



12th September 2023

Planning Department
Cornwall Council
Threemilestone
Truro
Cornwall
TR1 9EQ

Dear Sir / Madam

Section 96A of Town and Country Planning Act 1990 (As Amended) Application for the approval of Non-Material Amendments to Planning Permission Ref. PA19/04184 – Whalesborough Farm, Marhamchurch, Bude, Cornwall, EX23 0JD.

We write on behalf of our client, UK Country Parks Limited, in support of an application under S96a of the Town and Country Planning Act 1990 (as amended) in relation to a non-material change to planning permission reference PA19/04184.

Application Package

This application pack comprises this covering letter, elevation plans and a completed application form. The application fee of £234 + £32.20 Planning Portal administration fee has been paid online via the Planning Portal.

Background

Planning permission Ref. **PA19/04184** (Cornwall Council) was granted on the 17th of February 2020 at Whalesborough Farm, Marhamchurch, Bude, Cornwall, Ex23 0JD for the following: *“Additional 24 Holiday Dwellings and Extension to Swimming Pool Building to Provide Woodchip Biomass Boiler Room with variation to conditions 2 of application no. PA17/02783 dated 09/09/18.”*

A total of 15 conditions were placed on the determination. The following conditions are applicable to this application.

Condition 2

“The development hereby permitted shall be carried out in accordance with the originally approved plans except where replaced by those listed below under the heading “Plans Referred to in Consideration of this Application.”

The Decision Notice goes on to list drwg. no. 7262-01-007 Rev B which itself shows the elevations and floor plans of the approved unit types.

It is important to note that the development granted was for 24 holiday units split into two distinct areas. The application relates to the northern field in isolation whereby 8 luxury-built villa units were granted and are extant by virtue of working having commenced. These are known as the Hillside Villas for the purpose of this application.

Proposal

This application seeks a non-material amendment of the approved developed to include the addition of PV solar panels to the roof of each Hillside Villa. Elevational drawings are provided in support of the application, showing the location of the additional PV solar panels.

The addition of 16 PV panels per a unit, located on both sections of the wing roof will increase renewable energy production per a unit. Furthermore, this will reduce each unit's reliance on the grid electrical system. Consequently, the development will be more eco-friendly and, therefore, aligned with national and local planning policy including Cornwall Councils recently adopted Climate Emergency DPD.

Scope of a S96A Application

Section 96A of the Town and Country Planning Act 1990 (as amended) allows the local planning authority to make a change to any planning permission relating to land in their area if they are satisfied that the change is not material. This includes the provision for conditions to be added, removed or altered. In determining whether a change is material, regard must be had to the effect of the change on the planning permission originally granted.

Paragraph 002 of the Planning Practice Guidance (the PPG) states that there is no statutory definition of 'non-material'. This is because it will be dependent on the context of the overall scheme.

In our view, the key relevant test to this proposal is that contained at s.96a, that the Local Planning Authority should be satisfied that the proposed change is not material. It is recognised that there is no statutory definition of 'non-material' within the Act, however the concept is familiar in broader planning law with a body of case law dealing with the test of identification of material planning considerations. The most relevant case is the decision of the Court of Appeal in *R (Kides) v South Cambridgeshire DC* [2002]:

"In my judgment a consideration is "material", in this context, if it is relevant to the question whether the application should be granted or refused; that is to say if it is a factor which, when placed in the decision maker's scales, would tip the balance to some extent, one way or the other. In other words, it must be a factor which has some weight in the decision-making process, although plainly it may not be determinative. The test must, of course, be an objective one in the sense that the choice of material considerations must be a rational one, and the considerations chosen must be rationally related to land use issues."

Beyond the above, we are aware that Cornwall Council apply four questions in deciding if a change is non-material, these being:

- 1) Is the proposed change inconsequential in terms of its scale in relation to the original application?
- 2) Would the proposed change result in a detrimental impact either visually or in terms of amenity?
- 3) Would the interests of any 3rd party or body who participated in or were informed of the original decision be disadvantaged in any way?
- 4) Would the amendment be contrary to any policy of the Council

The above considerations are therefore of guidance in assessing whether the proposed development would represent a material amendment.

Following the principles established in *Kides*, it is our view that if the changes proposed would not “*tip the balance to some extent*” because they do not have “*weight in the decision-making process*” they are non-material. We note that materiality under s.96a (which applies only where permission has already been granted) is in practice concerned only with matters that tilt the planning balance the other way, against a grant.

This is of course a matter of judgment for the local planning authority, but that judgment will need to be exercised reasonably and objectively. In our view, it could not be said that the proposed amendments to the approved development, which constitute only de-minimis changes to the approved scheme, would have genuinely been considered when determining the original application for permission, to materially alter the planning balance such that permission would have been refused.

In regard to the above tests deployed by the Council, the addition of PV panels to the exterior of the building would not increase its scale nor prejudice the interests of any third party involved in the original application. The application would further represent positive steps to re-design extant development to ensure that the units will deliver the stated aims of the Cornwall Council Climate Emergency DPD and therefore will ensure that the units, when constructed, represent a greater planning gain than their original iteration. In this regard, the addition of PV Panels would not conflict with the Council stated tests.

The Hillside Villas, in their inception, were purposefully designed to blend and assimilate in the rural context such that their green roofs were to be read visually against the surrounding hillside. The addition of PV Panels within the green roofs would not reduce nor diminish the effect of the roofs to soften the landscape impact of the units, this is due to the use of a green finish on the solar panels proposed. This will allow the Hillside Villas to continue to prevent any negative landscape impact and this ensures that the amendment would not result in a change in a detrimental impact either visually or in terms of amenity.

In this case, the proposed amendments would not materially alter the approved development. Thus, there is no visual impact on the surrounding site and its wider character. Furthermore, there is no change to the principle of the development outlined in the planning permission and, therefore, the change is considered to be non-material.



Summary

In summary, the proposed changes are non-material in nature and are required to optimise the deliverability of the site. We trust that this submission contains sufficient information to enable the Local Authority to validate the application on receipt and we look forward to receiving your decision within the 28-day target determination period. However, should you require any further information, please do not hesitate to contact me.

Yours faithfully,



Arvind Sangha

Graduate Planner – Leisure



For and on behalf of Avison Young (UK) Limited