

Ms Laura Dorbeck
Regeneration and Planning
London Borough of Camden
Town Hall
Judd Street
London
WC1H 9JE

Our ref: APL-374 551-557 Finchley Road
Your ref: 2020/5444/P

22 August 2022

Dear Ms L. Dorbeck,

Removal of Condition 7 of approved planning application ref. 2020/5444/P at 551-557 Finchley Road, London, NW3 7BJ

On behalf of our client, please find enclosed an application for the removal of condition 7 of the development approved under planning permission 2020/5444/P. The permission is for the change of use from Use Class E and F1, remodelling of existing building to provide residential apartments, partial demolition and extensions at the rear, construction of additional storey at roof level, and restoration of front façade at 551-557 Finchley Road, London, NW3 7BJ.

The Site and Surroundings

The Site comprises 4 terraced buildings, four-storeys tall. The buildings are bound by Finchley Road to the east and mansion housing blocks to the west. The terrace buildings continue to the north of 551-557, with detached three-storey houses to the south.

Buildings on the opposite side of Finchley Road are a mix of three and four storeys with a new housing development of five storeys to the north. Buildings to the west of the site, facing Fortune Green Road are four and five-storey residential mansion blocks, with the same architectural style.

Relevant Planning History

This application follows the grant of planning permission on 24 December 2021 for 15 high-quality new apartments within the existing building. Four apartments are located

on the lower ground floor, within the new build extension to the rear. Nine apartments are equally distributed on the first, second, and third floors, while two are found on the proposed top floor. Flexible commercial units are proposed on the ground floor and front of the lower ground floor.

Proposed Variation of Condition

This application proposes the removal of condition 7 from planning permission 2020/5444/P as this condition is ultra vires, for the reasons set out below. The decision notice (Appendix 1) states the following:

‘All units hereby approved shall be designed and constructed in accordance with Building Regulations Part M4 (1) with units 3A and 3B designed and constructed in accordance with Building Regulations Part M4 (3) adaptable.’

The reason for this condition according to the decision notice was ‘to ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers and their changing needs over time, in accordance with the requirements of policy H6 of the Camden Local Plan 2017.’

The approval regards some alterations on the ground, first floor, and roof, with the main mass of the buildings to remain unaltered. From the first floor to the third floor, the approved scheme proposes only interior alterations in order to accommodate functional residential units. Therefore, the existing footprint of those floors is maintained in its original state.

Condition 7 requires that units 3A and 3B be designed and constructed in accordance with Building Regulations Part M4 (3) and be adaptable. For that condition to occur, a different layout would be required. Level 3 is the only lift-accessible floor without internal intermediate levels and stairs; however, the flat sizes are quite tight. The drawing below shows the building regulation compliant sizes overlaid on the permitted scheme.

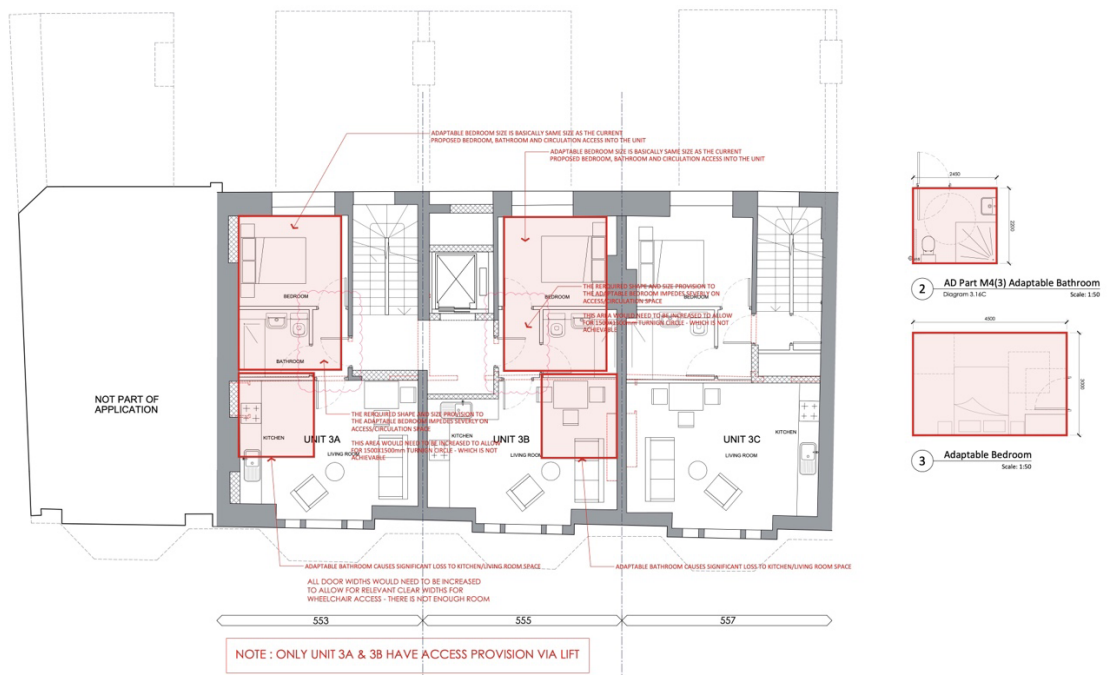


Figure 1. Third-floor overlay showing the impact of the adaptable layout, BCRi Architects

The adaptable room and bathroom outlines have been used to visually demonstrate the impact on the approved layout of units 3A and 3B. In particular, the adaptable bedroom impacts severely the proposed access of the units. The turning circle to entrance access into units is not achievable, while no available space exists to increase the size of the lobby/circulation space. Moreover, the adaptable bathroom would cause a significant loss of kitchen and living room space. In addition, all doors would have to be amended in order to increase their width and allow for wheelchair access, however, due to the limited floor area that is not feasible. Considerable requirements also exist for a kitchen space to be considered adaptable. An increase in the size of the kitchen would be required, which would consume even more of the very compromised space.

Based on the approved plans, it is evident that the requirements of condition 7 cannot be achieved by the existing mass and design of the development. A bigger footprint or layout would have been required. Therefore, condition 7 is ultra vires, as it cannot be complied with by constructing the scheme in accordance with the approved plans. In order to meet the requirements of condition 7, an alternative permission would have to be granted which included additional built form.

The NPPG section 'Use of Planning Conditions', Para 003 (Reference ID: 21a-003-20190723), refers to the NPPF by stating that '*a local planning authority should keep conditions to **a minimum**, and only **use them where they satisfy the following tests**:*

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

Each of these tests **"needs to be satisfied for each condition that an authority intends to apply."** It is clearly stated that any proposed condition that fails to meet one of the 6 tests should not be used.

Para 005 (Reference ID: 21a-005-20190723) mentions specific circumstances where conditions should not be included. Of particular relevance is the section regarding '*Conditions requiring compliance with other regulatory requirements (e.g., Building Regulations, Environmental Protection Act)*'. Conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning.

With regard to the above, it is evident that condition 7 cannot be complied with, within the built form of the development as approved. Therefore, it is not relevant to the development permitted and does not satisfy the 3rd test. Since it fails to meet the test, the condition is not compliant with the NPPF and NPPG policies and should not be used.

Summary

The removal of condition 7 from the decision notice for application ref. 2020/5444/P is considered reasonable as it does not satisfy National Policy and opposes the physical limits of the approved scheme.

We respectfully request that the application to remove Condition 7 is approved.

If you require further information, then please contact me on the details at the head of this letter

Kind Regards

A handwritten signature in black ink, appearing to read 'M. Schmull', with a stylized flourish at the end.

Mark Schmull