

BELMONT STREET JV LLP

FORMER CHARLIE RATCHFORD CENTRE, BELMONT ST

ADVICE ON SECTION 96A TOWN AND COUNTRY PLANNING ACT 1990

1. Introduction and background

1.1 Belmont Street JV LLP (the “**Client**”) has asked us to advise on the lawful parameters of Section 96A of the Town and Country Planning Act 1990 (the “**1990 Act**”), in view of anticipated changes to a number of elements to the development at the Former Charlie Ratchford Centre, Belmont St (the “**Site**”).

1.2 Full planning permission (ref 2020/5063/P) for the redevelopment of the Site was granted by Camden Council (the “**Council**”) on 5 November 2021 (the “**Planning Permission**”). The description of development is as follows:

*“Redevelopment of site including demolition of existing buildings and erection of a building up to 10 storeys in height for to provide self-contained residential flats (Use Class C3) and associated works” (the “**Development**”).*

1.3 The Client wishes to amend the Development authorised by the Planning Permission and has submitted an application under S96A of the 1990 Act to make non-material amendments to the Planning Permission to secure approval to those amendments. An application has been submitted which seeks the following amendments:

*“Introduction of gas kiosk, amendments to cycle and refuse stores, amendments to external stairs and entrance soffits, amendments to windows, doors and balconies, introduction of concierge, alteration of soldier course, removal of green roof, stair over run, flank windows and lift, reduction in parapet height and new man-safe system, adjustment of ground floor level, introduction of bulkheads and external alterations including new rainwater outlets, masonry divides, columns, vents, louvres, risers and soffits.” (the “**Proposed Amendments**”).*

1.4 Full details of the Proposed Amendments and the reasons for these are given in the cover letter submitted with the application.

1.5 We have been asked to advise whether the Proposed Amendments could reasonably be regarded as non-material by a local planning authority and therefore considered as falling within the scope of section 96A of the 1990 Act and capable of being secured by way of an application for a non-material amendment under that legislative provision.

2. Legal Principles

2.1 Section 96A of the 1990 Act provides:

96A Power to make non-material changes to planning permission or permission in principle

(1) A local planning authority may make a change to any planning permission, or any permission in principle (granted following an application to the authority), relating to land in their area if they are satisfied that the change is not material.

(2) In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under

this section, on the planning permission or permission in principle as originally granted. [...]

2.2 The Government's Planning Practice Guidance states that:

There is no statutory definition of 'non-material'. 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 local planning authority 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.

Paragraph: 002 Reference ID: 17a-002-20140306

2.3 Section 96A therefore empowers a local planning authority to make any change to a planning permission as long as it is satisfied "that the change is not material" (section 96A(1)). The section 96A power extends to amendments to the description of development, changes to approved documents and amendments to conditions, including the imposition of new conditions or removal of existing conditions.

2.4 The materiality of the proposed change must be assessed having regard to the existing permission as a whole, including the effect of any existing conditions and whether the proposed change "materially" affects the planning merits or otherwise of the scheme. A change is less likely to be material in the context of a large scale development in the sense that the planning merits of the scheme are less likely to be materially affected by the change. In deciding whether the change is material, the local planning authority must take into consideration any previous changes under section 96A¹. We understand that no non-material amendments have been approved to date in relation to the Planning Permission.

3. The Proposed Amendments

3.1 The main changes sought to the Planning Permission are listed below. We have reviewed these alongside the relevant drawings evidencing the Proposed Amendments. Our analysis of each proposed change is contained in blue below.

3.2 Our overall analysis of the collective impact of the changes in terms of the materiality of the amendments is contained at paragraph 3.2 of this note.

a) *Amend the location of the gas meter kiosk on the approved landscaping plans from Block C to the landscaping to the south of the Development as there is insufficient space in the original proposed location. We understand that the size of the gas meter kiosk will remain the same and this is simply a change to the location of the kiosk within the landscaping.*

b) *Amend the cycle stores to ensure the cycle stores are of a sufficient size so as to comply with relevant policy compliant cycle requirements and numbers (as stated in the Design & Access Statement submitted with the planning application). This amendment does not result in a change to the number of cycles that can utilise the stores but appears to be a very minor amendment to ensure the cycle numbers approved under the Planning Permission can be adequately stored.*

¹ S.96A(2) TCPA 1990

- c) *Amend the location of refuse stores and the bin sizes. This amendment is required in order to comply with the refuse strategy set out in the Design & Access Statement submitted with the application for the Planning Permission and to ensure the bin refuse stores are compliant with building regulations regarding M4(3) access.*
- d) *Amendment to approved drawings to provide for the inclusion of a rainwater outlet location which is compliant with Condition 7 of the Planning Permission. The approved plans did not previously include any rainwater outlets or rainwater pipes on the elevation. We understand that this minor amendment is therefore required in order to build out the approved scheme as intended.*
- e) *In line with the change in d), amendments are required to the masonry divides between private balconies to conceal the proposed rainwater pipes. Again, we understand that this update is required in order to build out the approved scheme as intended.*
- f) *Inclusion of columns not previously shown on the approved elevations. We understand these columns are required to support the external decking and courtyard walkways but were not included in the original approved drawings. An update to the approved plans is required in order to build out the approved decking / courtyard walkways as intended.*
- g) *As a result of the new columns provided for in (f) an increased envelope to the external staircase is required. We understand this is the resolution of a minor design issue required in order to build out the scheme as approved.*
- h) *Inclusion of columns not previously shown on elevations. We understand that the approved plans show columns on the floor plans but not on the approved elevations, this is an error and the elevations are therefore required to be updated in order to show the columns as already approved on the floor plans. These columns are necessary in order to support the external decking and courtyard walkways which were both approved under the Planning Permission.*
- i) *Increase of the depth of the walkway as recessed bulkheads are required on walkways in order to conceal the high-level services. We understand that this is a minor design amendment that was not included in the original plans in error, and would have little impact on the final form of the scheme in planning terms.*
- j) *Removal of stair overrun to block B as an alternative access strategy to the roof is proposed. We understand that this amendment would not impact the ability to access the roof as an alternative access is instead provided.*
- k) *Reduction of the depth of the stacked soldier course to the top floor windows. We understand that this will not materially impact the daylight received by the units on these floors or the layout of such units.*
- l) *Introduction of concierge on ground floor of block B. We are advised that this will not result in changes to the size of any residential units but is a reconfiguration of the lobby space. This is a minor amendment to the layout of the lobby space and would not materially impact the final form of the approved development.*
- m) *Omission of third minor refuse store on Building A to ensure that the neighbouring cycle store complies with the relevant requirements (see (b) above). The refuse store already approved pursuant to the Planning Permission will be re-provided within the other major refuse stores in Building A which is just a few metres away from the original position. The number of refuse stores will therefore not be impacted.*

- n) *The external risers to Block A and C are proposed to be subdivided, and a new door installed to the associated plant space on external walkways in order to comply with the M&E access requirements. We are advised that this is an amendment required for regulatory compliance purposes to ensure the separation of water and electrical services, it will not impact the approved provision of plant itself.*
- o) *Introduction of brick soffit and glazed curtain wall head lowered in all entrances and service void in order to conceal services and to conceal the proposed rainwater outlets. As with (d) above, we understand that the approved plans did not previously include any rainwater outlets or rainwater pipes on the elevation, this minor amendment is therefore required in order to accommodate the changes proposed in (d).*
- p) *Introduction of double louvred doors to the plant room of building B is required in order to align with the M&E strategy and 'free area' requirement and avoid louvres along the principal external facade. We are advised that this amendment is required for regulatory compliance purposes, and we have been informed that this will not impact the approved form of the plant itself but rather just the access to this.*
- q) *Adjustment to ground floor internal finished floor level to ensure that internal levels match external levels. We understand that these levels were omitted in error from the approved drawings and are required in order to build out the Development as intended.*
- r) *Amendments to balcony openings to top floor of Blocks A and C. We understand that this is required as the approved drawings did not take into account roof slab levels in relation to the openings. This is therefore intended to correct an error in the approved drawings.*
- s) *Increase in size of the door to the substation following information issued by the energy supplier. We are advised that this amendment is required for regulatory compliance purposes and has been requested by the energy supplier, it will not impact the approved form of the plant itself but rather the access to this.*
- t) *Adjustment of external elevations so that the brick soldier course on window sills no longer aligns with stone banding. We understand that this amendment is required as a result of Building Regulations feedback and NHBC requirements to accommodate additional thickness between the floors to provide one hour fire break requirements, the changes also reflect inaccuracies in the original planning drawings that did not reflect actual brick sizes.*
- u) *Reduction in height of the brick parapets and consequent introduction of safeguarding measures such as a man-safe balustrade. We understand that these amendments will not be easily visible and will not materially change the approved design.*
- v) *Omission of lift to Block C. We understand that the removal of the lift affects Block C only and will not impact the access strategy, fire strategy or evacuation strategy for the Development. Whilst this will result in the total internal floorspace of some of the residential units changing, it will not result in any amendment to the size mix of the units by reference to the numbers of bedrooms in those units.*
- w) *Removal of flank windows on Block B. We understand that this amendment is required in order to address overheating issues, the removal of the windows does not affect daylight and sunlight levels within the homes.*

- 3.3 We understand that an amendment to the green roofing was previously included in the application but the intention is that this will be removed and dealt with under a planning condition.
- 3.4 On our analysis, on an individual basis all of the amendments proposed under the section 96A application could be reasonably be regarded as non-material by a local planning authority and in our view any third party challenge to a decision to this effect would be very unlikely to be successful. It is also our view that on a cumulative basis, the above amendments could reasonably be considered to be non-material by a local planning authority in terms of their impact on the final Development as permitted under the Planning Permission. Indeed, the Proposed Amendments largely fall within the category of being required in order to resolve minor design issues and facilitate the build out of the Development as originally intended and as already approved under the Planning Permission.
- 3.5 Of course, the decision as to whether the changes fall within the scope of section 96A of the Act is a matter of planning judgement for the Council. However, we consider there to be a reasonable basis for the Council to conclude that all of the Proposed Amendments can be dealt with via a section 96A application.

4. **Conclusion**

- 4.1 Whether the Proposed Amendments individually or cumulatively would materially amend the Development as authorised by the Planning Permission, is a matter of planning judgement for the Council. However, in our opinion the Council could reasonably conclude that the Proposed Amendments are non-material and fall within the scope of section 96A, should it be so minded. It should be noted that there are no previous non-material amendments approved by the Council that need to be considered together with the Proposed Amendments; and further that the following material elements of the Development would remain unchanged:
- there is no reduction to the number of units provided as a result of the Proposed Amendments and no amendment to the size mix of those units;
 - the design and layout of the units is not compromised as a result of the Proposed Amendments;
 - the amended scheme would still fall within the description of development on the original decision notice which would therefore remain unchanged and would still comply with relevant planning policy;
 - the Proposed Amendments have no impact on the overall floorspace permitted under the Planning Permission;
 - the Proposed Amendments would have no material impact on any neighbours; and
 - the Proposed Amendments would not affect the design quality owing to for example a loss of detail or lower quality materials that would affect visual amenity.
- 4.2 The majority of the Proposed Amendments are minor design amendments that are largely intended to resolve errors, ensure consistency and reflect what was already intended and approved by the Planning Permission.
- 4.3 The Council's judgement as to whether the changes amount to a material amendment would only be challengeable on *Wednesbury* rationality grounds. We consider that there is sufficient basis upon which the Council can rationally conclude that the changes are not material.

This advice is intended for the benefit of the Client only and no other person may rely on it.

Town Legal LLP

24 January 2023