional planning condition. The figure for dwellings would remain as 540, not including the additional 8no., which has been subject of a Committee resolution in 2021.

Commercial / Other Uses

Most of the approved commercial uses, the former Classes A1 - Retail, A2 – Professional Services, & A3 – Cafes & Restaurants and B1 offices now fall within the new Class E (a, b, c & g). A small area for Yacht Facility (88sqm) was formerly D1, but is now outside any particular use class 'Sui Generis'

These uses are subject to planning conditions 30 & 31. A planning informative can explain how these uses transpose into Class E.

Parking

The proposed planning condition would repeat the number of parking spaces for residential and commercial / other uses respectively, although this does not refer specifically to visitors for commercial uses, but relies on approved drawings and condition 21 which requires parking to be implemented in accordance with approved plans.

Implementation

It is noted that the first phase of development has been implemented. Approval of this request for non-material amendment does not affect this work nor the duration of this planning permission, the five year implementation and phasing of which is governed by conditions 2 and 6 of the planning permission and remains subject to the associated legal agreement of August 2018.

Conclusion

The proposed amendment of the description and inclusion of the new planning condition ensures that the quantum of development remains unchanged. The approved drawings of the development which reflect this, remain unchanged and the additional condition repeats the quanta for each use and for parking.

The commercial uses specified under the 2018 permission transpose to their equivalents within specific sub-clauses of Class E the 2020 national Use Classes. Whilst variation of conditions 30 & 31 is outside the scope of this non-material amendment, an informative can be included to assist in future interpretation (see Informative 2 below).

Accordingly there is to the amount and nature of the development, and therefore it's environmental and social impacts are unchanged. The development remains subject to all other conditions of the permission and associated legal agreement. It is therefore acceptable.

Recommendation: **APPROVE**

Subject to additional planning condition no.34 as follows:

'Condition 34

The development hereby approved shall not exceed the following:

i) *540 residential dwelling (class C3); and*
ii) *2,707sqm of flexible Class E floorspace* (a, b, c & g)*;*
iii) *88sqm Yacht Facility*

And it shall include shall include

438 residential and 74 commercial parking spaces including space for visitors; and 596 cycle parking spaces.
***Reason:** In the interests of clarity, to ensure that the amount of development is in accordance with this planning permission and to ensure that parking provisions are included.*

Informatives

Informative 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.

Informative 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 AWDM/1497/17 referred to in the description above (and any other non-material amendments that may have been granted). All conditions and the s.106 Agreement dated 6th August 2018, remain fully applicable to the development to which this non-material amendment relates.

Informative 3.

It is noted that the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, as related to the commercial uses included in planning permission AWDM/1497/17, and subject of conditions 30 & 31 of that permission, are as follows:

Condition 30.

Notwithstanding the provision of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) planning permission shall be obtained before any change of use of the following components of the scheme:

Building D - Restaurant (~~A3~~ E (b)) 281 m² GIA
Building E - Restaurant (~~A3~~ E (b)) 365 m² GIA
Building F - Restaurant (~~A3~~ E (b)) 105 m² GIA;
- Yacht Facility (~~D1~~) 88 m² GIA
Building G&G1 - Office (~~B1~~ E (g)) 1,326 m² GIA
Building H - Retail (~~A1/A2/A3/A4~~ E (a, b, c i-ii)) 541 m² GIA

to any use other than Use Classes as detailed in the Town & Country Planning (Use Classes) Order 2010 (or any Order revoking or re-enacting that Order with or without modification).

Reason: *In order that the Local Planning Authority can retain control over further uses which it considers could be harmful to the vitality and viability of the designated centres in accordance with adopted Adur Local Plan 2017.*

31. The commercial units shall only be open for trade in accordance with the following:

~~A1/ A2~~ E (a & ci-ii) use class between the hours of 07.00 and 23.00 Monday to Saturday and 09:00 to 23:00 on Sunday. Any unit greater than 280 sq.m will comply with the Sunday Trading Act 1994 (or subsequent replacement) on Sundays.

A3 ~~/ A4~~ E (b) use class between the hours of 07.00 and 23.00 Monday to Thursday, 07.00 to 00.00 Friday and Saturday and 09:00 to 23:00 on Sunday. Any unit greater than 280 sq.m will comply with the Sunday Trading Act 1994 (or subsequent replacement) on Sundays.

~~B1~~ E (g) use class between the hours of 07.00 and 23.00 Monday to Saturday and 09:00 to 18:00 on Sunday. Any unit greater than 280 sq.m will comply with the Sunday Trading Act 1994 (or subsequent replacement) on Sundays.

~~D1~~ Yacht Facility use class between the hours of 07.00 and 23.00 Monday to Saturday and 09:00 to 21:00 on Sunday.

Reason: *To comply with Adur Local Plan Policy 16, and in accordance with the National Planning Policy Framework.*

Informative 4.

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

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Is recommendation contrary to letter(s) of representation? N

Case Officer: Stephen Cantwell Date: 08/09/22

Authorised by: James Appleton Date: 09/09/22