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Via Planning Portal Only

07 September 2018

Dear Sir/Madam,

Removal of condition 3 and variation of conditions 2 and 5 attached to planning permission 2013/6672/P under section 73A of the Town and Country Planning Act 1990
Construction of a three-storey single family dwelling (Class C3)
22 Rose Joan Mews, London, NW6 1DQ

Please accept this covering letter as an accompaniment to full planning application to retrospectively remove condition 3 and vary conditions 2 and 5 attached to planning permission 2013/6672/P.

Planning permission 2013/6672/P

Planning permission 2013/6672/P for the construction of a three-storey family home was granted on 26 June 2014. The permission was granted subject to six conditions, two of which were pre-commencement conditions and four of which were compliance conditions. The two pre-commencement conditions were never discharged but the permission was implemented in late 2014 and the development now complete. It is the two pre-commencement conditions and the condition listing the approved plans that are the subject of this application.

Condition 2 of planning permission 2013/6672/P (as amended by non-material amendment application 2016/2848/P) states:

The development hereby permitted shall be carried out in accordance with the following approved plans: 1852a A01, Design & Access Statement (DMFK: October 2013), Planning Statement (DMFK: October 2013), 1852a A10 rev F, A11 rev F, A15 rev F, A20 rev E, A50 rev B, A90, A95 and A96.

Reason: For the avoidance of doubt and in the interest of proper planning.

Condition 3 of planning permission 2013/6672/P states:

The details of the timber privacy screens to be used on the building shall not be otherwise than as those submitted to and approved by the Council before any work is commenced on the relevant part of the development. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 of the London Borough of Camden Local Development Framework Development Policies.

Condition 5 of planning permission 2013/6672/P states:

Before the development commences, details of the proposed cycle storage area for 1 x cycle shall be submitted to and approved by the Council. The approved facility shall thereafter be provided in its entirety prior to the first occupation of any of the new units, and thereafter permanently maintained and retained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP17 of the London Borough of Camden Local Development Framework Development Policies.

While pre-commencement conditions 3 and 5 were not discharged this does not mean that the implementation of the permission was unlawful. There are three leading authorities which confirm this – *Whitley & Sons v. SSW*, *Hammerton v. LUL Ltd* (as approved by the Court of Appeal in *Prokopp v. LUL Ltd*) and *R (Hart Aggregates) v. Hartlepool BC*. The principles to be derived from those cases can be summarised, in the context of this submission, in the following ways:

- (1) If the condition merely required that something be done on or before the commencement of development, then commencement is not unlawful on that ground.
- (2) Even if the condition expressly forbids the commencement of development before compliance with that condition, commencement in breach of the condition would still not have been unlawful unless the condition ‘went to the heart of the permission’. In other words, the condition would have to relate to some fundamentally important aspect of the development (or the way in which it was to be carried out), and not merely be concerned with the approval of details.

The details required by conditions 3 and 5 do not go ‘to the heart of the permission’ and would not fundamentally alter the permission and procedurally therefore, s73a of the Town and Country Planning Act applies as the correct mechanism to remove/vary conditions retrospectively.

Removal of condition 3

It is noted that planning permission 2013/6672/P was amended twice by virtue of non-material amendment proposals, set out in applications 2015/5728/P and 2016/2848/P. The latter of those amendments provided detail of all terrace screening and this was accepted by the council. The necessity to provide detail of all privacy screens therefore falls away and the screens have been provided in accordance with the earlier approved details. It is therefore requested that condition 3 be removed:

Variation of condition 5

Accompanying this application are plans identifying the location and type of cycle storage as required by condition 5 (plan no's A10 Rev G and A40). The plans show a wall mounted Sheffield cycle stand within a secure storage area in the undercroft area of the building. The area is secured with a lockable gate and sufficient circulation space is provided to allow ease of access. It is therefore requested that condition 5 be varied as follows:

Cycle storage shall be provided in accordance with details set out on drawing numbers A10 Rev G and A40 and shall thereafter be permanently maintained and retained.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy T1 of the Camden Local Plan.

Variation of condition 2

In order to accommodate the amendments referred above, condition 2 will need to be varied accordingly, as follows:

The development hereby permitted shall be carried out in accordance with the following approved plans: 1852a A01, Design & Access Statement (DMFK: October 2013), Planning Statement (DMFK: October 2013), 1852a, A10 rev G, A11 rev F, A15 rev F, A20 rev E, A40, A50 rev B, A90, A95 and A96.

Reason: For the avoidance of doubt and in the interest of proper planning.

Please do not hesitate to contact me if you have any queries or if I can offer any further points of clarification.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stuart Minty', written over a light-colored rectangular background.

Stuart Minty
Director
SM Planning