

GOODENOUGH RING

SOLICITORS

FAO Chris Smith
Planning Solutions Team
London Borough of Camden
5 Pancras Square
London
WC1H 9JE

Our ref: MAR00001

19 July 2024

Dear Sir or Madam,

**Re: Further objection to planning application 2024/1267/P – 1-6 Tavis House,
Tavistock Square, London, WC1H 9NA**

We write on behalf of Mary Ward House to object to the section 73 planning application 2024/1267 for 1-6 Tavis House. This letter supplements the representations made by Tibbalds on 3rd May 2024 and by Crochan Murphy of Mary Ward House on 29th May 2024.

Those representations are maintained. Several further points are made or emphasised as follows.

The validity of the section 73 application

The 2021 planning permission was for

“Refurbishment and extension of the existing building to provide new entrances, a new roof top pavilion, roof top plant equipment and enclosures, rear extension and cycle parking associated with Class E use together with new hard and soft landscaping and other ancillary works.”

The application included detailed drawings. These showed some demolition of the rear façade and the service core of the building. The vast majority of the building floorplates were to be retained.

The section 73 application shows that demolition but also the demolition of the floorplates and internal columns at the rear of the building. The majority of the interior of the building will be demolished. Other changes are the construction of generator and substation buildings adjacent to the boundary of Mary Ward House, with new nitrogen and gas stores slightly further away.

Section 73 of the Town and Country Planning Act 1990 provides as relevant:

‘(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and:

- (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
- (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application’.

A s 73 planning permission is one for the same development as the previous planning permission but subject to different conditions.

If granted, a section 73 application will produce a new planning permission. Two particular consequences arise:

- (1) Subject to any conditions imposed, the development which is authorised by the section 73 planning permission will be the same as that approved in the previous planning permission. This is sometimes referred to as an inability to change the description of development used on the planning permission, but goes further since the whole permission, including the submitted drawings which are necessary to describe it must be considered to decide what has been authorised. It is the operative part of the

permission which is not changed.¹ Particular caution has to apply to full planning permissions which necessarily include the submitted drawings.²

- (2) A condition can only be imposed in a s 73 planning permission if it could have been imposed on the original grant of planning permission: *R v Coventry City Council, ex p Arrowcroft Group plc*³. Conditions are able to change the development proposed provided it is not a fundamental alteration to the proposal⁴. Whether an alteration is fundamental has to be considered in the light of the individual proposal.

As Sullivan J explained in *Arrowcroft*⁵:

'... the council is able to impose different conditions upon a new planning permission, but only if they are conditions which the council could lawfully have imposed upon the original planning permission in the sense that they do not amount to a fundamental alteration of the proposal put forward in the original application'.

That judgment was considered by the Court of Appeal in *Finney v Welsh Ministers* [2019] EWCA Civ 1868. At paragraph 42-43 Lewison LJ held:

"42. ... The natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development. That coincides with Lord Carnwath's description of the section as permitting "the same development" subject to different conditions...

43. If the inspector had left the description of the permitted development intact, there would in my judgment have been a conflict between what was permitted (a 100 metre turbine) and what the new condition required (a 125 metre turbine). A condition altering the nature of what was permitted would have been unlawful. That, no doubt, was why the inspector changed the description of the permitted development. But in my judgment that change was outside the power conferred by section 73."

In *Armstrong v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 176 (Admin) James Strachan KC (sitting as a Deputy High Court Judge) was required to

¹ See *R v Coventry City Council ex p Arrowcroft* [2001] PLCR 7 at para 35 per Sullivan J; *Finney v Welsh Ministers* [2019] EWCA 1868, [2020] PTSR 455 at para 42; *R (on the application of Parkview Homes Limited) v Chichester District Council* [2021] EWHC 59 (Admin), [2021] JPL 1075 at para 47 per David Elvin QC.

² *Barnett v Secretary of State for Communities and Local Government* [2009] EWCA Civ 476, [2009] JPL 1597

³ [2001] PLCR 7 at para 33 per Sullivan J.

⁴ For example, *Richmond-upon-Thames London Borough Council v Secretary of State for the Environment* [1974] 1 All ER 193 and applied to s 73 applications in *Arrowcroft*.

⁵ [2001] PLCR 7 at para 33.

consider whether a s 73 application could be rejected on the basis that it constituted a 'fundamental variation' of the planning permission where it was agreed that the amendment did not conflict with the operative part of the permission⁶. The judge considered that there was no such limit on a 'fundamental variation' (from paragraph 77 to 87).

There is a debate in the recent legal judgments whether the test is a 'fundamental alteration' to the development permitted or conflict with the operative part of the permission or both⁷.

In the present case, the scheme includes various important elements which are not within the description of development of the 2021 permission:

- (i) The demolition of over half of the building and its rebuilding, when the 2021 permission refers to refurbishment and extension – so the retention of the existing building;
- (ii) The construction of substantial new buildings in the rear of the site.

These two elements are not shown on the 2021 approved drawings, and are significantly different to those drawings.

The new application gives rise to different effects because of those changes. Demolition works will be far more extensive than the removal of part of the façade, and construction works would be more substantial given the amount of rebuilt floorspace. The new buildings at the rear affect Mary Ward House.

The 2024 application is outside section 73 and so invalid as:

- (i) It contravenes the operative part of the planning permission (whether considered to be just the description of development or the description and the application drawings); and
- (ii) It amounts to a fundamental alteration to the planning permission which could not have been made by a condition when the original application was considered. The scheme is now for the demolition and rebuilding of most of the building, along with the proposed extension and new external buildings.

Consequently the applicants should be invited to withdraw the application and make a proper planning application.

⁶ It was the agreed position in the case that the amendment did not attempt to modify the description of development.

⁷ *R(Fiske) v Test Valley DC* [2023] EWHC 2221.

Noise and vibration

We enclose a review of the noise assessment which has been carried out by Mr Clive Bentley of Sharps Acoustics LLP.

He identifies the following deficiencies in the applicant's noise assessment:

- a. A failure to assess construction noise and vibration impacts;
- b. The only operational impacts assessed were those from plant, and so omitted vehicle movements;
- c. A failure to identify Mary Ward House as a noise sensitive receptor and the consequent failure to assess the noise impacts on Mary Ward House;
- d. The failure to consider guidance on construction noise and vibration, or relevant guidance on operational impacts on Mary Ward House; and
- e. The background noise level was measured from roof top height and will therefore be higher than ground level measurements. This will result in a target level (derived from these results) which is too high.

Impacts of noise and vibration

Mary Ward House is a conference and meeting venue. It therefore needs sufficiently low internal noise levels to be an attractive venue. External noise is also important given that the property's garden and courtyard are unique features of a community meeting space of this type.

As a Grade I listed building, Mary Ward House is severely constrained as to what can be done to protect against external noise. Glazing throughout the building is thin single-glazing. It would not be possible to insert secondary or double glazing without listed building consent, which would, at the least, be very difficult to obtain. The building does not have air conditioning which means that windows have to be opened in warm weather, so increasing internal noise levels. Air conditioning would be very difficult to install, given its grade I status.

Construction and operational noise (and construction vibration) is capable of directly and indirectly harming the listed building.

The direct harm would be (a) harm to the significance of the building through harm to its setting by noise affecting how the listed building is experienced; and (b) any vibration damage.

Indirect harm to the listed building would be the noise and vibrations discouraging conference and meetings bookings. That would:

- a. Undermine the significance of the listed building by compromising the use which is part of its significance; and
- b. Undermine the building's financial viability by driving away bookings. This reduces the funds available to maintain the building.

These impacts are in both the construction and operational periods. The construction effects will run for a lengthy period, risking a loss of business during construction and afterwards, as potential clients have moved to other venues or got a sense that Mary Ward House is not suitable.

The operational impacts will be experienced in perpetuity.

Conclusion

For the reasons in this letter the planning application is invalid.

For the reasons in this letter and the two other letters submitted by or on behalf of Mary Ward House the application should in any event be refused.

Mary Ward House are keen to work with the proposed developers of Tavis House, but that needs to be to achieve a scheme which will enable Mary Ward House to continue to operate successfully.

Please confirm receipt and that this letter and enclosure will be taken into consideration prior to the determination of the application.

Yours faithfully,

Goodenough Ring Solicitors

Encl.

sharps acoustics

**Mary Ward House / Tavis
House**

Review of noise assessment carried out for
Tavis House London.

Clive Bentley BSc (Hons) CIEH MEnvSc MIOA CEnv CSci
Acoustic Consultant and Partner

Sharps Acoustics LLP

19th July 2024

1.0 Introduction

- 1.1 Sharps Acoustics LLP (SAL) have been instructed by Mary Ward House to review a noise assessment report submitted in support of a planning application for the refurbishment and extension to Tavis House, London. The report was produced by Hoare Lea and dated 28th March 2024.
- 1.2 Tavis House and Mary Ward House are immediately adjacent to each other, meaning that noise and vibration associated with the demolition, construction and operation of the proposal has a potential to significantly impact on the use of Mary Ward House. This is exacerbated by the particular sensitivity of Mary Ward House due to its heritage status, which means that very little can be done at Mary Ward House to control noise from outside.
- 1.3 This note sets out our findings following this review.

2.0 Scope of noise assessment

- 2.1 There are two phases of work which need to be considered when assessing the potential noise and vibration impact from the proposed development. These are:
 - Noise and vibration during demolition and construction and
 - Noise during the operation of the proposal, including noise from plant, vehicle movements and deliveries or other servicing. There is also be the potential for disturbance from other uses such as people using the terrace.
- 2.2 The Hoare Lea report only considers noise from plant associated from the proposed development. The lack of assessment of noise and vibration during construction and demolition and of other sources of noise is an important omission, in SAL view.
- 2.3 The noise assessment describes:

"... the installation of heat pumps and strobic fans, the units will be located at roof level to enable a lab use. The most exposed noise sensitive receptors are the residential premises along Tavistock Place and Burton Street."
- 2.4 The listed receptors are shown in Figure 1 of the report.
- 2.5 Mary Ward House is not identified as a noise sensitive receptor. This is a key omission.
- 2.6 Mary Ward House is not a dwelling and, hence, an assessment using BS4142 (which is only intended to be used to assess noise from dwellings) would not be appropriate, this does not mean that an assessment of the impact of noise falling within the scope of BS4142 (such as plant and deliveries) should be ignored.

3.0 Policy and guidance

- 3.1 Relevant policy from the NPPF is quoted, although the paragraphs referred to are incorrectly numbered.
- 3.2 Reference to mineral extraction in paragraph 3.3 in the report is irrelevant and out of place; there are to be no mineral extraction activities taking place in this case, so far as SAL are aware.
- 3.3 No reference is made to guidance in relation to the assessment of noise and vibration from construction (such as that in British Standard BS5228, Parts 1 and 2).
- 3.4 British Standard BS4142 is referred to, but this relates only to impacts on dwellings. Further guidance will need to be considered in order to assess the noise impact from operational noise on other noise sensitive receptors, such as Mary Ward House.

4.0 Assessment of plant noise

- 4.1 Setting aside the key point, which is that the noise potentially affecting Mary Ward House has not been assessed, the noise which has been assessed has been done so in an unreliable manner due to the locations used to assess background noise levels, in SAL opinion.
- 4.2 From the description given in the Hoare Lea report, it appears that the noise survey locations were both at rooftop height. Noise measured at this height will be higher than that measured at ground or first floor receptors, as it is far less screened by buildings. SAL therefore do not consider that the results of these surveys provide a reliable baseline against which to assess noise impact, even on noise sensitive receptors that have been identified, such as the receiver shown in Figure 1 of the Hoare Lea report in Burton St.

5.0 Conclusions

- 5.1 In SAL opinion, further noise and vibration work is essential to establish:
 - the potential effects of noise and vibration on Mary Ward House and its users (and other nearby locations) during the demolition and construction phase.
 - The potential effects of noise from proposed activities at Tavis House (such as servicing and use of the terrace) on Mary Ward House (and other nearby locations).
- 5.2 An assessment also needs to be made of the potential impact of plant noise at Mary Ward House using design criteria relevant to the uses which take place there, taking account of the particular sensitivity of, and constraints present due to, the building given its heritage status.
- 5.3 When assessing the impact of noise at Mary Ward House (and at other locations), baseline noise levels must be representative of the receptor location and not based on measurements made on the roof of Travis House, in SAL opinion.