

Delegated Report		Analysis sheet	Expiry Date:	15/05/2015
(Members Briefing)		N/A	Consultation Expiry Date:	N/A
Officer			Application Number(s)	
Jennifer Walsh			2015/1676/P	
Application Address			Drawing Numbers	
Kings Cross Central - Main site Land between Euston Road, St Pancras Station, Midland Main Line, The New Channel Tunnel Rail Link, York Way and Kings Cross Station.			Please refer to draft decision notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal				
Non-material amendment to increase residential floorspace granted under application 2004/2307/P, 22/12/2006, for a comprehensive, phased, mixed-use development of former railway lands within the King's Cross Opportunity Area, as set out in the Revised Development Specification. The amendments include a proposed increase to the maximum amount of residential floorspace (condition 35) that may be developed, amendments to the maximum amount of residential floorspace that may be developed within the relevant development zones north of the Regent's Canal (condition 36); and amendments to the affordable housing floorspace figures and the social rented housing floorspace figures in Condition 42 b) and c).				
Recommendation:		Approve Non Material Amendment		
Application Type:		Non Material Amendments		

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	00	No. of responses	01	No. of objections	01
			No. Electronic	00		
Summary of consultation responses:	<p>Councillor Sian Berry sent a letter in via Leigh Day dated 8th May with concerns in relation to the decision to treat Application 2015/1676/P as a non-material amendment.</p> <p>“It would appear that the Council has erred in law in treating the proposed amendments as non-material. The reduction in floorspace and social rented housing units is significant. This is particularly so when viewed in the context of the original planning application. It is our view that the amendments are clearly material and a viability assessment is required before any decision on the application can be made.”</p> <p>This concern was also raised in a Letter before action sent under the judicial review pre action protocol received on 3rd June 2015.</p> <p>“The Claimant is also aware that an application has been made under s.96A to make “non-material” amendments to the Outline Permission.”</p> <p>“She has concerns as to how it can be possible that such a large alteration in the Outline Permission (particularly having regard to the importance which affordable housing provision had to the grant of planning permission in 2006) can be dealt with under this procedure.”</p> <p>A further letter was sent to the Council dated 8th June 2015 with:</p> <p>Concerns that the alterations to the floorspace, included within this application are material. “The Council’s position appears to be that if the variation sought is better for the Council it cannot be “materially different”. That is clearly a non-squitter. Such a significant alteration to one of the key provisions of the planning agreement is clearly a material one. It is, with respect, completely irrelevant to the question of materiality whether the new obligation achieves a better or worse outcome – the test in the Scheme of Delegation is concerned with whether (or by how much) the new obligation is <u>different</u>.”</p> <p>Officers response: Please refer to section 3.0</p>					
CAAC/Local groups comments:	None required					
Site Description						
This application relates to the Kings Cross Central site. King’s Cross Central is bound to the east by King’s Cross Station and York Way, to the north by the railway lines used by High Speed 1, to the west by St Pancras International, and to the south by Euston Road. A large element of the site is located within the Regents Canal Conservation Area.						
Relevant History						
<p>2004/2307/P: Outline application for a comprehensive, phased, mixed-use development of former railway lands within the King's Cross Opportunity Area, as set out in the Revised Development Specification. The development comprises business and employment uses within the B1 use class; residential uses (including student accommodation), serviced apartments and hotels; shopping, food and drink and financial and professional services within the A1, A2, A3, A4 and A5 use classes; the full range of community, health, education, cultural, assembly and leisure facilities, within the D1 and D2 use classes; night clubs; multi storey and other car parking; re-erection of the linked triplet of gas holder guide frames to enclose new residential and other development, on the site of the Western Goods Shed; re-erection of the guide frame for gas holder no 8, alongside the re-erected triplet, to enclose new play facilities and open space; relocation of an existing district gas governor; works of alteration to other existing buildings and structures, to facilitate their refurbishment for specified uses; new streets and other means of access and circulation; landscaping including open space; new bridge crossings and other works along the Regent's Canal; the re-profiling of site levels; and other supporting infrastructure works and facilities (R1). Approved 22nd December 2006</p> <p>2012/0669/P: Non-material amendment to outline planning permission granted 22/12/06 (2004/2307/P) for a comprehensive, phased, mixed-use development of former railway lands within the King's Cross Opportunity Area to insert an additional condition to secure the submission and approval of details in relation to the use of car parking spaces within the development (with the exception of the multi-storey car park). The materiality of the additional condition in relation to the car park, (to add a new condition to ensure the full independence of the multi- storey car park from condition 49) was taken into account when assessing this application in line with Section 96A (2).</p> <p>A Deed of Variation to the original Section 106 legal agreement to secure changes to the affordable housing provision clause NN and removal of clause MM. (Signed 28th April 2015).</p>						

Further changes to the baseline mix were also included within the application for T1 (presented to committee on 22nd March 2013). In T1 12 Shared Ownership and 22 affordable rent units were provided in lieu of 34 social rented units. There was no change to the overall T1 affordable housing square footage and the changes came about due to the changes in the funding regime. These alterations to the figures were made under clause 2.3 which allows for agreed amendments to the Baseline Mix therefore no Deed of Variation was required.

A Deed of Variation to the original Section 106 legal agreement in relation to Plot P1 which sat alongside a reserved matters application was presented to committee on 29th November 2012. A key component of Development Zone P as prescribed in the outline permission was the provision of a 2-form entry primary school to serve the proposed residential uses of the development. The reserved matters application (2012/4741/P) sought to vary this provision by the additional inclusion of new premises for the Frank Barnes School for Deaf Children. Furthermore in order to facilitate this, a variation to the residential mix was agreed, substituting additional school floorspace for an equivalent amount of affordable housing from the Outline permission total. Prior to this application, reserved matters approvals made changes to the affordable housing numbers, reducing 750 units to 707 units as a result of requests from the Council reflecting changes in demand for housing. However, despite this reduction in unit numbers, the total amount of affordable housing floor space remained the same. In order to compensate Kings Cross Central Limited Partnership for the additional floor space required for the schools, this application agreed further changes. The reserved matters planning submission for the P1 building therefore was made alongside a request for a S.106 variation which detailed the requirement for the delivery of the new schools development and changes to the housing mix. This reserved matters application adjusted the site wide total to 699 units. (Signed 7th December 2012)

Relevant policies

National Planning Policy Framework (2012)

The London Plan March 2015, consolidated with alterations since 2011

Local Development Framework (2010)

- CS6 Providing quality homes
- CS19 Delivering and monitoring the Core Strategy
- DP1 Mixed use development
- DP2 Making full use of Camden's capacity for housing
- DP3 Contributions to the supply of affordable housing
- DP4 Minimising the loss of affordable housing
- DP5 Homes of different sizes
- DP6 Lifetime homes and wheelchair homes
- DP24 Securing high quality design
- DP26 Managing the impact of development on occupiers and neighbours

Camden Planning Guidance 2013

Assessment

1.0 Proposal

1.1 This application is for a non-material amendment to the outline planning permission dated 22nd December 2006 (reference 2004/2307/P) which details the mixed use development of former railway lands within the King's Cross Central development.

1.2 The application seeks amendments to the following elements of the original planning application:

- a. Amendments to Table 1 (referenced in Condition 35) in respect to the maximum amount of residential floorspace that may be developed

Table 1

Residential	Current	Proposed
South of the Regent's Canal	2,200	2,200
North of the Regent's Canal	171,275	193,800
Total	173,475	196,000

- b. Amendments to Annex B (referenced in Condition 36) in respect to the maximum amount of residential floorspace that may be developed within the relevant development zones north of the Regent's Canal;

Annex B

Residential/Zone	Current	Proposed
Zones G and H	n/a	n/a
Zones I and M	n/a	n/a
Zone N	17,400	17,310
Zones J, K and Q	14,500	15,015
Zone L	n/a	n/a
Zones P and S	65,375	66,800
Zone R	46,000	54,000
Zone T	28,000	40,675
Total	171,275	193,800

- c. Amendments to the affordable housing floorspace and the social rented housing floorspace figures in Condition 42 (b) and (c), to reflect the revision to the affordable housing numbers set out in the Deed of Variation to the original Section 106 agreement, signed 28th April 2015.

1.3 Condition 42 reads as follows:

Residential Floor space

Unless otherwise agreed in writing by the local planning authority the development constructed and used pursuant to this permission shall provide when completed:

- a) A minimum of 137,200sqm gross external area of residential floorspace, including market housing, affordable housing; and
- b) A minimum of 53,670sqm gross external area of affordable housing floorspace (to deliver 42,936sqm net internal floor area); and
- c) A minimum 41,175sqm gross external area of social rented housing floorspace (to deliver 32,940sqm net internal floor area).

Condition 42 (b) and (c) are proposed to be amended to read as follows:

- b) A minimum of 46,976sqm gross external area of affordable housing floorspace (to deliver 37,581sqm net internal floor area) and
- c) A minimum 39,568sqm gross external area of social rented housing floorspace (to deliver 31,655sqm net internal floor area)

In tabular form

Condition 42 (floorspace figures only)	Current Gross External Area (sqm)	Proposed Gross External Area (sqm)
a)	137,200	137,200
b)	53,670	46,976
c)	41,175	39,568

1.4 The maximum overall floorspace figures in Conditions 33 (sitewide) and 34 (north and south of the Regent's Canal) and the maximum number of residential units and minimum level of residential floorspace in Condition 39 would remain unchanged.

2.0 Justification

2.1 There is a number of contributing factors as to why there is a need for more residential floorspace and the developer has submitted justification explaining how and why there is a need to increase the floorspace figures across this site.

2.2 It is over 8 years since the original planning application was worked up and agreed and standards have changed over these years. As such, in line with updated standards the developer is delivering larger homes as compared to the assumptions that underpinned the outline application. The residential floorspace figures in the Outline Planning Permission assumed a net to gross ratio (*net is the saleable/lettable area and gross includes communal circulation etc*) of 80% (or 0.8). This should be read in conjunction with the minimum residential floorspace figure of 137,200m² GEA (Condition 39) which equates to less than 65m² net per apartment. Due to the standards now in place (in relation to waste, recycling and cycling) and designing units for Lifetime Homes as well as highly sustainable homes, these changes have resulted in pressures to increase the size of many of the smaller apartments. As such, each unit has increased in size slightly therefore 'using up' a larger amount of net floorspace per Zone than previously was envisaged. This is shared across both the market units and the affordable units. For example, the 34 affordable units about to be delivered in the Tapestry development are required to deliver a minimum of 2,052m² net. The minimum areas for this block, as agreed in June 2012 (please see relevant history) are as follows:

2.3 Building T1 (Tapestry) – area breakdown of 34 affordable units (letter from Camden dated 29 June 2012)

- 8 x 1-bed affordable rent units @ 48sqm net internal floor area
- 12 x 2-bed affordable rent units @ 68sqm net internal floor area
- 2 x 3-bed affordable rent units @ 84sqm net internal floor area
- 6 x 1-bed shared ownership units @ 46sqm net internal floor area
- 6 x 2-bed affordable rent units @ 68sqm net internal floor area

2.4 In practice, some 2,278m² net will be delivered. Therefore, King's Cross buildings are currently delivering more net affordable floorspace than the minimum required.

2.5 Hand in hand with these considerations is the practical reality of implementing the Outline Planning Permission with its overlapping requirements including massing parameters and design guidelines, as well as maintaining aspect and views which all impact upon the net:gross ratios across the site. Each block proposed is individually designed to fit within the parameters, and the built form is carefully considered throughout the planning process. This leads to set backs and terraces in many instances as well as other features within the detailed design which in turn reduce the efficiency in terms of net:gross.

2.6 This also sits alongside the preferred internal layouts of the buildings. In line with planning policy, each individual development within a zone which comes forward needs to provide an acceptable standard of accommodation in terms of internal arrangements, dwelling and room sizes and amenity space. Such requirements have an impact on efficiency in terms of net:gross as applications are encouraged to incorporate a high number of high quality units which are dual aspect units rather than single aspect units off long corridors and less units per core.

2.7 Some additions and amendments in terms of the diversity of the estate and its residential offer have come about since the outline permission was granted, and one such change was the provision of Student Housing within plots T5 and T6 (Please refer to relevant history). Whilst there was always an element of student housing sought to be developed on the site, there has been more student housing floorspace provided than was previously anticipated at Outline stage.

2.8 Within the outline permission, there was no cap placed on the amount of student housing floorspace, yet there was a cap placed, through condition 41, on the number of on student units permitted. Condition 39 sets the maximum number of residential units permitted as 1,700, however, that figure specifically excludes student housing. Therefore, whilst providing

student housing reduces the quantity of residential floorspace (GEA), student housing does not count as 'residential units'.

2.9 It is accepted, whilst assessing this application that there is an inconsistency within the original planning conditions placed on the outline application. As there is no cap on student floorspace, it is taken out of the total residential floorspace across the site, controlled via Condition 39, and therefore there has been a reduction in the residential floorspace, whilst no additional student housing units over the cap set out in Condition 41 have been provided.

2.10 In detail, building T6 has been completed and consists of 236 student units, comprising 669 bedrooms (made up of 95 studios and 141 cluster units) within a building of 14 to 27 storeys. The total GEA of the building is 22,252m² less 1,013m² GEA for infrastructure and utilities. Although building T6 was approved under a full planning permission application (as it exceeded the height limit on the approved outline parameter plans), it is tied into the original Outline Permission and related Section 106 Agreement (22 December 2006) by way of two Deeds of Variation dated 11 January 2011 and 28 June 2013. The Deeds of Variation require that a defined level of floorspace delivered within the building should count towards (i) the site wide floorspace totals under Condition 14 (phasing in 3 year periods) of the Outline Planning Permission, and (ii) the relevant thresholds and triggers under the original Section 106 Agreement.

2.11 Building T5 is a ground plus 10 storey building which will provide 60 units of 198 student bedrooms (comprising 24 cluster units delivering 162 en-suite study bedrooms with shared kitchens, 33 studios and three 1-bed units). It is being delivered in partnership within the Aga Khan Development Network and will provide a total floorspace of 8,964m² GEA comprising 247m² retail and 8,717m² GEA of student housing.

2.12 The benefits of the additional student housing across the King's Cross Central site were well considered when each application came forward and were assessed. It is also noted that in line with Camden's Development Policies Student housing does not attract the requirement to provide an element of affordable housing. The proposals in this instance, were considered appropriate in this location in conjunction with planning policy and complemented the academic institutions both already on the site and proposed.

2.13 In relation to Phase 2 affordable housing and due to different factors including the changes that have taken place in the grant funding regime for affordable housing and the economy since the original application was approved, there were some revisions which needed to be considered for the delivery of the remaining affordable housing units across the site, which will provide the residual requirement on the site.

2.14 The Section 106 signed in 2006 in relation to the outline application allowed the developer to invoke a 'cascade' mechanism that would result in only half the target number of general needs units being delivered, i.e. 74 rather than 148. Whilst it is accepted that the option approved was less favourable than the initial baseline mix, in the current circumstances, the revised mix was considered more favourable than resorting to the 'cascade' mechanism on this site.

2.15 The Deed of Variation, signed 28th April 2015 was considered to be acceptable in planning terms as it would meet the planning purpose of the original obligation in the 2006 s106 agreement; namely to deliver on site affordable housing which cannot be delivered as originally intended. The mix of the affordable housing was considered to be acceptable in this instance due to the quality of the provision secured in comparison to the default position of the cascade.

2.16 Within the 2006 outline planning permission condition 42 relates to Residential Floorspace figures. The wording of this condition states 'Unless otherwise agreed in writing by the local planning authority the development constructed and used pursuant to this permission shall provide when completed'. Therefore it was not intended that the floorspace figures should be treated as immutable.

2.17 Condition 42 states the development constructed and used pursuant to this permission shall provide when completed 'A minimum of 137,200sqm gross external area of residential floorspace, including market housing, affordable housing'. This figure is not to be changed. Included within Table 1 (referenced in Condition 35) an increase in respect of the maximum amount of residential floorspace that may be developed is proposed to be increased by 22,525sqm. Within the assessment of this application, a reduction to the affordable housing floorspace is proposed as justified previously, yet no alteration to the minimum total residential floorspace across the whole site is included. It is proposed to reduce the affordable housing floorspace figures by 5355sqm (9.9%) of net internal area of Affordable housing and 1285sqm (3.9%) of social rented floorspace. The amendments proposed to the floorspace would result in an overall affordable housing provision of 24% across the site. Having regard to the permission as a whole, the extent of these changes is a minor and not one which would give rise to any requirement for consultation. It is considered to result in immaterial changes to the original permission even when assessed cumulatively with the effect of other previous amendments.

3.0 Non Material Amendment (NMA)

3.1 Within the National Planning Policy Guidance on Non Material Amendments, there is no statutory definition of 'non material'. It states that "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". Section 96A itself states that "in deciding whether a change is material the Local Planning Authority (LPA) must have regard to the effect of the change". The Local Planning Authority must have regard to the effect of the changes proposed and in the context of the overall scheme. Section 96A (2) states that '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 as originally granted'. A Non material amendment

for the site, in relation to car parking, has previously been approved on this site. The application and the effect of the change has been taken into account when considering this application.

3.2 One example situation in which changes cannot be considered NMAs is where they would trigger the need for an Environmental Impact Assessment (EIA) or for a revised EIA. Within this application, all the proposals are within the EIA parameters and therefore in this regard, the application can be considered as a NMA.

3.3 Under the Town and Country Planning (Development Management Procedure) (England) Order 2010 there is no requirement for the Council to formally consult on Non Material Amendment applications. The Planning Authority has the discretion in whether and how they choose to inform other interested parties. As previously noted, within the original planning permission, condition 42 states that 'unless otherwise agreed in writing by the local planning authority', therefore the condition as attached to the 2006 application allows for flexibility in relation to the floorspace figures across the site. In this instance, the Council is satisfied that due to the scale and effect of the non material amendment in consideration of the scheme as a whole, there is no need to conduct any publicity on the application as whilst the proposed changes are made to important conditions their scale and effect is minor and not material when considered within the context of the permission as a whole and even taking into account the cumulative effect with other NMAs previously made.

3.3 The proposals included within this application must be considered against the whole Kings Cross Central scheme. Although the proposed changes concern an increase in the overall residential floorspace permitted on site and a lowering of the minimum amount of affordable housing floorspace, there is no change to the number of residential units permitted to be delivered site wide and no change to any of the parameter plans or the Revised Development Specification.

3.4 The description of development included within the Outline Planning Permission is not proposed to be changed and now is the form and massing which is permitted by the parameter plans. It is also acknowledged and accepted that the overall number of residential units will not change. However, due to the justification outlined above, the net:gross ratios estimated as required to deliver 1,700 residential units across the site is no longer sufficient.

3.5 It is therefore considered that having due regard to the effect of the changes proposed in the context of the overall scheme, and given the size of the scheme in this case, the scale of the proposed changes is not material in this specific context and considered acceptable in this instance.

Recommendation: Grant Non Material approval