

CONSULTATION SUMMARY

Case reference number

2022/4985/P

Case Officer:

Laura Dorbeck

Application Address:

76 Fitzjohn's Avenue
London
NW3 5LS

Proposal(s)

Amendments (change to condition 6 trigger) to planning permission ref. 2017/1047/P granted 10/06/2019 for the Creation of a single storey basement with light well front and rear, installation of 1 x AC unit within front garden, installation of 3 x roof lights, removal of 1 x palm tree from front garden, alterations to side elevation fenestration, alterations to rear ground floor patio doors and erection of a new fence in the front garden.

Representations

Consultations:			No. of responses	2	No. of objections	1
					No of comments	1
					No of support	0

Summary of representations

(Officer response(s) in italics)

The owner/occupier of 129 South End Close submitted the following comments:

- Support with request: can the Palm tree which is to be removed be taken to 2A Camden estate and replanted? Too often when creating front or rear or rear structures within previously designated Gardens many of the trees and flora are lost. This impacts upon the green footprint of Camden overtime. Southend close is a Camden Estate not too far from this property address. Can the property owners liaise with Camden garden contractors and arrange for the palm tree to be removed, contained and replanted at this Camden Estate? This will form a model for future preservation of established plants with in Camden which can be developed as part of the green agenda. I am happy to liaise with new property owners and Camden to help facilitate this process involving this palm tree. We can report that to Camden planning on the success or challenges this involved.

Officer response

Although not relevant to the current application which seeks to amend the trigger for the submission of information for condition 6, contact was facilitated with the applicant to arrange the re-use of the tree.

One objection was received from a neighbouring resident who objected to the application on the following grounds:

- As mentioned before I am of the view that the Whitley principle should apply here. Therefore, the permission has lapsed.
- This is supported by the Cardiff County Council and Viridor case (17 December 2014). Applying the principles established by that case the Whitley exceptions do not apply because the Applicants did not apply for discharge of ALL the conditions prior to the commencement of the work.
- The Applicants argued that they changed some windows and that therefore the permission had not lapsed.
- Now the Applicants argue that there are two levels of works, above and under ground.
- Applying their reasoning, given only works above ground have started, the under ground permission has lapsed.

Officer response

- *This objection was received following previous correspondence with the neighbour regarding the applicant's submission of applications to discharge pre-commencement conditions after works had already been carried out to implement the approved development (with the installation of rooflights). The applications (references 2022/2440/P and 2022/1577/P) were received prior to the expiry of the original consent (10 June 2022) but were not determined until after this date (on 28/09/2022).*
- *After reviewing relevant case law (including Leisure Great Britain plc v Isle of Wight Council [2000]), officers consider it to suggest that if a developer has applied to discharge the conditions prior to the expiry of the three year end date of the planning permission, has carried out work pursuant to the permission (even though the conditions have not yet been discharged) and approval is subsequently given for the discharge of the conditions (even though the approval itself is after the three year expiry date), then the permission will be deemed to have been validly implemented.*
- *Therefore, given details to discharge those conditions were submitted prior to the expiry of the three year end date of the planning permission (even though that date passed during the determination of*

those applications), the council considered it reasonable to proceed to determine the applications for approval of details for conditions 8 (landscaping details) and 4 (programme of ground investigation).

- It was further considered that the basement excavation constituted only part of the wider development permitted by the planning permission - indeed most of the description permits other works that require no below ground works or excavation. Those conditions that prevent works before details of the below ground works (Condition 6 – below ground method statement), or require submission of details before works (Condition 4 – ground investigation) are of no relevance at all to most of the description of development on the decision notice. For example, the changes to windows do not rely on the outcome of those conditions as they do not involve excavation of the ground. It is therefore not considered that those conditions go to the heart of the permission, so that failure to comply means the entire development (including new windows, insertion of rooflights, an AC unit and so on) must be regarded as unlawful.*
- Therefore, given no further works have been carried out on site apart from the installation of rooflights, officers consider the proposed amendment to the trigger of condition 6 to be acceptable, and for it to be unreasonable to refuse to determine the application. The relevant details would still be required prior to the commencement of any below ground works, and therefore the below ground Network Rail infrastructure would be protected in accordance with the original intentions of the condition.*

Recommendation:-

Grant planning permission