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F.A.O Matt Kolaszewski

Planning Portal Ref: PP-08293100

24552/A5/JB/DO
8 January 2020

Dear Sir

SECTION 96A OF THE TOWN AND COUNTRY PLANNING ACT (NON-MATERIAL AMENDMENT)
FORMER NESTLE FACTORY, NESTLES AVENUE, HAYES, UB3 4RF
PLANNING APPLICATION REF. 1331/APP/2017/1883

On behalf of our client BDW Trading Limited (Barratt London), enclosed is an application for a non-material amendment (NMA) to vary the wording of the description of development of the above planning permission, which relates to the redevelopment of the Former Nestle Factory, Hayes.

Full planning permission was granted on the 28 June 2018 (ref: 1331/APP/2017/1883) for the following development:

"Part demolition of existing factory buildings and associated structures, and redevelopment to provide 1,386 dwellings (Class C3), office, retail, community and leisure uses (Classes A1/A3/A4/B1/B8/D1/D2), 22,663sqm (GEA) of commercial floorspace (Classes B1c/B2/B8 and Data Centre (Sui Generis)), amenity and playspace, landscaping, allotments, access, service yards, associated car parking and other engineering works."

Following the issue of the original planning permission, Barratt London has progressed with design development, including seeking amendments to the scheme through a variation to the approved drawings (s.73 application ref. 1331/APP/2019/1666). These proposals seek planning permission, in summary, for an additional three units, amendments to the unit mix and other design changes. The proposals were presented to planning committee on 18 September 2019 and members resolved to grant planning permission for the changes, subject to clarification on the provision of amenity space, overlooking issues and to agreeing a variation to the Section 106 Agreement dated 27 June 2018 (the parent s106 agreement).

Further information has been submitted in relation to amenity and overlooking issues, which are currently being considered by the Council. A draft Deed of Variation to the s.106 agreement has been prepared and will be issued separately to the Council's solicitor.



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Since the planning committee resolution, however, a Court of Appeal Judgment has been made (Ref. C1/2018/2922) in relation to **Finney v Welsh Ministers [2019] EWCA Civ 1868 (Finney)**, which held that on a s.73 application a local planning authority has no power to amend the description of development when granting the new permission. This judgment has procedural implications on the ability of LBH to positively determine the s.73 changes proposed to the original planning permission.

As noted above, the s.73 application (ref. 1331/APP/2019/1666) seeks to increase the number of residential units permitted, therefore, by definition, the Description of Development on the original planning permission would need to be amended because it refers to unit numbers but this is no longer possible in a s.73 application. Legal advice was sought by Barratt London from Winckworth Sherwood, which confirmed that the Description of Development on the original planning application could however be amended by way of an application under s.96A to move reference to the number of residential units into a planning condition.

This Section 96a application therefore seeks to amend the description of development for the original planning permission to remove the reference to unit numbers and add a new residential condition in order to control unit numbers. The proposed revised description of development is set out below:

"Part demolition of existing factory buildings and associated structures, and redevelopment to provide residential dwellings (Use Class C3), office, retail, community and leisure uses (Use Class A1/A3/A4/B1/B8/D1/D2), 22,663sqm (GEA) of commercial floorspace (Use Classes B1c/B2/B8 and Data Centre (Sui Generis)), amenity and playspace, landscaping, allotments, access, service yards, associated car parking and other engineering works."

The proposed wording of the new residential condition which is to be added to the original planning permission as part of this s.96A application is set out below:

"A total of no more than 1,389 residential dwellings are to be provided on the residential land."

We understand that further consultation will be required to be undertaken on the s.73 application following the grant of this non-material amendment application.

Summary

This application seeks to vary the Description of Development of planning permission ref: 1331/APP/2017/1883, to move reference to the number of proposed dwellings into a new residential condition, so that the s.73 changes proposed by planning application ref. 1331/APP/2019/1666 can be permitted, following resolution to grant at planning committee on 18 September 2019.

This application has been submitted via the Planning Portal (Ref. PP-08293100). A fee of £234 has been paid online via the Planning Portal.

We look forward to receiving acknowledgement of this application and trust you have sufficient information to consider the application at your earliest convenience. If you require any further information, please do not hesitate to contact me.

Yours faithfully

J Bain.

JESS BAIN
Senior Planner

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