

DAMR/PR/PD8664

email: david.reid@montagu-evans.co.uk
patrick.reedman@montagu-evans.co.uk

11 June 2015

London Borough of Camden
Town Hall
Judd Street
London
WC1H 8ND

F.A.O Neil Collins

Dear Mr Collins

**HERBAL HOUSE, 10 BACK HILL, LONDON, EC1R 5LQ
APPLICATION FOR A NON-MATERIAL AMENDMENT TO PLANNING PERMISSION 2014/3683/P
S96 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)**

We have been instructed by our client, Herbal House Investments Ltd, to seek approval for non-material amendments to planning application 2014/3683/P under S96 of the Town and Country Planning Act.

Planning application 2014/3683/P was approved by London Borough of Camden on 31st March 2015. The description of the development set out on the decision notice stated:

“Change of use from higher education college (D1) to a mixed use comprising offices (B1) from lower-ground to fourth floors, three flexible retail/café/office (A1/A3/B1) units at lower ground, ground and upper ground floors and a flexible commercial gallery/office (A1/B1) with ancillary café at lower-ground floor and part ground floor; lightwell infill extension at second third and fourth floor levels; two-storey roof extension to create additional office (B1) space and six self-contained duplex apartments; and associated external alterations”

The permission was granted subject to the condition that the development be carried out in accordance with the plans drawings specified in Condition 16.

Our client has proposed a number of amendments to the scheme which were subject to a document sent to the Council on the 26th January 2015. The scope and extent of amendments have since been revised, taking into account officers’ comments so that they may now be dealt with under S96 of the Act.

Taking account those proposed amendments, we set out below the procedure and the reasons why that procedure should be applied for formalising these amendments and the reasons for selecting this procedure.

The Amendments Sought

1) Application Description

The application description on the decision notice incorrectly refers to “three flexible retail/café/office (A1/A3/B1) units at lower ground, ground and upper ground floors”.

This reference is, in fact, incorrect as the application and the submitted plans show that only two of the Herbal Hill units would be ‘flexible’ (A1/A3/B1) units.

Correction of this point is within the scope of S96A, which allows a non-material change to be made to a planning application.

2) Amendments Sought

Our client has recently identified to make various non-material amendments to the scheme to result in improvements to the building's layout and function. These amendments include:

- Removal of all 'flexible use' units in favour of solely B1 office use
- Remove flexible gallery (A1) / B1 use in favour of solely B1 use with an altered floor layout to all lower floor levels and an additional reception area. The amended scheme represents a modest net reduction in the resultant overall GIA and GEA as compared with the approved scheme.
- Maintenance of internal lightwells from 2nd to 5th floors (i.e no change from existing building)
- Modest changes to the internal layout and arrangement of apartments (maintaining 6no. units)
- Amended roof level layout, including modest reduction in office and residential terrace areas
- Various alterations to fenestration and detailing, including changes to proposed entrances, infilling of delivery bay / reception area to Back Hill, rearrangement of ventilation louvres and the provision of a cycle access and ramp

The proposed non-material amendments are set out in detail within the accompanying document compiled by BGY Architects dated 9th June 2015.

Power to Make Amendments Under S96A

Section 96A of the Act gives the power to the Local Planning Authority to 'make a change to any planning permission ... if they are satisfied that the change is not material'.

S.96A(2) states that:

"In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted."

There have been no previous changes to the planning permission under S96 (or any other part) of the Act.

96A(3) further indicates that the powers under this section include the ability to impose new conditions or to remove or alter existing conditions.

The National Planning Policy Practice Guidance (Reference 17a-002-20140306) confirms that:

"There is no statutory definition of 'non-material'. This is because it will be dependent on the context of the overall scheme – an amendment that is non-material in one context may be material in another."

The power under S96A is, therefore, relatively broad in scope and we set out below why, in the context of the overall scheme, these particular changes can be dealt with as non-material amendments.

The Council has not published any general guidance on its approach to dealing with amendments to planning permissions.

We consider this power is appropriate in this case for the following reasons:

- The proposed amendments do not materially alter the quantum of floorspace and the mix of uses approved under the planning permission (see below);
- None of the proposed changes raise further development plan policy issues;
- None of the proposed changes will trigger the need for variations to the existing S.106 agreement; and
- None of the proposed design changes give rise to any material amenity, character or appearance considerations.

Given the above, the above changes are not sufficient to make consultation a necessary part of the determination process.

Discussion

Use of the Building

Excluding the fifth and sixth floor residential element, the principle of the use of the building for B1 (Office) purposes is established by the planning permission.

Within the original application all of the 'flexible units' within the building could have been put to B1a office use. There is no condition or obligation that would prevent this eventuality. The overall potential amount of B1 floor area in the permitted scheme was 13,670 GIA.

The amended scheme has an overall B1 office floor area of 13,270 GIA (including the area shown for flexible B1/A1/A3 use at ground floor level), a modest net reduction of 400sq m (c. 3% on the approved B1 floor area). This reduction primarily occurs as a result of the retention of the existing internal lightwell:

AREA BY USE CLASS

	GEA Approved (sqm)	GEA Amended (sqm)
Whole Building	15160	14863
Less Residential	993	960
B1 Office (or flexible B1)	14167	13903

	GIA Approved (sqm)	GIA Amended (sqm)
Whole Building	14505	14050
Less Residential	835	780
B1 Office (or flexible B1)	13670	13270

The potential A1 / A3 unit shown within the amended scheme (320sq m GIA) is significantly smaller than the overall amount of A1/A3 floor area which could be achieved under the planning permission within units 3 and 4 (959sq m combined).

As the amendments now proposed do not introduce new uses nor do they materially affect the overall quantum of office or retail space that could come forward pursuant to the planning permission, the balance of uses detailed in this submission should be considered to be non-material.

Moreover, support is given to the provision of additional B1 office use within the Central London Area and a quantum of retail use is not essential to meet the Council's mixed use policies. In short, the amendments would not materially affect the planning consideration against the development plan.

Amalgamation of Units

Condition 11 of the planning permission states:

“The three [sic] flexible commercial units shall be maintained as self-contained units, as shown on the approved plans, and shall not be amalgamated unless otherwise first agreed in writing by the LPA”

The reason given for this condition is:

“To ensure that suitable retail facilities are provided in this location in accordance with the requirements of policy CS7 of the London Borough of Camden Local Development Framework Core Strategy and policies DP10 and DP12 of the London Borough of Camden Local Development Framework Development Policies.”

The reason for the condition relates only to the provision of ‘suitable retail facilities’, presumably to prevent the creation of a large retail unit (such as a local supermarket) which would otherwise be unacceptable to the local planning authority.

There is, however, no obligation on the developer to use the ‘flexible units’ for retail purposes as the flexibility stated in the permission includes Class B1 (office) use.

As it is now proposed to use the space solely for B1 office purposes, the condition serves no purpose and the amalgamation of the units to form part of the wider B1 office use of the building would not have a material impact in planning terms. As set out above, the LPA is able to use its powers under S96A(3) amend or remove the condition.

Residential Units

The overall quantum of residential floor area is not materially affected and the number of units proposed remains constant.

The apartments would continue to achieve relevant space and quality standards as set out in the development plan and supplementary guidance.

Internal Alterations to Layout

The internal layout changes, such as the amended approach to light wells largely correspond to the form of the development permitted and, in any case, such changes would not normally constitute ‘development’ in their own right as it can be concluded that these changes would not materially affect the external appearance of the building.

External Amendments

The overall design approach to the development is not materially affected. Only relatively slight changes are proposed to the external appearance of the building, including changes to the position of entrances and fenestration. Within the context of the scheme as a whole, the changes would not be material and the resultant character and appearance of the building would not be altered.

External Terraces

In comparison with the approved scheme, an area of terrace for the office is to be removed as part of the 5th floor infill and a small area of terrace provided at 6th floor level. However, this will be fully enclosed by the roof extension and would offer no views out towards neighbouring properties.

The overall amount of office terrace area has been reduced from 77sq m to 42 sq m as a result of the amendments. The residential terraces are reduced from 115sq m to 96sq m.

Conclusion

The amendments conform with the balance of uses approved, do not materially alter the overall floor area of the scheme and the impact of the development, when considered against planning policy and all other material considerations, is either unchanged or lessened.

We politely request therefore that the London Borough of Camden accepts the changes set out in this letter and the accompanying plans and information as non-material amendments to planning permission 2014/3683/P.

A cheque for £195 made payable to the London Borough of Camden has been posted under a separate cover.

We trust the above is sufficient for you to validate the application but if you do have any queries or require any further information please contact David Reid or Patrick Reedman of this office.

Yours sincerely

MONTAGU EVANS LLP

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