

**Land Adjacent To The Oxford Canal Spiceball Park
Road Banbury**

19/02936/NMA

Case Officer: Samantha Taylor

Applicant: Cherwell District Council

Proposal: Non-material amendment to 17/00284/REM

Ward: Banbury Cross and Neithrop

Councillors: Cllr Hannah Banfield; Cllr Surinder Dhesi; Cllr Cassi Perry

Reason for Referral: Application affects Council's own land and the Council is the applicant

Expiry Date: 18 February 2020

Committee Date: 13 February 2020

1. APPLICATION SITE AND LOCALITY

1.1. This application relates to the Castle Quay 2 development proposals on both sides of the Oxford Canal in Banbury. This specific amendment proposes various changes to the approved plans for Blocks B (cinema and retail) and C (foodstore) of the development. The proposed changes are listed below.

2. CONSTRAINTS

2.1. Key constraints are that the application site is within flood zone 3 and part of the wider site adjoins the Oxford Canal Conservation Area.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

3.1. The following outlines the proposed changes:

3.2. Block B

- Proposed revisions to the colonnade facing the Social Club, by removing every other column to provide easier access to the building and to assist with fire tender tracking;
- Proposed cinema alterations at cinema terrace level, by cutting back the cinema and plant area to allow for a larger external terrace. This change was requested by the cinema tenant to improve the public's experience of this area;
- The proposed cinema terrace entrance glazing at ground floor is to be extended out into the colonnade with revolving doors. This change was requested by the cinema tenant to improve visibility and circulation to the main entrance;
- The lift from the cinema is to go down to the car park level in the lower ground floor with some minor alterations internally to the cinema layout. This change was requested by the cinema tenant to improve visitor access to the basement car park;
- Alterations to the car park external walls by pulling two sides into the car park which in turn creates an overhang of the car park at the upper level. This

change was as a result of avoiding the existing gas easement on the site. The planned car parking numbers already approved are maintained;

- Concrete walls to the car park are to be replaced with metal cladding, to match the cinema box cladding.

3.3. Block C

- Cut back the proposed building line at the upper level to ensure that no structure or foundations are within the gas easement on site;
- External timber blinds are to be added to the front of the supermarket shopfront facing the car park. This change was requested by the supermarket tenant in line with their typical material selection;
- • A grey render band 500mm high is proposed around the base of the supermarket and Zone C sub stations. This change was requested by the supermarket tenant in line with their typical material selection;
- A new slot window will be proposed to the façade facing Spiceball Park road in the supermarket level. This change was requested by the supermarket tenant to improve the experience of staff using the welfare room.

4. RELEVANT PLANNING HISTORY

4.1. The following planning history is considered relevant to the current proposal:

<u>Application Ref.</u>	<u>Proposal</u>	<u>Decision</u>
13/01601/OUT	Outline planning permission for the redevelopment of land adjacent to the Oxford Canal comprising; the demolition of the Castle Quay Shopping Centre northern car park and the General Foods Sports and Social Club; change of use of part of the ground floor of the Castle Quay Shopping Centre southern car park and associated works; the erection of a retail foodstore (Use Class A1), hotel (Use Class C3), cinema (Use Class D2), restaurants and cafes (Use Class A3 and A4) and altered vehicular and pedestrian accesses, landscaping, construction of infrastructure, car parking and associated works, including glazed canopy over the Oxford Canal and the construction of pedestrian/cycle bridges over the Oxford Canal and River Cherwell. Details of new vehicular access off Cherwell Drive and alterations to Spiceball Park Road	Application Permitted
16/02366/OUT	Removal/ Variation of conditions 4 (list of approved drawings) and 9 (enhancement of River Cherwell) to 13/01601/OUT - Condition 4 to be varied to reflect alterations in the access and servicing strategy for	Application Permitted

Block C, with variations to maximum deviations in block and Condition 9 to be removed as no longer justified.

17/00284/REM	Reserved Matters Application to 16/02366/OUT across the whole development site is sought. Application for approval of reserved matters for scale, layout, appearance and landscaping.	Application Permitted
18/00142/NMA	Non-Material Amendment to 16/02366/OUT and 17/00284/REM - Block B canopy amendments	Approved at the December Committee meeting

5. PRE-APPLICATION DISCUSSIONS

- 5.1. Discussions regarding the proposed amendments have taken place and it was advised these would constitute a non-material amendment subject to the full planning permission being sought separately for the new stair case.

6. RESPONSE TO PUBLICITY

- 6.1. This application has been publicised by way of a site notice displayed near the site. No comments have been received.

7. RESPONSE TO CONSULTATION

- 7.1. Whilst there is no formal duty to consult in respect of a non-material amendment application, as the applicant is Cherwell District Council, in the interests of transparency a site notice was posted. No comments have been received.

8. RELEVANT PLANNING POLICY AND GUIDANCE

- 8.1. The key issue for consideration in this case is whether the proposed change(s) can be accepted as non-material; there is no consideration of the planning merits of the proposed changes.
- 8.2. Section 96A of the Town and Country Planning Act 1990 (as amended) states that: "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". It is also stated that: "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".
- 8.3. The National Planning Practice Guidance states 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". The judgement on materiality in any particular case is one of fact and degree, also taking into account the likely impacts of the amendment. Materiality is considered against the development as a whole, not just part of it. The benchmark for forming the judgement on materiality is always the original permission.

9. APPRAISAL

- 9.1. The key issues for consideration in this case are whether the changes individually or cumulatively can be considered a non-material amendment to the original permission.
- 9.2. It is noted there are a number of changes which are sought. However, these would not require any significant changes such as additional floor space, changes to parking or the overall quantum and scale of development.
- 9.3. The changes sought are largely minor design details and some movement of the building line to ensure that the gas easement is not breached. Having considered the proposed changes and the development originally granted permission, Officers recommend that the changes would constitute a non-material amendment.
- 9.4. It is noted, that as the changes are considered a non-material amendment, other than the changes approved, the planning conditions on the original permission and reserved matters consent would remain as consented.

10. PLANNING BALANCE AND CONCLUSION

- 10.1. Overall it is considered the proposed changes would not materially alter the earlier permission and would result in a non-material change. Therefore, it is recommended that this non-material amendment application is approved.

11. RECOMMENDATION

THAT THE PROPOSED NON-MATERIAL AMENDMENT BE GRANTED IN ACCORDANCE WITH THE FOLLOWING WORDING:

Cherwell District Council, as Local Planning Authority, hereby approves the non-material amendment described in application ref.no.19/02936/NMA in accordance with the application form and drawing numbers set out in the agents letter dated 20 November 2019. The non-material amendment application, hereby approved, does not nullify the conditions imposed in respect of reserved matters consent 17/00284/REM. These conditions must be adhered to so as to ensure that the development is lawful.

CASE OFFICER: Samantha Taylor

TEL: 01295 221689