
Delegated report Officer: Holly Budworth

Application ref. DMOT/2026/0428

Non-material amendment to condition 21 (gutters and downpipes) of permission ref. DMPA/2025/0467
The variation of condition 2 (approved plans) of planning permission DMPA/2023/1259 (Demolition existing building and the erection of five new dwellings with associated amenity space and car parking) at Melbourne Community Centre, Church Street, Melbourne, Derby, DE73 8EJ

Valid date: 30/03/2026

Consults expired:

EIA development? No

Section 106 agreement? Not required

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

Relevant planning history

DMPA/2025/0467 - The variation of condition 2 (approved plans) of planning permission DMPA/2023/1259 (Demolition existing building and the erection of five new dwellings with associated amenity space and car parking) – Approved subject to conditions 07/07/2025.

Responses to consultations and publicity

In accordance with the Council's Statement of Community Involvement and the Legislation, there is no consultation requirement to s96a submissions.

Relevant policy, guidance and/or legislation

Town and Country Planning Act 1990 (as amended)

S96A - Power to make non-material changes to planning permission or permission in principle.

(1) A local planning authority 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.

(5) An application under subsection (4) to a local planning authority in England must be made in the form and manner prescribed by development order.

National Guidance

National Planning Policy Framework - (NPPF) - December 2024

National Planning Practice Guidance - NPPG

The Development Plan

For the purposes of s38(6) of the Act the Development Plan is the South Derbyshire Local Plan (SDLP) part 1 and part 2. The host permission was considered having regard to the relevant policies of the Development Plan. These policies are still up to date.

Emerging Local Plan

On 10 March 2025 the South Derbyshire Local Plan Part 1 Review was published for its period of formal representations under Regulation 19 (of the Local Plan Regulations) prior to submission to the

Secretary of State (The Publication Version). This is the version of the Local Plan that the Council intends to submit for examination, and it is a material consideration in the determination of planning applications.

The weight to be attached to emerging local plans is set out in paragraph 49 of the NPPF.

With regard to paragraph 49a) the plan is at an early stage of preparation having not reached examination. In terms of 49b) there remain unresolved objections to the plan from its Regulation 18 consultation and the comments made under Regulation 19 have been reviewed with unresolved objections which were reported to Environmental and Development Services committee on 6th November 2025. The Local Plan will be submitted in the New Year. Although the plan is in general conformity with the NPPF (paragraph 49c) it has been published to benefit from the transition arrangements set out in paragraph 234 of the NPPF, meaning the Local Plan will be examined under the 2023 version of the NPPF. For all these reasons the weight to be attached to policies in the publication version of the Local Plan is low.

Where there is any conflict between policies in the publication version of the Local Plan and existing adopted Local Plan policies the decision should be taken in line with the adopted Local Plan policies.

Paragraphs 50 and 51 of the NPPF are also relevant which clarify that refusals of permission in line with emerging policies will seldom be justified before a plan has been submitted for examination

Planning considerations

Taking into account the application made, the documents submitted and the site and its environs, the main issue central to the determination of this application is whether the proposal can be considered as a non-material minor amendment to the previously approved scheme. The power to make such a non-material change to a planning permission is set out in the Town and Country Planning Act 1990 section 96a (as amended).

Planning assessment

This application has been submitted pursuant to Section 96A of the Town and Country Planning Act 1990. The sole issue for consideration in this type of application is whether the proposed amendments being sought materially alters the development approved.

There is no statutory definition of 'non-material' as it is dependent on the specific context of each site and the development that has been approved. Annex A of the NPPG explains that the Local Planning Authority must be satisfied that any amendment or amendments proposed are not material. It must also have regard to the effect of the proposed change(s), together with any previous changes that may have already been agreed under Section 96A of the 1990 Act.

Section 96A of the Act enables the Local Planning Authority to make such a change to a planning permission relating to land in their area and this includes the power to impose new conditions and to remove or alter existing conditions.

The host application is for five new dwellings to be located within the Melbourne Conservation Area. Whilst the dwellings are contemporary, their overall character and appearance was traditionally designed.

The application proposes the following change:

1) The application seeks to change the details of condition 21 (gutters and downpipes), which states the following:

'Gutters and downpipes shall be in cast iron and finished in black and be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.'

Reason: In accordance with policies BNE1, BNE2, and BNE10 of the Local Plan and in the interests of the visual amenity and local distinctiveness.'

This application seeks to change the details of the guttering and downpipes from cast iron and finished in black, to a cast iron effect (finished in black) gutters and down pipes, supplied by Brett Martin.

The condition shall therefore be amended to the following:

'Gutters and downpipes shall be in cast iron effect and finished in black (as detailed on the application form and covering letter received on the 27th March 2026) and be fixed direct to the brickwork on metal effect brackets. No fascia boards shall be used.

Reason: In accordance with policies BNE1, BNE2, and BNE10 of the Local Plan and in the interests of the visual amenity and local distinctiveness.'

Whilst the material is not cast iron, the alternative is similar in appearance and considered to be an acceptable compromise on this new development. Considering the minor change proposed, this amendment is considered to still be in keeping with the character and appearance of the area.

Having considered all relevant matters, including the requirements of legislation in s96A, the proposed change as detailed is considered to be non-material to the planning permission when considered individually and cumulatively, and the amendment would not affect the scope of the planning permission or associated conditions.

It is concluded that the alteration as detailed can therefore be considered as a non-material amendment.

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.

Recommendation made:	27/04/2026
Report agreed:	27/04/2026
Authorised officer:	Jenny Blair
