

PD15093:RP/JL/PM

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Planning Portal Ref. PP-13370390

04 December 2024

Dear Christopher,

**100 AVENUE ROAD, LONDON, NW3 3HF
SECTION 96A OF THE TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)
NON-MATERIAL AMENDMENT TO THE DESCRIPTION OF DEVELOPMENT PURSUANT TO PLANNING
PERMISSION 2014/1617/P (AS AMENDED)**

On behalf of our Client, Regal Avenue Road Limited ('the Applicant'), please find enclosed an application made under Section 96a of the Town & Country Planning Act 1990 (as amended) ('the Act'), seeking to make a non-material amendment to Planning Permission 2014/1617/P granted via Appeal (ref: APP/X5210/W/14/3001616) on 18 February 2016 in relation to 100 Avenue Road, London, NW3 3HF ('the Site').

Background

Planning Permission 2014/1617/P (as amended) was granted via Appeal (ref: APP/X5210/W/14/3001616) on 18 February 2016 for the following description of development ("the Implemented Permission"):

"Demolition of the existing building and redevelopment with a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (class C3) and up to 1,041sqm of flexible retail/financial or professional or café/restaurant floorspace (classes A1/A2/A3) inclusive of part sui generis floorspace or potential new London Underground station access fronting Avenue Road and up to 1,350sqm for community use (Class D1) with associated works including enlargement of the existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements".

The Implemented Permission has previously been amended via multiple non-material amendments (including 2016/2048/P, 2018/4239/P, 2019/1405/P, and 2022/1609/P).

Since the Implemented Permission was approved in February 2016, development on Site has been lawfully implemented, and this was confirmed by the London Borough of Camden through the approval of Certificate of Lawfulness 2017/6884/P. However, construction works have now stalled.

Regal Avenue Road Limited acquired the Site in 2024 and intend to bring forward the proposals at 100 Avenue Road as soon as practicable, subject to the securing of future amendments to the Implemented Permission to ensure its deliverability, respond to updated Building Regulations as well as meeting current residential market

requirements. Extensive pre-application discussions have been held with LBC, the GLA and key stakeholders / members of the public, and a Section 73 amendment application will be submitted later this year.

However, to enable these amendments of the Implemented Permission, there is a need to first amend the description of development, prior to the submission of the proposed Section 73 application. This approach has been discussed and agreed with the London Borough of Camden, prior to submission.

Planning Application Route – Section 96a of the Town & Country Planning Act

Finney v Welsh Ministers found that Section 73 of the Act could be used to alter the description of development, as part of an application to vary the approved scheme.

However, following the judgment handed down by the Court of Appeal (Lewison, David Richards & Arnold LJJ) in *Finney v Welsh Ministers* [2019] EWCA Civ 1868, it has been held that this is not the case. The judgment also implied that you could still amend a Description of Development through a non-material amendment application if the proposed change were not considered to be a material one.

The Courts concluded that Section 73 of the Act may not be used to obtain a varied planning permission when the change sought would require a variation to the terms of the 'operative' part of that permission (i.e. the description of development). In this instance, the description of development contains specific residential unit numbers, building storey heights, and the quantum of floorspace and uses.

This application seeks to alter and simplify the description of development and impose a new condition which contains the specific residential unit numbers, building storey heights and the quantum of floorspace which has been removed from the description. This is to allow for the Implemented Permission to be amended by the imminent application to be submitted via Section 73 of the Act.

The changes also update the proposed use classes to reflect updates to the Town and County Planning (Use Classes) Order 1987 (As Amended) made in September 2020.

Section 96a of the Act provides an appropriate mechanism to make the relevant non-material amendment to Implemented Permission, 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) of the Act 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)*

Further, and as set out in S96a(3) of the Act, the power to make changes to a planning permission extends to 'remove or alter' existing planning conditions:

“(3) The power conferred by subsection (1) includes power—

- (a) to impose new conditions;
(b) to remove or alter existing conditions." (*own emphasis*)

Primary legislation is therefore clear that if the determining authority, which is the London Borough of Camden in this instance, is content that the effect of the proposed change is non-material, the Implemented Permission can be amended under Section 96a of the Act. Given the non-material nature of the proposed amendment to the description of development, Section 96a of the Act provides the appropriate mechanism to secure this.

Proposed Amendments to the Description of Development

The description of development of the Implemented Permission is as follows:

"Demolition of the existing building and redevelopment with a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (Class C3) and up to 1,041sqm of flexible retail/financial or professional or café/restaurant floorspace (Classes A1/A2/A3) inclusive of part sui generis floorspace or potential new London Underground station access fronting Avenue Road and up to 1,350sqm for community use (Class D1) with associated works including enlargement of the existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements".

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

*"Demolition of the existing building and redevelopment ~~with a 24 storey building and a part 7 part 5 storey building~~ comprising ~~of a total of 184 residential units (Class C3) and up to 1,041sqm of flexible retail/financial or professional or café/restaurant floorspace~~ **flexible commercial, business and service use (classes A1/A2/A3 Class E)** inclusive of part sui generis floorspace or potential new London Underground station access fronting Avenue Road and up to 1,350sqm for **community use (Class D1 F2(b))** with associated works including enlargement of the existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements".*

Incorporating the above amendments, the description of development would then read as follows:

"Demolition of the existing building and redevelopment comprising residential units (Class C3) and flexible commercial, business and service use (Class E) and community use (Class F2(b)) with associated works including enlargement of the existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements".

To retain clarity over the development permitted under the Implemented Permission, we would suggest that the following condition is added to the decision notice issued:

"CONDITION: The development hereby approved shall be built in accordance with the approved plans under Condition 3 and be restricted in development quantum to the following:

- *Development of a 24 storey building and a part 7 part 5 storey building comprising:*
 - *184 residential units (Class C3);*
 - *Up to 1,041 sqm of flexible commercial, business and service use (Class E) inclusive of part sui generis floorspace or potential new London Underground station access fronting Avenue Road; and*
 - *Up to 1,350sqm of community use (Class F2(b)).*

REASON: In the interests of proper planning and for clarity over the development hereby approved."

We consider the above amendment to be non-material, as it continues to provide the London Borough of Camden with control in limiting the overall quantum of development, however this is now captured via an appropriately worded compliance condition that refers to the latest use classes too, rather than the description of development. The proposed amendments also provide the Applicant with flexibility moving forward, so they can amend the Implemented Permission via the Section 73 amendment application route as agreed in the pre-application discussions to date, and so the wider benefits of redeveloping the Site can be delivered.

Administrative Matters

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

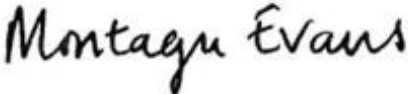
1. Covering Letter, prepared by Montagu Evans (i.e. this letter); and
2. Site Location Plan (as per the Implemented Permission).

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 please contact either Rachel Power (rachel.power@montagu-evans.co.uk), or James Leuenberger (james.leuenberger@montagu-evans.co.uk) of this office.

Yours sincerely,



MONTAGU EVANS LLP