



South Tyneside Council

Reference:	260586
Location:	Land west of the A19 at the International Advanced Manufacturing Park (IAMP), West Boldon
Ward:	Fellgate and Hedworth
Description:	Non-Material Amendment sought to make changes to condition 23, relating to previously approved Planning Application ST/1172/21/FUL.
Recommendation:	Approve Non-Material Change
Case Officer:	Nick Graham
Case Officer Contact No.:	0191 4247427 or 07741108995

Description of the Site

This application seeks a non material amendment to application ref: ST/1172/21/FUL which granted hybrid planning permission for demolition works, erection of industrial units (up to 168,000sqm) (Gross Internal Area) for light industrial, general industrial and storage & distribution uses (Class E(g)(iii), B2 and B8) with ancillary office and research & development floorspace (Class E(g)(i) and E(g)(ii) with internal accesses, parking, service yards and landscaping, and associated infrastructure, earthworks, landscaping and all incidental works (Outline, All Matters Reserved); and dualling of the A1290 between the A19/A1290 Downhill Lane Junction and the southern access from International Drive, provision of new access road including a new bridge over the River Don, electricity sub-stations, pumping station, drainage, and associated infrastructure, earthworks, landscaping and all incidental works (Detailed) on 29/08/2023.

This site / permission has been subject to various subsequent applications to discharge conditions, and previous non-material amendments to vary condition wording. This application seeks to amend the wording of condition 23 in relation to the approval of the detailed design of the A1290 highway dualling scheme.

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 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’.

Is the proposed change significant in terms of its scale in relation to the original approval?

Condition 23 currently reads as follows:

Prior to the commencement of works, technical approval of the detailed design of the A1290 highway dualling scheme will be required including a Stage 2 Road Safety Audit. This shall be submitted and will require approval in writing by the Local Planning Authority in consultation with the relevant Local Highway Authorities. Recommendations within the approved Stage 2 Road Safety Audit shall be implemented / completed in full on-site before the development hereby permitted is brought into use.

Reason: To ensure that requirements are met for both the strategic road network and the local road network to meet the needs of the development. In the interests of highway safety and highway capacity requirements and to comply with policies T1 of the Adopted Area Action Plan, Policy A1 and Policy DM1 of the South Tyneside Local Development Framework and paragraph 105 of the National Planning Policy Framework.

The above wording of condition 23 requires technical approval of the detailed design of the A1290 dualling scheme, including a Stage 2 Road Safety Audit [S2RSA], to be secured ‘prior to the commencement of works’, and that the recommendations within the S2RSA are implemented and completed in full on-site ‘before the development hereby permitted is brought into use’.

It is considered that the above condition is unworkable, and to a certain extent contradictory. This is because the S2RSA is an audit of a completed detailed design and is undertaken at the point at which the detailed design is fixed and prior to construction of the works to which the design relates. If the ‘works’ outlined in the first sentence are read as the entirety of ‘the development hereby permitted’ in the last sentence, the condition becomes circular and no development of any kind can commence until the A1290 detailed design has been audited and approved. However, the audit would be of highway works which themselves form part of that ‘development’.

Furthermore, the implementation of the condition cannot be met pre-commencement, as recommendations arising from a S2RSA can only be ‘implemented / completed in full on-site’ once the highway works themselves have been constructed. The current wording of the condition, therefore, expressly contemplates that the works to which it relates will have been carried out before the compliance point is reached. This is inconsistent with the first part of the condition which prohibits the commencement of those same works.

Finally, the reason given for the condition (highway safety and capacity) is directed at delivering safe and adequate highway access for the development it serves. That planning objective is met by controlling when the buildings which depend on the A1290 dualling may be occupied, not by prohibiting the commencement of those highway works themselves or the development more generally.

Planning conditions are to be construed in a common sense way, having regard to their purpose and context, and a construction which produces an unworkable result is to be avoided where a sensible alternative is available. A 'true' condition precedent is a condition which, on its proper construction, prohibits the commencement of development and goes to the heart of the permission.

Condition 23 does not currently meet the above description. The reference to 'commencement of works' is not sensibly read as commencement of 'the development' for the purposes of section 91 of the Town and Country Planning Act 1990 and condition 1 of permission ref. ST/1172/21/FUL. It is a reference to the commencement of the specific off-site highway works, the A1290 dualling scheme, whose detailed design is the object of the S2RSA or alternatively the buildings that these works serve. The purpose of the condition, read as a whole, is to ensure that (i) an audited detailed design exists in advance of those highway works being built, and (ii) the recommendations of that audit are physically delivered on the ground before the buildings served by those highway works are occupied.

On this basis, a re-wording of this condition which preserves the substantive planning safeguard the original condition was reaching for (an audited detailed design of the A1290 dualling, with any resulting recommendations delivered on the ground) while (i) removing the internal contradiction, (ii) tying the compliance point to occupation of the buildings the highway works are there to serve, and (iii) putting beyond argument that the condition is not a pre-commencement condition, is considered appropriate. Accordingly, the proposed re-worded condition reads as follows:

For the purposes of this condition:

1. "the A1290 Highway Works" means the off-site highway improvement works comprising the dualling of the A1290 between the A19/A1290 Downhill Lane Junction and the southern access from International Drive, together with the associated new bus stops, closures of existing accesses, signage, lighting, drainage and other ancillary works forming part of the detailed element of this permission; and
2. "Relevant Building" means each building shown for erection on the approved plans forming part of the outline element of this permission whose intended use requires the A1290 Highway Works to be in place to provide safe and adequate vehicular, pedestrian and cyclist access.

No Relevant Building shall be occupied or otherwise brought into use until:

- (i) Technical approval of the detailed design of the A1290 Highway Works, including a Stage 2 Road Safety Audit undertaken in accordance with DMRB GG 119 (or its equivalent in force at the time), has been submitted to and approved in writing by the Local Planning Authority in consultation with the relevant Local Highway Authorities;
- (ii) Where a Stage 3 Road Safety Audit is required under DMRB GG 119 following construction of the A1290 Highway Works, that Stage 3 Road Safety Audit has been submitted to and approved in writing by the Local Planning Authority in consultation with the relevant Local Highway Authorities; and
- (iii) All recommendations arising from the approved Stage 2 Road Safety Audit and (where applicable) the approved Stage 3 Road Safety Audit have been implemented and completed in full on-site.

For the avoidance of doubt, this condition does not prohibit or restrict the commencement of the A1290 Highway Works or the commencement of any other operation authorised by this permission, the effect of this condition is limited to the occupation and use of the Relevant Buildings.

Reason: To ensure that requirements are met for both the strategic road network and the local road network to meet the needs of the development, in the interests of highway safety and highway capacity requirements, and to comply with policy T1 of the Adopted Area Action Plan, Policy A1 and Policy DM1 of the South Tyneside Local Development Framework and the National Planning Policy Framework.

Given all of the above and the intentions of the re-worded condition set out above, it is considered that the proposed changes in terms of their scale relevant to the original approval and overall development are not considered significant.

Would the proposed change result in a detrimental impact either visually or in terms of amenity?

The proposed changes in terms of their visual and amenity impacts are not considered to result in detrimental impacts given the nature of the proposed change and the intended revised wording of the condition.

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 proposed changes in terms of their impacts on the interests of any third party or body who participated in, or were informed of the original decision, are not considered to be disadvantaged in any way, given the proposed change and the intended revised wording of the condition would still achieve the original intention of the condition whilst removing the current contradiction in its wording.

Conclusion and Recommendations

It is considered that alternative wording could be used in the determination of this request and that the alteration to the wording of condition 23 would indeed be non material. This is because that alternative wording would still retain the original intention of the condition whilst removing the current contradiction in its wording. The request and its determination would not affect or alter other planning conditions. It is noted the agent has provided a suggested re-wording for condition 23 however it is considered a greater re-wording is necessary for the reasons outlined above.

In deciding whether to grant 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, the proposed change sought is considered to be 'non material' and so this application is recommended for approval.

Recommendation

Approve Non-Material Change

NOTES TO APPLICANT

Condition 23 of ST/1172/21/FUL is hereby altered to read as follows:

For the purposes of this condition:

1. "the A1290 Highway Works" means the off-site highway improvement works comprising the dualling of the A1290 between the A19/A1290 Downhill Lane Junction and the southern access from International Drive, together with the associated new bus stops, closures of existing accesses, signage, lighting, drainage and other ancillary works forming part of the detailed element of this permission; and
2. "Relevant Building" means each building shown for erection on the approved plans forming part of the outline element of this permission whose intended use requires the A1290 Highway Works to be in place to provide safe and adequate vehicular, pedestrian and cyclist access.

No Relevant Building shall be occupied or otherwise brought into use until:

- (i) Technical approval of the detailed design of the A1290 Highway Works, including a Stage 2 Road Safety Audit undertaken in accordance with DMRB GG 119 (or its equivalent in force at the time), has been submitted to and approved in writing by the Local Planning Authority in consultation with the relevant Local Highway Authorities;
- (ii) Where a Stage 3 Road Safety Audit is required under DMRB GG 119 following construction of the A1290 Highway Works, that Stage 3 Road Safety Audit has been submitted to and approved in writing by the Local Planning Authority in consultation with the relevant Local Highway Authorities; and
- (iii) All recommendations arising from the approved Stage 2 Road Safety Audit and (where applicable) the approved Stage 3 Road Safety Audit have been implemented and completed in full on-site.

For the avoidance of doubt, this condition does not prohibit or restrict the commencement of the A1290 Highway Works or the commencement of any other operation authorised by this permission, the effect of this condition is limited to the occupation and use of the Relevant Buildings.

Reason: To ensure that requirements are met for both the strategic road network and the local road network to meet the needs of the development, in the interests of highway safety and highway capacity requirements, and to comply with policy T1 of the Adopted Area Action Plan, Policy A1 and Policy DM1 of the South Tyneside Local Development Framework and the National Planning Policy Framework.

Case officer: Nick Graham
Signed: N. Graham
Date: 27 August 2026

Authorised Signatory: Andrew Inch
Date: 28 August 2026