

Your Ref: **PP-12033878**
Our Ref: HPD/CD/SW/22/248
Date: 30 March 2023

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Dear Sir/Madam,

RE: 17 SHEPHERDS CLOSE, LONDON, N6 5AG – APPLICATION UNDER S73 FOR A MINOR MATERIAL AMENDMENT TO LPA REF: HGY/2021/0830

On behalf of our clients, Liam Dooley and Shamita Sharmacharja, we are pleased to enclose an application under Section 73 of the Town & Country Planning Act (1990), to secure a minor material amendment to LPA ref: HGY/2021/0830 which relates to the development at 17 Shepherds Close, London N6 5AG.

Accordingly, please find enclosed the following documents which comprise in addition to this letter, the application:

- Duly Completed Planning Application Form;
- Completed Ownership Certificate A;
- Completed Agricultural Holdings Certificate;
- Site Location Plan at scale 1:1,250 with the site edged in red;
- Decision Notice LPA Ref: HGY/2021/0830;
- Proposed Plans (Dwg no: P3.300);
- Proposed Elevations (Dwg no: P3.301);
- Proposed Elevations & Section (Dwg no: P3.302); and
- Covering Letter prepared by Hybrid Planning & Development.

The statutory application fee of £234.00 has been paid electronically by card following submission of this application via the Planning Portal.

The proceeding sections of this letter outline the site context and background, the proposed minor material amendments and planning assessment.

SITE CONTEXT AND BACKGROUND

The application site relates to a two storey, end of terrace house located on Shepherds Close; a cul-de-sac off the eastern side of Shepherds Hill, N6. The site is located at the end of the cul-de-sac, adjacent to 9 no. residential garages.

Planning permission (LPA ref: HGY/2021/0830), was approved on 27 March 2021 for the following development at the site:

“Construction of single storey front and rear extensions, the insertion of a side window and the creation of a side link between the main building and side garage.”

The applicant began works to implement LPA Ref: HGY/2021/0830 in June 2022. However, new Building Regulations were introduced on 15 June 2022, which included new standards to reduce energy use and

carbon emissions during home improvement works. For the approved development to comply with the new Building Regulations, roofs of domestic extensions must achieve a U-value of at least 0.15W/m²K. It follows that the approved single storey front extension does not provide any insulation and therefore fails to comply with the new Building Regulation requirements. To achieve the required standard, Building Control has confirmed that the approved development would need to provide 120mm of insulation in the roof.

The approved front extension has an internal ceiling height of 2 metres (which is already considerably lower than the minimum floor to ceiling height prescribed by the National Described Space Standards), and therefore; it is not possible to provide the required insulation should the works be completed in accordance with the approved scheme.

Accordingly, a full planning application (LPA Ref: HGY/2022/2219) was submitted to the Council in September 2022. This sought to increase the height of the single storey front extension by 290mm in order to accommodate the required roof insulation to comply with Building Regulation requirements, and to appropriately change the vertical wooden cladding to brickwork. The application was unfortunately refused and is now the subject of a Section 78 planning appeal.

Notwithstanding, the proposal (which is the subject of this S73 Application), has been discussed in detail with the Council (Ms Mercy Oruwari, Planning Officer). In the above context, Ms Oruwari formally advised that the increased roof height would likely be acceptable in planning policy terms subject to softening the appearance of the front extension as built through the use of materials with a white finish (i.e., cladding).

As such, and in accordance with the feedback kindly received from the Council, this application is submitted to secure alterations to the single storey front extension by way of a S73 Application.

PLANNING LEGISLATION

Section 73 of the Town and Country Planning Act (1990) enables a local planning authority to consider an application to vary or remove conditions associated with a planning permission. Specifically, Section 73 of the Act states:

“Section 73(1) – This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

Section 73(2) - On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

- (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and*
- (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.”*

The powers under Section 73 of the Act are supported by the National Planning Practice Guidance ('NPPG'), specifically the NPPG on 'Flexible options for planning permission'. Paragraph 015 of the NPPG clarifies that an approval under Section 73 has the effect of creating a new planning permission to carry out the same development as previously permitted, subject to the new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.

Paragraph 013 of the NPPG suggests that one of the uses of a Section 73 application may be to seek a minor material amendment to a development, where there is a relevant condition that can be varied. However, the recent High Court judgement in *Armstrong vs. SoSLUHC* [2023], handed down on 27 January 2023, confirmed that Section 73 does not limit such an application to making only "minor material amendments" or to amendments which do not involve a "substantial" or "fundamental" variation to the original scheme.

In accordance with the Court of Appeal ruling in *Finney v Welsh Ministers* [2019] EWCA Civ 1868, as long as the amendments being sought relate solely to the conditions attached to a planning permission and there is no conflict with the operative part of the development – i.e. the description of development – then Section 73 may be utilised to grant planning permission for development subject to different conditions.

The NPPG directs Local Planning Authorities to consider Section 73 applications against the development plan and other material considerations, under section 38(6) of the Planning and Compulsory Purchase Act 2004 (determination shall be made in accordance with the plan unless material consideration indicates otherwise), and conditions attached to the existing permission. LPAs should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission.

PROPOSED MINOR MATERIAL AMENDMENTS

In light of the above, the proposed minor material amendments relate solely to the single storey front extension. The proposed alterations seek to increase the height of the front extension by 290mm to provide the necessary insulation in order to comply with the new Building Regulation requirements.

The proposal seeks to retain the white timber cladding approved under LPA Ref: HGY/2021/0830 but seeks to amend the fenestration to facilitate a smaller window due to the internal layout of the kitchen.

Overall, the proposed amendments would result in a development which is not substantially different from that which has been previously approved.

Notwithstanding the above, the plans approved by way of Condition no. 1 will need updating. Accordingly, Table 1 (below), outlines the existing and proposed wording for Condition no. 1:

Table 1: Proposed Changes to Condition 1

Condition	Existing Wording	Proposed Change to Wording
1.	<i>"1. The approved plans comprise drawing nos (001, 300A, 301A & 302A). The development shall be completed in accordance with the approved plans except where conditions attached to this planning permission indicate otherwise or where alternative details have been subsequently approved following an application for a non-material amendment.</i> <i>Reason: In order to ensure the development is carried out in accordance with the approved details and in the interests of amenity."</i>	<i>"1. The approved plans comprise drawing nos (001, P3.300, P3.301 & P3.302). The development shall be completed in accordance with the approved plans except where conditions attached to this planning permission indicate otherwise or where alternative details have been subsequently approved following an application for a non-material amendment.</i> <i>Reason: In order to ensure the development is carried out in accordance with the approved details and in the interests of amenity."</i>

PLANNING ASSESSMENT

The proposal seeks to marginally increase the height of the front extension by 290mm. The front extension would be of the same depth and width as the approved extension, and therefore, it would still respect the existing building line of the single storey front projections found along the terrace. The increase in height is considered minimal and would not become a dominant feature within the street scene considering the high degree of variation of front façades along Shepherds Close.

In addition, by increasing the height of the front extension to accommodate the necessary insulation, this will in turn; increase the internal ceiling height to 2.2m, which will improve the living conditions for future occupiers, and will prevent substandard living conditions.

The change to the fenestration of the front façade would not distract from the existing character of the street scene considering the high degree of variation to fenestration within Shepherds Close. The site is located at the end of the cul-de-sac adjacent to 9 garages which are noted as negative contributors to the Highgate

Conservation Area. As such, the overall impact on the architectural consistency between the dwellings within the cul-de-sac would be limited and would sufficiently preserve the character and appearance of this part of the Highgate Conservation Area.

The proposed alterations are minor in scale and remain sensitive to the existing street scene. The proposed amendments are therefore consistent with the Council's design policies. The proposal also allows necessary improvements to the existing housing stock and contributes to the Council's commitment to become net-zero carbon by 2041.

Overall, it is considered that the proposed amendments would not compromise or significantly alter the approved development. The proposed changes do not conflict with the NPPF (2021) or Haringey's development plan and are considered acceptable on balance. Importantly, the changes will permit the development to be constructed safely, and in accordance with the most recent changes to the Building Regulations.

SUMMARY AND CONCLUSIONS

This application is made under Section 73 of the Town and Country Planning Act 1990 (as amended) to secure a minor material amendment to approved planning permission LPA ref: HGY/2021/0830.

I trust the enclosed is sufficient information to determine this application and we look forward to receiving confirmation that the application has been registered. In the meantime, should you require any further information please do not hesitate to contact me (sward@hpduk.com), in the first instance.

Yours faithfully,



Simone Ward
PLANNER

Encs