



Adams Hendry
Chartered Town Planners



Havant Thicket Reservoir

Non-Material Amendments to Phase 3 RMA – Western and Embankment
and Transition Zone Slope Angles

Report Number: HTR-FUW-P3-RE-RP-W-1717 P01

For Future Water MJJV Ltd

October 2025

Title

Havant Thicket Reservoir – Non-Material Amendments to Phase 3 RMA – Western Embankment and Transition Zone Slope Angles

Client

Future Water MJJV Ltd

Project Number

JTM/1856

Status

P01 – Final Draft

Report Number

HTR-FUW-P3-RE-RP-W-1717 P01

Adams Hendry Consulting Ltd.

Sheridan House, 40 – 43 Jewry Street, Winchester, SO23 8RY

T 01962 877414

E info@adamshendry.co.uk

www.adamshendry.co.uk

Author Name: Rachel Murrell

Date: October 2025

Approved by: Andy Turner

Date: October 2025

Certified to ISO9001 Standard



ISO 9001 Registration Number Q10324

Registered Office: Sheridan House, 40 – 43 Jewry Street, Winchester, SO23 8RY

Registered in England No. 3804753 VAT Registration No. 807 9759 79



Contents

Contents	3
1 Introduction.....	4
2 Pre-Application	6
3 Proposed Non-Material Amendments (NMAs)	7
4 Environmental Implications.....	12
5 Planning Implications	14
6 Conclusion.....	16
Appendix 1: Case Law	17
Appendix 2: Pre-Application Advice	29
Appendix 3: Conditions	35

1 Introduction

- 1.1 This statement has been prepared by Adams Hendry Consulting Ltd on behalf of Future Water (FW) and Portsmouth Water (PW) to provide information to support applications to Havant Borough Council (HBC) and East Hampshire District Council (EHDC) for Non-Material Amendments (NMAs) proposed under Section 96A of the Town and Country Planning Act 1990 (as amended) (“the TCPA”) to the planning permission for Havant Thicket Reservoir (HTR).
- 1.2 This application proposes to make NMAs to the Phase 3 Reserved Matters Applications (RMAs) granted by HBC and EHDC in December 2024. The amendments are proposed to the Western Embankment and Transition Zone of HTR which are essential to ensure the internal slopes remain structurally stable in an emergency draw down event. As a result of these NMAs, there are no amendments proposed to the Main (Southern) Embankment beyond the Transition Zone.
- 1.3 The proposed amendments are considered to be non-material as:
- The principle of development will be unaltered as set out in the Section 73 NMA application.
 - The conclusions of the Environmental Statement (ES) and ES Addendum will be unaltered.
 - The amendments will not give rise to any new, additional, or extended material impacts from the consented scheme.
 - The amendments are only to the Western Embankment and Transition Zone.
 - As a result of these NMAs, there are no amendments to the Main (Southern) Embankment or wider reservoir development.
 - The scale of the amendments are very modest when seen in the overall context of the reservoir development.
- 1.4 Duplicate applications have been submitted as follows:
- Havant Borough Council (HBC) – to make a non-material amendments to RMA for Phase 3 permission reference APP/24/00311 for the Main (Southern) Embankment works.
 - East Hampshire District Council (EHDC) – to make a non-material amendments to RMA for Phase 3 permission reference 51680/011 for the Main (Southern) Embankment works.
- 1.5 Duplicate NMAs to the Section 73 permissions have also been submitted. These NMAs mirror the details of the NMAs to the RMAs for Phase 3 and should be considered in parallel.
- 1.6 For information, Planning case law has confirmed that an NMA to an RMA can be made. This position was clarified by the Court of Appeal, in R (on the Application of Fulford Parish Council) v City of York Council [2019] EWCA Civ 1359, which confirmed that the statutory power under section 96A of the Town and Country Planning Act 1990 to make non-material

changes to a planning permission can be used to make non-material changes to conditional RMAs (See Appendix 1: Case Law).

- 1.7 A full description of the proposed amendments and the reasons for them is given in Section 3 of this Planning Statement.

Relevant Planning Background

- 1.8 On 15 October 2021, a hybrid planning permission (part outline / part full planning permission) was granted for the development of a reservoir for raw water storage under HBC Ref: APP/20/00990 and EHDC Ref: 51680/001.
- 1.9 An RMA was granted on 24 February 2023 for Phase 1 relating to the northern access route from Manor Lodge Road (B2149) of the HTR and approval of relevant conditions in relation to these works under HBC Ref: APP/22/00681 and EHDC Ref: 51680/003. RMAs were subsequently granted on 6 September 2024 for Phase 2 works comprising the wetlands under HBC Ref: APP/24/00186 and EHDC Ref: 51680/003.
- 1.10 Applications have also been approved to revise the original consent. A NMA under Section 96A of the TCPA was granted in March 2024 which revised the southern embankment position; make slight increases to excavation and embankment earthworks volume and a small reduction in capacity along with associated consequential changes (HBC Ref: APP/23/00979 and EHDC Ref: 51680/006).
- 1.11 Under Section 73 of the TCPA, a planning application to make amendments to the size and alignment of the reservoir embankment was granted on 6 December 2024 (hereafter referred to as the 'section 73 permission') by HBC Ref: APP/24/00312 and EHDC Ref: 51680/012. These permissions effectively supersede the hybrid planning permission and previous NMA. Pursuant to the section 73 permissions, RMAs for Phase 3 works comprising the Main (Southern) Embankment were granted on 20 December 2024 by HBC Ref: APP/24/00311 and EHDC Ref: 51680/011.

Structure of this Planning Statement

- 1.12 The report is structured as follows:
- Section 2 – Pre-Application
 - Section 3 – Proposed Non-Material Amendments (NMAs)
 - Section 4 – Environmental Implications
 - Section 5 – Planning Implications
 - Section 6 – Conclusion
 - Appendices

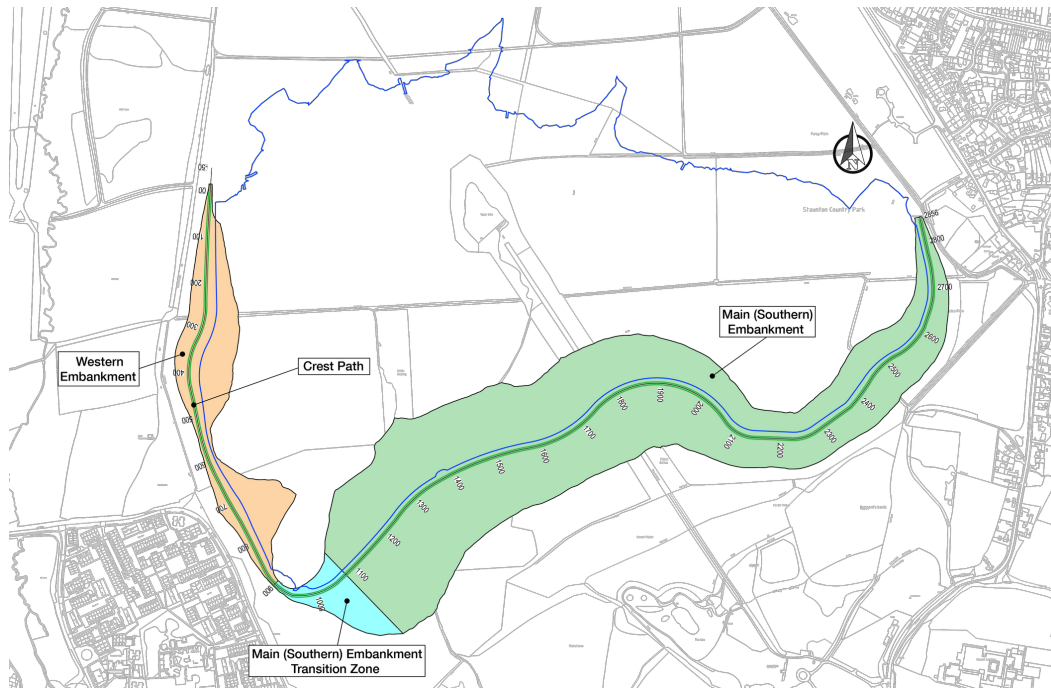
2 Pre-Application

- 2.1 A presentation was given to officers from HBC and EHDC in July 2025 setting out the proposed non-material amendments.
- 2.2 A draft of the NMA was also submitted to officers from HBC and EHDC in August 2025 setting out the proposed non-material amendments.
- 2.3 A pre-application advice letter was received from HBC on behalf of both HBC and EHDC dated 7 September 2025 which confirmed that:
- The proposed embankment changes can be treated as non-material under S96 of the TCPA.
 - When compared back to the environmental effects under the Hybrid planning permission, the detailed changes would not give rise to new or materially different significant effects on the environment from those previously assessed or debated at planning committee.
 - Given the limited scale of the differences/changes and expected limited effects on the environment from those previously assessed, they could be capable of being consented via a S96A approval.
- 2.4 Further clarification provided on 30 September 2025 confirmed that NMA applications can be submitted for both the Section 73 permission and Phase 3 RMA.
- 2.5 A copy of the pre-application advice is included as Appendix 2.

3 Proposed Non-Material Amendments (NMAs)

- 3.1 The proposed NMAs are to the approved slope angles of the Western Embankment and Transition Zone highlighted in Figure 1. As a result of these NMAs, there are no amendments proposed to the Main (Southern) Embankment or wider reservoir.

Figure 1: HTR Embankments



Need for Amendments

- 3.2 The amendments are required to ensure the internal slopes remain structurally stable in an emergency draw down event at the reservoir.
- 3.3 The reservoir has been designed so that when it is full of water, the clay material used to construct the internal embankment slopes is saturated with water, with the internal core acting as the impermeable barrier of the embankment. It has however now been identified that due to the rate at which the reservoir will be drawn down during an emergency event, which requires the reservoir to be lowered by both 5% of full depth of water within 24 hours and a third of water depth in 6 days, the saturated clay material at steeper slope angles could become unstable due to the rate at which water is released from the saturated clay, also referred to as the pore pressure.
- 3.4 This potential instability has resulted in the need to slacken the internal slope angles of the Western Embankment to alleviate this risk, and associated changes to the Transition Zone to tie in with the Main (Southern) Embankment.

Proposed NMAs

3.5 The proposed NMAs to the slope angles are illustrated in Figure 2 and summarised in Table 1. The amendments will:

- Reduce the angle of the inside slopes of the Western Embankment to remove the structural risk. The amendments will generally be below the water line and therefore not readily visible.
- Increase the angle of the outside slopes of the Western Embankment. There are no changes to the alignment of the outer toe of the embankment or to the height of the embankment. Views of the outside slopes of the Western Embankment are limited and largely screened from the nearest residential properties by existing vegetation which will be maintained and reinforced as part of the landscaping for HTR.
- Alter the Transition Zone from the Western Embankment to tie in with the Main (Southern) Embankment slopes, providing a graded change between the embankments. As a result of these NMAs, there is no change to the Main (Southern) Embankment beyond the Transition Zone.
- Revise the inside slope angles at the northern extent of the Western Embankment to ensure tree G190 located adjacent to the Western Embankment is retained.
- Consequential non-material amendments, including alterations to fencing and gates, the viewing platform, reed beds and amphitheatre.

3.6 The proposals are shown in full on NMA drawing HTR-COF-EM-RE-DR-GE-4003 P02.

Figure 2: Approved and Proposed Slope Angles

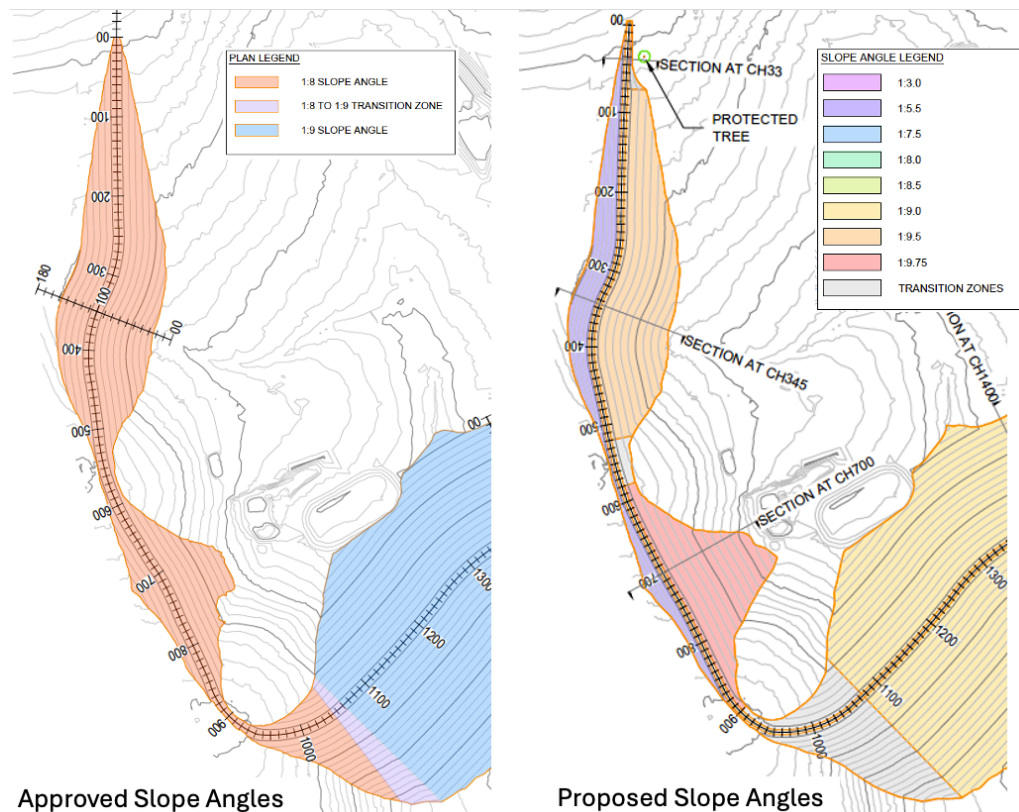
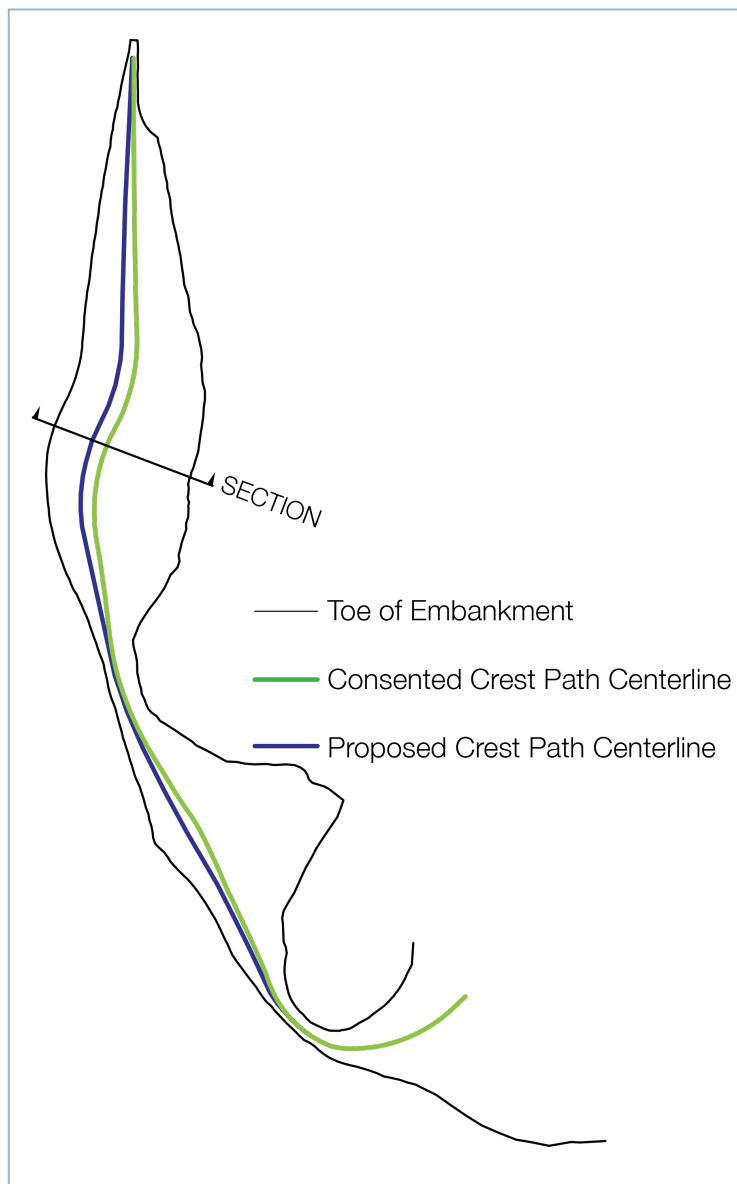


Table 1: Summary of Proposed Amendments to Slope Angles

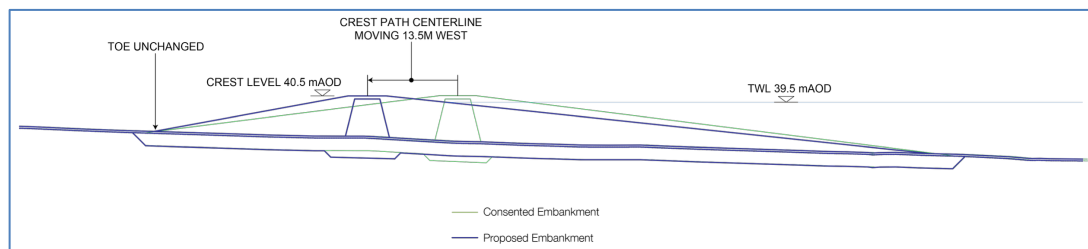
	Approved	Proposed
Western Embankment Slope and Transition Zone		
Outside slope angles	1:7 to 1:9	1:5.5 to 1:9
Inside slope angles	1:7 to 1:9	1:9. To 1:9.75 Except inside slope chainage up to 70, which will be 1:3 transitioning to 1:9.5 to retain tree G190

- 3.7 The proposed NMAs require the realignment of the crest path on the Western Embankment to account for the revised design as illustrated in Figure 3.

Figure 3: Illustration of Crest Path Realignment

- 3.8 The amendments to the crest path are summarised below:
- Crest path moves 13.5m west at approximately chainage 350 (illustrated in Figure 4: Crest Path at Chainage 350).
 - Crest path moves 10.5m west at chainage 700.
- 3.9 This results in a 2m increase in the overall length of the embankment to 2,850m.

Figure 4: Crest Path at Chainage 350



- 3.10 The amendments to the realignment of the crest path must be viewed in the context of the reservoir that is over 1600m in width east to west on a site that is over 160 hectares in size. This is a imperceptible amendment when considered in this context and is considered non-material.
- 3.11 It is noted that the length of the crest path length is detailed as 2848m on the approved section 73 permission plans but Condition 2 on the S73 decision notice was not updated and references the length as 2,800m. It is proposed that the NMA to the section 73 permissions will update Condition 2 to reflect the proposed NMA to 2,850m.

Updates to RMA Phase 3 Conditions

- 3.12 To secure these changes, non-material amendments are proposed to Condition 1 of HBC RMA Phase 3 approval (HBC Ref: APP/24/00311) and Condition 2 of EHDC RMA Phase 3 approval (EHDC Ref: 51680/011).
- 3.13 The full text version of the updated conditions is provided in Appendix 2.

Amendment to Condition 1 of HBC RMA Phase 3 approval and Condition 2 of EHDC RMA Phase 3 approval.

- 3.14 The following drawings are submitted as part of the NMA and will therefore update Condition 2 to reflect the changes to the Western Embankment and Transition Zone:
- HTR-GHD-ZZ-ZZ-DR-T-0021 P04 PLANNING STRATEGY KEY PLAN
 - HTR-COF-EM-RE-DR-GE-4002 P02 MAIN EMBANKMENT PROPOSED SITE LAYOUT

- HTR-COF-EM-RE-DR-GE-4003 P03 MAIN EMBANKMENT CROSS-SECTIONS
- HTR-GHD-ZZ-ZZ-DR-T-0011 P07 MAIN EMBANKMENT LANDSCAPE PLAN
- HTR-GHD-ZZ-ZZ-DR-T-0018 P04 MAIN EMBANKMENT LANDSCAPE CROSS SECTIONS LA1-LA3
- HTR-GHD-ZZ-ZZ-DR-T-0013 P06 PROPOSED CULVERT AND VALVE TOWER SITE LAYOUT

3.15 These drawings continue to provide the necessary information on the siting, scale, external appearance and landscaping as required by Condition 2 of the respective S73 planning permissions (HBC Ref: APP/24/00312 and EHDC Ref: 51680/012).

4 Environmental Implications

- 4.1 A technical note has been submitted as part of this NMA application titled ‘Statement of Conformity with the Environmental Statement’. This technical note considers the embankment design proposed in this NMA application with that assessed in the Hybrid Planning Permission Environmental Statement (the “2020 ES”) and Section 73 Environmental Statement Addendum (the “2024 ES Addendum”), demonstrating that the amendments would not give rise to new or materially different significant effects on the environment from those previously assessed. A summary of the conclusions are set out in Table 2 below.

Table 2: Conformity with 2020 ES and 2024 ES Addendum

2020ES/ 2024 ES Addendum Topic	Environmental Appraisal Summary
Historic environment	<p>The proposals would not materially change the construction phase footprint, operations, nor associated visual impacts upon the setting of the Staunton Country Park or the Sir George Staunton Conservation Area. The minor and imperceptible changes in operational landscaping/visual amenity effects would be consistent and fall within the granularity and flexibility of the published methodology, which both acknowledged and allowed for a degree of detailed design development.</p> <p>As such, no materially different significant effects on the historic environment would arise as a result of the proposed changes to the design. Consequently, there would no change to the significance of effects reported in the 2020 ES or 2024 ES Addendum.</p>
Ground conditions	<p>There will be no change to the significance of effects. There is only a 0.5% decrease change to the volume of earthworks and as such there will be no change to the significance of effects on ground conditions during construction.</p> <p>Changes to the excavation and embankment earthworks volume would be reflected in the final Materials Management Plan submitted as part of the CL:AIRE Definition of Waste: Code of Practice (DoWCoP) process. The Scheme promotes sustainable waste and material resource management in line with the Government’s waste hierarchy to allow the re-use of suitable materials during the construction works.</p>
Air Quality	There will be no change to the significance of effects are anticipated from air emission and dust sources during construction.
Noise and vibration	The construction works, intensity, and plant would remain unchanged by the proposals. The slight change to the embankment would remain within the broad assumptions utilised for the published 2020 ES and 2024 ES Addendum.
Biodiversity	There would be no new effects on ancient woodland or veteran trees arising from the proposed design changes. There would also be no additional loss of existing habitat beyond that assumed within the 2020 ES and 2024 ES Addendum and would be in line with the Biodiversity Mitigation and Compensation Strategy.

2020ES/ 2024 ES Addendum Topic	Environmental Appraisal Summary
Landscape and Visual	The amendments to the scheme assumed for the purpose of the published 2020 ES and 2024 ES Addendum assessment are comparatively minor in scale and fall both within the granularity of the assumptions for the methodology, as well as its inherent flexibility to accommodate the design changes proposed.
Population and human health	There will be no change to the significance of effects reported in the 2020 ES or 2024 ES Addendum.
Traffic and transport	There will be no change to the significance of effects reported in the 2020 ES or 2024 ES Addendum.
Material resources and waste	There will be no change to the significance of effects reported in the 2020 ES or 2024 ES Addendum.
Water (flows, quality and groundwater)	There will be no change to the significance of effects reported in the 2020 ES or 2024 ES Addendum.
Climate	There will be no change to the significance of effects reported in the 2020 ES or 2024 ES Addendum.
Vulnerability to climate change	There will be no change to the significance of effects reported in the 2020 ES or 2024 ES Addendum.
Cumulative and In-Combination Effects	There will be no change to the significance of effects reported in the 2020 ES or 2024 ES Addendum. The assessment of in-combination effects remains unchanged.

- 4.2 The proposed non-material amendments will only result in very small changes to the embankment slopes and will not change the principle, scale, or function of the consented development.
- 4.3 The review of the 2020 ES and 2024 ES Addendum as summarised in Table 2 has furthermore determined that the proposals will not give rise to any new or materially different residual effects and will not change the conclusions regarding residual effects presented. Therefore, there is no change to the conclusions of the approved 2020 ES and 2024 ES Addendum.
- 4.4 The environmental impacts of the proposed amendments are therefore considered to be non-material.

5 Planning Implications

- 5.1 Paragraph 002 of the Planning Practice Guidance (PPG) states that there is no statutory definition of ‘non-material’. This is because it will be dependent on the context of the overall scheme – an amendment that is non-material in one context may be material in another.
- 5.2 It is therefore the responsibility of the local planning authority (LPA) to determine what constitutes a non-material change, taking into consideration the context of the overall scheme and the circumstances of the case.
- 5.3 The proposed amendments to the Western Embankment with associated changes to the Transition Zone need to be considered in the context of the consented HTR which is significant in scale. It is noted that the site is over 160 hectares in size and the width of the new reservoir is in excess of 1600m from east to west.
- 5.4 Views of the reservoir will be largely unaltered by the proposal as summarised below:
- The amendments to the inside slope angles of the Western Embankment and Transition Zone will mainly be below the water level and therefore not readily visible. There are consequential changes to the reed beds to be created adjacent to the Transition Zone though they remain similar in form as approved.
 - The outside slope of the Western Embankment and Transition Zone is predominantly screened from the nearest residential properties by existing vegetation. The slopes will be slightly steeper but the overall appearance from public vantage points when seen in the context of the wider reservoir development will not be materially different. The outside embankment will still be a grassland slope and changes to the gradient when viewed from the Southern Access Road will be imperceptible given the scale of the embankment and the wider development. It is important to note that there are no changes proposed to the position of the outside toe of the embankment or height of the crest path.
 - The realignment of the crest path will continue to follow the route of the ridge of the embankment, and the amendments will be largely imperceptible when viewed in the context of the wider reservoir development.
 - The consequential amendments to the viewing platform and amphitheatre result in an improved overall provision with larger gravel area for seating.
 - The adjustments to the fencing and additional gates are as a result of ongoing consideration of the public access requirements.
 - As a result of these NMAs, there are no changes proposed to the much larger Main (Southern) Embankment or wider reservoir development.
- 5.5 The amendments will not give rise to any new, additional, or extended material impacts from the consented HTR development. The proposed amendments will also have no material impact upon the scope or control provided by the planning conditions and legal obligations attached to the planning permission for the development.
- 5.6 The proposed amendments DO NOT:

- Change the principle of development
- Change the description of development
- Change the planning application boundary
- Change the height of the embankment
- Change the capacity of the reservoir

5.7 It is therefore concluded that these amendments are non-material in nature and should benefit from approval under Section 96A of the Town and Country Planning Act 1990.

5.8 As set out in Section 2 of this Supporting Statement, pre-application advice from HBC and EHC, has also confirmed the view that the proposed amendments are considered to be non-material.

6 Conclusion

- 6.1 It is concluded that the NMAs will not give rise to any new, additional, or extended material impacts to the consented HTR. The amendments to the Western Embankment and Transition Zone would not be materially different than previously approved and secured by Condition 1 (Approved Plans) of Phase 3 RMA under HBC Ref: APP/24/00312 and Conditions 2 (Approved Plans) of Phase 3 RMA under EHDC Ref: 51680/012). It has also been demonstrated that the conclusions of the 2020 ES and 2024 ES Addendum for the development remain valid.
- 6.2 It is demonstrated in the Section 73 NMAs that the proposed non-material amendments will not give rise to any change in the principle of the development consented by the Section 73 permission or to any additional land use planning impacts. The NMAs will also have no material impact on the purpose or scope of control provided by the planning conditions and legal obligations attached to the planning permission for the development.
- 6.3 As such, it is considered that the NMAs accord with the provisions of Section 96A (1) and (2) of the Town and Country Planning Act 1990 (as amended) as they do not materially change the consented development.
- 6.4 The proposed amendments are therefore considered to be non-material in nature, and as such it is requested the HBC and EHDC approves this application within the statutory determination period of 28 days.

Appendix 1: Case Law



Neutral Citation Number: [2019] EWCA Civ 1359

Case No: C1/2019/0254

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION
PLANNING COURT
Mrs Justice Andrews DBE
CO47092018

Royal Courts of Justice
 Strand, London, WC2A 2LL

Date: 30th July 2019

Before :

LORD JUSTICE LEWISON
LORD JUSTICE FLOYD
 and
LORD JUSTICE PETER JACKSON

Between :

THE QUEEN (ON THE APPLICATION OF FULFORD PARISH COUNCIL)	<u>Appellant</u>
- and -	
CITY OF YORK COUNCIL	<u>Respondent</u>
-and-	
PERSIMMON HOMES (YORKSHIRE) LIMITED	<u>Interested Party</u>

MR KILLIAN GARVEY (instructed by Shoosmiths LLP) for the Appellant
 MR JONATHAN EASTON (instructed by City of York Legal Services) for the Respondent
 MR GILES CANNOCK QC (instructed by Walker Morris LLP) for the Interested Party

Hearing date : 16th July 2019

Approved Judgment

Judgment Approved by the court for handing down.

Fulford v York Council

Lord Justice Lewison:

1. The issue on this appeal is whether the statutory power conferred by section 96A of the Town and Country Planning Act 1990 to make non-material changes to a planning permission includes power to make non-material changes to conditional approvals of reserved matters. In a reasoned order refusing permission to apply for judicial review, Andrews J held that it did. With the permission of Lindblom LJ, the Fulford Parish Council appeals.
2. Section 96A provides:
 - “(1) A local planning authority in England may make a change to any planning permission, or any permission in principle (granted following an application to the authority), relating to land in their area if they are satisfied that the change is not material.
 - (2) 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 or permission in principle as originally granted.
 - (3) The power conferred by subsection (1) includes power to make a change to a planning permission—
 - (a) to impose new conditions;
 - (b) to remove or alter existing conditions.
 - (4) The power conferred by subsection (1) 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 or permission in principle relates.”
3. Following a public inquiry and an inspector’s report, on 9 May 2007 the Secretary of State granted outline permission for residential development of approximately 700 dwellings, the creation of public open space and community facilities, including local shops and associated works on land at Germany Beck, Fulford, York subject to a large number of conditions. Many of these conditions required matters to be subsequently approved by the local planning authority. These included a detailed scheme for a nature park, a scheme of archaeological work, noise mitigation measures, proposals for the disposal of foul and surface water, approval of highway design and so on.
4. The site in respect of which permission was granted was (or may have been) the site of the battle of Fulford, where in 1066 King Harald Hardrada and Earl Tostig defeated the northern earls Edwin and Morcar; before they in turn were defeated by King Harold at the battle of Stamford Bridge. One of the conditions attached to the grant of permission was the approval of an interpretative trail detailing the course of the battle.

Judgment Approved by the court for handing down.

Fulford v York Council

5. The Fulford Parish Council is bitterly opposed to the scheme, and has mounted a number of unsuccessful challenges to it (including an unsuccessful attempt to register the site as a historic battlefield).
6. On 2 February 2012 the City of York Council (“York”), as local planning authority, received an application for approval of reserved matters relating to details of appearance, landscaping, layout and scale of 655 dwellings. It granted approval on 9 May 2013.
7. The grant of approval stated:

“9. No development shall take place until a detailed Bat Mitigation Strategy and Method Statement have been submitted to and approved in writing by the Local Planning Authority. All works shall be carried out in accordance with the approved details, unless otherwise approved in writing by the Local Planning Authority and shall be retained unless otherwise agreed in writing with the Local Planning Authority.”
8. It went on to specify what the plan should deal with. These included:

“A timetable for implementing the above measures and construction showing any phasing of work carried out to avoid sensitive times of the year.”
9. In April 2015 York approved a bat mitigation strategy. That strategy provided a timetable for implementing the various measures. One of the proposals involved the provision of bat “hop-overs.” A bat “hop-over” is a trellis, with vegetation planted round it, to encourage bats to cross the road at a safe height. On 15 October 2018 York approved a further application described as:

“Non-material amendment to permitted application 12/00384/REMM to alter approved plans and to amend approved bat mitigation strategy required under condition 9.”
10. The amendments were changes to the approved house types and layouts of two of the phases of the scheme; and changes to the bat mitigation strategy. The amendment to the bat mitigation strategy involved a change in the timing of the provision of one of the bat hop-overs. The other one was already in place. By the time of that decision, the planning permission had been implemented, in the sense that the overall scheme of development had begun.
11. The Parish Council contends that section 96A did not empower York to make that decision. The statutory power is limited to making non-material amendments to a “planning permission”; and an approval of reserved matters is not a “planning permission”.
12. It is not easy to see where this argument leads. As the judge correctly said, the reserved matters approval specifically contemplated that the local planning authority might agree in writing deviations from the approved bat mitigation strategy. An

Judgment Approved by the court for handing down.

Fulford v York Council

agreement in writing permitting such an alteration would not change the condition itself. It would be implementing it. I will return to this point later.

13. The argument for the Parish Council, ably presented by Mr Garvey, is that the legislative code maintains a clear distinction between a “planning permission” on the one hand, and an “approval” on the other.
14. The planning permission granted by the Secretary of State was an outline planning permission. That species of permission is defined by section 92 of the Act:

“In this section and section 91 “outline planning permission” means planning permission granted, in accordance with the provisions of a development order, with the reservation for subsequent approval by the local planning authority, the Welsh Ministers or the Secretary of State of matters not particularised in the application (“reserved matters”).”

15. It can thus be seen, the argument runs, that there is a distinction between the planning permission on the one hand, and subsequent approval of reserved matters on the other. This distinction is maintained elsewhere in the Act. Section 62A enables certain applications (called “relevant applications”) to be made directly to the Secretary of State. Section 62A (2) provides:

“In this section “relevant application” means—

- (a) an application for planning permission, or permission in principle, for the development of land in England, or
- (b) an application for approval of a matter that, as defined by section 92, is a reserved matter in the case of an outline planning permission for the development of land in England,”

16. Once again, Mr Garvey points out, an application for planning permission is dealt with separately from an application for approval of reserved matters. Section 78 provides:

“(1) Where a local planning authority—

- (a) refuse an application for planning permission or grant it subject to conditions;
- (aa) refuse an application for permission in principle;
- (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission or grant it subject to conditions; or
- (c) refuse an application for any approval of that authority required under a development order, a local development order, a Mayoral development order or a neighbourhood development order or grant it subject to conditions,

Judgment Approved by the court for handing down.

Fulford v York Council

the applicant may by notice appeal to the Secretary of State.”

17. Planning permission is dealt with under paragraph (a), whereas approval required by a condition is dealt with under paragraph (b). The same distinction can be seen in section 73 (5), and section 93 (2) and (3). The same distinction between a planning permission and a grant of approval of reserved matters is carried through into the Town and Country Planning (Development Management Procedure) Order 2015.
18. Mr Garvey also pointed to section 70. Section 70 (1) empowers a local planning authority to grant planning permission either unconditionally or subject to conditions. Section 70 (1A) empowers a local planning authority to grant or refuse permission in principle. There is no power to grant conditional permission in principle. Section 70 (2ZZB) applies to the grant of permission in principle. It provides:

“An application for technical details consent is an application for planning permission that—

 - (a) relates to land in respect of which permission in principle is in force,
 - (b) proposes development all of which falls within the terms of the permission in principle, and
 - (c) particularises all matters necessary to enable planning permission to be granted without any reservations of the kind referred to in section 92”
19. Mr Garvey made something of the fact that section 70 (2ZZB) provides in terms that an application for technical details consent is an application for planning permission. By contrast, there is nothing in the Act that says that an application for the approval of reserved matters is an application for planning permission. I do not think that this argument carries much force. Planning permission is defined by section 336 as:

“permission under Part III, . . . but does not include permission in principle”
20. It follows from the exclusionary nature of this definition that, in order to bring permission in principle within the statutory planning code, there must be some part of the process that treats an application as an application for planning permission. The application for technical details consent fulfils that function.
21. As Mr Garvey submits, the distinction between an application for planning permission and an application for the approval of reserved matters is also embedded in the case law; and has been for over half a century. In *R (Boulton) v Bradford-on-Avon UDC* [1964] 1 WLR 1136 Widgery J said:

“The other ground on which this argument must fail is that, in my opinion, the application for planning approval of details made in this case was not an application for planning permission at all, and therefore did not attract the need for a certificate under section 37. It will be remembered that when the original application was made, the certificate was signed by

Judgment Approved by the court for handing down.

Fulford v York Council

the builder, and no criticism has been laid against it. That was the certificate for the purposes of this application; no further or additional certificate was required when the application for approval of details was made, because that was not an application for planning permission within the meaning of the section.”

22. That distinction was approved by this court in *Castlebay Ltd v Asquith Properties Ltd* [2005] EWCA Civ 1734, [2006] 2 P & CR 22. That case concerned the enforceability of a contractual option. The judge at first instance said at paragraph [41] of his judgment:

“My conclusions are as follows. I am satisfied, that, as a matter of planning law, firstly outline planning permission is planning permission and the grant of approval of reserved matters is not a planning permission. Secondly, an application for outline planning permission is an application for planning permission, and an application for reserved matters of approval is not.”

23. Having reviewed the applicable legislation in some detail, Chadwick LJ said at [34] that the judge’s summary was “plainly correct”. As Mr Garvey put it in oral argument: if you successfully apply for apples, you do not end up with oranges.
24. In the light of the provisions of the Act and the case law, I accept that the approval of reserved matters is not, itself, a planning permission and that an application for such approval is not, itself, an application for planning permission. But in my judgment that is not the answer to the question raised by this appeal.
25. The primary source of the power to grant planning permission is contained in section 70 (1) of the Act which provides:

“Where an application is made to a local planning authority for planning permission—

 - (a) subject to section 62D(5) and sections 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or
 - (b) they may refuse planning permission.”
26. Sections 91 and 92 impose requirements about conditions prescribing time limits within which development must be begun; or, in the case of outline planning permission, by which an application for approval of reserved matters must be made. The conditional grant contemplated by section 70 (1) (a) is a grant of planning permission “subject to” conditions. Two points flow from this. First, the grant of outline planning permission is the grant of planning permission as defined by the Act. Second, since the grant is “subject to” conditions, the conditions must be seen as an intrinsic part of the grant.
27. In *R (Stevens) v Newbury DC* (1992) 65 P & CR 438 Roch J held that it was within the power of the local planning authority under the Town and Country Planning Act

Judgment Approved by the court for handing down.

Fulford v York Council

1971 to grant conditional approval of reserved matters (a point that had been left open by Browne J in *Chelmsford Corporation v Secretary of State for the Environment* (1971) 22 P & CR 880). In so deciding he upheld a practice that had been going on for years. He said:

“Section 36(3) empowers the Secretary of State, subject to the following provisions of section 36, to allow or dismiss the appeal or reverse or vary any part of the local planning authority’s decision, and to deal with the application as if it had been made to him in the first instance. Then section 36(5) confers on the Secretary of State the powers given to local planning authorities by section 29(1)(a) to grant permission “either unconditionally or subject to such conditions as they think fit.”

The interpretation of the Act on this issue, in my judgment, turns on the meaning of “planning permission” in section 29(1). Is it confined to outline planning permissions or does it include “approvals of reserved matters?” As section 290 does not recognise “approval” or “approval of a reserved matter” as something separate from a “planning permission” and as “planning decisions” apply to decisions made on application under Part III of the Act, which I take to mean all decisions made under Part III of the Act, I conclude that Mr Gray is correct in his submission. “Conditional approval of a reserved matter” is a creature known to the law, and the local planning authority and the Secretary of State can give such approval.”

28. It seems to me, therefore, that the nub of the reasoning is that the conditional approval of reserved matters is itself a condition subject to which the planning permission has been granted.
29. As Mr Garvey pointed out, a developer may make multiple applications for reserved matters. In support of that proposition, he relied on the decision of this court in *Heron Corporation Ltd v Manchester City Council* [1978] 1 WLR 937. The question in that case was whether approved reserved matters could be revised or varied after the date of approval. This court held that they could. Lord Denning MR said at 943-4:

“Suppose that a condition required the design and material of a house to be approved: and, on the first application, the planning authority approved a particular style of facing brick or a two-storey house. But it afterwards appeared that those facing bricks were not obtainable, or that the applicant had to live on one floor and wanted a bungalow. I should have thought it plain that he could make a second application for approval. The planning authority could grant it if it thought fit — leaving the first approval still standing — in which case the applicant could use whichever approval he liked: or the planning authority could grant the second application, *subject to the first not being proceeded with.*” (Emphasis added)

Judgment Approved by the court for handing down.

Fulford v York Council

30. The last part of the citation plainly contemplates conditional approval of revised reserved matters. In *R (Redrow Homes Ltd) v First Secretary of State* [2003] EWHC 3094 (Admin) at [44] Sullivan J also took the view that a condition may lawfully be imposed upon an approval of details. The point did not arise on the subsequent appeal: [2004] EWCA Civ 1375, [2005] JPL 502. In addition, section 78 (1) (b) confers a right of appeal where, on an application for “any” approval, the local planning authority “grant it subject to conditions”. That, too, recognises a power to give conditional approval to reserved matters.
31. In *Pressland v Hammersmith & Fulham LBC* [2016] EWHC 1763 (Admin), Mr John Howell QC, sitting as a judge of the Planning Court, said at [24]:
- “Planning permissions are granted subject to such conditions as may be imposed when either the permission or any subsequent required approval is granted.”
32. At [34] he said:
- “A local planning authority may grant an application for any consent, agreement or approval required by a condition imposed on a grant of planning permission (referred to in paragraph (b) of section 78(1)) subject to conditions. It is no doubt the case that such a condition may serve merely to define what the development permitted is in greater detail or to preclude the carrying out of development until something occurs: carrying out the development otherwise than in accordance with such a condition may mean that the whole development is carried out without the planning permission required for it. But other conditions may be imposed which, without unlawfully modifying the permission that has been granted without compensation, may provide for things to be done or not done which, if breached, would not cause the development to be carried out without permission. If such conditions were not ones “subject to which planning permission has been granted”, however, they would be unenforceable under Part VII of the 1990 Act.”
33. At [36] he added:
- “Mr Buley's submissions [for the local planning authority] assume that the only conditions subject to which planning permission has been granted are those imposed at the same time as the grant of that permission. The fact that a condition subject to which a subsequent required approval was given was not imposed *when* the permission was granted does not mean in my judgment, however, that the permission has not been granted *subject to it* as a result of that conditional approval. Thus, for example, in the case of an outline planning permission granted subject to the approval of reserved matters, the permission is granted subject to compliance with what is approved (which may serve to define what the permission is for), and given that

Judgment Approved by the court for handing down.

Fulford v York Council

any approval may be conditional, subject to any conditions that may be imposed on that approval. That is what the legislation entails. Once imposed such a condition is one subject to which planning permission has been granted. Planning permissions are granted subject to such conditions as may be imposed when either the permission or any subsequent required approval is granted. Again, in my judgment it makes no difference in principle whether the approval granted subject to a condition is one required by a condition imposed by a planning authority on the grant of a planning permission or one required by a condition imposed on the grant of planning permission by a development order made by the Secretary of State. In each case the planning permission is granted subject to any conditions that may be imposed on the required approval. Once imposed, it is a condition subject to which planning permission has been granted.” (Emphasis in original)

34. I agree. That, to my mind, is without doubt the assumption upon which section 96A is drafted. It follows, in my judgment, that Mr Garvey’s argument that there is no power to approve reserved matters subject to conditions is wrong.
35. In my judgment, the “planning permission” to which section 96A refers is the package consisting of the grant of planning permission itself, together with any conditions to which the grant is subjected, whether the conditions are imposed at the time of or subsequent to the grant of permission. An application for an amendment to an approval (or conditional approval) of reserved matters is, in my judgment, an application for the alteration of an existing condition; which is expressly permitted by section 96A (3) (b). The power under section 96A is restricted to *non-material* changes. It follows that a change in approved reserved matters can have no material impact. In those circumstances, I can see no policy objection to this interpretation. Mr Garvey laid some stress on the statutory time limit within which applications for approval of reserved matters is made. He pointed to section 73, which applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. The one condition that cannot be dispensed with under this power is a condition limiting the time within which development must be begun or an application for the approval of reserved matters must be made: section 73 (4). Section 96A should not be interpreted so as to override section 73 (4). He also referred to the lack of requirements for public advertisement where an application is made under section 96A. That, he said, deprived the public of a valuable right to participate in environmental decision-making.
36. It seems to me to be clear from section 96A (2) (which requires the planning authority to consider “previous changes” made under section 96A (1)), that the section specifically contemplates sequential changes. Provided that the initial application for approval of reserved matters is made within the time limit imposed by the Act, I can see no good reason for outlawing non-material changes made later. In *Inverclyde DC v Secretary of State for Scotland* (1982) 43 P & CR 375, 397 Lord Keith of Kinkel said:

Judgment Approved by the court for handing down.

Fulford v York Council

“This is not a field in which technical rules would be appropriate, there being no contested *lis* between opposing parties. The planning authority must simply deal with the application procedurally in a way which is just to the applicant in all the circumstances. That being so, there is no good reason why amendment of the application should not be permitted at any stage, if that should prove necessary in order that the whole merits of the application should be properly ascertained and decided upon. There is, however, one obvious limitation upon this freedom to amend, namely that after the expiry of the period limited for application for approval of reserved matters ...an amendment which would have the effect of altering the whole character of the application, so as to amount in substance to a new application, would not be competent.”

37. Moreover, if (as in the present case) some matters that could have been dealt with at the outline permission stage as reserved matters, have in fact been given full approval, it would make no sense for a local planning authority to have power to make non-material changes to those matters but not to matters that had been reserved but subsequently approved. If a change in approved reserved matters were to be a *material* change, things might be different.
38. I accept that public participation in environmental decision-making is important. But section 96A is concerned with a situation in which the environmental decision has already been taken, with the public participation that is required. The power under section 96A is confined to changes which are not material. The need for public participation in *non-material* changes does not seem to me to be so pressing.
39. It is also to be observed that if, instead of applying for outline planning permission, a developer applies for permission in principle, followed by approval of technical details, there is no doubt that non-material changes can be made to the technical details. Since both are processes for determining what development may be carried out, it would be capricious for two wholly different sets of power to be given to local planning authorities. As there is no time limit on the making of non-material changes to technical details, both the timing mischief and the lack of public involvement mischief on which Mr Garvey relies would exist. I cannot regard these as weighty policy reasons for adopting the interpretation that he advocates.
40. In addition, as Mr Cannock QC for the developer submitted, in deciding whether or not to exercise the power under section 96A the local planning authority must be satisfied that the proposed change is not material. It cannot in practice make that assessment without considering not merely the original outline permission and its conditions; but also the details of reserved matters that have been subsequently approved. If Mr Garvey's argument is right, the approved reserved matters need not be considered. If a developer were to ask: what development is permitted by the outline permission, the only possible answer is that the permitted development is to be found in the package consisting of the outline permission, any approval of reserved matters, and any subsequent non-material changes.
41. Although the local planning authority has the power to give conditional approval to reserved matters, its power to do so is limited by the scope of what has been reserved

Judgment Approved by the court for handing down.

Fulford v York Council

for subsequent approval. It is not open to an authority to impose additional conditions falling outside the scope of what has been reserved. It may be that, as Mr Easton for York suggested, it was a fear of falling foul of this principle that spurred the developer to apply for formal amendment under section 96A rather than simply asking York for written approval under the conditional approval of the bat mitigation strategy. We were referred to a number of cases that illustrate that principle; but it is not necessary to discuss them further; since it is not suggested that the change in the bat mitigation strategy made under section 96A falls outside the scope of the permission.

42. Mr Garvey also argued that the power to approve non-material changes to a planning permission cannot be used retrospectively. Section 73A of the Act provides:

“(1) On an application made to a local planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application.

(2) Subsection (1) applies to development carried out—

(a) without planning permission;

(b) in accordance with planning permission granted for a limited period; or

(c) without complying with some condition subject to which planning permission was granted.

(3) Planning permission for such development may be granted so as to have effect from—

(a) the date on which the development was carried out; or

(b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.”

43. Mr Garvey contrasts section 73A with section 96A which contains no wording expressly permitting a retrospective amendment. In the present case, he says, the planning permission, taken as a whole, has been implemented. It follows, therefore, that the power under section 96A cannot be exercised. I do not accept this argument. When a successful application is made under section 73A, it results in the grant of planning permission which did not exist before. In the present case, the planning permission (taken as a whole) has already been granted. The effect of the exercise of the power conferred by section 96A is merely to make a non-material amendment to an existing planning permission. The two sections are, therefore, concerned with entirely different circumstances.
44. One of the purposes of section 96A was surely to formalise minor differences between, say, approved layout plans and “as-built” development. In days gone by this used to be dealt with informally by planning officers; and principles of private law (such as estoppel) would be relied on to validate their representations (e.g. *Lever Finance Ltd v Westminster CC* [1971] 1 QB 222). But that possibility was, for all

Judgment Approved by the court for handing down.

Fulford v York Council

practical purposes, brought to an end nearly thirty years later by the House of Lords (*R (Reprotech (Pebsham) Ltd) v East Sussex CC* [2002] UKHL 8, [2003] 1 WLR 348). So a statutory power to achieve the same results was needed; and in my judgment section 96A fills that gap.

45. But in any event, on the facts of this case, I am not persuaded that the power is being used retrospectively. The bat mitigation strategy has yet to be put in place; at least fully. Although it is true that the planning permission has been “implemented”, all this means is that development has *begun*; so as to comply with the time limit imposed by section 92. It does not mean that the whole of the permitted development has been “carried out” as that expression is used in section 73A.

46. For these reasons, I would dismiss the appeal.

Lord Justice Floyd:

47. I agree.

Lord Justice Peter Jackson:

48. I also agree.

Appendix 2: Pre-Application Advice



Public Service Plaza
Civic Centre Road
Havant
Hampshire PO9 2AX

T 023 9247 4174
F 023 9249 8031

www.havant.gov.uk

Andy Blaxford
Adams Hendry Consulting Ltd
Sheridan House,
40-43 Jewry Street,
Winchester,
SO23 8RY

Our Ref: APP/24/00312 & 5180/012
Direct Line: 01730 234018
Ask For: Mr Narinder Lakhan
Email: Narinder.Lakhan@easthants.gov.uk
9th September 2025

Town and Country Planning Act 1990

Dear Andy,

Site Address: Havant Thicket Winter Storage Reservoir, Manor Lodge Road, Rowlands Castle.

I am writing in response to your enquiry in respect of a Non-Material Amendment to Section 73 Permissions APP/24/00312 & 5180/012 – the amendment relating to the Western Embankment and Transition Zone Slope Angles. The response below represents the officer views of both East Hampshire District Council (EHDC) and Havant Borough Council (HBC).

The amendments you are seeking have been set out in the Adams Hendry Note August 2025 (para 3.5 page 8) and as shown on drawing number HTR-COF-EM-RE-DR-GE-4003 P02 (Fig 2 of the note). In summary they are as follows:

- i. Reduce the angle of the inside slopes of the Western Embankment.
- ii. Increase the angle of the outside slopes of the Western Embankment. There are no changes to the alignment of the outer toe of the embankment or to the height of the embankment (please refer to point (v) below in respect of movement of crest path and length of embankment).
- iii. Alter the Transition Zone from the Western Embankment to tie in with the Main (Southern) Embankment slopes, providing a graded change between the embankments.
- iv. Revise the inside slope angles at the northern extent of the Western Embankment to ensure tree G190 located adjacent to the Western Embankment is retained.

What you are seeking from both Local Planning Authorities (LPA) is to advise is whether these changes amount to non-material amendments; changes requiring a submission of S73 Minor Material Amendment; a new planning application; or can be accommodated within a reserved matters application (RMA) submission (as you have asserted in your note). In response to this request, I will assess the changes in each phase (summarised above) and then conclude whether individually and cumulatively they amount to non-material amendments.

Planning History and Need for Amendments

The planning history is noted in respect of previous NMA consents as set out in paragraphs 1.9 to 1.12 of your note. However each NMA application is treated on its merits and the cumulative impact of the proposed change and other changes are material.

Whilst the need for the changes (paragraphs 3.2 to 3.4) are noted these considerations are not material to the assessment of the amendments which are summarised in the legal and planning context below.

Legal and Planning Context

The Government's Planning Practice Guidance ("PPG") contains some commentary on section 96A of the 1990 TCPA under the heading: "Flexible options for planning permission. Options for amending proposals that have planning permission".

The guidance states that new issues may arise after planning permission has been granted, which require modification of the approved proposals. Where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 ... will need to be submitted. Where less than substantial changes are proposed as in this case, there are the following options for amending a proposal that has planning permission:

Section 96A of the TCPA 1990 provides, so far as material, as follows: "96A Power to make non-material changes to planning permission ..." (1) 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. (2) 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.

There is no statutory definition of 'non-material' and this will be dependent on the context of the overall scheme and an amendment that is non-material in one context may be material in another. The local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under section 96A of the Town and Country Planning Act 1990 ..."

There is a body of case law dealing with the test for identification of material planning considerations, and the courts had already recognised an informal power in LPAs to accept immaterial amendments to a planning permission without requiring a further application, prior to the enactment of Section 96A (see - R (Midcounties Cooperative Ltd) v Wyre Forest DC [2009] EWHC 964 (Admin), per Ouseley J at paras.66-70). It is also the case that Section 55 of the 1990 Act itself requires consideration of materiality when deciding whether a change of use is development and whether works amount to development.

The approach to materiality in the context of planning considerations is encapsulated by the decision of the Court of Appeal in R (Kides) v South Cambridgeshire DC [2002] EWCA Civ 1370; (2003) 1 P&CR 19. At paragraph 121 Jonathan Parker LJ stated:

"In my judgment a consideration is "material", in this context, if it is relevant to the question whether the application should be granted or refused; that is to say if it is a factor which, when placed in the decision maker's scales, would tip the balance to some extent, one way or the other. In other words, it must be a factor which has some weight in the decision-making process, although plainly it may not be determinative. The test must, of course, be an objective one in the sense that the choice of material considerations must be a rational one, and the considerations chosen must be rationally related to land use issues".

That explanation assists in understanding the correct approach to the words "non-material" in Section 96A. If the changes proposed would not "tip the balance to some extent" because they do not have "weight in the decision-making process" then they will be non-material and may be dealt with under Section 96A. If, however, the changes do have weight in the decision-making process such that they alter the planning balance then Section 96A could not be engaged.

Crucially, whether a change is "non-material" for the purposes of Section 96A is a matter of "planning judgment" for the local planning authority. In this case I am of the opinion that the effect of the changes would be non-material in that their nature and substance would not create new planning considerations

beyond those already assessed under the extant planning permission; and the effect of the changes, individually or cumulatively, would be non-material. The rationale for this conclusion is set out in the paragraphs below.

Assessment of changes (do they amount to material changes?)

i. Reduce the angle of the inside slopes of the Eastern Embankment

The reduction of the angle of the inside slopes of the Eastern Embankment. These amendments will be below the water line and therefore not readily visible and therefore their impact would not be readily appreciated in the context of the wider site context. These changes therefore can be considered to be non-material and would not give rise to any new planning impacts to the nearest residential receptors or impact the overall character.

ii. Increase the angle of the outside slopes of the Western Embankment. There are no changes to the alignment of the outer toe of the embankment or to the height of the embankment

There are no changes to the alignment of the outer toe of the embankment or to the height of the embankment. It is the views of the outside slopes of the Western Embankment that are the most important to consider in terms of the materiality of the amendments. It is noted that the height of the embankment will not be affected. From public vantage points which includes the northern and southern access roads the slope angle change is considered to be imperceptible given the scale of the embankment and its context in the wider development..

iii. Alter the Transition Zone from the Western Embankment to tie in with the Main (Southern) Embankment slopes, providing a graded change between the embankments

The alteration to the Transition Zone from the Western Embankment to tie in with the Main (Southern) Embankment slopes, which provides a graded change between the embankments can be considered as a non-material amendment, as there is no change to the Main (Southern) Embankment beyond the Transition Zone.

iv. Revise the inside slope angles at the northern extent of the Western Embankment to ensure tree G190 located adjacent to the Western Embankment is retained

Whilst there is a benefit in the retention of the tree it is the slope angle change which needs to be considered. As the change is to the inner slope which would not be readily visible or noticeable from public vantage points, and it being submerged by the reservoir waterline, this change can be considered as a non-material change.

v. Other consequential changes

The proposal requires the realignment of the crest path on the Western Embankment to account for the revised design and a result the following changes result:

- Crest path moves 13.5m west (at approximately chainage 350).
- Crest path moves 10.5m west (at chainage 700).
- A 2m increase in the overall length of the embankment to 2,850m

The amendments to the crest path can be considered non material as the principle does not change and a path is still delivered.

Cumulative Impact

The amendments (i) to (v) above would cumulatively would not amount to material changes for the reasons set out above. This conclusion also takes into account the amendments secured by the previous NMA and S73 permission approved.

Environmental Impacts

It is noted that the principal permission was subject to an Environmental Impact Assessment (EIA). The changes you are proposing should not affect the conclusions in respect of the impacts. I note that the submission will include a technical note setting out the changes and how they conform with the Environmental Statement in the Hybrid Planning Permission Environmental Statement (the "2020 ES") and Section 73 Environmental Statement Addendum (the "2024 ES Addendum"), demonstrating that the amendments would not give rise to new or materially different significant effects on the environment from those previously assessed.

You have provided reassurances in respect of landscape conformity ensuring that the vegetation secured under the recent Condition 28 discharge will remain. This view is supported by the Council's Ecologist and Landscape Architect. The works are required to ensure the internal slopes remain structurally stable in an emergency draw down event and as such there will be no change to the significance of the effects on ground conditions.

You have also provided updates on land stability which will be improved and waste where you state there is a 0.5% decrease to the volume of materials required, which is a negligible change in the context of the overall project and as such there will be no change to the significance of effects on transport, noise, air quality, or ground conditions during construction.

Final Conclusions

It is considered that the proposed "embankment changes" (bulleted (i) and (v) above) can be treated as non-material under S96 of the TCPA. When compared back to the environmental effects under the Hybrid planning permission, the detailed changes would not give rise to new or materially different significant effects on the environment from those previously assessed or debated at planning committee. Given the limited scale of the differences/changes and expected limited effects on the environment from those previously assessed, they could be capable of being consented via a S96A approval.

I note that hybrid application tested environmental impacts and the proposed embankment changes remain within the worst-case scenario assessed in the original Environmental Statement. It is also the case that the scale of the change is limited when seen in the overall context of the reservoir development. It must be stressed that should an NMA application be made, it must be accompanied by an "Environmental Statement of Conformity", which is noted you intend to do.

To secure the above changes it is recommended that they are formalised through a S96A NMA submission, and can thereafter form part of a future Reserved Matters Application (RMA) and conditions submission.

Yours Sincerely,



Narinder Lakhan
Planning Consultant Major Projects

Subject: RE: Havant Thicket Reservoir - NMA Pre-application Advice
Date: Tuesday 30 September 2025 at 10:06:39 British Summer Time
From: Narinder Lakhan
To: Andy Turner
CC: Samms L. (Lizzie), Rachel Murrell
Attachments: image001.png, image002.png

Dear **Andy**

Thank you for your email dated 15th September 2025 in which you set out your rationale for considering the amendments to the RMA applications (LPA References APP/24/00312 and 51680/012) as Non-Material Amendments.

In my response to you I confirmed that the LPA considered the amendments to the embankment S73 as non-material. In the final paragraph of the letter I stated the following:

"To secure the above changes it is recommended that they are formalised through a S96A NMA submission and can thereafter form part of a future Reserved Matters Application (RMA) and conditions submission".

I have considered your arguments that the NMA changes can also equally apply to the RMAs approved and referenced above. I note you have drawn to my attention relevant case law where the Courts have determined that NMAs can also apply to details secured under RMA (Court of Appeal, in R (on the Application of Fulford Parish Council) v City of York Council [2019] EWCA Civ 1359).

On the assumption that the LPA consider the amendments as non-material for the substantive part of the permission in due course, I consider that were the same details submitted under the RMA, those same amendments (bulleted i to v in the letter dated 9th of September) could also be considered non-material changes. I hope this now clarifies the LPAs position and resolves any ambiguity in the paragraph above.

Your Sincerely
 Narinder Lakhan

From: Andy Turner <a.turner@adamshendry.co.uk>
Sent: 15 September 2025 16:11
To: Narinder Lakhan <Narinder.Lakhan@easthants.gov.uk>
Cc: Weaver, Steve <steve.weaver@havant.gov.uk>; Adrian Ellis <Adrian.Ellis@easthants.gov.uk>; Samms L. (Lizzie) <Lizzie.Samms@mackley.co.uk>; Rachel Murrell <R.Murrell@adamshendry.co.uk>
Subject: Havant Thicket Reservoir - NMA Pre-application Advice

Dear Narinder,

Thank you for your pre-application advice dated 9 September 2025 (copy attached) which agreed that the proposed amendments to the Western Embankment and Transition Zone Slope Angles can be treated as non-material under Section 96A of the TCPA.

Further to your letter, I would appreciate clarification from you regarding our proposed approach to secure the changes to the Phase 3 RMA. We previously set out that it is our intention to submit a separate application for NMAs to the Phase 3 RMA. However, the advice provided in the final sentence of your letter as underlined below would seem to suggest a new Phase 3 RMA is required rather than this being an NMA submission:

"To secure the above changes it is recommended that they are formalised through a S96A NMA submission, and can thereafter form part of a future Reserved Matters Application (RMA) and conditions submission."

For information, planning case law has confirmed that an NMA to an RMA can be made. This position was clarified by the Court of Appeal, in R (on the Application of Fulford Parish Council) v City of York Council [2019] EWCA Civ 1359, which confirmed that the statutory power under section 96A of the Town and Country Planning Act 1990 to make non-material changes to a planning permission can be used to make non-material changes to conditional reserved matters approvals (RMAs).

As you agree that the proposed amendments to the Section 73 can be treated as non-material, we can see no reason why an NMA of the Phase 3 RMA would not be the most straightforward and acceptable route to securing the required changes. Please can you confirm that this approach is acceptable.

Kind regards
Andy

Andy Turner

Technical Director

Adams Hendry Consulting Ltd.

Sheridan House, 40-43 Jewry Street, Winchester, SO23 8RY



Mob: 07941113896

Office: 01962 877414

www.adamshendry.co.uk

Adams Hendry's Charity of the Year 2025



Charity Reg. No. 298941

This message and any files transmitted with it are intended solely for the use of the individual or entity to whom they are addressed. It may contain information that is privileged and confidential within the meaning of applicable law. Unauthorised dissemination, distribution, publication or copying of this email is prohibited. If you have received this email in error please notify info@adamshendry.co.uk or telephone 01962 877414 and delete it from your system.

Please [click here](#) for further information on Adams Hendry's data protection policy and copies of Privacy Notices

Registered Office: Sheridan House, 40-43 Jewry Street, Winchester, SO23 8RY

Registered in England under Company Number 3804753.

VAT Registration Number: 807 9759 79.

Appendix 3: Conditions

Full text of updated Condition 1 of HBC PHASE 3 RMA(APP/24/00311) and Condition 2 of EHDC PHASE 3 RMA (51680/011):

The development hereby permitted shall be carried out in accordance with the following approved plans and particulars:

Documents

Covering letter
Planning Statement
Environmental Statement of Conformity (Main Reservoir Embankment, Culvert and Valve Tower)

Drawings:

HTR-GHD-ZZ-ZZ-DR-T-0021 Rev ~~P02~~P04 Planning Strategy Key Plan;
HTR-GHD-ZZ-ZZ-DR-T-0019 Rev P03 Main Embankment Reserved Matters Application Area;
HTR-COF-EM-RE-DR-GE-4002 Rev ~~P01~~P02 Main Embankment Proposed Site Layout ;
HTR-COF-EM-RE-DR-GE-4003 Rev ~~P01~~P03 Main Embankment Cross-Sections;
HTR-GHD-ZZ-ZZ-DR-T-0013 Rev ~~P04~~P06 Proposed Culvert and Valve Tower Site Layout;
HTR-GHD-ZZ-ZZ-DR-T-0020 Rev P07 Outlet Works Valve Tower & Culvert General Arrangement Plans and Sections;
HTR-GHD-ZZ-ZZ-DR-T-0015 Rev P04 Valve Tower Plan and Sections General Arrangement;
HTR-GHD-ZZ-ZZ-DR-T-0011 Rev ~~P04~~P07 Main Embankment Landscape Plan;
HTR-GHD-ZZ-ZZ-DR-T-0018 Rev ~~P02~~ P04 Main Embankment Landscape Cross-Sections LA1-LA3;
HTR-GHD-ZZ-ZZ-DR-T-0040 Rev P01 Valve Tower Elevation

Reason - To ensure provision of a satisfactory development.