



<b>Application Number</b>	<b>22/01033/NMA</b>
<b>Site Address</b>	<b>Woodlands, 268 Malvern Road, WORCESTER, WR2 4PA</b>
<b>Description of Development</b>	Non material amendments to planning permission P08C0487 comprising changes to (i) the approved site layout plan and (ii) the approved drainage arrangements for Woodlands and the new house at Plot 3.
<b>Expiry Date</b>	24 February 2023 (EoT to be agreed)
<b>Applicant</b>	M&M Homes Worcester Ltd
<b>Agent</b>	Mr Ben Taylor
<b>Case Officer</b>	Lydia Hall
	lydia.hall@worcester.gov.uk
<b>Ward Member(s)</b>	Bedwardine Ward
<b>Reason for Referral to Committee</b>	Ward Member referral
<b>Key Issues</b>	The principle of development and whether the proposal would be sustainable form of development having regard to the 3 dimensions of sustainable development in terms of its economic role, social role and environmental role.
<b>Web link to application</b>	<a href="https://plan.worcester.gov.uk/Planning/Display/22/01033/NMA">https://plan.worcester.gov.uk/Planning/Display/22/01033/NMA</a>
<b>Recommendation</b>	<b>The Corporate Director - Planning and Governance recommends that the Planning Committee approve the non-material amendments to planning permission P08C0487</b>

## 1. **Background**

- 1.1 The application was registered on 29 November 2022 and was due for a decision on 27 December 2022. An extension of time for the determination of the application has been agreed until 24 February 2023 to allow determination by the Planning Committee.

1.2 The application has been referred to the Planning Committee at the request of Councillor Amos.

## **2. The site and surrounding area**

2.1 The site comprises the former extended grounds of the detached dwelling known as Woodlands, 268 Malvern Road an early twentieth century house located on the west side of Malvern Road. The site currently contains Woodlands, two relatively new detached houses (268a and 268b Malvern Road) and the plot of a third house (hereafter referred to as 'Plot 3'), which is situated to the north side of Woodlands (see Figure 1 below).



*Figure 1: Site location plan*

2.2 Numbers 268a and 268b Malvern Road are located in the former front garden of Woodlands and were granted planning permission in October 2008, along with a third detached house at Plot 3. All three new houses, along with extensions and alterations to Woodlands, were approved under that planning permission (ref. P08C0487). As two of the dwellings have been built, the permission as a whole, is considered to be extant.

2.3 The dwelling on Plot 3 is currently under construction and is the subject of this application and a further application for non-material amendments to the original permission (22/01034/NMA), which is also reported in this agenda.

2.4 The application site is surrounded by residential uses, comprising two bungalows to the rear / west of the site (20 and 22 Hudson Close), detached dwellings to the north (6 and 7 Link Elm Close and The Bungalow) and is bounded by Malvern Road to the east. To the south, the site is bounded by the gardens of 270 and 272 Malvern Road.

- 2.5 The site is not located within a conservation area and none of the buildings on the site, or on adjoining sites, are listed. No part of the site is allocated as Green Space; however, the site is subject to a Tree Preservation Order (TPO177), which relates to the mature lime tree in the southwest corner of the site, two sycamore trees and a cedar tree along the northern boundary of Plot 3 and two Austrian pine trees along the northern boundary of 268b Malvern Road.
- 2.6 The site is located within Flood Zone 1 and is not noted on the Council's GIS as being susceptible to surface water flooding.

### 3. **The proposals**

- 3.1 The current application is for non-material amendments to planning permission P08C0487 comprising changes to (i) the approved site layout plan and (ii) the approved drainage arrangements for Woodlands and the new house at Plot 3.
- 3.2 In detail the proposed changes comprise the following:
- Re-alignment of the site access road, removal of one visitor parking space and removal of the passing place to reflect what has been constructed (as opposed to what was approved),
  - Reconfiguration of the private driveway at Plot 3, and
  - Alterations to the surface water disposal arrangements for Woodlands and Plot 3.
- 3.3 The proposed changes are shown in blue on the site plan approved under P08C0487 (see Figure 2 below).



Figure 2 - Proposed site plan (proposed changes in blue)

- 3.4 The application is accompanied by the following plans and supporting documents:
- 858-100 – Site Location Plan
  - 858-101 – Existing Site Plan
  - 858-110 – Proposed Site Plan

- 563:001 – Surface Water Drainage Layout
- Water Management Statement

3.5 In accordance with Article 15 (7) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended), full details of the application have been published on the Council’s website. As such, Members will have had the opportunity to review the submitted plans and documents in order to familiarise themselves with the proposals prior to consideration and determination of the application accordingly.

#### **4 Legislative Framework & Planning Policy**

4.1 The Town and Country Planning Act 1990 (‘the Act’) establishes the legislative framework for consideration of this application.

4.2 Section 96(A) of the Act states that a local planning authority may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material and that 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 this section, on the planning permission as originally granted.

4.3 The power conferred by Section 96(A) includes the power to make a change to a planning permission to impose new conditions or to remove or alter existing conditions.

4.4 Section 96(A) may be exercised only on an application made by or on behalf of a person with an interest in the land to which the planning permission relates. Where an application is made by or on behalf of a person with an interest in some, but not all, of the land to which the planning permission relates, the application may be made only in respect of so much of the planning permission as affects the land in which the person has an interest. On this issue, whilst the current application includes the existing houses at 268a and 268b Malvern Road, which are not owned by the applicant, all of the changes proposed relate to land within the applicant’s control, which comprise the access road, Woodlands and Plot 3.

4.5 The Development Plan for Worcester now comprises:

- The South Worcestershire Development Plan (SWDP), adopted Feb 2016;
- The Worcestershire Waste Core Strategy, adopted in December 2012; and
- The Worcestershire Minerals Local Plan 2018-2036, adopted July 2022.

#### **South Worcestershire Development Plan**

4.6 The following policies of the SWDP are considered to be relevant to the proposal:

SWDP 4 – Moving Around South Worcestershire

SWDP 21 – Design

SWDP 29 – Sustainable Drainage Systems

#### **The Waste Core Strategy for Worcestershire - Adopted Waste Local Plan 2012-2027**

- 4.7 The Waste Local Plan was adopted by Worcestershire County Council on 15 November 2012 and is a plan outlining how to manage all the waste produced in Worcestershire up to 2027.

### **Material Considerations**

- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance
- Supplementary Planning Documents

- 4.8 The Worcestershire Design Guide Supplementary Planning Documents (SPD) is also relevant to the assessment of the proposals.

### **Other Material Considerations**

- 4.9 None.

## **5 Planning History**

- 5.1 The site has an extensive planning history; the applications relevant to the current application are listed below:

- P08C0487 – Alterations and extensions to existing dwellinghouse. Erection of three detached dwelling houses. Alterations to existing access and all associated works. Approved 9<sup>th</sup> Oct 2008.
- 22/00601/FUL – Alterations and extensions to existing dwellinghouse. Erection of three detached dwellinghouses. Alterations to existing access and all associated works (Variation of Condition 2 attached to P08C0487). Section 72 application, withdrawn 9<sup>th</sup> November 2022.
- 22/01027/HP – Proposed ground and first floor rear extension to Woodlands, addition of attached double garage with accommodation over and removal of bay window to front elevation. Current application – reported elsewhere in this agenda.
- 22/01034/NMA – Non-material amendments to planning permission P08C0487 comprising internal and external changes to the approved house at Plot 3. Current application – reported elsewhere in this agenda.

## **6 Consultations**

- 6.1 The following consultation responses have been received:

**Worcestershire County Council (Highway Authority)** – No objection.

**South Worcestershire Land Drainage Partnership** – No objection.

### **Third Party Comments:**

- 6.2 5 letters of representation have been received. The letters raise concerns regarding the principle of the house on Plot 3 being built, including the associated impacts listed below:

- increase in traffic and highway safety concerns, in particular, conflict on the shared access road and at the junction with Malvern Road;
- surface water drainage and flooding;
- foul drainage;
- land instability; and
- lack of neighbour consultation.

6.3 Members have been given the opportunity to read all representations that have been received in full. At the time of writing this report no other consultation responses have been received. Any additional responses received will be reported to members verbally or in the form of a late paper, subject to the date of receipt.

6.4 In assessing the proposal due regard has been given to local residents' comments as material planning considerations. Nevertheless, decisions should not be made solely on the basis of the number of representations, whether they are for or against a proposal. The Localism Act has not changed this, nor has it changed the advice that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission unless it is founded on valid planning reasons.

## **7. Planning Assessment**

7.1 There is no statutory definition as to what constitutes a non-material amendment, however, it is generally considered that non-material amendments are changes to a planning approval that are very minor and do not materially alter the scale of a building, including its footprint and would not alter the description of the development, or the red line area of the application site.

7.2 The current application does not propose any change to the overall scale of the development, the scale or footprint of any buildings on the site, the description of development, or the red line of the application site. As such, it is considered that the proposed changes are non-material, on the basis that the revised layout and means of surface water drainage would not materially alter the approved development. It is concluded that the process of under S.96A as a non-material amendment is appropriate in this context.

7.3 The key issues for assessment are considered to be the impact of the proposed changes on:

- (i) Parking and highway safety, and
- (ii) Surface water drainage and flood risk

7.4 Paragraph 135 of the National Planning Policy Framework, states that "Local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme".

### **Parking and highway safety**

7.5 Paragraph 110 of the NPPF states that in assessing specific applications for development it should be ensured that safe and suitable access to the site can be achieved for all users. Furthermore, with regard to highway safety, paragraph 111 states that "development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe".

- 7.6 The relevant development plan policies on this issue are Policy SWDP 4 (Moving Around South Worcestershire) and Policy SWDP 21 (Design). Policy SWDP 21 states that “vehicular traffic from the development should be able to access the highway safely and the road network should have the capacity to accommodate the type and volume of traffic from the development”.
- 7.7 With regard to parking, Worcestershire County Council’s Streetscape Design Guide (SDG) 2022 sets out indicative standards for new dwellings. For dwellings with 4-5 bedrooms the requirement is 3 no. car parking spaces and 2 no. cycle parking spaces. Neither Woodlands, nor the house at Plot 3 (either as approved or as proposed) have more than 5 bedrooms and the amendments do not increase the number of bedrooms, as such, there is a requirement for 3 no. spaces per dwelling. With regard to visitor parking, there is no requirement to provide spaces for residential developments under the SDG 2022.
- 7.8 The reason for the current application (as regards site layout) is due to the fact that the shared access road serving the development was not constructed in accordance with the approved site layout plan when the houses at 268a and 268b Malvern Road were built. The change to its alignment is indicated in blue on the proposed site plan (see Figure 2) – it has been located further to the south as a result of the front garden of 268b having been increased in both width and depth. This change has also resulted in the curve of the access road into Plot 3 being less gentle than approved. Furthermore, due to the shift of alignment of the access road further to the south, only two of the three approved visitor parking spaces have been provided and the passing place in front of them has been omitted. The current application seeks to regularise the access arrangements to the four houses on the site ‘as built’.
- 7.9 Three parking spaces are provided within the curtilage of Woodlands, in the same layout to that approved under the extant permission (P08C0487). For Plot 3, three parking spaces are also provided, again, in a very similar layout to that approved under the extant permission – two spaces in front of the garage and another on the driveway in front of them. The driveway at Plot 3 is also proposed to be increased in size – towards and up to the front of the house, to improve circulation and turning space as compared with the approved scheme. All parking spaces located in front of the garages have been increased to 6 metres in length, in accordance with the requirements of the SDG 2022, to enable the garage doors to be opened with the parked cars in place.
- 7.10 The reduction in the number of visitor spaces site from three to two is noted and is considered acceptable on the basis that there is no current requirement for visitor parking spaces to be provided under the SDG 2022. Furthermore, it is noted that the front gardens of 268a and 268b Malvern Road can now both accommodate up to 4 no. parking spaces each (as opposed to the 2 no. spaces approved) due to the increased extent of their driveways.
- 7.11 The comments received in relation to visibility at the junction with Malvern Road, the gradient of the first part of the shared access road and potential vehicle and vehicle-pedestrian conflicts on the access road are noted as are the concerns regarding turning at the top of the site by emergency and delivery vehicles. The site access is existing and has been approved to serve of 4 no. dwellings; furthermore, and importantly, no changes are proposed to the site access or to the shared access road up to the first house (Plot 1 / 268a Malvern Road). With regard to potential traffic conflict and difficulties turning within the site, County Highways have assessed the proposals and have raised no objection in relation to the impact of the revised site layout on parking, highway safety, or the road network.

7.12 As stated above, Policy SWDP 21 requires that “vehicular traffic from the development should be able to access the highway safely and the road network should have the capacity to accommodate the type and volume of traffic from the development” and the NPPF states that “development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe”. The shared access road is a private road and not part of the public highway. On this basis and taking into account the comments received from Highways [and the proposed condition requiring the provision of a turning area at the top of the site], it is considered that the revised site layout plan is acceptable in terms of its impact on parking and highway safety.

### **Surface water drainage and flood risk**

7.13 Policy SWDP 29 requires developments to demonstrate that site drainage and run-off will be managed in a sustainable and co-ordinated way that mimics the natural drainage network.

7.14 The approved drainage scheme (plan ref. 04 approved in relation to Condition 17 attached to the extant permission) shows a small soakaway located just in front of the curtilage of Woodlands to capture run-off from the driveway of that property. At Plot 3, a soakaway and rainwater harvesting tank are shown within the rear garden, with a second, smaller soakaway located directly in front of the house to capture run-off from the driveway.

7.15 With regard to Woodlands, the drainage details now proposed indicate the discharge of surface water from the house and driveway to a soakaway located within the rear garden. The plans also include a strip drain at the boundary of the private driveway serving Woodlands, to ensure that surface water from the driveway will be retained within the site and discharged to the soakaway, rather than being permitted to run down the access drive towards Malvern Road.

7.16 A similar drainage scheme is proposed for Plot 3, with surface water from the house and driveway being directed to a large soakaway within the rear garden. No strip drain is proposed at the edge of the private driveway to Plot 3, with water from the driveway draining back towards the house and garage and then directed into the soakaway.

7.17 The proposed changes to the surface water drainage arrangements for Plot 3 simply stem from the fact that Plot 3 is large enough to accommodate a soakaway of sufficient capacity to serve the plot, whilst maintaining the required distances to site boundaries and buildings, the proposed drainage plan (ref. 563:001) has been measured and it is confirmed that both soakaways proposed (those at Woodlands and Plot 3) are more than 2 metres from the site boundaries and more than 5 metres from all buildings on the site.

7.18 The South Worcestershire Drainage Land Drainage Partnership (SWLDP) have assessed the proposals and have confirmed that the use of soakaways is acceptable in principle, subject to site and ground conditions being suitable and that, in this respect, soils maps indicate that ground conditions at this location are likely to be suitable for infiltration drainage methods. In summary, the SWLDP have raised no objection to the surface water drainage proposals, noting that the detailed design and construction of the soakaways will be dealt with under the Building Regulations.



- 7.19 The concern highlighted in the third party comments regarding flash flooding along the access drive is noted. Taking into account the proposed drainage arrangements outlined above and the supportive comments of the SWLDP, it is considered that the proposed scheme for the disposal of surface water from the development is acceptable. In particular with regard to flash flooding, it is noted that water from the driveways of both Woodlands and Plot 3 are to be diverted back into those plots to reduce water running down and along the shared access road, as it is reported currently occurs. In this respect, it is considered that the proposed drainage system, once completed, is likely to have a positive impact on run-off and flood risk as compared to the current situation.

### **Other issues**

#### *Overlooking*

- 7.21 No changes are proposed to the house at Plot 3 under the current application; these are dealt with under application 22/01034/NMA reported elsewhere in this agenda. It is noted, however, that the window referred to in the representation letter, which serves Bedroom 3 and looks eastwards (towards the side elevation of 268b Malvern Road) is included in the plans approved under the extant permission and that the window now proposed on that elevation is no higher than that already approved. An additional window is proposed within Bedroom 3, however, that is located on the opposite side of the house – comprising an additional (third) dormer on the west elevation of the house. The impact of the additional dormer window has been assessed in the report relating to application 22/01034/NMA and has been found to be acceptable in terms of its impact on the privacy of neighbouring occupiers.

#### *Foul drainage*

- 7.22 The concerns raised, regarding the inadequacy of the existing sewer serving the site and others along the shared access road are noted. It is also noted that the approved foul sewer link between Plot 3 and that running underneath the access road may not have been constructed and may not be able to be put in place now. The sewage system between Woodlands / Plot 3 and Malvern Road however, is located on third party land and is thus considered to be a private matter. Having said that, it is noted that neither the proposals to extend Woodlands (the subject of planning application 22/01027/HP), nor the changes proposed to the house at Plot 3 (the subject of application 22/01034/NMA), include the introduction of any new toilets or bathrooms – with both houses containing 1 no. WC, 1 no. bathroom and 2 no. en-suites – the same as approved under the extant permission. As such there would be no increase in pressure on the sewage system as a result of the changes proposed in the three applications reported to committee compared with the approved scheme.

#### *Principle of house at Plot 3*

- 7.23 As stated above, planning permission already exists to construct a dwelling on Plot 3 by way of extant planning permission P08C0487. Officers have considered whether or not planning permission P08C0487 has lawfully commenced and have determined that it has. As such, the applicant is entitled to commence works to construct a dwelling in accordance with the scheme approved under that permission.

### *Land instability*

- 7.24 The concern raised regarding the suitability of the retaining wall between Plot 3 and 268b Malvern Road is noted. The retaining wall was the subject of a condition attached to the extant permission (Condition 11), which states that "where required by changes of level, sufficient and suitable retaining walls shall be provided in accordance with a scheme to be approved in writing by the local planning authority beforehand. Such retaining walls shall be provided before the occupation of the property to which they relate".
- 7.25 The details submitted indicate the same type of retaining structure between Plot 3 and 268b Malvern Road as that between 268a and 268b Malvern Road. The submitted details comprises a pre-cast concrete foundation (60mm minimum depth), with a dual concrete block wall on its higher side and a single skin of facing brick on its lower side. The details were approved on 22/06/2010 under application reference D10C0002. The retaining structure built between Plot 3 and 268b Malvern Road should be in accordance with the approved details. The applicant's duty to ensure that the construction of the house at Plot 3 causes no damage to the adjoining property is a private matter.

### *Neighbour consultation*

- 7.26 Due to the non-material nature of amendments made under Section 96A applications, there is no requirement to carry out consultations or notify neighbouring properties of the proposed changes. However, the application was included on the weekly list and full details of the application have been available on the Council's website for the duration of the application (along with the ability to submit comments).

## **8. Conclusion and Planning Balance**

- 8.1 The proposed changes are considered to constitute non-material amendments to the extant permission and having assessed the proposals in detail, it is considered that they would not have an adverse impact on parking, highway safety or surface water drainage / flooding.

## **9. Recommended Conditions**

- 9.1 It is recommended that the application be approved, and the applicant be notified by letter containing the following text:

Condition 2 (approved plans) attached to planning permission P08C0487 is hereby revised as outlined below:

Plan ref. 0807/01/Rev.E (Site layout plan) replaced with plan ref. 858-110

The details approved under Condition 17 (drainage) attached to planning permission P08C0487 are hereby revised as outlined below:

Plan ref. 04 replaced with plan ref. 563:001 only insofar as it relates to the arrangements for the disposal of surface water for Woodlands and Plot 3.