

18 December 2024

Camden Council  
Planning – Development Control  
Camden Town Hall  
London  
WC1H 8ND

Dear Sir / Madam,

**Town and Country Planning Act 1990 (as amended) – S73**  
**Application for Variation of Condition of Planning Permission ref. 2019/2823/P**  
**No. 22 Holmes Road, London, NW5 3AB**  
**Planning Portal Ref. PP-13580070**

We write on behalf of our client, Ms Judith Leeb ("the Applicant"), in respect of a S73 (minor-material amendment) application for the variation of Condition 3 (approved drawings and documents) pursuant to planning permission ref. 2019/2823/P at 22 Holmes Road, London, NW5 3AB ("the Site").

Planning permission ref. 2019/2823/P was granted by the London Borough of Camden ("the Council") on 7 December 2020 for the following development:

*"Demolition of former studio building and existing side and rear extensions to 22 Holmes Road. Erection of 2 storey (with basement), 2 bedroom dwelling between no.22 and no.24, and 2 x 2 storey (with basement) 2 bedroom dwellings to rear of site with associated private amenity space and refuse/cycle storage. Erection of new 2 storey extension to rear of no.22."*

This S73 application seeks the following proposed changes:

*"Variation of Condition 3 of planning permission ref. 2019/2823/P to provide an increased finished floor height; amendments to the elevations and internal layouts; new rooftop terrace and inclusion of a new ramp to provide step-free access to units 2 and 3."*

Condition 3 of the Permission ref. 2019/2823/P refers to the approved drawings and documents. The Condition states:

*"The development hereby permitted shall be carried out in accordance with the following approved plans:*

*1617-NMA-XX-ZZ-DR-A-00001, 1617-NMA-XX-B1-DR-B-00100, 1617-NMA-XX-00-DR-B-00100, 1617-NMA-XX-01-DR-B-00100, 1617-NMA-XX-RF-DR-B-00100, 1617-NMA-00-ZZ-DR-B-00300, 1617-NMA-00-ZZ-DR-B-00200, 1617-NMA-XX-B1-DR-A-20102, 1617-*

NMA-00-B1-DR-A-00100, 1617-NMA-00-00-DR-A-00100, 1617-NMA-00-01-DR-A-00100, 1617-NMA-00-R1-DR-A-00100, 1617-NMA-00-R2-DR-A-00100, 1617-NMA-00-ZZ-DR-A-00201, 1617-NMA-00-ZZ-DR-A-00200, 1617-NMA-00-ZZ-DR-A-00300, 1617-NMA-00-ZZ-DR-A-00301, 1617-NMA-00-ZZ-DR-A-00302.

Documents: Design & Access Statement rev P2, Daylight and Sunlight Study (Neighbouring Properties) dated 7 March 2019, Daylight and Sunlight Study (Within Development) dated 7 March 2019, Basement Impact Assessment (Land Stability) ref: 19-088-R-001 rev 05 dated 09/03/2020, Basement Impact Assessment – Surface water & groundwater dated 25 September 2019, Report on structure for basement construction by Osborne Edwards Ltd. dated July 2019, Letter from Key GeoSolutions Ltd dated 24 September 2019, Draft Construction Management Plan pro forma.”

This application seeks to vary Condition 3, so that it reads as outlined below. The key amendments are highlighted in red, including revision numbers added to the approved Site Location Plan and existing drawings for clarity.

“The development hereby permitted shall be carried out in accordance with the following approved plans:

1617-NMA-XX-ZZ-DR-A-00001 rev. P2, 1617-NMA-XX-B1-DR-B-00100 rev. P1, 1617-NMA-XX-00-DR-B-00100 rev. P1, 1617-NMA-XX-01-DR-B-00100 rev. P1, 1617-NMA-XX-RF-DR-B-00100 rev. P1, 1617-NMA-00-ZZ-DR-B-00300 rev. P4, 1617-NMA-00-ZZ-DR-B-00200 rev. P1, ~~1617-NMA-XX-B1-DR-A-20102, 1617-NMA-00-B1-DR-A-00100, 1617-NMA-00-00-DR-A-00100, 1617-NMA-00-01-DR-A-00100, 1617-NMA-00-R1-DR-A-00100, 1617-NMA-00-R2-DR-A-00100, 1617-NMA-00-ZZ-DR-A-00201, 1617-NMA-00-ZZ-DR-A-00200, 1617-NMA-00-ZZ-DR-A-00300, 1617-NMA-00-ZZ-DR-A-00301, 1617-NMA-00-ZZ-DR-A-00302;~~ PLO1; PLO2; PLO3; PLO4; PLO5; PLO6; PLO7; PLO8; PLO9; PL10; PL11; PL12; PL13; PL14; PL15.

Documents: Design & Access Statement rev P2, Daylight and Sunlight ~~Study Report~~ (Neighbouring Properties) dated ~~7 March 2019~~ 26 November 2024, Daylight and Sunlight ~~Study Report~~ (Within Development) dated ~~7 March 2019~~ 12 December 2024, Basement Impact Assessment (Land Stability) ref: 19-088-R-001 rev 05 dated 09/03/2020, Basement Impact Assessment – Surface water & groundwater dated 25 September 2019, Report on structure for basement construction by Osborne Edwards Ltd. dated July 2019, Letter from Key GeoSolutions Ltd dated 24 September 2019, Draft Construction Management Plan pro forma.”

The changes are proposed to provide a better designed scheme, which improves the amenity of the future residents, through increased daylight and sunlight levels and by providing external amenity space.

There is no change in the quantum of dwellings or the unit mix. The minor material amendments continue to provide 3no. 2bed-4person dwellings with extensions to the existing no. 22 Holmes Road dwelling to provide 3 bedrooms as per the Permission ref. 2019/2823/P.

## **The Site and Surrounding Context**

The Site measures 296sqm, located within the Ward of Kentish Town and is bounded by Holmes Road to the south and Regis Road to the north. It is situated approximately 160m south-west of the Kentish Town station.

The Site consists of a semi-detached property (No. 22), used as a single dwelling house (Use Class C3) and a gap between the property and the neighbouring property, no. 24 Holmes Road.

The Site and the adjacent property no. 20 Homes Road (to the east) are the only remaining period properties in the surrounding area and both are in residential use. The property on the Site and at no. 20 Holmes Road are both locally listed and are considered to make a positive contribution to the local character. The Camden's Local List (2015) highlights that the Site and no. 20 Holmes Road have architectural and townscape significance and are described as *"Semi detached mid 19th century villa, semi basement plus two storeys, set behind front garden. Attractive remnant of the original development on Holmes Road, and which has provide the cue for some of the later development in terms of building line and height."* The Site is however not located within a Conservation Area.

The Camden Local Plan Policies Map (updated August 2021) shows that the Site is not designated or allocated for any specific use.

The Site has a high PTAL of 6a, indicating excellent access to public transport, with Kentish Town station located at a walkable distance from the Site providing the Thameslink service as well as bus stops situated on Kentish Town Road, located approximately 140m east of the Site. Local bus services includes nos. 88, 134, 214, 393 and N20.

The surrounding area consists of a mix of architectural styles and land uses, with an office building adjacent to the west, the Kentish Town Police Station to the east, a school (St Patrick's Catholic School) and sheltered housing to the front (south of Holmes Road). To the rear of the Site (north of Regis Road) there is an industrial estate known as Regis Road Site, which is also identified as a Growth Area on the Camden Local Plan Policies Map. The buildings closest to the site are three storeys in height, with some apartment blocks further along the road increasing to six storeys.

The land approximately 20m east of the Site, which comprises four separate, but adjacent plots is allocated for a comprehensive residential development known as York Mews, Section House and Land Around The Police Station.

The Environment Agency's flood map data shows that the Site is located within Flood Zone 1.

## **Planning History**

The planning history considered of relevance is summarised below:

- 2019/2823/P – *Demolition of former studio building and existing side and rear extensions to 22 Holmes Road. Erection of 2 storey (with basement), 2 bedroom dwelling between no.22 and no.24, and 2 x 2 storey (with basement) 2 bedroom dwellings to rear of site with associated private amenity space and refuse/cycle storage. Erection of new 2 storey extension to rear of no.22. Approved on 7 December 2020.*
- 2023/4847/P – *Details to discharge Condition 6 (Energy Statement) & Condition 10 (Appointment of Structural Engineer) of planning reference 2019/2823/P dated 07/12/20 for demolition of former studio building and existing side and rear extensions to 22 Holmes Road. Erection of 2 storey (with basement), 2 bedroom dwelling between no.22 and no.24, and 2 x 2 storey (with basement) 2 bedroom dwellings to rear of site with associated private amenity space and refuse/cycle storage. Erection of new 2 storey extension to rear of no.22. Approved on 29 November 2023.*
- 2023/5181/P – *Certificate of Lawfulness – Commencement of works in accordance with condition 1 (within three years from date of planning permission 2019/2823/P dated 07/12/2020), for the demolition of former studio building and existing side and rear extensions to 22 Holmes Road. Erection of 2 storey (with basement), 2 bedroom dwelling between no.22 and no.24, and 2 x 2 storey (with basement) 2 bedroom dwellings to rear of site with associated private amenity space and refuse/cycle storage. Erection of new 2 storey extension to rear of no.22. Approved on 6 February 2024.*

## **Background**

As highlighted above planning permission (under ref. 2019/2823/P) was granted by the Council on 7 December 2020 for the following proposal:

*“Demolition of former studio building and existing side and rear extensions to 22 Holmes Road. Erection of 2 storey (with basement), 2 bedroom dwelling between no.22 and no.24, and 2 x 2 storey (with basement) 2 bedroom dwellings to rear of site with associated private amenity space and refuse/cycle storage. Erection of new 2 storey extension to rear of no.22.”*

The Permission was subject to 12 conditions, with condition no. 6 (Energy Statement) and no. 10 (Appointment of Structural Engineer) being pre-commencement conditions, which were discharged on 29 November 2023 under application ref. 2023/4847/P. Condition 4 (samples of materials) and condition 8 (combined water network) required details to be submitted for discharge, with all other remaining conditions being compliance conditions.

In addition, the permission was also subject to a S106 Agreement, which included various clauses requiring payments and submission of relevant documents. This included payments and submission of the following:

- Affordable Housing Contribution of £6,306.47 (clause 4.1.1)

- Basement Approval In Principle Application to be submitted to the Council's Highways Structural team (clause 4.2.1(a))
- Basement Approval in Principle Contribution of £1,800 (clause 4.2.1(b))
- Construction Management Plan Implementation Support Contribution of £3,136 (Clause 4.4.1(i))
- Construction Management Plan to be submitted to the Council (Clause 4.4.1(ii))
- Highways Contribution of £3,398.16 (clause 4.5.1)
- Levels Plan to be submitted to the Council (clause 4.5.2)
- Written Notice to be submitted to the Council regarding the Implementation of the Development (clause 5.1).

An application (ref. 2023/5181/P) seeking a lawful development certificate (LDC) was submitted to establish that works to implement the approved scheme commenced before the permission expired on 7 December 2023. Lawful Development Certificate was granted on 6 February 2024 and therefore Permission ref. 2019/2823/P remains extant and construction works can continue at any time.

All the above financial contributions, the Implementation of the Development details, the Construction Management Plan and Basement in Principle Application were confirmed to be satisfied through receipt of various S106 Discharge Notices (dated 18 October 2023; 17 November 2023; 22 November 2023; 28 November 2023 and 28 March 2024). In addition, the LDC application also confirmed the discharge of all the above, with the exception of the Levels Plan, which was satisfied after the LDC application had been determined, through the Discharge Notice dated 28 March 2024.

### **Pre-application**

A pre-application (ref. 2022/1686/PRE) was undertaken with the Council to discuss design amendments. A meeting was held on 7 July 2022, followed by formal written advice received on 22 December 2022.

Three design options considering the changes to the front elevation of the front infill building were presented within the pre-application.

In terms of design, relating to the changes of the external design and materials of the front infill building, it was suggested that option 1, which included a symmetrical façade with central circular window would be the most successful, subject to its detailed design.

It was outlined that the detailed information of the materials were not provided and clarity on this was sought.

In terms of the balustrade, it was questioned whether a glazed balustrade would be appropriate for the front first floor balcony and a high quality and well detailed metal railing was preferred by the Council.

In regards to the rear elevation, it was recognised that the height of the two buildings were increased and Officers recognised this as a benefit and supported in raising the level of the windows which would provide better internal lighting, however, this would be subject to impacts on the neighbouring building.

The changes to the design to the rear elevation appeared to be acceptable, subject to their detailed design and materials. The proposals were welcomed as it retained the industrial characteristics of the previously consented scheme.

Examples of the materials and how it would weather were highlighted to be required to allow the Council to make comments on its acceptability.

It was highlighted that it was difficult to comment on the alterations at roof level without more section drawings showing this element. However, there was no objection in principle of a roof terrace provided that there are no harmful impacts on the amenity of future occupants in terms of overlooking.

The advice highlights that Officers are not supportive of the white render to the rear elevation of the front infill building as the material tends to deteriorate quickly and does not respond to the character.

In terms of alterations to the floor plans and internal layout, there were no concerns raised regarding the removal of planters as the overall amount of planting was not reduced and it was noted that garden area was increased in size. However, details of the proposed planting within the garden area should be provided and greening of the bin enclosure should be explored. Given the extent of the development and hardstanding at the Site, it was recommended to explore additional opportunities for increasing biodiversity.

It was highlighted that all units should be capable of meeting Part M4(2) requirements, given the side passage reduced in width.

The ground floor footprint of the two rear units were reduced, setting it back from the rear boundary. Officers raised concerns over the lightwells serving the basement courtyards, which were removed so that the two entrances sit side by side, as well as the small first floor balconies above.

In terms of the basement excavation, it was highlighted that the submitted floor plans did not show a clear site boundary and it was therefore difficult to make a full assessment against the relevant Local Plan policy A5 concerning basement excavations.

In regards to the amenity impacts, it was considered that impact on neighbouring residential buildings appeared to be the same as previously approved and there is unlikely to be significant impacts on their amenity in terms of privacy, outlook, noise, daylight and sunlight. However, as highlighted above, the proposed increase in height of the two buildings at the rear would likely impact on the daylight/sunlight levels on the neighbouring office buildings and therefore any application should be supported by a daylight/sunlight assessment which includes an assessment of overshadowing of the



neighbouring roof terrace and the impacts on the light levels to their windows as well as ensuring that there would be no harmful overlooking between users of the neighbouring office terrace and the new homes.

### **Proposed Amendments**

This S73 application seeks amendments which will ultimately improve the amenity for future occupants. This includes reconfigurations and changes to the internal layouts of the proposed units alongside minor external amendments which are summarised below.

#### *Basement level changes:*

- Finished floor level of Units 2 and 3 to be raised by 1m resulting in a reduced depth of basement (with the footprint of the basement as per previously approved).
- Minor reconfigurations of the combined kitchen / dining area to all 3 units (Units 1, 2 and 3) at the basement level.
- Removal of the living element from basement level of Unit 1 and provision of a utility area.
- Removal of the internal storage space from the basement level of Units 2 and 3 and re-providing it on the ground level.

#### *Ground level changes:*

- Minor reconfigurations of the ground level of all 3 Units.
- Increase in floorspace by 4sqm of Unit 1.
- Provision of a home office to Units 2 and 3 along with internal storage.
- Provision of entrance to Unit 1 from the front elevation, within an enclosed patio rather than the side.
- Removal of the storage room on the ground level from Unit 1 and re-providing at the first floor.
- Provision of a small window to the w/c of Unit 1 at the ground level.
- Removal of rectangular amenity area at the rear of Units 2 and 3 and incorporating the space in the internal floorspace.
- Introduction of a skylight to the front of Unit 1.
- Planter removed from the front of the Site to increase the patio space of unit 1.
- Ramp included to provide a step-free inclusive access to the rear units (2 and 3).
- Cycle parking redesigned within a covered structure to create more openness and less shade in the internal courtyard.
- Separating the bin enclosures, providing both to the front of Unit 1 and to the front of no. 22 rather than to the front of Unit 1 only.
- Converting the front garden of no. 22 to a patio.

#### *First level changes:*

- Reconfigurations of the first floor of Units 2 and 3 to provide both bedrooms with ensembles and wardrobe to each room.
- Reconfiguration of the first floor of Unit 1. Inclusion of internal storage.

- Removal of terraces from all 3 units.
- Reconfiguration to the rear of Units 2 and 3 to provide a balcony.
- Reconfiguration to provide wardrobe to bedroom 1 of no. 22 at first floor.
- Skylight introduced to bedroom 2 of no. 22.

*Second level changes:*

- Provision of wardrobe to bedroom 3 of no. 22.
- Rooftop space incorporated to all 3 units with planters and rooflights.

*The external changes are as follows:*

- Provision of juliet balcony on first floor of Unit 1 and change in design to the window to facilitate the bathroom.
- Changes to the windows on the ground floor fronting no. 22.
- Changes to the entrance and window fronting Unit 1 at ground level.
- Changes to the rear elevation to provide new windows and balconies.
- Finished floor levels of the rear units (2 and 3) raised by 1 metre.
- Changes to the roof design.

**Documents submitted with the Revised Proposals**

The following documents have been submitted to support the Revised Proposals:

- Application Form and Ownership Certificate duly signed;
- This Covering Letter, dated 18 December 2024;
- CIL Form 1;
- Site Location Plan (ref. 1617-NMA-XX-ZZ-DR-A-00001 rev. P2);
- Proposed Site Plan (ref. PL01);
- Proposed Second Floor Plan (ref. PL05);
- Proposed Elevations (ref. PL09);
- Proposed Sections (ref. PL10);
- Proposed Sections (ref. PL11);
- Proposed Elevations (ref. PL12);
- Proposed Sections (ref. PL13);
- Proposed Sections (ref. PL15);
- 3D View – Street View – Holmes Road 2 (ref. PL16);



- 3D View – Street View – Holmes Road 1 (ref. PL17);
- 3D View – Aerial Front and Rear (ref. PL18);
- 3D View – Top and Street (ref. PL19);
- 3D View – Internal Courtyard 1 (ref. PL20);
- 3D View – Rooftops (ref. PL21);
- X2 3D Views showing Cycle Shelter;
- Daylight and Sunlight Assessment, prepared by Right of Light, dated 26 November 2024; and
- Daylight and Sunlight Assessment (Within Development), prepared by Right of Light, dated 12 December 2024.

In addition to the above, the table below shows a list of the approved drawings under Permission ref. 2019/2823/P, and the new (proposed) drawings submitted as part of this S73 application which will supersede the approved drawings (where indicated).

Approved drawings	New drawings (Proposed)
<b>Existing Drawings</b>	
Lower Ground Floor Ref. 1617-NMA-XX-B1-DR-B-00100 (rev. P1)	(No change)
Upper Ground Floor Ref. 1617-NMA-XX-00-DR-B-00100 (rev. P1)	(No change)
First Floor Ref. 1617-NMA-XX-01-DR-B-00100 (rev. P1)	(No change)
Roof Plan Ref. 1617-NMA-XX-RF-DR-B-00100 (rev. P1)	(No change)
Existing Elevations Ref. 1617-NMA-00-ZZ-DR-B-00200 (rev. P1)	(No change)
Section BB – Existing Ref. 1617-NMA-00-ZZ-DR-B-00300 (rev. P4)	(No change)
<b>Proposed Drawings</b>	
Basement to Garden Ratio Ref. 1617-NMA-XX-B1-DR-A-20102 (rev. P3)	(No longer applicable)
Basement – Proposed Ref. 1617-NMA-00-B1-DR-A-00100 (rev. P9)	Proposed Basement Floor Plan Ref. PLO3
Ground Floor – Proposed Ref. 1617-NMA-00-00-DR-A-00100 (rev. P9)	Proposed Ground Floor Plan Ref. PLO2

First Floor – Proposed Ref. 1617-NMA-00-01-DR-A-00100 (rev. P8)	Proposed First Floor Plan Ref. PL04
Roof Plan – Proposed Ref. 1617-NMA-00-R1-DR-A-00100 (rev. P2)	Proposed Roof Plan Ref. PL06
Roof Plan 2 – Proposed Ref. 1617-NMA-00-R2-DR-A-00100 (rev. P2)	Proposed Roof Plan Ref. PL06
Proposed Elevations Front Ref. 1617-NMA-00-ZZ-DR-A-00200 (rev. P1)	Proposed Elevations Ref. PL07
Proposed Elevations Rear Ref. 1617-NMA-00-ZZ-DR-A-00201 (rev. P1)	Proposed Elevations Ref. PL08
Section AA – Proposed Ref. 1617-NMA-00-ZZ-DR-A-00300 (rev. P7)	Proposed Sections Ref. PL14
Section BB – Proposed Ref. 1617-NMA-00-ZZ-DR-A-00301 (rev. P7)	-
Section CC – Proposed Ref. 1617-NMA-00-ZZ-DR-A-00302 (rev. P7)	-

### **Policy Context**

The Planning and Compulsory Purchase Act (2004) requires that planning applications are determined in accordance with the 'Development Plan' unless material considerations indicate otherwise (Section 38).

The **Development Plan** for the Site comprises the following:

- The London Plan (2021)
- Camden Local Plan (2017)
- Kentish Town Neighbourhood Plan (2016)
- Camden Local Plan Policies Map

Other **Material Considerations** includes The National Planning Policy Framework (NPPF) (December 2024) and the National Planning Practice Guidance (PPG).

There are also a number of additional Supplementary Planning Guidance (SPG) and Supplementary Planning Documents (SPD) by the London Borough of Camden which are considered relevant. This includes Camden Planning Guidance Basement (January 2021) and the Camden Planning Guidance Design (January 2017).

The Camden Local Plan Policies Map shows that the Site is not designated or allocated for any specific development or use.

## **Emerging Local Plan**

The Council has published a new Draft Camden Local Plan (DCLP) for which Regulation 18 consultation was undertaken between January to March 2024. Given the stage of the emerging Local Plan, it is considered that the emerging policies hold little weight in decision-making, hence, the Draft Local Plan has not been considered further.

## **Assessment**

### **Principle of Development**

Chapter 5 (Delivering a sufficient supply of homes) of the NPPF states at paragraph 61 that *“To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.”*

Paragraph 73 states *“Small and medium sized sites can make an important contribution to meeting the housing requirement of an area...and are often built-out relatively quickly.”*

London Plan Policy GG4 (Delivering the homes Londoners need) seeks to provide a housing market that works better for all Londoners. Of relevance, the policy states that those involved in planning and development must ensure that more homes are delivered.

London Plan Policy H1 (Increasing housing supply) sets the ten-year targets for net housing completions that each local planning authority should plan for in Table 4.1 of the Plan. The policy outlines that Boroughs must include these targets in their Development Plan Documents. For the London Borough of Camden, the ten-year housing target is 10,380 from 2019/20 – 2028/29. To ensure this target is met, borough should optimise the potential for housing delivery on all suitable and available brownfield sites through their Development Plans and planning decisions, especially the following sources of capacity, which includes ...a) sites with existing and planned public transport accessibility levels (PTALs) 3-6; and e) small sites.

London Plan Policy H2 (Small sites) states that boroughs should pro-actively support well-designed new homes on small sites (below 0.25 hectares in size) through both planning decisions and plan-making in order to achieve a number of objectives including to support small and medium-sized housebuilders. Table 4.2 of the Plan sets out the 10-year housing target (2019/20 – 2028/29) for net housing completions on small sites. The London Borough of Camden has been set a target to complete 3,280 homes on small sites.

The Local Plan Policy G1 (Delivery of growth and location) states that growth in Camden will be expected to meet the strategic objectives, which includes 16,800 additional homes to 2031 with developments taking place throughout the borough with the most significant growth expected at growth areas and other highly accessible locations, which includes Kentish Town.

Local Plan Policy H1 (Maximising housing supply) seeks to maximise the housing supply. The Council aims to exceed a target of 16,800 additional homes from 2016/17 – 2030/31, including 11,130 additional self-contained homes.

Neighbourhood Plan Policy SSP7 (Small sites and infill development) states that the Kentish Town Neighbourhood Forum *“would look favourably on infill proposals for making use of small urban sites such as gaps, unused marginal land and other remnants where innovative ideas for sustainable development will bring the land back into use. A high quality approach to design is required (see Policy D3) to ensure adequate amenity for new residents, protection of the amenity of existing residents, and the preservation of the character and appearance of the street scene. Outdoor space may be difficult to obtain due to the size of the sites. In these cases alternative approaches should be considered, such as balconies and roof gardens. This policy will be subject to assessment of viability on proposals coming forward.”*

The principle of the development to provide 3 residential units and extension to the existing dwelling at no. 22 Holmes Road, with associated works has already been established through planning permission ref. 2019/2823/P. The proposed development does not seek to make changes to the number of homes being delivered. The proposal continues to provide a total of 3 residential units, through one infill dwelling between no. 22 and 24 Holmes Road and two residential units at the rear, with amenity space and cycle and refuse storage and ancillary works.

The delegated report of application ref. 2019/2823/P highlights that *“Housing is regarded as the priority land-use of the Local Plan and the Council will make housing its top priority when considering the future of unused and underused land and buildings.”* As such, the proposal will continue to make a small yet valuable contribution to meeting the housing targets of the borough within a highly accessible location. The proposal is therefore supported by Chapter 5 of the NPPF; the London Plan policies GG4, H1 and H2 and the Local Plan policies G1 and H1 which seek to increase housing supply as well as the Neighbourhood Plan Policy SSP7 which supports infill developments of small urban sites which bring the land back to use.

### **Residential Standards and Dwelling Mix**

London Plan Policy D5 (Inclusive design) requires development proposals to achieve the highest standards of accessible and inclusive design, which is convenient and welcoming with no disabling barriers.

London Plan Policy D6 (Housing quality and standards) highlights that housing developments should be of high quality, providing adequacy sized rooms. Residential units are required to meet the space standards set within Table 3.1 of the London Plan which provides the minimum internal space standards for new dwellings. There are no standards set for a 2 bed dwelling provided over 3 storeys. However, a 2bed-4person dwelling over 2 storeys is required to provide 79sqm of gross internal area with 2sqm built-in storage and a 3bed-5person dwelling provided over 3 storeys is required to provide 99sqm of gross internal floorspace with 2.5sqm of built-in storage.

In addition, private amenity space is required at a minimum of 5sqm for 1-2 person dwellings with an extra 1 sqm for each additional occupant.

London Plan Policy D7 (Accessible housing) states that residential development must ensure that:

1. *“at least 10 per cent of dwellings (which are created via works to which Part M volume 1 of the Building Regulations applies) meet Building Regulation requirement M4(3) ‘wheelchair user dwellings’*
2. *all other dwellings (which are created via works to which Part M volume 1 of the Building Regulations applies) meet Building Regulation requirement M4(2) ‘accessible and adaptable dwellings’.*”

London Plan Policy H10 (Housing size mix) highlights that schemes should generally consist of a range of unit sizes. The policy outlines that in order to determine the appropriate mix of unit sizes, applicants and decision-makers should have regard to a number of factors, which includes evidence based and *“the nature and location of the site, with higher proportion of one and two bed units generally more appropriate in locations which are closer to a town centre or station or with higher public transport access and connectivity.”*

Local Plan Policy H6 (Housing choice and mix) seeks to create mixed and inclusive communities by providing high quality accessible homes. All residential developments are required to meet the nationally described space standards. The Policy reiterates the London Plan Policy D7, requiring 90% of new-build self-contained homes to be accessible and adaptable in accordance with Building Regulation M4(2); and 10% of new-build self-contained homes to be suitable for occupation by a wheelchair user or easily adapted for occupation by a wheelchair user in accordance with Building Regulation M4(3).

Policy H6 also highlights that the Council will seek a diverse range of housing products in the market and affordable sectors; support development of private rented homes if it will assist in creating mixed, inclusive and sustainable communities and require a range of dwelling sizes in accordance with Policy H7.

Local Plan Policy H7 (Large and small homes) seeks to secure a range of homes of different sizes. The Council will seek to ensure that all housing developments contributes to meeting the priorities set out in the Dwelling Size Priorities Table and includes a mix of large and small homes. A flexible approach will be taken to assess the mix of dwelling sizes. Table 1 of the Local Plan sets out the dwelling size priorities, and is set out below.

Table 1: Dwelling Size Priorities

	1-bedroom (or studio)	2-bedroom	3-bedroom	4-bedroom (or more)
Social affordable rented	Lower	High	High	Medium

Intermediate affordable	High	Medium	Lower	Lower
Market	Lower	High	High	Lower

Local Plan Policy C6 (Access for all) seeks to *“promote fair access and remove the barriers that prevent everyone from accessing facilities and opportunities.”* Of relevance, the Council will expect developments to be highest practicable standards of accessible and inclusive design, including the spaces, routes and facilities between buildings to be fully accessible and secure parking for disabled people.

Unit Mix

As highlighted above, there are no changes to the unit mix of the approved development. The proposal will provide 3no. high quality 2-bedroom homes and no. 22 Holmes Road will be extended to provide a 3-bedroom home. As it can be noted from Local Plan Policy H7, 2-bedroom and 3-bedroom market homes are a high priority and the proposal will help to achieve this priority.

In addition, the delegated report of Permission ref. 2019/2823/P stated that *“Although the development would not provide a mix of dwelling sizes, given the fact that the proposal involves the creation of only 3 new dwellings, all of which would be 2 bedroom properties which is a high priority dwelling size, the development is considered to be in accordance with Policy H7.”*

Overall, it is considered that due to the minor scale of the development, it is not practical to provide a range of unit sizes and mix. The proposal has been developed to maximise the Site whilst ensuring that the development respects the surrounding local character. Therefore, the proposed unit mix should be considered acceptable and supports in achieving the priorities outlined within the Local Plan policy H7.

Accessible Units

All dwellings are compliant with Building Regulation M4(2) and all are wheelchair accessible. Due to raising the Units 2 and 3 by 1m, a ramp has been incorporated to ensure ease of access to these units for wheelchair users in accordance with Building Regulation M4(2).

Due to the minor scale of the development (i.e. being below 10 dwellings) and given the constraints of the Site as well as maximising the Site, there are no units proposed which are M4(3) compliant. It should be noted that the Permission ref. 2019/2823/P also did not make provision for any M4(3) dwellings and this was not raised as a concern. The delegated report of the Permission acknowledged that *“All of the units will need to meet M4(2) which the Council would secure as a planning condition.”* In addition, the pre-application did not raise any concerns regarding this and outlined that all units will need to be complaint with Part M4(2) requirements. The proposal therefore accords with the London Plan policy D5 which requires proposals to be inclusive and accessible.

### Internal Space Standards and External Amenity Space

All units comply with the minimum space standards as required within the London Plan Policy D6 and the Local Plan Policy H6.

The table below shows a summary of the internal floorspace provided to each unit compared against the requirement, although as previously highlighted there are no minimum internal space standards prescribed for 2bed dwellings over 3 storeys. Therefore, the minimum space standards for a 2bed, 4-person dwelling over 2 storeys is used for a comparison.

<b>Unit</b>	<b>Minimum GIA (sqm) requirement</b>	<b>Proposed GIA (sqm)</b>
Unit 1 – 2b4p	79 (for 2b4p over 2 storeys)	82
Unit 2 – 2b4p	79 (for 2b4p over 2 storeys)	89
Unit 3 – 2b4p	79 (for 2b4p over 2 storeys)	89
No. 22 – 3b5p	99	102

In addition to the courtyard access, as a result of the design amendments, additional private amenity space has been introduced in the form of roof terraces and balconies. The 3no. 2-bed 4-person dwellings are required to provide a minimum of 7sqm of private amenity space, whereas no. 22 Holmes Road being a 3-bed, 5-person dwelling is required to provide a minimum of 8sqm of amenity space. All units exceed the minimum amenity space standards.

The table below shows a summary of the amenity space provided to each unit and the requirement.

<b>Unit</b>	<b>External amenity space requirement (sqm)</b>	<b>External amenity space proposed (sqm)</b>
Unit 1	7	40
Unit 2	7	24
Unit 3	7	24
No. 22	8	28

The proposed 3no. 2bed-4person units also exceed the built-in storage space as Units 1, 2 and 3 provide built-in storage spaces of 2sqm, 3sqm and 3sqm respectively.

In summary, the proposal exceeds the minimum internal space standards as well as the private amenity space requirement. In addition, the 3 units provide the required built-in storage space and therefore the proposals accords with the London Plan policy D6 and Local Plan policy H6.



## **Affordable Housing**

London Plan Policy H4 (Delivering affordable housing) highlights the requirement to provide affordable housing to major applications, consisting of 10 or more units.

Local Plan Policy H4 (Maximising the supply of affordable housing) seeks to maximise the supply of affordable housing. The policy requires all developments providing one or more additional homes and involve a total addition to residential floorspace of 100sqm GIA or more to contribute towards providing affordable housing. The maximum reasonable amount of affordable housing will be sought.

The targets are applied to additional housing floorspace proposed and not to existing housing floorspace or replacement floorspace. The policy states that *“d. a sliding scale target applies to developments that provide one or more additional homes and have capacity for fewer than 25 additional homes, starting at 2% for one home and increasing by 2% of for each home added to capacity”* and *“g. where developments have capacity for fewer than 10 additional dwellings, the Council will accept a payment-in-lieu of affordable housing”*.

Under Permission ref. 2023/5181/P, the required contribution of £6,306.47 (as highlighted earlier) was paid to the Council towards affordable housing based on the uplift in floorspace. Given that the proposal results in a marginal increase in floorspace of 4sqm compared to the Permission, it is understood that no further contribution will be required in respect of securing affordable housing.

## **Design**

Chapter 12 of the NPPF establishes national policy guidance on the design of the built environment. Paragraph 131 states that *“good design is a key aspect of sustainable development”*.

Paragraph 135 states that planning policies and decisions should ensure that developments:

- a) Will function well and add to the overall quality of the area;
- b) Are visually attractive, due to architecture, layout and landscaping;
- c) Are sympathetic to the local character and history;
- d) Establish and maintain a strong sense of place;
- e) Optimises the site potential; and
- f) Create places that are safe, inclusive and accessible.

Paragraph 137 of the NPPF emphasises the importance of considering the design of proposals throughout its evolution and that early discussions between the applicant, local authorities and community engagement will be looked on more favourably.

London Plan Policy D1 (London's form, character and capacity for growth) outlines the importance of understanding the local context and ensuring that new developments respect the established character.

London Plan Policy D3 (Optimising capacity through design-led approach) seeks to optimise site capacity through a design-led approach. This policy sets out that development proposals should *"enhance local context by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale, appearance and shape"*. In addition, they should achieve safe, secure and inclusive environments whilst being of high quality.

London Plan Policy D4 (Delivering good design) states that masterplans and design codes should be used to help bring forward development and ensure it delivers high quality design and placemaking based on the requirements.

Local Plan Policy D1 (Design) sets out the criteria which the Council will use to secure high quality design in developments. Of relevance, the Council will require that development:

- *(a) respects local context and character;*
- *(b) preserves or enhances the historic environment and heritage assets in accordance with Policy D2 Heritage;*
- *(c) is sustainable in design and construction, incorporating best practice in resource management and climate change mitigation and adaptation;*
- *(d) is of sustainable and durable construction and adaptable to different activities and land uses;*
- *(e) comprises details and materials that are of high quality and complement the local character;*
- *(f) integrates well with the surrounding streets and open spaces, improving movement through the site and wider area with direct, accessible and easily recognisable routes and contributes positively to the street frontage;*
- *(g) is inclusive and accessible for all;*
- *(h) promotes health;*
- *(i) is secure and designed to minimise crime and antisocial behaviour;*
- *(k) incorporates high quality landscape design (including public art, where appropriate) and maximises opportunities for greening for example through planting of trees and other soft landscaping;*
- *(l) incorporates outdoor amenity space;*
- *(n) for housing, provides a high standard of accommodation; and*

- *(o) carefully integrates building services equipment.*

The Council will resist development of poor quality design and expects excellence in architecture and design. The Policy links back to Policy G1 that delivery and location of growth will be provided through high quality contextual design.

Neighbourhood Plan Policy D3 (Design principles) states that applications for the development of new and the redevelopment of existing buildings will be supported where they meet the following criteria:

- a) "Proposals must be based on a comprehensive understanding of the site and its context*
- b) Proposals must be well integrated into their surroundings and reinforce and enhance local character, in line with paragraph 64 of the NPPF*
- c) Proposals must identify and draw upon key aspects of character, or design cues from the surrounding area. Appropriate design cues include grain, building form (shape), scale, height and massing, alignment, modulation, architectural detailing, materials, public realm and boundary treatments*
- d) Design innovation will be encouraged and supported where appropriate*
- e) Design proposals must be of the highest quality and sustainable, using materials that complement the existing palette of materials in the surrounding buildings*
- f) Proposals must enhance accessibility in buildings by taking into account barriers experienced by different user groups."*

The design approach to the proposed dwellings remains as originally approved under application ref. 2019/2823/P, albeit the amendments proposed have been informed by the pre-application discussions. In accordance with the pre-application advice, the proposal incorporates the following:

- Includes a metal balustrade on the first floor balcony rather than glazed balustrade as preferred by the Council;
- The wall from the rear boundary along Regis Road has been removed to provide activation;
- Details of the materials have been provided on the submitted drawings which includes red brickwork, pale yellow brickwork, dark grey cladding, windows, metal screen and metal balustrade. There is no white render proposed as preferred by the Council;
- Roof terraces has been provided given there were no objections subject to the impact on the amenity of future occupants in terms of overlooking, which is discussed in the section below;
- Whilst the planter to the rear of Unit 1 has been removed, additional planters have been incorporated throughout the scheme and overall there is no reduction in the overall amount of planting.

Officers were supportive of increasing the height of the two units at the rear and considered this to be a benefit as it would provide better internal light for future residents. However, it was made clear that this should be subject to impacts on neighbouring buildings. As such a Daylight and Sunlight Assessment has been submitted and assessed further below. In addition, there were no objections over the roof terrace provided there are no harmful impacts on the amenity of future occupants.

The Applicant has had extensive discussions with the architects to maximise the Site whilst ensuring the proposed changes provide an improvement to the local character and streetscene in comparison to the Permission.

Whilst the height of the proposals has increased, the scheme would still sit below the adjoining property to west as well as providing a more symmetrical roof design from the streetscene.

The proposed materials have been selected which enhances the local character and provides a contrast with the locally listed No. 22 Holmes Road.

Overall, it is considered that the proposed changes to the design further enhances the scheme compared to the Permission as the roof height, materials, and form respects the character of the neighbouring buildings whilst not being dominant in scale.

### **Impact on Amenity**

Local Plan Policy A1 (Managing the impact of development) states that the *"Council will seek to protect the quality of life of occupiers and neighbours."* Of relevance, the factors which will be considered includes visual privacy and outlook; daylight, sunlight and overshadowing and noise and vibration levels.

In terms of impact on the neighbouring amenity, the pre-application advice confirmed that the *"Impacts on neighbouring residential buildings largely appear to be the same as previously approved, and there are unlikely to be significant impacts on their amenity in terms of privacy, outlook, noise, daylight and sunlight."*

To consider the impacts of this increase in height upon neighbouring buildings, this application is supported by a Daylight and Sunlight Assessment which concludes that *"the numerical results in this assessment demonstrate that the proposed development will have a low impact on the light receivable by its neighbouring properties. In our opinion, the proposed development sufficiently safeguards the daylight and sunlight amenity of the neighbouring properties."*

In terms of overlooking from the roof terrace, it should be noted that the roof terraces are set back within the roof to minimise overlooking to neighbouring properties. As it can be assessed from the "Views" submitted, there will be no direct overlooking to the neighbouring properties.

Therefore, the proposals will not have any detrimental impacts on the neighbouring occupiers and accords with the Local Plan policy A1 which seeks to protect the amenity of neighbouring occupiers.

In terms of internal amenity, a Daylight and Sunlight Assessment has been undertaken to confirm that the proposed development will provide adequate levels of natural light to the future occupants. The Assessment *"confirms that the proposed design satisfies all of the requirements set out in the BRE guide 'Site Layout Planning for Daylight and Sunlight'.* *In our professional opinion, the proposed design will provide the development's future occupiers with adequate levels of natural light."*

### **Basement Works**

London Plan Policy D10 (Basement development) states that *"Boroughs should establish policies in their Development Plans to address the negative impacts of large-scale basement development beneath existing buildings, where this is identified as an issue locally."*

Local Plan Policy A5 (Basements) states that basement development will be permitted where it can be demonstrated to the Council's satisfaction that the proposal will not cause harm to:

- a) *neighbouring properties;*
- b) *the structural, ground, or water conditions of the area;*
- c) *the character and amenity of the area;*
- d) *the architectural character of the building; and*
- e) *the significance of heritage assets.*

The Policy goes on to say that the *"siting, location, scale and design of basements must have minimal impact on, and be subordinate to, the host building and property. Basement development should:*

- f) *not comprise of more than one storey;*
- g) *not be built under an existing basement;*
- h) *not exceed 50% of each garden within the property;*
- i) *be less than 1.5 times the footprint of the host building in area;*
- j) *extend into the garden no further than 50% of the depth of the host building measured from the principal rear elevation;*
- k) *not extend into or underneath the garden further than 50% of the depth of the garden;*

- l) be set back from neighbouring property boundaries where it extends beyond the footprint of the host building; and*
- m) avoid the loss of garden space or trees of townscape or amenity value.*

*Exceptions to f. to k. above may be made on large comprehensively planned sites.*

*The Council will require applicants to demonstrate that proposals for basements:*

- n) do not harm neighbouring properties, including requiring the provision of a Basement Impact Assessment which shows that the scheme poses a risk of damage to neighbouring properties no higher than Burland Scale 1 'very slight';*
- o) avoid adversely affecting drainage and run-off or causing other damage to the water environment;*
- p) avoid cumulative impacts;*
- q) do not harm the amenity of neighbours;*
- r) provide satisfactory landscaping, including adequate soil depth;*
- s) do not harm the appearance or setting of the property or the established character of the surrounding area;*
- t) protect important archaeological remains; and*
- u) do not prejudice the ability of the garden to support trees where they are part of the character of the area."*

The Original Application (ref. 2019/2823/P) was supported with a number of documents which related to the assessment of the basement proposals. In addition to Condition 3 referring to the approved documents, Condition 11 refers to the reports and highlights that the basement excavation should be completed in accordance with the following reports:

- Basement Impact Assessment (Land Stability) ref: 19-088-R-001 rev 05 dated 09/03/2020;
- Basement Impact Assessment – Surface water & groundwater dated 25 September 2019;
- Report on structure for basement construction by Osborne Edwards Ltd, dated July 2019;
- Letter from Key GeoSolutions Ltd, dated 24 September 2019; and
- Recommendation set out in Campbell Reith Audit report, dated 24 March 2020.

The Basement Impact Assessment prepared by Land Stability (ref. 19-088-R-001 rev 05 dated 09/03/2020) concluded that *"... the proposed basements could be constructed employing appropriate construction methods without significant impact on either the slope stability within the area or on the adjacent properties or infrastructure."*

Given that the proposal does not result in any changes to the footprint of the basement i.e. the proposed basement footprint remains the same as approved, it is considered that the conclusions of the Basement Impact Assessment continue to remain applicable. Despite the increase in height of Units 2 and 3, confirmation of this can be provided by the project engineer if deemed necessary by the LPA.

Within the pre-application proposals, changes were proposed to the footprint to the basement level. However, the scheme no longer proposes any changes to the footprint of the basement and this remains as approved under the Permission ref. 2019/2823/P.

The delegated report of application ref. 2019/2823/P confirms that the proposal would comply with all the points (i.e from f to m) and *“would retain more than 50% of the existing garden/unbuilt area. The size and depth of the basement are considered acceptable given the existing development at the site and extent of hardscaping.”*

In regards to the Basement Impact Assessment, the delegated report highlights that *“The applicant has submitted a Basement Impact Assessment (BIA) which has been subject to independent verification by Campbell Reith to review the BIA for potential impact on land stability and local ground and surface water conditions arising from basement development in accordance with Policy carried out by Stantec Ltd with supporting documents provided by Osborne Edwards Ltd. The authors possess suitable qualifications which are in accordance with LBC guidance.*

*Campbell Reith issued their final BIA audit report on 24th March 2020 confirming that the revised BIA and details have been conducted in accordance with the requirements of Policy A5 and the Basement CPG. If planning permission is granted, conditions will be imposed requiring the applicant to submit details of a qualified engineer to inspect, approve and monitor the construction works, and requiring the basement to be completed in accordance with the approved basement impact assessment and associated documents.”*

As such, the proposed changes comply with the Local Plan policy A5 and it is anticipated that a condition requiring compliance with the approved basement impact assessment is included within any future permission.

### **Heritage Impact**

Chapter 16 (Conserving and enhancing the historic environment) of the NPPF seeks to conserve heritage assets. With regards to non-designated heritage assets, paragraph 216 of the NPPF states *“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*



London Plan Policy HC1 (Heritage and conservation growth) states that *“Development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets’ significance and appreciation within their surroundings. The cumulative impacts of incremental change from development on heritage assets and their settings should also be actively managed. Development proposals should avoid harm and identify enhancement opportunities by integrating heritage considerations early on in the design process.”*

Local Plan Policy D2 (Heritage) states that *“The Council will seek to protect other heritage assets including non-designated heritage assets (including those on and off the local list), Registered Parks and Gardens and London Squares. The effect of a proposal on the significance of a non-designated heritage asset will be weighed against the public benefits of the proposal, balancing the scale of any harm or loss and the significance of the heritage asset.”*

As outlined earlier, the Site and the adjacent building no. 20 Holmes Road are both locally listed and are considered to make a positive contribution to the local character.

There were no concerns raised within Permission ref. 2019/2823/P regarding the impact on the non-designated heritage assets and neither was there anything raised within the pre-application that was of concern. It is considered that the proposals will in fact make a further positive contribution to the local character through the new development, which seeks to ensure that the locally listed building on Site is preserved and enhanced whilst respecting the neighbouring listed building.

Given that permission has already been granted for the demolition and redevelopment at the Site, it is considered that there are no detrimental impacts on the Site through these revised proposals. The proposals will retain the front exterior of the Site (no. 22 Holmes Road) and existing materials will not be altered. The proposals include changes externally. However, this is considered to make a positive improvement to the character of the locally listed building as the rear of the Site will comprise of the same design, further enhancing the area through the removal of the gap, which has no positive impact to the overall local character.

The proposals are therefore considered to preserve and enhance the local character as encouraged within Chapter 16 of the NPPF, the London Plan Policy HC1 and the Local Plan Policy D2.

### **Transport Impacts**

Chapter 9 (Promoting sustainable transport) of the NPPF outlines the role of transport in achieving sustainable development. Paragraph 110, states that *“significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions and improve air quality and public health.”*

Paragraph 116 adds that *“development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”*

London Plan Policy T5 (Cycling) states that development proposals should help remove barriers to cycling and create a healthy environment in which people choose to cycle by securing the provision of appropriate levels of cycle parking which should be fit for purpose, secure and well-located. Developments should provide cycle parking at least in accordance with the minimum standards set out in Table 10.2 and Figure 10.3 of the Plan. The Site is located within an area where the Policy seeks higher than minimum standards.

For residential (Use Class C3) developments, the minimum cycle parking standards for long stay is 2 spaces for dwellings of more than 1 room and 2 short stay cycle spaces are required for proposals providing between 5-40 dwellings.

London Plan Policy T6 (Car parking) states that car-free development should be the starting point for all development proposals in places that are (or are planned to be) well-connected by public transport, with developments elsewhere designed to provide the minimum necessary parking ('car-lite'), whilst still providing appropriate disabled parking spaces. The policy also requires adequate provision to be made for the efficient deliveries and servicing and emergency access.

Local Plan Policy T1 (Prioritising walking, cycling and public transport) states that *“Council will promote sustainable transport by prioritising walking, cycling and public transport in the borough”*. In order to promote cycling in the borough, the Council will ensure that developments *“h) provides for accessible, secure cycle parking facilities exceeding minimum standards outlined within the London Plan (Table 6.3) and design requirements outlined within our supplementary planning document Camden Planning Guidance on transport. Higher levels of provision may also be required in areas well served by cycle route infrastructure, taking into account the size and location of the development.”*

Local Plan Policy T2 (Parking and car-free development) states that *“The Council will limit the availability of parking and require all new developments in the borough to be car-free.”* The policy highlights that the Council will make use of legal agreements to not issue parking permits. In terms of disabled car parking spaces, the Policy states that the Council will *“limit on-site parking to: i) spaces designated for disabled people where necessary, and/or ii) essential operational or servicing needs.”*

The Site benefits from a very high PTAL rating of 6a. As such, the proposal will be car free as per the Permission ref. 2019/2823/P, which included a legal agreement setting out that the development will be car free.

The proposal will provide secured cycle spaces for the proposed 3no. 2-bed, 4-person dwellings through provision of stands provided within a covered area which can accommodate 6 cycles. This accords with the London Plan policy T5 requirements.

## **S106 Obligations and Conditions**

### Conditions

As highlighted above, the Original Permission was subject to 12 conditions of which 2 conditions have been discharged. In light of this, it is considered that should this S73 application be approved, the following conditions should be attached:

1. Statutory time limit of development – compliance
2. Materials of rear of No. 22 to resemble as closely to the existing building – compliance
3. Approved drawings and documents. This should be updated to reflect the revised drawings submitted, which are listed above – compliance
4. Samples of facing brickwork to be provided prior to commencement
5. Screens – condition should be removed as screens to terraces are no longer provided.
6. Energy Strategy – condition should be reworded to refer to compliance given approval of the Energy Strategy under application ref. 2023/4847/P
7. Maximum internal water usage – compliance
8. Details of water network upgrades / housing and infrastructure phasing plan to be submitted prior to occupation
9. Provision of cycle storage – compliance
10. Basement construction works – condition should be reworded to refer to as a compliance condition given approval of the details under application ref. 2023/4847/P
11. Development to be carried out in accordance with the Basement Impact Assessment and other accompanying basement reports – compliance
12. Units 1, 2 and 3 to be constructed in accordance with Building Regulations Part M4(2) – compliance

### S106 Obligations

The Permission ref. 2018/2823/P was subject to the following contributions / obligations which have been satisfied.

- Affordable Housing Contribution of £6,306.47 – paid
- Basement Approval In Principle Application – approved
- Basement Approval in Principle Contribution of £1,800 – paid
- Construction Management Plan Implementation Support Contribution of £3,136 – paid
- Construction Management Plan – approved
- Highways Contribution of £3,398.16 – paid

- Levels Plan – approved
- Written Notice – submitted

It is considered that only a new Levels Plan may be required to be submitted to the Council for approval following the increase in height of Units 2 and 3 under this application.

Upon our review of the S106 (dated 7 December 2020) there do not appear to be provisions relating to S73 applications and therefore if a Deed of Variation is required under this application then we would welcome early dialogue with the LPA to formalise this.

### **Other Matters – Procedure**

It was suggested as part of the pre-application discussions that the proposed amendments would require submission of a full planning application, rather than be considered under S73 of The Town and Country Planning Act 1990 (as amended). It is our firm view that the proposed amendments subject of this application can be considered under S73 which allows the variation of conditions to a previous planning permission. Our view is informed by the following:

- There is no change to the description of the development (DoD), as the unit sizes referenced with the DoD remain applicable and the introduction of roof terraces would fall within the considerations of “*associated private amenity space*”.
- There is no change to the nature of the proposals, which continue to provide 3no. dwellinghouses as originally approved.
- Neighbouring amenity impacts can be assessed under this S73 application, which will be subject to formal consultation.

In considering this application under S73, the LPA should be aware of case law of *Armstrong v Secretary of State for Levelling-Up, Housing and Communities* [2023] (summarised at Appendix A) which shows that the whilst changes in the form and architectural style can be considered as a fundamental variation, provided there are no change in the basic principle of development (i.e the description of the development), proposals can be considered within a S73 application.

### **Conclusions**

For the reasons outlined above, it is our view the proposed amendments should be considered acceptable and S73 permission be granted, to help deliver three residential units at the Site.

The statutory planning application fee of £293 (plus planning portal admin fee of £70) has been paid via the Planning Portal.

I trust you have all the information required determine this application. However, should you have any queries, please do not hesitate to contact me, or colleague Nasrin Sayyed ([Nasrin.sayyed@pegasusgroup.co.uk](mailto:Nasrin.sayyed@pegasusgroup.co.uk)).

Yours faithfully,



**Henry Courtier**

**Director**

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**APPENDIX A****Case Law – Armstrong v Secretary of State for Levelling-Up, Housing and Communities [2023]**

Application (ref. 06/01798/FUL) was made by the Applicant, Mr Mikael Armstrong (hereby referred to as “Applicant”, later becoming the “Claimant”), to the then Caradon District Council (now Cornwall, being the Defendant) Council for the “construction of one dwelling” at “The Beach House, Finnygook Lane, Portwrinkle, Torpoint, Cornwall, PL11 3BP”, being the Site.

The application was approved on 26<sup>th</sup> July 2007 subject to a total of 9 conditions. None of the conditions included a reference to the approved set of drawings but this was included by means of an informative which set out the drawings to which the decision refers to. The case law highlights that “he Informative appears inappositely worded, as the decision notice does not refer to a “Drawing” or “Drawings”, but rather makes reference (in the part already quoted above) to “plan(s)” that had been submitted with the application.”

On 1 October 2020, Cornwall Council who had taken over the planning functions of Caradon District Council issued a decision notice for a S96A application (ref. PA20/07129) which the Applicant had submitted to add another condition (condition no. 10) to formalise the informative referring to some of the drawings from the original permission. A total of 8 plans were added to the condition and condition 10 remained silent as to the effect of the other drawings referred to in the Informative which were not added within the condition.

On 18 December 2020, the Applicant submitted another application, this being a S73 application (ref. PA20/11367) for “Construction of one dwelling without compliance of Condition 10 of PA20/07129 dated 1st October 2020 Non material amendment to E2/06/01798/FUL to add condition to decision notice.” The proposed changes included the dwelling to be in a different form and style. The application was refused by the Council 4 May 2021 for the following reason:

*“The proposed development seeks to change the design of the dwelling approved via, E2/06/01798/FUL, from an irregularly-shaped boldly modernist dwelling to a dual-pitched alpine lodge style dwelling. The application site occupies a highly prominent and sensitive coastal plot. The proposed revised design completely alters the nature of the development and would result in a development that would differ materially from the approved permission. As a result this proposal goes beyond the scope of Section 73 of the Town and Country Planning Act 1990 and is contrary to guidance within the National Planning Practice Guidance, specifically paragraph 001 Reference ID: 17a-001-20140306.”*

An appeal (ref. APP/DO840/W/21/3285697) was made against the refusal, which was dismissed on 4 April 2022 with the Inspector concluding that “...the nature of the development proposed would be substantially different to that allowed by the existing permission. Consequently, it goes beyond the parameters of a minor material amendment and cannot be considered under section 73. In accordance with the advice in the PPG, a

*planning application under section 70 should be submitted for consideration by the local planning authority in the first instance. In view of this conclusion, it is not necessary for me to consider the planning merits of the modified scheme."*

The Claimant submitted that the Inspector's decision was flawed on the basis that:

- a) *"the decision was not within the powers of the TCPA 1990;*
- b) *the Inspector failed to consider that the Government's PPG does not have the force of law;*
- c) *the Inspector failed to apply the legislation and case law in reaching his decision;*
- d) *the Inspector used the PPG to over-ride legislation and case law.*
- e) *the Inspector restricted the powers of section 73 without having the legal authority to do so."*

A number of other information was submitted which included case laws. The main issue which arises from this Claim is whether the Inspector lawfully concluded that the application would give rise to a fundamental variation or change to the permission such that the application fell outside the scope of a S73 application. The Defendant placed particular reliance as to the possibility of a change of condition being so different as to be what could properly be described as a "fundamental variation" of the effect of the permission overall.

It was confirmed by the Counsel that the Defendant and the Inspector accepted that what was being proposed in the S73 application did not conflict with the description of the development permitted by the planning permission. The issue with the case law was whether S73 permits the proposed change to a condition permitting what the Inspector treated as involving fundamental variation to the design of the single dwelling on the Site that is otherwise permitted by the operative part of the planning permission.

Upon review and analysis of the case, the Deputy Judge of the High Court stated that the Inspector did not act lawfully in doing so, for a number of reasons. The Judge stated that "S73 applies to any application for planning permission for development of land "without complying with conditions subject to which a previous planning permission was granted."

Other case laws were also used, whereby in *Finney v Welsh Ministers'* case law it was confirmed that S73 cannot be used to vary the operative part of a planning permission. In this case, the operative part is the erection of one dwelling house and it was highlighted that no inconsistency or contradiction arises from the amended description. The case law stated that "The proposed revision to the architectural style of the dwelling (however) different in nature does not conflict with that. It will remain a permission for the construction of a single dwelling on the Site."

The case highlights other cases which ultimately shows "the importance of the distinction between the "operative part" (which s.73 does not permit to be varied) and conditions." It was outlined that there were no conflicts within the case itself and that there was no need for any alteration to the description of the permission for the construction of one dwelling.



It also adds that “The plans currently specified in condition 10 and the plans proposed to be substituted provide for the construction of one dwelling. The difference is in its form and architectural style; but that form or architectural style is not specified in that description of development. One can see that the situation may well be different if the operative part of the permission uses words which are inherently more prescriptive of the form of the building permitted (e.g. permitting “construction of a single bungalow” rather “construction of one dwelling”) but that is not the case here.”

The case law highlights that the substitution of the “plans with a different form and architectural style could be described as “fundamental variation” of that form and style. But there has been no change in the basic principle of what was being permitted on the Site, namely the construction of a single dwelling. But there has been no change in the basic principle of what was being permitted on the Site, namely the construction of a single dwelling.”

The case law highlights that s73 applications are not limited in scope to be “minor material amendments”.

In summary, this case law shows that whilst changes in the form and architectural style can be considered as a fundamental variation, provided there are no change in the basic principle of development (i.e the description of the development), proposals can be considered within a S73 application. The proposed changes does not require amendments to the description of the permitted development ref. 2019/2823/P.