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Your ref:
Our ref: 2024-10-25 LPA
Date: 25 October 2024

Dear Ms Roscoe

FORMER WALKERS SITE, 73 CRABTREE LANE, CLAYTON, MANCHESTER, M11 4GU

SECTION 73 APPLICATION: VARIATION OF CONDITIONS 2, 9 (a), 10, 11, 12 (a) 17 (a), 19 (a), 20, 21 (a) 22, 23, 24 AND 28 IN RELATION TO PLANNING PERMISSION 138914/FO/2023 - ERECTION OF 9 NO. UNITS (IN 3 NO. BUILDINGS) WITH ACCESS AND SERVICING ARRANGEMENTS, CAR PARKING, LANDSCAPING AND ASSOCIATED WORKS (USE CLASSES E(G) (III) B2 AND B8) FOLLOWING DEMOLITION OF EXISTING BUILDINGS AND STRUCTURES.

PLANNING PORTAL REFERENCE: PP-13471525

Further to pre-application discussions with Sue Wills and on behalf of Chancerygate Manchester Ltd we have today submitted an application under Section 73 of the Town and Country Planning Act 1990 (as amended) (hereafter referred to as the Act) for the variation of Conditions 2, 9 (a), 10, 11, 12 (a) 17 (a), 19 (a), 20, 21 (a) 22, 23, 24 and 28 of the above-mentioned full planning permission issued by Notice dated 17 April 2024.

Supporting Documents

- Application Form.
- Covering Letter.
- Annex 1 enclosed herewith identifies the plans, drawings and documents submitted in support of the Section 73 planning application.

Statutory Application Fee

The appropriate planning application fee is £293 plus an administration fee of £70.00, the total being £393.00. My client has been nominated to pay this fee and will be making payment via the Planning Portal shortly.

Justification for Submission of the Application

My client submitted the original full application on a speculative basis following the acquisition of the subject site last year. Full planning permission was granted for a Class B2 / B8 and E (g) (iii) mixed-use scheme on 17 April 2024 (Application Reference 138914/FO/2023) and since then the Applicant has secured a tenant for part of the development. The identified tenant would be operating a self-storage business - which falls under the permitted Class B8 use - but in order to meet their requirements, revisions to the extant planning permission are required.

The principal revision to the scheme is that the identified self-storage operator would be taking up the whole of one of the approved buildings which is currently labelled as Units 1 to 4, and therefore permission is required from the Council to enable Units 1 to 4 to be merged into a single unit to meet the needs of the identified tenant. The consequence of this, is that a number of approved drawings and documents are required to be revised to be consistent with the revisions to the building and minor revisions to the approved site layout.

You may well already be aware of the recent High Court case of Armstrong v Secretary of State for Levelling-up, Housing and Communities & Anor [2023] EWHC 176 where the correct legal scope of Section 73 applications was the issue. This case reaffirms the principle of Section 73 applications which can be used to amend conditions attached to an approved scheme, provided it would not conflict with the description of development permitted by the planning permission. The PPG has since been amended following this case law and clarifies that there is no statutory limit to the degree of change permissible to conditions but the change must relate to conditions and not the operative part of the permission:

> ***'Amending the conditions attached to a permission (application under Section 73 TCPA 1990)***
> ***How are the conditions attached to a planning permission amended?***
>
> *In contrast to section 96A, an application made under section 73 of the Town and Country Planning Act 1990 can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission.*
>
> *Provisions relating to statutory consultation and publicity do not apply. However, local planning authorities have discretion to consider whether the scale or nature of the change warrants consultation, in which case the authority can choose how to inform interested parties.*
>
> *Paragraph: 013 Reference ID: 17a-013-20230726*
> *Revision date: 26 07 2023'*

The enclosed Section 73 application comprises the following changes to the original scheme granted Full Planning Permission in April this year:

- The block of buildings along the northern boundary would comprise one singular building - Unit 1 - for a Class B8 self-storage use. The footprint of the single unit would be the same as that approved when the building was proposed to be four adjoining units - a footprint of 1,902.3 sqm.

- The proposed elevations and floor plans of Unit 1 have been updated to reflect the requirements of the new tenant. The approved building measured a maximum height of 12 m with the external treatment proposed to be different shades of grey profiled cladding. The enclosed revised drawings indicate a building which would measure a maximum height of 12.09 m and would again be clad in grey materials. There is a reduction in the amount of glazing proposed (to suit the Class B8 self-storage use) in the current proposals, but fundamentally, the building would have a similar appearance to that previously approved.

- The revised building would have an increased floor area, created by the introduction of mezzanines at first, second and third floor. The extant permission allowed for a total gross external floor area of 5,535.6 sqm. Through the increased floorspace in the revised Unit 1 building, the total gross external floor area across the

site would be 10,647.2 sqm (within Unit 1 comprising 7,609.2 sqm of the total). The submitted revised Transport Statement takes full account of this increase in floorspace and how this might impact on the number of car parking spaces required to serve the development.

- The boundary treatments and soft landscaping have been revised slightly to accommodate the requirements of the new tenant, but fundamentally remain the same as that previously approved.

- The proposed vehicular access remains the same as that approved, but the areas of car parking have been updated to meet the requirements of the new self-storage tenant (the number of car parking spaces has been reduced from 58 to 50), as have the proposed cycle storage (the cycle spaces have increased from 32 to 36 no.).

- The proposed drainage strategy confirms that the principle of drainage remains the same as that previously proposed, given that the footprint of the revised building remains the same as that which was approved.

- In terms of energy and sustainability, the revised scheme results in a 15% increase in energy saving (an increase from 17.73% to 32.3%), and therefore a 15% increase in reduction of carbon emissions (from 15.42% to 30.24% reduction).

Implications

As Officers will know, if the Council approves this application a new planning permission will be generated sitting alongside the original permission, which remains intact and unamended.

The PPG[1] notes that to assist with clarity, Decision Notices for the grant of planning permission under Section 73 of the Act should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.

For implementation purposes, this Section 73 Application now seeks approval to vary the wording of the following Conditions on planning permission 138914/FO/2023:

- Condition 2 - List of approved drawings and documents.
- Condition 9 - Specifically part (a) - Electric vehicle charging details.
- Condition 10 - Car parking.
- Condition 11 - Cycle storage facilities.
- Condition 12 - Specifically part (a) - Surface Water Drainage design.
- Condition 17 - Specifically part (a) - Waste Strategy.
- Condition 19 - Specifically part (a) - Energy and Sustainability Statement.
- Condition 20 - Crime Impact Statement.
- Condition 21 - Specifically part (a) - External Lighting Scheme.
- Condition 22 - General Arrangement Plan.
- Condition 23 - Proposed Boundary Treatment Plan. And
- Condition 24 - Landscaping Scheme.
- Condition 28 - Maximum gross external floorspace.

Proposed Conditions

The following section sets out the required revisions to the conditions subject to this application.

[1] Paragraph: 015 Reference ID: 17a-015-20140306.

Condition 2 - List of approved drawings and documents

A set of revised drawings and documents are enclosed with this planning application and therefore the list of approved items in Condition 2 will need to be revised. The following list indicates those drawings and documents which will remain extant (as per the original planning permission) and those items which have been superseded by the items submitted today and which are indicated with ~~strikethrough text~~ as follows:

- Topographical Survey ref: 47333_T rev.0.
- Site Constraints Plan ref: 23168-UMC-XXXX-SI-DR-A 0501 rev.P04.
- Site Location Plan ref: 23168-UMC-XXXX-SI-DR-A 0502 rev.P04.
- Existing Site Plan Drawing No. 23168-UMC-XXXX-SI-DR-A-0503 rev. P04.
- Demolition Site Plan ref: 23168-UMC-XXXX-SI-DR-A 0503 rev.P03.
- ~~Proposed site plan ref: 23168-UMC-XXXX-SI-DR-A 0601 rev.P05.~~
- ~~Site Sections Plan ref: 23168-UMC-XXXX-SI-DR-A 0610 rev.P2.~~
- ~~Proposed cycle storage Plan ref: 23168-UMC-XXXX-SI-DR-A 0702 rev.P03.~~
- Proposed substation Plan ref: 23168-UMC-XXXX-SI-DR-A 0703 rev.P03.
- ~~Proposed waste strategy Plan ref: 23168-UMC-XXXX-SI-DR-A 0704 rev.P02.~~
- ~~Unit 1 -4 Building and office plan ref:23168-UMC-01-DR-A 1001 rev.P3.~~
- ~~Unit 1- 4 Roof plan ref: ref: 23168-UMC-01-DR-A 1002 rev.P2.~~
- ~~Unit 1 -4 Building elevations plan ref: ref: 23168-UMC-01-DR-A 1301 rev.P1.~~
- Unit 5 Building and office plan ref: 23168-UMC-01-DR-A 1011 rev.P3.
- Unit 5 Roof plan ref: ref: 23168-UMC-01-DR-A 1012 rev.P2.
- Unit 5 Building elevations plan ref: ref: 23168-UMC-01-DR-A 1302 rev.P1.
- Unit 6 -9 Building and office plan ref:23168-UMC-01-DR-A 1021 rev.P3.
- Unit 6- 9 Roof plan ref: ref: 23168-UMC-01-DR-A 1022 rev.P2.
- Units 6 -9 Building elevations plan ref: ref: 23168-UMC-01-DR-A 1303 rev.P1.
- ~~Design and Access Statement revision A December 2023.~~
- Air Quality Assessment ref: 572948.0001 r.1 dated December 2023.
- Biodiversity Enhancement Management Plan rev. 02 dated 12.12.2023.
- Biodiversity Net Gain Design Stage Assessment rev. 01 dated 12.12.2023.
- ~~Crime Impact Statement Version B :06.12.2023 Ref: 2023/0548/CIS/01.~~
- ~~Energy and Sustainability Statement ref: 6624-CBC-HR-RP-S-001-P03 dated November 2023.~~
- ~~External Impact Lighting Assessment ref: 6624-CBC-OR-RP-E-001 rev.02 Dated December 2023.~~
- Framework Construction Management Plan rev.01 dated December 2023.
- Phase 1 Desk Based Geo-Environmental and Geotechnical Site Assessment ref: 546629.0000.0000 July 2023.
- Planning Statement dated 20 December 2023.
- ~~Flood Risk Assessment ref: 23-026 I&L December 2023 (Notwithstanding the Proposed Drainage Strategy Layout (Drawing no. 23-026 I&L_D00_P1) contained in Appendix D).~~
- ~~Transport Statement ref: 327475 dated December 2023.~~
- ~~Framework Travel Plan ref: 327475 dated December 2023.~~
- Electric Vehicle Charging Specification - Sevadis Maxi Charger Pillar.
- ~~Refuse Vehicle Swept path analysis plan ref: J32-7475-PS-005.~~
- Noise Impact Assessment: 572948.0001 r.1 dated December 2023.
- Arboricultural Impact Assessment rev.02 dated December 2023.
- Preliminary Ecological Assessment rev.03 dated December 2023 Received 27th December 2023.
- ~~Waste Management Proforma and Site Access Junction plan ref: J32-7475-PS-002 rev.A received 4th January 2024.~~
- Biodiversity Net Gain Metric Version 2 received 1st February 2024.
- Intrusive Geoenvironmental and Geotechnical Site Assessment report ref: 546629.001.0000 dated July 2023 Received 5th February 2024.
- Remediation Strategy and Verification Plan. Reference 546629.0004.0000. Dated 16 February 2024.
- Technical Note - Air Quality Additional Information. Reference 572948.tn1. Dated 20 February 2024.

- Technical Note - Noise Additional Information. Reference 572948.tn1. Dated 20 February 2024 Received 27th February 2024.
- Supplementary Geo-environmental and Geotechnical Site Assessment Reference 546629.0002.0000 dated 2nd February 2024 and Asbestos in Soils Management Plan reference 546629.0003.0000 dated 2nd February 2024 received 18th March 2024.
- ~~Proposed Boundary Treatments Plan ref: 23168-UMC-XXXX-SI-DR-A 0701 rev.P06 received 21st March 2024~~
- Technical Note - Noise Additional Information. Reference 572948.t 2. 1. Dated 9th April 2024 Received 10th April 2024.
- Soft landscaping hand pit dug locations (in connection with ground conditions) plan ref: 546629.0004 Fig 4 rev.P01 received 11th April 2024.
- ~~General Arrangement Plan ref:UG_2066_LAN-GA-DRW_-101 rev.T2 received 15th April 2024.~~

The enclosed Annex 1 lists all the drawings and documents submitted with this current Section 73 application.

Condition 9 - Specifically part (a) - Electric vehicle (EV) charging details

Condition 9 is split into parts a) and b). Part b) is fine, however a variation to part a is required in order to take account of the revised Proposed Site Layout and an additional specification for the EV charging points. The future occupant of unit 1 uses a specific EV charging device and therefore, part a) of condition 9 is proposed to be worded as follows:

> *9) a) Electric vehicle charging points shall be implemented in the locations shown on Proposed site plan ref: 23168-UMC-XXXX-SI-DR-A 0601 rev.P17 and specifications on Electric Vehicle Charging Specification - Sevadis Maxi Charger Pillar and EVA-22D-SE-RFID.*

Condition 10 - Car parking

Condition 10 needs to be updated to remove reference to a superseded drawing and make reference to the submitted revised Proposed Site Layout as follows:

> ~~*Proposed site plan ref: 23168-UMCXXXX- SI-DR-A 0601 rev.P05*~~ replaced with:
> *Proposed Site Plan ref: 23168-UMC-XXXX-SI-DR-A-0601-P17.*

Condition 11 - Cycle storage facilities

Condition 11 needs to be updated to remove reference to two superseded drawings and make reference to the submitted revised Proposed Site Layout as follows:

> ~~*Proposed site plan ref: 23168-UMCXXXX- SI-DR-A 0601 rev.P05*~~ and ~~*Proposed cycle storage plan ref: 23168-UMC-XXXX-SI-DR-A 0702 rev.P03*~~ replaced with:
>
> *Proposed Site Plan ref: 23168-UMC-XXXX-SI-DR-A-0601-P17.*
> *Cycle Storage ref: No. 23168-UMC-XXXX-SI-DR-A-0702-P09.*

Condition 12 - Specifically part (a) - Surface Water Drainage design

The proposed merging of 4 units into 1 has resulted in a revision to the proposed drainage strategy and therefore the reference to the approved Flood Risk Assessment (FRA) and Drainage Strategy in part a) of Condition 12 needs to be updated as follows:

> *'The design of the surface water is to be progressed in accordance with the principles set out in the Flood Risk Assessment and Drainage Strategy including Proposed Drainage Strategy Layout Drawing ~~23-026-I&L_D00_P1 (contained in Appendix D of the Flood Risk Assessment) dated 15 December 2023~~.'* replaced with:

Flood Risk Assessment and Drainage Strategy including Proposed Drainage Strategy Layout Drawing no. 23-026-I&L_D00_P2 (contained in Appendix D of the Flood Risk Assessment). Dated 18 September 2024'

Condition 17 - Specifically part (a) - Waste Strategy

Part a) of Condition 17 needs to be updated to remove reference to the superseded Waste Strategy and two superseded drawings as follows:

'…~~the Waste Strategy dated 19 December 2023~~: including Completed Proforma, Waste Strategy Plan (~~Drawing no. 23168-UMC-XXXX-SI-DR-A-0704-P02~~), and Refuse Vehicle Swept Path Analysis (~~Drawing no. J32-7475-PS-005~~) in regard to the storage and disposal of refuse.' and replace with:

'…the Waste Strategy dated 17 October 2024: including Completed Proforma, Waste Strategy Plan (Drawing no. 23168-UMC-XXXX-SI-DR-A-0704-P08), Proposed Bin & Recycling Compound (Drawing no. (90)04A) and Refuse Vehicle Swept Path Analysis (Drawing no. J32-7475-PS-005) in regard to the storage and disposal of refuse.'

Condition 19 - Specifically part (a) - Energy and Sustainability Statement

Part a) of Condition 19 needs to be updated to remove reference to the superseded Energy and Sustainability Statement as follows:

'*shall be carried out in accordance with the document titled ' Energy and Sustainability Statement ref: ~~6624-CBC-HR-RP-S-001-P03 dated November 2023~~.'* replace with:

'*shall be carried out in accordance with the document titled ' Energy and Sustainability Statement ref: 6624-CBC-HR-RP-S-001-P06_Rev 006 dated 16 October 2024.'*

Condition 20 - Crime Impact Statement

Condition 20 states the following:

'20) The development shall only be carried out in accordance with section 4 in the Crime Impact Statement Version B :06.12.2023 Ref: 2023/0548/CIS/01 (notwithstanding the requirement set out in Section 4.3 bullet point 3 page 13 in the checklist of the CIS). The development hereby approved shall not be occupied or used until the Council as local planning authority has acknowledged in writing that it has received written confirmation of a secured by design accreditation for that the development.

Reason - To reduce the risk of crime pursuant to policies SP1 and DM1 of the Manchester Core Strategy (2012) and to reflect the guidance contained in the National Planning Policy Framework.'

The issue with the specific wording of this condition is that some of the more specific requirements in the Crime Impact Statement (CIS) would not be actioned until the final occupants of the final unit have completed them – they certainly won't be actioned by the Applicant who is delivering the base build and not the final fit out of the units. The current condition as worded doesn't take account of the fact that the development as approved is speculative and therefore there are no specific building designs available for some of the development approved - for a speculative scheme of this nature, this causes a problem for the occupation of <u>any</u> of the units across the whole site.

The CIS has been updated to reflect the proposed changes to the scheme (for the S73 application). The CIS also requires secured by design elements to be actioned which relate to the whole site and not just individual units, such as perimeter fencing or wider landscaping, so this again causes a bit of a disconnect between the responsibility of the Applicant (who will be delivering the base build and <u>*some initial*</u> elements of the secured by design but not everything in full), and the responsibility of tenants as they occupy each of the units. The CIS does recognise this position (page 13):

'It is recognised that if the units are being constructed on a speculative basis, some of the security measures for each of the individual units listed below (such as access-controlled entrances and intruder alarms) may be for the end owners/occupiers of the units to install rather than the developers. However, they would be required for the scheme as a whole to achieve the full SBD Award.'

With the above in mind, the following revision to Condition 20 is suggested in so far as the condition would provide the Council with the comfort that the secured by design principles as detailed in the CIS are to be delivered (where appropriate and necessary), but that the secured by design accreditation is not required to be achieved in this particular case:

> '*The proposed development shall be constructed in general accordance with the recommendations contained within section 4 of the Crime Impact Statement Version C: 02/10/2024 Ref: 2023/0548/CIS/01. Within two months of the commencement of the first occupation of any of the units, a verification statement confirming the implementation of the recommendations of the crime impact statement shall be submitted to and approved in writing by the City Council as local planning authority and subsequently maintained in situ.'*

The Applicant is not opposed to incorporating crime prevention measures and techniques into the development, indeed the original proposed development (which was approved in April 2024), was revised to take account of previous comments from Greater Manchester Police in the original CIS. The updated CIS confirms that *'the layout of the proposed scheme is considered acceptable'*, but there is nothing in the CIS that states that formal secured by design accreditation is necessary, with the CIS requiring that the security measures are incorporated into the initial design of the wider development site, and the final fit-out of the units themselves - and this is exactly what the Applicant intends to do as far as practicably possible.

The Applicant is aware of other cases in the Manchester administrative area where the secured by design accreditation has not been required by planning condition, but as per the suggested condition above, a verification report has been satisfactory to the Council, and the Applicant would request that the Council approaches this S73 application in that same way. Finally, there is nothing in the adopted Development Plan which states that secured by design accreditation must be achieved in development proposals, simply that development should make a positive contribution to the safety of residents (Policy SP1) and that development should have regard to community safety and crime prevention (Policy DM1).

Condition 21 - Specifically part (a) - External Lighting Scheme

Part a) of Condition 21 needs to be updated to remove reference to the superseded External Lighting Scheme as follows:

> '*The external lighting scheme shall be implemented in accordance with the measures External Lighting Impact Assessment, Ref: ~~6624-CBC-OR-RP-E-001 - Revision: P02, dated: 18/12/2023~~.'* replace with:
>
> '*The external lighting scheme shall be implemented in accordance with the measures External Lighting Impact Assessment, Ref: 6624-CBC-OR-RP-E-001 - Revision: P03, dated: 24/10/2024.*

Condition 22 - General Arrangement Plan

Condition 22 needs to be updated to remove reference to a superseded drawing as follows:

> *'Prior to the installation of the retaining wall in the location shown on General Arrangement Plan ref:~~UG_2066_LAN-GA-DRW_-101 rev.T2 received 15th April 2024~~'* replace with:
>
> *'Prior to the installation of the retaining wall in the location shown on Landscape General Arrangement Plan ref: UG_2066_LAN_GA_DRW_01 Rev P11 received xx*.'

Condition 23 - Proposed Boundary Treatment Plan

Condition 23 needs to be updated to remove reference to a superseded drawing as follows:

> *'The boundary treatment scheme for the development shall be implemented in accordance with Proposed Boundary Treatments Plan ref: ~~23168-UMC-XXXX-SI-DR-A 0701 rev.P06~~ received ~~21st March 2024~~* replace with:
>
> '*…in accordance with Proposed Boundary Treatments Plan ref: 23168-UMC-XXXX-SI-DR-A 0701 rev.P11 received xx'*

Condition 24 - Landscaping Scheme

Both parts (a) and (b) of Condition 24 need to be updated to remove reference to a superseded drawing as follows:

> '…in accordance with General Arrangement Plan ref:~~UG_2066_LAN-GA-DRW_-101 rev.T2 received 15th April 2024~~' replace with:
>
> *'…in accordance with Landscape General Arrangement Plan ref: UG_2066_LAN_GA_DRW_01 Rev P11 received xx*.'

Condition 28 - Maximum gross external floorspace

Condition 28 restricts the gross external floorspace to that as shown on the approved Proposed Site Plan as follows:

> *'The permission hereby granted relates to a maximum of gross external floorspace of 5,535.6 sq.m. of commercial floorspace, including Classes E(g) (iii) B2 and B8) uses.'*

The approved floorplans for the approved building for Units 1 - 4 allowed for a proposed gross external floor area (GEA) of 2,497.6 sqm, based on a GEA footprint of 1,902 sqm. This S73 seeks a variation to the condition to enable the new building for Unit to measure 7,609.2 sqm GEA with all the other proposed buildings remaining the same, resulting in a new overall GEA of 10,647.2 sqm. Ordinally, the installation of mezzanine floors for storage use would represent internal alterations that do not constitute 'development' as defined in Section 55(2) of the Town and Country Planning Act 1990. However, as Condition 28 on the extant permission restricts the GEA of commercial floorspace, it is necessary to seek to vary the condition. For the avoidance of doubt, the submitted revised Transport Statement takes full account of the proposed GEA in the modelling noting that self-storage typically generate a lower number of trips that standard Class B8 uses.

Having regard to the above, it is suggested that Condition 28 be reworded to say:

> *'The permission hereby granted relates to a maximum of gross external floorspace of 10,647.2 sq.m. of commercial floorspace, including Classes E(g) (iii) B2 and B8) uses.'*

Summary

Based on the above case law it is our view that the proposed revisions to the scheme could be dealt with via a Section 73 application. As with the Armstrong Case the revisions would not affect the description of development in the planning permission wherein the submitted drawings and documents relate to the conditions on the original Full Planning Permission and not the operative part of the permission. This Section 73 application has been submitted to seek to vary Condition 2 (Approved Drawings and Documents) to replace the site plan and another other associated plans with the new plans showing the change, however by reviewing the Decision Notice we must also seek to vary Conditions 9 (a), 10, 11, 12 (a) 17 (a), 19 (a), 20, 21 (a), 22, 23, 24 and 28 to allow for the new layout and amendments to one of the approved buildings.

I trust that you will find the enclosed application to be in order and I look forward to receiving confirmation that the application has been registered and validated as soon as possible.

If you have any queries about the enclosed details pertaining this application, I would be more than happy to discuss the matter further, or in my absence please speak with Marc Hourigan.

Yours sincerely



BEVERLEY MOSS BA (Hons) MA MRTPI
Associate Director

cc. Chancerygate Manchester Ltd
Marc Hourigan Hourigan Planning

Encl.