

**Case Officer:** Michael Sackey

**Applicant:** Mr Chris Hills

**Proposal:** Works to the existing roof are simplified, as well as the addition of 3no new flag poles. Alternative location for Air Handling Unit (AHU); courtyard roof no longer proposed, remain as existing; ductwork step-overs removed, and existing ductwork stepped up and over to form walkway Value (proposed as Non-Material Amendment of 24/01224/CDC)

**Ward:** Banbury Cross And Neithrop

**Councillors:** Cllr Becky Clarke, Cllr Matt Hodgson, Cllr Dr Chukwudi Okeke

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

**Expiry Date:** 24 February 2025

**Committee Date:** 20 February 2025

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**SUMMARY RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS**

**1. APPLICATION SITE AND LOCALITY**

1.1. The application relates to part of the Castle Quay shopping centre, specifically the first floor Unit formally occupied by British Home Stores, above Lock 29. The Castle Quay Shopping Centre is located within Banbury Town Centre.

**2. CONSTRAINTS**

2.1. The application site is within the setting of the Oxford Canal Conservation Area and Public Right of Way Ref: 120/103/40 runs adjacent to the site.

**3. DESCRIPTION OF PROPOSED DEVELOPMENT**

3.1. The application seeks consent for changes to planning permission ref. 24/01224/CDC, specifically to make the following changes:

- The relocation of an Air Handling Unit (AHU)
- Omission of the previously proposed glazed courtyard roof
- The existing ductwork modified to form a new walkway.
- 3no new flags (to display Cherwell District Council, Union Jack, and Ukraine flags)

**4. RELEVANT PLANNING HISTORY**

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

**Application: 23/03103/CDC** Permitted 16 February 2024

Insertion of two new window openings

**Application: 24/00600/CDC** Permitted 11 June 2024

New/enlarged shop front windows

**Application: 24/01150/DISC** Permitted 15 July 2024

Discharge of Condition 22 (details of operational plant and mitigation) of 16/02366/OUT

**Application: 24/01224/CDC** Permitted 15 July 2024

New courtyard roof and roof mounted air handling units

**Application: 24/03319/NMA** Permitted 17 January 2025

Works to the existing canal elevation are simplified. 2no arched windows (type B) are retained as existing, no amendments to extend the windows or alterations to the existing lean-to roof below. A third window (new) will match the existing arched windows. 2no new windows type A remain as per the original application to match the existing adjacent windows (proposed as non-material amendment to 24/00600/CDC)

## 5. PRE-APPLICATION DISCUSSIONS

5.1. No pre-application discussions have taken place with regard to this proposal.

## 6. RESPONSE TO PUBLICITY

6.1. There is no statutory requirement to consult on, or publicise, applications seeking approval for non-material amendments to an existing planning permission.

## 7. RESPONSE TO CONSULTATION

7.1. 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.

7.2. 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."

7.3. 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 nonmaterial 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.

- 7.4. The proposed changes would all be situated on the roof of the existing building and, apart from the proposed flags, given their scale and positioning would not be readily visible from the public domain or within the setting of the Oxford Canal Conservation Area.
- 7.5. The proposed flags benefit from permitted development under (Class 7: flag advertisements – Outdoor advertisements and signs (June 2007)).
- 7.6. Given the permitted development fallback position of the proposed flags, the nature , extent and lack of visibility of the other elements of the proposed, it is considered that the proposed changes would not have any significant visual impact on the site's surroundings or significantly affect the character of the development or locality or raise any new issues in relation to the visual and residential amenity.
- 7.7. Overall, none of the proposed changes would raise any new issues, nor would they necessitate further consultation with any third party consulted at the time of the planning application, and therefore may be considered non-material amendments in the context of the development as a whole.

## **8. PLANNING BALANCE AND CONCLUSION**

- 8.1. The proposal is therefore considered to be non-material, and the application is therefore recommended for approval.

## **9. RECOMMENDATION**

The proposal is considered to be non-material, and the application is therefore recommended for approval as described above and in accordance with the drawing number: 40131\_RF-GA

### Informative (proposed works)

This consent relates to the redline area of (Drawing No. 7165-GBS-XX-XX-DR-A-104-P01) of the previously approved application reference (24/01224/CDC) and the other works illustrated on the proposed plans which fall outside of the redline area of the original consent are not covered by this permission.

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