

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 ('KCCLP') is seeking to make a non-material amendment to the amount of three and four bedroom units required by Condition 42A of the outline planning permission (reference 2004/2307/P) for the King's Central ('KXC') site (the 'Outline Planning Permission'). The Outline Planning Permission gives consent for a comprehensive, phased, mixed-use development within the King's Cross Central Opportunity Area for a maximum of 713,090m² GEA floorspace, of which no less than 137,200m² GEA is residential floorspace comprising up to 1,700 residential units.

Condition 42A of the Outline Planning Permission requires that, unless otherwise approved in writing by the local planning authority, the residential accommodation (excluding the student accommodation and the residential home approved as part of Reserved Matters approvals pursuant to the outline permission), shall include not less than 23% of units as three and four bedroom accommodation.

Since the Outline Planning Permission was granted in 2006, the housing market in London has changed considerably and whilst KCCLP continues to see steady sales of its 1 and 2 bedroom apartments, there is significantly less demand for the three and four bedroom open-market apartments which tend to sit at a much higher price point. As illustrated in Section 3 below, there remains a substantial number of unsold 3 and 4 bedroom units in buildings which have been completed or are nearing completion. Consequently, this application seeks an amendment to the wording of Condition 42A to allow for a lower site wide target of 19% of units as three and four bedroom accommodation, to provide some flexibility for the unbuilt open-market housing and possible revisions to the approved schemes for Buildings R3 and R8. The proposed change would not affect the number or mix of affordable units, which is set by a Deed of Variation to the Section 106 Agreement dated 28 April 2015 (the 'Affordable Housing DoV').

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 42A of the Outline Planning Permission requires not less than 23% of residential units (excluding student accommodation and any residential home brought forward as Reserved Matters) as three and four bedroom units. However, there is some flexibility built into the condition which allows alterations to the mix to be agreed in writing by the local planning authority in order to respond to changes to housing needs over the lifetime of the project. KCCLP has always been committed to providing larger apartments across the tenures and has achieved a site wide total of 24.9% in the buildings brought forward for approval to date (see Table 1 below). However, sales of open-market family sized units in particular has become very challenging; a trend which has been observed across developments in London. Consequently, this application seeks to agree a lower percentage of three and four bed accommodation by amending the wording of Condition 42A, thus providing greater flexibility in the delivery of unbuilt open-market units in light of the low demand for the larger apartments.

Projects such as the Plimsoll Building (P1), Gasholders (N1) and Fenman House (R5S) illustrate the challenge. In the Plimsoll Building, which was completed in 2015, 11no. open-market units remain available, all of which are three bedroom apartments. Similarly, in the Gasholders which is due to complete shortly, 31no. of the 47no. open-market apartments with three or more bedrooms remain available, while in Fenman House (due to complete in Q4 of this year), 11no. open-market apartments remain available, of which 8no. are three bedroom units. The pricing of these units has been considered in the context of other developments across central London to ensure they are competitive and to encourage sales, however, housing needs within the open-market sector have changed substantially in Central London locations such as King's Cross since 2006 and the general demand for larger family housing at this price point has dropped.

The original premise behind Condition 42A, was to ensure appropriate provision for housing needs within a comprehensive and sustainable development, to achieve regeneration, integration and good design. Flexing the open-market unit mix within the unbuilt accommodation would enable us to bring forward regeneration, without compromising the other objectives given in the reason for the Condition. King's Cross is already a good example of integration and good design, for example.

The development at King's Cross is now well advanced and KCCLP has received Reserved Matters approval for and has delivered/ is delivering a total of 1229 (739 open-market and 490 affordable) residential units. There are four further residential buildings to be brought forward for Reserved Matters approval, namely F1, S5, S4 and S3, which are expected to deliver 402 units (297 open-market and 105 affordable). Table 1 below shows the total number of open-market and affordable dwellings that have already been approved, the number of three and four bedroom units within those approved buildings and the anticipated distribution of units across the remaining buildings. This assumes no further open-market three/four bed units in F1, S3, S4 or S5, although S3 would make up the outstanding affordable units from the baseline mix, including 26 family size affordable apartments. The table also assumes that the approved mix in buildings R3 and R8 will remain unchanged, resulting in a site-wide average on completion of the development of 20.5%. However, in the context of the challenging market around larger units, KCCLP may decide to revisit the layout and accommodation in these two approved buildings prior to construction. If the 24no. three and four bedroom open-market apartments were removed from Buildings R3 and R8 (9no. and 15no. respectively), the total percentage would be approximately 19%. This would still deliver all of the affordable three and four bedroom homes.

In reality, KCCLP is likely to look at a blended approach which sees a reduction of larger units in one or two buildings, but the inclusion of some three -bed units in another. For example, KCCLP may look to retain all of the three bed units in R3, where the layout works well, but redesign the open-market accommodation in R8 to remove all of the larger units in that building and include some in S5 instead. However, at this

stage, KCCLP does not know how the numbers will play out or what the total number of dwellings would be in those buildings. Therefore, in order to maintain some flexibility, it is seeking to adjust the percentage in Condition 42A to 19%.

For the avoidance of doubt, the proposed amendment does not seek to revisit the affordable housing mix which is set out in the Affordable Housing DoV. There are currently 54 larger (three/four bedroom) affordable apartments left to deliver; 38 in Building R8 and 26 elsewhere within Zone S. These numbers would not change. Indeed, they have not changed from the baseline mix originally set out in the Section 106 Agreement dated 22 December 2006. Although an adjusted baseline mix was subsequently agreed in the Affordable Housing DoV, this document retained all of the three and four bedroom affordable (in this case social affordable) units. Based on 26no. larger units being brought forward in Building S3, the overall total of three and four bedroom affordable units would remain above the current target at 27%, and would make a significant contribution to the achievement of the revised target of 19%.

Building	Total dwellings		No. of 3/4 bedroom units		Percentage
	Open-market	Affordable	Open-market	Affordable	
Rubicon Court (R4)	0	117	0	38	32.5%
Arthouse (Building J)	114	29	26	13	27%
Saxon Court (R5N)	1	143	0	21	14.6%
Plimsoll Building (P1) ₁	178	85	40	22	23.6%
Tapestry Building (T1)	95	34	16	2	14%
Fenman House (R5S)	76	0	20	0	26.3%
Gasholders	145	0	46	0	31.7%
Building R3	61	0	9	0	15%
Building R8	69	82	15	38	35%
Total approved	739	490	172	134	24.9%
	1229		306		
	KXC Minimum (Condition 42A)				23%
S3	60	45	0	26	24.7%
S4	118	0	0	0	0%
S5	94	60	0	0	0%
F1	25	0	0	0	0%
Total outstanding	297	105	0	26	6.5%
	402		26		6.5%
Sitewide Totals (R3 and R8 as approved)	1036	595	172	160	20.5%
	1623		332		

1: These figures reflect the s106 Deed of Variation for P1 which provided for additional school floorspace in lieu of affordable residential units.

Table 1: Approved and outstanding number of dwellings and proportion of approved and anticipated 3 and 4 bedroom units

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:

- Condition 42A already incorporates some flexibility which allows alterations to the number of three and four bedroom apartments to be agreed in writing with the Local Planning Authority;
- Table 1 demonstrates a strong record in providing larger units to date, achieving a site-wide percentage of 24.9%, (including affordable products) across the residential buildings that have already been granted Reserved Matters approval. KCCLP have been innovative in their open-market products, providing larger apartments with more character, more storage and bigger rooms than highly optimised 'investor' type units. Buildings delivered to date include a range of typologies for all sizes, including townhouses, duplexes and homes with mezzanine levels, to appeal to all types of buyers. The Tapestry Building (T1) which has recently completed and the Gasholders which is nearing completion, are good examples of this and as a result, there are/will be a high proportion of owner-occupiers in each building;
- An overall provision of 19% remains a significant number in a scheme of this size and in the context of the buildings which have already been delivered/are under construction, would continue to meet the objectives of the conditions, specifically by delivering a good mix of residential accommodation across the site, meeting housing needs and ensuring the creation of a mixed and balanced community;
- There is no reduction to the number of three or four bedroom affordable units, which remain as per the baseline mix set out in the Affordable Housing DoV. Indeed, assuming 26no. larger affordable units come forward in Building S3, the overall total of 3 and 4 bedroom apartments would stand at 27% of the total number of affordable dwellings;
- Only three previous applications for amendments to the Outline Planning Permission have been submitted under Section 96A, one of which remains under consideration by the council (ref. 2017/3442/P). That application, submitted in June 2017 alongside a Reserved Matters submission for the Zone A building, seeks to adjust the proportion of basement floorspace across the northern and southern parts of the site to facilitate a larger basement in Zone A. Previous approved applications include one 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 713,090m² floorspace and up to 1,700 residential dwellings. In the context of the significant scale of development and the relevant factors listed above, it is considered that the proposed change to the percentage of family sized units is de minimis and therefore "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 42A currently reads as follows:

“Unless otherwise approved in writing by the local planning authority the residential accommodation excluding the student accommodation and the residential home approved as part of Reserved Matters approvals pursuant to this permission shall include not less than 23% as three and four bedroom accommodation.”

It is proposed that Condition 42A is amended to read:

“Unless otherwise approved in writing by the local planning authority the residential accommodation excluding the student accommodation and the residential home approved as part of Reserved Matters approvals pursuant to this permission shall include not less than 19% as three and four bedroom accommodation.”