

Mr D Easton  
Planning Services  
Arun District Council  
Arun Civic Centre  
Maltravers Road  
Littlehampton

18 May 2022

Dear Mr Easton

**Applicant:** Dandara Southern Ltd  
**Site:** Land east of Fontwell Avenue, Fontwell, West Sussex BN18 0SB  
**Proposal:** Application under Section 96A for a non-material amendment to WA/22/15/OUT to amend the approved number of dwellings in the description of development

On behalf of our client, Dandara Southern Ltd, please find enclosed a completed electronic application seeking a non-material amendment to the proposed scheme, in accordance with Section 96A of the Town and Country Planning Act.

Please note that this application is submitted alongside a Section 73 application, which seeks to amend the design and form of the Retail building (Block A) to accommodate a proposed national retailer and the construction of 5no. flats at first floor level. It is requested that the Section 96A amendment should be granted in advance of this proposed Section 73 application.

### **Background**

The Planning Permission was granted on 13 July 2017, for the following:

*"outline planning permission for up to 400 new dwellings, up to 500 sq. m of non-residential floor space (A1, A2, A3, D1 and/or D2), 5,000 sq. m of light industrial floorspace (B1 (b)/(c) and associated works including access, an internal road network, highway works, landscaping, selected tree removal informal and formal open space and play areas, pedestrian and cyclist infrastructure, utilities, drainage infrastructure, car and cycle parking and waste storage"*

Following a period of extensive marketing, with minimal interest being shown, a national retailer is now willing to enter into contract to take the non-residential floorspace at the entrance to the site. This comprises a community retail building. In order to take matters forward, the proposed building housing that floorspace requires amendment to meet the retailer's standard requirements. The building would deliver 140 sq. m of retail floorspace. Additionally, in order to make the most efficient use of the proposed building, it is proposed to deliver 3 x 1 bedroom and 2 x 2 bedroom flats on the first floor of the building (proposed under

the parallel Section 73 submission). This would take the overall number of dwellings to be delivered pursuant to the Planning Permission to 405.

As set out in Planning Policy Guidance, “There is no statutory definition of a ‘minor material amendment’ but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved”.

Applying that principle to the amendments proposed here, in the case of the retail floorspace, the position is that the Planning Permission required the delivery of up to 500 sq. M of “non-residential floorspace” (which was expressly stated in the description of development to include a retail use) and these proposals deliver the retail element of the floorspace alongside the community building being provided elsewhere on the application site, which is to be transferred to the Parish Council.

The net effect of the construction of the first floor of the proposed building would be to increase the total number of permitted dwellings from the current 400 dwelling to 405 dwellings. Case law has confirmed that, subject to the resultant changes not leading to a substantially different development, increased unit numbers can lawfully be permitted by the minor material amendment procedure.

The relevant case to refer to in relation to such an amendment is the case of *R (Wet Finishing Works) v Taunton Deane Borough Council* [2018] PTSR 26 (**enclosed with the submission**). The case dealt with the use of the minor material amendment procedure to increase the number of dwellings permitted under a planning permission from 83 to 90 – an 8.4% increase (a significantly greater percentage than is proposed by this proposed amendment).

Singh J held that the local planning authority / Planning Inspector in the Wet Finishing Works case would have been entitled to attach a condition to the original planning permission which limited the number of houses to the increased number and that consequently, having concluded that the effect of the modification was not a fundamental modification to the terms of the original Planning Permission, it was lawful to use the Section 73 procedure. Applying that analysis to the position here, if the planning permission had permitted 405 rather than 400 dwellings, would that have resulted in a fundamentally different development? It is very difficult to see how that could possibly be the case.

The Wet Finishing Works rationale was upheld in the leading case of *Finney v Welsh Ministers* [2019] EWCA Civ 1868 (**enclosed with the submission**), which upheld, at the Court of Appeal, the use of the minor material amendment procedure for a 25% increase in size of permitted wind turbines.

Following the case law, it is clear that it is perfectly lawful to grant permission for an amendment to a scheme that only increases the number of approved dwellings by 1% via the minor material



amendment procedure. However, the Finney case also addressed an issue of practicality. The Court of Appeal held, contrary to the first instance decision, that a minor material amendment application could not automatically override a restriction set out in the description of development.

The solution to this is that before any Section 73 minor material amendment application is granted, a non-material amendment application is made and granted which amends the description of development to reflect the increased dwelling numbers. Bearing in mind that simply altering the description of development does not in itself grant permission for an additional development (the approved drawings and conditions remain as approved) such an amendment is clearly (in my view) non-material. It is therefore requested that the application description be amended as follows:

*"outline planning permission for up to 405 new dwellings, up to 500 sq. m of non-residential floor space (A1, A2, A3, D1 and/or D2), 5,000 sq. m of light industrial floorspace (B1 (b)/(c) and associated works including access, an internal road network, highway works, landscaping, selected tree removal informal and formal open space and play areas, pedestrian and cyclist infrastructure, utilities, drainage infrastructure, car and cycle parking and waste storage"*

Once the above amendment has been granted the Section 73 approval can then follow.

I hope that the submission is in order and I will look forward to receiving confirmation that the application is valid, however, should you require any further information; please do contact me on the number above.

Yours sincerely

  
**Peter Cleveland MRTP1**  
**Partner, Head of Planning**  
**Henry Adams LLP**