

31 January 2020

London Borough of Camden

Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990
APP REFERENCE: 2017/
1 HAMPSHIRE STREET, LONDON, NW5 2TE

I have been instructed by my Client to submit this application to delete condition 15 on the above referred planning permission.

It is proposed to delete this condition as professional advice has indicated it is unnecessary for the scale and development, and given the surrounding context.

Legal Framework & Guidance

Section 73 of the 1990 Act makes provision for, “the determination of applications to develop land without compliance with conditions previously attached”.

By section 73(2);

“On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and-

- (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and*
- (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.”*

Accordingly, pursuant to section 73(2)(a), a local planning authority may grant planning permission subject to conditions that differ from those attached to a previous permission and the legal power enjoyed by local planning authorities pursuant to section 73 of the 1990 Act is broad.

The Government has published guidance within its National Planning Practice Guidance (“NPPG”) stating that;

“An application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied.”

and,

“There is no statutory definition of a ‘minor material amendment’ but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.”

As such, application of Central Government’s Practice Guidance may limit the extent to which changes to proposed development may be effected pursuant to Section 73 of the 1990 Act7.

Application of Legal Principles and Guidance

S72 of the Town and Country Planning Act 1990 contains a general power to impose conditions on a planning permission regulating the development or use of land for which planning permission is granted. This power is in wide terms but has been curtailed by judicial decisions and for a condition to be lawful it must satisfy the tests set out in *Newbury DC vs. SSE 1981 A.C. 578* and other cases. In summary these are that a planning condition must be imposed for a planning purpose, it must be fairly and reasonably relate to the development permitted by the planning permission and should not be so unreasonable that a reasonable planning authority could not have imposed it.

Paragraph 206 of the National Planning Policy Framework states “Planning conditions should only be imposed where they are:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects.”

The policy requirement above is referred to in this guidance as the six tests.

The table below provides commentary on the relevance of the six tests on the imposed condition.

| | |
|------------------------------|---|
| necessary | Para 8.48 of the Local Plan provides indications of where an Air Quality Condition would be required. Although this is a major application, it does not have the characteristics mentioned in the same example. Furthermore, the Applicant has prepared the construction checklist required by the Mayor’s |
| Relevant to planning | |
| To the development permitted | |

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| | 2014 SPG on Construction and Air Quality (enclosed) and it indicates that the number of receptors within the threshold distances is below that required for such monitoring to occur. |
| enforceable | The condition as drafted is unenforceable, as Part 4 of Schedule 2 of the GPDO 2015 grants planning permission for the use of plant on a site. I am therefore at a loss as to how this condition would be enforceable, as the SOS has already deemed to grant permission by way of Art3(1) of the GPDO 2015 |
| precise | No relevant commentary. |
| Reasonable in all other respects | As noted above, it fails the five previous tests and should therefore be deleted. |

The application should be uncontroversial, but should you have any queries regarding the above, please do not hesitate to contact me on 07545 264 252 or at Kieran@krplanning.com.

Yours Faithfully



Kieran Rafferty
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