South Tyneside Council

Reference:	ST/0701/24/NMA
Location:	Land South West of Telephone Exchange Claypath Lane Crossgate South Shields NE33 4PG
Ward:	Beacon and Bents
Description:	Application for Non-Material Amendment in relation to previously approved Planning Application ST/0746/22/FUL to relocate the bin store to the opposite end of the parking bays (to the west), extend the landscape area, and remove the existing brick wall and replace with a timber knee rail fence.
Recommendation:	Approve Non-Material Change
Case Officer:	Helen Lynch
Case Officer Contact No.:	0191 4247408 or 07741106225

Description of the Site

This application seeks a non-material amendment to application ref: ST/0746/22/FUL which granted planning permission for a proposed coffee shop with drive-thru, 3 no. commercial units (Use Class E) together with 35 new parking spaces (across the overall site), 3 cycle racks, new boundary treatments and landscaping on 09/08/2023.

This application seeks to amend this scheme by relocating the bin store to the opposite end of the parking bays (to the west), extend an area of landscaping to the permieter of the site, and remove the existing (part) brick wall and replace with a timber knee rail fence.

Since the grant of planning permission to ST/0746/22/FUL, the Local Planning Authority (LPA) received an application ST/0070/24/VC, which sought to vary condition 13 of the original permission to amend the requirement for a 2m wide footway. During the assessment of the original planning application and based on the nature of the proposal and site uses, it was considered necessary to increase the narrower footway width along the western boundary of the site to provide a minimum of 2m width. Following an assessment of application ST/0070/24/VC it was considered the original planning condition and the requirement for the 2m wide footpath should remain and consent to vary this would not be granted, and subsequently the application was withdrawn.

The current non-material amendment application seeks to address the need to provide the 2 metre wide footway. In order for the footpath width of 2 metres to be provided, the existing (part) boundary wall, for which the original application identified retention, requires removal and an alternative provided, which in part would need to be set within the site to allow for the additional width required to extend the footpath. The width of the footpath varies currently around the perimeter of the site and as such encroachment into the development site to widen the footpath would be minimal (maximum circa 190mm) and this reduces towards the site entrance, where the path is currently wider. Additionally, amendments to the position of a number of parking bays has been identified as a result of the necessary encroachment into the site to accommodate the 2 metre wide footpath and securing required visibility and ensuring sufficient manoeuvring space for vehicles. The position of a parking bay to the bin store (relocating this to the opposite end of the parking bays to the west), removes the western parking bay of concern where any further encroachment into the site to provide the 2 metre wide footpath may result in reduced manoeuvring space.

Assessment

Section 96A of the Town and Country Planning Act 1990 states 'that the local planning authority may make a change to any planning permission if they are satisfied that the change is not material…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 permission as originally granted.'

The legislation and government guidance does not define what changes may be treated as being non-material. The Council's 'protocol for non-material amendments following a grant of planning permission' (December 2010) seeks to explain the non-material amendment process and set out the procedures involved in considering such changes across Tyne and Wear. This protocol provides guidance criteria to assess such applications.

Accordingly, the key issues in the assessment of this planning application are as follows:
Is the proposed change significant in terms of its scale in relation to the original approval; would the proposed change result in a detrimental impact either visually or in terms of amenity; and would the interests of any third party or body who participated in or were informed of the original decision be disadvantaged in any way.

The Tyne and Wear Non-Material Amendments Protocol notes that if the answer to any of the above questions is "yes", then the proposed change cannot be accepted as 'non material'.

It is considered that the changes would not be significant in terms of scale in relation to the original approval. The changes would not result in any detrimental impact in terms of visual or residential amenity. The boundary wall removal and replacement with a timber knee rail fence would alter the appearance of the site but not significantly. Within the context of the wider site, existing timber railing currently exists and within the wider area surrounding the application site, there are various types, styles and heights of enclosure seen. It should also be noted and a significant consideration to the assessment is that the works to remove and replace the existing boundary wall with a timber knee rail fence could also be undertaken without planning permission, constituting permitted development (Part 2 – minor operations).

In respect of the third issue - whether the interests of any third party or body who participated in or were informed of the original decision would be disadvantaged in any way, the LPA and St Bede's Catholic Primary & Nursery School, have been in dialogue since the original grant of planning permission and withdrawn application ST/0070/24/VC. As a result, the LPA have advised of the current non-material amendment application but have not undertaken formal notification / publicity. Comments received in respect of the current application have been noted, including the works not being material and altering the

appearance significantly and concern has also been raised relating to the replacement wooden rail, with this presenting additional new safeguarding risks for the nursery and primary children attending the school. The school have stated that consequently, under the statutory guidance, Working Together to Safeguard Children 2023, an impact analysis of those risks will need to be conducted by the Local Authority's Children Safeguarding Partnership, together with the school's internal and external Children Safeguarding partners.

The application site is located opposite St Bede's Catholic Primary & Nursery School and separated by intervening highway and footway. As detailed above, the current application has been submitted to make changes to the internal site layout in order to allow for the provision of the 2 metre wide footpath. It is considered that the wider 2m footway would provide more benefits to pedestrians, including disabled users, and school users than the narrower footway presently, which aligns with the NPPF in improving routes to prioritise and encourage sustainable trips and avoiding use of the private car. The application seeks the removal of the existing (part) boundary wall and its replacement with a timber knee rail fence. The current (part) boundary wall provides a delineation of the site curtilage to the adjacent footway. The knee rail fence would be sited within a landscape area to the perimeter of the site and would form a physical demarcation of the site to the adjacent footway and wider area. Designated pedestrian routes and crossing points are included within the approved layout to the original application and it is considered that increased movement of people across the site towards the school would not result from the removal of the boundary wall and considering its relative position to the site entrance and access routes.

In assessing the application, the LPA have consulted with the Local Highway Authority, who have advised that the details of the application have been examined and are considered acceptable and therefore they have no objections to the proposal.

As such it is not considered that interests of any third party would be disadvantaged.

The Local Highway Authority have identified that any technical approval required for the footway widening works will form part of the overall s278 technical approval process for the whole scheme, covered by application consent ST/0746/22/FUL. As this is not a new planning consent, it is not considered necessary to repeat the conditions.

Conclusion and Recommendations

In deciding whether to grant planning permission the Council must have due regard to the 3 equality aims contained in Section 149 of the Equality Act 2010 (the public sector equality duty). A preliminary assessment of the potential equality impacts of any grant of planning permission in this case has been undertaken. There are no apparent equality impacts of the proposed development which give rise to the need to undertake a more detailed equality impact assessment.

The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Consequently, proposed changes sought are considered to be non-material and so this application is recommended for approval.

Recommendation

Approve Non-Material Change

List of plans etc. for standard note on decision

Plan Reference
Drg no. 224020-IMA-ST-XX-DR-A-061003 Rev C04 received 20/11/2024
Drg no. 224020-IMA-ST-X-DR-A-061002 Rev C04 received 20/11/2024

Case officer: Helen Lynch

Signed: Helen Lynch

Date: 08-01-2025

Authorised Signatory: G.Horsman

Date: 09/01/2025