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PO19 1UA

Date: 24th January 2023

Please ask for: Mr D Easton

Tel: 01903 737500 ex37361

Your Ref:

Our Ref: WA/57/22/NMA

Dear Mr Cleveland,

**Section 96A of the Town & Country Planning Act 1990 (as amended)  
Town and Country Planning (Development Management Procedure) (England) Order 2015  
(as amended) - Article 10**

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Non material amendment following WA/22/15/OUT to amend the description of development to refer to 405 new dwellings so that the description reads: 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.

Land East of Fontwell Avenue Fontwell

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Artun District Council has determined the application as APPROVED.

WA/57/22/NMA seeks to amend the description of planning application WA/22/15/OUT to increase the number of dwellings from 400 to 405. Therefore, the amended description would read:

"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"

The Council has adopted guidance which identifies that non-material amendments will only be accepted when the changes are insignificant and do not change the intensity, form, or

description of the original planning permission. Nor should they change the intensity of the original planning permission, result in a change to the description of the application or conflict with any conditions of the original permission. Therefore, in this case the submitted NMA would fail to accord with the limitations imposed by the adopted Council guidance.

The amendment would be contrary to the Council's previously adopted guidance on what can be accepted as a non-material amendment (Planning Committee November 2017).

However, recent case law has confirmed several situations where a planning permission can be amended under powers of Section 73 to increase the size or number of developments (R (Wet Finishing Works) v Taunton Deane Borough Council PTSR 26 and Finney v Welsh Ministers EWCA Civ 1898).

The Finney case confirms that a new S73 planning permission cannot override a description of development, and therefore to overcome this limitation an NMA application is required to amend the description of development. The amendment to the description is not material as by itself it does not grant permission for any additional development (with the approved drawings and conditions remaining as originally approved). However, the amendment would allow for a Section 73 application to amend the layout/design of the development which would go through formal consultation and amendments to the S106 to secure the relevant infrastructure.

Further legal advice secured by the Local Planning Authority has confirmed that in this case the amendment of the description to increase the total number of dwellings by 1.25% would not be fundamental and as such could be dealt with as a 'non-material amendment' despite the Council's adopted guidance note.

On 30th November 2022, Arun District Council Planning Committee resolved to approve the application to amend the description of development. A full report can be seen on the Arun District Council's website, under the Planning Committee agendas.

I trust this information is of assistance to you.

Yours sincerely



Neil Crowther  
Group Head of Planning