



The Old Vicarage

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Mr M Jedruch
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RW/24.082/CL
06 March 2024

Dear Mr Jedruch

Non-material amendment to permission ref: 21/01147/OUT to amendment the wording of Conditions 13 and 14

Please find enclosed an application for a non-material amendment relating to planning permission 21/01147/OUT for Residential development for up to 61 dwellings, including a shop, open space, new access and associated works (Outline - access only) at Land Off Wood Lane, Higham On The Hill, Leicestershire.

Section 96A of the Town and Country Planning Act 1990 (as amended) set out that:

'(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 previous changes made under this section, on the planning permission as originally granted.

*(3) The power conferred by subsection (1) includes power to make a change to a planning permission —
(a) to impose new conditions;
(b) to remove or alter existing conditions.'*

Conditions 13 and 14 of the Outline permission seek a scheme of ventilation for the shop premises and a scheme for protecting the proposed dwellings from noise from the shop premises; they read as follows:

'13. a) No development shall take place until a scheme for ventilation of the shop premises, which shall include installation method, maintenance and management has been submitted to and agreed in writing with the Local Planning Authority.

b) The approved scheme shall be implemented in accordance with the agreed details before the shop premises are first brought into use for the development hereby approved and maintained in use thereafter.

14. Development shall not begin until a scheme for protecting the proposed dwellings from noise from the proposed commercial uses has been submitted to and approved by the Local Planning Authority; and all works which form part of the scheme shall be completed before any of the permitted dwellings are first occupied.'

During the determination of the subsequent Reserved Matters application, details were not submitted to discharge conditions 13 and 14 as the applicant is yet to find an occupier and therefore does not know the ventilation requirements. It was agreed that the reserved matters in respect of the layout, scale, appearance, and landscaping of the shop premises could be approved without this information in light of the size and scale of the shop premises with any ventilation, plant and machinery likely to be very modest and could be suitably mitigated at-source to achieve the aims of the conditions.

Notwithstanding the above, condition 13 requires the ventilation scheme prior to commencement of any development on the site, and installation prior to occupation of the shop, and condition 14 requires a scheme for protecting dwellings from noise from the shop prior to commencement, and all works being completed prior to occupation of any dwelling.

The currently wording of the conditions is problematic in the sense that it prohibits the delivery of the residential development. The applicant is seeking to update the conditions as follows:

- Condition 13 – amended to require the ventilation scheme prior to commencement of the shop premises, not the whole site; no change to the installation prior to use of the shop;
- Condition 14 – amended to require the scheme for protection of dwellings from noise prior to commencement of the shop, and all works which form part of the scheme to be completed prior to occupation of the shop.

It is suggested that the wording of each condition is amended to read as follows, or similar:

'13. a) No construction of the shop premises shall take place until a scheme for ventilation of the shop premises, which shall include installation method, maintenance and management has been submitted to and agreed in writing with the Local Planning Authority.

b) The approved scheme shall be implemented in accordance with the agreed details before the shop premises are first brought into use for the development hereby approved and maintained in use thereafter.

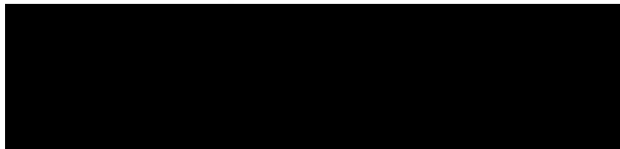
14. No construction of the shop premises shall take place until a scheme for protecting the approved dwellings from noise from the proposed commercial uses has been submitted to and approved by the Local Planning Authority; and all works which form part of the scheme shall be completed before the shop premises is first occupied.'

The Planning Practice Guidance confirms that there is no statutory definition of 'non-material' and that the materiality of changes will be dependent on the context of the overall scheme.

The applicant is of the view that the changes proposed are not material as they achieve the same outcome of ensuring the amenity of residents, and therefore can be pursued in under a Section 96A application.

Should you have any queries, please do not hesitate to contact myself.

Yours sincerely



RICHARD WEST BA (Hons) MRTPI
Director

