

**Planning and Rights of Way Panel 21<sup>st</sup> February 2017**  
**Planning Application Report of the Service Lead – Infrastructure, Planning & Development**

<b>Application address:</b> Land at Test Lane, Southampton			
<b>Proposed development:</b> 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.			
<b>Application number</b>	16/02201/NMA	<b>Application type</b>	NMA
<b>Case officer</b>	Stephen Harrison	<b>Public speaking time</b>	5 minutes
<b>Last date for determination:</b>	17.01.2017	<b>Ward</b>	Redbridge
<b>Reason for Panel Referral:</b>	Request by Ward Cllr and five or more letters of objection have been received	<b>Ward Councillors</b>	Cllr Mc Ewing Cllr Pope Cllr Whitbread
<b>Referred to Panel by:</b>	Councillor Pope	<b>Reason:</b>	The drainage changes are not insignificant

<b>Applicant:</b> Evander Properties Ltd/Peel Logistics	<b>Agent:</b> Michael Sparks Associates
---	---

<b>Recommendation Summary</b>	<b>Conditionally Approve</b>
-------------------------------	------------------------------

<b>Community Infrastructure Levy Liable</b>	<b>Not applicable</b>
---	-----------------------

**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 change the finished floor level of the building, without affecting its approved footprint, whilst reducing the overall height. The drainage change applies the same principles as approved but changes the design without reducing the ability of the site to deal with drainage and flood events. Other material considerations, such as those listed in the report to the Council's Planning and Rights of Way Panel on 21<sup>st</sup> February 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 a 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 supported by the Council's current adopted

Supplementary Planning Guidance and the guidance contained with the evolving National Planning Practice Guidance.

<b>Appendix attached</b>			
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 currently a grassed open area with some tree planting to the boundaries and hedgerows to the Test Lane frontage. 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 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.
- 2.3 A 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. As originally submitted these alterations included:

- a) **A change to the finished floor level with the buildings set lower into the site by 1 metre (Unit 1), 80cm (Units 2 and 3) and reduction in overall height therefrom; and,**
- b) A reduction to the approved eaves heights by 1 metre (Unit 1), 60cm (Unit 2) and 1.7 metres (Unit 3) ; and,
- c) Overall a reduction in the height of the approved buildings by 1 metre (Unit 1 to 18.75m AOD), 1.95 metres (Unit 2 to 17.8m AOD) and 1 metre (Unit 3 to 19.76m AOD); and,
- d) A reduction in the number of loading bays serving Unit 3 (North Elevation) from 18 to 7;
- e) Amend the agree external materials; and, finally,
- f) **An amendment to the design of the proposed drainage layout as shown on approved RPS drawing 17798\_0300 Rev B.**

2.4 The final change listed has, understandably, proven to be the most contentious amongst interested third parties.

2.5 Since validation the applicants have formally withdrawn their request to reduce the eaves height (b above), reduce the building height (c above), amend the loading bays (d above) and amend the cladding materials previously approved (e above) and these changes no longer form part of this request for a Non Material Amendment approval. For the avoidance of doubt only the changes set out in bold above (a and f) are for consideration by the Panel.

### **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’. 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.

- 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.

#### **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 Once officers were comfortable that the submitted request could be considered as a NMA those interested parties that had provided written comment to the original application 14/01911/FUL were notified by letter (94 letters sent) and given 21 days to comment. A Site Notice was posted on 20<sup>th</sup> January 2017. A deadline for comments of the 7<sup>th</sup> February was set.
- 5.3 At the time of writing the report **32 objections** have been received, including representations 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 **The proposed changes to the agreed drainage strategy are material to the scheme and will increase the possibility of flooding to local residents. The existing infrastructure is old and will not cope with the additional water.**

##### Response

It is in no one's interest to permit development that causes additional flooding. The design of the drainage for this scheme follows the principles of the approved scheme, but amends the layout, and has been designed and assessed by drainage specialists. This change is acceptable to both the Council's Senior Flood Risk Management Officer (regarding surface water and fluvial flooding) and Southern Water (regarding foul water drainage) and is discussed in more detail within the Planning Considerations section of this report.

- 5.5 **The proposed changes to the design of the buildings, in terms of the external cladding materials, are material and will impact upon the visual amenity of local residents. Residents want the opportunity to review and approve the**

**chosen materials for this development. Some residents have asked for a complete redesign and comment on traffic impact and air quality issues.**

Response

Following objection the applicants have formally withdrawn their request to amend the cladding materials previously approved and this no longer forms part of their request for a Non Material Amendment approval.

- 5.6 On the other matters it should be noted that officers were given delegation by the Planning and Rights of Way Panel to approve the chosen materials for this development, in line with the schedule of materials listed on the approved drawings that were consulted on ahead of the application being considered and that formed part of the officer presentation at the previous Panel meeting. These approved plans list profile steel cladding (in greens and grey) as the principal material for these buildings and that will not change. As it currently stands the applicants will retain the approved timber cladding and brickwork, but they are entitled to seek further NMAs separately should they wish.
- 5.7 The opportunity to formally comment on the details of the scheme – namely the quantum, location, appearance and the highways impact of the development has passed with the approval of planning permission 14/01911/FUL.

Consultation Response

**5.8 SCC Senior Flood Risk Management Officer – No objection**

The principle design criteria of the approved surface water drainage system ref 14/01911/FUL have been carried through to the proposed amended system submitted as part of this NMA application. The proposed amendments are limited to the layout and levels of the drainage components, size of the attenuation storage tanks (upsized) and permeable paving arrangement. Given this I have no objection to the proposed amendments to the SuDS system.

**5.9 Southern Water – No objection**

*(to 16/01644/DIS showing the same drainage layout as 16/02201/NMA)*

The discharge of foul sewerage to the public sewers via use of private pumping station should not exceed the agreed peak flow rate. An approval for connection to the public foul sewer should be obtained under Section 106 of the Water Industry Act. An approval for connection to the public surface water sewer should be obtained under Section 106 of the Water Industry Act. The peak run off rate discharged to the public sewer should not exceed the existing levels. Any further flows shall be accommodated by use of attenuation facilities. The evidence of the existing surface water flows contributing to the public network shall be provided during S106 application process.

**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 drainage strategy for the scheme and the proposed amendments to the finished floor level and their cumulative impact upon their context and the amenity of its neighbours.

## 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.
- 6.3 No definition of what constitutes a “Non-Material Amendment” is provided. The National Planning Policy Guidance 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 finished floor level with the buildings set lower into the site by 1 metre (Unit 1), 80cm (Units 2 and 3) and reduction in overall height therefrom.**

As a consequence of the change to the drainage strategy (discussed at (f) below) the building’s finished floor level can be reduced by between 80cm and 1 metre. This change assists in reducing the height of the buildings and is, therefore, regarded as a non-material change that does not need a fresh planning application. As an aside the applicants have suggested that a lower site level has *‘the additional benefit that an extra 67,500 tonnes of material does not have to be bought to site equating to over 5000 vehicles being removed from the construction process and c. 18 weeks of construction’*. This cannot be verified easily but it is, nevertheless, recommended that no objection is raised.

**b) A reduction to the approved eaves heights by 1 metre (Unit 1), 60cm (Unit 2) and 1.7 metres (Unit 3).**

This requested change has been withdrawn following validation.

**c) Overall a reduction in the height of the approved buildings by 1 metre (Unit 1 to 18.75m AOD), 1.95 metres (Unit 2 to 17.8m AOD) and 1 metre (Unit 3 to 19.76m AOD).**

This requested change has been withdrawn following validation.

**d) A reduction in the number of loading bays serving Unit 3 (North Elevation) from 18 to 7.**

This requested change has been withdrawn following validation. A second NMA application has been submitted for this change and is also for consideration by this Panel (see 07/00154/NMA).

**e) Amend the agree external materials**

This requested change has been withdrawn following validation.

**f) An amendment to the design of the proposed drainage layout as shown on approved RPS drawing 17798\_0300 Rev B.**

This proposed change has proven to be the most contentious amongst third party objectors. Quite rightly neighbours to the development seek assurances that any change to the agreed drainage scheme will not put their property at additional risk from flooding. The Panel need to consider two separate points before making a decision; firstly is the proposed drainage strategy safe and fit for purpose and, secondly, is the revised design significantly different to that originally approved thereby requiring a fresh planning application.

In terms of the revised scheme's ability to cope with the site's drainage requirements officers have consulted with Southern Water and the Council's own Senior Flood Risk Management Officer. These are the same consultees that advised that the original drainage scheme (as shown on approved drawing 17798\_0300 Rev B) is acceptable. They both raise no objection to the revised drainage scheme thereby concluding that the revision does not increase the risk of flooding to neighbour land and/or property. In response to specific questions raised by ward Cllr Pope the Council's Senior Flood Risk Management Officer has confirmed the following:

*'The NMA will not increase flood risk. The fundamentals of the updated drainage plan are no different to those previously agreed (Drawing 17798\_0300 Rev B (Proposed drainage layout) is listed in the schedule of drawings/plans which the development should be implemented in respect of in relation to the planning approval for 14/01911/FUL). The proposed amendments to the updated drainage plan are limited to the layout and levels of the drainage components, size of the attenuation storage tanks (upsized) and permeable paving arrangement.*

*For clarity I have provided an overview of the distinction between the different sources of flooding that residents are concerned about in relation to this site and the mitigation measures that will be implemented as part of the development to ensure flood risk is not increased.*

*Part of the site (and surrounding areas) are at risk from tidal flooding at present as the River Test at this location is tidally influenced. The risk of tidal flooding to the development site has been mitigated through raising the finished floor levels of the proposed buildings above the design flood event (1 in 200 year tidal flood event) over the assumed lifetime of the development (60 years). Part of the adjacent residential area is already at risk from tidal flooding but the development will not result in an increase to this risk. This is because a tidal system is different to a fluvial system. Displacement of tidal flood water by a structure (be it a flood defence, building etc.) will have minimal impact on the overall flood level in an area (matter of millimetres, if even that) as this is dictated by the tide level relative to the ground level. Displacement of flood water is a concern in relation to fluvial flooding as any water displaced from the functional floodplain will most likely result in an increase in water level locally, however, this is not the dominant flood source in this location. It is important to note that the risk of flooding to this area will increase over time as a result of projected sea level rise.*

*The concern regarding increased flood risk as a result of introducing impermeable areas on the site is associated with surface water runoff. The*

*impact on surface water runoff from the site has been mitigated through the introduction of the proposed sustainable drainage system which provides areas of storage for surface water in the form of below ground attenuation tanks and permeable paving with peak flow rates from the site limited to 68l/s. The drainage system has been designed to manage surface water for rainfall events up to and including the 1 in 100 year rainfall event plus 20% allowance for climate change which is the current standard technical requirement.*

*The link between these two different sources (surface water & tidal) are when surface water cannot discharge due to the level of the tide at the outfall, known as tide locking. This has been mitigated for by the use of a sustainable drainage system where surface water can be stored on the site below ground until the outfall is no longer tide locked'.*

- 6.5 This response also answers the second question in that the drainage solution is based on the agreed principles. It is the below ground design that has changed meaning that the impact of the change is neither physical (in terms of visual appearance) nor operational (in terms of reducing capacity). It is recommended that no objection is, therefore, raised.

## **7.0 Summary**

- 7.1 The proposed changes to the approved buildings are considered to maintain an acceptable scheme for the site and the drainage alterations have been assessed as acceptable and within the spirit of the approved drainage solution. 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 21.02.17 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 as updated by the revised plans approved under 16/02201/NMA, unless otherwise agreed in writing with the Local Planning Authority.

Reason:

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