

**PD15093/RC/JL/PM**

[rachel.crick@montagu-evans.co.uk](mailto:rachel.crick@montagu-evans.co.uk)  
[james.leuenberger@montagu-evans.co.uk](mailto:james.leuenberger@montagu-evans.co.uk)  
[phoebe.milner@montagu-evans.co.uk](mailto:phoebe.milner@montagu-evans.co.uk)

Christopher Smith  
Development Management  
Regeneration and Planning  
London Borough of Camden  
2<sup>nd</sup> Floor  
5 Pancras Square  
London  
N1C 4AG

**Planning Portal Ref. PP-13016044**

17 May 2024

Dear Sir/Madam,

**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 73 OF THE TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)  
AMENDMENTS TO THE WORDING OF CONDITIONS 1 AND 2 PURSUANT TO PLANNING PERMISSION 2018/2340/P**

On behalf of Regal Avenue Road Limited ('the Applicant'), we submit this application under Section 73 of the Town and Country Planning Act 1990 (as amended) ('the Act'), to seek a minor material amendment to the Statue Planning Permission ref: 2018/2340/P granted on 27 June 2018 (as amended) by the London Borough of Camden ('LBC') in relation to 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 wording of Conditions 1 and 2**

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.

Condition 1 of the Statue Permission states:

*"The relocation of the sculpture is permitted on a temporary basis for the duration of the construction period associated with 100 Avenue Road under 2014/1617/P dated 18/02/2016. The sculpture shall be relocated to its*

current position by 25/06/2022, unless otherwise agreed in writing by the Local Planning Authority, and the temporary location shall be reinstated to its former condition.

*Reason: The relocation of the sculpture is required due to the construction of the development under 2014/1617/P and following its practical completion, it could be moved back into its current position or a more suitable location may be justified. The permanent retention of the sculpture in its approved location is not considered acceptable without further investigation of potential locations to better enhance the setting of the listed feature. The Local Planning Authority would wish to review the permission at the end of the period to ensure compliance with the requirements of policies D1 and D2 of the London Borough of Camden Local Plan 2017.”*

Condition 2 of the Statue Permission states:

*“Prior to the substantial completion of the 100 Avenue Road development under 2014/1617/P dated 18/02/2016 or the expiration of the temporary permission on 25/06/2022, details of a full review of the most appropriate permanent location for the listed sculpture shall be submitted to and approved in writing by the Council as Local Planning Authority. The review should include details of an appropriate level of engagement and consultation with members of the public and relevant statutory and interested parties.*

*Reason: The permanent retention of the sculpture in its approved location is not considered acceptable without further investigation of potential locations to better enhance the setting of the listed feature. The Local Planning Authority wishes to interrogate the most appropriate location in greater detail closer to the completion of the approved development under 2014/1617/P to ensure compliance with the requirements of policies D1 and D2 of the London Borough of Camden Local Plan 2017.”*

Condition 3 requires all new external work to be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application. Condition 4 requires the work to be carried out in accordance with the approved plans.

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.

Considering that the timescales for the relocation of the Hampstead Figure Statue listed in Conditions 1 and 2 have now passed (the date specified is 25/06/2022), amendments to the condition wording are required to extend the period of temporary relocation to reflect the new anticipated construction dates.

Accordingly, the revised date to be referred to in Conditions 1 and 2 of the Statue Planning Permission is 31/12/2028. It is at this point Regal Avenue Road Limited anticipate construction works will be concluded on their forthcoming development.

### **Proposed amendment condition wording**

This Application seeks revisions to the planning conditions imposed upon the Statue Planning Permission 2018/2340/P:

Condition 1 of Planning Permission 2018/2340/P is as follows:

*“The relocation of the sculpture is permitted on a temporary basis for the duration of the construction period associated with 100 Avenue Road under 2014/1617/P dated 18/02/2016. The sculpture shall be relocated to its*

*current position by 25/06/2022, unless otherwise agreed in writing by the Local Planning Authority, and the temporary location shall be reinstated to its former condition.”*

The amendments sought in respect of the wording of Condition 1 are set out below:

*“The relocation of the sculpture is permitted on a temporary basis for the duration of the construction period associated with 100 Avenue Road under 2014/1617/P dated 18/02/2016 **(as amended)**. The sculpture shall be relocated to its current position **or an appropriate alternative location** by ~~25/06/2022~~ **31/12/2028**, unless otherwise agreed in writing by the Local Planning Authority, and the temporary location shall be reinstated to its former condition.”*

Condition 2 of Planning Permission 2018/2340/P is as follows:

*“Prior to the substantial completion of the 100 Avenue Road development under 2014/1617/P dated 18/02/2016 or the expiration of the temporary permission on 25/06/2022, details of a full review of the most appropriate permanent location for the listed sculpture shall be submitted to and approved in writing by the Council as Local Planning Authority. The review should include details of an appropriate level of engagement and consultation with members of the public and relevant statutory and interested parties.”*

The amendments sought in respect of the wording of Condition 2 are set out below:

*“Prior to the substantial completion of the 100 Avenue Road development under 2014/1617/P dated 18/02/2016 **(as amended)** or the expiration of the temporary permission on ~~25/06/2022~~ **31/12/2028**, details of a full review of the most appropriate permanent location for the listed sculpture shall be submitted to and approved in writing by the Council as Local Planning Authority. The review should include details of an appropriate level of engagement and consultation with members of the public and relevant statutory and interested parties.”*

Planning Officers have advised that the proposed amendments to the condition wording should be secured via a s.73 amendment. Amendments relating to non-compliance with / variation of conditions are able to be secured under s.73 of the Town and Country Planning Act 1990 (as amended) where the proposals remain consistent with the operative part of the planning permission. Recent case law has confirmed that the scope of s.73 amendments is not limited to “minor material amendments” or to prevent “fundamental variations” to conditions where there is no conflict with the operative part of the permission<sup>1</sup>. In this instance, a s.73 amendment is a suitable mechanism to secure the proposed amendments to the condition wording for the following reasons:

- 1) The overall strategy regarding the temporary relocation of the Hampstead Figure Sculpture (i.e. the operative part of the permission) remains the same;
- 2) The temporary relocation of the statue to Swiss Cottage Leisure Centre has already successfully taken place;
- 3) It is still intended that the Hampstead Figure Sculpture could be reinstated back at 100 Avenue Road, or in an alternative suitable location, post construction (this is not proposed to be changed through these amendments);
- 4) The wording of Condition 1 allows for an alternative date for the relocation to be “agreed in writing by the Local Planning Authority”. This anticipates the potential requirement for the date to be amended;
- 5) The wording of Condition 2 indicates that the review of potential permanent locations for the sculpture should be undertaken “prior to the substantial completion of 100 Avenue Road” or “the expiration of the temporary permission on 25.06.2022”. This condition wording indicates that the temporary relocation was intended to cover the full construction period up to substantial completion of the development at 100 Avenue Road. This appropriate remains consistent with the proposed amendment, the only change is that the anticipated end of construction date;

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<sup>1</sup> Armstrong v Secretary of State for Levelling-Up, Housing and Communities (2023)

- 6) The amendments to Conditions 1 and 2 are limited to extending the period of temporary relocation as a result of delays associated with the construction period associated with the Main Planning Permission. Such a change does not go to the heart of the operative part of the permission.

Section 70(2) of the Town and Country Planning Act 1990 (as amended) and Section 38(6) of the Planning and Compulsory Purchase Act 2004 outlines that s.73 applications must be determined in accordance with the Statutory Development Plan unless material considerations indicate otherwise.

In this instance, the Statutory Development Plan comprises the following:

- The London Plan (2021); and
- The Camden Local Plan (2017)

The National Planning Policy Framework ('NPPF') (2023) and Planning Practice Guidance ('PPG') set out the Government's national policy and guidance, and is a material consideration. Other material considerations relevant to this Application include supporting planning guidance produced by the Mayor and the LBC.

An assessment of the proposed amendments against the Development Plan is provided below.

## **Planning Assessment**

### Introduction & Background

#### *Original locations of the Hampstead Figure Sculpture*

The Hampstead Figure Sculpture is a Grade II listed sculpture completed by F E McWilliam in 1964, and was commissioned by Sir Basil Spence to compliment a group of civic buildings designed with Bonnington and Collins between 1959 and 1964. The Hampstead Figure Sculpture was moved in 1982 from its original central position between three civic buildings in order to accommodate new squash courts and a sports club.

The sculpture had been moved by the time of listing in 1999 and was again likely to have been relocated since 1982, during the 2002 redevelopment of the swimming pool. Prior to its location resulting from the approval of the Statue Planning Permission, the Hampstead Figure Sculpture was situated to the north of the listed Swiss Cottage Library, to the south of 100 Avenue Road, on an area of open space set back from the public footpath.

#### *Current location of the Hampstead Figure Sculpture*

Following approval of the Statue Planning Permission, the sculpture was relocated to the south of the Swiss Cottage Leisure Centre, to the north of Adelaide Road. It is now located in a prominent position on a grass verge, in close proximity to the Swiss Cottage Library and Leisure Centre.

#### *Previous considerations by the Planning Inspectorate and the LBC*

In support of the above, we note that Paragraph 87 of the Inspector's Report issued in respect of Main Planning Permission 2014/1617/P outlines that:

*"The Hampstead Figure Sculpture has been repositioned in the past nearer to the existing building on the appeal site and is not easily viewed from all around because it is close to the building. The proposal would enable the statue to be relocated more in keeping with the original location and allow all around viewing and so the proposed enhancements would be an improvement to the listed building, enhancing its special architectural and historic interest."*

And Paragraph 286 of the Inspector's Report issued in respect of Main Planning Permission 2014/1617/P also states that:

*“The opportunity to reposition the sculpture to provide all around viewing would be a major benefit, as would re-establishing a more positive relationship with the library. Even if the sculpture is repositioned in the same location, the impact on its significance would be neutral. Overall I consider there is likely to be a significant enhancement to the setting of the statue and consequently the special architectural and historic interest of the listed building would be likely to be enhanced.”*

The decision from the Secretary of State agreed with the Planning Inspectorate regarding enhancements to the setting of the sculpture and indicated that the best final position may not be known until after the development is implemented:

*“As to the Hampstead Figure Sculpture, the Secretary of State notes it would be necessary to remove the listed sculpture and reposition it after the works are complete (IR283). He agrees with the Inspector that there is likely to be a significant enhancement to the setting of the sculpture and therefore the special architectural and historic interest would be likely to be enhanced (IR286).”*

In this regard, we also draw attention to previous comments also made by the LBC in their consideration of Statue Planning Permission 2018/2340/P in that they concluded at Paragraph 36 of their Delegated Report, that:

*“The principle of the relocation of the sculpture has been accepted by the Planning Inspectorate and Secretary of State. This principle is further supported by Historic England. The sculpture has been moved from its original location multiple times as a result of developments over the years. Therefore, the principle of it being moved again is supported. Furthermore, it is acknowledged that there is little rationale for the sculpture’s current position, that it would need to be moved during the construction of 100 Avenue Road and that there are opportunities for its enhancement.”*

From the above, it is clear that principle of the relocation of the Hampstead Figure Sculpture has been accepted by the Secretary of State, the Planning Inspectorate, and the LBC. This previous assessment and the conclusions reached are material considerations in the determination of this subsequent application.

#### Heritage Assessment

The statutory provision principally relevant to the determination of these applications is set out in the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), in that in considering whether to grant Listed Building Consent for works which affect a listed building (or sculpture in this instance), the Local Planning Authority shall have special regard to the desirability of preserving the listed building, its setting and its features of special architectural or historic interest.

Paragraph 200 of the NPPF states that the Local Planning Authority, during the determination process, would need to identify and assess the significance of any heritage assets in relation to the development proposals, and Paragraph 201 of the NPPF requires a description of the significance of any heritage assets affected, including any contribution made by their setting. Paragraph 205 of the NPPF advises that considering the impact of the proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be).

The NPPF also cites at Paragraph 208 that *“where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use”*.

The overall strategy regarding the temporary relocation of the Hampstead Figure Sculpture remains the same as previously approved under Statue Planning Permission 2018/2340/P. In addition, the temporary relocation has already taken place, and it is still intended for the Hampstead Figure Sculpture to be reinstated back in its previous location adjacent to 100 Avenue Road, or in an alternative suitable location, post construction, if desired (as secured through Condition 2 of Statue Planning Permission 2018/2340/P).

On this basis, it is considered that the retention of the Hampstead Figure Sculpture in its current location, for an extended time period, meets the requirements of the Statutory Development Plan, and the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990.

### Other Design Considerations

High quality and inclusive design are encouraged at all policy levels, and the NPPF notes that 'good design' is a key aspect of sustainable development and should contribute positively to making places better for people.

Chapter 3 of the London Plan explores the Mayor's commitment to ensuring the delivery of good quality designed developments, which reflect and respond to London's character. Policy D1 (London's form, character and capacity for growth) requires developments to respond to local context by delivering buildings and spaces that are positioned and are of a scale, appearance and shape that responds successfully to the identity and character of the locality.

Policy D1 (Design) of the LBC Local Plan seeks to secure high quality design in development, and requires development to; respect local context and character, preserve or enhance the historic environments and heritage assets, be sustainable in design and construction incorporating best practice in resource management and climate change mitigation, while also comprising details and materials that are of high quality and complement the local character, integrate well with surrounding streets and open spaces, incorporate high quality landscape design and be inclusive and accessible for all and secure.

Policy D1 (Design) of the LBC Local Plan notes the Council will only permit artwork, statues or memorials where they protect and enhance the local and historic environment and contribute to a harmonious and balanced landscape design.

The continued temporary relocation of the Hampstead Figure Sculpture in its current location allows for it to be viewed and appreciated near the civic building without blocking any pathways or pedestrian routes, while 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, take place.

Its positioning in a previously approved location, within an area of soft landscaping in front of the leisure centre, ensures the Hampstead Figure Sculpture remains part of a harmonious and balanced landscape design, and allows it to continue to be appreciated in its current setting in a large open area, away from construction works. As such an extension of time for the continued temporary relocation of the Hampstead Figure Sculpture is considered acceptable in design terms.

### **Summary**

This Application seeks an amendment to Conditions 1 and 2 of Planning Permission 2018/2340/P for the continued temporary relocation of the Hampstead Figure Sculpture to ensure the construction at 100 Avenue Road is able to be completed without causing harm to the statue during the construction programme.

It is considered that the retention of the Hampstead Figure Sculpture in its current temporary location, albeit for an extended time period, meets the requirements of the Statutory Development Plan, on the basis the overall strategy regarding the temporary relocation of the Hampstead Figure Sculpture remains the same as previously approved, the temporary relocation has already taken place, it is still intended that the Hampstead Figure Sculpture could be reinstated back in its previous location adjacent to 100 Avenue Road, or in an alternative suitable location, post construction, if desired.

### **Concurrent amendments to Hampstead Figure Sculpture permissions**

This s.73 amendment has been submitted in conjunction with two applications relating to the Hampstead Figure Sculpture:

- S.96a amendment to Planning Permission 2018/2340/P relating to the description of development to refer to any future amendments which might be approved to the Main Planning Permission.
- 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 have been submitted as part of this Application, in addition to the requisite application forms:

1. Covering Letter (i.e. this letter), prepared by Montagu Evans;
2. Copy of Decision Notice 2018/2340/P;
3. Site Location Plan (as approved by 2018/2340/P);
4. Statue Location Plan (as approved by 2018/2340/P);
5. Design & Access Statement (as approved by 2018/2340/P);
6. Heritage Statement (as approved by 2018/2340/P); and
7. Copy of Members Briefing Document from 2018/2340/P.

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

We would be grateful if the Council could confirm that the application is complete, and we look forward to receiving confirmation of validation shortly. However, if you have any outstanding queries, then please contact Rachel Crick ([rachel.crick@montagu-evans.co.uk](mailto:rachel.crick@montagu-evans.co.uk)) or James Leuenberger ([james.leuenberger@montagu-evans.co.uk](mailto:james.leuenberger@montagu-evans.co.uk)) of this office.

Yours sincerely,



**MONTAGU EVANS LLP**