

Delegated Report

Application for a non-material amendment following grant of planning permission

Case Officer:	Olivia St-Amour	Valid Date:	10 July 2020
Officer Recommendation:	Approve	Expiry Date:	07 August 2020
Application Number:	20/01454/NONMAT	Recommended Date:	16 November 2020
Address:	Abbey Retail Park, Abbey Road, Barking, IG11 7BB		
Proposal:	Application for non-material amendment following grant of planning permission 15/01635/FUL : Amendment Condition (3 - Vehicle and Pedestrian Access) of application 15/01635/FUL		

Site, Situation and Relevant Background Information

The application relates to the site at Abbey Retail Park South, which benefits from planning permission 15/01636/FUL for:

Demolition of existing buildings and the erection of new buildings ranging from 6 to 15 storeys in height to provide 597 residential units comprising a mix of studios, 1 and 2 bedroom flats and associated private amenity space, together with ancillary management and residents facilities, plant rooms and refuse storage areas, and the provision of flexible commercial space (Use Classes A1, A3, B1 and D1), reconfiguration of existing vehicular access, car and cycle parking, public realm with hard and soft landscaping including dedicated child play space and other ancillary works.

The planning permission has been implemented, construction is ongoing and the site is not yet occupied.

The planning permission is subject to a number of conditions, many of which have been discharged by the LPA and/or submitted for consideration to be discharged. One such condition, to which this non-material planning application relates is condition 3:

A detailed scheme to improve the vehicular and pedestrian access to the site including any associated off site highway works and/or alterations required in the interests of highway safety shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be substantially implemented and constructed in accordance with the approved details prior to the first use of the buildings hereby approved and wholly completed within 6 months of first occupation.

Reason: To ensure that the approved development does not prejudice the free flow of the traffic or conditions of general safety along the neighbouring highway, or the safety of future occupiers, and in accordance with Policy BR10 of the Borough Wide Development Policies DPD (March 2011).

Application reference 20/00037/CDN has been submitted to discharge a number of conditions, including condition 3. Be First's Transport Development Manager has been consulted with regards to the content of the submission to discharge condition 3.

Detailed Proposal

Proposed Amendment:	Reasoning:
	<p>The applicant's reasoning is as set out on the application form is as follows:</p> <p><i>"Amendment of Planning Condition 3 is sought in order to provide a more practical approach to the delivery of the highways works and alterations whilst ensuring that these works are delivered prior to the overall completion of the development. The substantial completion of the highways works prior to first use of the buildings approved would have subjected the completed works to approx. 10 months of construction traffic likely resulting in damage to newly completed works. The proposal has been discussed with the Transport Development Manager for Be First, John Hunter with no objections being received to the proposal."</i></p> <p>Further clarification on the approach was sought, the following response was detailed in an email 11/11/2020:</p> <ul style="list-style-type: none"> • <u>Block A use</u> – Confirm that Block A will be in use for landscaping, gym, residents lounge, part of parking as highlighted within the attached document. • <u>Block A Handover</u> – Strategy highlights residents

access routes and vehicle access routes. Residents will be able to access Block A from the courtyard in the north area and further down the diagonal path into the scheme in which we understand to be no material change. The attached documents also demonstrating how residents will enter and exit the site including road crossing highlighted below.

- **Phased Works** – Please see attached plan of works for S278 in 6 phases and breakdown of each phase below.
 - **Phase 1:** Initially we will be installing temp pedestrian crossing as indicated on the attached to allow pedestrians to cross whilst the pavements works are being completed. At the south end of the development there is already a permanent pedestrian crossing giving access to the opposite side of the pavement whilst the works take place. Access for pedestrians into the development will be through the paved area indicated by the arrows via North area and diagonal footpath. The wheel chair access will be through the same route with a ramp provided as indicated.
 - **Phase 2:** The planning and tarmacking of the road will be carried in two sections. We will then build half of the speed table that sits within our road closure and prepare for the other half. This will allow us to complete the road markings and the bike route as set out.
 - **Phase 3:** As this section is entrance to a live site and the residents access to the car park and for deliveries this will have to be done out of hours and in conjunction with the residents. Some of these works will have already have been completed as part of our landscaping works for the handover of the current block.
 - **Phase 4:** Again with this being a live traffic route and part of the site/residents entrance this will be done out of normal hours as not to inconvenience anyone.
 - **Phase 5:** When we have completed the other phases we can then close down phase 5 opening up the other routes into site indicated on the attached drawing. It is critical that the other phases are complete to allow full residential access into the block.
 - **Phase 6:** When the other phases are complete we can close down this phase and complete the table top on the other side of the road to finish all the works.

We understand the attached documents and the statement provided above demonstrates a clear and safe provisions being put in place for residents and vehicles for Block A and rest of the scheme. Midgard further understand this to be a non-material amendment based on the attached and above points presented.

The applicant seeks to amend condition 3 to insert the underlined text below, highlighted amendments represent alterations to the wording through the course of the application:

A detailed scheme to improve the vehicular and pedestrian access to the site including any associated off site highway works and/or alterations required in the interests of highway safety shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be substantially completed in accordance with the approved details prior to the first occupation of Block B hereby approved and wholly completed prior to the occupation of Block D.

ASSESSMENT

In response to the provisions of Section 96A Town and Country Planning Act 1990, the application is to be assessed to ascertain

In response to the provisions of Section 96A Town and Country Planning Act 1990, the application is to be assessed to ascertain as to whether the proposed changes constitute a non-material amendment to the approved development. Section 96A states:

- (1) A local planning authority in England 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.
- (3) The power conferred by subsection (1) includes power—
 - (a) to impose new conditions;
 - (b) to remove or alter existing conditions.

The National Planning Practice Guidance states: "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."

In light of the guidance set out above, in determining whether or not the proposed amendments constitute a non-material amendment, consideration shall be given to the context of the overall scheme and the effect of the changes, together with any previous changes made under section 96A.

Effects of Proposed Changes

Is this s96A application the first application made under this part with respect to the original application?	NO
Officer comment:	<p>The effects of the proposed changes, together with any previous changes made under section s.96A are discussed below:</p> <p>Application ref: 17/00629/NMA was approved 26/04/2017 which inserted a new condition to allow phased construction of the site. This application relates to the phasing of construction with no changes to the overall development, and its previous approval has no impact on the assessment of the current application.</p> <p>Application ref: 20/02008/NONMAT was approved 28/10/2020 , approving the amendment to condition 41 (petrol and oil interceptors). The approval of this non-material amendment does not impact the assessment of this application, and there would be no combined impacts should oth non-material amendment applications be approved.</p>

Detailed Assessment

Condition 3 currently states:

A detailed scheme to improve the vehicular and pedestrian access to the site including any associated off site highway works and/or alterations required in the interests of highway safety shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be substantially implemented and constructed in accordance with the approved details prior to the first use of the buildings hereby approved and wholly completed within 6 months of first occupation.

The condition was imposed for the following reason: *To ensure that the approved development does not prejudice the free flow of the traffic or conditions of general safety along the neighbouring highway, or the safety of future occupiers, and in accordance with Policy BR10 of the Borough Wide Development Policies DPD (March 2011).*

The proposed non-material amendment seeks to amend the condition as follows:

A detailed scheme to improve the vehicular and pedestrian access to the site including any associated off site highway works and/or alterations required in the interests of highway safety shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be substantially completed in accordance with the approved details prior to the first occupation of Block B hereby approved and wholly completed prior to the occupation of Block D.

The application does not propose any change to the scheme itself, but seeks amendments to the timing of the site access and associated highways works, to allow early occupation of Block A whilst the S278 works and site construction works complete. Block A contains 122 units, which is 20% of the total units approved. As such, only a small proportion of the units would be occupied whilst highways works are ongoing. The handover strategy submitted alongside this application demonstrates that those who occupy Block A will have safe access crossing Abbey Road, save access and egress into the site and would also be able to access landscaping cycle and car parking areas, residents gym/ concierge and lounge. It should be noted that whilst the original wording of this condition requires the highways works to be completed prior to occupation of the site, there are no planning conditions that specifically require all construction works to be complete before the occupation of the units.

A phased plan of works for the S278 and S38 works has been submitted alongside this non-material amendment application to demonstrate the measures to be put in place to allow pedestrians safe access to the site and when crossing Abbey Road.

Given the proposed change relates to a small proportion of the units only, and the occupiers will have uninterrupted access to amenities, and safe access to the site, and the early occupation would only be for a limited time before completion (less than 1 year), I therefore consider this would be a 'non-material amendment' to the planning permission overall.

The amended wording would only allow the occupation of Block B when the works are substantially completed and the final block, Block D when the works are wholly completed, therefore ensuring the final occupation would occur when the highways works are completed.

It is recommended that the non-material amendment is approved.

CONCLUSION

Officers have had regard to the effect of the proposed changes on planning permission 15/01636/FUL as it was originally granted and consider that the proposed changes constitute a non-material amendment.

APPENDIX 1

As set out in National Planning Policy Guidance (Paragraph: 008 Reference ID: 17a-008-20140306) an application under Section 96a is not an application for planning permission. Accordingly, Section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply.

APPENDIX 2

Relevant Planning History			
Application Number:	20/00037/AOD	Status:	Pending decision
Description:	<i>Application of approval of details reserved by conditions 3 (Vehicular and Pedestrian Access), 38 (Wind Mitigation Measures), 39 (Car Parking), 40 (Electric Vehicle Charging Points), 41 (Petrol and Oil Interceptors) and 42 (Cycle Parking) in respect of planning permission 15/01635/FUL.</i>		
Application Number:	20/02008/NONMAT	Status:	Approved
Description:	Non-material amendment to planning permission 15/01635/FUL dated 14/12/16 The development hereby permitted shall not be occupied until details of petrol and oil interceptors for all car parking, servicing and loading areas have been submitted to and approved in writing by the Local Planning Authority		
Application Number:	17/00629/NMA	Status:	Approved
Description:	<i>Application for non-material amendment following grant of planning permission 15/01635/FUL - Demolition of existing buildings and the erection of new buildings ranging from 6 to 15 storeys in height to provide 597 residential units comprising a mix of studios, 1 and 2 bedroom flats and associated private amenity space, together with ancillary management and residents facilities, plant rooms and refuse storage areas, and the provision of flexible commercial space (Use Classes A1, A3, B1 and D1), reconfiguration of existing vehicular access, car and cycle parking, public realm with hard and soft landscaping including dedicated child play space and other ancillary works (to secure the approval of a phasing plan) at Abbey Retail Park (south), Abbey Road, Barking.</i>		
Application Number:	15/01636/FUL	Status:	Approved
Description:	<i>Demolition of existing buildings and the erection of new buildings ranging from 6 to 15 storeys in height to provide 597 residential units comprising a mix of studios, 1 and 2 bedroom flats and associated private amenity space, together with ancillary management and residents facilities, plant rooms and refuse storage areas, and the provision of flexible commercial space (Use Classes A1, A3, B1 and D1), reconfiguration of existing vehicular access, car and cycle parking, public realm with hard and soft landscaping including dedicated child play space and other ancillary works.</i>		

APPENDIX 3

Consultations		
Consultee:	Date Consulted:	Summary of response:
Transport Development Manager		The transport development manager was consulted in relation to the discharge of condition 3 separately under application 20/00037/AOD and has confirmed that he is happy with the details submitted.

