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**Delegated report**      Officer: Katie Moriarty

**Application ref. DMOT/2019/1042**

Non-material amendment to permission ref. 9/2016/0094 seeking to remove new adoptable footpath from approved plans to become part of plot 10 (relating to the residential development of 13 bungalows with new access from Shelley Road, parking spaces and new adopted road) at Eureka Lodge, Newhall Road, Midway, Swadlincote

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Valid date:                      19/09/2019

Consults expired:

EIA development?

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This decision is delegated to officers under the terms of the current Scheme of Delegation.

**Relevant planning history**

9/2017/0857 - Approval of reserved matters for appearance and landscaping only of planning permission ref: 9/2016/0094 - granted 17/11/2017

9/2016/0094 – Outline application (all matters except for access, layout and scale to be reserved) for the residential development of 13 bungalows with new access from Shelley road parking spaces and new adopted road - granted 20/9/17

9/2014/1012 - Proposed conversion of eureka lodge into five residential dwellings and fifteen new build residential dwellings - Withdrawn

9/2004/0073 - Residential development including the erection of three detached dwellings the conversion of Eureka Lodge to six flats and extension to provide two flats and an apartment block of three flats with access from Shelley road (flats) and Newhall road (houses) - granted 20-04-04

9/2002/0840 - Outline application (all matters except means of access to be reserved) for the erection of five dwellings (main house excluded from application site) - granted 23-04-03

9/1999/0195 - The use as a residential home for the elderly and day nursery - granted 20-07-99

**Responses to consultations and publicity**

None received.

**Relevant policy, guidance and/or legislation**

The relevant development plan policies are:

- 2016 Local Plan Part 1 (LP1): SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence) and S6 (Sustainable Access).

National Guidance

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

Local Guidance

- Design Guide Supplementary Planning Document (SPD)

## Planning considerations

Unlike section 73 of the Town and Country Planning Act 1990, which only allows a Local Planning Authority (LPA) to vary or remove planning conditions; section 96A allows an LPA to make a change to any planning permission if they are satisfied that the change is not material. The proposed alterations relate to the loss of the proposed footpath link and the effect, positive or negative, this might have on the surrounding area, and the impact of this change on neighbouring properties.

## Planning assessment

The application seeks to remove the link to the existing footpath to the eastern boundary of the site. The link was included to increase the accessibility of the site to the wider area but it would appear that the link cannot be installed without compromising the root protection areas of the protected trees to the east of the site and that the harm posed to the trees would not be outweighed by the accessibility of the site.

Whilst there was no objection raised to the proposed link being included, this was not a requirement of the County Highway Authority and the removal of the link from the site is not considered to be a material change which would require a formal assessment through a normal planning application. The removal of the link would pose no amenity issues to the future occupiers of plots 9 and 10, or occupiers that would abut the site.

## Recommendation

Approve

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

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| Recommendation made: | 14/10/2019 |
| Report agreed:       | 03/11/2019 |
| Authorised officer:  | Chris Nash |

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