



Delegated Report

Non-Material Amendment Planning Application

Planning Application No: 20230605

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 B and the amendment of conditions 3,4,5,6,7,8,9,10, 11, 12, 13, 14,15 and 23.

Applicant: Mr Chris Lee

Submitted Documents/Plans

Planning Application Form;
Drawing No. 23/171/14 Rev B – Proposed Retaining Wall;
Drawing No. 1100 Rev A1 – Proposed Wall Foundation;
Supporting Information – Proposed Amendments to Planning Conditions;
Supporting Information – Somerset West and Taunton Decision Notice; and
Supporting Information – Counsels Opinion.

Relevant Planning History

Reference	Description	Decision	Decision Date
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 built light industrial type units and a site office.	Permission	23.12.2021

Development Plan

As an application under S.96A of the Town and Country Planning Act the considerations turn to whether the proposals are non-material. The application is not assessed under the development plan.

Consultations, Publicity and Representations

Consultees

Neighbouring properties

Consultation was by way of a letter being sent to 1 surrounding property and the following comment was received:

I am responding on behalf of the Thames and Medway Canal Association to ensure that the line of the canal is maintained as an unbroken green corridor. It is difficult to calculate accurate dimensions on the plan but the retaining wall and 'access road' position should be suitable to provide a green corridor width of at least 15'-0" between the 'access road' and this wall adjacent to Canal Road representing the minimum width of the original canal. The green corridor clear to and under the rail bridge should also be maintained.

Officer's Analysis

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 local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under s.96A.

The proposal includes the inclusion of a section of retaining wall by the proposed entrance to the development of the new business park, which is to be shown as a detailed section on the existing and approved site masterplan. The applicant therefore wishes to vary condition 2 which lists the approved plans to include the new additional plan of the detailed wall section, together with the varying of conditions 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 23 which are both pre-commencement and first phase conditions to include the words "other than the works showing in Drawing ref: 23/171/14 Rev B" (the new/additional plan).

The supporting application form states the reasoning for the proposed additions/amendments and variations is to allow for a new investor more time to satisfy the pre-commencement conditions due to their complexity and to protect the permission so that it does not lapse.

Pre-Commencement Conditions

The decision notice for Planning Application 20190290 included a number of pre-commencement conditions and the following informative was included within the decision notice:

9. AGREEMENT FOR IMPOSITION OF PRE-COMMENCEMENT CONDITION(S)

In accordance with The Town and Country Planning (Pre Commencement Conditions) Regulations 2018 and paragraph 36 of the Planning Practice Guidance the Local Planning Authority has agreed in writing with the applicant on 23.9.2021 to the inclusion of the following pre-commencement conditions.

Condition 3 - Highways Improvements

Condition 4 - Passing Places

Condition 5 - Phasing Plan

Condition 6 - Traffic Controls

Condition 7 - Traffic Regulation Order

Condition 8 - Demolition and Construction Logistics Plan

Condition 9 - Construction Traffic Management Plan

Pre-commencement conditions are only imposed where there is a clear justification, such as the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would otherwise be necessary to refuse the whole permission. Development carried out without having complied with a pre-commencement condition would be unlawful and may be subject of enforcement action.

Extending the lifetime of a planning permission

A non-material amendment application under Section 96A of the Town and Country Planning Act is a way of amending an existing planning permission, if the amendment is very minor and is not a material change to the development as approved. There is no definition of what is 'non-material' and this will depend on the

development as permitted and the change proposed. An amendment that is material to one permission may be non-material to another.

If the change is likely to have amenity, highways or other impacts, increase the size or clearly change the appearance of a development, or in this case, conflict with conditions imposed, it is not likely to be considered to be non-material. The local planning authority is of the opinion that the proposed amendments to the pre-commencement and phase 1 conditions would be material.

Whilst the inclusion of a section of retaining wall may well not constitute a material amendment on its own, the associated pre-commencement and phase 1 conditions rely on the submission of extensive details relating to the development as a whole and any extension to the time limits would be material and would therefore not fall under Section 96a. In addition, as stated above, Section 96A is to amend an existing permission and not to extend the lifespan or alter the time limits within the permission by issuing a new permission, unless through a full resubmission.

To vary conditions to include additional plans, this would fall under a minor material amendment application (Section 73 of the Town and Country Planning Act), however you cannot amend time limits of a planning permission through the use of Section 73 (minor material amendment) which as stated within the supporting information, is one of the main purposes of this application.

Varying Planning Conditions

Section 96A of the Town and Country Planning Act 1990 allows a Local Planning Authority to make non-material changes to a planning permission, and this includes the power to impose new conditions or remove/alter conditions. However, the Local Authority must be satisfied that the change is not material.

A Section 96A non-material application cannot be used to vary conditions to include additional plans. Furthermore, the process would also only amend the existing permission and not result in the grant of a new permission. Therefore, as stated above, in this case a minor material amendment (section 73 of the Town and Country Planning Act 1990) is the more appropriate procedure for varying conditions.

An application for a minor material amendment under Section 73 of the Town and Country Planning Act 1990 cannot be used to amend the time limits of a planning permission and therefore this would not be a suitable procedure either, in order to address the reasons for the amendments.

Conclusion & Recommendation

The Local Planning Authority is of the opinion that a non-material planning application (S.96A of the Town and Country Planning Act) is not a tool to extend the lifetime of a planning permission, nor is it the appropriate planning procedure to vary conditions to alter plans or include additional plans, or wording within conditions relating to additional plans. As such the application cannot be supported.

(For detailed conditions / reasons for refusal and informatives, see draft Decision)

Case Officer:	Mrs Amanda Grout	Team Leader:	Richard Hart
Signed:	<i>A Grout</i>	Signed:	<i>R Hart</i>
Dated:	19 th July 2023	Dated:	19th July 2023