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6th October 2009

Déar Sir/Madam

5 Shepherd's Walk, London, NW3 5UE. Section 73 application for the removal of condition No. 1 from planning permission 2006/5053/P.

On behalf of my client I am pleased to submit a Section 73 application for the above.

The application comprises the following:

- Covering letter (including justification);
- Completed application forms; and
- Cheque for £170.

I would like to take this opportunity to expand upon the justification in more detail than the planning application form allows. I will discuss the history of the site as well as considering the planning implications of the condition's removal.

Background

On March 26th 2003 planning permission (Ref: PWX0203116/R1) was granted as a revision to the previous 2001 Planning Permission granted by Camden Borough Council at 5 Shepherd's Walk for the following development:

"Erection of additional floors over ground and first floors of southern end of house, erection of 2 conservatories and creation of new basement level containing swimming pool, change of use of extended property to form two selfcontained dwelling houses, plus elevational alterations and provision of 1 carparking space as a variation to the planning permission granted 8/10/01 (Ref: PWX0103196/R3) for conversion to a maisonette and a house plus various extensions and alterations."

A copy of both of the decision notices are included at **Appendix 1**. It should also be noted that all pre-commencement conditions were discharged (2006/5419/P).

Camden confirmed (see **Appendix 6**) that the March 2003 planning permission (PWX0203116/R1) was implemented within the required five year period by virtue of the change of use and sub division of the extended property to form two selfcontained dwelling houses (5 & 5b Shepherds Walk), and the provision of one car parking space was formed in 2005 by the removal of a TPO tree to facilitate these works (Ref: 2005/3732/T). Accordingly, the March 2003 Permission has not and will not expire.

This was evidenced by Camden granting planning permission (2003/0359/P) for development at 5b Shepherds Walk (see **Appendix 3**). No. 5b Shepherds Walk was then sold in 2004 by my Client which is evidenced by the Land Registry entry for the newly formed dwelling house (5b Shepherd's Walk) which is included at **Appendix 2**.

Subsequently my client made two further applications to vary the consent granted in 2003. The first was granted in March 2007 (see **Appendix 4**) and the second in November 2007 (see **Appendix 5**). However, a condition was placed upon the March 2007 variation which stated:

"The development hereby permitted must be begun not later than the end of three years from the date of this permission."

A meeting was recently held with Charles Thuaire to discuss the implications of this condition. Given that the time limit condition placed upon the 2003 consent was already complied with through implementation it was agreed that Condition 1 of 2006/5053/P consent was only attached in error as the case officer was unaware that the earlier 2003 consent, to which it related, had already been implemented. As such it was agreed that a Section 73 application should be submitted to Camden to have the condition removed and that the planning officer would be minded to approve such an application. A copy of the meeting note and planning officer's reply is attached at **Appendix 6**.

To summarise:

- Planning permission was granted in March 2003 for the change of use and sub division of the extended property to form two selfcontained dwelling houses and various physical works;
- The permission was implemented by virtue of the change of use and sub division of the extended property to form two selfcontained dwelling houses and the provision of one car parking space formed;

- A variation to the permission was approved by Camden in March 2007 and November 2007;
- A time limited condition was attached to the March 2007 variation;
- Officers confirmed in a meeting that the condition was attached in error and they would be open to a Section 73 application seeking its removal.

Justification

In order for a planning condition to be imposed on a planning permission it must comply with all six tests laid down by the courts on a number of occasions as the general criteria for testing the validity of planning conditions and also set out in *circular 11/95: The Use of Conditions in Planning Permissions*. As such all planning conditions imposed must be:

1. Necessary;
2. Relevant to Planning;
3. Relevant to the development permitted;
4. Precise;
5. Enforceable; and
6. Reasonable in all other respects.

Condition No. 1 places a three year time limit on the consent and states:

"The development hereby permitted must be begun not later than the end of three years from the date of this permission."

In this case it is considered that the above condition is neither necessary nor reasonable. Each of these issues will be considered below.

Need

Paragraph 16 of circular 11/95 sets out advice on where conditions may be considered to be unnecessary. It states:

"In some cases a condition is clearly unnecessary, such as where it would repeat provisions in another condition imposed on the same permission."

It is clear from the decision notice for the 2003 permission (**Appendix 1**) that provision has been made to time limit the consent. Furthermore the March 2007 permission (**Appendix 4**) states:

"You are advised that the conditions attached to the previous planning permissions granted on 08/10/2001 (reference PWX0103196) and on 26/03/2003 (reference PWX0203116) still apply."

Given the above it is clear that the condition we are seeking to be removed is not necessary as it repeats provisions imposed by another condition.

Reasonableness

Paragraph 35 of circular 11/95 states:

"A condition may be unreasonable because it is unduly restrictive. Although a condition may in principle impose a continuing restriction on the use of land (provided that there are good planning reasons for that restriction), such a condition should not be imposed if the restriction effectively nullifies the benefit of the permission."

It is considered that the condition is unreasonable as a time-limit condition has already been placed upon the permission and has been discharged through implementation. As such it is considered unreasonable for the Council to attach an additional time-limiting condition to the implemented consent as it effectively nullifies the benefit gained from the variation and means that the March 2007 revision will expire even though the 2003 permission to which it relates has previously been implemented and as such cannot expire.

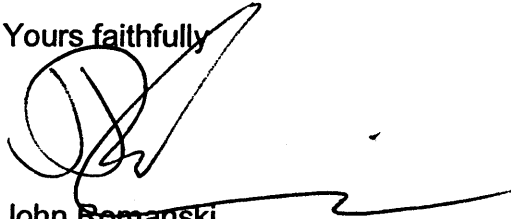
Conclusions

In summary it has been demonstrated that the imposition of condition 1 is contrary to the guidance set out in circular 11/95 on the basis that it is neither necessary nor reasonable. There is clear evidence that the planning permission granted in March 2003 has been implemented and as such it was not necessary or reasonable for Camden to impose an additional time limiting condition upon the March 2007 permission that relates to the already implemented 2003 consent.

In light of the above information, it is respectfully requested that condition 1 of planning permission **2006/5053/P** be removed.

I trust that the enclosed is in order and look forward to receiving confirmation of validation in due course. However, should you require anything further then please do not hesitate to get in touch.

Yours faithfully

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a long horizontal stroke extending to the right.

John Romanski
Planning Advisor