

<u>Location:</u>	Land East Of Garden Walk And North Of Newmarket Road, Garden Walk, Royston, Hertfordshire
<u>Applicant:</u>	Vistry Homes
<u>Proposal:</u>	Variation of condition 1 (revised plans) of planning permission 17/02627/1 granted 30.05.2018 for Application for approval of reserved matters comprising of access, landscaping, layout, scale and appearance of Phase 1 the development (pursuant to Outline application 14/02485/1 granted 07/12/2016) as amended by plans received on 22 December 2017; 30 January 2018; 27 March 2018; 18 April 2018; and 02 May 2018.
<u>Ref. No:</u>	24/02656/S73
<u>Officer:</u>	Sarah Kasparian

Date of expiry of statutory period: 3 March 2025

Extension of statutory period: 25 February 2026

Reason for referral to Committee: Major development with a site area over the 0.5 hectare threshold.

Reason for delay: Discussions and negotiations on various technical aspects, further information received and additional consultation exercises that were undertaken as a result.

1. Site History

- 1.1. Outline permission ref. 14/02485/1 relates to residential development for up to 330 units and community open space with access onto the A505. The site relates to site allocation RY2. Reserved matters for phase 1 were approved ref. 17/02627/1 for 83 units and included landscaping, layout, scale, access and appearance, which was amended by 21/02194/S73 relating to a change to a road layout near the drainage basin.
- 1.2. This application relates to variation of condition 1 to planning permission ref. 21/02194/S73 referring to the list of approved plan numbers. This S73 application supersedes the application for reserved matters for phase 1 ref. 17/02627/1.
- 1.3. All applications that have been made to discharge conditions subject of outline application ref. 14/02485/1 have all been approved. There were no conditions that needed to be discharged under application ref. 21/02194/S73 as they had all been approved previously. These conditions could be carried over onto the decision notice for this current application should it be approved.

1.4. Related to the 'community open space' on site, the following obligations or applications include:

- 21/00996/NMA application for a non-material amendment to application for reserved matters ref 17/02627/1 – relating to 'the inter-face and access to the Community Open Space that was approved as part of the site wider landscape arrangements, which were included within the Phase 1 RM application...' Specifically these included:
 - Further details relating to the gradient of the COS along the boundary with phase 3 of the development;
 - The introduction of a lower-level pathway through the COS in a north/south direction.
 - The introduction of additional access points into the COS in the form of two sets of steps and the step-free ramp.
- In line with Schedule 2 Part 1 Clause 11 in the S106 agreement to outline application ref 14/02485/1, an 'Open space Scheme, Open Space Programme and Open Space Management Plan' was agreed in writing with officers dated 7/12/2028.
- Financial obligations relating to the management and maintenance of the open space have been met, but the land should have been transferred to North Herts Council to take on ownership, management and maintenance 'pre-commencement' of development on site.

1.5. It is also noted that application ref. 18/0359/RM is reserved matters for Phase 2 of the development and has been approved and a series of applications to discharge conditions has followed.

1.6. Applications ref. 19/02865/RM and 19/02866/RM were two options for reserved matters for Phase 3 of the development that were both approved; and the latter of which has been implemented together with various applications to discharge conditions and non-material amendment.

2. Representations

2.1. **Hertfordshire Ecology** – There have been several rounds of amending the Landscape and Ecological Management Plan and there is now no objection to the details.

2.2. **NHC Greenspaces** – No objection in principle, however consideration given to the practical arrangements for maintaining the land given that this Council was due to adopt the land identified within the red line as greenspace (known as Community Open Space COS). Report by external party to review maintenance requirements for adopting the land with the new levels has reassessed the cost of the initial and ongoing works, as well as access arrangements. This has resulted in changes to the heads of terms.

2.3. **Hertfordshire Highways** – No objection.

2.4. **Hertfordshire Archaeology** – No comments.

- 2.5. **Royston Town Council** – No objection.
- 2.6. **Environmental Health** – No objection.
- 2.7. **Environment Agency** – No objection.
- 2.8. **Lead Local Flood Authority (LLFA)** – No comments as there are no proposed change to flood risk or drainage matters.
- 2.9. **Place Services: Landscape** – Initially Place Services questioned the impact of the proposals on the landscape, where there had been no assessment of the changes. Following the submission of additional information, alongside amendments to the proposals in terms of the increased height of land across the ‘Community Open Space’, Places Services have been able to assess the impact. There is still a concern about the increased levels, which in the amended scheme are preferable compared to the original plans submitted with this application. Place Services acknowledge that the difference of opinion between them and the applicants landscape consultant is ‘not substantial’.
- 2.10. It is noted that a number of consultees did not respond to the consultation but given the very limited scope for consideration it is not anticipated specific comments from outstanding parties is needed.
- 2.11. A total of 443 neighbours had been notified of this application and subsequent amendments. No neighbour representations have been received to either public consultation.

3.0 Planning Considerations

3.1 Site and Surroundings

- 3.1.1 The site relates to phase 1 of the wider development located to the east of Royston, enclosed by the A505 to the east; Newmarket Road to the south; and Hawthorn Way/Garden Walk. Phase 1 comprises the far north-eastern portion of 83 homes out of 330 across the whole site together with greenspace and the ‘community open space’ to the south.
- 3.1.2 The site is accessed from a new roundabout off the A505 and the new ‘spine road’ now known as Lilburn Avenue runs mainly north to south through the site from which secondary roads loop off or form cul de sacs of residential development.
- 3.1.3 The application relates to the ‘community open space’ at the southern end of the site. It comprises land of a higher topography compared to the rest of the site and in a broadly triangular shape. Its former use was arable land, but through the outline permission its purpose was for chalk grassland and public amenity. There is a perimeter footpath linking around the whole of the site. Also secured through reserved matters ref. 17/02627/1 and associated conditions, steps up from the road running parallel to the bottom of the slope, and a short section of retaining wall along the part of the edge adjacent to the housing development.

3.2 Proposal

- 3.2.1 The application seeks to increase the height of the land compared to the approved plans. This is a result of depositing of excess earth from elsewhere across this development site for housing onto the area to be retained as Community Open Space.
- 3.2.2 It should be noted that the alternative of approving this proposal (or implication of a refusal of planning permission) is that the excess earth which has been deposited will need to be removed from the site, which the applicant states would require 6,200 lorry movements through the now nearly complete housing development.

3.3 Key Issues

- 3.3.1 The impact of the proposals on landscape and ecology, and planning obligations will be addressed, before concluding.

3.4 Landscape

- 3.4.1 A principal issue for this application relates to the impact of the proposed changes to the ground level of the community open space on the wider landscape. NPPG Para 174 indicates that the intrinsic character and beauty of the countryside should be recognised. The NPPF does not seek to protect the countryside for its own sake from development, rather it concentrates on seeking to protect valued landscapes. The site does not form part of any designated landscape. The NPPF does not define what is a valued landscape, albeit most landscapes are valued in one form or another, but case law demonstrates that value lies in it being considered more than just open countryside.
- 3.4.2 NHLP Policy NE1 seeks to protect, conserve and enhance the strategic green infrastructure network. Policy NE2 confirms that planning permission will be granted for development proposals that respect the sensitivities of the relevant landscape character, do not cause unacceptable harm to the character and appearance of the surrounding area or the landscape character area in which the site is located, taking account of any suitable mitigation measures necessary to achieve this, ensure the health and future retention of important landscape features and have considered the long-term management and maintenance of any existing and proposed landscaping.
- 3.4.3 The outline planning application considered some planning history before 2015, when this outline application was considered by a previous planning committee. However, now of relevance was that the area is characterised by Royston sitting in a shallow bowl of the East Anglian heights chalk escarpment, which ranges generally between 40-100 AOD. The committee report acknowledged the site is located within the Landscape Character Area 228 (scarp slopes south of Royston), which is a large character area with low capacity for development. Officers considered at the time that this site was set apart from the character area, which would have benefited from subdivision, but resolved that there should be no development above 80m AOD, which is how the line was drawn to exclude the COS from development and allocated it for open space. It was noted that Royston, due to its surrounding landscape character, viewing residential development on higher ground is part of its character, and so this development would not be out of place. Overall, it was considered that the COS allocation helped to reduce the visual impact of the development as a whole on the landscape character area, and therefore the impact on the

landscape was acceptable. It was agreed in the outline application that the COS would comprise chalk grasslands in the interests of biodiversity and nature conservation.

- 3.4.4 The application for phase 1 reserved matters then included the landscaping detail for the COS. It was noted that an open space scheme, open space programme and open space management scheme was approved in accordance with the S106. It was noted that the COS would comprise chalk grass land and that landscaping detail was set out in that application for reserved matters and described as a '*key landscape feature of the site*'.
- 3.4.5 Place Services (Landscape) provided advice to Officers on the impact of the proposals on the landscape. Following the receipt of a landscape assessment from the applicant, the plans were amended to reduce the highest levels originally proposed. Place Services commented that the amended scheme was preferable but still had concern about the increased levels in principle. Place Services acknowledge that the difference of opinion between them and the applicants landscape consultant was 'not substantial'.
- 3.4.6 The amended LEMP submitted with this application continues to propose that the site would remain as chalk grassland, which compliments the provision at Therfield Heath, and would improve the quality of the land, which was previously in arable rotation. While the levels and form of the site would change as a result of this application, the purpose, of using the land for natural grassland is supported. The fact that the land would be steep would help to prevent many people using it too extensively, thereby assisting with its purpose.
- 3.4.7 Further request from Officers resulted in the submission of a ground stability assessment, to ensure that the increased levels is safe and has been undertaken in accordance with regulations. The report states that the work has been done over and above requirements for depositing inert material.
- 3.4.8 Officers note that while the deposit of inert material on the site is not ideal in terms of its impact on either the wider landscape or locally, there is not a significant landscape reason to refuse the application. The proposals are therefore considered to be in accordance with the NPPF 2024 and NHLP Policies NE1 and NE2.

3.5 Ecology

- 3.5.1 The other principal issue associated with the proposals relates to the impact on ecology and habitats. Chapter 15 of the NPPF requires decisions to contribute to and enhance the natural environment. NHLP policies SP1, SP12, NE4, NE6 and NE8 seek to protect, enhance and manage the natural environment.
- 3.5.2 In consultation with Hertfordshire Ecology, the applicant has prepared a 'landscape and ecological management plan' (LEMP), which is common practice on sites like this now, but goes beyond the requirements of the original planning permission and associated s106.
- 3.5.3 The scheme was given planning permission well before mandatory biodiversity net gain was introduced, but this submitted LEMP supports introduction of native chalk grasslands and associated habitat and biodiversity. The purpose of this open space was for natural chalk grassland, like that found at Therfield Heath and characteristic of the area. The plan is supported by Hertfordshire Ecology.

- 3.5.4 The applicant will finish the levels of the community open space as per the submitted plans, and in preparation for the council to adopt the land and employ an external supplier to undertake initial restoration works ready for future long terms maintenance. A further amended version will be needed should this application be resolved to be granted planning permission, to address the needs of Greenspaces in restoring, managing and maintaining the land. The amended version will be in consultation with HCC Ecology and NHDC Greenspaces.
- 3.5.5 The proposals are therefore considered to be in accordance with the NPPF and NHLP policies SP1, SP12, NE4, NE6 and NE8.

3.6 Planning Obligations

- 3.6.1 A requirement of the S106 to the outline planning permission required the applicant to transfer the land identified as 'community open space' to North Hertfordshire Council before the occupation of any dwelling on site. The applicant is currently in breach of the legal agreement as the majority of the site is complete and occupied and the land has not yet been transferred.
- 3.6.2 The applicant also previously committed to paying a management and maintenance contribution toward the initial costs of looking after the land. To confirm, this payment was made in accordance with the S106 terms.
- 3.6.3 As the levels and character of the COS has changed, and the applicant seeks to regularise that, Officers wanted to be certain that the District Council would be content in continuing to adopt the land given the material changes. The Greenspaces team has confirmed that this is acceptable, subject to changes to the LEMP to make the management and maintenance arrangements practical and realistic.
- 3.6.4 Due to the steep changes in levels now on the COS and the quality of the deposited soil, the contractor who would manage and maintain the council's greenspaces requires additional funding in order to restore the land to chalk grassland. Hydroseeding is proposed due to the steep levels over a period of time in order to ensure the grasslands are established. Greenspaces, with advice from the external contractor considers that there would be sufficient funds available maintain the land for an estimated 15-20 years, depending on how many cuts would be needed each year
- 3.6.5 Officers have therefore reviewed the obligations in the original s106 agreement and suggest the following new heads of terms that will need to be agreed in a deed of variation:
- Additional £21,928 in order to meet the difference in cost of the works involved in restoring the land as a result in the change of levels (or £6,006 if VAT is not included)
 - Change the trigger for the transfer of the land; ensure the levels on adoption are as per the drawings subject of this application
 - Ensure access arrangements from Newmarket Road are secured on adoption

- 3.6.6 A further modification to the obligations are proposed, although not relevant to this application, in relation to the footpath through Newmarket Road recreation ground, where there is limited flexibility on the location through the recreation grounds and so a change is proposed and the applicant agrees to enable a more flexible plan for different solutions to the installation of a new path through the park from the application site.
- 3.6.7 The applicant agrees to enter into a deed of variation with those heads of terms, thereby satisfying the requirement that the council can adopt the land with the costs required to undertake initial restoration works and given the change in circumstances on site.

3.7 Conclusion

- 3.7.1 This application relates to a variation of plans of the reserved matters permission for phase 1 and subsequent S73 ref 21/02194/S73. The changes are for an increase in ground levels of the community open space as a result of excess earth being deposited on the site. The application is supported by a current draft LEMP, which ecology support, but will need to be updated in consultation with HCC Ecology and NHDC Greenspaces ready for its implementation.
- 3.7.2 It is noted that the previous conditions attached to the reserved matters permission ref. 17/02627/1 had all been discharged where applicable, and conditions were brought forward to S73 application ref 21/02194/S73. It is recommended that the same conditions follow through should this application be approved. No other conditions are recommended provided that the LEMP is agreed before issuing the decision, otherwise there should be a condition for an updated LEMP. A Deed of Variation to the original S106 is required to be completed as set out above. The recommendation below reflects these considerations and changes to obligations.

4.0 Alternative Options

- 4.1 If the application were refused, there are implications for the applicant and the need to remove the excess earth that has been deposited on site. This will involve significant lorry vehicle movements to bring the level of the ground in line with the approved plans.
- 4.2 If the application were refused, there would also be implications for the transfer of the land adoption of the COS by the council. The District Council have committed to adopting the land at the previously approved ground levels. The applicant is in breach of the S106 and the appropriate enforcement action could be taken.

5.0 Pre-Commencement Conditions

- 5.1 Not applicable.

6.0 Legal Implications

- 6.1 In making decisions on applications submitted under the Town and Country Planning legislation, the Council is required to have regard to the provisions of the development plan and to any other material considerations. The decision must be in accordance with the plan unless the material considerations indicate otherwise. Where the decision is to

refuse or restrictive conditions are attached, the applicant has a right of appeal against the decision.

7.0 Recommendation

7.1 That planning permission be **GRANTED** subject the following:

- A) The completion of a satisfactory deed of variation to the original s106 agreement or similar legal mechanism to ensure delivery of the agreed Heads of Terms;
- B) The applicant agreeing to extend the statutory period in order to complete the Deed if required; and
- C) Providing delegated powers to the Development and Conservation Manager to update conditions and informatives with minor amendments as required; and
- D) Conditions from planning permission reference 21/02194/S73 as set out below:

1. The development hereby permitted shall be carried out wholly in accordance with the details specified in the application and supporting approved documents and plans listed above.

Reason: To ensure the development is carried out in accordance with details which form the basis of this grant of permission.

2. The development and construction works hereby approved must be carried out in accordance with the Tree Protection Measures within the Arboricultural Impact Assessment and Method Statement by ACD Environmental submitted alongside this application.

Reason: To prevent damage to or destruction of trees to be retained on the site in the interests of the appearance of the completed development and the visual amenity of the locality.

3. Any tree felled, lopped, topped, uprooted, removed or otherwise destroyed or killed contrary to the provisions of the tree retention condition above shall be replaced during the same or next planting season with another tree of a size and species as agreed in writing with the Local Planning Authority, unless the Authority agrees in writing to dispense with this requirement.

Reason: To safeguard and enhance the appearance of the completed development and the visual amenity of the locality.

4. The approved details of landscaping shall be carried out before the end of the first planting season following either the first occupation of any of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced during the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to vary or dispense with this requirement.

Reason: To safeguard and enhance the appearance of the completed development and the visual amenity of the locality.

5. Soft and hard landscaping shall be implemented within and around the basin and swales in accordance with the approved details submitted to and approved in writing by the Local Planning Authority under ref. 18/01959/DOC prior to commencement of that part of the development hereby approved. The details shall thereafter be implemented and maintained for a period of five years if any soft landscaping feature is damaged, dies or is removed.

Reason: To ensure the SUDs features present a high quality landscape feature which enhances the appearance of the development.

6. The provision of Bird and Bat Boxes shall be provided on the site in accordance with the details submitted and approved in writing by the Local Planning Authority under ref. 18/02049/DOC, including further provision to that shown on plan referenced 996/5/1 and full specification of integrated bird and bat boxes, the approved details through this condition shall be implemented and retained unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that appropriate ecological protection and mitigation measures are implemented in order to protect ecological value within the site.

7. All ecological measures and/or works shall be carried out in accordance with the details contained in Construction Method Statement (Ecology) produced by Green Environmental Consultants and dated January 2018. Evidence of successful completion of ecological measures should be provided to the Local Planning Authority.

Reason: To ensure that the ecological value of the site is maintained and respected during construction.

8. The updated Lighting Design Strategy Plan approved in writing by the Local Planning Authority under ref. 18/02098/DOC shall be provided in full on site. Details approved pursuant to this condition must then be implemented.

Reason: To ensure that the ecological value of the site is maintained and respected during construction and assess the quality of design of the hard landscaping feature.

9. The scheme detailing provision for on-site parking as well as safe pedestrian and vehicle access for construction workers for the duration of the construction period submitted to and approved in writing by the Local Planning Authority under ref. 18/02099/DOC must be implemented and maintained until the end of the construction unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of highway, pedestrian and vehicle safety.

10. Amended site plan and elevation details showing provision of external residential storage (including and allocating storage for at least three waste receptacles as well as a food waste bin) for dwellings submitted to and approved in writing by the Local Planning Authority under ref. 18/02100/DOC must be implemented prior to the occupation of any dwelling hereby approved and thereafter permanently maintained

Reason: To ensure adequate outdoor storage as required in association with the residential use of the site.

11. Further details regarding the enclosure, equipment and long-term maintenance and management of the Local Area for Play (LAP) submitted to and approved in writing by the Local Planning Authority under ref. 18/03127/DOC shall be implemented, managed and maintained in accordance with the details approved by way of this condition.

Reason: To ensure that the LAP area is delivered, maintained and managed for the long-term social benefit of the residents of the development.

Proactive Statement:

Planning permission has been granted for this proposal. The Council acted proactively through positive engagement with the applicant during the determination process which led to improvements to the scheme. The Council has therefore acted proactively in line with the requirements of the Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.