

DELEGATED DECISION REPORT

NMA/2024/0036
Valid 27/11/2024

WEBBS ORCHARD
MEADOWFIELD
WHALEY BRIDGE

**APPLICATION FOR A NON-
MATERIAL AMENDMENT FOR
-
A CHANGE IN THE PROPOSAL
DESCRIPTION
IN RELATION TO
APPLICATION HPK/0003/3396

(NON MATERIAL
AMENDMENTS)**

MAIN ISSUES

- Whether the proposed change of description to that associated with the original application HPK/0003/3396 is materially different, as a matter of planning judgement

DESCRIPTION OF SITE

The application relates to a development known as Webbs Orchard, which comprises 2 x two storey blocks of flats with associated parking and soft landscaping that was granted planning permission under HPK/0003/3396 on 21st April 1994.

The description of development that appears on the Decision Notice for this development read as follows:

“Sixteen one-bed flats for mature people at Meadowfield (land adjacent to No.1), Whaley Bridge”

6no. planning conditions are attached to this Decision Notice however none specifically restrict the occupation of any flat to any specific group of people including any restrictions on age.

The development has been fully completed and occupied.

PROPOSAL

The applicant occupies No.8 Webbs Orchard. In trying to sell the property, a question has been raised with regards to the validity of the decision with regards to the phrase “mature people”.

The applicant therefore seeks a Non Material Amendment which would change the description of development to the following:

“Development of Flats at Meadowfield (Land adjacent to No.1), Meadowfield”

The application is supported by a detailed letter which sets out the relevant case law and the applicants case as to how, as a matter of fact and degree, the proposed change to the description of development is not material.

NEIGHBOUR / PUBLIC COMMENTS

1no. representation has been received from a resident within the Webbs Orchard complex who states the following:

“We are not in favour of giving permission to undertake a non-material change to the existing planning permission. One of the selling points in determining our purchase of No.9 was that the development of flats was for ‘mature people’.

We were surprised to discover upon our occupancy that several of the residents were not of mature years and that, apparently, there seemed to be no compliance with this stipulation or any means of ensuring such compliance. During our ownership of nearly 10 years, there have been many changes of ownership of the 17 flats and at no time, seemingly, has there been any restriction on the age of tenants or leaseholders. It is unclear to us who is responsible for ensuring compliance.”

OFFICER COMMENTS

A Non-Material Amendment under Section 96A allows a local planning authority to make a change to any planning permission, if they are satisfied that the change is not material. In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under Section 96a, on the planning permission as originally granted.

In light of the above, should the Authority be satisfied that the change to the description of development as proposed would not materially alter or effect the nature or function of the development, then it is possible to secure that change by way of a Non Material Amendment.

Applicant’s Case

A summary of the applicant’s case as to why the proposed description is not material is set out as follows:

- The original permission does not contain any specific condition that restricts the occupancy of any flat within the development but only details such restriction within the description of development
- The “I’m Your Man” principle (I’m Your Man v Sec of State for the Environment (1999) applies to this case which held the following:
 - *Any limitation on the grant of a planning permission is only legally effective if it is secured by a condition*

- *Any restriction on use following exercise of a planning permission must be imposed by way of conditions.*
- *The permission will give consent for the works and/or use outlined in the description of development but must also be subject to the conditions imposed.*
- *Any limitation on a permission must be imposed by a condition else it will be considered void, as a limitation itself can only be imposed by a development order*
- Further case law including Winchester City Council v Sec of State for Communities and Local Government (2015) cements the premise that the 'I'm Your Man' principle is only relevant where a use remains and there is no alleged change of use.
- The "I'm Your Man" principle is relevant to this application in so far as:
 - The use granted by the permission is residential
 - The pertaining and proposed use is also residential
 - There is no condition restricting how the residential use is exercised
 - The decision therefore allows for a residential development with no occupancy restrictions despite the description stating that it is for "mature people", compounded by a lack of definition of "mature people"
 - There are therefore no occupancy restrictions for the entire Webbs Orchard development approved under HPK/0003/3396 as the site is over the timescale for enforcement action and is thus immune from such action.
 - In light of the above there should be no limitations for its sale

In addition to the above, the applicant also contents that it would not be reasonable for the Council to impose a "fresh" or new condition (which is within the scope of Section 96A), to limit or restrict the occupancy of the development for the following reasons:

- Webbs Orchard has been used by people of all ages for many years with no issues
- Reservation of flats for the ageing population has since dissipated and applying such a condition would not meet the 'six tests' referred to within the National Planning Policy Framework and the online PPG.
- Owing to the length of time that has passed, the current diversity of ages of residents, and the lack of need to ensure the units are reserved for more elderly residents that would make any age restricted condition unnecessary.

- Such a condition would not truly be enforceable as many occupants would immediately secure a certificate of lawfulness to prove they have been there for over four years.
- Applying such a condition retrospectively would require the eviction of some residents, and doing so would be highly unreasonable
- The Committee Report in connection with the original application (11th April 1994) even concedes that:

“Although the application states it is for mature people it is not possible to impose a planning condition to enforce this”

Assessment

Webbs Orchard is a residential development comprising open market housing with no assisted living element that would characterise it as an elderly or mature persons residential complex.

The applicant’s supporting letter contains a detailed and compelling case as to why the proposed change to the description of development is non material. Having regard to the relevant case law, Officers fully accept that with regards the wording of the description of development, it is the case that without specifying the definition of the word mature, either within the Committee Report or indeed the Decision Notice by way of restrictive conditions, there is no age (or any other) restriction of the persons that can lawfully reside at each flat within the Webbs Orchard development.

The representation made by a resident of Webbs Orchard provides evidence of the fact that restricting occupancy to “mature” people has not happened, and that flats have changed multiple times with owners being of different ages. It also illustrates the lack of enforceability of the “mature” stipulation. Reference is also made to neighbour / freeholder notification on the application. However, as an NMA application there is no statutory requirement to carry out consultation.

As such, it is fully accepted that the proposed change is Non-Material.

Turning finally to the subject of whether a new condition should be added to the consent that does define the word mature and retrospectively restrict the age of persons residing within the development, Officers again fully agree with the applicant’s position that there is no policy basis for doing so, and that the consequences of applying the condition for current residents – who are of varying ages and reside at the development lawfully in the absence of any enforceable occupancy condition – would be wholly unreasonable.

CONCLUSION / PLANNING BALANCE

In light of the above analysis, the recommendation is to approve the Non-Material Amendment.

OFFICER RECOMMENDATION : Approve

Case Officer: James Stannard

Recommendation Date: 20th February 2025

X *B.J. Haywood*

Signed by: Ben Haywood

On behalf of High Peak Borough Council