

6 December 2024



Regeneration and Planning  
Culture and Environment  
London Borough of Camden  
5 Pancras Square  
London  
N1C 4AG

David Whittington  
E: DWhittington@savills.com  
DL: +44 (0) 20 7557 9997

33 Margaret Street W1G 0JD  
T: +44 (0) 20 7499 8644  
F: +44 (0) 20 7495 3773  
savills.com

Dear Sir/ Madam

**PLANNING PORTAL REF: PP-13596263**

**SUBMISSION OF AN APPLICATION UNDER SECTION 73 (MINOR MATERIAL AMENDMENT) OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) FOR:**

**AMENDMENTS TO PLANNING PERMISSION REFERENCE 2016/5190/P**

**(AS SUBSEQUENTLY AMENDED BY NON-MATERIAL AMENDMENT REFERENCE 2018/0403/P & MINOR -MATERIAL AMENDMENT REFERENCES 2018/3308/P and 2024/2311/P**

**Phoenix House 104-110 Charing Cross Road London WC2H 0JN**

On behalf of the applicant, *D L (Charing Cross Road) Limited*, Savills have been instructed to prepare and submit this application under Section 73 of the Town and Country Planning Act 1990 (as amended) seeking minor material amendments to planning consent granted under permission reference 2016/5190/P (as has been subsequently amended by NMA and MMA references 2018/0403/P& 2018/3308/P and 2024/2311/P relating to the site at Phoenix House 104-110 Charing Cross Road London WC2H 0JN.

As part of the ongoing design and detailed technical development of the scheme following the grant of planning consent, a number of opportunities have been identified to improve and update aspects of the scheme. Revisions have also been made to ensure continued technical and regulatory compliance.

The application hereby seeks

- **Variation of Planning condition 3** of the planning consent granted under reference 2016/5190/P (as has been subsequently amended by non-material amendment reference 2018/0403/P & Minor Material Amendment references 2018/3308/P and 2024/2311/P & 2023/2713/P and 2023/3382/P)
- **Condition 7** is also proposed to be amended to remove the reference to render as a material
- **Condition 8** is also proposed to be amended to update the amended drawing number reference
- **Condition 10** is also proposed to be amended to update the amended drawing number reference

This Planning Covering Letter sets out the proposed amendments for which consent is sought and considers these within the context of the adopted Development Plan and other material considerations. This document should be read in conjunction with the following supporting documentation which accompanies this application:

- Completed application forms (via the Planning Portal)
- Previously Consented Approved floorplans, elevations and sections
- Proposed amended floorplans, elevations and sections, prepared by BMA Architects
- Acoustic Noise Report prepared by EMTEC

Offices and associates throughout the Americas, Europe, Asia Pacific, Africa and the Middle East.

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The relevant Statutory Planning Application fee payment will be made directly via the Planning Portal by the applicant.

## Background

Planning Permission was granted by The London Borough of Camden (the 'LPA') on 30 July 2017 for the following development. The permission was granted subject to a S106 Agreement and a number of planning conditions: (2016/5190/P)

*Erection of 2 storey roof extension with garden room and terrace at rooftop level to provide 2 x 2 bedroom flats.*

The application was then amended by a S96a NMA. In February 2018 the LPA approved the following: (2018/0403/P):

*Alterations including changes to materials, removal of rear brise soleil, change in orientation of PV panels, realignment of 5th floor south elevation windows and new window to stairwell, replacement of metal screen and balustrade with Kalwall screen, and removal of internal lifts; as non-material amendments to planning permission granted under ref: 2016/5190/P dated 30/06/2017 (erection of 2 storey roof extension with garden room and terrace at rooftop level to provide 2 x 2 bedroom flats)*

In September 2018, a S73 MMA was approved: (2018/3308/P)

*Variation of condition 3 (approved drawings) of planning permission ref: 2016/5190/P dated 30/06/2017 (as amended by ref: 2018/0403/P dated 28/02/2018) for the erection of 2 storey roof extension with garden room and terrace at rooftop level to provide 2 x 2 bedroom flats; namely to increase the footprint of the rooftop structure to the rear (east) elevation and revisions to the detailed design of this elevation.*

Material operations on site commenced and a Certificate of Lawful Existing Development (CLEUD) confirmed that the material operations undertaken were lawful and constituted commencement of the development. The CLEUD was issued on 7 May 2020 under reference 2020/1174/P. The planning permission is therefore extant in perpetuity.

In December 2024, a second S73 was approved by the LPA: 2024/2311/P

*Variation of conditions 2 (approved drawings) and 8 (cycle parking) of planning permission 2016/5190/P granted 30/06/2017 (as later amended by planning permission 2018/0403/P dated 28/02/2018 and 2018/3308/P dated 18/09/2018) for; Erection of 2 storey roof extension with garden room and terrace at rooftop level to provide 2 x 2 bedroom flats, namely to make changes to cycle parking*

## Proposed amendments

The purpose of this latest S73 is to bring all of these changes together under one permission and to add in further design/ layout technical evolutions:

Variation of conditions 3 (approved drawings) 7(material samples), 8(cycle parking) and 10 (PV Panels) of planning permission 2016/5190/P granted 30/06/2017 (as later amended by NMA 2018/0403/P dated 28/02/2018 and MMA's 2018/3308/P dated 18/09/2018 and 2024/2311/P dated December 2024) for; Erection of 2 storey roof extension with garden room and terrace at rooftop level to provide 2 x 2 bedroom flats, namely to make changes to:

- new surround to ground floor entrance door (Phoenix Steet)
- minor changes to internal flat layout at 7th and 8th floor
- changes to external cladding at side and rear elevation from render to textured white rainscreen at 6th-8th floor
- creation of small step our terraces at sixth floor and 7th floor and introduction of metal balustrades
- Alteration to windows at 7th and 8th floor rear east elevation
- Extension of lightwell fire escape from 5th to 6th floor and new access door to enclosed walkway at 6th floor
- Changes to balustrade at 6th floor and 7th floor
- Insertion of 2no windows within rear elevation at 6th floor walkway screen
- Alterations to flat rooflights at 8th floor roof
- Relocation of plant and new plant and screen within enclosed external stairwell void

1	<i>location of cycle parking</i>	<i>This is as per the approved new location as per the S73 approved by the LPA in December ref 2024/2311/P)</i>
2	<i>new surround to ground floor entrance door (Phoenix Steet)</i>	<i>This is a minor cosmetic change to improve the visual amenity of the entrance door to the residential flats. It sits below the main theatre canopy that extends into Phoenix Street. It provides a crisper visual arrangement and an identifiable entrance/ address point, both enhancing the street scene and the new development above.</i>
3	<i>minor changes to internal flat layout at 7<sup>th</sup> and 8<sup>th</sup> floor</i>	<i>These are effectively non material as these are internal layout changes only. They do not materially affect habitable room size or flat size</i>
4	<i>changes to external cladding at side and rear elevation from render to textured white rainscreen at 6<sup>th</sup>-8<sup>th</sup> floor</i>	<p><i>This amendment proposes a new external rain screen cladding in place of the large expanses of relatively bland white textured render.</i></p> <p><i>A rain screen will weather much better that a textured render at height. It will remain cleaner for longer and be much more resilient to the elements. This material will continue to be subject to the relevant condition relating to the submission and approval of material details. This will provided a faceted elevation as opposed to a blank expanse of textured render.</i></p> <p><i>It is a clear visual design and maintenance improvement step, that will ensure a cleaner building for longer and avoid potential for staining.</i></p>
5	<i>creation of small step our terraces at sixth floor and 7th floor and introduction of metal balustrades</i>	<i>These external roof spaces already exist at this level. This amendment would allow access to be gained via a new door within the existing window apertures These are small step out terraces that would have no ability to overlook or be overlooked by neighbouring properties The balustrades would be set behind parapet line and would be at height. Their visibility within the wider public realm</i>

		would be very limited at best. Details of the balustrades would be subject to the existing condition relating to material samples.
6	<i>Alterations to windows at 7<sup>th</sup> and 8<sup>th</sup> floor east rear elevation</i>	<p><i>This windows would now be side sliding doors rather than inward opening. This allows for much better internal space and a more appropriate engineering solution. There is little or no change of the external appearance of the elevations as a whole.</i></p> <p><i>Removal of two small windows within west elevation</i></p> <p><i>Marginal enlargement of two consented windows within east elevation at 8<sup>th</sup> floor to serve the internal stair core. These windows are now of better proportion within the elevation. They are no longer appear squat in their appearance. There is a much more appropriate solid to void ratio proposed within this elevation and the window frames respond (in design terms) to the proposed east facing windows of the 8<sup>th</sup> floor sun rooms.</i></p>
7	<i>Extension of lightwell fire escape from 5<sup>th</sup> to 6<sup>th</sup> floor and new access door to enclosed walkway at 6<sup>th</sup> floor</i>	<p><i>The existing fire star is hidden within the north elevation of the site. It is not visible at all within the streets scene. It runs behind the theatre up the elevation to 5<sup>th</sup> floor level. It is not visible within Charing Cross Road, or any other part of the public realm. It cannot be viewed from the narrow pedestrian only Flitcroft Street.</i></p> <p><i>It is effectively blocked from view by the buildings front Charing Cross Road and the large massing of the theatre buildings/ roof structures to the rear.</i></p> <p><i>It is proposed or increased the height of this open metal stair by 1 floor to meet the new consented 6<sup>th</sup> floor. it provides a walkway at this level and provides a further means of escape.</i></p> <p><i>It is to be clearly noted however, by virtue of the implementation of the permission the project proceeds under building regulations in place at the time of the original permission.</i></p>
8	<i>Changes to balustrade at 6<sup>th</sup> floor and 7<sup>th</sup> floor</i>	<i>Replacement of glass balustrade with metal balustrade to match at rear east 6<sup>th</sup> floor elevation. Details of the balustrades would be subject to the existing condition relating to material samples</i>
9	<i>Insertion of 2no windows within rear elevation at 6<sup>th</sup> floor walkway screen</i>	<i>The walkway screen within the rear east elevation does not alter in its dimensions, positioning or length, but two east facing windows, looking out over the roofscape of the theatre are proposed. There is no opportunity for overlooking of any neighbouring properties at this height and location. They provides a modest outlook from the walkway, which is of course, not a habitable demise. It provides a modest amenity enhancement for residents and provides articulation and punctuation within the rainscreen elevation.</i>
10	<i>Alterations to flat rooflights at 8<sup>th</sup> floor roof</i>	<i>These rooflights lie almost flat within the roof surface and would not be visible. It is, in and of itself largely invisible ; their size is larger, but their upstand height remains the same as consented and would not be visible in the context if the site and the height of this feature at 8<sup>th</sup> floor roof.</i>
11	<i>Relocation of plant and new plant and screen within enclosed stairwell void space</i>	<p><i>Existing plant is to related from ground floor level to be located within the fully enclosed triangular void space adjacent to the lower floors of Phoenix House. New ASHP's to serve the new flats are proposed</i></p> <p><i>In visual terms this plant is completely hidden from view. There is no ability to view this plant from any public space, nor from any habitable window.it sits behind the existing metal escape stair fully obscured/</i></p> <p><i>A new acoustic screen would be proposed to be affixed to the side of the metal staircase adjacent to the plant zone to prevent/ mitigate noise breakout.</i></p>

	<p><i>Full details including location images, photos, plant specification, acoustic screening and background noise survey are to be found within the accompanying documents prepared by EMTEC.</i></p>
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The proposed minor material amendments do not alter the principles of the consented development but simply seek to take opportunity to improve the quality of the development, both externally and internally, whilst also computing achieving a technically up to date development.

**Evaluation and Assessment**

Application Process (Section 73)

The proposed changes are minor in scale and nature when viewed in the context of the consented scheme. The changes do not have any impact on the fundamental aspects of the permission, or indeed any material aspect of the consent. The changes do not alter the principles of the approved scheme, with the changes simply taking opportunity to improve the design quality of the scheme whilst also ensuring technical and regulatory compliance.

The application does not seek to amend the description of development or propose any *new* conditions. It is therefore deemed appropriate for the proposed amendments to proceed via an application made under S,73 of the Act, with all previously imposed conditions (albeit subject to amendments required to regularise the amended drawings and documentation).

The planning consent has been lawfully implemented (as confirmed within a lawful development certificate (reference 2020/1174/) and remains extant in perpetuity. This holds significant weight in the assessment of the any future application.

The S73 route allows for the assessment and analysis of the proposed amendments. It allows the opportunity for full public, internal and external consultation by the LPA.

Officers will be familiar with the principles set out by the “Armstrong” case in 2023, which concerned the extent to which a s73 application may vary an original permission. It was clear that the Court held that design changes to the external appearance of a building were clearly acceptable for determination under a s73. In the Armstrong case, that meant a completely new design idiom and materiality. That is not the case as proposed here, where the design intent and language remains the same as consented. There is no conflict with the operative part of the planning permission. There is therefore no reason why the LPA would not accept this as an acceptable procedural route to consider these amendments.

Amendments to conditions

The proposed amendments to the scheme will result in a requirement to amend the wording of condition 3 in order to update the references to the approved drawings and documentation. The amendments will not alter the general principle of the condition, rather simply replacing references to the approved documentation where appropriate.

The condition as amended would continue to meet the tests required for planning conditions, as set out at paragraph 56 of the National Planning Policy Framework (NPPF) (December 2023). The suggested amendment to condition 3 is relevant to the scheme, relevant to planning, precise and enforceable in all respects.

<p>The original 2016 Condition 3 reads as follows:</p> <p><i>The development hereby permitted shall be carried out in accordance with the following approved plans: (P)001; (P)002; (P)003 revision C; (P)004 revision B; (P)005 revision B; (P)006 revision B; (P)007 revision B; (P)008 revision B.</i></p> <p><i>Reason: For the avoidance of doubt and in the interest of proper planning</i></p>
<p>The Latest S73 ref 2024/2311/P (December 2024) Condition 3 reads as follows:</p> <p><i>The development hereby permitted shall be carried out in accordance with the following approved plans: (P)001; (P)002; (P)003 revision G; (P)004 revision D; (P)005 revision D; (P)006 revision D; (P)007 revision D; (P)008 revision D; SK10012, revision</i></p>
<p>The superseded plans are</p> <p>The development hereby permitted shall be carried out in accordance with the following approved plans: (P)001; (P)002; <del>(P)003 revision G; (P)004 revision D; (P)005 revision D; (P)006 revision D; (P)007 revision D; (P)008 revision D</del>; SK10012, revision C .</p>
<p><b>The amended Condition 3 should read:</b></p> <p><b>The development hereby permitted shall be carried out in accordance with the following approved plans: (P)001; (P)002; 2435-1106, 2435-1107, 2435-1108, 2435-1300, 2435-1301, 2435-1302, 2435-1303, 2435-0100, 2435-1320,2435-0101 rev a, 2435-1101 rev a SK10012, revision C .</b></p> <p><b>Reason: For the avoidance of doubt and in the interest of proper planning</b></p>

In addition to condition 3, the approved drawings listed on the front page of the decision notice should be updated accordingly.

**Other Conditions**

In order to be consistent, three other conditions require updated drawing numbers / use of materials to be amended:

<p>The Latest S73 ref 2024/2311/P (December 2024) Condition 7 reads as follows</p> <p><b>Samples and manufacturers details of all new facing materials including, but not limited to:</b></p> <ul style="list-style-type: none"> <li><b>a) a sample panel of the facing brickwork of no less than 1.5m by 1.5m demonstrating the proposed colour, texture, face-bond and pointing.</b></li> <li><b>b) a sample panel of the proposed render demonstrating the proposed colour and texture.</b></li> </ul> <p><b>shall be provided on site and approved in writing by the local planning authority before the relevant parts of the works are commenced and the development shall be carried out in accordance with the approval given. The approved panel shall be retained on site until the work has been completed.</b></p>
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The amended Condition 7 should read:

Samples and manufacturers details of all new facing materials including, but not limited to:

- a) a sample panel of the facing brickwork of no less than 1.5m by 1.5m demonstrating the proposed colour, texture, face-bond and pointing.
- ~~b) a sample panel of the proposed render demonstrating the proposed colour and texture.~~
- b) A sample of the proposed rainscreen to be used on external elevations demonstrating the colour and texture.

shall be provided on site and approved in writing by the local planning authority before the relevant parts of the works are commenced and the development shall be carried out in accordance with the approval given. The approved panel shall be retained on site until the work has been completed.

The Latest S73 ref 2024/2311/P (December 2024) Condition 8 reads as follows:

*Secure cycle parking for 3 x bicycles shall be provided in its entirety as shown on approved drawing numbered (P) 003, rev G prior to the first occupation of the new units, and permanently retained thereafter.*

The amended Condition 8 should read:

Secure cycle parking for 3 x bicycles shall be provided in its entirety as shown on approved drawing numbered (P) 003, rev G; SK10012 revision C and prior to the first occupation of the new units, and permanently retained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy T1 of the London Borough of Camden Local Plan 2017

The Latest S73 ref 2024/2311/P (December 2024) Condition 10 reads as follows:

*Prior to first occupation of the new dwellings, the photovoltaic cells shown on approved drawing no. (P)004 rev.D, shall be installed and permanently retained and maintained thereafter.*

The superseded plans are:

*Prior to first occupation of the new dwellings, the photovoltaic cells shown on approved drawing no. ~~(P)004 rev.D~~, shall be installed and permanently retained and maintained thereafter*

The amended Condition 10 should read:

Prior to first occupation of the new dwellings, the photovoltaic cells shown on approved drawing no. **2435-1106**, shall be installed and permanently retained and maintained thereafter.

**Reason: To ensure the development provides adequate on-site renewable energy facilities in accordance with the requirements of policy CC1 of the London Borough of Camden Local Plan 2017.**

All other conditions listed on the original consent remain unaffected by the proposed changes.

The proposed amendments do not result in any changes to the consented details. As such, these conditions should be altered to become compliance matters in accordance with the approved documentation on any future S73 consent.

Deed of variation to the Section 106 Agreement

If permission is granted for the minor material amendments, the S106 Agreement dated 12th March 2020 would require a Deed of Variation under S106A of the Town and Country Planning Act 1990 (as amended).

Given the nature of the changes proposed, it is not anticipated that there will be any change to the planning obligation in the signed legal agreement. Nevertheless, it is considered necessary to undertake a Deed of Variation to reflect the new permission reference if consent is given, so that the same obligations can be applied to any S73 permission if implemented.

This Deed of Variation would follow:

- The First Deed of Variation      associated to s73 planning permission 2018/3308/P      18 September 2018
- The Second Deed of Variation      associated to s73 planning permission 2024/2311/P      December 2024

Planning Considerations

The key planning consideration in assessment of the changes to the scheme are principally related to design and amenity.

The proposed amendments do not change the overall consented design intention, rather they reflect an opportunity to enhance the design and appearance of the resultant scheme whilst also ensuring technical and regulatory compliance with relevant building regulations.

In terms of design, Policy D1 of the adopted and emerging Camden Local Plan seeks to secure high quality design in development which respects and responds to local context and character. The policy also notes that development should integrate well with the surrounding streets and open spaces to improved movement through and around the site.

The proposed changes to the scheme ensure continued compliance with this policy.

The internal amendments provide better quality internal layouts with non-material internal layout changes. The switch to sliding door frames rather than inward opening doors is an obvious design benefit and will not have a material change to overall extension appearance of the extension.

The other external elevational changes are modest. The LPA can be comforted that they still have control over the external appearance via existing conditions relating to the submission of details and samples.

The introduction of step out terraces makes use of very small areas of existing roof space. Given the height and scale of the building, the fixing of additional railings close to the consented built form/ building lines will not



have a discernible impact upon the appearance of the extension. Certainly it does not increase the sense of scale or massing of the consented extension. At this height, there are no possible overlooking issues to any neighbouring residential unit. On this basis the application accords with Local Plan Policy A1. *'Managing the impact of development'*.

The new ASHP's are completely hidden from view. These are to be located within a hidden vertical triangular void area behind the existing metal stair way/ There is no material visual effect upon the external appearance of the building. In terms of amenity, the accompany Noise Survey and Specification sets out compliance with Camden' Noise Standards. This amendment complies with Local Plan Policy A1. *'Managing the impact of development'*, and Local Plan Policy A4 *'Noise and Vibration'*

Similarly, the vertical extension of the rear metal stair by one floor does not have a significant effect upon the appearance of the building. Again, this feature is largely hidden behind the main elevation of the Theatre and Phoenix House. The extension will not be readily appreciate against the backdrop of the existing and extended Phoenix house, and across the significant depth of the site (the Theatre auditorium and back of house) There are no public views of this space and potentially only a very marginal ability to glimpse from an office building along the north side of Flitcroft Street.

For the reasons noted above, the minor amendments would preserve the character and appearance of the Denmark Street Conservation Area. Similarly, there is no material effect upon the setting of the adjacent Grade II Phoenix Theatre nor would these minor amendments have any effect upon its special architecture or historic interest. On these basis the application accords with *Local Plan Policy D2 'Heritage'*.

## Summary

This Planning Cover Letter has been prepared in support of an application seeking minor material amendments to planning permission granted under reference 016/5190/P (as has been subsequently amended by non-material amendment reference 2018/0403/P & Minor Material Amendment references 2018/3308/P and 2024/2311/P

The proposed amendments are minor in scale and nature when taking account of the consented scheme as a whole and are considered appropriate to proceed via an application under S73 of the Act.

The proposed changes are brought forward following ongoing development and more detailed architectural analysis. The amendments take opportunity to improve the overall design quality and ultimately the buildings resultant contribution to the character and appearance of the area.

Overall, the proposed amendments will result in no material change to the consented principles of the development and the proposals will remain in conformity with the adopted development plan and all other material considerations.

I trust this letter is clear, however should you wish to discuss this matter further, or require any further information at this stage, please do not hesitate to contact me at any time using the details set out at the head of this letter.

Yours faithfully



**David Whittington**  
**Director**  
**Savills Planning**