

PD15093/RC/JL/PM

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Planning Portal Ref. PP-13015830

17 May 2024

Dear Christopher,

**HAMPSTEAD FIGURE SCULPTURE – LAND TO THE NORTH OF SWISS COTTAGE LIBRARY, AVENUE ROAD AND
LAND TO THE SOUTH OF SWISS COTTAGE LESIURE CENTRE, ADELAIDE ROAD, NW3 3NF
SECTION 96A OF THE TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)
AMENDMENT OF DESCRIPTION OF DEVELOPMENT OF PLANNING PERMISSION 2018/2340/P**

On behalf of Regal Avenue Road Limited ('the Applicant'), please find enclosed an application under Section 96a of the Town and Country Planning Act 1990 (as amended) ('the Act'), seeking a non-material amendment to Statue Planning Permission 2018/2340/P granted on 27 June 2018 by the London Borough of Camden ('LBC'), at Land to the North of Swiss Cottage Library, Avenue Road and Land to the South of Swiss Cottage Leisure Centre, Adelaide Road, NW3 3NF ('the Site').

The Statue Planning Permission 2018/2340/P relates to the Grade II listed Hampstead Figure Sculpture. The Statue Planning Permission allows for the temporary relocation of the statue from its former location at 100 Avenue Road to outside the Swiss Cottage Leisure Centre, Adelaide Road. Such relocation is necessary during the construction period associated with the Main Planning Permission 2014/1617/P (as amended) for the redevelopment of 100 Avenue Road.

Listed Building Consent 2018/2347/L was also granted on 27 June 2018 for the temporary relocation of the statue.

Background to proposed amendments to the description of development

The Statue Planning Permission 2018/2340/P was granted by LBC on 27 June 2018 for the following description of development:

"Removal and temporary re-siting of the Hampstead Figure Sculpture for the duration of the construction associated with 100 Avenue Road under 2014/1617/P dated 18/02/2016."

The Statue Planning Permission 2018/2340/P relates to the relocation of the Hampstead Figure Sculpture for a temporary period, whilst construction works in respect of the redevelopment of 100 Avenue Road under the Main Planning Permission 2014/1617/P take place, to mitigate any potential damage to the Hampstead Figure Sculpture.

The Main Planning Permission 2014/1617/P has been lawfully implemented, and this was confirmed by the LBC through the approval of Certificate of Lawfulness 2017/6884/P. Whilst demolition works and basement construction works have taken place by the previous owner (Essential Living), above ground construction works in respect of the Main Planning Permission 2014/1617/P have stalled, and the timescale for the relocation of the statue has passed.

Regal Avenue Road Limited acquired 100 Avenue Road in 2024 and intend to bring forward the proposals at 100 Avenue Road as soon as practicable, subject to securing of some amendments to the Main Planning Permission 2014/1617/P to seek to ensure its deliverability and compliance with the latest Building Regulations. Amendments to the Main Planning Permission 2014/1617/P will be submitted to LBC later this year, following a series of pre-application discussions with the Council and wider community / stakeholder engagement sessions which will be held over the coming months.

To ensure that the Statue Planning Permission (2018/2340/P) remains linked to any subsequent amendments to the Main Planning Permission (2014/1617/P), there is a need to amend the description of development of Statue Planning Permission 2018/2340/P to refer to future amendment applications to the Main Planning Permission which might be approved. Such reconciliation of the description of development would allow the Hampstead Figure Sculpture to remain in its current location, as already approved by the Statue Planning Permission 2018/2340/P, and be linked to the Main Planning Permission (2014/1617/P) and any future amendments.

Planning application route – Section 96a of the Town & Country Planning Act

Under Section 96a of the Town & Country Planning Act (1990), amendments to a planning permission can be made if the decision maker is satisfied that the change is not material. The judgement handed down by the Court of Appeal (Lewison, David Richards & Arnold LJ) in *Finney v Welsh Ministers* [2019] EWCA Civ 1868, confirms that it is possible to amend a description of development through a s.96a non-material amendment.

On this basis we consider that Section 96a provides an appropriate mechanism to make the relevant non-material amendment to the Statue Planning Permission 2018/2340/P, as Section 96a(1) states:

1. *“A local planning authority may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material.”*

With regard to what constitutes a material change, Planning Practice Guidance confirms that there is no statutory definition, as it depends on the specifics of the case (Reference ID: 17a-002-20140306).

When considering the case, Section 96A(2) outlines that:

2. *“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”.*
[own emphasis]

Primary legislation is therefore clear that if the determining authority is content that the effect of the proposed change is non-material, a planning permission can be amended under Section 96a of the Act.

Given the non-material nature of this amendment to the description of development, Section 96a provides the appropriate mechanism to secure the proposed change. This approach has also been discussed and agreed with the Council, prior to the submission of this application, and will enable the Hampstead Figure Sculpture to lawfully remain in its current location for the associated construction period associated with the redevelopment of 100 Avenue Road either under the Main Planning Permission, or the Main Planning Permission as it may be amended.

Proposed amendments to the description of development and analysis

The description of development which was approved by Planning Permission 2018/2340/P is as follows:

“Removal and temporary re-siting of the Hampstead Figure Sculpture for the duration of the construction associated with 100 Avenue Road under 2014/1617/P dated 18/02/2016.”

For the reasons above, this application seeks the following amendment to the description of development:

*“Removal and temporary re-siting of the Hampstead Figure Sculpture for the duration of the construction associated with 100 Avenue Road under 2014/1617/P dated 18/02/2016 **(as amended)**”*

The proposed addition of “(as amended)” to the description of development does not alter the specifics of the Statue Planning Permission 2018/2340/P, and continues to provide the LBC the control to ensure the sculpture is not permanently retained in its currently approved (temporary) location. The proposed non-material amendment seeks to regularise the description of development of Planning Permission 2018/2340/P to continue to provide a link between the statue permission and the Main Planning Permission (2014/1617/P) in the future, should amendments to the Main Planning Permission be consented.

The legislation and case law makes clear that when determining a s.96a application:

- it is not for the decision maker to consider whether or not the changes may be acceptable in their own right;
- there is no requirement to undertake a planning balance exercise of the benefits or the harms of the amendment; and
- the key consideration is whether, in the context of the original planning permission, the changes are non-material.

In our view, the proposed addition to the description of development does not go to the heart of the Statue Planning Permission 2018/2340/P, as the intention was at the permission was directly linked to a temporary period of time linked to the construction of the Main Planning Permission (2014/1617/P). Planning conditions often refer to the “original planning permission (as amended)” with the foresight of the original planning permission being amended, and it is standard practice for such caveats to be included.

Concurrent amendments to Hampstead Figure Sculpture permissions

This s.96a non-material amendment has been submitted in conjunction with two other applications relating to the Hampstead Figure Sculpture:

- S.73 amendment to the Statue Planning Permission 2018/2340/P relating to the wording of Conditions 1 and 2. These amendments seek to address the timescales associated with the temporary relocation of the statue.
- A new Listed Building Consent which is nearly identical to Listed Building Consent 2018/2347/L, but which proposes similar amendments to the description of development and the timescales for relocation as listed above.

Administrative matters

The following documents have been submitted as part of this application, in addition to the requisite application forms:

1. Covering Letter, prepared by Montagu Evans (i.e. this letter);
2. Copy of the Decision Notice for Planning Permission 2018/2340/P; and
3. Site Location Plan as approved by Planning Permission 2018/2340/P.

The application fee of £363.00 (inc. service charge) has been paid by the Applicant via the Planning Portal.

We trust the enclosed is in order and we look forward to receiving confirmation of validation shortly. However, if you have any outstanding queries or require further information, please contact Rachel Crick (rachel.crick@montaguevans.co.uk), or James Leuenberger (james.leuenberger@montagu-evans.co.uk) of this office in the first instance.

Yours sincerely,



MONTAGU EVANS LLP