

**Committee Report**

<b>Application No:</b>	<b>DC/16/01121/NMA</b>
<b>Case Officer</b>	<b>Tracy Long</b>
<b>Date Application Valid</b>	<b>17 October 2016</b>
<b>Applicant</b>	<b>Spenhill Developments Ltd</b>
<b>Site:</b>	<b>Trinity Square Gateshead Tyne And Wear NE8 1BU</b>
<b>Ward:</b>	<b>Bridges</b>
<b>Proposal:</b>	<b>Proposed non-material amendment of application DC/12/00999/FUL to allow amendment of Car Park Management Plan to allow installation of new charging terminals to replace existing Parkeon system.</b>
<b>Recommendation:</b>	<b>REFUSE</b>
<b>Application Type</b>	<b>Non Material Amendment</b>

**1.0 The Application:**

**1.1 DESCRIPTION OF APPLICATION SITE**

The application site is the Trinity Square development in Gateshead Town Centre. Trinity Square is a mixed use development with retail including a Tesco store, offices, leisure and student accommodation. Planning permission was granted for the Trinity Square development in February 2011. The first element of the scheme the Tesco store and Trinity Square car park opened in May 2013. The majority of the scheme has now been let and is occupied except for the office block on West Street and some ground floor commercial units along High Street and West Street. The Trinity Square development is bounded by Lambton Street/Nelson Street to the north, High Street to the east, Jackson Street to the south and West Street to the west.

**1.2 DESCRIPTION OF APPLICATION**

1.3 This is a Non Material Amendment (NMA) application. The application proposes an amendment of planning application DC/12/00999/FUL (which relates to the main Trinity Square development) to allow changes to the approved car park management plan.

**1.4 BACKGROUND INFORMATION**

1.5 When the planning permission was granted for the Trinity Square development this was subject to a number of planning conditions and a section 106 agreement. Some of these planning conditions required a car park management plan (CPMP) including the car park charging regime for the car park areas to be submitted to and approved in writing by the Local Planning Authority, prior to any part of the development being occupied.

- 1.6 It was therefore expected as required by these planning conditions that car park charging would be introduced in the Trinity Square car park when the first part of the development (the Tesco Store) opened in May 2013.
- 1.7 Car park payment machines were installed and operational in the car park when the Tesco store opened in May 2013. However Spenhill advised that the payment machines were complicated to use and proposed that alternative machines should be installed. Although the Council considered that the original machines were perfectly adequate and that customers would soon learn how to use them, the Council nevertheless agreed with Spenhill to delay the re-introduction of car park charging at Trinity Square for a short period while different payment machines were being trialled.
- 1.8 The trigger for the introduction of car park charging at the Trinity Square car parks is in the car park management plan approved under the car park management plan conditions ( in this instance planning condition 95 of planning permission DC/12/00999/FUL).
- 1.9 The approved CPMP (revision 18 dated 20 Dec 2013) requires that a car park charging regime and associated payment machines be implemented for the Trinity Square car park by 28 March 2014, unless an alternative date is agreed in writing beforehand by the Council.
- 1.10 The Council did not agree to an alternative date however despite the above currently there is still no car park charging regime operating in the Trinity Square car park, so the car parking is currently free. The original car park payment machines remain in situ.
- 1.11 Planning condition 95 of planning permission DC/12/00999/FUL reads :
- “No part of the development shall be occupied until details of a car park management plan for the sub basement car park has been submitted to and approved in writing by the Local Planning Authority. The plan shall demonstrate how the car parking spaces allocated to this development within the sub basement car park will be managed, including the management arrangements for student drop off / pick up at the start and end of academic terms, the charging regime and hours of operation. At all times thereafter, the use of the sub basement car park shall be in accordance with the approved management plan.
- Reason  
In the interests of effective use of the car parks in accordance with Policies in the NPPF and Policy DC4 of the Unitary Development Plan.”
- 1.12 The applicant has stated that the wording of this condition does not allow for the Car Park Management Plan to be reviewed and updated.
- 1.13 Council officers never intended for the CPMP to be fixed in perpetuity and it was designed to be flexible with the ability to be varied to reflect and respond to any

changes in circumstances. At the end of the approved CPMP there is a section which specifically relates to variation arrangements and states that the CPMP should be reviewed and if necessary adjusted to reflect and respond to any changes in circumstances.

1.14 The applicant has therefore submitted this non material amendment application as a mechanism to amend the approved Car Park Management Plan (revision 18 dated 20/12/2013) associated with planning permission DC/12/000999/FUL.

1.15 The applicant has explained in their covering letter that the revised car park management plan (revision 19 dated 17 October 2016) will allow the installation of new charging terminals to replace the existing Parkeon system.

1.16 The revised Car Park Management Plan submitted as part of this NMA application (revision 19 dated 17 October 2016) states that :

" The car park machines will be replaced with an appropriate replacement pay machine. The chosen machines being capable of fulfilling the requirements of the CPMP and planning conditions. The replacement machines will be in place and the charging regime operation as soon as possible and in line with the Implementation Plan in Appendix 7."

1.17 Appendix 7 in the approved CPMP (revision 18 dated 20 December 2013) provided details of the Parkeon ANPR car park system. This has been replaced in the submitted CPMP (revision 19 dated 17 October 2016) with an implementation Plan.

1.18 This non material amendment application has been submitted with the following information :

- Application Form
- Covering Letter
- Revised Car Park Management Plan (Revision 19 dated 17/10/16)

1.19 RELEVANT PLANNING HISTORY

1.20 Original Hybrid Planning Permission : DC/10/00712/FUL  
Full planning application for mixed use development comprising retail (A1), financial and professional (A2), restaurants and cafes (A3), drinking establishments (A4), hot food take aways (A5), shopmobility unit (sui generis), supermarket (A1), offices (B1), student accommodation and ancillary facilities (C1), car parking and access, public square, landscaping and associated works with outline application for a range of uses to include A1/A2/A3/A4/B1/D1 (Residential Institutions)/ C1 (Hotels).

1.21 This hybrid planning application was granted planning permission in February 2011, subject to 97 planning conditions and a section 106 agreement. The section 106 agreement relates to a number of transport measures and highway

improvements as well as the provision of local employment opportunities. The development is now built and the town centre car park, Tesco store and retail units opened in May 2013. The student accommodation was occupied in September 2014.

- 1.22 The outline element of this hybrid planning application has now been replaced by a full planning permission for a cinema development see planning permission DC/12/00356/FUL below.
- 1.23 PCT Planning Permission : DC/11/00929/FUL  
Erection of Primary Care Trust unit with associated car parking and access works. This planning application replaces four retail units along West Street which were granted permission under the original planning permission (DC/10/00712/FUL) with a Primary Care Trust unit. This planning application was granted planning permission in November 2011, subject to 26 planning conditions and a section 106 agreement. The section 106 agreement ties this standalone PCT planning permission to the wider Trinity Square planning permission to avoid any conflict between the two planning permissions. The PCT building opened in April 2013.
- 1.24 Cinema Planning Permission : DC/12/00356/FUL  
Proposed Cinema. This planning application replaces the outline block which had a range of possible uses, which was granted permission under the original hybrid planning permission (DC/10/00712/FUL). This planning application was granted planning permission in May 2012 subject to 18 planning conditions and a section 106 agreement. The section 106 agreement ties this standalone cinema planning permission to the wider Trinity Square planning permission to avoid any conflict between the two planning permissions. The cinema building opened at the end of 2013.
- 1.25 DC/12/00999/FUL  
Section 73 planning application to remove planning condition 42 (cycle works on Swinburne Street) and planning condition 59 (bus lane through Bensham Road roundabout) from the original hybrid planning application (ref : DC/10/00712/FUL). This planning application was granted planning permission in February 2013, subject to a number of planning conditions and a section 106 agreement. The section 106 agreement is a deed of variation to ensure that the new planning permission resulting from this section 73 planning application is bound by the obligations contained in the original section 106 agreement as varied.
- 1.26 DC/14/00339/FUL, DC/14/00340/FUL, DC/14/00341/FUL  
Three section 73 planning applications which proposed to vary the approved car park management plans by deferring the introduction of car park charging at Trinity Square based on vacancy levels. These three applications were considered by Planning Committee on 17 February 2017 where Members resolved to refuse planning permission as insufficient evidence had been submitted to demonstrate a viability reason why car park charges should not be introduced.

### 1.27 Other Applications

There are a number of other applications relating to the Trinity Square development including a number of Non Material Amendment (NMA) applications to change the wording of some planning conditions, applications to make changes to the design of the scheme, as well as a number of advertisement applications for proposed signage. However these other applications are not considered to be relevant to the consideration of this current NMA application.

- 1.28 A separate non material amendment application (ref : DC/16/01125/NMA) has also been submitted which proposes amendments to planning permission DC/12/00356/FUL (which is the cinema element of the Trinity Square development) to allow changes to the approved car park management plan. This NMA application is on the same agenda and is being considered at the same time as this current NMA application.

## 2.0 Consultation Responses:

None

## 3.0 Representations:

- 3.1 No neighbour notification letters were sent out by Council for this application as it is a non material amendment application. The applicant is not the sole owner of the site. The agent therefore notified the parties who have a legal interest in the site about this application on 17 October 2016. No representations have been received.

## 4.0 Policies:

UC10 Car Parking

NPPG National Planning Practice Guidance

NPPF National Planning Policy Framework

CS13 Transport

## 5.0 Assessment of the Proposal:

- 5.1 From 1 October 2009 a new provision under Section 96A of the Town and Country Planning Act came into force allowing a Local Planning Authority (LPA), on application, to make a change to any planning permission if it is satisfied that the amendment proposed is non material.
- 5.2 There is no statutory definition of "non material". This is because it is dependent on the context of the overall scheme, as what may be non material in one context may be material in another. The Local Planning Authority (LPA) must be satisfied that the amendment sought is non material in order to grant a non material application.

- 5.3 The key test as to the acceptability of an application for a non material change is whether the change is material to any development plan policy.
- 5.4 If the answer is 'no', three further tests will be applied:
1. Is the proposed change significant in terms of its scale (magnitude, degree etc.) in relation to the original approval?
  2. Would the proposed change result in a detrimental impact either visually or in terms of amenity?
  3. Would the interests of any third party or body who participated in or were informed of the original decision be disadvantaged in any way?
- 5.5 When making a decision on a NMA application LPA's must have regard to the effect of the change, together with any previous changes. The LPA must also take into account any representations made by anyone notified.
- 5.6 Council officers consider that the proposed amendment to the approved car park management plan is a material amendment, as it would alter the nature of the car park charging regime, which would be contrary to policies CS13 and UC10 of the Council's Core Strategy and Urban Core Plan which seek to introduce car park charging to promote short stay or long stay parking. In addition Council officers are of the opinion that the proposed amendment would conflict with the provision of the existing planning condition and approved car park management plan.
- 5.7 The proposed car park management plan (revision 19 does not include a specific date by which car park charging will be introduced. The submitted CPMP therefore does not provide or include any certainty of when the car park charging would be re-introduced, so it is not clear, precise or enforceable.
- 5.8 Council officers also consider that a non material amendment application is not the correct legal mechanism to review and approve a revised car park management plan. The decision of a NMA application only relates to the non material amendments sought. It is not a reissue of the original planning permission, which still stands. The approval of a NMA application is read together with the original planning permission. So this could result in the approval of two car park management plans - revision 18 and revision 19, with no certainty which CPMP would be implemented.
- 5.9 It is therefore recommended that this NMA application be refused as the proposed changes in the revised Car Park Management Plan (revision 19) are considered to be material.
- 5.10 Should the applicant wish to update the approved car park management plan to allow a revised date for the car park charging regime to be re-introduced Council officers consider that a more appropriate mechanism would be to firstly submit a non material amendment application to vary the wording of the condition so it allows the approved car park management plan to be reviewed and updated. If such a non material amendment is approved then a revised CPMP could then be submitted for consideration under this condition.

## 6.0 CONCLUSION

- 6.1 The key question for the determination of this current non material amendment application is whether the proposed amendment to the approved CPMP is material or not.
- 6.2 It is recommended that this NMA application is refused as Council officers consider that the proposed amendments to the approved CPMP are material.

### Recommendation:

That this application be REFUSED for the following reason(s):

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The non material application is refused as the proposed amendment to the approved car park management plan would result in a material change.

