

25 March 2022



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Dear Elaine,

**SECTION 73 OF THE TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)  
MINOR MATERIAL AMENDMENT APPLICATION OF PLANNING PERMISSION 2020/2364/P  
1,3 FERDINAND PLACE, LONDON NW1 8EE**

As you will be aware, we act as planning adviser to UK Lux One SPV 9 Ltd ('Luxgrove'), and on their behalf we are instructed to submit a minor material amendment (MMA) under Section 73 of the Town and Country Planning Act 1990 (as amended) to:

- Vary the approved document referenced at Condition 2 (approved plans) as listed in the decision notice to omit document 'Arboricultural Planning Statement prepared by Alastair Durkin dated 15/05/2020';
- Remove Condition 7 (tree protection measures) as the only 2 trees affected are to be removed and will no longer require protection.

The application has been submitted via the Planning Portal (PP-PP-11144067) and comprises the following information:

- Completed application form;
- This cover letter;
- Technical note from ADTree Consulting; and
- Statutory application fee £234.00

**Background**

For completeness, the permission to which this application relates (ref: 2020/2364/P) was formally granted on 16 March 2022. The description of development is set out below:

*"Demolition of the existing building and the erection of a four storey building with roof level accommodation, terraces and PV panels, comprising office use (Class E) at ground floor level and 9 self-contained residential units (Class C3) on the upper floors, plus associated plant, cycle parking and refuse storage."*

The planning permission is subject to 26 planning conditions.

The Council were informed on 25 January 2022 that the 2 adjacent trees to the north of the site on the Broomfield Estate ('the Estate') (not within the red-line for the application site) could no longer be retained in terms of the planned construction method. The 2 trees are not within a conservation area, or subject to Tree Preservation Order/s. However, they were shown in planning documentation as to be retained as they were outside of the red-line.

As the construction methodology has developed, it has become clear that the retention of the trees is not possible and therefore they would need to be felled and replaced. The construction proposals that are planned to be progressed involve their removal and replacement with new trees which will have better space to mature

without contacting the building and will therefore have a greater longevity in landscape terms. The replacement trees will also replace any visual amenity offered by the trees. It is worth noting the 2 trees to be removed are Category C trees, and not Category A or B.

The proposals have been discussed with the Estate Manager for the Chalk Farm Housing Group who, we understand, raise no objection to the felling and replacement of the trees, albeit they have requested that the planning permission is amended to reflect this, which has led to this application being submitted.

## Application Proposals

The application proposes the following:

- i. **Vary approved documents under Condition 2 to remove reference to ‘Arboricultural Planning Statement prepared by Alastair Durkin dated 15/05/2020’.** As the trees are to be removed and replaced, and given there are no other trees that could be impacted as a result of the development, it is not considered appropriate that the planning permission is implemented in accordance with this document, which relates solely to the 2 trees to now be removed.
- ii. **Remove Condition 7 in respect of tree protection measures.** The information within this submission includes a Technical Note from ADTree Consulting setting out the justification and approach to felling the existing 2 trees (Cat C) and their replacement with 2 new trees in more appropriate locations for future growth.

## Planning Context

Planning law requires that where regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the development plan unless material considerations indicate otherwise. In assessing and determining development proposals, the National Planning Policy Framework (NPPF) (February 2021) states that local planning authorities should apply a presumption in favour of sustainable development. Where development proposals accord with up-to date development plan policies they should be approved without delay.

Minor material amendments can be made to planning permissions through the use of Section 73 of the Town and Country Planning Act 1990. Whilst there is no statutory definition of ‘minor-material amendment’, Planning Practice Guidance (PPG) notes that this 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*”.

## Planning Assessment

The application is considered to be acceptable as there are no amendments to the scheme proposals that have been consented by the Council. The changes set out above to Conditions 2 and 7 are required to reflect the planned construction method and to ensure that trees works that have been discussed with the adjacent Estate Manager can be undertaken without any conflict with the grant of planning permission.

As set out above, the 2 trees are not within the conservation area and not subject to TPO/s. They could be removed by the Estate (effectively, the Council) without any breach in planning control. The trees are Category C and are close to the existing and new building façade. The replacement tree planting (1:1) in new locations will maintain the landscape, biodiversity, and visual amenity value of the trees. The precise tree species can be agreed with the Council and Estate.

The proposed amendment and removal of conditions are considered to be acceptable, and based on the above, the following assessment can be reached:

- i. The minor material amendments do not alter or amend the approved scheme from what is described on the planning permission.

- ii. The changes do not negatively impact on the quality of accommodation to be provided against any adopted standards or policies, instead they seek to enhance the quality of accommodation to be provided.
- iii. There is no change to the floorspace, uses or bulk, scale or massing added as a result of the amendments.
- iv. The changes do not have a material or harmful impact on neighbouring residential properties' amenities.
- v. The proposal does not introduce or result in any new impacts or effects that require assessment.
- vi. The amendments or removal of conditions is considered to be expedient and appropriate.

### **Planning Conditions**

Where an application under Section 73 is granted, the National Planning Policy Guidance (NPPG) makes clear that the effect is the issue of a new planning permission, sitting alongside the original permission, which will remain intact and unamended.

When a new decision notice is issued, this should set out all of the conditions related to it. However, paragraph 015 Reference ID: 17a-015-20140306 of the NPPG makes it clear that, *'to assist with clarity decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.'*

### **Conclusion**

The proposed changes to conditions are straightforward and logical. The changes do not alter the approved scheme in any detrimental way. The application accords with national and development plan policy and, having regard to the PPG, constitutes a minor-material amendment.

We trust you have all the relevant information to register and validate the application; and that the application will gain your Officers' support. We would be grateful if you could acknowledge receipt of this application and contact Edward James or myself.

Yours sincerely,



**Mark Thomson MRTPI**  
**Associate Director**