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Attention: Kristina Smith

Our Ref. 17-066
iApply Ref. IAP00007325-001

25th May 2017

Dear Kristina

Re: Former Marine Ices, 4-8a Haverstock Hill & 45-47 Crogsland Road, London, NW3 2BL
S96A Non-Material Amendment Application to Planning Permission LPA Ref: 2015/0487/P

On behalf of Chalk Farm Marine LLP (the Applicant), please find enclosed an application made under S96A of the Town and Country Planning Act 1990 (as amended) to vary the planning permission ref: 2015/0487/P, which was granted on 22nd December 2016, for the following description of development:

> *Demolition of existing buildings, with retention of facade at 45-47 Crogsland Road and construction of a part 4/part 5 storey building with basement comprising flexible use of cinema (class D2) at basement and ground level with ancillary restaurant and bar (class A3/A4) at ground level or retail class (class A1 at basement and ground floor level and 19 residential dwellings (8 x 1 bed, 9 x 2 bed and 2 x 3 bed units) on upper floors with associated cycle parking, amenity space and refuse and recycling storage.*

This application is made to regularise the minor proposed alterations to the approved scheme, and comprises the following documents and information:

- Covering letter;
- Section 96A application form;
- Structural Engineers' Report Addendum, by Heyne Tillett Steel;
- Updated Basement Impact Assessment, by LBH Wembley;
- Revised Proposed Drawings – Plans and Sections, by 21st Architecture (as set out in the table below):

CONSENTED DRAWING NO. TO BE SUPERSEDED	PROPOSED REVISED DRAWING NO.
177_GA_00S_Rev B	265_GA_00S_Rev C
177_GA_-01S_Rev -	265_GA_-01S_Rev A
177_GS_00_Rev F	265_GS_00_Rev G

177_GS_01_Rev E	265_GS_01_Rev F
177_GS_02_Rev F	265_GS_02_Rev G

Please also find enclosed an application fee cheque of £195, made payable to 'London Borough of Camden'.

Proposed Amendments to the Approved Scheme

This application is made to seek minor proposed alterations to the approved scheme, as detailed in the accompanying drawings.

The main proposed alteration to the approved scheme is to reduce the depth of the basement. This is best demonstrated on the submitted revised Section drawing nos. 265_GS_00_RevG, 265_GS_01_RevF, and 265_GS_02_RevG, and the Basement Impact Assessment, by LBH Wembley.

There are no changes to the internal layouts of the approved 'Shell' floor plans, other than a minor alteration in the basement wall configuration and the addition of a cycle store to accommodate 10 spaces for the commercial use (as secured by condition), and no elevational changes are proposed. None of the proposed changes will be visible from the street (either Haverstock Hill or Crogsland Road) as they will be underground and/or internal.

Given that the main change relates to the reduction in the depth of the basement, which would be less complex and will have less of an impact on neighbouring properties in construction terms, we consider these proposed alterations to be non-material. This is supported by an addendum to the approved Structural Engineers' Report and a revised Basement Impact Assessment, both of which conclude the proposed reduced basement depth will have no greater impact than the currently approved basement.

Legal Framework

Section 96A of the Town and Country Planning Act 1990 (added to the 1990 Act by the Planning Act 2008) provides that:

96A Power to make non-material changes to planning permission

(1) A local planning authority in England may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material.

(2) 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.

(3) The power conferred by subsection (1) includes power;

(a) To impose new conditions;
(b) To remove or alter existing conditions.

(4) The power conferred by subsection (1) may be exercised only on an application made by or on behalf of a person with an interest in the land to which the planning permission relates.

(5) An application under subsection (4) must be made in the form and manner prescribed by development order.

(6) Subsection (7) applies in relation to an application under subsection (4) made by or on behalf of a person with an interest in some, but not all, of the land to which the planning permission relates.

(7) The application may be made only in respect of so much of the planning permission as affects the land in which the person has an interest.

(8) A local planning authority must comply with such requirements as may be prescribed by development order as to consultation and publicity in relation to the exercise of the power conferred by subsection (1).

The key test is that contained within Section 96A(1). The local planning authority must be satisfied that any proposed change is "not material". Whilst there is no definition of materiality provided within Section 96A or the 1990 Act as a whole, the concept is a familiar one. There is a body of case law dealing with the test for identification of material planning considerations, and the courts had already recognised an informal power in LPAs to accept immaterial amendments to a planning permission without requiring a further application prior to enactment of Section 96A.

We take the view that a consideration is "material", in this context, if it was relevant to the question whether the original application should be granted or refused; that is to say if it is a factor which, when placed on the decision maker's scales, would tip the balance to some extent. In other words, it must be a factor which has some weight in the decision making process.

In relation to matters that might tip the balance, and therefore require consideration under Section 73, it's unlikely that it was the legislature's intention to require applicants and LPAs to spend increased time and effort on suggested alterations to schemes already consented when the alterations proposed merely strengthened the case for consent yet further.

With this in mind, in our view, a change is unlikely to be material if it amounts to a change which only serves to reinforce an existing positive feature of a scheme, or makes positive a feature that the LPA has already decided is acceptable, as this would not have tipped the balance in the decision making process. Rather, we consider that materiality under Section 96A is concerned with matters that tip the planning balance the other way, against a grant. There is therefore a good case for treating minor-material changes which would only be capable of tipping the balance in favour of approval as non-material as well.

With the above test in consideration, it is our opinion that the proposed amendments are not material in nature, and would not 'tip the balance' in the decision making process, and it is therefore entirely appropriate for Officers to consider the amendments under Section 96A of the 1990 Act.

I trust you have sufficient information to determine this application.

Please do not hesitate to contact me on 020 8312 8803 should you wish to discuss anything in greater detail.

Yours sincerely

Jane Richardson
Senior Planner
On behalf of bptw partnership

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