

Delegated Report

Application No:	20230885
Location:	Nuralite Industrial Estate Canal Road Higham Rochester
Description:	Application for a non-material amendment to planning permission reference number 20190290 to allow the addition of plan number 23/171/14 and the amendment of conditions 3,4,5,6,7,8,9,10, 11, 12, 13, 14,15 and 23.
Applicant:	Mr Simon Hughes

Proposal

Application for a non-material amendment to planning permission reference 20190290 for the systematic redevelopment of the existing Nuralite site. This includes the importation of inert materials to cap, and landscape the historic asbestos landfill, thus containing its contamination risk. To demolish the existing buildings of the Nuralite industrial estate, deal with existing contamination, both through capping and removal of areas of hydrocarbon pollution, the laying of new service and utility infrastructure and the construction of 11 new purpose built light industrial type units and a site office.

The application consists of the following;
Planning Application Form;
Drawing No. 23/171/14 - Proposed Retaining Wall;
Supporting Information – Proposed Amendments to Planning Conditions;
Supporting Information – Somerset West and Taunton Decision Notice; and
Supporting Information - Drawing No. 1100 Rev A1 – Proposed Wall Foundation.

Relevant Planning History

Reference	Description	Decision	Decision Date
20230605	Application for a non-material amendment to planning permission reference number 20190290 to allow the addition of plan number 23/171/14 B and the amendment of conditions 3,4,5,6,7,8,9,10, 11, 12, 13, 14,15 and 23.	Refusal	19.07.2023
20190290	The proposal is for the systematic redevelopment of the existing Nuralite site. This includes the importation of inert materials to cap, and landscape the historic asbestos landfill, thus containing its contamination risk. To demolish the existing buildings of the Nuralite industrial estate, deal with existing contamination, both through capping and removal of areas of hydrocarbon pollution, the laying of new service and utility infrastructure and the construction of 11 new purpose	Permission	23.12.2021

	built light industrial type units and a site office.		
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Development Plan

A local planning authority may, on an application under section 96A of the Town and Country Planning Act 1990, make a change to any planning permission relating to land in their area if they are satisfied that the proposed change is not material. The key consideration in deciding whether the proposals are material or non-material change on the planning permission as originally granted.

Key Issues for Consideration

The main issue in respect of this application is to determine if the proposed changes are:

- (a) Non-material and do not require the submission of an application for planning permission by reason that they:
 - (i) do not in themselves constitute development; or
 - (ii) Are considered to be so trivial or inconsequential that they may be regarded as *de minimus*; that is legally of no consequence, and that planning permission is not required.

Or

- (b) Are materially different from the permitted scheme and require the submission of an application for planning permission.

Analysis

As set out in in paragraph 002 of Flexible Options for Planning Permissions (Options for amending proposals that have planning permission), in determining a non-material amendment, the Local Planning Authority (LPA) must be satisfied that the amendment sought is non-material in order to grant an application under section 96A of the Town and Country Planning Act 1990. In this regard the Council's attention is drawn to the Town and Country Planning Act 1990 where it provides LPA with the power to 'remove or alter existing conditions' (s96A(3)(b)) under a non-material change to planning approval. It also has the ability to impose new conditions.

There is no statutory definition of 'non-material'. This is because it is so dependent on the context of the overall scheme – what may be non-material in one context, may be material in another. The LPA must be satisfied that the amendment sought is non-material in order to grant an application under s.96A.

The application is a resubmission of the previously refused scheme (ref: 20230605).

The applicant has provided an example of this approach from Somerset West and Taunton Council (ref: NMA/21/20/001) which is the same approach being suggested with this application.
Eg

- 5 No works shall be undertaken on site (other than those shown on proposed Wall Foundation Plan ref. no.1100 A) until a site waste management plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall be implemented in accordance with the approved details.
Reason: In the interests of good design having regard to the provisions of Policy NH13 of the West Somerset District Local Plan to 2032.

This proposal is in line with NMA/21/20/001 which was not legally challenged and approved by Somerset West and Taunton Council Planning Authority.

Can s.96A be used to alter plans attached to conditions?

Planning Practice Guidance is clear there is nothing which prevents s.96A being used to vary or add plans referred to in conditions. Legal advice has been sought on this matter which verifies that the section can be used in this way as was *acknowledged by the Court of Appeal in Fulford PC v City of York Council: Lewison LJ said (at [44]): “One of the purposes of section 96A was surely to formalise minor differences between, say, approved layout plans and “as-built” development”*. Where the court specifically used the change of plans as an example for the use of the section, and therefore as conditions are used to reference the relevant plans the advice supported the view that the section can therefore be used to amend a condition in this way.

Taking on board the above view (including *Fulford PC v City of York Council* (<https://www.bailii.org/ew/cases/EWCA/Civ/2019/1359.html>) that the guidance from the courts suggests that a 96A application can therefore be used to refer to a new plan within condition 2 (approved plans condition) in this instance. The additional plan is not seeking amendments to the scheme but provides further clarification and detail of the proposed retaining wall which formed part of the original approval.

The Council is also mindful of the underlying aim of the regulations, which came into force on 1 October 2018, (whereby applicants are required to provide their written consent to pre-commencement conditions unless exclusion applies) which was in response to the Government's stated aim to reduce the time lag between planning permission being granted and work commencing on site, and so there is a clear expectation that LPA's are sympathetic to changes which facilitate commencement. Which is what the application is seeking to facilitate here.

In summary, the proposal is to add an additional plan and it is considered that in light of the above condition 2 could be lawfully amended under this section 96a application to include the following additional plan:

- Drawing No. 23/171/14 - Proposed Retaining Wall;

Below shows the existing wording of condition and the suggested amended wording of condition 2.

Condition 2 – Approved Plans

The development hereby permitted shall be carried out in accordance with the following approved plans:

*Drawing No.18/171/01 - Ordnance Survey Plan;
Drawing No.18/171/02 - Site Over Plan;
Drawing No.18/171/03 - Plans and Elevations;
Drawing No.18/171/04 - Warehouse Plans and Elevations;
Drawing No.18/17113 - Warehouse (B) Plans and Elevations;
Drawing No.1-01 - Proposed Contour Plan;
Drawing No.1-03 - Proposed Sections 'AA-DD';
Drawing No.1-04 - Proposed Section 'EE'; and
Drawing No.1-02 - Proposed Contour Plan.*

Reason: *For the avoidance of doubt and in the interests of proper planning.*

To

The development hereby permitted shall be carried out in accordance with the following approved

plans:

Drawing No. 23/171/14 - Proposed Retaining Wall;
Drawing No.18/171/01 - Ordnance Survey Plan;
Drawing No.18/171/02 - Site Over Plan;
Drawing No.18/171/03 - Plans and Elevations;
Drawing No.18/171/04 - Warehouse Plans and Elevations;
Drawing No.18/17113 - Warehouse (B) Plans and Elevations;
Drawing No.1-01 - Proposed Contour Plan;
Drawing No.1-03 - Proposed Sections 'AA-DD';
Drawing No.1-04 - Proposed Section 'EE'; and
Drawing No.1-02 - Proposed Contour Plan.

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

Amending Wording of conditions

According to the application form the reasoning for the amending of the conditions is as follows:

if approved through the application of a non material amendment can be undertaken and, thus constitute enacting of the permission, through a material start, this allowing time for the full execution and discharge of all of the pre commencement conditions.

This applicant is clear that they are not seeking to vary the time limit (eg condition 1) but are seeking to allow a small amount of works detailed in the additional plan to commence before the pre-commencement conditions trigger point is met.

The suggesting amendment to the conditions is to allow works to commence on the proposed retaining wall only and not further elements of the development.

The conditions proposed to be amended are considered to be conditions precedent but this application does not seek to materially change the conditions (which would be Section 73 application) but seeks to amend the wording to allow a retaining wall to be constructed prior to the pre-commencement conditions for the whole of the development being discharged. The trigger points of all relevant conditions is therefore protected. For clarity the following section lists each condition to be changed.

Condition 3 - Highway Improvements

No development approved by this permission (including demolition and engineering operations) shall commence until full details of the road improvements works at the Canal Road / Chequers Street / Church Street /Lower Rochester Road junction generally in accordance with RSK drawing ref.661792/02A are submitted to, and approved in writing by the Local Planning Authority. The approved details shall then be implemented prior to any works commencing on site (except in relation to the road improvement works to the extent they occur on the site). For the avoidance of doubt this shall include details of construction and surface finishes for roads, footpaths, cycle-ways, car parking areas and passing bays and the development shall be completed in accordance with the approved details

Reason: To ensure adequate highway improvement works are provided in a timely manner to ensure no adverse impact to the safe and free flow of traffic on the highway network; to ensure that the final external appearance of the public highway is acceptable and built to appropriate and recognised safety standards and in accordance Policy CS11 of Gravesham Local Plan: Core Strategy (September 2014).

To

Other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall] no development approved by this permission (including demolition and engineering operations) shall commence until full details of the road improvements works at the Canal Road / Chequers Street / Church Street /Lower Rochester Road junction generally in accordance with RSK drawing ref.661792/02A are submitted to, and approved in writing by the Local Planning Authority. The approved details shall then be implemented prior to any works commencing on site (except in relation to the road improvement works to the extent they occur on the site and in relation to the works shown on Drawing No.23/171/14 – Nuralite Retaining Wall. For the avoidance of doubt this shall include details of construction and surface finishes for roads, footpaths, cycle-ways, car parking areas and passing bays and the development shall be completed in accordance with the approved details.

Reason: *To ensure adequate highway improvement works are provided in a timely manner to ensure no adverse impact to the safe and free flow of traffic on the highway network; to ensure that the final external appearance of the public highway is acceptable and built to appropriate and recognised safety standards and in accordance Policy CS11 of Gravesham Local Plan: Core Strategy (September 2014).*

Note: The amending of the wording of the above condition to allow the construction of the retaining wall before any off site highway improvements commences is acceptable as the construction of a small retaining wall does not trigger the need for off site highway improvements to be completed. The amendment to this condition is acceptable and non-material.

Condition 4 – Passing Places

Other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall] no development approved by this permission (including demolition and engineering operations) shall commence until full details of the construction of additional passing places (within the public highway) along Lower Rochester Road and Gore Green Road generally in accordance with RSK Drawing Ref. 661792-10-04B have been submitted to and approved in writing by the Local Planning Authority. The passing places shall be completed in accordance with the approved details prior to any works (other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall] commencing on site.

Reason: *To ensure adequate highway improvement works are provided in a timely manner to ensure no adverse impact to the safe and free flow of traffic on the highway network; to ensure that the final external appearance of the public highway is acceptable and built to appropriate and recognised safety standards and in accordance Policy CS11 of Gravesham Local Plan: Core Strategy (September 2014).*

Note: The amending of the wording of the above condition to allow Condition is 4 required to ensure that before any HGV movements take place in relation to the import and export of materials sufficient passing places are in place. The change to this condition to allow a wall to be constructed prior to the passing places being constructed is acceptable and not a material change.

To

Other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall] no development approved by this permission (including demolition and engineering operations) shall commence until full details of the construction of additional passing places (within the public highway) along Lower Rochester Road and Gore Green Road generally in accordance with RSK Drawing Ref. 661792-10-04B have been submitted to and approved in writing by the Local Planning Authority. The passing places shall be completed in accordance with the approved details prior to any works

commencing on site.

Reason: To ensure adequate highway improvement works are provided in a timely manner to ensure no adverse impact to the safe and free flow of traffic on the highway network; to ensure that the final external appearance of the public highway is acceptable and built to appropriate and recognised safety standards and in accordance Policy CS11 of Gravesham Local Plan: Core Strategy (September 2014).

Condition 5 - Phasing Plan

No development approved by this permission (including demolition and engineering operations) shall commence until full details of the phasing of the development are submitted to, and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: The Local Planning Authority needs to be satisfied that the development of the site is undertaken in a coherent and comprehensive manner and to ensure compliance with Policies CS05, CS12, CS19 and CS20 of Gravesham Local Plan: Core Strategy (September 2014).

To

Other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall] no development approved by this permission (including demolition and engineering operations) shall commence until full details of the phasing of the development are submitted to, and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: The Local Planning Authority needs to be satisfied that the development of the site is undertaken in a coherent and comprehensive manner and to ensure compliance with Policies CS05, CS12, CS19 and CS20 of Gravesham Local Plan: Core Strategy (September 2014).

Note: The phasing condition is to ensure that the entire development is delivered in a cohesive form, eg the demolition, land clearance, land raising and redevelopment of the site. The construction of small retaining wall before the site wide phasing plan is discharged is acceptable and would not impact on the wider delivery of the development and is not a material change to this condition.

Condition 6 - Traffic Controls

No development approved by this permission (including demolition and engineering operations) shall commence until full details of the traffic signal control (including location and the duration of signal controls) along Canal Road to enable one-way working are submitted to, and approved in writing by the Local Planning Authority. The approved details shall then be implemented prior to any works commencing on site.

Reason: To ensure adequate highway improvement works are provided in a timely manner to ensure no adverse impact to the safe and free flow of traffic on the highway network; to ensure that the final external appearance of the public highway is acceptable and built to appropriate and recognised safety standards and in accordance Policy CS11 of Gravesham Local Plan: Core Strategy (September 2014).

To

Other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall] no development approved by this permission (including demolition and engineering operations) shall commence until full details of the traffic signal control (including location and the duration of signal

controls) along Canal Road to enable one-way working are submitted to, and approved in writing by the Local Planning Authority. The approved details shall then be implemented prior to any works (other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall]) commencing on site.

Reason: To ensure adequate highway improvement works are provided in a timely manner to ensure no adverse impact to the safe and free flow of traffic on the highway network; to ensure that the final external appearance of the public highway is acceptable and built to appropriate and recognised safety standards and in accordance Policy CS11 of Gravesham Local Plan: Core Strategy (September 2014).

Note: Traffic controls are required to manage the HGVs using Canal Road and this condition needs to be discharged and measures implemented before demolition and engineering and demolition operations occur. The condition trigger point changing to allow the construction of a retaining wall is acceptable and the wording change is not a material change.

Condition 7 - Traffic Regulation Order

No development approved by this permission (including demolition and engineering operations) shall commence until a Traffic Regulation Order has been enacted to introduce a one-way routing strategy requiring HGV vehicles travelling westbound to use Lower Rochester Road and Gore Green Road for travelling eastbound during the construction of the development. For the avoidance of doubt this includes demolition works.

Reason: To ensure adequate highway improvement works are provided in a timely manner to ensure no adverse impact to the safe and free flow of traffic on the highway network; to ensure that the final external appearance of the public highway is acceptable and built to appropriate and recognised safety standards and in accordance Policy CS11 of Gravesham Local Plan: Core Strategy (September 2014).

To

Other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall]) no development approved by this permission (including demolition and engineering operations) shall commence until a Traffic Regulation Order has been enacted to introduce a one-way routing strategy requiring HGV vehicles travelling westbound to use Lower Rochester Road and Gore Green Road for travelling eastbound during the construction of the development. For the avoidance of doubt this includes demolition works.

Reason: To ensure adequate highway improvement works are provided in a timely manner to ensure no adverse impact to the safe and free flow of traffic on the highway network; to ensure that the final external appearance of the public highway is acceptable and built to appropriate and recognised safety standards and in accordance Policy CS11 of Gravesham Local Plan: Core Strategy (September 2014).

Note: Traffic Regulation Order is required to manage the HGVs and this condition needs to be discharged and measures implemented before demolition and engineering and demolition operations occur. The condition trigger point changing to allow the construction of a retaining wall is acceptable and is not material change.

Condition 8 - Demolition and Construction Logistics Plan

No development approved by this permission (including demolition and engineering operations) shall commence until a comprehensive Demolition and Construction Logistics Plan covering all

environmental impacts of this development or the relevant phase of development during the demolition and construction phase is submitted for approval to the Local Planning Authority in consultation with the Local Highway Authority.

The report shall include assessment of the impacts during the demolition and construction phases of the development on nearby residents and other occupiers together with means of mitigating any identified impacts, and make reference to British Standard BS5228:2009, for Deconstruction and Construction Sites (and arrangements for liaison set out therein).

For the avoidance of doubt the Demolition and Construction Logistics Plan shall include, but not exclusively cover the following:

- a) Parking of vehicles of site personnel and visitors;*
- b) Storage of plant and materials;*
- c) Dust management controls;*
- d) Location and height of cranes and scaffolding;*
- e) Measures of minimising the impact of noise and vibration arising from demolition and construction activities;*
- f) Predicted noise and vibration levels for demolition and construction using methodologies and at locations agreed with the Local Planning Authority;*
- g) Scheme for monitoring noise and vibration levels using methodologies and at points agreed with the Local Planning Authority;*
- h) Scheme for location and appearance security fencing/hoardings, depicting a readily visible 24-hour contact number for queries, complaints or emergencies;*
- i) Details of disposal of waste arising from the construction programme, including final disposal points (the burning of waste on the site at any time is specifically precluded);*
- j) Hours of operation;*
- k) Smoke management controls;*
- l) Odour controls;*
- m) Any other matters relevant to this particular site.*

The development hereby permitted shall be carried out in accordance with the approved Demolition and Construction Logistics Plan.

Reason: *To ensure the free flow of traffic on the highway and to minimise the impact on residential amenity and in accordance with Policy CS19 Gravesham Local Plan: Core Strategy (September 2014).*

To

Other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall] *no development approved by this permission (including demolition and engineering operations) shall commence until a comprehensive Demolition and Construction Logistics Plan covering all environmental impacts of this development or the relevant phase of development during the demolition and construction phase is submitted for approval to the Local Planning Authority in consultation with the Local Highway Authority.*

The report shall include assessment of the impacts during the demolition and construction phases of the development on nearby residents and other occupiers together with means of mitigating any identified impacts, and make reference to British Standard BS5228:2009, for Deconstruction and Construction Sites (and arrangements for liaison set out therein).

For the avoidance of doubt the Demolition and Construction Logistics Plan shall include, but not exclusively cover the following:

- a) Parking of vehicles of site personnel and visitors;
- b) Storage of plant and materials;
- c) Dust management controls;
- d) Location and height of cranes and scaffolding;
- e) Measures of minimising the impact of noise and vibration arising from demolition and construction activities;
- f) Predicted noise and vibration levels for demolition and construction using methodologies and at locations agreed with the Local Planning Authority;
- g) Scheme for monitoring noise and vibration levels using methodologies and at points agreed with the Local Planning Authority;
- h) Scheme for location and appearance security fencing/hoardings, depicting a readily visible 24-hour contact number for queries, complaints or emergencies;
- i) Details of disposal of waste arising from the construction programme, including final disposal points (the burning of waste on the site at any time is specifically precluded);
- j) Hours of operation;
- k) Smoke management controls;
- l) Odour controls;
- m) Any other matters relevant to this particular site.

The development hereby permitted shall be carried out in accordance with the approved Demolition and Construction Logistics Plan.

Reason: *To ensure the free flow of traffic on the highway and to minimise the impact on residential amenity and in accordance with Policy CS19 Gravesham Local Plan: Core Strategy (September 2014).*

Note: The construction of the small retaining wall in isolation would not require a Demolition and Construction Logistics Plan and the works required (a small foundation and brick wall) would not impact on the amenity of the wider area. The plans show that reclaimed brick on site would be used so there would be no import of quantity of materials. The wording change to the condition is non-material.

Condition 9 - Construction Traffic Management Plan

No development approved by this permission (including demolition and engineering operations) shall commence until a full Construction Traffic Management Plan for the development has been submitted to and approved in writing by the Local Planning Authority. The Plan is to include the following elements;

- a) *Maximum HGV numbers both daily and hourly and HGV routing together with a requirement for a GPS tracking system covering all construction vehicles.*
- b) *Detailed work programme / timetable.*
- c) *Site HGV delivery / removal hours.*
- d) *Detailed routeing for demolition, excavation and construction traffic and abnormal loads.*
- e) *Supply of pre-journey information on routeing and site restrictions to contractors, deliveries and visitors.*
- f) *Detailed plan showing the location of on-site stores and facilities including the site compound, contractor & visitor parking and turning as well as un/loading point, turning and queuing for HGVs.*
- g) *Breakdown of number, type, size and weight of vehicles over the demolition & construction period.*
- h) *Details of debris management including location of wheel wash, programme to control debris spill/ tracking onto the highway to also include sheeting/sealing of vehicles and dust management.*
- i) *Details of public impact and protection to include road, footway, cycleway and PRow. Details of TROs and road/footway/cycleway/PRow closures and re-routeings as well as signage, barriers and remediation.*

- j) Public liaison position, name, contact details and details of public consultation/liaison.
- k) Route details as required covering culverts, waterways, passing places, tracking of bends/junctions and visibility splays.
- l) To also include the removal of TROs, temporary signage, barriers and diversions.
- m) Details of temporary construction accesses and their remediation post project.
- n) Provision for emergency vehicles.
- o) Road cleaning and wheel washing facilities.

Development shall thereafter proceed only in full compliance with the approved CTMP.

Reason: To ensure the free flow of traffic on the highway and to minimise the impact on residential amenity and in accordance with Policy CS19 Gravesham Local Plan: Core Strategy (September 2014).

to

Other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall] no development approved by this permission (including demolition and engineering operations) shall commence until a full Construction Traffic Management Plan for the development has been submitted to and approved in writing by the Local Planning Authority. The Plan is to include the following elements;

- a) Maximum HGV numbers both daily and hourly and HGV routing together with a requirement for a GPS tracking system covering all construction vehicles.
- b) Detailed work programme / timetable.
- c) Site HGV delivery / removal hours.
- d) Detailed routing for demolition, excavation and construction traffic and abnormal loads.
- e) Supply of pre-journey information on routing and site restrictions to contractors, deliveries and visitors.
- f) Detailed plan showing the location of on-site stores and facilities including the site compound, contractor & visitor parking and turning as well as un/loading point, turning and queuing for HGVs.
- g) Breakdown of number, type, size and weight of vehicles over the demolition & construction period.
- h) Details of debris management including location of wheel wash, programme to control debris spill/ tracking onto the highway to also include sheeting/sealing of vehicles and dust management.
- i) Details of public impact and protection to include road, footway, cycleway and PRow. Details of TROs and road/footway/cycleway/PRow closures and re-routeings as well as signage, barriers and remediation.
- j) Public liaison position, name, contact details and details of public consultation/liaison.
- k) Route details as required covering culverts, waterways, passing places, tracking of bends/junctions and visibility splays.
- l) To also include the removal of TROs, temporary signage, barriers and diversions.
- m) Details of temporary construction accesses and their remediation post project.
- n) Provision for emergency vehicles.
- o) Road cleaning and wheel washing facilities.

Development shall thereafter proceed only in full compliance with the approved CTMP.

Reason: To ensure the free flow of traffic on the highway and to minimise the impact on residential amenity and in accordance with Policy CS19 Gravesham Local Plan: Core Strategy (September 2014).

Note: The construction of the small retaining wall in isolation would not require a Construction Traffic Management Plan and the works required (a small foundation and brick wall) would not

impact on the amenity of the wider area. The plans show that reclaimed brick on site would be used so there would be no import of quantity of materials. The changing to the condition wording is not a material change.

Condition 11 - Site Wide Ecological Mitigation Strategy and Habitat Creation Plan

Prior to works commencing on a new phase (Including the first phase) an updated preliminary ecological appraisal and review and of the site wide mitigation strategy must be carried out and shall be provided by the applicant and submitted for approval to the Local Planning Authority in consultation with Natural England, Environment Agency and Kent County Council. The development shall thereafter be carried out in accordance with the most recent version of the Ecological Mitigation Strategy. For the avoidance of doubt the submitted information shall include, but not exclusively cover the following:

- a) A preliminary ecological appraisal - less than one year old.*
- b) Review of existing survey data and updates of any surveys required.*
- c) Review of and update of existing mitigation plans.*
- d) Detailed methodology to implement mitigation.*
- e) Details of habitat creation required for ecological mitigation and habitat creation areas.*
- f) Methodology to implement habitat creation.*
- g) Timings of proposed works for ecological mitigation and habitat creation areas.*
- h) Maps showing the following:*
 - 1) Existing habitat plan;*
 - 2) Proposed mitigation areas;*
 - 3) Habitat Creation Areas.*
- i) Details of who will carry out the works.*
- j) Interim management plan for mitigation/habitat creation works.*
- k) Update on what works have already been carried out on site.*
- l) Letter from the applicants ecologist confirming why they are satisfied that the currently site wide mitigation strategy and habitat creation plan is still valid OR*
Updated site wide mitigation strategy and habitat creation plan informed by required, updated species or habitat surveys.

Reason: *In the interests of biodiversity net gain and pursuant to Policies CS12 and CS19 Gravesham Local Plan: Core Strategy (September 2014).*

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Prior to works (Other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall]) commencing on a new phase (Including the first phase) an updated preliminary ecological appraisal and review and of the site wide mitigation strategy must be carried out and shall be provided by the applicant and submitted for approval to the Local Planning Authority in consultation with Natural England, Environment Agency and Kent County Council. The development shall thereafter be carried out in accordance with the most recent version of the Ecological Mitigation Strategy. For the avoidance of doubt the submitted information shall include, but not exclusively cover the following:

- a) A preliminary ecological appraisal - less than one year old.*
- b) Review of existing survey data and updates of any surveys required.*
- c) Review of and update of existing mitigation plans.*
- d) Detailed methodology to implement mitigation.*
- e) Details of habitat creation required for ecological mitigation and habitat creation areas.*
- f) Methodology to implement habitat creation.*
- g) Timings of proposed works for ecological mitigation and habitat creation areas.*

h) Maps showing the following:

- 1) Existing habitat plan;
- 2) Proposed mitigation areas;
- 3) Habitat Creation Areas.

i) Details of who will carry out the works.

j) Interim management plan for mitigation/habitat creation works.

k) Update on what works have already been carried out on site.

l) Letter from the applicants ecologist confirming why they are satisfied that the currently site wide mitigation strategy and habitat creation plan is still valid OR

Updated site wide mitigation strategy and habitat creation plan informed by required, updated species or habitat surveys.

Reason: In the interests of biodiversity net gain and pursuant to Policies CS12 and CS19 Gravesham Local Plan: Core Strategy (September 2014).

Note: The location of the retaining wall is at the eastern end of the site is not within SSSI/RAMSAR site and the small wall will not have an impact on biodiversity of the wider site. The word changing to this condition is not a material change.

Condition 12 - Archaeology

No development or phase of development approved by this permission (including demolition and engineering operations) shall commence until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in relation to the development or relevant phase of development in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority. For the avoidance of doubt any archaeological works shall take into account that parts of the site cannot be accessed due to site contamination.

Reason: To ensure that features of archaeological and heritage interest are properly researched, examined, recorded and reported on for the benefit of this and future generation and pursuant to Policy CS20 Gravesham Local Plan: Core Strategy (September 2014).

to

No development or phase of development (**Other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall]**) approved by this permission (including demolition and engineering operations) shall commence until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in relation to the development or relevant phase of development in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority. For the avoidance of doubt any archaeological works shall take into account that parts of the site cannot be accessed due to site contamination.

Reason: To ensure that features of archaeological and heritage interest are properly researched, examined, recorded and reported on for the benefit of this and future generation and pursuant to Policy CS20 Gravesham Local Plan: Core Strategy (September 2014).

Note: The small depth of the foundations (less than 1m) and its location away from the existing buildings on the site will not disturb any heritage within the site. The heritage on this site relates to the 19th century industrial development further to the west. The word changing of this condition is not a material change.

Condition 13 - Contaminated Land Strategy

No development approved by this permission (including demolition and engineering operations) or

any phase of development shall commence until a strategy to deal with the potential risks associated with any contamination of the site or the relevant phase has been submitted to, and approved in writing by, the Local Planning Authority. This strategy will include the following components:

- a) A preliminary risk assessment which has identified:
all previous uses; potential contaminants associated with those uses; a conceptual model of the site indicating sources, pathways and receptors; and potentially unacceptable risks arising from contamination at the site.
- b) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- c) The results of the site investigation and the detailed risk assessment referred to in (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The development or phase of development shall thereafter be carried out only in full accordance with the approved Strategy unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution in line with paragraph 174 of the National Planning Policy Framework (2021).

To

Other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall no development approved by this permission (including demolition and engineering operations) or any phase of development shall commence until a strategy to deal with the potential risks associated with any contamination of the site or the relevant phase has been submitted to, and approved in writing by, the Local Planning Authority. This strategy will include the following components:

- a) A preliminary risk assessment which has identified:
all previous uses; potential contaminants associated with those uses; a conceptual model of the site indicating sources, pathways and receptors; and potentially unacceptable risks arising from contamination at the site.
- b) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- c) The results of the site investigation and the detailed risk assessment referred to in (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The development or phase of development shall thereafter be carried out only in full accordance

with the approved Strategy unless otherwise agreed in writing by the Local Planning Authority.

Reason: *To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution in line with paragraph 174 of the National Planning Policy Framework (2021).*

Note: The minor works of this retaining wall as shown on the plans would not require a contaminated land assent. The contamination on the site relates to the landfills at the western end of the site along with the existing buildings on site. The word changing of this condition is not a material change.

Condition 14 - Asbestos Plan of Works

No phase of development approved by this permission (including demolition and engineering operations) shall commence until an asbestos survey of buildings to be demolished in that phase has been submitted to and approved in writing by the Local Planning Authority in consultation with Health and Safety Executive. The relevant phase of development shall thereafter be carried out in full accordance with the approved details.

Reason: *To ensure that risks from asbestos to the environment, future users of the land and neighbouring land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors and in the interests of residential amenity and pursuant to Policy CS19 Gravesham Local Plan: Core Strategy (September 2014).*

To

Other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall no phase of development approved by this permission (including demolition and engineering operations) shall commence until an asbestos survey of buildings to be demolished in that phase has been submitted to and approved in writing by the Local Planning Authority in consultation with Health and Safety Executive. The relevant phase of development shall thereafter be carried out in full accordance with the approved details.

Reason: *To ensure that risks from asbestos to the environment, future users of the land and neighbouring land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors and in the interests of residential amenity and pursuant to Policy CS19 Gravesham Local Plan: Core Strategy (September 2014).*

Note: This condition relates specifically to asbestos survey of buildings to be demolished and this condition being amended to allow a retaining wall to be constructed prior to asbestos survey being undertaken as this retaining wall does not related to asbestos buildings on the site. The changes to this condition is considered to be non-material change.

Condition 15 - Historical Survey of Existing Buildings

No development or phase of development approved by this permission (including demolition and engineering operations) shall commence until an appropriate programme of historic building recording and analysis to Historic England Building Recording Level 3 for the development or the relevant phase of development has been secured and implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The development or phase of development shall be carried out at all times in strict accordance with the approved scheme.

Reason: *No such details have been provided at this stage and in accordance with Policies CS19 and CS20 Gravesham Local Plan: Core Strategy (September 2014) and Saved Policy TC3 of the*

Gravesham Local Plan First Review 1994.

To

Other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall no development or phase of development approved by this permission (including demolition and engineering operations) shall commence until an appropriate programme of historic building recording and analysis to Historic England Building Recording Level 3 for the development or the relevant phase of development has been secured and implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The development or phase of development shall be carried out at all times in strict accordance with the approved scheme.

Reason: No such details have been provided at this stage and in accordance with Policies CS19 and CS20 Gravesham Local Plan: Core Strategy (September 2014) and Saved Policy TC3 of the Gravesham Local Plan First Review 1994.

Note: The construction of the retaining wall has no impact on the historic survey of the buildings and the word changing of this condition is not a material change.

Condition 23 - Review of Site Wide Mitigation Strategy and Habitat Creation Plan

Prior to works commencing on a new phase an updated preliminary ecological appraisal and review, and where necessary update, of the site wide mitigation strategy and habitat plan must be carried out and shall be provided by the applicant and submitted for approval to the Local Planning Authority in consultation with Natural England, Environment Agency and Kent County Council. The development shall thereafter be carried out in accordance with the approved Ecological Mitigation Strategy. For the avoidance of doubt the submitted information shall include, but not exclusively cover the following:

- Preliminary Ecological Appraisal.
- Update on what works have already been carried out on site.
- Letter from the applicants ecologist confirming why they are satisfied that the currently site wide mitigation strategy and habitat creation plan is still valid. or
- Updated site wide mitigation strategy and habitat creation plan informed by required, updated species or habitat surveys.

Reason: In the interests of biodiversity net gain and accordance with Policies CS12 and CS19 Gravesham Local Plan: Core Strategy (September 2014).

To

Prior to works (Other than the works shown on [Drawing No.23/171/14 – Nuralite Retaining Wall]) commencing on a new phase an updated preliminary ecological appraisal and review, and where necessary update, of the site wide mitigation strategy and habitat plan must be carried out and shall be provided by the applicant and submitted for approval to the Local Planning Authority in consultation with Natural England, Environment Agency and Kent County Council. The development shall thereafter be carried out in accordance with the approved Ecological Mitigation Strategy. For the avoidance of doubt the submitted information shall include, but not exclusively cover the following:

- Preliminary Ecological Appraisal.
- Update on what works have already been carried out on site.
- Letter from the applicants ecologist confirming why they are satisfied that the currently site wide mitigation strategy and habitat creation plan is still valid. or

- Updated site wide mitigation strategy and habitat creation plan informed by required, updated species or habitat surveys.

Reason: In the interests of biodiversity net gain and accordance with Policies CS12 and CS19 Gravesham Local Plan: Core Strategy (September 2014).

Note: The changes to condition 23 are acceptable as the location of the wall is outside any of the ecology sensitive locations within the site would not impact on the SSSI, SPA or Ramsar Site. The word changing of this condition is not a material change.

Implications

The inclusion of an additional plan in condition 2 (this plan provides further detail but introduces no further built development), the change in wording of conditions 3,4,5,6,7,8,9,10, 11, 12, 13, 14,15 and 23 to remove the need of the conditions to be discharged prior to commencement of development allows a retaining wall to be constructed on site. The changes in wording and the construction of the retaining wall are deemed to be non-material (Does not result in additional development on the site the word changing to the conditions is *de minimus*) in the overall scheme and do not impact on any of the reasoning of the conditions to be amended and is non-material for the overall scheme.

As such the word changing to conditions is considered acceptable.

Conclusion

In summary it is considered that the changes to conditions 2,3,4,5,6,7,8,9,10, 11, 12, 13, 14,15 and 23 as discussed within this report are considered to be 'non-material'. Accordingly, it is considered that the application can be supported, and permission is granted.

Paragraph 11 of the NPPG is clear that a non-material amendment does not constitute a reissue of the original planning permission, which still stands. The two documents should be read together. A relevant informative will also be included to highlight this.

Due to asbestos on the wider site, a relevant informative will be included on the decision notice to inform the applicant to comply with the relevant HSE legislation.

Recommendation:

Permission.

See draft Decision

Case Officer:	Mr Richard Hart	Team Leader:	Wendy Lane
Signed:	<i>R Hart</i>	Signed:	<i>Wendy Lane</i>
Dated:	31st August 2023	Dated:	01/09/2023