

Date: 13th February 2024

Manchester City Council
Planning Services
Town Hall Annex
Lloyd Street
Manchester
M2 5DB

(By Email)

FAO: Ms Emily Booth

Dear Emily

Town & Country Planning Act 1990 – S.96A
Planning (Listed Buildings & Conservation Areas) Act 1990

Application for Non Material Amendment to Planning Permission Ref: 131992/FO/2021
& Listed Building Consent Ref: 131993/LO/2021

Site: MCR HOME Arches, Railway Arches, Whitworth Street West, Manchester

***** **Amended Covering Letter** *****

On behalf of our client Robertson *Construction) Ltd* hereby submit an application under Section 96A of the Town and Country Planning Act 1990 for a non-material amendment [NMA] to planning permission ref: 131992/FO/2021 for a number of changes to details to the approved development, which for the reasons set out below, we contend reasonably fall under the gambit of being non-material amendments.

This S.96A NMA and S.19 Variation applications are submitted via the Planning Portal (ref. PP- 12510665). This S.96A NMA and S.19 Variation application comprises the following:

- Completed application form;
- TPS Covering letter;
- Amended Plans (see list below)
- The requisite application fee of £234.00 has been paid online via the Planning Portal.

The Approved Development under Planning Permission ref: 131992/FO/2021 permits the conversion of 3 no arches below the viaduct together with an extension to create arts, culture and education and events space.

The Planning Permission is accompanied with an associated Listed Building Consent, issued under MCC LBC ref: 131993/LO/2021. Legislation under the Planning (Listed Buildings & Conservation Areas) Act 1990 does not provide for non-material amendments to a LBC. Section 19 of the legislation permits a LBC too be varied in the same way that a planning consent can be varied under S.73 of the Town & Country Planning Act.

The proposed changes as shown in the submitted amended plans and as summarised below are considered to be of a minor nature that can be properly considered under S.96A of the Town & Country Planning Act 1990 and variation of approved plans under S.19 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The Site benefits from the Planning Permission for which application has been made to discharge pre-commencement conditions. The Council has confirmed approval of materials for the development. Other information submitted for approval under the conditions discharge application relates to drainage and Environmental Construction Management Plan.

The details of the works have been through a process of refinement through the preparation of detailed construction drawings and technical consultations with Network Rail and Manchester City Council (the client for the works).

The applicant, who are the contractor for the development, have been advised by the retained architects John Matthews Associates (and through their discussions with the client and Network Rail as part of the updating of surveys and through value engineering) that the approved plans require some minor changes, which we can summarise as follows:

- Network Rail requirement to achieve 350mm from face of steel to brick viaduct for inspection and repair.
- Survey inaccuracies discovered means Whitworth Street public footpath is approximately 300mm higher than previously thought and the arch head is 100mm higher.
- Value Engineering/Client propose to remove the glazed bricks from rear pod elevations.

A summary of the changes to the design are outlined below:

- Moving the steel to achieve 350mm clear from the arch – *external alteration*.
- Increased shadow gap (spandrel panel) between glazing head and arch – *external alteration*.
- To maintain DDA access widths to the entrance doors in the curtain walling the pods, front and back, have been reduced by 2 bricks in width. The pods remain central to each of the arches – *external alterations*.
- Arch 1 pod HOME elevation doors narrowed slightly to maximise control room size – *external alteration*.
- Arch 2 pod HOME side single WC and quiet room reduced in width with no other impact on plan or elevation – *internal alteration*.
- Arch 3 pod HOME side no change other than width – *internal alteration*.

Minor detail changes due to Survey inaccuracies, require the following amendments:

- Elevation (*external elevation*) is approximately 250mm shorter due to the finished floor level to Whitworth Street being plus 350mm and the arch head being plus 100mm.
- Pod heights remain the same as dictated by internal datum.
- Additional steps required internally to accommodate the increase in height from finished floor level to Whitworth Street.

The Submitted Amended Plans & Elevations are listed as follows:

- HAP-JMA-A1-00-DR-A-02-4201 - Enlarged Plan – Arch 1
- HAP-JMA-A1-XX-DR-A-05-4201 - Longitudinal Section through Arch 1
- HAP-JMA-A1-XX-DR-A-05-4221 - Cross Section – Arch 1
- HAP-JMA-A2-00-DR-A-02-4202 - Enlarged Plan – Arch 2
- HAP-JMA-A2-XX-DR-A-05-4202 - Longitudinal Section through Arch 2
- HAP-JMA-A2-XX-DR-A-05-4222 - Cross Section - Arch 2
- HAP-JMA-A3-00-DR-A-02-4203 – Enlarged Plan – Arch 3
- HAP-JMA-A3-XX-DR-A-05-4203 – Longitudinal Section Arch 3
- HAP-JMA-A3-XX-DR-A-05-4223 – Cross Sections Arch 3
- HAP-JMA-B01-00-DR-A-02-2200 – Ground Floor GA Plan
- HAP-JMA-B01-XX-DR-A-04-2200 - Whitworth Street (North) Elevation
- HAP-JMA-B01-XX-DR-A-04-2201 - Home South GA Elevation
- HAP-JMA-B01-XX-DR-A-05-2200 - Longitudinal Section AA
- HAP-JMA-B01-XX-DR-A-05-2201 - Longitudinal Section BB

Section 96A of the Town and Country Planning Act 1990

Section 96A of the Town and Country Planning Act 1990 specifically permits local planning authorities to approve non-material amendments to permissions. It states that:

"(1) A local planning authority in England may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material. The power conferred by subsection (1) includes: power to impose new conditions; to remove or alter existing conditions."

There is no definition of 'non-material' within the Act. It is a basic principle within the meaning of the Act, and relevant case-law, which will depend on the nature of the change, the context of the overall scheme, and the effects that such a change has in that instance.

Section 19 of the Planning (Listed Buildings & Conservation Areas) Act 1990

Application for variation or discharge of conditions under Section 19 states:

"(1) Any person interested in a listed building with respect to which listed building consent has been granted subject to conditions may apply to the local planning authority for the variation or discharge of the conditions."

(2) The application shall indicate what variation or discharge of conditions is applied for.

(3) Sections 10 to 15 apply to such an application as they apply to an application for listed building consent.

(4) On such an application the local planning authority or, as the case may be, the Secretary of State may vary or discharge the conditions attached to the consent, and may add new conditions consequential upon the variation or discharge, as they or he thinks fit.

Commentary of the Proposed Non Material Amendments

The nature of the proposed changes as detailed in listed plans and drawings and summarised above do not raise any significant design changes or materials changes which would undermine the integrity of the approved development, nor do any of the changes in minor details raise new planning issues or heritage considerations that have not been previously considered by the granting of the Planning Permission and Listed Building Consent.

Furthermore, the submitted details do not result in the development becoming contrary to policies of the development plan or national guidance, and do not weaken the quality of the approved development.

The changes do not require consultation with external organisations or neighbours and will be broadly consistent with the principles of the previously approved development without causing any conflict with any other conditions imposed on the planning permission.

It is therefore considered that these changes are non-material in nature and can be considered through an application under S.96A of the Town and Country Planning Act 1990 and S.19 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

It is proposed to amend the wording of Condition No. 2 of Planning Permission Ref: 131992/FO/2021 and Condition No. 2 of Listed Building Consent Ref: 131993/LO/2021, to substitute the approved plans listed in the respective consents with the list of amended plans noted above.

We trust that the information provided is sufficient to enable you to validate the submitted S.96 Non Material Amendment application and S.19 Variation of Conditions application and that both applications can be progressed towards determination at the earliest opportunity.

In the meantime, should you require any further information please do not hesitate to contact me.

Regards

CD Williams

Colin D Williams

The Planning Studio

Encl.

cc – Robertson Construction Ltd
Sam Ainsley, JMA