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25 March 2019

London Borough of Camden
Development Management
Camden Town Hall Extension
Argyle Street
London
WC1H 8EQ

Dear Sir/Madam,

**TOWN AND COUNTRY PLANNING ACT 1990
APPLICATION FOR A MINOR MATERIAL AMENDMENT
MARIA FIDELIS CONVENT SCHOOL, 34 PHOENIX ROAD, LONDON, NW1 1TA
LB CAMDEN REFERENCE – 2016/3476/P (as amended by 2018/2405/P)
PLANNING PORTAL REFERENCE – PP-07732857**

On behalf of our client Kier Construction London, please find enclosed an application for a Minor Material Amendment under s73 of the Planning Act 1990 (as amended) to the above permission at Maria Fidelis Convent School, 34 Phoenix Road, London NW1 1TA.

Planning history

Planning permission was granted, subject to a s106 agreement, on 1 December 2016 (LBC ref: 2016/3476/P) for the following development:

“Demolition of existing school buildings and erection of a new part two, part three, part four-storey 5 form entry secondary school (1,050 pupils including 300 16+) with associated landscaping, flood-lit multi-use games area (MUGA), cycle parking and servicing”.

This permission was amended (LB ref: 2018/2405/P) on 21 September 2018 to address structural constraints associated with the retention of the gable wall of 44 Phoenix Road, as follows:

Proposal: Alteration to boundary wall (removal of railing and replacement with brick with vertical slots) at junction of Phoenix Road and Clarendon Grove and grey render finish to exposed gable wall of 44 Phoenix Road to 'erection of a new part two, part three, part four-storey secondary school with associated landscaping, flood-lit multi-use games area (MUGA), cycle parking and servicing' approved under 2016/3476/P dated 01/12/2016.

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Development at 42 Phoenix Road

No 44 Phoenix Road formerly formed part of the School; unusually it provides structural support for the adjoining building at 42 Phoenix Road where it oversails Clarendon Grove, a public footpath that runs along the eastern boundary of the school between Phoenix Road and Drummond Crescent. Planning permission was granted on appeal on 13 September 2017 for the redevelopment of 42 Phoenix Road (LBC ref: 2015/6383/P) for the following development:

Demolition of the existing building and erection of a new ground plus five storey over basement building, to provide community use (D1) at ground and basement and student accommodation (8 x 6 bed apartments and 7 studios, 55 beds) on the upper floors; widening of Clarendon Grove alleyway.

[amended at the appeal to 7 x 6 bed apartments and 1 x 4 bed apartment, with 53 beds.]

In allowing the appeal, the Inspector noted that “the new proposal would present a much improved appearance ... to the exposed gable end facing west, once Maria Fidelis School is demolished.”

This permission is not likely to be implemented prior to completion of the school works; this was the motivation for the NMA last year to provide a more structurally robust solution to this part of the boundary. Since that time attempts to conclude a Party Wall Agreement with the owner of 42 Phoenix Road have not been concluded.

Adam Nickerson from Gleeds has provided the following notes on the structural basis for this approach along the party wall and why the original scheme simply cannot be fully delivered, at least at present:

- In order to carry out the demolition works to the existing school to align with the original planning permission, works were required to be undertaken to the Party Wall between Maria Fidelis School and 42 Phoenix Road. This required a combination of works which fell under the provisions of the Party Wall etc Act (Section 2(2)(n) exposing the party wall and providing permanent weathering) as well as other structural works which required express consent from the owner of 42 Phoenix Road (installation of helical ties into the floor slab and installation of new steel support columns).
- A party wall notice was served in July 2018 and it was agreed at the time with the owners of 42 Phoenix Road that both the notifiable works under the Act and the other relevant structural works would be combined into one agreement. Subsequent discussions and negotiations have been protracted and have broken down: under the Act if a surveyor fails to act effectively within a period of 10 days, the other surveyor can act ex parte. However as there is an element of structural works that doesn't fall under the Act but requires express consent from the owner of 42 Phoenix Road, Kier is unable to progress with the works until this agreement is in place.

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- Due to the breakdown in negotiations between the parties it was subsequently agreed that the building owner would investigate alterations to the extent of the demolition taking place which would negate the need to undertake structural works requiring express consent. This would involve retaining the existing stair core to the former Maria Fidelis School which forms part of the party wall between 42 Phoenix Road and provides structural support to the cantilever structure over the local authority owned passageway.

Enforcement complaint

At about this time, an enforcement complaint was received by LBC, apparently from the owners of 42 Phoenix Road, regarding the intended retention of part of 42 Phoenix Road. In our view, retention of some of the existing building on the site would not constitute any breach of planning law. It would not be contrary to the terms of the original planning permission that was granted. While there is a planning condition requiring the development to be carried out in accordance with the approved plans, there is no condition requiring completion of the scheme. It might be open to LBC to issue a Completion Notice but this is a very blunt and rarely used tool, and it would have little practical effect.

The way forward

We met LBC officers on-site on 23 January 2019 to consider the way forward. A subsequent email on 20 February 2019 from Elizabeth Beaumont (Appeals and Enforcement Manager) noted the position and invited the submission of this application for a Minor Material Amendment. In so doing, Kier were invited to consider raising the height of the green wall, in a manner like that implemented at Forest Mews.

Kier has discussed the practical implications of increasing the height of the green wall in the manner suggested; the school, however, is naturally concerned about the maintenance liability of such a structure – particularly when plants reach the roof and over top it to reach the neighbouring building – and is not prepared to take on that risk.

LBC also indicated their intention to secure a s106 agreement to require the building's removal in the future should the opportunity arise. At this stage it is difficult to judge if such an obligation could be drafted so as to meet the relevant tests set out in the NPPF para 56 in terms of necessity, relatedness, and fairly and reasonably relating in scale and kind to the proposal. The original permission was granted subject to a s106 agreement with the school (The Trustees of the Society Sisters Faithful Companions of Jesus) and a deed of variation will need to be agreed in any case for this s73 application. The school redevelopment is funded by the DfE and it is likely their agreement would be required to any such obligation.

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It is within this context that application is made to substitute amended drawings for this proposal, replacing those previously approved, and thereby amending condition 2 of the extant permission (as amended). These revised drawings are set out in the submitted drawing schedule.

The planning application fee of £234 has been paid online via the planning portal.

We trust that the enclosed is in order and enables validation of the application. Should you require any further information please do not hesitate to contact me.

Yours faithfully,

Mike Ibbott
Director
for **tp bennett**

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