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Sent by Post and Email

Mr D Fowler
Camden Council
Planning Solutions Team
5 Pancras Square
London
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Your reference

Our reference

JENG/1001139651

Attention: Mr David Fowler

Dear Mr Fowler,

Consultation response in respect of planning application reference 2025/0484/P relating to the variation of planning permission reference 2022/0528/P (the O2 Approved Masterplan Permission).

1 Introduction and background

- 1.1 We write on behalf of our client Hampstead Asset Management Limited (**HAML**) in relation to the planning application with reference 2025/0484/P comprising a section 73 application to amend the O2 Approved Masterplan Permission as follows:

“Application under Section 73 of the Town and Country Planning Act 1990 (as amended) to vary Conditions I4 (Severability Condition), AD1 (Approved Drawings - Masterplan), AD2 (Approved Drawings - Reserved Matters), AD3 (Approved Drawings - Phase 1), RM1 (Parameter Plans and Development Specification), RM6 (Phasing Plan), RM11 (Reserved Matters – Access Statement), RM21 (Reserved Matters – Total floorspace), D20 (Photo-voltaic Cells), D21 (Phase 1 Long Stay Cycle Parking), D22 (Phase 2 Short Stay Cycle Parking), D24 (Phase 1 Disabled Car Parking), D26 (Phase 1 Fire Safety Implementation of Approved Measures), and M28 (Phase-Wide Lighting Strategy) and the removal of Condition M7 (Major Utilities Infrastructure) of planning permission ref. 2022/0528/P dated 20 December 2023 for ‘Detailed planning permission for Development Plots N3-E, N4, and N5 and Outline planning permission for Development Plots N1, N2, N3, N6, N7, S1 and S8, including demolition of all existing structures and associated works, and redevelopment to include residential development (Class C3), commercial, business and service uses (Class E), local community uses (Class F2), and Sui Generis leisure uses (including cinema and drinking establishments) together with all landscaping, public realm, cycle parking and

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*disabled car parking, highway works and infrastructure within and associated with those Development Plots, in accordance with the Development Specification. For the avoidance of doubt, the Detailed and Outline planning permission are separate and severable for each of the Plots shown on plan P011 and the description of development on any decision notice issued pursuant to the application would reflect that, to allow for amendments to the Detailed Element (Plots N3-E, N4 and N5) including additional height, alterations to the design, massing and footprint of the buildings; the replacement of Block N4D with the relocated community centre; additional residential floorspace (and corresponding reduction in floorspace within Outline Elements); revisions to unit mix and internal layouts; additional community (Class F2) floorspace, reduction in retail (Class E,a) floorspace, reduction in professional services (Class E,c) floorspace, additional blue badge parking and cycle parking; revised landscaping and additional public realm; and associated works” (the **O2 S.73 Application**).*

- 1.2 HAML is the freehold owner of 14 Blackburn Road (the **Site**) which is identified as Plot S8 in the O2 Approved Masterplan Permission. Plot S8 is on the far west of the O2 Approved Masterplan Permission and included in the western outline phase (phase 2). HAML maintains its objection to the Site being included in the O2 Approved Masterplan Permission, and is disappointed that the applicant has not used the opportunity of the O2 S.73 Application to identify the Site as “white land” and effectively remove it from the permission perimeter, the applicant having now acknowledged in its “Town Planning Statement Addendum” the extant permissions PWX0202103 and 2023/1292/P that relate to the Site, and having assessed these consents in its “ES Addendum”.
- 1.3 The Site was granted planning permission on 6 January 2004 under reference PWX0202103 (the **2004 Permission**) with a s.73 planning permission with reference 2023/1292/P granted on 25 July 2024 for “*redevelopment of whole site by the erection of a 4 storey eastern block comprising two Class B8 and eight Class B1 units with associated service yard, together with a 4 storey plus basement western block comprising 8 dwellinghouses and 6 self-contained flats with associated underground car-parking*” (the **2024 Permission**). The 2004 Permission has been lawfully implemented and the Council issued a Certificate of Lawfulness of Existing Use or Development (reference 2022/4576/P) in relation to the 2004 Permission. Since the works undertaken are works consistent with the 2024 Permission, this permission is *de facto* implemented and also remains extant.
- 1.4 HAML is currently preparing a further planning application for the redevelopment of the Site for which extensive pre-application advice has been sought from the Council, TfL and the GLA. HAML is committed to redeveloping the Site either in accordance with this scheme (the **14 BR Application**) should permission be granted, or in accordance the 2004 Permission or 2024 Permission if it is refused.

2 O2 S.73 Application amendments

Severability plan and condition I4

- 2.1 The O2 S.73 Application includes a new severability plan, drawing number 4602_001-GRD-00-100L-DR-A-(00)_P011 Rev. P1, for consideration. This shows only Plot S8 as severable from the remainder of the land within the O2 Approved Masterplan Permission.
- 2.2 HAML fully support the new severability plan, drawing number 4602_001-GRD-00-100L-DR-A-(00)_P011 Rev. P1. In the absence of identifying the Site as “white land” is it considered that this is the next best option.
- 2.3 The applicant is also seeking amendment to Condition I4 of the O2 Approved Masterplan Permission to clarify the severability of Plot S8. Whilst the principle of the condition is supported, and the amendment to identify the Site as a severable plot on an identified plan, we do not consider the other proposed amendments to the condition appropriate or necessary, and further consider these to be ambiguous and lacking clarity.
- 2.4 The proposed wording refers to the development being constructed in accordance with the approved plans “*unless a further planning permission specific to that part of the severable plot shown on Drawing No: 19066 X (00) PO11 Rev. XX is implemented*”. If “*such further planning permission is implemented*” then the remainder of the O2 Approved Masterplan Permission can still be developed.
- 2.5 Since the purpose of the amendment to the condition is supposedly to address issues raised by *Dennis* which succeeded the *Hillside Parks* decision, it is to be noted that as a consequence of those decisions, if a permission is severable then *Pilkington* is disapplied. A “*clear express provision*” [*Dennis @54*] is needed in the permission to make it severable. Whether a permission is to be treated as severed “*or a collection of discrete planning permissions is a matter of construction of that consent*” [*Dennis @102*]. Just because a permission is phased (whether outline or detailed) does not mean that it is a severable permission. It is assumed that the reason for condition I4 as it is proposed to be varied, is to recognise that the 2004 and 2024 Permissions are “*discrete planning permissions*” which if implemented could mean that *Pilkington* applies and therefore the remainder of the O2 Approved Masterplan Permission could not be built out unless the Site was treated as severable. The applicant’s proposed amendments to condition I4 however create ambiguity because of course the 2004 and 2024 Permissions have already been approved

and implemented. This is specifically recognised by the applicant at paragraph 4.34 of its Town Planning Statement Addendum. If the intention is to recognise that the works undertaken to implement these permissions are already incompatible in a material way with the O2 Approved Masterplan Permission and therefore prevent that later permission being developed, then that is a supportable interpretation as a matter of law, but that is not made clear in the wording of the condition.

2.6 This wording proposed raises several further issues:

- (a) What does a “*further planning permission*” mean? The applicant’s Town Planning Statement Addendum and ES Addendum refer to, and the latter assesses, the 2004 Permission and the 2024 Permission. Is the proposed wording of I4 suggesting that these count as a “*further planning permission*” or it is suggesting that only a permission that does not yet exist such as a consent pursuant to the 14 BR Application could be a “*further*” planning permission? It is not clear. If the language is intended to cover both eventualities, then it is not clear that it does. It seems strange that the applicant would specifically assess the 2004 and 2024 Permissions for the purposes of identifying the Site as severable (ES Addendum para 5.3) if the delivery of this development with the O2 Masterplan was not the intention of the severability amendments to condition I4.
- (b) The wording refers to “*that part of the severable plot*”, which suggests that there is a distinction to be drawn between plot S8 and the Site, perhaps with the suggestion that it is only if the red line boundary of a “*further planning permission*” coincides precisely with “*that part of the severable plot*” shown on the referenced drawing number that the consequences of *Pilkington* will be avoided. If that is the intention then it is ill-conceived, the law as set out in *Pilkington* and confirmed in *Hillside Parks* concerns “*physical impossibility*” [*Hillside @41*] of a permission being implemented (or being further implemented), not the niceties of a red line. The reference to “*that part of the severable plot*” is therefore erroneous, it should apply to “*any part of the severable plot*” to be consistent with case law.
- (c) The reference to drawing number “*19066 X (00) PO11 Rev. XX*” is confusing as this is not the reference number of the drawing entitled “Severability Plan” which has reference 4602_001-GRD-00-100L-DR-A-(00) P011 Rev. P1. It is therefore entirely unclear what drawing is being referred to. If it is intended to refer to the “Severability Plan” then that plan should be referred to by name and drawing reference number to avoid confusion.

- 2.7 We therefore suggest the following amendments to the approved condition I4 (our suggested additional text is shown in blue and underlined and the text proposed to be removed is struck through in red text):

“Severability” Condition – making each plot severable

The development hereby permitted shall be built in accordance with the approved Plans (in relation to phase 1) and the approved Parameter Plans (in relation to the Outline phases 2 and 3) listed at Conditions AD1, AD2, and AD3, unless a ~~further~~ planning application permission specific to ~~one or more of any part of the severable areas~~ plot shown cross-hatched on the drawing entitled “Severability Plan” and given Drawing No: 4602 001-GRD-00-100L-DR-A-(00) P011 Rev. P1 ~~19066 X (00) PO11 Rev. PO1~~ is submitted to and approved by the Council implemented in substitution for that part of the approved development. It is acknowledged that planning permissions PWX0202103 and 2023/1292/P have already been lawfully implemented on the severable plot, and therefore this condition is engaged. This condition also applies to any future planning permission that is implemented on any part of the severable plot. If such further planning application is approved, The ~~the remaining severable areas shown on Drawing No: 4602 001-GRD-00-100L-DR-A-(00) P011 Rev. P1 (being the areas not shown cross-hatched)~~ may still be developed as approved in this Planning Permission, it being intended that this Planning Permission should permit each severable area separately and severably from the remainder of the site. ~~others.~~

O2 Approved Masterplan Permission

- 2.8 The O2 S.73 Application seeks approval to amend the detailed element of the O2 Approved Masterplan Permission to increase the residential floor space.
- 2.9 The submitted planning statement confirms that the increase in residential floor space within the detailed element (+5,755 sqm) will not alter the maximum residential floor space permitted pursuant to the O2 Approved Masterplan Permission. It set outs there will be an equal reduction in the residential floorspace in the outline elements of the O2 Approved Masterplan Permission as a consequence of the increase to the residential floor space in the detailed element. It is assumed that this proposed amendment to the residential floorspace is in recognition of the fact that development will be brought forward on the Site by HAML, although this is not articulated.
- 2.10 In addition, we note that if the O2 S.73 Application excluding plot S8, and the 14 BR Application are approved by the Council and both permissions are implemented, that these are compatible, and neither permission impinges the other including in respect of access, servicing, the east-west pedestrian and cycle link and turning/public realm areas which are in close proximity to the Site. Moreover, the public benefits of the O2 Approved Masterplan Permission will be maintained. These matters will be set out in detail in the 14 BR Application material.

- 2.11 It is also noted that the amendments sought by the applicant to condition I4, and the fact that the 2004 and 2024 Permissions have both been the subject of the ES Addendum are a tacit acknowledgement that the 2004 and 2024 Permissions can be delivered, and that the remainder of the scheme absent Plot S8 proposed by the O2 S.73 Application can also be delivered without one scheme preventing development of the other. It would be useful to understand if the Council agree.

3 Conclusion

- 3.1 The principle of regeneration that underlies the O2 S.73 Application is supported, albeit HAML maintains its objection to the inclusion of development on the Site. However, HAML welcomes the further clarity which the O2 S.73 Application provides in relation to the severability of the Site. The proposed variation of condition I4 needs some amendment to ensure that it is clear and unambiguous, but the intention behind that varied condition is welcomed. Provided that the condition is varied to make it clear that the 2004 and 2024 Permissions have already engaged the condition, and that the condition applies equally to any permission that may be implemented pursuant to the 14 BR Application then HAML has no objection to the variation of the condition as it will provide certainty to both the applicant and HAML that any granted permission can be lawfully implemented on the Site in tandem with the O2 Approved Masterplan Permission ensuring the deliverability of both a redevelopment of the Site and O2 Approved Masterplan (as varied by the O2 S.73 Application).

Yours sincerely



Norton Rose Fulbright

3 April 2025