

Westminster City Council Development Planning
Development Planning
City of Westminster
PO Box 732
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Dear Sir / Madam

27 GOODGE STREET, LONDON, W1T 2LD

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) - SECTION 96A APPLICATION TO VARY DEVELOPMENT DESCRIPTION OF PLANNING PERMISSION 2022/3608/P

PLANNING PORTAL REF: PP-12323307

On behalf of the applicant, Shaftesbury CL Ltd, please find enclosed a non-material amendment application made under Section 96A of the Town and Country Planning Act 1990 (as amended) to vary the description of development of planning permission 2022/3608/P in respect of the above site.

This application has been deemed necessary in light of the decision of the Court of Appeal in *Finney v. Welsh Ministers* [2019] EWCA Civ 1868 (hereby referred to as the *Finney Case*) in which it was determined that the limits of the powers of Section 73 of the Town and Country Planning Act 1990 should be restricted to the conditions attached to any planning permission. The approval of this NMA application would therefore facilitate the approval of future Section 73 applications which may affect the description of development on the approved planning permission.

The application fee of £234.00 has been paid via the Planning Portal.

Background

Planning permission was granted by the London Borough of Wandsworth on 9th February 2023 (ref: 2022/3608/P) for the "*Installation of 6 new air source heat pumps on the rear first floor*".

Upon installation of 3No. heat pumps for the offices by the contractor, it was deemed that there was insufficient space on the rear first floor roof to install the units within their approved acoustic housing, as the housing required to meet the relevant acoustic noise standards as set out in the original Hann Tucker noise report was larger than originally anticipated (as depicted on the approved drawings for 2022/3608/P). We note that the 3No. heat pumps for the ground floor tenant has not yet been installed and no changes have been sought to the consented arrangements.

A singular heat pump for the office was required to be relocated, as its approved location would block

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maintenance access to the roof, which was via the first floor window. It was decided to move this onto the roof to avoid any plant being shifted closer to the residential properties on Colville Place. This heat pump has been positioned next to the existing access hatch, to service the top floor office unit.

A retrospective application under Section 73A of the Act was therefore submitted to Camden Council on 4th July 2023 to vary the approved plans (Condition 2) of planning permission 2022/3608/P (ref: 2023/2760/NEW) to reflect what was constructed on site. Following further discussion with the allocated case officer, it was determined that the proposed amendment to relocate one heat pump to the upper roof fell outside of the approved development description.

This non-material amendment application has been submitted concurrently with the Section 73 application (ref: 2023/2760/NEW) to enable this to be decided by officers.

Purpose of Section 96A- Non Material Amendment

The applicant seeks to amend the approved planning permission (reference: 2022/3608/P) for the Application Site. Amendments include relocation of roof plant and changes to the size of three approved acoustic enclosures to reflect what has been installed on site.

These amendments can be made through the Section 73 application process, however, the current description of development specifies the location of the heat pumps on the rear first floor flat roof. As such, it is necessary to amend the description of development to remove reference to location of plant.

It is proposed to make the following changes to the description of development of planning permission 2022/3608/P:

Installation of 6 new air source heat pumps ~~on the rear first floor.~~

The changes sought by this NMA application allow officers to determine the live Section 73A application (ref: 2023/2760/NEW) submitted to amend the wording of Condition 2 to reflect changes to the size and location of installed plant (as shown on the approved plans).

Justification for 96A

The key consideration in respect of this application is whether the proposed change to the description of development represents a non-material amendment to planning permission reference 2022/3608/P. It is therefore necessary to subject the proposed change to the materiality test.

The materiality test is satisfied on the basis that the development permitted under the planning permission after the S96A approval would remain the same. There is no material distinction between a permission which lists specific details within the development description and one that shows details on approved plans.

Both permissions allow the same development (i.e. both establish number of heat pumps approved) and in both cases, the details of the heat pumps to be installed would be secured by the similarly worded conditions tying the development to the same approved drawings. In short, the resulting development would be identical.

There is, consequently, no legal obstacle in our view to removing reference to the location of the heat pumps via a non-material amendment under s. 96A as the approved plans will establish the location of the approved plant. Indeed, S96A is frequently used to effect changes of this kind as acknowledged by Paragraph 45 of the Finney case which states:

“If a proposed change to permitted development is not a material one, then section 96A provides an available route. If, on the other hand, the proposed change is a material one, I do not see the objection to a fresh application being required.”

The consequence of the S96A approval is simply that there will be a condition which can be varied to affect any minor material amendment considered acceptable by the Council under the S73 application process. There is nothing unlawful or improper about providing an opportunity which (had the Original Permission been differently structured) could have been there from the outset.

On this basis, we consider that this S96A application complies with the following key tests of whether an alteration is a nonmaterial amendment:

- 1. Is the change material to any development plan policy?** Answer, No
- 2. Is the proposed change significant in terms of its scale in relation to the original approval?** Answer, No.
- 3. Would the proposed change result in a detrimental impact either visually or in terms of amenity?** Answer, No.
- 4. Would the interest of a third party or body that participated in or were informed of the original decision be disadvantaged in any way?** Answer, No.

We consider that the proposed amendments can be determined under the non-material amendment application route.

We consider these amendments are non-material to the planning permission granted and we look forward to a swift and positive outcome. Should you however require anything further or wish to discuss the proposals please do not hesitate to contact the undersigned.

Yours faithfully

Ailish Collins

For and on behalf of
Rolfe Judd Planning Limited
18 July 2023