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10 November 2023

Project/File: 333100517

Mr Chris Maltby
Principal Planning Officer
London Borough of Ealing
Perceval House
14-16 Uxbridge Road
London
W5 2HL

Dear Chris,

**SECTION 96A OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
FRIARY PARK ESTATE, THE DRIVE, JOSEPH AVENUE, SPARKS CLOSE & FRIARY ROAD,
ACTON, LONDON - APPLICATION FOR NON-MATERIAL AMENDMENTS**

We hereby submit on behalf, Friary Park 1 LLP (“the Applicant”), an application under Section 96A (S96A) of the Town & Country Planning Act 1990 (as amended) (“the 1990 Act”) for non-material amendments (NMA) (“the Application”) to the planning permission (ref: 221747HYBRID) (“the Planning Permission”).

BACKGROUND

The Planning Permission was granted by London Borough of Ealing (“the Council”) on 3 May 2023 for the redevelopment at Friary Park Estate, The Drive, Joseph Avenue, Sparks Close & Friary Road, Acton, London (“the Site”). The Planning Permission comprises a phased development that is currently being built out over several years.

THE PROPOSAL

The Application seeks permission to alter the description of development of the Planning Permission and adjust the wording of Condition 9. The reasons for this NMA are twofold.

Firstly, the future tenant of the affordable workspace, the Creative Land Trust (CLT), has advised the Applicant that the planning use classes approved under the Planning Permission do not cover the full scope of their intended operations. The CLT have advised that they require the range of use classes permitted by the Planning Permission to be expanded so to include Class E(g)(ii) and (iii).

The description of development for the planning permission limits the range of Class E uses able to occupy this floorspace to Class E(a)-(g)(i) uses. This is further reinforced by the development parameters specified under Condition 9 of the planning permission.

The inclusion of the affordable workspace was previously supported and regarded as a notable benefit of the regeneration proposals. It is intended that a long lease would be granted to the CLT and as such flexibility is required to facilitate the occupation by the creative end of the affordable workspace spectrum. Therefore, to ensure the planning permission enables the CLT to lawfully occupy the affordable workspace throughout its tenancy, this Application has been submitted to alter the description of development and the wording of Condition 9 so to include Class E(g)(ii) and (iii) uses within the scope of the Planning Permission. These additional sub-categories of Class E(g) are low impact uses that, as

Reference: Friary Park Estate - Section 96A Application

defined by the Town and Country Planning (Use Classes) Order (as amended) 1987 (“the Use Classes Order”), are uses which can be carried out in a residential area without detriment to its amenity.

The second element relates to the various numerical components (number of homes, non-residential floorspace and building heights) that are included in the description of development. To provide flexibility moving forward, the Application seeks to remove the numerical components from the description of development. The relevant numerical components of the development are already set out in Condition 9 of the planning permission and so no new condition is required.

Accordingly, the proposed description of development for this application is:

“Non-material amendment to planning permission 221747HYBRID to amend the description of development to remove specific reference to the number of dwellings, floor areas and building heights, expand the scope of Class E(g) use to include parts (ii) and (iii) and amend the wording of condition 9 to include Class E(g)(ii) & (iii) uses”.

The proposed changes summarised above are discussed in further detail below.

Item 1: Description of development

The proposed alterations to the description of development for the Planning Permission are as follows (original wording struck out and new wording in red text):

“Hybrid planning application for the phased demolition of all existing buildings & structures & all site preparation works followed by a mixed-use phased development comprising ~~multiple buildings of 3-14 storeys (Block A), 2-24 storeys (Block B), 44.16m AOD to 106.47m AOD (Block C), 40.06m AOD to 82.32m AOD (Block D), 4-6 storeys (Blocks E, F, G and H), containing up to 1228 residential units & up to 1825sqm of~~ non-residential floorspace, including Commercial, Business & Service floorspace (Use Class E(a)-E(g)(i), Drinking Establishments & Hot Food Takeaways (Sui Generis)) & Community & Learning floorspace (Use Class F1 & F2), & community floorspace (Use Class E(f), F1 & F2(b)); landscaping; removal and replacement of trees; public realm improvements; access alterations; car & cycle parking; & other highway works incidental to the development.

Outline planning permission for phased demolition of all existing buildings & structures, all site preparation works & redevelopment to provide new buildings ~~ranging in height from 40.60m AOD to 106.47m AOD with up to 52,880sqm (GIA) of total floorspace; comprising of up to 576~~ homes (Use Class C3); ~~up to 440sqm of~~ community floorspace (Use Class E(f), F1 & F2(b)); cycle & vehicle parking; highway & access improvements; & landscape & public realm improvements.

Full planning permission for phased demolition of all existing buildings & structures & all site preparation works & Blocks A (~~3-14 storeys~~), B (~~2-24 storeys~~), E, F, G and H (~~4-6 storeys~~) comprising ~~652~~ homes (Use Class C3); ~~1,385sqm~~ Commercial, Business & Service floorspace (Use Classes E(a)-E(g)(i), Drinking Establishments & Hot Food Takeaways (Sui Generis)) & Community & Learning floorspace (Use Class F1 & F2)); energy centre; cycle & vehicle parking; highway & access improvements; & landscape & public realm improvements.

Reference: Friary Park Estate - Section 96A Application

An Environmental Statement has been submitted with the application under the Town & Country Planning (Environmental Impact Assessment) Regulations 2017, as amended.”

As discussed above, the alterations to the description of development seek to only remove the numerical components and to expand the scope of Class E(g) to include (ii) and (iii) uses.

Item 2: Amendments to Condition 9

The proposed alterations to Condition 9 of the Planning Permission is as follows (updated wording highlighted in red text):

Condition 9:

Full (detailed) planning permission for:

- **652 homes (Use Class C3);**
- **1,043sqm (GIA) of flexible non-residential floorspace ((Use Classes E(a)-E(g)(i) **(inclusive)**, F1, F2, Drinking Establishments (Sui Generis) & Hot Food Takeaways (Sui Generis));**
- **342 sqm (GIA) of community floorspace (Use Classes E(f), F1 & F2(b)), and**
- **Buildings between 3 and 24 storeys in height above ground level and associated basements.**

Outline planning permission (all matters reserved) for:

- **Up to 576 homes (Use Class C3);**
- **Up to 440 sqm (GIA) of community floorspace (Use Classes E(f), F1 & F2(b)), and**
- **Buildings ranging in height from 40.06m AOD to 106.47m AOD with up to 52,880 sqm (GIA) of total floorspace;**

Reason: To ensure that the development is carried out in accordance with the approved plans and other submitted details and to ensure that the quantum of floorspace keeps within the parameters assessed as part of the Environmental Statement.

The amendments to Condition 9 only seek to expand the scope of Class E(g) to include (ii) and (iii) uses to ensure the future occupier, CLT, can lawfully occupy the affordable workspace. Since Condition 9 already includes the numerical components of the development, no new condition is required to capture the alterations to the abovementioned description of development.

PLANNING CONSIDERATIONS

The following sets out the planning considerations relevant to the items described above.

Section 96A of the 1990 Act gives the power for local planning authorities in England to make a change to any planning permission relating to land in their area, if they are satisfied that the change is not material. Section 96A(2) states that:

“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”.

Reference: Friary Park Estate - Section 96A Application

Section 96A(3) goes on to provide local planning authorities with the authority to impose new conditions or to remove or alter existing conditions attached to a planning permission.

There is no definition of materiality provided within Section 96a itself, or the 1990 Act. However, the term has been subject of much discussion in the Courts. The most authoritative analysis is contained in the decision of the Court of Appeal in *R (Kides) v South Cambridgeshire DC* [2002] EWCA Civ 1370; (2003) 1 P&CR 19, at para. 121 where Parker LJ noted:

“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.”

The principle in *Kides* is of assistance in understanding the correct approach to the words “non-material” in Section 96A. If the changes proposed would not “tip the balance to some extent” because they do not have “weight in the decision-making process” then they will be non-material and can be dealt with under Section 96A.

The proposal to remove the numerical components from the description of development, with these figures already captured in Condition 9, can be dealt with under Section 96A of the 1990 Act because it essentially amounts to a restructuring of the planning permission decision notice itself.

Expanding the scope of the Planning Permission to include Class E(g)(ii) and (iii) uses would not materially change the nature of what the Council have previously assessed or give rise to any new or different material planning considerations. The Council’s Committee Report acknowledges the significance and benefits associated with the inclusion of the affordable workspace as part of the development. The affordable workspace would remain in the same location on the ground floor of Block B1 fronting Friary Road, as approved under the Planning Permission. No changes to the approved planning drawings are therefore required. It would simply align the description of development with the considerations already carried in by the Council in granting planning permission.

Class E(g)(ii) and (iii) uses are also low impact uses that are controlled by the Use Classes Order as those that can be carried out in a residential area, such as this, without detriment to its amenity. The expansion of the permitted use classes would not therefore result in any additional effect on the amenities of local residents.

Therefore, there is “no effect” of the proposed change because there is no change to the underlying development and no change to the limitations or controls already placed on the permission via existing conditions or planning obligations. It would have little, if any, weight in the decision-making process and would not therefore tip the balance as to whether permission should be granted or refused.

The Planning Permission required an Environmental Impact Assessment and was accompanied by an Environmental Statement. However, the Application would not give rise to any new or different environmental effects to those already considered as part of the Environmental Statement because again there is no change to the underlying scheme of development, only a restructuring of the permission.

Furthermore, when considering expanding the scope of Class E(g) to include uses (ii) and (iii), while Schedule 6 of the Section 106 Agreement defines the process that should be followed to ensure the

Reference: Friary Park Estate - Section 96A Application

affordable workspace is provided at a rent 20% below market rents, it does not include reference to any specific use classes. Accordingly, a Deed of Variation should not be required to either this schedule or the wider Section 106 Agreement.

It should be noted that a similar application (ref: 213581NMA) to alter the description of development was approved in relation to the previous planning permission (ref: 193424HYBRID) for the Site granted by the Council on 25 June 2021.

Based on the above, it is concluded that the proposals would constitute a non-material change to the Planning Permission that squares falls within the scope of Section 96A of the 1990 Act.

ADMINISTRATIVE MATTERS

The following documents and drawings have been submitted electronically via the Planning Portal for the Council's consideration:

- Covering letter (this letter)
- Completed planning application form
- Decision notice (ref: 221747HYBRID)
- Site Location Plan with the location of the affordable workspace shaded in yellow (submitted for information only).

A full electronic copy of the submission will be sent direct to the case officer. Hard copies of the application documents will not be provided unless specifically requested by the Council.

In accordance with the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, as amended, an application fee of £234.00, plus a service charge of £64.00, has been calculated and paid by bank transfer via the Planning Portal.

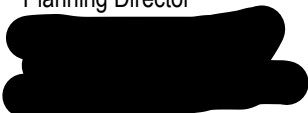
We trust that this Section 96A application fully meets with Council's requirements and we look forward to a favourable determination in due course. We would be grateful if confirmation of the validation of the planning application could be provided at the earliest opportunity.

In the meantime, if you require any further information or wish to discuss matters further, please do not hesitate to get in contact.

Yours sincerely,



Gary Stevens
Planning Director



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