

Planning and Rights of Way Panel 3rd October 2017
Planning Application Report of the Service Lead – Infrastructure, Planning & Development

Application address: Land at Test Lane, Southampton			
Proposed development: Non material amendment sought to planning permission ref: 14/01911/FUL to amend the number of dock loaders on unit 3 from 7 to 18 (18 as originally approved ref: 14/01911/FUL) and to include concrete frames on units 1, 2 and 3			
Application number	17/01260/NMA	Application type	NMA
Case officer	Stephen Harrison	Public speaking time	5 minutes
Last date for determination:	16.08.2017	Ward	Redbridge
Reason for Panel Referral:	Request by Ward Cllr and five or more letters of objection have been received	Ward Councillors	Cllr Mc Ewing Cllr Pope Cllr Whitbread
Referred to Panel by:	Councillor Pope	Reason:	<ol style="list-style-type: none"> 1. Developers shouldn't be allowed to continually change the scheme 2. A new planning application is required given the number of NMAs sought 3. The increase in loading bays will result in harmful air quality issues 4. The increase in loading bays will significantly increase road traffic 5. The increase in loading bays will increase the amount of noise

Applicant: Evander Properties Ltd/Peel Logistics	Agent: Michael Sparks Associates
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Recommendation Summary	No Objection
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Community Infrastructure Levy Liable	Not applicable
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Reason for raising NO OBJECTION

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. The request for a Non-Material Amendment seeks to reinstate the number of loading bays to Unit 3 from 7 (as approved under 17/00154/NMA) to 18 (as originally consented under 14/01911/FUL). Other material considerations, such as those listed in the report to the Council's Planning and Rights of

Way Panel on 3rd October 2017, do not have sufficient weight to justify a refusal of the application. In accordance with Section 38 (6) of the Planning & Compulsory Purchase Act 2004 another revision to planning permission 14/01911/FUL should therefore be granted.

Policies – SDP1, SDP4, SDP5, SDP7, SDP9, SDP10, SDP13, SDP14, SDP15, SDP16, SDP17, SDP22, NE4, NE5, CLT7 and MSA19 of the City of Southampton Local Plan Review (as amended 2015) and CS6, CS7, CS13, CS18, CS19, CS20, CS21, CS22, CS23, CS24 and CS25 of the Southampton City Council Local Development Framework Core Strategy – Adopted January 2010 (as amended 2015) as supported by the Council’s current adopted Supplementary Planning Guidance and the guidance contained with the evolving National Planning Practice Guidance.

Appendix attached			
1	Development Plan Policies	2	14/01911/FUL Decision Notice

Recommendation in Full

Conditionally Approve - The proposed changes sought by this request (set out at paragraph 2.3 below) are considered to provide a Non-Material Amendment to the approved planning permission. All planning conditions applicable to the approved planning permission remain in force.

1.0 The site and its context

- 1.1 The application site is some 6.5 hectares in area and is situated on the eastern side of Test Lane. The site is under construction following the grant of planning permission for 3 employment buildings. The site is allocated in the Local Plan for light industrial and warehousing development (Classes B1(c) and B8) under Policy MSA19 of the Local Plan and the planning permission was granted in June 2016 for a speculative development in accordance with this allocation (14/01911/FUL refers).
- 1.2 The surroundings are of mixed character with industrial development (including the Daily Echo headquarters) to the north; the M271 motorway to the east; the Lower Test Lane Nature Reserve to the West beyond the Southampton to Romsey railway line; and a residential area to the south comprising bungalows and two-storey houses in Gover Road, Coniston Road, Westover Road and Test Lane. The application site is close to the administrative boundary of the city with Test Valley Borough Council.

2.0 Proposal

- 2.1 Full planning permission was granted for the redevelopment of the site last year following consideration by the Planning and Rights of Way Panel (14/01911/FUL refers).
- 2.2 The permission gives approval for the redevelopment of the site to provide 19,132 square metres of employment floorspace in three buildings (Units 1 and 3 to be storage and distribution use (Class B8), Unit 2 to be Business use (Class B1c) and/or storage and distribution use (Class B8)) with an area of open space, associated landscaping, servicing areas and car parking with vehicular access from Test Lane. This permission is in the process of being implemented.

- 2.3 A further set of revisions to the approved scheme are now sought. The applicants have applied for a Non Material Amendment (NMA) to their original permission but are not seeking a fresh planning permission. If the Panel accept that these changes are relatively minor (and not material to the original permission) then no objection will be raised by the Council to the principal planning permission being implemented in accordance with the agreed changes. The proposed alterations comprise:
- a) An increase in the number of HGV loading bays to unit 3 from 7 to 18; and,
 - b) The addition of a concrete frame to the dock levellers to all 3 approved units

- 2.4 Unit 3 is located in the south-east corner of the site and the loading bays face north into the site and away from the nearest residential neighbours.

3.0 Relevant Planning Policy & Guidance

- 3.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (Amended 2015) and the City of Southampton Core Strategy (Amended 2015). The most relevant policies to these proposals are set out at **Appendix 1**.

- 3.2 The application site is allocated for development under Policy MSA19 which reads as follows:

Test Lane South is safeguarded for B1 and B8 uses. Development will be permitted which:

- (i) provides a buffer of landscaped and planted open space on the southern boundary of the site; refer to CLT 7;*
- (ii) would not adversely affect the residential amenity of the occupiers of nearby properties on Gover Road and Coniston Road.*

Built development will not be permitted on the southern part of the site.

- 3.3 In 2009 the Government introduced a formal procedure for agreeing changes to an existing planning permission. Flexibility was offered for small changes to existing schemes without the need for applying again for the whole development. A nominal planning fee and a 28 day target date applies, and it is for the Local Planning Authority to determine whether or not the requested changes can be treated as ‘Non Material’. Further guidance on this relatively new process can be found within the ‘National Planning Practice Guidance’ (NPPG). The Council can either ‘object’ (where a refusal notice would be issued and there would be no right of appeal; the applicants would then need to make a planning application for either the revised scheme or to vary the relevant planning conditions) or raise ‘no objection’ and issue a supplemental notice to the principal planning permission. There is no right of appeal.
- 3.4 This procedure does not allow the Council, or the scheme’s objectors, to revisit the planning merits of the original scheme as the planning permission will remain regardless of the decision made on the NMA application.

4.0 Relevant Planning History

- 4.1 14/01911/FUL – Conditionally Approved 29.07.2016 – see **Appendix 2**
Redevelopment of the site to provide 19,132 square metres of employment floorspace in three buildings (Units 1 and 3 to be storage and distribution use (Class

B8), Unit 2 to be Business use (Class B1c) and/or storage and distribution use (Class B8)) with an area of open space, associated landscaping, servicing areas and car parking with vehicular access from Test Lane.

4.2 16/02201/NMA – Conditionally Approved 22.02.2017 (by Planning Panel)
Non material amendment sought to planning permission ref 14/01911/FUL to reduce the height of the approved buildings and amend the approved drainage strategy - description amended following validation to remove reference to any external elevational changes.

4.3 **17/00154/NMA – Conditionally Approved - 27.02.2017 (by Planning Panel)**
Non material amendment sought to planning permission Ref: 14/01911/FUL to amend the number of dock loaders on unit 3 from 18 to 7 and pedestrian footpath extended to access unit 3.

4.4 *Note:*
17/00154/NMA is very relevant to the current application. As the buildings are being constructed on a speculative basis minor changes are regularly needed to satisfy prospective tenants. In this case Unit 3 was originally approved as part of the permission for the wider scheme with 18 loading bays (as now sought again). The approval of 17/00154/NMA changed the permission so that Unit 3 is to be built with only 7 loading bays. The applicants actually want a building with 18 loading bays (as originally consented) but unfortunately the planning process requires a further approval from the Council to revert back.

5.0 Consultation Responses and Notification Representations

5.1 The Government's National Planning Practice Guidance explains that 'as an application to make a non-material amendment is not an application for planning permission, the existing Town and Country Planning (Development Management Procedure) (England) Order 2015 provisions relating to statutory consultation and publicity do not apply. Therefore local planning authorities have discretion in whether and how they choose to inform other interested parties or seek their views'.

Notification

5.2 Officers have agreed to notify residents of all submitted changes to this development. 112 letters have been sent and residents have been given 21 days to comment. A Site Notice was posted on 28th July 2017. A deadline for comments of the 15th August 2017 was set.

5.3 At the time of writing the report **16 objections** have been received, including objections from all three ward councillors and the Redbridge Residents Association. A verbal update will be given should any further objections be received before the Panel meeting. The following is a summary of the planning related points made:

5.4 **Ward Cllrs McEwing & Whitbread – Objection**
I wish to register an objection to this NMA. Planning had already agreed to 18 docking stations then the relevant company changed to 7 docking stations – I see no merit in going back to 18 docking stations as there is enough disruption in the locality.

5.5 **Ward Cllr Pope – Objection**

I wish to object to this application. I request that under the Constitution, it be sent to the PROW Panel for a public decision by councillors. It must not be decided by delegated authority. The reasons for my objection are:

1. As I've said all along with this development, this level of detail should have been decided BEFORE planning permission was granted, not afterwards. The developers should not be allowed to meddle with the size of the development YEARS after the original application. This is NOT a "Non-Material" Amendment. Changing the number of dock loaders by almost treble (7 to 18) IS material. In addition, the other so-called NMAs are mounting up. Therefore a NEW planning application should be submitted instead.
2. Increasing the number of dock loaders so significantly will increase the levels of air pollution and a new air quality assessment is necessary by the Council's officers. If this is not done, it is clear that this development is approved no matter what harm it does to our City's already poor air quality.
3. Increasing the number of dock loaders so significantly will increase road traffic on Test Lane, assuming that they will definitely be blocked off from using Gover Road, Test Lane, Westover Road and other roads south of the Test Lane site. This will also impact negatively on road safety.
4. Increasing the number of dock loaders will increase the amount of noise from the development. Another noise assessment is needed by Council officers.

5.6 **Redbridge Residents Association – Objection**

I make submissions in my capacity as Chairman of The Redbridge Residents Association subsequent to our most recent Committee meeting when this NMA was an item on the Agenda.

- 5.7 The Panel allowed the Developer every opportunity to ensure Residential Amenity was not affected by this Development as per the explicit condition within the sale document. We are now a short period into contracted works and it is very evident the Developer has failed to do so, a planning decision was deferred whilst further submissions were required re the Traffic Impact on surrounding residential roads, the developer promised the panel and in turn residents a road layout would be designed to prevent left turn out of the site and right turn into it from Test Lane, the new road layout is complete and wholly fails to prevent either of the aforementioned so in direct contradiction to the Sale Document, Submissions to Panel AND promises to Residents.
- 5.8 In view of this I fail to see quite why Vanessa White STILL supports this application, we did not know the impact prior to commencement of works, well now we do and 38 Tonne Material Movement Lorries have trundled daily up and down Gover Road turning right into the site..38 Tonne Trucks!! breaking the Law due to the 7.5t restriction and contravening planning law as per the conditions set out by the panel to the developer.
- 5.9 Currently Gravel Extraction is taking place on the South of the site metres away from houses which border the site, the developer is taking the gravel out from that area to utilise in areas of the site to be developed due to poor conditions of the same, they are then simply back filling the expansive holes from which the gravel

has been extracted with the soil from those 'poor' areas "compacting down" in the contractors own words, this will have a major impact on drainage, again, something Residents warned of in previous submissions.

5.10 A meeting with Council Offices, Ward Councillors etc..highlighted the fact that they were wholly unaware this was to take place..that cannot be right.

5.11 To date, and early in to this development, Residents fears are being realised, it is incumbent upon the Council to protect Residential Amenity, they have failed thus far to do so, the Panel have a chance to go some way to mitigating the impact of this development on traffic within the area by refusing this application.

5.12 **Officer Response**

The concerns raised are noted and the site is being monitored during the construction phase. However, the above matters do not directly relate to this request to change the external appearance of Unit 3 and are being dealt with outside of the Planning Panel.

5.13 *The Panel are being asked to consider the proposed change from 7 loading bays to 18 for Unit 3. The fact that the Council approved 18 loading bays last year is a significant material consideration and circumstances have not changed in terms of predicted traffic movements, air quality and noise issues arising from the completed development since the Panel agreed that 18 loading bays for unit 3 would be acceptable.*

5.14 **The proposed changes will result in additional traffic, reduce air quality further and more lorries will bring additional noise, dust and disturbance. These issues need to be assessed properly through the submission of a fresh planning application rather than through yet another NMA. Residents feel that they are being ignored by the developer and the Council. This field should never have been sold by the Council for development.**

Response

See officer response above and the comments from the Council's Environmental Health and Highways officers set out below.

5.15 The opportunity to formally comment on the details of the scheme – namely the quantum, location, appearance and the impact of the development upon air quality, highways and noise has passed with the approval of planning permission 14/01911/FUL.

Consultation Response

5.16 **SCC Environmental Health** – No objection

As this makes no change to the previously approved application for 18 bays, I see no reason for a further submission on noise or air quality grounds.

5.17 **SCC Highways** – No objection

As the site was originally designed to accommodate the number of HGVs likely to be generated by this larger number of loading docks. The site will be governed by the routing restrictions as proposed for the whole site.

5.18 *Officer Comment:*

The details of this current NMA have already been subject to detailed consideration under application 14/01911/FUL, which included a transport, noise and air quality assessments, and the Planning Panel found this level of loading bays to be acceptable after scrutiny. There is, therefore, no objection to returning to the baseline position now proposed.

6.0 Planning Consideration Key Issues

6.1 The key issues for consideration in the determination of this NMA application are the change to the number of loading bays to unit 3 and the amendment to the external appearance.

Non Material Amendments

6.2 In 2009 the Government set out a formal procedure and guidance (“Greater Flexibility for Planning Permissions”) to enable applicants to secure confirmation from the Local Planning Authority (LPA) that minor changes to a consented scheme are acceptable without the need to obtain a further planning permission. This was designed to be a light touch approval process and no limit was set on the number of NMAs that an applicant could apply for.

6.3 No definition of what constitutes a “Non-Material Amendment” is provided. The NPPG explains that *‘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’*. The guidance explains that the LPA should be content that the proposed changes do not significantly alter the permission.

6.4 In respect of each of the proposed changes officers comment as follows:

a) A change to the loading bays for Unit 3 from 7 to 18 in total

6.5 This change reverts back to the 18 bays that were approved in 2016 and that were found to be acceptable under permission 14/01911/FUL. There have been no change in circumstance to suggest that a completed building with 18 loading bays is now harmful. Officers consider that the change is acceptable.

b) Change to the materials around the loading bays to units 1-3

6.6 The proposed change to a concrete frame provides a more robust finish and greater protection around the docks where there is potential for contact between the building fabric and vehicles. Officers consider that the change is acceptable and will not look out of keeping on this type of development.

7.0 Summary

7.1 The proposed changes to the approved buildings are considered to maintain an acceptable scheme for the site and have been assessed as acceptable and within the spirit of the approved development. The proposals are still considered to meet the requirements of the development plan as detailed at **Appendix 1**. The changes listed are not regarded material enough to warrant the need for a fresh planning application for the entire development, and have been assessed as non-

material to the original planning permission. All previous planning conditions remain effective.

8.0 Conclusion

8.1 This application for a non-material amendment is acceptable and it is recommended that no objection is made.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1(a), 1(b), 1(c), 1(d), 2(b), 2(d), 2(f), 4(b), 4(g), 4(m), 4(vv), 6(a) and 6(b).

SH2 for 03.10.17 PROW Panel

Amended Condition:

29. Approved Plans (Amended)

The development hereby permitted shall be carried out in accordance with the approved plans listed in the original permission 14/01911/FUL as updated by the revised plans approved under 17/01260/NMA, unless otherwise agreed in writing with the Local Planning Authority.

Reason:

For the avoidance of doubt and in the interests of proper planning.