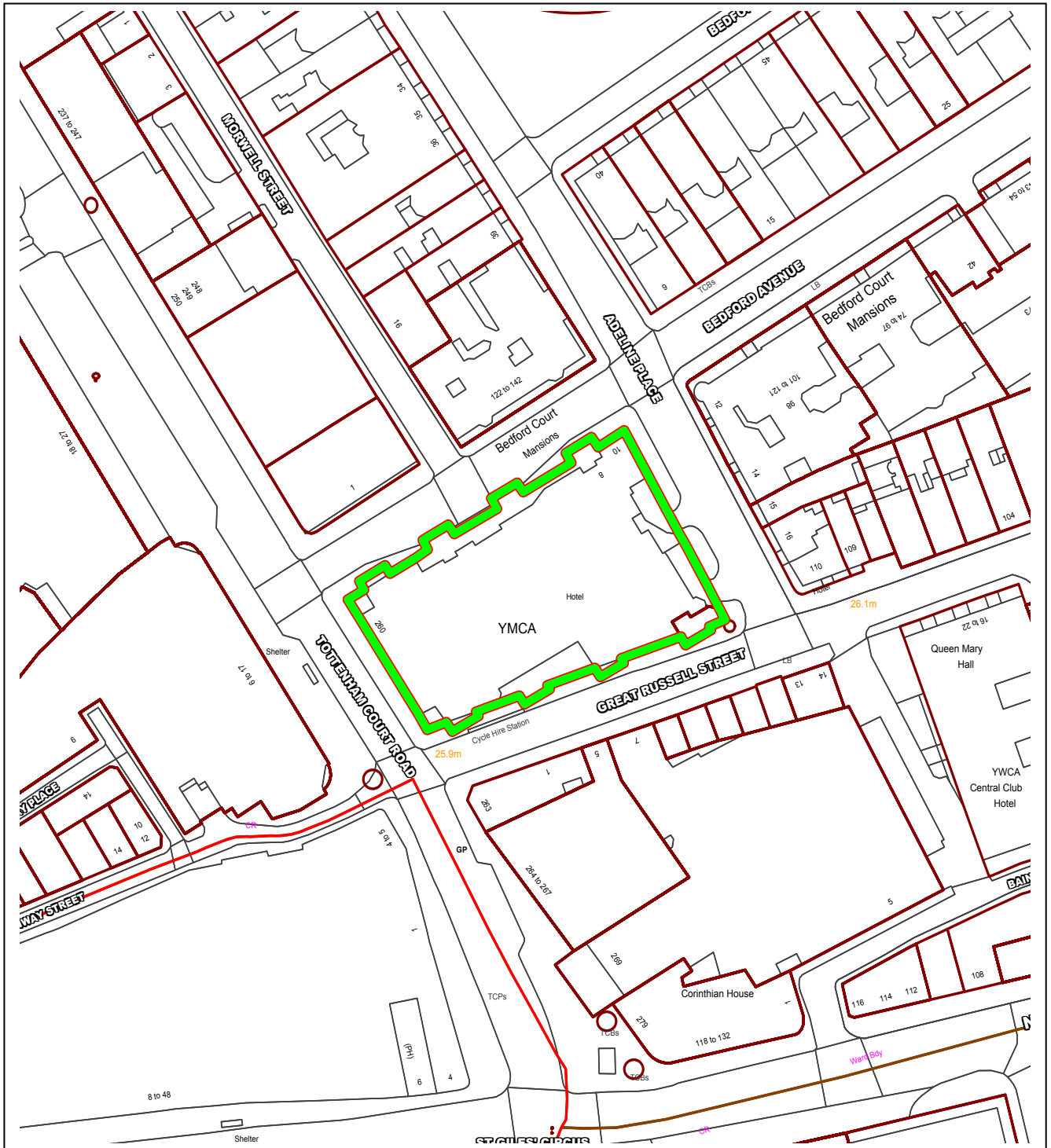


2020/1438/P – 112A Great Russell Street, WC1B 3NP



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2020/1438/P – 112A Great Russell Street, WC1B 3NP



1) Birds eye view of Great Russell Street and Adeline Place Elevations (vehicular entrance on to Adeline Place)



2) Entrance on Great Russell Street



3) Vehicular access points on Adeline Place

Delegated Report		Analysis sheet		Expiry Date:	20/04/2020
(Members Briefing)		N/A		Consultation Expiry Date:	N/A
Officer				Application Number(s)	
Ben Farrant				2020/1438/P	
Application Address				Drawing Numbers	
112A Great Russell Street London WC1B 3NP				Please refer to draft decision notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
Non-material amendment to planning permission ref: 2015/3605/P dated 04/11/2016 for: 'Change of use of part ground floor and basement levels -4 and -5 from Car Park (sui generis) to 166 bedroom hotel (Class C1), including alterations to openings, walls and fascia on ground floor elevations on Great Russell Street and Adeline Place'; namely to: alter the development description to omit the number of hotel rooms and to insert a planning condition to secure 166 rooms.					
Recommendation(s):		Grant Consent			
Application Type:		Non Material Amendment			

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice			
Informatives:				
Consultations				
Adjoining Occupiers:	No. of responses	20	No. of objections	20
Summary of consultation responses:	<p>As this is a S96A (or Non Material Amendment (NMA)) application, no statutory third party consultation process was required.</p> <p>The application would have appeared on email alerts for those signed up to the weekly list. As such 20 objections were received from addresses including: 12A Adelaide Place, Bedford Court Mansions (nos. 81, 104, 106, 111, 112, and 118), Bedford Estates, and 40 Bedford Square. Objections were also received from a leaseholder (St Giles Hotel Ltd.) and 'virtual freeholder' (Ravencroft Investments Inc.) of the site. (Please note a number of objections had anonymous addresses).</p> <p>Each of the objections made reference to support the objections raised by the Bloomsbury Association (which are noted in the relevant consultation section below). Additional comments raised by third parties included:</p> <ol style="list-style-type: none"> 1. It is unclear as to why enforcement action has not been taken on this site. 2. This is not a non-material amendment, it is an incremental strategy pursued by the applicant. 3. Continual amendments to the original scheme are contrary to the spirit of planning rules and makes for a difficult review of the overall proposal. 4. Inadequate light and ventilation for the hotel rooms. 5. Unclear what tests have been conducted on the car park prior to the change of use, such as the residual build-up of lead particulates given the former car park use. 6. Environmental health/health and safety concerns regarding the use of space for human occupation. 7. It is unclear why the applicant would go to additional expense given the impact of the Covid-19 outbreak. 8. Work continues on-site without due regard to social distancing rules. 9. There should be a proper and full review of the cumulative substance of what the applicant is seeking to achieve. 10. Ill-conceived increase from 166 to 208 hotel rooms. Objected to the original application and stand by the objection. Should avoid the slums of the future. Increasing the density is opposed as it will exacerbate an already substandard planning consent which will require greater facilities to service (information about which has not been supplied). 11. Design and layout of the 'Hotel entrance', particularly concerning right of access and fire escapes. Consent of the freeholder is required prior to the implementation of these works. 12. Little information has been provided on the proposed full-time use of the car park ramps onto Adeline Place and cycle storage details. The freeholder owns land surrounding the building. Vents and exhausts require good airflow but the proposed façade would cover these. 13. How do they intend to supply fresh air to their development which is a condition of the original planning consent? 			

14. How do they propose to receive hot and cold water supply?
15. The plan does not outline how the underground hotel would mitigate fire risks, what the system being installed is, and what the procedures will be in the event of a fire.
16. Proposed is a major amendment to the original application, and a S96A application is not the correct procedure and represents a misuse of this section of the Planning Act. These changes require a new planning application and referral to planning committee.

Officer Response:

1. *On the basis that the developer has a valid consent for 166 rooms, the enforcement team were not in a position to stop the works taking place on site. Whilst there are powers to stop works, using a temporary stop notice or seeking an injunction, these measures can only be used where serious harm is taking place and it is expedient that the activity which amounts to the breach is stopped immediately. In this case, the activity that the team would be seeking to stop would be the construction taking place, in this case, where there is an approved scheme which enables construction work with a CMP which is being adhered to, a court is unlikely to find in our favour of taking such robust action. Whilst all necessary obligations and conditions have been discharged and the CMP is still being complied with, the enforcement team did not consider it was expedient to take action at this stage.*
2. *The application is solely for a S96A to vary the wording of the development description of the original consent (to omit the number of hotel rooms proposed). The proposal would not permit any changes to the previously approved plans, nor would it permit an increase in number of rooms. It also does not imply acceptability of any future proposal to amend the plans or increase the number of hotel rooms. Conditions on the original consent mean it would still need to be built in compliance with the originally approved scheme. Any future proposed increase in the number of rooms would be subject to a further S73 application (to vary the approved plans) with the associated required documents and full public consultation. See Sections 3 & 4 of this report.*
3. *It is common practice for non-material and minor amendments to be made following the approval of an application. The original scheme and subsequent amendments (including the cumulative impacts) are thoroughly assessed as part of the application process.*
4. *Light and ventilation were matters considered under the original application and controlled by subsequent conditions. This application is solely to amend the wording of the previous development description.*
5. *Works undertaken are required to comply with current Building Regulations, which is a separate matter from planning.*
6. *See Officer Response 5 above. The space was considered acceptable for a hotel use subject to conditions under the original consent. This is not a matter for discussion under this application to vary the wording of the original development description.*
7. *The motive of the applicant to construct a hotel given the impact of the post-Covid-19 outbreak is not a material consideration in the determination of this application.*
8. *At the time of writing, the Government classes construction as essential work. The Council has no powers to restrict working practices on site aside advising builders to be considerate of people working from home and to follow the guidance on social distancing.*

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| | <ol style="list-style-type: none">9. See Officer Response 3 above.10. See Officer Response 2 above.11. See Officer Response 2 above. Lease/freeholder concerns are a civil rather than a planning matter, though planning permission does not override ownership consent.12. See Officer Responses 2 and 11 above.13. Further details of ventilation are separately required by condition on the original approval prior to the occupation of the hotel. These details are yet to be discharged, however they are not a matter for consideration under the current proposal.14. This is not a material consideration for the determination of the application.15. This is not a material consideration for the determination of the application. Though any future proposal would need to comply with current Building Regulations and Fire Safety Standards.16. See Officer Response 2 above. |
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<p>Bloomsbury Residents Action Group (BRAG)</p>	<p>The Bloomsbury Residents Action Group (BRAG) objects on the following grounds:</p> <p>“We understand that a S96A application has been submitted in relation to the developer's amended proposals for this site.</p> <p>We endorse the Bloomsbury Association's detailed objection to this S96A application which was submitted to Camden Council on 9 April 2020.</p> <p>We are concerned that the hotel's intensification of use and increase in size, with many more bedrooms than was in the initial application, plus other changes, will have a corresponding increase in impact on the local neighbourhood.</p> <p>It would seem appropriate for the developer to apply for full planning permission, so that the changes can be properly scrutinised, and measures put in place to mitigate the new impacts on the local community.”</p> <p><u>Officer Response:</u> <i>The application is for a S96A solely to vary the wording of the development description of the original consent. The change to the development description would remove reference to the number of hotel rooms, but it would not permit any changes to the previously approved plans, nor would it permit an increase in number of rooms. It also does not imply acceptability of any future proposal to amend the plans or increase the number of hotel rooms. Conditions on the original consent mean it would still need to be built in compliance with the originally approved scheme. Any future proposed increase in the number of rooms would be subject to a further S73 application (to vary the approved plans), which would be subject to the associated public consultation. See Sections 3 & 4 of this report.</i></p>
<p>Fitzrovia Neighbourhood Association</p>	<p>The Fitzrovia Neighbourhood Association objects on the following grounds:</p> <p>“I write to raise concerns about this application to increase the guest capacity at the underground hotel. The difference between 166 rooms and 208 rooms is significant and the extra guest capacity would amount to a 36 percent increase. This is a significant, material change to the permitted application and should not be treated as a minor alteration and non-material amendment. It is self-evident that this is an abuse of the planning system. We fully support the Bloomsbury Association's comments and concerns. For the above reasons this application should be refused and the applicants required to submit a full planning permission under s70 and the decision taken by a planning committee.”</p> <p><u>Officer Response:</u> <i>See above Officer Response to the Bloomsbury Residents Action Group (BRAG) and Sections 3 & 4 of this report.</i></p>
<p>Bloomsbury Conservation Area Advisory Committee (CAAC)</p>	<p>The Bloomsbury CAAC objects on the following grounds:</p> <p>“We would like to lodge our objection to the above proposal for the underground hotel. The increase in hotel rooms of 25% and guest occupancy of 36% above the original permission is a significant</p>

	<p>intensification of a use to which we originally objected and it will further harm the character of the Conservation Area”</p> <p><u>Officer Response:</u> <i>See above Officer Response to the Bloomsbury Residents Action Group (BRAG) and Sections 3 & 4 of this report.</i></p>
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<p>Seven Dials Trust</p>	<p>The Seven Dials Trust objects on the following grounds:</p> <p>“The Trust has seen the details of this application and the circumstances surrounding it.</p> <p>Applicants sometimes need to make minor amendments during the course of construction, usually due to unforeseen circumstances. However in this case it appears to be deliberate changes on a large scale. The method chosen by the applicant to 'remedy' this, would, if approved, make a mockery of the planning system and set an unacceptable precedent, and we therefore object.</p> <p>As an important matter of principle is involved it should be decided by the planning committee and not under delegated powers.”</p> <p><u>Officer Response:</u> <i>See above Officer Response to the Bloomsbury Residents Action Group (BRAG) and Sections 3 & 4 of this report.</i></p>
<p>Covent Garden Community Association</p>	<p>The Covent Garden Community Association objects to the scheme on the grounds as summarised below:</p> <ol style="list-style-type: none"> 1. A non-material amendment is not the correct application type for the changes proposed. Accepting the proposed change under a non-material amendment sets a concerning precedent with far-reaching implications. 2. The increase of capacity cannot be described as ‘non-material’. 3. The agent of the scheme agrees that the change is material, referring to it in the covering letter as an “intended substantive amendment for the reorganisation of the consented floorplans to deliver 208 bedrooms”. Why has this then been accepted as a non-material amendment? 4. Agree with all points raised by the Bloomsbury Association. 5. The <i>Finney v Welsh Ministers</i> (November 2019) at the Court of Appeal judgement does not imply that a change in description “is a necessary technical pre-step”, contrary to the information contained in the covering letter. The appeal case clarifies that the description of a proposed development determines the scope of any application seeking to modify or remove conditions under section 73 of the Act. 6. The case should be determined by a full Planning Committee. 7. We ask the planning authority to refuse the application. Since applications under section 96A of the Act do not fall within the range of applications for which section 78 of the Act grants a right of appeal, the applicant would then simply need to submit a planning application to seek approval for the proposed amendments. <p><u>Officer Response:</u></p> <ol style="list-style-type: none"> 1. <i>See above response to the Bloomsbury Residents Action Group (BRAG) and Sections 3 & 4 of this report.</i> 2. <i>No increase in capacity is proposed under this non-material amendment application. See Sections 3 & 4 of this report.</i> 3. <i>There is no dispute that the change to increase the number of rooms of the hotel to 208 rooms would be material. However, no material changes are proposed here, the application is solely to amend the wording of the previous development description to omit reference to</i>

166 rooms. An increase in rooms would require a subsequent S73 application.

- 4. Noted. Comments made by the Bloomsbury Association are addressed below within the relevant section of this report.*
- 5. See Sections 3 & 4 of this report.*
- 6. In compliance with Camden Council's Terms of Reference, an application such as this would typically be determined under delegated powers. In this instance it has been referred to Member's Briefing (given the number of objections). It would only be heard at full planning committee should the Member's Briefing panel request it to be referred.*
- 7. It would not be prudent to refuse an application which the local planning authority finds to be acceptable.*

**Bloomsbury
Association**

The **Bloomsbury Association** objected to the scheme (uploaded 09/04/2020) on a number of grounds, summarised below. Further comments (uploaded 10/04/2020) and a further addendum (uploaded 29/04/2020) were later added to their objection. The comments are numerous and complex so only a summary is listed here, though the full comments can be viewed online.

Initial Responses (uploaded 09/04/2020 and 10/04/2020):

A different scheme is being constructed on site to that previously consented. The changes being:

(a) an increase in the number of bedrooms from 166 up to 208 (332 up to about 450 bedspaces), i.e. about 25% increase in rooms and 36% increase in human capacity; and a reduction in 'back of house' areas. Together, this represents a significant increase in residential occupants and the general operational bedroom area. It also has a significant impact on fire safety when compared to the Fire Safety Overview submitted with the original application.

(b) changes to the ramp concourses.

(c) alterations to access; alterations to firefighting access; alterations to cycle parking; alterations to ventilation and air-conditioning plant, air inlet and exhaust; an increase in the amount of servicing traffic; alterations to the volume and location and means of access to refuse storage; the ground floor entrance and servicing on both Great Russell Street and Adeline Place.

(d) alterations to the elevations.

The entire 2-step process is misconceived and would be an abuse of the planning system. The determination by the Council must be based on one simple question: Q: Is the change non-material in effect? If so, it can make an affirmative determination. If not, the application must be refused, irrespective of whether the Council would have approved the proposed changes. i.e. the Council cannot consider the merits of the scheme, rather solely on the nature and scope of proposed changes.

The Council has not accepted plans of the proposed change as it would otherwise open them to a charge of wilful incompetence. Full disclosure of the amendments at this stage is paramount.

Amendments to the scale, height or footprint of a development can be dealt with under S73 provided that those amendments do not result in the scale and nature of the development being substantially different from the one previously approved. We now know, for example, that there will be a need for two refuse collections a day, not one as originally stated. Likewise, with the significant increase in bed-spaces, the suitability and adequacy of entrances and common spaces internally to serve guests and staff should be reconsidered.

By not submitting drawings and other details in support of the S96A application, Centro Planning Consultants have intentionally denied the LPA an opportunity to consider the full extent of their client's proposals, and to be able to judge whether the proposals are non-material or significant. To suggest that a S73 application would be the more substantive one, is to 'put the cart before the horse' and thus pervert the planning system.

The essence of any objection to the S96A 'device' is that the nature and scope of the changes whether already made or proposed are 'material' in

that the approved scheme would be significantly changed. It is argued that the nature, scope and scale of the changes (referenced points a-d listed above) cannot reasonably be considered non-material.

Whilst not submitted with the application, the Bloomsbury Association have received plans showing the amended layout with increased capacity. There are 20 listed different points of concern surrounding these plans.

The application is devoid as no notice was served on the owners of the site.

The application form states that pre-application advice was given, but no details have been disclosed.

Officer Response:

- 1. The comments regarding the mechanism for the submission of the application are addressed in Sections 3 & 4 of this report.*
- 2. The amended plans which the Bloomsbury Association reference have not been submitted as part of this application. Any plans to increase the number of hotel rooms would form part of a future S73 application which would be examined in full with full public consultation.*
- 3. The Council was notified at an early stage that notice was not served on owner(s) of the site, the applicant immediately rectified the matter.*
- 4. No formal pre-application advice has been given on this site, however given the works taking place internally are not fully compliant with the previously approved plans, Camden's planning and enforcement teams have been in ongoing discussions with the applicant.*

Further comments (uploaded 10/04/2020):

Reference is made to emails with the planning officer, in which the officer explains that the proposal is purely to amend the development description. I believe there are some fundamental flaws in the Planning Officer's understanding of the S96A/73 process. Such a superficial examination would give no consideration to the effect of the change.

If the proposed amendment was simply an innocent and benign change of description, then one might question why the developer has chosen not to submit the drawings for consideration.

Plans are included with this response, showing the previously approved floorplan and the proposed amendment which is in the process of being built out.

Reference is made to the *Finney v Welsh Ministers* case as giving a definitive conclusion that a section 73 application is constrained by the scope of the description of development on the existing planning permission - to amend the description of development by section 96A, but only if the change to the description of development in itself can be shown to be non-material, before then making a section 73 application.

The flaw in this approach is to ignore the fundamental requirement that such amendment(s) must still be non-material in nature and scope. It is not sufficient to rely on the worded description of the development set out in the application form. This is not an end in itself, it is simply a summary for the administrative purposes of the LPA.

It is designed to appear benign while at the same time paving the way for a raft of new drawings describing a 208-bedroom scheme for approval under a revised condition from the S73 application process.

The development description suggests a condition prior to the determination of the application which is unlawful.

From the Council's perspective, it would, perhaps naively, believe it was granting a benign change of words on a planning form in expectation of a further S73 application describing a far larger scheme. While it may have misgivings now about the nature and scope of this larger scheme, its hands would be tied by its prior approval of the S96A application, which by definition was for a non-material amendment. By such means, the developer wins retrospective approval for a scheme that was his intention from the start of works on site.

The LPA must review all the details of the S96A application, not just the worded description on the application form.

The proposed amendment to the development should satisfy a range of criteria as to its non-material nature and scope.

The current S96A application is devoid of enough detail to adequately consider whether it is non-material and/or meets the relevant criteria.

The making of the application has only been necessitated by a designed and constructed scheme far larger than that approved by the Planning Inspector in November 2016.

The accompanying letter to the S96A application is part of the application. Not only does it say so in its conclusion, the reference to the 208-room scheme makes it clear that the changes sought are substantive, and therefore not non-material, a defining characteristic of a S96A application.

Implications for a future S73 application are then listed.

If Camden Council approve the application under S96A, whether or not it had sight of the drawings and other details, it would be tacitly accepting the changes from 166 to 208 bedrooms, which any reasonably-minded person would acknowledge as significant, to be 'non-material'. This would open the door to a subsequent S73 application for a 'fait accompli' approval on the basis that the Council had already granted permission for the changes as non-material.

If the applicant wishes to pursue the scale of changes he has already executed, he has the option to apply for retrospective planning permission under s70.

Officer Response:

The comments regarding the mechanism for the submission of the application are addressed in Sections 3 & 4 of this report.

Site Description

The site is occupied by a large detached 20th century brutalist building bound by Great Russell Street to the South, Adeline Place to the East, Bedford Avenue to the north and Tottenham Court Road to the west. It is within the Central Activities Zone (CAZ) as defined by the London Plan, and as such the surrounding area is characterised by a mix of uses including commercial, residential, cultural and leisure uses.

The upper floor of the building is the existing St.Giles Hotel which is accessed from Bedford Avenue and the YMCA which is accessed from Great Russell Street, adjacent to the pedestrian entrance to the car park (the subject of this application). The existing building is not listed, and the site is not located within a conservation area although the Bloomsbury Conservation Area borders the site to the north, east, and south along Bedford Avenue, Adeline Place and Great Russell Street respectively. This section of Tottenham Court Road is a central London Frontage.

Planning permission to convert the underground car park into a hotel was initially refused at committee (ref: 2015/3605/P dated 04/02/2016), with 12 reasons for refusal, though reasons 3-12 could have been withdrawn with an adequate S106 agreement. The substantive reasons (reasons one and two) were on the grounds of standard of accommodation and impact on residential amenity. The refusal was appealed and subsequently allowed (ref: APP/X5210/W/16/3147078 dated 04/10/2016) subject to 13 conditions.

Works have commenced on site, though during the course of the works it was made clear to Camden that the works are not in complete compliance with the plans. At present, the works are entirely internal with no external alterations having taken place. The works being implemented are to facilitate a 208 bed hotel (rather than a 166 bed as previously approved). Planning and enforcement officers have been in regular contact with the developer, though enforcement action cannot be taken at this stage as the principal consent is for the change of use and the use has not commenced, the works are also entirely internal at present.

Relevant Planning History

The site has a long planning history to convert the underground car park into a hotel. For clarity, only the most recent and applicable applications have been listed here:

2019/1289/P - Installation of 3 x condenser units, at first floor level behind parapet adjacent to existing plant. 2 x to Great Russell Street and 1 x to Bedford Avenue, relocated from basement level (Retrospective) – **Currently under consideration.**

2019/1118/P - Details of drainage strategy (Condition 10) of planning permission 2015/3605/P allowed at appeal ref: APP/X5210/W/16/3147078 dated 04/10/2016 for 'Change of use of part ground floor and basement levels -4 and -5 from Car Park (sui generis) to 166 bedroom hotel (Class C1), including alterations to openings, walls and fascia on ground floor elevations on Great Russell Street and Adeline Place' – **Granted 26/06/2019.**

2019/0226/P - Details of external materials (Condition 5), cycle storage (Condition 6), & piling (Condition 7) of planning permission 2015/3605/P allowed at appeal ref: APP/X5210/W/16/3147078 dated 04/10/2016 for 'Change of use of part ground floor and basement levels -4 and -5 from Car Park (sui generis) to 166 bedroom hotel (Class C1), including alterations to openings, walls and fascia on ground floor elevations on Great Russell Street and Adeline Place' – **Granted 27/06/2019.**

2015/3605/P - Change of use of part ground floor and basement levels -4 and -5 from Car Park (sui generis) to 166 bedroom hotel (Class C1), including alterations to openings, walls and fascia on ground floor elevations on Great Russell Street and Adeline Place – **Refused 04/02/2016, appeal allowed ref: APP/X5210/W/16/3147078 dated 04/10/2016.**

Relevant policies

Section 96A of the Town and Country Planning Act 1990.

Assessment

1. Proposal

1.1. This application seeks a S96A (non-material amendment) to vary the development description of the original planning permission (ref: 2015/3605/P, allowed at appeal ref: APP/X5210/W/16/3147078 dated 04/10/2016) to remove reference to the number of hotel rooms proposed.

1.2. The previous development description read:

'Change of use of part ground floor and basement levels -4 and -5 from Car Park (sui generis) to 166 bedroom hotel (Class C1), including alterations to openings, walls and fascia on ground floor elevations on Great Russell Street and Adeline Place.'

1.3. The proposed description would read:

'Change of use of part ground floor and basement levels -4 and -5 from Car Park (sui generis) to ~~166 bedroom~~ hotel (Class C1), including alterations to openings, walls and fascia on ground floor elevations on Great Russell Street and Adeline Place.'

1.4. As such, the proposal would solely omit the reference to the number of rooms on the previous development description.

1.5. No physical alterations are proposed to the previously approved scheme, and the works would continue to be required to accord with condition 2 of the original consent which necessitates works to be completed in accordance with the approved plans.

2. Revisions

2.1. No revisions were received during the course of the application.

3. Background

3.1. A recent Court of Appeal decision (*Finney v Welsh Ministers* [2019] EWCA Civ 1868) has held that it is not lawful to use the powers under section 73 of the Town and Country Planning Act 1990 ("the Act") to amend the description of development on a planning permission.

3.2. Objector John Finney brought the case over the permitted height of turbines at a site in Carmarthenshire. Carmarthenshire County Council had given planning permission to Energiekontor (UK) Ltd for two wind turbines, with a tip height of up to 100m. One of the conditions required that the development was to be carried out in accordance with the approved plans and documents. Energiekontor then applied under section 73 of the Act for the removal or variation of this condition so that a turbine of up to 125 metres could be built. Carmarthenshire refused and Energiekontor appealed to the Welsh Ministers, whose inspector allowed the appeal. This was appealed to the High Court and then Court of Appeal.

3.3. The Court of Appeal considered it was a question of statutory interpretation and that when considering an application under section 73 a planning authority must only consider the question of conditions. Lewison LJ ruled that a local planning authority "*must not, therefore, consider the description of the development to which the conditions are attached. The natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development*".

3.4. **KEY POINT:** The local planning authority has no power to amend the description of development when granting an approval under section 73 of the 1990 Act.

3.5. Lewison LJ held that if the inspector had left the description of the permitted development intact, there would have been a conflict between what was permitted (a 100 metre turbine) and what the new condition required (a 125 metre turbine). In Lewison LJ's judgment "*a condition altering the nature of what was permitted would have been unlawful. That, no doubt, was why the inspector changed the description of the permitted development. But in my judgment that change was outside the power conferred by section 73.*"

3.6. **KEY POINT:** A condition which conflicts with the operative part of the development is not lawful.

4. **Assessment**

4.1 In this instance, the developer intends to build out of accordance with the previously approved plans, to construct a 208 bedroom hotel within the same footprint of the building (rather than 166 rooms previously consented).

4.2 A S73 application would be required in order to implement such a change as this would represent a minor material amendment to the original scheme. That is, whilst the substance of the application remains the same (i.e. the change of use of the underground car park to be used as a hotel with associated alterations), the impact of the change (subsequent increase in capacity) would have a material impact.

4.3 As detailed in the Finney case above however, a S73 application cannot be used to alter the development description on the previous consent. As such, this S96A application has been submitted solely to remove reference to the number of bedrooms within the previous development description. A S73 application would then follow to amend the plans condition for alterations including the increase in number of bedrooms to 208. The subsequent S73 application would require full plans and relevant information, and would be subject to full and thorough consideration and public consultation.

4.4 This S96A application is solely to vary the wording of the development description of the original consent. The change would not permit any alterations to the previously approved plans, nor would it permit an increase in number of rooms. It also does not imply acceptability of any future S73 proposal to amend the plans or increase the number of hotel rooms. Conditions on the original consent mean it would still need to be built in compliance with the originally approved scheme.

4.5 Whilst the Council is aware that it is the intention of the applicant to later amend the scheme to increase the rooms, this does not alter whether this proposal (to vary the development description) is considered material. It is important to note that the Council must act reasonably in its response to this scheme, and cannot seek to pre-empt any future application and refuse this application on the basis that it would enable a S73 application to increase the number of rooms. To assess matters which the application does not seek could be considered as unnecessarily obstructive and pre-emptive of an application that may be received by the Council in the future. A S73 application would be required for alterations to the number of rooms and changes to the plans, and at that stage the Council is able to fully assess the planning merits of the proposal.

4.6 A further condition would be attached to any subsequent approval of this S96A application, confirming that the proposal would still be for a 166 bedroom hotel. It is also acknowledged that the 166 bedrooms would continue to be controlled under the existing 'approved plans' condition (condition 2) of the original consent.

4.7 The effect of the change to the description with the new condition is 'non-material' as the scheme ultimately remains the same as previously approved.

4.8 There would be no neighbouring amenity impacts as a result of the amendment.

4.9 On the basis that the proposal does not permit any change to the approved scheme, the proposed amendment is considered to be minor in the context of the original scheme and would not raise any new issues or alter the substance of the approved scheme. It can therefore be treated as a non-material amendment to the original proposal.

4.10 The full impact of the proposed development has already been assessed by virtue of the original approval ref: APP/X5210/W/16/3147078 dated 04/10/2016 following refusal of planning permission ref: 2015/3605 dated 04/02/2016. In the context of the permitted scheme, it is considered that the amendment, solely to amend the development description, and subject to the attached condition, would not have any material effect on the approved development in terms of appearance and neighbour impact.

4.11 This decision relates only to the changes highlighted in the application and set out in the description, and shall only be read in the context of the substantive permission granted ref: APP/X5210/W/16/3147078 dated 04/10/2016 following refusal of planning permission ref: 2015/3605 dated 04/02/2016, and is bound by all the conditions and obligations attached to that permission.

5. Recommendation

5.1 Grant consent

The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Tuesday 26th May 2020, nominated members will advise whether they consider this application should be reported to the Planning Committee. For further information, please go to www.camden.gov.uk and search for 'Members Briefing'.

Application ref: 2020/1438/P
Contact: Ben Farrant
Tel: 020 7974 6253
Date: 20 May 2020

Development Management
Regeneration and Planning
London Borough of Camden
Town Hall
Judd Street
London
WC1H 9JE

Phone: 020 7974 4444

planning@camden.gov.uk
www.camden.gov.uk/planning

Centro Planning Consultancy
104 St. John Street
Clerkenwell
London
EC1M 4EH

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990 (as amended)

Grant of Non-Material Amendments to planning permission

Address:

**112 A Great Russell Street
London
WC1B 3NP**

Proposal: Non-material amendment to planning permission ref: 2015/3605/P dated 04/11/2016 for: 'Change of use of part ground floor and basement levels -4 and -5 from Car Park (sui generis) to 166 bedroom hotel (Class C1), including alterations to openings, walls and fascia on ground floor elevations on Great Russell Street and Adeline Place'; namely to: alter the development description to omit the number of hotel rooms and to insert a planning condition to secure 166 rooms.

Drawing Nos: Location Plan (Ref: 2897/L/01).

The Council has considered your application and confirms that the proposals are acceptable as non-material amendments to the planning permission set out above.

For the purposes of this decision, the description of development for planning permission reference 2015/3605/P, allowed at appeal ref: APP/X5210/W/16/3147078 dated 04/10/2016, shall be replaced with the following description:

'Change of use of part ground floor and basement levels -4 and -5 from Car Park (sui generis) to hotel (Class C1), including alterations to openings, walls and fascia on ground floor elevations on Great Russell Street and Adeline Place.'

For the purposes of this decision, planning permission 2015/3605/P, allowed at appeal ref: APP/X5210/W/16/3147078 dated 04/10/2016 shall have the following condition added:

ADDITIONAL CONDITION 14

Number of hotel rooms

The development hereby permitted shall not comprise more than 166 hotel bedrooms upon completion and shall be delivered in accordance with the approved plans set out in Condition 2 of this planning permission.

Reason: In order to ensure that the amenities of the surrounding area are protected in accordance with policies A1, A4 and D1 of the London Borough of Camden Local Plan (2017).

Informative(s):

- 1 You are advised that this decision relates only to the changes set out in the description and on the application form and shall only be read in the context of the substantive permission 2015/3605/P, allowed at appeal ref: APP/X5210/W/16/3147078 dated 04/10/2016 and is bound by all the conditions attached to that permission.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2019.

Yours faithfully

Director of Regeneration and Planning

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