Item No 01:-

17/04552/NONMAT

Brewery Court Cirencester Gloucestershire

Item No 01:-

Non-material amendment to applications for revisions to wording of conditions 10 (contaminated land) and 19 (raised platform) of planning permission ref. 14/01529/FUL (Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops and refurbished public realm, including the provision of a new substation and new public toilets, both replacing existing structures) at Brewery Court Cirencester Gloucestershire

Non-material amendment 17/04552/NONMAT (CT.2239/X)		
Applicant:	Wildmoor Cirencester Ltd	
Agent:	Pegasus Group Ltd	
Case Officer:	Mike Napper	
Ward Member(s):	Councillor Jenny Hincks	
Committee Date:	23rd November 2017	
RECOMMENDATION:	PERMIT	

Main Issues:

- (a) Impact upon potential ground contamination
- (b) Landscape and Built Heritage impact

Reasons for Referral:

The application relates to land currently in the Council's ownership and therefore Section D (para 3.4) of the adopted Scheme of Delegation expressly requires any such applications, including those for Non-Material Amendments, to be determined by Planning Committee.

1. Site Description:

The application site runs parallel with Castle Street to the north and Cricklade Street to the east, with the Tesco 'Metro' store to the west. It comprises an area of approximately 1.7 ha in total, although approximately half of it accommodates the Brewery public car park. The remainder of the site area comprises the regionally important New Brewery Arts (NBA) complex, including 'The Barrel Store' tourist accommodation (formerly The Niccol Building), together with retail units, rear service areas of other commercial properties and public toilets. The area is otherwise dominated by paved public open space, which includes the distinctive 'Hare Mosaic', with pedestrian links to Castle Street, Farrell Close and Ashcroft Road. The area is currently also well-used by pedestrians visiting NBA and the other commercial properties fronting the open space and the Bishop's Walk arcade, including associated and public outside seating areas. The site is traversed by established Public Rights Of Way as a result of longstanding public usage.

The site lies within Cirencester's Development Boundary and within the town's Commercial Centre, as defined within the Cotswold District Local Plan. With the exception of the public car park, the site is subject to a site-specific Local Plan policy, Policy CIR.5 (Land Adjacent to Brewery Car Park).

Other than the public car park, the site lies within the Town Centre Conservation Area wherein the Local Planning Authority is statutorily obliged to pay special attention to the desirability of preserving or enhancing the character or appearance of the area, in accordance with Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990. Additionally, the site abuts and affects the setting of listed buildings fronting Cricklade Street and Castle Street. The Local Planning Authority is statutorily required to have special regard to the desirability of

preserving the listed buildings, their setting, and any features of special architectural or historic interest they may possess, in accordance with Sections 16(2) and 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990.

There are also numerous unlisted buildings that are considered non-designated heritage assets that would be affected directly or indirectly by the proposed development, mainly of late C19 or early C20 construction. Within the site, these include the visually prominent former brewery building occupied by NBA, 'The Barrel Store' and the detached two-storey brick building currently in retail use. The site also contains more modern single and one-and-a-half storey late C20th buildings and immediately adjoins the large Tesco 'Metro' store and Bishops Walk buildings that, together with the rear elevations of the Castle Street-fronting properties, dominate views from within the public car park.

The application site also lies within an area of well-established archaeologically sensitivity and the eastern part of the site lies within a Scheduled Ancient Monument, which itself is a designated Heritage Asset.

2. Relevant Planning History:

13/01034/FUL Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops, a multi-purpose arts facility and refurbished public realm, including the provision of a new substation and new public toilets both replacing existing structures: Permitted 10.01.14 (BUT PLEASE NOTE THAT THIS DECISION WAS THE SUBJECT OF LEGAL CHALLENGE AND IS TO BE QUASHED).

14/00270/FUL Change of use of Niccol Centre to a Youth Hostel with associated external alterations: Permitted 16.05.14.

14/01529/FUL Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops and refurbished public realm, including the provision of a new substation and new public toilets, both replacing existing structures: Permitted 24.11.14.

14/01530/LBC Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops and refurbished public realm, including the provision of a new substation and new public toilets, both replacing existing structures: Consent 24.11.17.

17/03494/COMPLY Compliance with conditions 6 (toilets), 7 (archaeology), 8 (drainage), 10 (contamination), 15 (noise/dust), 16 (CMS), 20 (travel plan) & 21 (landscaping) - Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops and refurbished public realm, including the provision of a new substation and new public toilets, both replacing existing structures: Pending consideration (see separate report on this Schedule).

17/04090/COMPLY Compliance of with conditions 9 (Piling Method Statement), 13 (noise), 14 (noise), 24 (wall details), 25 (roof materials), 26 (samples), 27 (sample panels), 28 (fenestration), 29 (timber) and 30 (fenestration) - Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops and refurbished public realm, including the provision of a new substation and new public toilets, both replacing existing structures: Part-Compliance only in respect of Phase 1 works (see separate report on this Schedule).

17/04091/COMPLY Compliance with conditions 3 (samples), 4 (roofing), 5 (walling), 6 (sample panels), 7 (fenestration), 8 (timber) and 9 (design plans) - Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops and refurbished public realm, including the provision of a new substation and new public toilets, both replacing existing structures: Part-Compliance only in respect of Phase 1 works (see separate report on this Schedule).

17/04454/COMPLY Compliance with Condition 19 (raised parking area) - Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops and refurbished public realm, including the provision of a new substation and new public toilets, both replacing existing structures: Pending consideration (see separate report on this Schedule).

3. Planning Policies:

NPPF National Planning Policy Framework LPR05 Pollution and Safety LPR42 Cotswold Design Code LPR45 Landscaping in New Development

4. Observations of Consultees:

Environmental Protection Officer: No objection.

Landscape Officer: No objection.

Highways Officer: No objection.

5. View of Town/Parish Council:

No comments received.

6. Other Representations:

None.

7. Applicant's Supporting Information:

N/A

8. Officer's Assessment:

Permission was granted in 2014 for the Brewery Court re-development under application reference 14/01529/FUL. A series of conditions was attached to the permission. Notwithstanding the wording of the current conditions, Government guidance for local planning authorities provided within its Planning Practice Guidance (March 2014) publication, under the heading of 'Flexible Options for Planning Permissions', states that "New issues may arise after planning permission has been granted, which require modification of the approved proposals. Where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 will need to be submitted." Where less substantial changes are proposed, however, the Guidance states one of the acceptable options is by the Non-Material Amendment procedure.

The Guidance goes on to state that "There is no statutory definition of 'non-material'. This is because it 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 be satisfied that the amendment sought is non-material in order to grant an application."

Section 96A of the Planning Act states that:-

"S.96A - Power to make non-material changes to planning permission

- (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.
- (2) In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.
- (3) The power conferred by subsection (1) includes power—

- (a) to impose new conditions;
- (b) to remove or alter existing conditions."

In this instance, the applicant proposes revised wording of conditions 10 (Ground contamination) and 19 (Details of a raised platform element), in both cases to revise the wording to align them with that of other conditions referring to the phased construction of the development. The materiality of the proposed revisions to the wording of each of the conditions is assessed in the following text.

(a) Impact upon potential ground contamination

Condition 10 of the relevant permission is currently as follows:-

"No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the Local Planning Authority. The results of the site investigation shall be made available to the Local Planning Authority before any development begins. If any significant contamination is found during the site investigation, a report (the Remediation Scheme) specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before any development begins. The Remediation Scheme, as agreed in writing by the Local Planning Authority, shall be fully implemented in accordance with the approved timetable of works and before the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the Local Planning Authority in advance of works being undertaken. On completion of the works the developer shall submit to the Local Planning Authority written confirmation that all works were completed in accordance with the agreed details.

Reason: To ensure any contamination of the site is identified and appropriately remediated, in accordance with Cotswold District Local Plan Policy 5 and the provisions of the NPPF."

The condition was attached as a result of consultation with the Environmental Protection Officer, who considered that the condition was necessary to ensure that investigation of the previously developed land comprising the application site was undertaken to ascertain the presence of any potential ground contamination from previous historic uses and to ensure the appropriateness of the proposed measures for mitigating any such pollution. The applicant's supporting information submitted with the original 2014 application, included a desk-based assessment had established the need for further investigation.

Whilst the applicant is not challenging the necessity for the condition, it has been correctly highlighted that the current wording is contradictory and incapable of being met. This is due to the fact that it is a 'condition precedent' (that is, a condition that requires the submission and approval of further details prior to the physical commencement of the development). In this case, the details required are those relating to ground investigation works, which can only be fully undertaken following the demolition of an existing building (formerly known as 'Jungle'). The demolition of the building would, in planning terms, constitute a commencement of the development and would thereby instantly conflict with the pre-commencement requirement.

In order to resolve the conflict in the wording of the current condition as described above, the applicant proposes to revise the wording to the following:-

"No phase of development, other than works of demolition (Phase 1) hereby approved, shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the Local Planning Authority. The results of the site investigation shall be made available to the Local Planning Authority before any other phase of development begins. If any significant contamination is found during the site investigation, a report (the Remediation Scheme) specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before any development in any other subsequent phase begins.

- 7

The Remediation Scheme, as agreed in writing by the Local Planning Authority, shall be fully implemented in accordance with the approved timetable of works and before the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the Local Planning Authority in advance of works being undertaken. On completion of the works the developer shall submit to the Local Planning Authority written confirmation that all works were completed in accordance with the agreed details."

The effect of the suggested revisions (that is, the introduction of wording to refer to the phased construction of the development) would allow demolition phase (Phase 1) of the development to be implemented, thereby allowing the ground investigation works to be undertaken to meet the requirements of the other elements of the condition. The purpose of the condition and the Council's ability to ensure compliance would remain, by virtue of the need for the results of the ground investigation works, and any associated remediation proposals, to be submitted for approval prior to the commencement of any other phase of the construction works. The approval of any necessary remedial works before groundworks are undertaken is, of course, critical to ensure that they are completed as part of the construction of the development, in accordance with Local Plan Policy 5 and to ensure a sustainable form of development.

For purposes of clarity, the applicant has provided a Proposed Phasing Strategy, as follows:-Phase 1 - Demolition of existing buildings and structures; Phase 2 - Ground works and enabling works; Phase 3 - Construction of superstructure; Phase 4 - Construction of cinema, ground floor commercial units and student accommodation; Phase 5 - Fit out.

Having regard to the intent and effectiveness of the condition, officers are satisfied that the revised wording would allow the investigation works to be fully completed, would, in fact, resolve the inconsistency in the current wording, and would retain the appropriate degree of control for the Council to ensure compliance. Consequently, officers support the proposed revisions and are content that they are non-material to the effect of the original planning permission.

(b) Highways safety, Landscape and Built Heritage impact

Condition 19 of the planning permission is currently a follows:-

"Prior to the commencement on site of any phase of the development hereby permitted, details of the 'Raised parking area with pedestrian priority', as shown on drawing 2438-A-P011 Rev. A19, including surface treatment(s), section(s) and method (street furniture and/or landscaping details) of physical delineation and separation between it and the colonnaded pedestrian walkway, shall be submitted to and approved in writing by the Local Planning Authority. The said raised parking area shall then be provided in accordance with the requirements of Condition 17 of this decision notice.

Reason: To ensure that a safe and appropriately designed layout is provided, in accordance with the provisions of the NPPF and Cotswold District Local Plan Policies 15, 39, 42 and CIR.5."

The raised parking area would be in close proximity to the southern elevation of the development and therefore to pedestrian users of the public spaces. The raised parking area, which includes 16 public car parking spaces, was considered necessary to provide a physical delineation for drivers and pedestrians between pedestrian only circulation space and the remainder of the public car park. The raised area is to be a shared space to provide vehicular access to the parking spaces, but is to be pedestrian priority. The condition was attached to the permission to ensure that the design of the raised area would be visually appropriate to the townscape and, equally, that the detailed design would ensure safe use of the space for car users and pedestrians.

The applicant proposes the following wording:-

"Prior to the commencement of the 'Raised parking area with pedestrian priority' hereby approved, details of the 'Raised parking area with pedestrian priority', as shown on drawing 2438-A-P011 Rev. A19, including surface treatment(s), section(s) and method (street furniture and/or

landscaping details) of physical delineation and separation between it and the colonnaded pedestrian walkway, shall be submitted to and approved in writing by the Local Planning Authority. The said raised parking area shall then be provided in accordance with the requirements of Condition 17 of this decision notice."

The intention of the proposed revised wording is to remove the necessity for the required additional design details of the raised parking area to be submitted for the Council's approval prior to the commencement of construction works of that particular feature. The wording as suggested would be more compliant with the recommendations of Government guidance regarding the practicality of conditions, as it would not place an unreasonable and unnecessary onus on the applicant to provide details prior to any commencement of the overall development, which works may not have any bearing on the construction of the raised area. Consequently, officers consider that the proposed revision to the wording is more 'fit-for-purpose', but would nevertheless retain the effectiveness and enforceability of the original condition.

Officers are therefore content that the revised wording would be non-material to the intent and effect of the condition.

9. Conclusion:

On the basis of the preceding assessment, officers are satisfied that the revisions to the wording of both of the stated conditions are not material to the intent, effect and enforceability of the original permission and that therefore it is appropriate for them to be approved under the Non-Material Amendment procedure.

It is important to highlight that the effect of revising the wording of the conditions in the consideration of the remainder of the applications within the Committee Schedule will be relevant to the determination of those later applications. Conditions 10 and 19 are the subject of two of the following condition compliance applications. As a result of the conclusions reached here regarding the Non-Material Amendments application, officers recommend that Members have regard to the revised wording when considering the relevant compliance applications if they are minded to approve the Non-Material Amendments. The reports to the relevant condition compliance applications will therefore address this issue.

10. Proposed conditions:

For the purposes of clarity, this decision hereby amends condition 10 and 19 of planning permission reference 14/01529/FUL to read:-

Condition 10

"No phase of development, other than works of demolition (Phase 1) hereby approved, shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the Local Planning Authority. The results of the site investigation shall be made available to the Local Planning Authority before any other phase of development begins. If any significant contamination is found during the site investigation, a report (the Remediation Scheme) specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before any development in any other subsequent phase begins.

The Remediation Scheme, as agreed in writing by the Local Planning Authority, shall be fully implemented in accordance with the approved timetable of works and before the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the Local Planning Authority in advance of works being undertaken. On completion of the works the developer shall submit to the Local Planning Authority written confirmation that all works were completed in accordance with the agreed details.

__ (

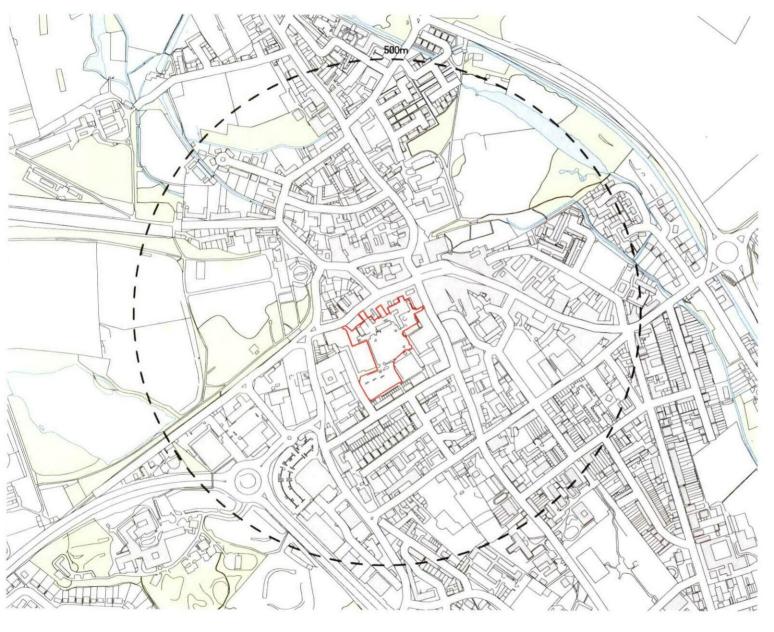
Reason: Reason: To ensure any contamination of the site is identified and appropriately remediated, in accordance with Cotswold District Local Plan Policy 5 and the provisions of the NPPF."

Condition 19

"Prior to the commencement of the 'Raised parking area with pedestrian priority' hereby approved, details of the 'Raised parking area with pedestrian priority', as shown on drawing 2438-A-P011 Rev. A19, including surface treatment(s), section(s) and method (street furniture and/or landscaping details) of physical delineation and separation between it and the colonnaded pedestrian walkway, shall be submitted to and approved in writing by the Local Planning Authority. The said raised parking area shall then be provided in accordance with the requirements of Condition 17 of this decision notice.

Reason: To ensure that a safe and appropriately designed layout is provided, in accordance with the provisions of the NPPF and Cotswold District Local Plan Policies 15, 39, 42 and CIR.5."

This decision does not confer a new planning permission and therefore this decision should be read in conjunction with planning permission referenced 14/01529/FUL, including in respect of the remaining conditions attached thereto.





| T 01285 641717 | F 01285 642348 | www.pegasuspg.co.uk |

Revisions: A · First issue

Site Boundary

Date 19.05.2014

Brewery Car Park - Townscape and Visual Assessment

Site Boundary Plan

Drawing Ref: W.0313_01-A

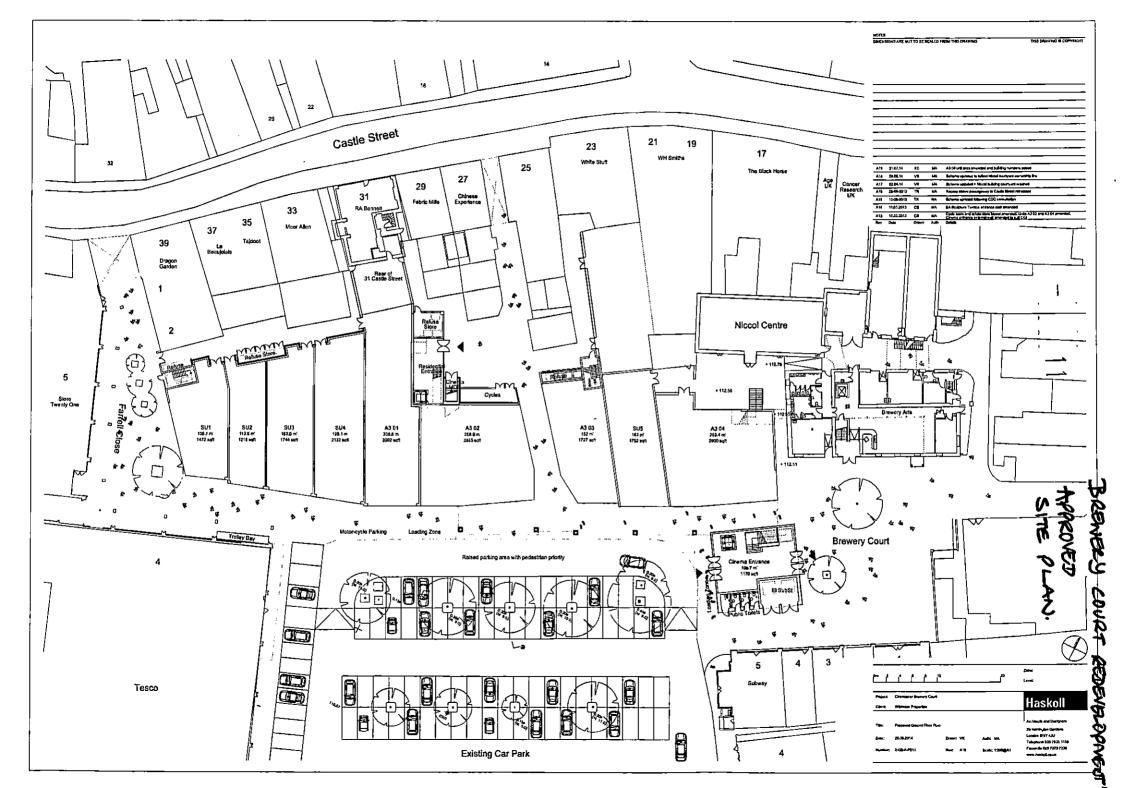
Client: Wildmoor Property Management Ltd

1:5000 @ A3

: 19.05.2014 Date

Drawn by : LD Checked by : SW

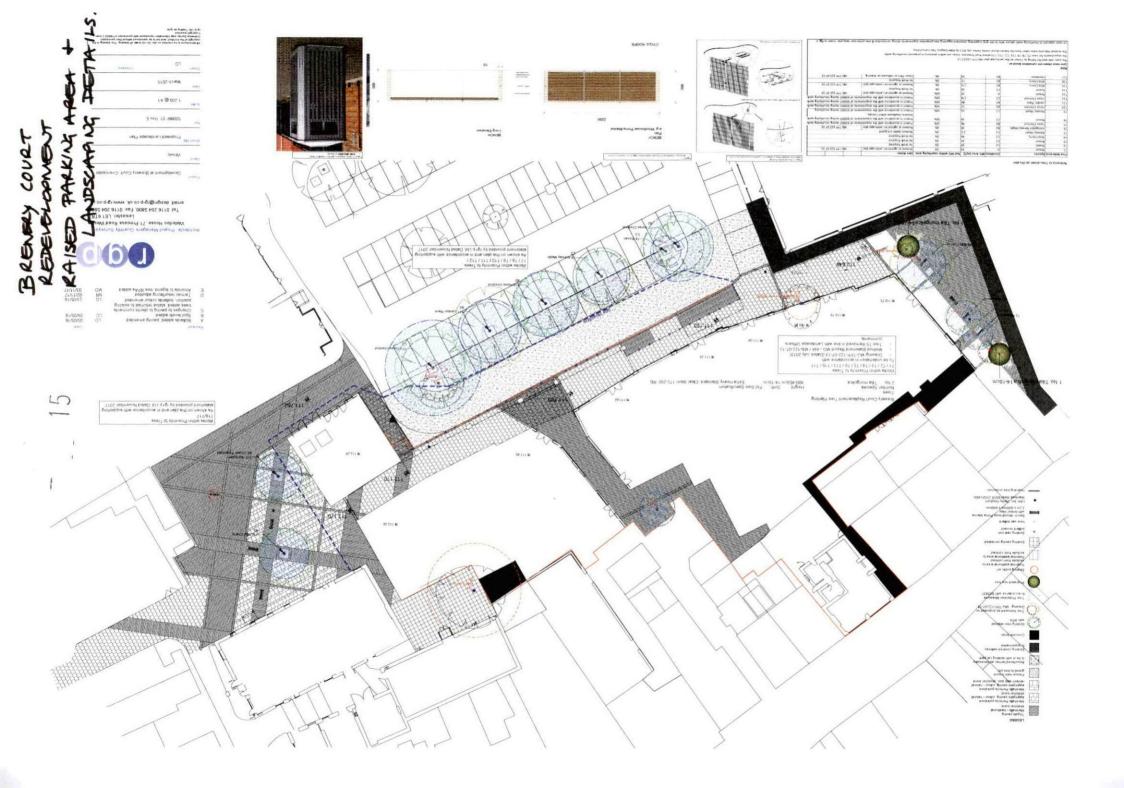




COURT

TOBOUT COPYED TO





Mike Napper

From: David Hutchisor

Sent: 17 November 2017 11:52

To: Mike Napper

Cc: Laura Humphries; Mark Booth Subject:

RE: Brewery Court Development

Dear Mike

My client has asked that I provide you with a response to the comments received from the Town Council (attached in the email below). I have separated out the relevant points raised by the Town Council (in bold and italics) and provide the Applicant's response to each of these as follows:-

"The Committee noted, with regret, that a start had not been made to comply with any of the planning compliance conditions which applied to the original planning consent for this development, which is due to expire on 24th November 2017,"

Applicant Response

- 1. The planning permission will only expire on 24th November 2017 if a lawful start on site is not made on, or before that date.
- 2. To that end the Applicant has submitted various applications to discharge all conditions that require details to be agreed prior to the commencement of development.
- 3. Once the details are approved, a start will be made on site in the terms of s.56 of the Town and Country Planning Act 1990 which will keep the permission alive in perpetuity.
- 4. The Applicant has followed due process and it is simply not the case that "no start has not been made to comply with any of the planning compliance conditions."

"In the meantime, it was understood that a start on work to demolish the former "Jungle" retail premises, in order to gain access to and commence investigation work into an area of potential contamination, will be made. This, in order to comply with the 3 year planning consent rule that the proposed development has commenced."

Applicant Response

- 5. The initial works that have been referred to will allow for further site investigation works to be undertaken, but it is also important to recognise that this will represent a commencement of the development.
- 6. As agreed with Officers it is logical and necessary that buildings are demolished to allow for the further site investigations to be undertaken in those areas.

"These are minor, but physically and visually disruptive, works in comparison with the scale of the proposed development as a whole. The Planning Committee therefore recommended that an extension of time for the compliance of planning conditions should be refused and a new planning application invited from this or another developer able to proceed".

Applicant Response

- 7. The demolition works form the first phase of the wider development, which will then be built out on a phased basis.
- 8. All construction sites cause a degree of visual and physical disruption but this is a short-term impact. Mitigation measures have been submitted for noise and dust suppression under condition 15 and a

- 17

Construction Method Statement under condition 16 to minimise any such disruption. This is standard practice.

- The Applicant does not seek an extension of time for conditions to be approved. There must be some misunderstanding. The necessary details have all been submitted and we seek approval now and prior to the commencement of development.
- 10. There is no need for any new planning application to be submitted to deal with these technical matters. My client intends to commence works pursuant to the extant planning permission.

Further Applicant Commentary

- 11. In terms of the substance of the discharge of condition applications, it is noted that the Town Council do not make any comments on the submitted details.
- 12. This would indicate that the Town Council raises <u>no objections</u> to applications themselves on any technical grounds. My client obviously welcomes this.
- 13. The reference to an extension of time is obviously irrelevant and the recommendation to refuse any of the applications on this basis should be afforded no weight.

My client would ask that this response is brought to the attention of the Committee Members and I hope that it clears up any misunderstandings that the Town Council may have. If you have any further queries please contact me or Laura Humphries in the usual way.

Kind regards

David Hutchison

Executive Director

Pegasus Group

PLANNING | DESIGN | ENVIRONMENT | ECONOMICS

Pegasus House | Querns Business Centre | Whitworth Road | Cirencester | GL7 1RT

T 01285 641717 | M 07795 010661 | DD 01285 888027 | E david.hutchison@pegasusgroup.co.uk

Birmingham | Bracknell | Bristol | Cambridge | Cirencester | East Midlands | Leeds | Liverpool | London | Manchester



The Cirencester Office's Environmental Management System is certified to the international ISO 14001:2004 standard.

Please consider the environment before printing this email message.



www.pegasusgroup.co.uk