

Officer's Report

Application Number	HGY/2022/4229
Type	Non-Material Amendment
Location	Ashley House, Ashley Road, London, N17 9LJ
Proposal	Non-Material Amendment (NMA) to planning permission HGY/2019/0108 (Allowed on Appeal APP/Y5420/W/19/3232707) to enable changes to be made to Conditions 12, 14, and 15 to allow for site demolition, site clearance, and proposed drainage works to be carried out prior to submission of details.
Case Officer	Philip Elliott
Valid Date	03/02/2023
Applicant	-
Agent	Anna Rigelsford

RECOMMENDATION

Approve

Drawing number of plans: ASP-WSL-XX-XX-DR-D-92001 Rev T02; AH-WSL-XX-XX-DR-D-92002 Rev T01; AH-WSL-XX-XX-DR-D-92001 Rev T02; Cover Letter dated 3 February 2023.

1. RECOMMENDATION

GRANT Non-Material Amendment

2. PROPOSED DEVELOPMENT AND LOCATION DETAILS

2.1 Approved development

Planning application HGY/2019/0108 was refused by the Council on 10/04/2019. The application was subsequently allowed on appeal (PINS Ref. APP/Y5420/W/19/3232707) on 16/04/2020. The approved development consisted of the following:

- Demolition of existing buildings and erection of a part 6, part 8 storey building to provide 97 residential units (Class C3), 170 sqm of commercial floorspace (Class A1/A3/B1), new public realm, car and cycle parking and associated works.

2.2 Proposed amendments

The applicant seeks to amend the wording of Conditions 12 and 15 of the permission to allow for initial drainage works to be carried out. Currently, the conditions would preclude such work until all details have been approved in relation to those conditions.

The initial drainage works comprise a small channel drain and chamber, these would be dug out and installed outside of the footprint at each building. The proposed drainage works are required for the applicant to form a meaningful start on site.

An amendment is also proposed to Condition 14 to bring it in line with permission HGY/2016/4165 – to make it a 'prior to above ground works' condition as opposed to a pre-commencement condition.

3. ANALYSIS/ASSESSMENT

S96 of the Town and Country Planning Act 1990 (as amended) allows the Council to make a change to any planning permission if satisfied that the change is not material. An application for a non-material amendment can only be made by or on behalf of a person with an interest in the land to which the planning permission relates and the application may be made only in respect of so much of the planning permission as affects the land in which the person has an interest.

The National Planning Practice Guidance (NPPG) sets out that there is no statutory definition of 'non-material'. This is because it will be dependent on the context of the overall scheme – an amendment that is non-material in one context may be material in another. The local planning authority must be satisfied that the amendment sought is non-material in order to grant an application. As an application to make a non-material amendment is not an application for planning permission, the existing Town and Country Planning (Development Management Procedure) (England) Order 2015 provisions relating to statutory consultation and publicity do not apply. Therefore local planning authorities have discretion in whether and how they choose to inform other interested parties or seek their views.

The NPPG states that when making a decision the local planning authority must have regard to the effect of the change, together with any previous changes made under section 96A. They must also take into account any representations made by anyone notified, provided they are received within 14 days of notification. As this is not an application for planning permission, section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply.

Condition 12 makes an exception for demolition in its scope. However, it would preclude the proposed minor drainage installations. Condition 15 is even more restrictive. Whilst the rationale for this is acknowledged, the proposed changes would still ensure that the conditions must be satisfied, albeit at a slightly later point, but still prior to any major works being carried out. Given the minor nature of the installations and modest impact on the conditions, the flexibility afforded to the applicant by the amendments would be acceptable.

The amendments would change the conditions as follows (bold denotes additional wording):

Existing condition 12:

12. Prior to the commencement of the development (except demolition works) details of all existing and proposed levels on the site in relation to the adjoining properties shall be submitted to and approved by the Local Planning Authority. The development shall thereafter be in full accordance with the agreed levels details.

Amended Condition 12:

12. Prior to the commencement of the development (except demolition, **site clearance, & initial drainage works**) details of all existing and proposed levels on the site in relation to the adjoining properties shall be submitted to and approved by the Local Planning Authority. The development shall thereafter be in full accordance with the agreed levels details.

(The initial drainage works shall constitute those indicated on drawing numbers ASP-WSL-XX-XX-DR-D-92001 Rev T02; AH-WSL-XX-XX-DR-D-92002 Rev T01; and AH-WSL-XX-XX-DR-D-92001 Rev T02 or as otherwise agreed in writing with the local planning authority)

Existing Condition 15:

15. Prior to any above ground works, including demolition, a revised Overheating Report shall be submitted to and approved in writing by the Local Planning Authority. Details in the report shall include, but not be limited to:

- The location and units modelled*
- Occupancy levels in the units*
- Impact of future weather files and how this will be risk mitigated.*

The development shall be carried out in accordance with the details approved and maintained as such thereafter.

Amended Condition 15:

15. Prior to any above ground works (**excluding demolition, site clearance, & initial drainage works**) a revised Overheating Report shall be submitted to and approved in writing by the Local Planning Authority. Details in the report shall include, but not be limited to:

- The location and units modelled
- Occupancy levels in the units
- Impact of future weather files and how this will be risk mitigated.

The development shall be carried out in accordance with the details approved and maintained as such thereafter.

(The initial drainage works shall constitute those indicated on drawing numbers ASP-WSL-XX-XX-DR-D-92001 Rev T02; AH-WSL-XX-XX-DR-D-92002 Rev T01; and AH-WSL-XX-XX-DR-D-92001 Rev T02 or as otherwise agreed in writing with the local planning authority)

The drainage works proposed consist of a very small extent of the larger drainage design that will follow on and be submitted to the Council for full approval in due course as part of the amended conditions. The amendments to Conditions 12 and 15 are non-material and accepted.

The current wording of condition 14 requires BREEAM registration prior to commencement. This condition is overly restrictive, particularly given the fact that planning permission HGY/2016/4165 requires this at 'prior to above ground works' stage under Condition 34. The following amendments are therefore proposed:

Existing Condition 14:

14. Evidence that the commercial unit at the development hereby approved is registered with a BREEAM certification body and that a pre-assessment report (or design stage certificate with interim rating if available) has been submitted indicating that the development can achieve the stipulated BREEAM level "Very good" shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development and a final certificate shall be submitted for approval to the Local Planning Authority within 6 months of the occupation of the development.

Amended Condition 14:

14. Evidence that the commercial unit at the development hereby approved is registered with a BREEAM certification body and that a pre-assessment report (or design stage certificate with interim rating if available) has been submitted indicating that the development can achieve the

stipulated BREEAM level “Very good” shall be submitted to and approved in writing by the Local Planning Authority prior to **above ground works (excluding demolition, site clearance, & initial drainage works)** and a final certificate shall be submitted for approval to the Local Planning Authority within 6 months of the occupation of the development.

(The initial drainage works shall constitute those indicated on drawing numbers ASP-WSL-XX-XX-DR-D-92001 Rev T02; AH-WSL-XX-XX-DR-D-92002 Rev T01; and AH-WSL-XX-XX-DR-D-92001 Rev T02 or as otherwise agreed in writing with the local planning authority)

The proposed changes would be non-material and are accepted and approved.

4. RECOMMENDATION

GRANT Non-Material Amendment

Informatives:

- The applicant is advised that Condition 12 of planning permission reference HGY/2019/0108 (Allowed on Appeal APP/Y5420/W/19/3232707) will now read:

Prior to the commencement of the development (except demolition, site clearance, & initial drainage works) details of all existing and proposed levels on the site in relation to the adjoining properties shall be submitted to and approved by the Local Planning Authority. The development shall thereafter be in full accordance with the agreed levels details.

(The initial drainage works shall constitute those indicated on drawing numbers ASP-WSL-XX-XX-DR-D-92001 Rev T02; AH-WSL-XX-XX-DR-D-92002 Rev T01; and AH-WSL-XX-XX-DR-D-92001 Rev T02 or as otherwise agreed in writing with the local planning authority)

- The applicant is advised that Condition 15 of planning permission reference HGY/2019/0108 (Allowed on Appeal APP/Y5420/W/19/3232707) will now read:

Prior to any above ground works (excluding demolition, site clearance, & initial drainage works) a revised Overheating Report shall be submitted to and approved in writing by the Local Planning Authority. Details in the report shall include, but not be limited to:

- The location and units modelled
- Occupancy levels in the units
- Impact of future weather files and how this will be risk mitigated.

The development shall be carried out in accordance with the details approved and maintained as such thereafter.

(The initial drainage works shall constitute those indicated on drawing numbers ASP-WSL-XX-XX-DR-D-92001 Rev T02; AH-WSL-XX-XX-DR-D-92002 Rev T01; and AH-WSL-XX-XX-DR-D-92001 Rev T02 or as otherwise agreed in writing with the local planning authority)

- The applicant is advised that Condition 14 of planning permission reference HGY/2019/0108 (Allowed on Appeal APP/Y5420/W/19/3232707) will now read:

Evidence that the commercial unit at the development hereby approved is registered with a BREEAM certification body and that a pre-assessment report (or design stage certificate with interim rating if available) has been submitted indicating that the

development can achieve the stipulated BREEAM level "Very good" shall be submitted to and approved in writing by the Local Planning Authority prior to above ground works (excluding demolition, site clearance, & initial drainage works) and a final certificate shall be submitted for approval to the Local Planning Authority within 6 months of the occupation of the development.

(The initial drainage works shall constitute those indicated on drawing numbers ASP-WSL-XX-XX-DR-D-92001 Rev T02; AH-WSL-XX-XX-DR-D-92002 Rev T01; and AH-WSL-XX-XX-DR-D-92001 Rev T02 or as otherwise agreed in writing with the local planning authority)