6 October 2023
Delivered via Planning Portal

Jennifer Atkinson
Manchester City Council
P.O. Box 532
Town Hall
Manchester
M60 2LA

Dear Jennifer,

NON-MATERIAL AMENDMENT AND ALTERATION TO LISTED BUILDING CONSENT APPLICATION PURSUANT TO LPA REF. 129251/FO/2021 AND 129252/LO/2021| 98-116 DEANSGATE AND 35-47 KING STREET WEST, MANCHESTER, M3 2GQ

I am pleased to enclose an application, submitted on behalf of Kendal Regeneration Company Ltd, for a non-material amendment to planning permission 129251/FO/2021 relating to the wording of existing planning conditions to allow the approved development to be delivered in phases. The application is submitted pursuant to Section 96A (S96A) of the Town and Country Planning Act 1990. The application also seeks to vary conditions listed under the linked Listed Building Consent 129252/LO/2021 pursuant to Section 19 (S19) of the Planning (Listed Building and Conservation Areas) Act 1990 for the same reason.

This application has been submitted via the Planning Portal (ref. PP-12393363) and comprises the following:

- Completed application forms
- This covering letter
- Drawing no. 6273-SRA-KE-XX-DR-A-01801 Rev P02 Phasing Plan
- Drawing no. DGA-FRH-Q1-ZZ-DR-S-4700 Demolition Plan
- Drawing no. DGA-FRH-Q1-ZZ-DR-S-4701 Demolition Elevations and Sections

The requisite application fee of £298.00 (inc. VAT) has been paid online via the Planning Portal.

Background

Full Planning Permission[1] ('FPP') for the change of use of the upper floors and the erection of a three-storey rooftop extension to the existing Kendal Milne building to provide office and commercial floorspace and the demolition of an adjacent multi-storey car park and the erection of an office building in its place was granted by Manchester City Council ('MCC') on 4th June 2021with the following description:

> *Change of use of upper floors and erection of three storey rooftop extension, including plant level, to Kendal Milne building to provide offices on floors 1-9 (Use Class E), together with change of use of ground, lower ground and basement levels of Kendal Milne building to flexible commercial spaces (Use Class E, F2 and /or*

[1] LPA Ref. 129251/FO/2021

1 New York Street,
Manchester,
M1 4HD

Registered in England Turley Associates Limited no. 2235387. Registered office: 1 New York Street, Manchester, M1 4HD

> *Sui Generis (Drinking Establishments) and associated elevational alterations and works; Demolition of adjacent Fraser Building and link bridges and erection of 14 storey office building (Use Class E), including plant level, together with associated amenity space and ground and basement floor flexible commercial units (Use Class E, F2 and / or Sui Generis (Drinking Establishments)) and basement areas for cycle storage and plant; Highways landscaping and public realm works, engineering and infrastructure works and other associated works.*

An accompanying Listed Building Consent[2] ('LBC') was also granted by Manchester City Council on 4th June 2021 for the internal and external alterations to the existing Kendal Milne building. The description of consent is as follows:

> *Listed Building Consent for internal and external alterations to Kendal Milne building as part of proposals for change of use and three storey rooftop extension to form 9 floors of offices and commercial uses at ground, lower ground and basement levels.*

The planning permission and listed building consents are yet to be implemented. They expire on 21st June 2024.

Investec is the parent company of Kendal Regeneration Company Ltd and owns the freehold of the subject site. It has worked collaboratively with Manchester City Council over a number of years to achieve consent for a high-quality scheme which can secure the long-term productive use of the Kendal Milne building and enable its sustainable repurposing in the context of its status as one of the city's most high profile and prominent buildings located in the commercial core of the city centre. This will be delivered alongside the development of a further office building replacing an existing poor quality multi-storey car park to the rear. Working together, the two components of the development will deliver significant regeneration benefits via the provision of high-quality Grade A office accommodation and the removal of a structure which detracts from the environmental quality of this part of the city centre. In doing so, the proposal will bring additional activity to the area adding to the vitality and viability of the wider Deansgate area. Investec is fully committed to the scheme and is looking forward to delivering this key development in the near future.

As is common with major city centre sites, the development is affected by land ownership and leasehold constraints which it has been necessary to address to enable a credible, deliverable and viable development to be presented to the investor and occupier market.

In this instance, the existing multi-storey car park was subject to a lease in favour of Manchester City Council which had 153 years to expiry. The terms of that lease would preclude the delivery of the development as consented. It has therefore been necessary to agree an alternative lease arrangement with Manchester City Council to remove this constraint. This was formally achieved in November 2022 following several months of negotiation. As a result, this particular constraint has been removed, and Investec can progress to the next stage of delivering the scheme.

Up to the point of this milestone being reached, it has not been possible for Investec to secure funding for the development or to commission the next phase of detailed design work to enable the development to be delivered. In essence, the viable delivery of the scheme, and therefore the ability to commit further funds to the development, was dependent on addressing the leasehold constraint.

The renegotiated lease on the car park site resolves this issue. Investec are grateful to the City Council for its collaboration in reaching this point.

The lease renegotiation has been progressed alongside an ongoing negotiation with existing tenants of the ground floor commercial units of the car park and resolution of Rights of Light issues relating to surrounding buildings, requiring protracted engagements with third parties. These issues must also be resolved to enable legal

[2] LPA Ref. 129252/LO/2021

impediments to the site's delivery to be removed and thus enabling funding to be committed and the scheme marketed to occupiers. Significant progress has now been made to the extent that detailed design work can be funded and commenced with confidence.

Investec is fully committed to the scheme and, following extensive work undertaken to address the above constraints, is now in a position to move towards the next phase of delivery. At present the Kendal Milne building continues to be occupied by a trading House of Fraser department store. A new lease was agreed with House of Fraser in 2019 to enable their continued occupation of the premises following the parent businesses' liquidation in 2018. Investec recognises that this is a high profile and prominent site which, if left vacant over a long period of time, would have a significant adverse impact on Deansgate as a busy route through the city centre. It has effectively agreed a rent-free lease which enables House of Fraser to continue trading from this site whilst the majority of other stores across the country have now ceased trading.

As noted, the extant permission for the development of the site expires in June 2024. Significant additional design work, which would take over a year to complete, now needs to be commissioned to enable the scheme to come forward fully. This includes some changes to the scheme design to reflect changes to Building Regulations.

As a result of the amount of time needed to renegotiate the lease on the car park site, there is now insufficient time to complete this detailed design work before the permission lapses in June 2024. It is therefore Investec's proposal to deliver an initial phase of works on site by 21st June 2024, sufficient to constitute commencement of the development before the planning permission lapses. These works would not require the aforementioned detailed design work to be completed. To enable this, non-material amendments are required to the extant planning permission relating to the phased delivery of the scheme and associated changes made to the listed building consent which are explained further in this letter.

Proposed Changes

It is now intended to bring forward the development subject to the FPP / LBC. The initial proposed phase referred to above (Phase 1) would comprise demolition of two bridges (Bridges A and B) which link the Kendal Milne building with the multi-storey car park to the rear. Details of the proposed works are shown on the demolition plans. The remainder of the development will be brought forward in subsequent phases(s).

The definition of the phases and an overview of the works within each are shown on the Phasing Plan which has been submitted with this application (plan references xxx). Associated Sections and Elevations plans have been submitted which provide details of the works proposed through Phase 1 (plan reference xxx).

At present the planning permission and listed building consent do not expressly permit the delivery of the development, and critically the discharge of planning conditions, on a phased basis. Non-material amendments are therefore proposed to a limited number of conditions to address this and enable phased delivery in accordance with the Phasing Plan (reference xxx). As part of these applications, it is also proposed that the Phasing Plan be added to the planning permission and listed building consent as an approved plan.

The necessary changes to the conditions are outlined below within **Appendix 1.** These amendments will enable Phase 1 of the development to be delivered through the discharge of only those conditions which need be addressed in the context of the limited scope of works which comprise Phase 1 of the development as proposed.

A meeting was held with Manchester City Council on Monday 24th July to discuss these proposed changes. It was agreed that the proposed changes could be dealt with via a NMA / S19 application in respect of the FPP and LBC respectively in principle. The formal submission of the enclosed applications follows that meeting.

Basis of Determination

National Planning Practice Guidance (NPPG) confirms that what constitutes a 'non-material' amendment will be dependent on the context of the overall scheme – an amendment that is non-material in one context may be material in another. The local planning authority must have regard to the effect of the change and be satisfied that the amendment sought is non-material in order to approve an application under Section 96A of the Town and Country Planning Act 1990.

Section 19 of Planning (Listed Building and Conservation Areas) Act 1990 allows the variation or discharge of conditions attached to LBCs. It is noted that as with NMAs, a Section 19 application does not require statutory consultation, with guidance prepared by the Institute of Historic Building Conservation[3] confirming that *'only a new application for LBC would require the statutory consultations'*.

Evaluation of the Proposed Changes

The proposed changes will not alter any aspect of the development approved in terms of its physical form; they simply relate to ensuring that the conditions are structured in a way that reflects the intended phased implementation of the project.

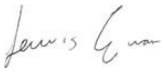
The proposed changes do not change the scale, nature or extent of the approved scheme. The mix of uses comprised in the development, its built form and design quality are unaffected. Accordingly, the applications do not engage a reconsideration of the physical form of the scheme or its uses proposed or indeed of its harm to heritage assets.

Whilst the changes would facilitate the delivery of a first phase of development (Phase 1) independently of the rest, the completion of the proposed Phase 1 works in isolation does not give rise to any environmental or related planning or heritage matters and would have no effect on the overall planning balance which fell in favour of the scheme's approval through the determination of the planning application and associated LBC application. Phase 1 can be delivered in isolation in an acceptable manner given the very limited scope of works proposed. The delivery of Phase 1 in the manner does not undermine the delivery of the wider development in due course.

In light of the above, it is clear that the proposed changes comprise non-material amendments to the FPP and fall within the scope of the types of amendments to LBCs that can be approved via Section 96a of the Town and Country Planning Act 1990 and Section 19 of the Planning (Listed Building and Conservation Areas) Act 1990 respectively.

I trust that you have sufficient information to register and determine this application and look forward to receiving confirmation of receipt as soon as possible. However, if you have any queries or require any additional information, please do not hesitate to get in touch

Yours sincerely



Lewis Evans

Associate Director

lewis.evans@turley.co.uk

[3] Guidance Notes (ihbconline.co.uk)

Appendix 1: Proposed Revisions to Condition Wording

Outlined below are the proposed wording alterations to conditions attached to the FPP, LPA Ref. 129251/FO/2021 (unless stated to also apply to the LBC, Ref. 129252/LO/2021). The revised wording of the below conditions seeks to enable the phased discharge of a number of associated pre-commencement conditions.

2) add Phasing Plan 6273-SRA-KE-XX-DR-A-01801 Rev P02 as an approved drawing to the condition [condition to be amended on FPP and LBC]

3) (a) Notwithstanding the details submitted with the application, prior to the commencement of **any phase of** development the following shall be submitted for approval in writing by the City Council, as Local Planning Authority:

A programme for the issue of samples and specifications of all materials to be used on all external elevations of **that phase of** the development (~~on both the Kendal and Fraser Buildings),~~ including the roof terraces, and drawings to illustrate details of the full sized sample panels that will be produced. The programme shall include timings for the submission of samples and specifications of all materials to be used on all external elevations **in that phase** of the development to include jointing and fixing details, details of the drips to be used to prevent staining, details of the glazing and a strategy for quality control management.

(b) All samples and specifications shall then be submitted to and approved in writing by the City Council as local planning authority in accordance with the programme as agreed for part a) of this condition.

[condition to be amended on FPP and LBC]

4) (a) Prior to the commencement of **each phase of** the development, details of a local labour agreement in order to demonstrate commitment to recruit local labour for ~~both~~ the **demolition and** construction ~~and operational~~ elements of the development shall be submitted to and approved in writing by the City Council as Local Planning Authority. The approved document shall be implemented as part of the construction ~~and occupation~~ phases of the development.

(b) Prior to first occupation of the development, details of a local labour agreement in order to demonstrate commitment to recruit local labour for the operational elements of the development shall be submitted to and approved in writing by the City Council as Local Planning Authority. The approved document shall be implemented as part of the occupational phases of the development.

(c) Within six months of the first occupation of the development, details of the results of the scheme shall be submitted to the Local Planning Authority for consideration. Reason - To safeguard local employment opportunities, pursuant to policy EC1 of the Core Strategy for Manchester. 5) No development shall take place, including any demolition works, until a construction management plan or construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the demolition/construction period. The plan/statement shall provide for;…

Manchester City Council encourages all contractors to be 'considerate contractors' when working in the city by being aware of the needs of neighbours and the environment. Membership of the Considerate Constructors Scheme is highly recommended. The development shall be carried out in accordance with the approved construction management plan.

6) a) Before **each phase of** the development hereby approved commences, **with the exception of the initial demolition phase (Phase 1**, a report (the Preliminary Risk Assessment) to identify and evaluate all potential sources

and impacts of any ground contamination, groundwater contamination and/or ground gas relevant to **that phase of development** ~~the site~~ shall be submitted to and approved in writing by the City Council as local planning authority. The Preliminary Risk Assessment shall conform to City Council's current guidance document (Planning Guidance in Relation to Ground Contamination).

In the event of the Preliminary Risk Assessment identifying risks which in the written opinion of the Local Planning Authority require further investigation, **that phase of** the development shall not commence until a scheme for the investigation of the site and the identification of remediation measures (the Site Investigation Proposal) has been submitted to and approved in writing by the City Council as local planning authority.

The measures for investigating the site identified in the Site Investigation Proposal shall be carried out, before the development **of each phase** commences and a report prepared outlining what measures, if any, are required to remediate the land (the Site Investigation Report and/or Remediation Strategy) which shall be submitted to and approved in writing by the City Council as local planning authority.

b) When **each phase of** the development commences, the development shall be carried out in accordance with the previously agreed Remediation Strategy and a Completion/Verification Report shall be submitted to and approved in writing by the City Council as local planning authority.

In the event that ground contamination, groundwater contamination and/or ground gas, not previously identified, are found to be present on the site at any time before the development is occupied, then development shall cease and/or the development shall not be occupied until, a report outlining what measures, if any, are required to remediate the land (the Revised Remediation Strategy) is submitted to and approved in writing by the City Council as local planning authority and the development shall be carried out in accordance with the Revised Remediation Strategy, which shall take precedence over any Remediation Strategy or earlier Revised Remediation Strategy.

7) a) Prior to the commencement of development of **each phase (with the exception of the initial demolition phase (Phase 1)**, a programme for the submission of final details of the landscaping, lighting, ecological enhancements, public realm works and planting of street trees **to be used in that phase of development** shall be submitted to and approved in writing by the City Council as Local Planning Authority. The programme shall include submission and implementation timeframes for the following details:

…

The approved scheme for part (v) shall be implemented not later than 12 months from the date the proposed building is first occupied. If within a period of 5 years from the date of the planting of any tree or shrub, that tree or shrub or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted at the same place,

b) The above details shall then be submitted to and approved in writing by the City Council as local planning authority in accordance with the programme as agreed for part a) of this condition. The development shall be carried out in accordance with the approved details.

8) External lighting shall be designed and installed so as to control glare and overspill onto nearby residential properties. If any lighting at the development hereby approved, when illuminated, causes glare or light spillage which in the opinion of the City Council as local planning authority causes detriment to adjoining and nearby residential properties, within 14 days of a written request, a scheme for the elimination of such glare or light spillage shall be submitted to the City Council as local planning authority and once approved shall thereafter be retained in accordance with details which have received prior written approval of the City Council as Local Planning Authority.

9) Prior to the commencement of the development hereby approved, **with the exception of the initial demolition phase (Phase 1),** archaeological investigations shall be carried out in accordance with Archaeological Desk-Based Assessment prepared by Salford Archaeology, received by the City Council as Local Planning Authority on 5 February 2021.

No development-related groundworks shall take place (except for demolition and clearance) until the applicant or their agents or successors in title has secured the implementation of a programme of archaeological works. The works are to be secured through and undertaken in accordance with a Written Scheme of Investigation (WSI) prepared by the appointed archaeological contractor and submitted to and approved in writing by Manchester City Council as Local Planning Authority. The WSI shall cover the following:

…

10) No development shall commence**, with the exception of the initial demolition phase (Phase 1)** until a surface water drainage scheme for the site, based on sustainable drainage principles, the hierarchy of drainage options in the National Planning Practice Guidance, and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the City Council as Local Planning Authority. The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards.

The drainage scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

20) a) Before **each phase of** development commences, a full condition survey of the carriageways/footways on construction vehicle routes **to be used in the construction of that phase of development** ~~surrounding the site~~ shall be undertaken and submitted to the City Council as Local Planning Authority.

b) When all construction/fit-out works are complete, the same carriageways/footways shall be re-surveyed and the results submitted to the City Council as Local Planning Authority for assessment. Should any damage have occurred to the carriageways/footways, they shall be repaired and reinstated in accordance with a scheme that shall first be submitted to and approved in writing by the City Council as Local Planning Authority. The necessary costs for this repair and/or reinstatement shall be met by the applicant.