

PLANNING STATEMENT

Land at Old Foundry Road Non-Material Amendment Application



JPW1985
Planning Statement
October 2023

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Document status

Version	Purpose of document	Authored by	Reviewed by	Approved by	Review date
NMA	Planning Statement	Damian Barry	Damian Barry	Damian Barry	12/10/2023

Approval for issue

Damian Barry

12 October 2023

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1 INTRODUCTION & BACKGROUND

- 1.1 This planning statement has been prepared on behalf of Bluefield Land Ltd, the applicant.
- 1.2 Full planning permission was granted by Neath Port Talbot County Borough Council (ref P2023/0265) on 22nd August 2023.
- 1.3 The permission was approved subject to conditions.
- 1.4 Condition 29 is as follows:
- *The development shall be carried out in accordance with the recommendations in the 'Old Foundry Road Flood Consequence Assessment' hereby approved. Notwithstanding any other details which may be given in the FCA and/or plans hereby approved, the units shall have a flood resilient design to a minimum level of 33.4m AOD and a minimum finished floor level of 33.95m AOD.*
- Reason: *To minimise and manage the risk of flooding to an acceptable level.*
- 1.5 Condition 29 sets a minimum finished floor level (ffl) of 33.95m AOD as worded. The Flood Consequences Assessment (FCA) that supported the planning application, recommended a ffl of 32.95m AOD.
- 1.6 The requirement for a higher than recommended minimum ffl leads to a number of buildability issues for the development and is likely to lead to adverse impacts/conditions on land and property surrounding the application site. We explore these herein.
- 1.7 As a result of the above, this application under Section 96A of the Town and Country Planning Act 1990 for non-material amendments, (NMA) seeks to regularise the ffl to that as set out in the approved FCA which recommended as a mitigation that the finished floor level be set at 32.95m (refer to Section 7, 2 and Section 8 of the approved FCA).
- 1.8 Importantly, the NMA does not seek to remove any condition/s or divest the scheme of any fundamental requirements.

2 NON-MATERIAL AMENDMENTS

- 2.1 The Welsh Government's 'Planning Guidance: Approving Non-Material Amendments' published in July 2014 states that there is no statutory definition of what constitutes a small amendment to an existing planning permission. In the absence of a definition and in deciding whether or not a proposed change is non-material, the guidance highlights that consideration should be given to the effect of the change, together with any previous changes made to the original planning permission.
- 2.2 When assessing and determining whether or not a proposed change would qualify as a non-material amendment, the guidance states that local planning authorities may wish to consider the following tests:
- 2.3 In the absence of a definition, the published guidance sets out the following tests for local planning authorities to consider in the determination of NMA applications:
- *(a)(i) Is the scale of the proposed change great enough to cause an impact different to that caused by the original approved development scheme; and,*
 - *(a)(ii) Would the proposed change result in a detrimental impact either visually or in terms of local amenity?*
 - *(b) Would the interests of any third party or body be disadvantaged in planning terms; or,*
 - *(c) Would the proposed change conflict with national or development plan policies?*
- 2.4 It is the above tests that the requested amendment is assessed against in the next section together with presenting the buildability and/or other planning justifications. The tests are considered a 'starting point' for LPAs in their consideration of non-material amendments. It is acknowledged that there may be other considerations that will identify if a proposed amendment is non-material depending on the circumstances of each case.
- 2.5 The importance of pre-application discussions is noted to establish whether or not the proposed amendments are non-material in nature and can be determined as an application under Section 96A. Email exchanges post the granting of permission on this issue has been held with the case officer Claire Hall, which following her informal consultation with Natural Resources Wales and NPTCBC Highways, endorsed the acceptability of the amendment sought and that it would need to be regularised via a NMA application.

3 THE AMENDMENTS SOUGHT

- 3.1 The following discusses and makes the case for the necessary amendment, setting out the reasons for it and a review against the relevant tests. The suggested amendment to the wording of the condition is presented in **bold underlined** text for ease of review.

Condition 29

- 3.2 Condition 29 requires a minimum ffl of 33.95m AOD as worded. The Flood Consequences Assessment (FCA) that supported the planning application, recommended a ffl of 32.95m AOD.
- 3.3 Notwithstanding that the building and site layout, circulation and access design was informed by the recommendations in the FCA, the requirement to meet 33.95 as opposed to 32.95 leads to a number of fundamental issues for the buildability of the development and would lead to adverse impacts for neighbouring land and property.

Access and Slope Issues

- 3.4 A ffl of 33.95m is impractical, leading to excessive slopess across the site. Anything steeper than 1:20 becomes a ramp in building regulation part M. This has significant consequences including handrails and limits on length of slopes. It is undeliverable given the site constraints.
- 3.5 A FFL of 33.950 AOD would increase the upper access gradient (and therefore crossfall for vehicles in the site moving parallel with Old Foundry Road) to a 1 in 9 gradient. This would also apply to fork-lifts, for which the implications are greater with a combination of off-centred loads, manoeuvring /rotating/lifting etc.
- 3.6 Another consequence is that 33.95m would raise the units on the boundary with the adjacent house, increasing the impact on this property.

Geotechnical Issues

- 3.7 From a geotechnical point of view the increase in level to 33.95m AOD will cause severe complications.
- 3.8 The site is underlain by soft alluvial deposits. The increase in level will cause these deposits to be compressed and settlement at depth will occur. This is likely to cause unacceptable differential settlement between the proposed piled buildings at the site and the newly raised ground surface.
- 3.9 There is a reasonable prospect that this will in turn lead to the requirement to surcharge the site, to preload the settlement out, by placing stockpiles above 33.95m AOD to pre compress the ground.
- 3.10 Note, that this will be a challenging exercise on site, as the surcharge stockpiles will not only compress the alluvial soils underlying the stockpiles, but the soils underlying the surrounding site, including those soils beneath the canal itself. An analogy would be placing a book on a trampoline surface. The trampoline surface surrounding the book would be pulled down in level as well as the footprint of the book itself.

4 ASSESSMENT OF AMENDMENT

- 4.1 The proposed amendment is required from a buildability perspective as set out in the previous chapter.
- 4.2 There will be no detriment from the amendment given that it is in line with the recommendations of the approved FCA.
- 4.3 The amendment is necessary to make the permission implementable as designed and approved.
- 4.4 When assessed against the tests for local planning authorities to consider in the determination of NMA applications, the amendment sought is considered acceptable because:
- the proposed change does not lead to/result in an impact different to that caused by the original approved development scheme. In fact, complying with the condition as existing would lead to significant issues of buildability and operation.
 - they would not result in a detrimental impact either visually or in terms of local amenity.
 - no third party interests will be disadvantaged in planning terms.
 - The proposed change would not conflict with national or development plan policies contained in Future Wales: The National Plan (2040), or Planning Policy Wales or the Council's adopted local development plan.
- 4.5 In light of the above, it is considered that the proposed amendment accords with the relevant Welsh Government guidance and would constitute an NMA.

5 CONCLUSIONS

- 5.1 This planning assessment has clearly demonstrated that the requested amendment amounts to an NMA.
- 5.2 The Welsh Government's guidance on NMAs does not provide a definition of what an NMA can comprise. Rather, it depends on a number of factors such as the context of the overall scheme, the amendments being sought to the original planning permission and the specific circumstances to the site and surrounding area.
- 5.3 The development has been considered against the four tests and it is concluded that:
- There is no detrimental impact. In fact, the ffl as currently permitted would in itself lead to detriment.
 - The scale of the proposed change does not cause an impact different to that caused by the original approved development – in fact the approved development is designed based upon the proposed ffl change, being informed directly by the FCA.
 - No third party or body would be disadvantaged in planning terms and the proposed change would not conflict with national or development plan policies.
 - The changes do not go to the heart of the permission and do not conflict with any other planning conditions.
- 5.4 The conclusion is that the NMA should be approved.