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Mr Lee Osborne
Knowsley Metropolitan Borough Council
Municipal Buildings
Huyton
L36 9UX

15th March 2021

CJ – 18/413
BY EMAIL

Dear Lee,

APPLICATION FOR A NON-MATERIAL AMENDMENT UNDER SECTION 96A OF THE TOWN AND COUNTRY PLANNING ACT 1990 RELATED TO PLANNING PERMISSION 19/00261/FUL

We write on behalf of our client, Henry Boot Barnfield Limited, to submit a planning application under S96a of the Town and Country Planning Act to amend the wording of condition 25 of planning permission ref. 19/00261/FUL relating to the development of land between Cronton Road and the M62 motorway sliproad (junction 6), Tarbock.

The condition concerns the implementation of an acoustic bund which was required 'in the interests of noise mitigation and residential amenity and to comply with Policies CS2 and CS19 of the Knowsley Local Plan Core Strategy and saved Policy ENV2 of the Knowsley Replacement Unitary Development Plan'.

We set out below the reasons for this non-material amendment application (NMA).

a. Reasons for this NMA

The development of the site under the hybrid permission

As noted in the committee report of the original hybrid application (ref. 17/00301/HYB) the intention for the site was the development of a phased scheme to include a food store, a petrol filling station and kiosk, B1 and B2 employment floorspace across two areas of the site and a pub/restaurant.

Amongst a number of conditions controlling the development of the site, Condition 25 (of the S73 permission 19/00261/FUL) states that:

Notwithstanding submitted details prior to the food store hereby permitted being first occupied a bund with boundary treatment above shall have been implemented in accordance with details previously submitted to and approved in writing by the Local Planning Authority. The scheme shall include a landscaping scheme for the bund. For the avoidance of doubt the bund shall extend the full length of the western boundary of the site from Cronton Road to the M62 slip road extending past the neighbouring Coopers Farm dwelling (and not partially along the boundary as indicated on the Phase 3 drawing shown on the Proposed Phasing Plan Dwg No PL07 Rev P3) and the submitted scheme shall include landscaping.

The reasoning for the implementation of the acoustic bund specifically prior to the opening of the food store was not explicitly stated, with the committee report noting that-

The applicant has submitted a noise assessment report to consider the potential noise created by the proposed uses, for example from service vehicles and general vehicle movements. As a consequence a 2m high bund (topped by a 2.2m high fence), in order to lessen the impacts of noise, is proposed along part of the site's western boundary. The bund would extend across approximately two-thirds of this boundary and would be 132m in length. Landscaping would be installed to the bund to provide screening to the fence, and in order to improve visual amenity.

The Environmental Health and Consumer Protection Service are satisfied with the findings and the bund generally, but request that a noise mitigation scheme be submitted and approved should planning permission be granted.... Other conditions linked to noise mitigation measures requested include hours of use and deliveries, and that the bund extends the length of the western boundary not just the length of bund submitted.

From this, it is suggested that the bund was proposed as a simple solution to a general concern regarding noise impact and visual screening across the entire site. However, the specifics regarding the exact type, height and length of any noise barrier most suitable to address noise concerns were still debated, and hence, further information was requested by the Environmental Health department.

Alterations to the proposed uses across the site

Whilst the need for noise mitigation is accepted, upon reflection, as the site has developed over time, the need for a bund to be implemented has been questioned.

As the Phase 1 food store was under construction (now occupied by Aldi), the original proposals for the rest of the site were being revisited. Whereas the original consent intended to include B1 and B2 uses and a pub/restaurant, occupier interest led to Euro Garages acquiring Phase 2 to deliver a petrol filling station and two drive-thru's in replacement of the pub/restaurant. Following this, interest in Phase 3 then led to Jaguar Land Rover (JLR) submitting a new full planning application to secure consent for a car showroom on this plot. Discussions with JLR then subsequently stalled.

As conditions for Phase 1 were discharged and reserved matters were applied for, for Phase 2, we liaised with the Environmental Health Officer (EHO) regarding the need to implement the bund, supplying updated noise impact reports which demonstrated that the bund was not required when considering the new proposed uses on site.

In order for Aldi to reach practical completion in Summer 2020, we were able to liaise with Environmental Health and secure a 'letter of comfort' which confirmed that Aldi did not need to comply with condition 25 and construct the bund, as there was no noise impact to mitigate against on Phase 1.

Later in 2020, the applicant discussed the potential development of Phase 3 with senior members of KMBC, when it was unclear whether JLR would proceed with the car showroom, or if a B8 Storage and Distribution occupier would look to acquire the site instead. During these discussions regarding the potential implications of a B8 use proposal, the EHO was able to confirm in writing that:

"I have looked at the noise report and phase 1 and 2 shouldn't impact on the closest residential properties. The units themselves are over 200 metres away and the surrounding area is the M62 and an industrial estate, which themselves will elevate the background level. Our biggest concern is with the third phase and units with a possible B2/B8 use.

I therefore agree that the bund is not needed for phase 1 and 2. But depending on what is going to go on phase 3 [referring to the period of uncertainty regarding phase 3 development], and the layout, they may need to update the noise assessment and hence the mitigation required. Although I assume an application would have to be submitted if that was the case, and we could address any impact the change could have at that point? "

On that basis, I think we could agree to an NMA with regard to the timing of the bund."

Planning Practice Guidance

It is important to note that the Government's Planning Practice Guidance states that:

Where the circumstances of the application make this necessary...conditions can be imposed to ensure that development proceeds in a certain sequence. Conditions may also be used to ensure that a particular element in a scheme is provided by/at a particular stage or before the scheme is brought into use.

It is important that the local planning authority and the applicant discuss and seek to agree any such conditions before planning permission is granted. This is in order to understand how the requirements would fit into the planned sequence for developing the site, impacts on viability, and whether the tests of reasonableness and necessity will be met.

On reflecting on the above, it is clear that the implementation of an acoustic barrier does not need to be linked to the occupation of the Phase 1 food store as this is not a necessary stage at which to request it.

b. Proposed amendment to Condition 25

In light of the EHO confirming that an acoustic bund is not required for Phase 1 or 2, we propose to amend the wording of condition 25 to amend the 'trigger' for its construction. It is suggested the condition reads as follows:

*Notwithstanding submitted details prior to ~~the food store~~ phase 3 hereby permitted being first occupied, **subject to the findings of an up to date noise assessment, an acoustic barrier** ~~a bund~~ with boundary treatment above shall have been implemented in accordance with details previously submitted to and approved in writing by the Local Planning Authority. The scheme shall include a landscaping scheme ~~for the bund~~. ~~For the avoidance of doubt the bund shall extend the full length of the western boundary of the site from Cronton Road to the M62 slip road extending past the neighbouring Coopers Farm dwelling (and not partially along the boundary as indicated on the Phase 3 drawing shown on the Proposed Phasing Plan Dwg No PL07 Rev P3) and the submitted scheme shall include landscaping.~~*

We do not consider that the noise impact information provided to date confirms that a bund is necessarily needed along the full length of the western boundary, and as such, we suggest removing this onerous part of the condition.

In all likelihood, as JLR have now committed to developing Phase 3 of the site for the consented car showroom, it is most likely that this condition will 'fall away' as phase 3 of the hybrid scheme will not be delivered. However, amending the condition in this way will still allow for the bund to be constructed should it be needed in the future for noise mitigation purposes.

The exact wording of the revised condition is open to discussion with Officers.

c. Conclusion

We trust that you find the enclosed details to be acceptable and sufficient to enable the council to determine this application within the recommended 28 day determination period. Please contact me on 0161 509 2841 (cjones@iceniprojects.com) or my colleague Lucy Furber (lfurber@iceniprojects.com), in the first instance should you have any questions.

Yours sincerely,



Chris Jones, Director