



Your Ref: PP-09852677  
Our Ref: 37308

21<sup>st</sup> May 2021

Ms Kiran Chauhan,  
Southwark Council,  
160 Tooley Street,  
SE1 2TZ

Dear Kiran,

**RE: NON-MATERIAL AMENDMENT APPLICATION IN RELATION TO THE APPROVED DEVELOPMENT 17/AP/4596 at NYES WHARF, FRENHAM STREET, LONDON, SE15 6TH**

On behalf of our client, Berkeley Homes (SEL) Ltd, please find enclosed an application for non-material amendments in relation to approved permission 17/AP/4596 which was granted on the 30<sup>th</sup> of October 2020 for:

*“Demolition of existing buildings and erection of mixed-use scheme comprising 1,193sqm Class B1 floorspace at ground and mezzanine levels; with 153 Residential units (Class C3) above in a building ranging from 9 to 18 storeys (max height 56.202m) with hard and soft landscaping including a new park and associated infrastructure works, including three disabled spaces and cycle parking.”*

In addition to this Covering Letter, the submission comprises the following:

- Application Form prepared by Stantec;
- Nyes Wharf Site Location Plan;
- Contextual Site Plan Malt Street Regeneration; and
- CIL Phasing Plans, titled as follows:
  - Nyes Wharf CIL Phase 1 - Enabling works & Demolition;
  - Nyes Wharf CIL Phase 2 – Piling;
  - Nyes Wharf CIL Phase 3 - Floors 0 – 8; and
  - Nyes Wharf CIL Phase 4 - Floors 9 – 18.

The relevant application fee of £234.00 will be paid electronically by the applicant following submission.

This application is made in respect of a non-material amendment (NMA) to the consented permission (LPA Ref. 17/AP/4596). As such, this application is to be determined on matters of fact and degree and planning law in respect of the extent and effect of the proposed change to the permitted development.

Matters of planning policy are therefore not a relevant consideration. The detailed planning policy relating to this development is set out in the committee report on the original parent planning application.

**Proposed Non-material Amendment**

**Insertion of a Phasing condition**

This application proposes non-material amendments to planning permission 17/AP/4596 (Demolition of existing buildings and erection of mixed-use scheme comprising 1,193sqm Class B1 floorspace at ground

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and mezzanine levels; with 153 Residential units (Class C3) above in a building ranging from 9 to 18 storeys (max height 56.202m) with hard and soft landscaping including a new park and associated infrastructure works, including three disabled spaces and cycle parking) which comprise adding a new condition (no. 41) to address the phasing of the development and its related CIL payments.

The Decision Notice for the parent application 17/AP/4596 does not include a phasing or CIL condition. However, condition 3 (21/AP/0422) was recently partially discharged for demolition works only for the written Construction Environmental Management Plan (CEMP). This included a definition for the phasing of the development as set out in paragraph 2.3 (page 7).

Following condition 3's partial discharge, informal pre-application discussions have taken place with LBS Planning Officer Kiran Chauhan, who in turn has consulted colleagues within LBS' CIL Team. This email correspondence (dated 21<sup>st</sup> April and 7<sup>th</sup> May) stated LBS' legal advice in relation to a query regarding introducing CIL phasing and stated:

*"On the basis that the development on the site has not begun (please confirm, as I am unclear about whether demolition has started), then you would be able to make a s96a application to introduce CIL phasing. We would need to see the details of the phasing as part of that submission. If development on the site has commenced, then it would fall into the same remit as the Oval case. Any change to allow for phasing must be taken before the commencement of the development."*

Officers stated in their correspondence that details of the Phasing would be required in drawn and written format, to set out the Phases proposed.

The additional condition (no. 41) wording proposed is as per the below:

*"Condition 41 - CIL Phasing*

*For the purposes of the Community Infrastructure Levy Regulations 2010 (as amended) this is a phased development.*

*The first phase of development is defined as 'Enabling works & Demolition'. The extent of this Phase is presented on plan 'Nye's Wharf CIL Phase 1 - Enabling Works & Demolition'.*

*Thereafter, CIL Phasing Plans 'Nye's Wharf CIL Phase 2 – Piling', 'Nye's Wharf CIL Phase 3 - Floors 0 – 8', and 'Nye's Wharf CIL Phase 4 - Floors 9 – 18' establish the extent of CIL Phases 2, 3 and 4. Each CIL phase approved by this condition shall be considered a separate chargeable development for the purposes of calculating Community Infrastructure Levy.*

*Reason: To comply with CIL regulations (2010) and Strategic Policy 14 'Implementation and deliver' of the Core Strategy (2010)."*

The CIL Phases are also set out within Table 1 (Nyes Wharf – CIL Phases) below, alongside their corresponding drawings.

**Table 1 – Nyes Wharf CIL Phases**

<b>CIL Phase number</b>	<b>Phase name</b>	<b>Area cover by each phase</b>
Phase 1	<i>Enabling works &amp; Demolition</i>	<i>Enabling works on entire site; and for demolition, see turquoise area on drawing "Nyes Wharf CIL Phase 1 - Enabling works &amp; Demolition"</i>
Phase 2	<i>Piling</i>	<i>See blue lined area on drawing "Nyes Wharf CIL Phase 2 – Piling"</i>

Phase 3	Construction of Floors 0-8	See blue lined area on drawing "Nyes Wharf CIL Phase 3 - Floors 0 – 8"
Phase 4	Construction of Floors 9-18	See blue lined area on drawing "Nyes Wharf CIL Phase 4 - Floors 9 – 18"

Any phasing condition to be inserted should be permitted by the Local Planning Authority only where it meets the six tests of Paragraph 206 of the NPPF. The condition must be:

- necessary;
- relevant to planning and;
- to the development to be permitted;
- enforceable and
- precise and;
- reasonable in all other respects.

#### Necessary

Circular 11/95: 'Use of Conditions in Planning Permission' explains that a condition must be no wider in its scope than is necessary to achieve the desired objective.

It also states that the condition must be justifiable such that in the absence of the condition planning permission would need to be refused.

The insertion of the phasing condition is necessary for financial reasons given the scale of the application such that, were the Local Planning Authority not to agree to its inclusion, the delivery of the development may be further delayed or altogether hinder the delivery of the permission.

The permitted development will bring significant economic and social benefits to the borough and will act as a catalyst for the regeneration of the wider area. As such, facilitating the delivery of this mixed-use scheme and the regeneration benefits it will bring is considered to be desirable in planning terms. As such, it is our assertion that the addition of the proposed condition is necessary in planning terms.

Additionally, the scope of the condition is not either excessively broad or prohibitive, nor unduly permissive on the other hand; it is, therefore, in line with the requirements of 'Circular 11/95: Use of Conditions in Planning Permission'.

#### Relevant to planning and to the development to be permitted:

Although the parent application was not established as a phased permission, the CEMP (condition 3) introduced the phasing of the development in terms of how it would be demolished and built. The addition of a new planning condition is required to split CIL payments into the stages aligned with the intended phased delivery of this development. Therefore, the condition is clearly relevant to planning and to the consented development.

#### Enforceable and precise:

Whilst the parent application did not include a Phasing Strategy, the recently partially discharged condition 3 (CEMP) did. As previously stated, Officers requested that additional details be provided within this application and in drawn format, to clearly identify each of the Phases which will be introduced.

The Phases are clearly set out within Table 1 of this letter and in the drawings submitted as part of this application and as such create four physical elements ('Nye's Wharf CIL Phase 1 - Enabling Works & Demolition', 'Nye's Wharf CIL Phase 2 – Piling', 'Nye's Wharf CIL Phase 3 - Floors 0 – 8', and 'Nye's Wharf CIL Phase 4 - Floors 9 – 18'), each of which is clearly identifiable from all others.

Each CIL phase approved by this condition shall be considered a separate chargeable development for the purposes of calculating Community Infrastructure Levy.

The lack of interdependence/interrelationship between the elements means that it will be easy to identify when implementation of each element has occurred. Furthermore, CIL Phase Plans have been provided for each of the four Phases, establishing the extent of the phase which shall be submitted to and approved by the Council.

Therefore, the wording of the proposed phasing condition is considered to be sufficiently precise and would not make it impracticable for the Local Planning Authority to collect CIL payments at the stipulated stages of the build.

Reasonable in all other aspects:

The last of the six tests requires the LPA to consider whether the condition is reasonable in all other respects. In the case of this application, an important consideration is whether the new phasing condition would contradict the requirements of other conditions or legal obligations attached to the parent consent. Imposing a condition that would prevent the developer from being able to implement their permission would create such a scenario and would be 'unreasonable'.

The new condition has no dependency upon or inter-relationship with any other condition on the parent Decision Notice and so is considered to be reasonable.

It also important to ask the question of: *'Is the change either outside the definition of development or of such triviality/inconsequence that it may be regarded as non-material?'*

As noted above, Legal advice has been sought from LBS which considers a S96A appropriate to determine this application as the S.96A(3)(a) & (b) of the 1990 Act further expressly provide that the power to make a non-material change to a planning permission includes the power to impose new conditions and/or to remove or alter existing conditions.

The sole purpose of the proposed condition is to enable the developer to make staged CIL payments over the course of the build rather than one single up-front CIL payment on first implementation. The condition has no knock-on implications for any aspect of the development in the sense that it would not generate either any additional material planning considerations and its inclusion and would have been acceptable at determination stage of 17/AP/4596.

Overall, the new condition (no. 41) would not contradict with, undermine, or negate any of the other conditions or obligations of the parent consent. For these reasons, the new condition should be viewed as being of such an inconsequence to the parent planning application that it should be regarded as non-material.

**Conclusion**

In the context of the informal pre-application advice received from LBS Planning and CIL Officers and given the fact that development on the site has not begun, we are of the understanding that the proposed additional condition (no. 41) is considered acceptable under S.96A of the Town and Country Planning Act 1990 and is considered to consist of a non-material amendment in the context of the full planning permission (AP/17/4596).

The inclusion of a further condition would only defer CIL liability into phases in which the development will be built in accordance with.

We trust that Officers will agree that insertion of a new planning condition on CIL Phasing does not result in a material change to the planning permission and can be approved via this non-material amendment submission.

Should you have any queries or require further information, please do not hesitate to contact me via email ([senan.seatonkelly@stantec.com](mailto:senan.seatonkelly@stantec.com)).

Yours sincerely/faithfully

**Senan Seaton Kelly**

**Senior Planner**  
on behalf of Stantec UK Ltd