

**KING'S CROSS CENTRAL**  
**Application for non-material amendment following grant of planning permission**  
**Section 96A TCPA 1990**  
**Supporting Statement**

1. Proposed Non-material Amendment

King's Cross Central General Partner Ltd (KCCGPL) acting on behalf of King's Cross Central Limited Partnership is seeking to make a non-material amendment to the outline planning permission (reference 2004/2307/P) for the King's Central ('KXC') site (the 'Outline Planning Permission'), in relation to the distribution of basement floorspace across the development.

Condition 37 of the Outline Planning Permission permits a maximum of 83,500m<sup>2</sup> GEA of basement floorspace, comprising up to 32,000m<sup>2</sup> GEA to the south of the Regent's Canal and up to 51,000m<sup>2</sup> GEA to the north of the Regent's Canal. Reserved Matters approval has already been granted for 24,765m<sup>2</sup> (GEA) of basement space across the southern part of the site (excluding Zone A) and these approvals have been implemented. There is therefore 7,235m<sup>2</sup> GEA of basement floorspace remaining for Zone A.

Google UK Ltd and KCCGPL have recently submitted a Reserved Matters application for a revised scheme in Development Zone A (ref. 2017/3133/P), in which they are seeking a basement of 11,054m<sup>2</sup> (GEA), thus taking the total for this part of the site over the 32,000m<sup>2</sup> (GEA) permitted under Condition 37.

Consequently, this application seeks to amend the wording of that Condition to enable an increase of up to 4,000m<sup>2</sup> GEA in the basement floorspace permitted in the area to the south of the Regent's Canal and a corresponding decrease to the permitted basement space in the area to the north of the Regent's Canal to facilitate the construction of a larger basement to service the proposed Zone A building. The maximum overall basement floorspace of 83,500m<sup>2</sup> would remain unchanged.

2. Section 96A of the Town and Country Planning Act 1990

Section 96A of the Town and Country Planning Act 1990 (as amended) states;

- (1) A local planning authority may make a change to any planning permission 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 changes made under this section, on the planning permission as originally granted.

The National Planning Practice Guidance ('NPPG') contains guidance on making a non-material amendment to a planning permission. The NPPG explains 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.*"

3. Rationale for Proposed Non-material Amendment

As noted above, Condition 37 of the Outline Planning Permission permits a maximum basement floorspace (GEA) across the KXC development of 83,500m<sup>2</sup>. This currently includes up to 51,500m<sup>2</sup> for the northern part of the site, and 32,000m<sup>2</sup> for the south. The proposed amendment to Condition 37, set out in Schedule 1, does not result in an increase to the total permitted basement floorspace of 83,500m<sup>2</sup> GEA. Rather, it seeks to reapportion the basement floorspace in the northern and southern parts of the

site in order to facilitate the proposed basement in Zone A. Specifically, 4,000m<sup>2</sup> would be transferred from the north to the south to create the following revised totals:

- 36,000m<sup>2</sup> in the area south of the Regent's Canal
- 47,500m<sup>2</sup> in the area north of the Regent's Canal

The design team for Zone A consider it desirable to locate as much plant as possible below ground in order to free up space at roof level for gardens and minimise its visual impact on the facades (for example louvres). Whilst they have sought to optimise spaces within the basement footprint, for example, by incorporating double height spaces in which plant could be 'stacked', they are unable to meet the building's operational requirements within the remaining permitted floorspace for the southern area. Consequently, the revised scheme for the Zone A Building proposes a basement of 11,054m<sup>2</sup> in order to accommodate the necessary servicing and plant. This would bring the total basement floorspace in the south of the site to 35,819m<sup>2</sup>, some 3,819m<sup>2</sup> above the permitted maximum for this area under Condition 37. It is worth noting that five separate buildings, as originally envisaged for Zone A on Parameter Plan KXC005, would be expected to place larger demands on the basement area as they are less likely to benefit from the same efficiencies as a single occupier and therefore would give rise to a similar issue.

KCCGPL has now obtained Reserved Matters approval for, and has completed or is nearing completion on all of the buildings in the southern part of the site. With the exception of the existing buildings of the Great Northern Hotel and German Gym, these are all commercial buildings with retail/food and drink at ground floor. There is no residential floorspace in the south. Excluding Zone A, Reserved Matters approval has been granted for 24,765m<sup>2</sup> of basement floorspace, leaving 7,235 m<sup>2</sup> for the whole of Zone A. The reality of meeting the servicing and plant requirements of commercial occupiers, who tend to use basement areas more intensively than in residential buildings, and the desire to activate facades by relocating uses such as plant, refuse and cycle parking wherever possible within basements, puts this space under significant pressure. Annex B to the Revised Development Specification (which forms part of the Outline Planning Permission) originally envisaged that some of these uses would be above ground, hence the GEA exclusions in the notes to Annex B for plant, refuse and parking. KCCGPL consider that there are wider townscape and architectural benefits by moving these uses away from the façade, however, there are no similar exclusions for basements and therefore the inclusion of these uses to an extent not envisaged at the outline stage puts strain on basement floorspace in the south.

In contrast, the northern part of the site is more mixed with basements forming part of commercial and residential buildings. We have so far sought and gained approval for approximately 23,000m<sup>2</sup> of the 51,500m<sup>2</sup> permitted for the north, with six buildings still to be submitted for Reserved Matters approval. Of these, only four buildings are identified with basements on Parameter Plan KXC 016, namely P2, S3, S4 and S5. This leaves a current allowance of just over 28,000m<sup>2</sup> for the four buildings. However, we do not envisage using all of this, not least because Building S4 cannot build out the full extent of the basement area shown on Parameter Plan KXC 016 owing to the proximity of the Thameslink Tunnels beneath part of the site. KCCGPL anticipates that the combined total basement floorspace is likely to be in the region of 19,500m<sup>2</sup>, which would leave 8,419m<sup>2</sup> of unused basement floorspace in the north once KXC is built out, well above what is required in Zone A.

It is also worth noting the EIA which was submitted as part of the outline planning application and informed the floorspace in Condition 37 and the annual spoil volumes and lorry movements set out in Conditions 64 and 65 which are associated with, among other things, excavating the basements. The Environmental Statement addresses the environmental effects of construction, including the accepted worst-case scenario that may be by caused through excavation or back-filling of building foundations,

utility trenches, basements, public realm levelling, and/or remediation, during the estimated 12-15 year construction of the KXC masterplan.

Lorry movements on the KXC site are well below the figures stated in Conditions 64 and 65, as set out in the Compliance Reports which accompany every Reserved Matters submission. Indeed, the report for the proposed Zone A Building confirms that annual lorry movements for 2017 and 2018 would be 14,832 and 15,337, respectively, and thus below the yearly 31,765 figure set by the conditions (based on 8.5m<sup>3</sup> per lorry).

One benefit of constructing a single large basement box, as is proposed by the current Zone A scheme, is the reduction in the number of vehicle movements required to bring clean spoil back to the site after its excavation. To deliver the approved basement area at lower basement level (LB2) under the previously approved Zone A scheme (ref. 2013/4001/P), a significant area (3,365m<sup>2</sup>) would have to have needed to be excavated and the perimeter sheet piled, and then backfilled to allow the larger upper basement level (LB1) to be built on top. This resulted in a double movement of the spoil. However, by creating one single volume, there is no need to bring back spoil. Based on an area of 3,365m<sup>2</sup> and a 4m slab to slab height, this equates to approximately 13,460m<sup>3</sup>. Based on an assumption of 8.5m<sup>3</sup> of spoil per lorry, this would equate to a reduction of 1,410 lorry movements, roughly a quarter of those approved for the previous Zone A scheme.

#### 4. Assessment of Materiality for the Purposes of Section 96A

In judging the materiality of the proposed amendment we have considered a number of factors, specifically:

- There is no increase to the overall basement floorspace to be provided across the development;
- Only two previous applications for amendments have been submitted under Section 96A. This includes an application in February 2012 (ref. 2012/0669/P) which added Condition 50A to the Outline Planning Permission requiring details of the use of car parking spaces proposed within the development, and a further application in March 2015 (ref. 2015/1676/P) to increase the maximum residential floorspace that may be developed (but not the maximum number of residential units which remained unchanged);
- The proposed amendment does not involve any changes to the approved parameters for the development which are subject to the conditions attached the Outline Planning Permission;
- The effect of the amendment would not give rise to any impact that has not been tested by the EIA at the outline stage.

It is important to bear in mind, as the guidance referred to in Section 2 makes clear, that the materiality of the amendment needs to be addressed in the context of the “overall scheme”. The “overall scheme” for King’s Cross is a comprehensive, phased, mixed use development within the King’s Cross Opportunity Area for a maximum of 713,090m<sup>2</sup> floorspace, plus 83,500m<sup>2</sup> of basement floorspace. In the context of the significant scale of development and the relevant factors listed above, it is considered that the proposed amendment is “non-material” for the purposes of Section 96A of the Town and Country Planning Act 1990 (as amended).

## Schedule 1

### Proposed Non-material Amendment to the Outline Planning Permission

Condition 37 currently reads as follows:

*“The basement floorspace to be constructed in accordance with this permission, and specifically with conditions 33 and 35 shall be constructed in accordance with condition 31(k) above and shall not exceed 83,500 square metres gross external areas in total (comprising up to 32,000 square metres gross external area to the south of the Regent’s Canal and up to 51,500 square metres gross external area to the north of the Regent’s Canal).”*

It is proposed that Condition 37 is amended to read:

*“The basement floorspace to be constructed in accordance with this permission, and specifically with conditions 33 and 35 shall be constructed in accordance with condition 31(k) above and shall not exceed 83,500 square metres gross external areas in total (comprising up to 36,000 square metres gross external area to the south of the Regent’s Canal and up to 47,500 square metres gross external area to the north of the Regent’s Canal).”*