

Mr Christopher Johnston
Staffordshire Moorlands District Council
Moorlands House
Stockwell Street
Leek
Staffordshire
ST13 6HQ

26 January 2024
EP ref: 23-660

Dear Mr Johnston

Re: Application reference: SMD/2023/0423 (PP: 12725749)
Section 73 application for minor amendments to reserved matters consent reference SMD/2021/0491
Land off Tenford Lane, Upper Tean, Stoke on Trent (re-submission of SMD/2023/0240)

On behalf of our client, Marden Homes, please find enclosed an application pursuant to Section 73 of the Town and Country Planning Act 1990 to vary condition 1 on reserved matters consent SMD/2021/0491 to seek minor amendments to the approved drawings.

The application comprises this letter, completed application form and the following information:

Document	Document reference
Counsel's Advice	Dated 15 January 2024
Location Plan	00438-AL(0)08
Site Plan	01204 - PL(0)01E
House Type A	01204 - PL(0)02D
House Type B	01204 - PL(0)03A
House Type C	01204 - PL(0)04B
House Type D	01204 - PL(0)05D
House Type E	01204 - PL(0)06D

Document	Document reference
House Type F	01204 - PL(0)07B
House Type G	08A - House Type G
Proposed Site Sections	01204 – PL (0) 09B
Affordable Housing Allocation	01204 - PL(0)10E
Site Plan	01204 - PL(0)11H
House Type C1	01204 - PL(0)12
House Type K	01204 - PL(0)13
Layout of facing bricks used	01204 - PL(0)14
As approved - Comparison Streetscenes	01204 - PL(0)15C
Materials Schedule	01204
Proposed Levels	K22-001-003L
Impermeable Areas	K22-001-301B
Drainage plan	K22-001-302E
Infiltration basin 1 and 2 – sections	K22-001-304
Flood Exceedance Plan	K22-001-303D
SUDS Maintenance plan	K22-001-305C
Basin 1	September 2023
Basin 2	September 2023
Swale cross sections	K22-001-019
Southern Boundary Grips	-
Landscape Specification	LDS517(H)-LS
Landscape 1 of 2	LDS517-01H
Landscape 2 of 2	LDS517-02H

Background

This application is a re-submission of refused application reference SMD/2023/0240 which also sought consent to vary condition 1 on reserved matters consent SMD/2021/0491. Application reference SMD/2023/0240 was refused on 27th December 2023 for the following reason:

The application, as submitted for this variation of conditions, proposes substantial and fundamental amendments to the scheme, changing or altering the operative part of the permission concerning:

- Levels of;
- types of;
- drainage of (affecting condition 10);
- and position of

development in a manner that changes the description of the development to include the provision of a mix of houses and bungalows, contrary to the outline (SMD/2016/0811) which is beyond the powers provided by section 73 of the 1990 Town and Country Planning Act (as amended). The levels, types and positions of proposed dwellings would result in harm to amenity, overlooking of existing and proposed dwellings, harm to the character of the area and would fail to protect and enhance the environment and the setting of the village contrary to policies DC1(2) & (5), DC3(2), and SS1 of the adopted Staffordshire Moorlands Local Plan (2020).

This application proposes the following amendments to the refused scheme to respond directly to the concerns raised with the refused application:

- The ground level of the single storey dwellings (bungalows) on plots 31-40 would be the same as the approved scheme.
- The previously proposed raised timber decking on plots 32-40 has been removed from the scheme.
- The rear dormer windows previously proposed for plots 32, 34 and 36 have been removed.
- The ground level of plots 25 to 39 would be the same as the approved scheme.
- Plot 38 would no longer be relocated. Plots 37 and 38 would become a pair of semi-detached properties (single storey).

Therefore, this section 73 application now proposes the following:

- Introduction of two new house types (type F which is single storey with an additional storey served by rooflights and G which is a single storey properties) on plots 31-40 across the frontage of the site. These bungalows would replace previous type 1 which were 4-bedroom detached two storey dwellings, some type 2, detached 3 bedroom, 2 storey dwelling (with an additional storey served by dormer windows in the roofspace) and some type 3 detached two storey dwellings. There is no change in the finished floor level from the approved scheme.
- Changes to ground levels around the distributor road. The levels remain as approved where the distributor road meets the highway and for the first few metres to the rear of the highway. In broad terms, there is an increase in levels for plot 1 to 10 and a decrease in levels for plots 11-24.
- Removal of one of the three drainage basins to the north of the distributor road.

- Removal of detached garage and introduction of an attached garage on house type A.
- Removal of 1no. dormer on house type B.
- Rearrangement of plots 13, 14 and 17.
- Rearrangement of plots 18, 23 and 24.
- House types B & C have changed from 3 beds to 4 Beds
- Addition of an ensuite above the porch on House Type C.
- Driveway alterations on plots 2 - 5.
- The 2 roads to the north of the site have been made private.

These amendments are made without prejudice to our view that the refused section 73 application complies with the provisions of the development plan.

The further amendments to the scheme provide a reduction in the visual impact of the houses along Tenford Lane in comparison with the approved scheme, which was found to be acceptable in planning terms. The removal of the previously proposed dormer windows on plots 32,34 and 36 and the raised decking from plots 32-40 would ensure that that there is no potential for overlooking the existing properties on Tenford Lane.

The plots where there is a proposed increase in levels (plots 1 to 10) are located to the north of the access road ensuring that views of these properties would largely be blocked by the dwellings to the south of the access road.

LEVEL CHANGES UPPER TEAN			Lower or no change	29 Plots	
	Approved levels Rev C	Proposed levels Rev L	Higher	11 Plots	
PLOTS			DIFFERENCE in mm	Summary	Comments
1	165.42	167.60	-2.18	Higher	Levels increased at lower part of site to balance the site and reduce height and visible impact of masonry garden retaining walls
2	164.52	166.60	-2.08	Higher	
3	164.52	166.60	-2.08	Higher	
4	163.52	165.30	-1.78	Higher	
5	163.52	165.30	-1.78	Higher	
6	161.45	162.80	-1.35	Higher	
7	162.15	163.45	-1.30	Higher	
8	162.75	164.05	-1.30	Higher	
9	163.20	164.35	-1.15	Higher	
10	165.65	166.85	-1.20	Higher	
11	167.25	167.15	0.10	Lower	Levels reduced at gighest existing ground level of site to balance and reduce impact of height of proposed masonry retaining walls
12	168.25	168.00	0.25	Lower	
13	169.50	168.39	1.11	Lower	
14	169.50	168.39	1.11	Lower	
15	171.15	169.59	1.56	Lower	
16	171.97	169.95	2.02	Lower	
17	170.60	170.60	0.00	No Change	
18	171.90	171.45	0.45	Lower	
19	171.90	170.75	1.15	Lower	

20	171.00	170.75	0.25	Lower	
21	171.00	169.75	1.25	Lower	
22	169.62	169.75	-0.13	Higher	
23	169.63	168.75	0.88	Lower	
24	169.60	168.75	0.85	Lower	
25	171.70	171.70	0.00	No Change	Levels no match approved Rev C - no change.
26	170.80	170.80	0.00	No Change	
27	169.90	169.90	0.00	No Change	
28	167.45	167.45	0.00	No Change	
29	167.45	167.45	0.00	No Change	
30	167.45	167.45	0.00	No Change	House type changed to bungalows to reduce the impact of Tenford Lane residents from previously approved. No level change from approved C. The bungalows have removed 40 habitable room windows and reducing 1st floor height with roof
31	166.65	166.65	0.00	No Change	
32	166.50	166.50	0.00	No Change	
33	166.50	166.50	0.00	No Change	
34	166.50	166.50	0.00	No Change	
35	166.50	166.50	0.00	No Change	
36	166.35	166.35	0.00	No Change	
37	164.42	164.42	0.00	No Change	
38	164.40	162.80	1.60	Lower	
39	161.60	161.60	0.00	No Change	
40	160.50	160.50	0.00	No Change	

The revised scheme would meet all privacy distances and standards set out in the Council's Space About Dwellings SPG and would be fully compliant with Policy DC1 of the Local Plan.

In summary, the proposed amendments would overcome the previous reasons for refusal, the revised scheme would be inkeeping with the character of the area nor would it harm the residential amenities of the area. It would be acceptable in all other regards.

Application procedure

An application under Section 73 of the Town and Country Planning Act 1990 can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the planning permission (PPG reference ID: 17a-013 20230726). The PPG also clarifies that provisions relating to statutory consultation and publicity do not apply. However, local planning authorities have discretion to consider whether the scale of nature of the change warrants consultation, in which case the authority can choose how to inform interested parties. Section 73A is the mechanism for amending a scheme where development has already commenced on site.

The reason for refusal for the previous application raised concern that the proposals are outside the scope of section 73. Counsel's opinion from Mr Jack Smyth of No. 5 chambers is enclosed with the application to provide comfort to the local planning authority on this point. This concludes that a section 73 application was and is the appropriate application procedure for the amendments sought.

Other matters

In the interests of transparency, the applicant has submitted an appeal against the refusal of planning permission SMD/2023/0240 however, should planning permission be granted for this revised application in the meantime, it is currently the intention that the appeal would be withdrawn.

Should you have any questions, please contact me on the number below.

Yours sincerely
Emery Planning

Caroline Payne

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Director

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