

Mrs D Bird  
Clerk to Willand Parish Council  
By Email

**Tel:** 01884 234267

**e-mail:** [adevereaux@middevon.gov.uk](mailto:adevereaux@middevon.gov.uk)

**Date:** 7th August 2023

**Your Ref:**

**Contact:** Adrian Devereaux  
Area Team Leader

**My Ref:** MDCMS-6463

Dear Mrs Bird,

**Your Stage 1 complaint - Ref: MDCMS-6463**

I am writing in response to the complaint received from Willand Parish Council in respect to the Council's handling of the Non-Material Amendment (NMA) application 23/01018/NMA which relates to a non-material amendment for Outline Planning Permission 18/00175/MOUT to amend condition 17 from 'No dwelling shall be occupied until the off-site highway improvements to widen the footways along the B3181, shown on drawing number A-012 Rev: P1, have been carried out in accordance with details which shall have been first submitted to and approved in writing by the local planning authority' to allow 15 dwellings to be occupied prior to the works being completed in October.

[Not what is on the planning summary on the portal. Look at application form.](#)

I have summarised your comments and concerns of Willand Parish Council as follows:

- To determine to amend the condition set by a Planning Inspector at Appeal without any consultation or reference to the Parish Council.
- The matter was only raised as an enforcement issue and that the matter was not allowed be decided by Planning Committee.
- That the matter of occupation and required highway works was raised at the start of the year with the response in February from the Enforcement Officer following a site visit being that no houses were occupied.
- Concerns were raised in April that some houses appeared completed with fears raised that condition 17 would not be complied with.
- That there was no further update until a member of the public drew attention to application 23/01018/NMA.
- [That the supporting information to this application outlined agreement between the Planning Officer and Local Highway Authority to the acceptance of the proposed changes to condition 17.](#)

[There is no supporting information.](#)

- Confirmation from the Enforcement Officer to the change of wording being to allow no more than 15 dwellings to be occupied prior to the works being completed in October 2023 and that there was no public record as to how this came about.
- That the decision has already been taken.

I can confirm that application 23/01018/NMA has not yet been determined by the LPA. With respect to the submission of a non-material amendment (NMA) application, as outlined within government guidance, development must take place in accordance with the permission granted and the conditions attached to it, along with any associated legal agreements. However, circumstances may alter following grant of permission and an applicant may seek to revise their proposals. Where these changes are fundamental or substantial or raise new issues, a new planning application will need to be submitted. Where the changes are less substantial, there are alternative options to making a completely new application.

Under sec.96A of the 1990 Act, a local planning authority in England is given further power to make a change to a planning permission if they are satisfied that the change is non-material. Using this power it is possible to seek the addition of a condition listing plans, which would then enable the use of a sec.73 application to make minor material amendments. It is important to be aware of the difference between minor material amendments and non-material amendments.

As national PPG points out in 'flexible options for planning permissions', there is no statutory definition of a non-material amendment. In deciding whether a change is material, an authority must have regard to the effect of the change, together with any previous non-material changes, on the planning permission as originally granted, and the scheme context. In allowing a non-material change, an authority may impose new conditions and remove or alter existing conditions.

In terms of consultation for an NMA application, as an application to make a non-material amendment is not an application for planning permission, the existing Town and Country Planning (Development Management Procedure) (England) Order 2015 provisions relating to statutory consultation and publicity do not apply. Therefore in this instance the Parish Council would not have been consulted on the matter.

Condition 17 of outline planning permission 18/00175/MOUT states:

*17. No dwelling shall be occupied until the off-site highway improvements to widen the footways along the B3181, shown on drawing number A-012 Rev: P1, have been carried out in accordance with details which shall have been first submitted to and approved in writing by the local planning authority.*

Within the 'Conditions' section of the Planning Appeal Decision, the Planning Inspector noted at Para. 41. *'In the interests of highway safety, I have attached a condition to ensure that the access and site compound have been constructed prior to any other development commencing. Conditions are also required to secure the widening of the footway along the B3181 and the completion of relevant highway infrastructure before the occupation of each plot. The proposal would directly affect a public footpath and lead to its increased use. It is therefore reasonable to impose a condition seeking an access scheme to ensure that the development mitigates for its impact on this route.'*

Been aware since 2018 but officers have not chased as if they had it could have been resolved earlier.

The applicant is aware of the requirement of condition 17 and the need to avoid a situation where they could be in breach of the planning condition. Having spoken with the case officer who dealt with the reserved matters approval 21/01754/MARM, discussions were first entered into by the developer with the case officer and Local Highway Authority when it came to light that there is currently a delay in obtaining certain licenses for the off-site highway works and an enquiry made as to whether there would be a way to deliver affordable housing which is a priority of the Council.

Could be delivered if Condition complied with expeditiously.

During these meetings the timeframe for obtaining the necessary licenses and undertaking the highway works were set out with highway works to be undertaken across the months of August and September and building in the necessary flexibility for any slippage. The outcome being that the widening of the footway along the B3181 specifically required by Condition 17 would be completed by the end of October. When comparing this timeline with the phasing plan for the delivery of housing, the applicant identified that the number of dwellings this would equate to is 15.

As noted earlier in this response, an NMA application can be considered by the LPA where the proposed change will not result in the scale and/or nature of the development being substantially different from the one which has been approved. Condition 17 relates specifically to the widening of an existing footpath and the change proposed is to delay the delivery of said off site highway works until the end of October whereby 15 houses could be occupied. As such, the applicant has submitted an NMA application to revise the condition wording, an approach supported by the Local Highway Authority who are aware of the current delays commenting to the LPA that some of these works are S278 works where the agreement is in place, whereas other sewer works which the applicant wants to undertake at the same time are S50 works and it is this S50 licence which is holding up the process. The applied for revised condition wording does not mention 15 houses.

Therefore application 23/01018/NMA has been submitted for consideration by the LPA to consider whether the changes to the condition would be non-material. Through the NMA application, detailed plans for the widening of the footpath have been submitted which the Local Highway Authority has confirmed are acceptable, as such the second part of condition 17 has been complied with. I can confirm that the LPA are still awaiting further information from the applicant in respect to the delivery of the 15 houses in terms of a plan outlining the location and tenure of the houses to be delivered in order to allow an assessment as to whether the changes to the condition are non-material, not impacting upon the scale and nature of the development.

You have not stated whether or not the complaint is upheld.

This concludes my response to your complaint in accordance with Stage 1 of Mid Devon District Council's complaints and feedback procedure. If you remain dissatisfied, you may request your complaint be progressed to a Stage 2 complaint, this request must be made within 4 weeks of the date of this letter, please state why you are not happy with this response and action that has been taken.

Please ensure you quote reference **MDCMS-6463** in any correspondence.

Yours sincerely

Adrian Devereaux  
Area Team Leader  
Mid Devon District Council