

Planning and Rights of Way Panel 30th January 2018
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 comprising changes to the internal layout of unit 3 and external changes to units 1, 2 and 3 including a revised canopy design and provision of louvres and a level access door to unit 3			
Application number	17/02384/NMA	Application type	NMA
Case officer	Stephen Harrison	Public speaking time	5 minutes
Last date for determination:	22.12.17	Ward	Redbridge
Reason for Panel Referral:	Five or more letters of objection have been received	Ward Councillors	Cllr Mc Ewing Cllr Pope Cllr Whitbread
Referred to Panel by:	N/A	Reason:	N/A

Applicant: Evander Properties Ltd/Peel Logistics	Agent: Michael Sparks Associates
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Recommendation Summary	Conditional Approval
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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 proposed changes, when taken in combination with the previous requests, remain non materials to the overall scheme for 19,132 square metres of employment floorspace in three buildings . Other material considerations, such as those listed in the report to the Council’s Planning and Rights of Way Panel on 30th January 2018, 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 are considered to provide a Non-Material Amendment to the approved planning permission (as already amended). 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 in June 2016 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 The scheme has already been amended, and 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) Changes to the internal layout of Unit 3 with a change to the entrance location;
 - b) An increase in the number of loading bays to unit 3 from 18 to 19;
 - c) The addition of louvres to western elevation of Unit 3; and,
 - d) The substitution of aluminium with glass to the approved canopies to the pedestrian entrances of all 3 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; the applicants would then need to make a planning application for either the revised scheme, the works themselves 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. The NPPG advises that *‘the local planning authority must have regard to the effect of the change, together with any previous changes made under section 96A. They must also take into account any representations made by anyone notified, provided they are received within 14 days of notification. As this is not an application for planning permission, section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply’*.

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 - 28.02.2017 (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 **17/01260/NMA** – Conditionally Approved - 02.11.2017 (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 7 to 18 (18 as originally approved ref: 14/01911/FUL) and to include concrete frames on units 1, 2 and 3.
- 4.5 This is the fourth request for a NMA to planning permission 14/01911/FUL and there is no limit set by the planning system as to how many NMAs an applicant can make. The NPPG advises that the cumulative impact of all NMAs is relevant, and the Council could decide (if members believe that the evidence warrants it) that the latest request, in combination with the 3 previous NMA applications, results in a significant change to the development and requires planning permission.

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. 101 letters have been sent and residents have been given 21 days to comment. A Site Notice was posted on 1st December 2017. A deadline for comments of the 22nd December 2017 was set.
- 5.3 At the time of writing the report **7 objections** have been received, including an objection from Ward Cllr Pope. 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 Cllr Pope** – Objection
I object to this claimed "Non-Material Amendment". The reasons are:
1. It IS material, just like the other ones. I have challenged the Planning Manager to provide Southampton City Council's definition of Non-Material Amendment. He hasn't provided one, instead relying on vague Government guidance. Other councils have their own definition, but SCC doesn't. Why? Not having one allows developers like this to get away with making residents' lives worse.

2. I agree and wish to support the comments from resident Mr Smith:

"The addition of doors to allow vehicles to enter the unit will mean more noise being generated by vehicles using this unit. Currently, certain companies have policies in place under health & safety guidelines for vehicles to sound their horns when entering & leaving buildings. This extra noise will have an impact on the residents whose homes border the development.

This is a direct intrusion on the resident's amenity, which the council stated in their sales literature when they marketed the land for sale SHOULD NOT be affected. Despite this planning was still granted by the SCC planning panel even though the developers stated in their documents that the resident's amenity WOULD be affected.
"

3. All of the NMAs put together ARE material.

4. Noise, light pollution, contaminants.

5. Destruction of wildlife habitat. Why have the developers been allowed to get away with it?

6. The increase to air pollution. More HGVs. More pollution. More illness and deaths because of this development.

This NMA should be refused, and therefore the entire planning application thrown out. Now we know that John Lewis are moving in, and that the jobs claims by Councillor Letts are a complete lie. John Lewis have stated publicly that this will not increase jobs in the move from the City Centre. Instead, local residents have this monstrosity that they didn't want, with the deal signed behind their backs, and behind my back as a ward councillor. It would be understandable if some residents felt that they were being ignored. Because the Council is ignoring them, repeatedly. I think the following comment from a resident is therefore telling of this:

"How much money and time are the Council wasting in asking for comments? The Council don't care and will agree to whatever the developers want, the developers can make as many changes to the approved plans, and they know it will be approved. None of the residents want this monstrosity on their doorstep. It's a complete farce asking the residents what they think."

5.5 *Note & Officer Response:*

The Cllr's comment also covers the planning related points raised by the other 6 objectors. In response, this report does not agree that the proposed changes, either on their own or in combination with the previous changes, result in a significant amendment requiring planning permission; and concludes that the resultant impacts upon residential amenity, pollution, noise and disturbance, wildlife habitat, highway safety and/or visual amenity are within acceptable tolerances.

Consultation Response

5.6 **SCC Environmental Health** – No objection

5.7 **SCC Highways** – No objection

The main changes are some internal alterations to the office space/plant room and the level access door. There are also other minor external changes which is not material consideration for highways. The office space is simply being relocated on

level down with the remaining space to be used for plant. This will have very limited impact if not will create less trips as plant does not generate as much as office or light industrial floor space.

5.8 The proposed level access door is to facilitate vehicles being able to enter the building to service the site. This will have limited impact on traffic and, as above, it could be argued that it may be less. In transport terms, we calculate trips based on floor space. As part of the proposal, the use will remain the same but it can also argued that the internal floor space will now have additional 'clear' or empty space for when the vehicle needs to enter the site rather than machinery/equipment/workspaces which would generate more staff/activity and, therefore, more trips. Regardless, the level of change is considered to be insignificant and will not have any notable impact on the approved existing scheme. For the reasons above, there will be no highway objections.

5.9 **SCC Flood** – No objection

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 by the Government. 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, either by themselves or in combination with other NMAs, alter the permission.

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

a) Changes to the internal layout of Unit 3 with a change to the entrance location; This change switches the office accommodation from the first floor (as approved) to the ground floor (as now proposed). This change results in less operational floorspace within the approved building envelope and will have no impact. The relocation of the pedestrian entrance by a couple of panels is also not significant to the overall assessment of this wider scheme. As such, the change is recommended as non-material.

b) An increase in the number of loading bays to unit 3 from 18 to 19;

The provision of a further loading bay is not significant to the overall assessment of this wider scheme. As such, the change is recommended as non-material.

c) The addition of louvres to western elevation of Unit 3;

The external alteration results in a louvre added above the entrance door. This change is not significant to the overall assessment of this wider scheme and, as such, is recommended as non-material.

d) The substitution of aluminium with glass to the approved canopies to the pedestrian entrances of all 3 units;

The replacement material for the approved entrance canopies is not significant to the overall assessment of this wider scheme and, as such, is recommended as non-material.

e) Cumulative Impact

The NPPG requires that the cumulative impact of the proposed NMA is considered in combination with the previous NMAs. The scheme, as now proposed, maintains 3 employment buildings within the footprint and quantum of development previously found to be acceptable.

f) Permitted Development Fallback

Schedule 2, Part 7 Class H of the Town and Country Planning (General Permitted Development) (England) Order 2015 allows employment warehouses to make alterations without the need for planning permission; and this would include the requested changes now sought. As permitted development is only gained following occupation it means that, if unsuccessful at Panel, the applicants would need to wait until first occupation and then would be free to make the proposed changes in any event. Alternatively they could make a discreet application for the proposed external changes once the building is largely complete. Both are material to this recommendation.

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 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 30.01.18 PROW Panel
Condition to include:

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 16/02201/NMA, 17/00154/NMA, 17/01260/NMA and 17/02384/NMA unless otherwise agreed in writing with the Local Planning Authority.

Reason:

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