

Officer's Report

Application Number	HGY/2023/1192
Type	Removal/variation of conditions
Location	4 Broughton Gardens, Hornsey, London, N6 5RS
Proposal	Section 73 application to vary the wording of planning conditions 4 (tree protection measures) & 7 (method of construction statement) of approved development HGY/2020/2352 for the 'Construction of a new ground floor and lower ground floor side extension with a new terrace and addition of a new garage to the front of the existing dwelling' at 4 Broughton Gardens, N6 5RS.
Case Officer	Neil McClellan
Valid Date	02/05/2023
Applicant	Mr & Mrs Lloyd Simon
Agent	Mr Daniel Rinsler

RECOMMENDATION

Approve with Conditions

SUMMARY OF RECOMMENDATION

GRANT PERMISSION subject to condition(s):

Conditions

- 1) Time limit
- 2) In Accordance with Approved Plans
- 3) Materials as Approved
- 4) Tree Protection Measures
- 5) No Roof Terrace
- 6) Ancillary to Residential Use
- 7) Method of Construction Statement

Informatives

- 1) CIL liable
- 2) Land ownership
- 3) Party Wall Act
- 4) Hours of construction

SITE DESCRIPTION

Three-storey semi-detached house located within Broughton Gardens, a 1930's development of modernist houses located off Shepherds Hill.

The property is not listed, it is however located within the Crouch End Conservation Area and is noted as a positively contributing building.

DETAILS OF PROPOSAL

Section 73 application to vary the wording of planning conditions 4 (tree protection measures) & 7 (method of construction statement) of approved development HGY/2020/2352 for the 'Construction of a new ground floor and lower ground floor side extension with a new terrace and addition of a new garage to the front of the existing dwelling' at 4 Broughton Gardens, N6 5RS.

RELEVANT PLANNING AND ENFORCEMENT HISTORY

The property has quite an extensive planning history. The more recent decisions are set out below.

HGY/2023/0990 - Certificate of Lawfulness establishing that the proposed demolition of a concrete walled planter at ground floor level at the front of the property, would constitute the carrying out of a 'material operation' comprised in the development granted planning permission under application reference: HGY/2020/2352 on the 18 November 2020, and for the purposes of Section 56 (1) of the Town and Country Planning Act 1990 would represent the initiation of the development. Decided 27.04.2023.

CON/2022/0233 – Notification of proposed works to trees in a conservation area comprising the re-pollarding of 1 London plane and 8 lime trees in the property's rear garden. No objection was raised to the proposed works. Decided 05.07.2022.

HGY/2020/2352 – Planning permission granted for the construction of a new ground floor and lower ground floor side extension with a new terrace and addition of a new garage to the front of the existing dwelling. Decided 18.11.2020.

HGY/2018/2503 – Approval of a non-material amendment following as grant of planning permission HGY/2016/1965 involving the removal of the approved lower ground floor. Decided 24.08.2018.

HGY/2016/1965 – Planning permission granted for the erection of a side extension at ground floor and lower ground floor level. Decided 02.09.2016.

HGY/2012/0789 – Planning permission granted for the replacement of the property's existing second floor extension with a new larger second floor extension. Decided 03.08.2012.

HGY/2010/0187 – Certificate of lawfulness granted for the erection of a single storey rear extension. Decided 24.03.2010.

There have also been the following previous enforcement investigations relating to the property:

UNW/2010/00467 – Investigation into a complaint that the single storey rear extension being erected at the property exceeded the relevant permitted development height restrictions. The extension was found to meet the relevant PD restrictions and conditions and the case was closed on the 11.08.2010.

TPC/2007/00150 - Investigation into a complaint that unauthorised tree works had been carried out at the property in contravention of s.211 of the Town & Country Planning Act 1990. The investigation revealed that unauthorised tree works had been carried, with the owner/occupier stating they were unaware their property was inside a conservation area. The works were not considered significant to take further action and the case was closed on the 09.21.200, with the owner/occupier being advised of their obligations under sections 210 & 211 of the 1990 Act.

CONSULTATION

The application has been publicised by letters sent to adjoining properties, a site notice displayed in the vicinity of the site and by press notice.

One response has been received objecting to the proposal, raising the following issues:

- Proximity of the proposed new lower level to their property.
- Impact on the remnants of the former Broughton House's grounds.
- Potential increase in the already intrusive floodlighting associated with this property.
- Damage to visual amenity, ecology and heritage.

These matters are dealt with in the considerations section below.

MATERIAL PLANNING CONSIDERATIONS

The main planning considerations raised by the proposed development are:

1. Scope of Section 73 application
2. The impact of the proposed development on the character and appearance of the conservation area;
3. The impact on the amenity of adjoining occupiers;
4. Basement development; and
5. Trees.

Scope of Section 73 application

An application can be made under S.73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. One of the uses of a S. 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied. A S.73 application results in a new permission being issued.

Guidance for determining S.73 applications is set out in the NPPG which states that a minor material amendment is one "whose scale and nature results in a development which is not substantially different from the one which has been approved". This is not a statutory definition, but the Department for Communities and Local Government agree with this statement. It is further stated that the development which the application under S.73 seeks to amend will by definition have been judged to be acceptable in principle at an earlier date. Consequently, the extent of the material planning considerations are somewhat restricted and only the amendments being applied for should be considered at this stage. Having said that, when determining the application, the local planning authority (LPA) will have to consider the application in the light of current policy. The LPA therefore has to make a decision focusing on national or local policies which may have changed significantly since the original grant of planning permission as well as the merits of the changes sought.

Haringey's development plan in the form of its Development Management DPD (2017) and its Local Plan Strategic Policies DPD (2017) remain unchanged from when the original permission was granted. New versions of the London Plan (2021) and the NPPF (2021) have been adopted have been adopted. But the policy approach in these documents in relation to residential extensions and development affecting heritage assets has not materially changed. The overall policy approach relating to the approved development remains consistent.

No physical changes are proposed to the approved development. The proposed wording changes to the wording of conditions 4 (tree protection measures) & 7 (method of construction statement)

involve altering the trigger for discharge of these conditions with the following wording to the start of each condition; 'Save for the proposed demolition of a concrete walled planter at ground floor level at the front of the property, no development shall.....'. This would allow the permission to be implemented prior to the discharge of these conditions. The small planter in question is located to the front of the site away from the trees that condition 4 seeks to protect. The intent of condition 4 is therefore to protect these trees would not be affected by the change in wording.

Similarly, given the small size of the planter, the amount of work involved in its demolition and removal is of such a minor nature that it not being included in method of construction statement required by Condition 7, would not result in any materially significant impact on neighbouring amenity or on highway conditions.

The changes to the wording of these conditions proposed in this section 73 application are considered acceptable.

The rest of this report updates the previous material considerations with relevant policy changes.

Design and character and appearance of the conservation area

DM Policy (2017) DM12 'Housing Design and Quality' states that extensions or alterations to residential buildings, including roof extensions will be required to be of a high, site specific, and sensitive design quality, and respect and/ or complement the form, setting, period, architectural characteristics, detailing of the original buildings, including external features such as chimneys, and porches. High quality matching or complementary materials should be used appropriately and sensitively in relation to the context. Policy DM1 'Delivering High Quality Design' requires development proposals to relate positively to their locality, Local Plan (2017) Policy SP11 requires the highest standard of design that respects its local context and character and historic significance and this is supported by London Plan (2021) Policy D3.

Haringey Local Plan Policy SP12 requires the conservation of the historic significance of Haringey's heritage assets. Policy DM9 of the Development Management, Development Plan Document (2015) states that proposals for alterations and extensions to existing buildings in Conservation Areas should complement the architectural style, scale, proportions, materials, and details of the host building and should not appear overbearing or intrusive. Policy HC1 states that "development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings."

The Crouch End Conservation Area Character Appraisal notes that nos. 1 to 9 (consecutive) Broughton Gardens is a small cul-de-sac between No. 48 and No. 50 Shepherd's Hill that has early to mid-20th Century white-painted three storey dwellings similar in style to those at Nos. 44 to 48 (even) and Nos. 50 to 54 (even) Shepherd's Hill. They include projecting balconies and recessed upper sections to provide roof terraces.

No. 5, terminating the view along Broughton Gardens, is constructed of yellow stock brick and has a flat roof. It presents a blank elevation to the street unworthy of its key position in the cul-de-sac, failing visually to adequately enclose Broughton Gardens. Nevertheless, the group of buildings is considered to make a positive contribution to the conservation area.

It is noted that the proposal follows a previously approved extension, as detailed within the planning history section of this report. The changes from the proposed development involve the reduced footprint of the basement area.

As part of the assessment of the previously approved scheme, it was noted that although the width of the extension would be similar to that of the main building, given the set down of the extension from the main building of approximately 3.8 metres, and that the elements of the extension at ground floor level would not project beyond the existing rear extension and would be set back from the front building line, it is not considered that the proposed extension would appear to dominate the side elevation and would remain subordinate in appearance.

The lower ground floor level and would not be highly visible from either the street or from neighbouring properties. Consequently, it is not considered that the proposal would appear disproportionate in the context of the host dwelling.

It is noted as part of an appeal decision at No. 6 Broughton Gardens, under application reference HGY/2008/0434, dated 30/06/2009, the inspector highlighted the impact of that proposal on the views from the close, with the gaps between nos. 4 and 5 & 5 and 6 playing a positive role in the streetscene, but acknowledged that the gap between nos. 4 and 5 was limited in its extent to its role it played within the streetscene. Unlike the proposal as part of the appeal decision at No. 6, the proposed extension would not extend above No. 5 Broughton Gardens and would extend only at single storey above ground level, with this element being set back approximately 2.4 metres from No. 5 Broughton Gardens and comprising of glazed elements. It is considered that the views of this limited gap, would be retained from the majority of the angles from within the close and would preserve the character and appearance of the streetscene and this part of the conservation area.

The latest application at the site also proposes alterations to the front in terms of the front garage door. Whilst the design of this element would be altered from that of the existing, it is noted that a number of changes have taken place to other garage doors to properties within the cul-de-sac, including that of being converted into habitable spaces. As such, the proposed changes to this part of the building would be relatively small in scale and would not be uncharacteristic when viewed within the context of the locality.

Overall, the proposed development would have an acceptable impact upon the character and appearance of the host property and would preserve the character and appearance of this part of the Crouch End Conservation Area.

Impact on the amenity of adjoining occupiers

The London Plan (2021) Policy D6 Architecture states that design must not be detrimental to the amenity of surrounding housing. DM Policy (2017) DM1 'Delivering High Quality Design' states that development proposals must ensure a high standard of privacy and amenity for the development's users and neighbours. The Council will support proposals that provide appropriate sunlight, daylight and open aspects (including private amenity space where required) to all parts of the development and adjacent buildings and land provide an appropriate amount of privacy to their residents and neighbouring properties to avoid overlooking and loss of privacy detrimental to the amenity of neighbouring residents and the residents of the development and address issues of vibration, noise, fumes, odour, light pollution and microclimatic conditions likely to arise from the use and activities of the development.

The positioning of the extension proposed as part of this application would result in the extension only projecting a similar depth to that of the rear of No. 5. Whilst the extension would be visible from the rear amenity of that property, it is not considered that the proposed extension would appear unacceptably visually obtrusive or overbearing. Similarly, given the distance to neighbouring properties to the south, along Hurst Avenue, the proposed extension would not impinge unacceptably upon the residential amenity of those neighbouring occupiers in terms of outlook, daylight or overbearing impact.

Given that the elements of the proposed extension that would project above ground level would be screened by existing built form to the north by the side wall of the existing dwelling and to the east of the site by the side wall of No. 5, it is not considered that the proposal would result in significant loss of light to any neighbouring occupier.

It is accepted that the extension would be visible to some degree from rear windows and rear gardens along Hurst Avenue and Stanhope Road. However, it is not uncommon to see extensions to properties in rear garden areas, and given the distances involved, it is not considered that the visibility of the extension in itself and the associated levels of lighting produced would result in an unacceptable impact on the visual or residential amenity of any neighbouring occupier. Similarly, the distances involved between the extension and properties along Hurst Avenue and Stanhope Road are considered to be sufficient to prevent overlooking and loss of privacy. Furthermore, a condition is to be attached to the application restricting the use of the roof being used as a roof terrace area.

Noise and pollution from construction works would be temporary and the proposal would be subject a condition relating to the submission of a Construction Management Plan in order to mitigate against the impacts of any potential disturbance. The works would also be subject to the control of pollution act in terms of hours.

Overall, it can be demonstrated that there will be no unacceptable harm to the living conditions of neighbouring residents. As such, the scheme is considered to be in accordance with policies outlined above.

Basement development

Policy SP11 of Haringey's Local Plan requires that new development should ensure that impacts on natural resources, among other things, are minimised by adopting sustainable construction techniques. DM Policy (2017) DM1 requires that there should be no significant adverse impact on other surrounding uses.

Development Management DPD (adopted July 2017) policy DM18 states that basement extensions should not adversely affect the structural stability of the application building, neighbouring buildings and other infrastructure, including the adjoining highway, having regard to local geological conditions; or adversely impact the amenity of adjoining properties by reason of noise or increased levels of internal or external activity.

London Plan (2021) Policy D10 allows Boroughs to establish policies to address the negative impacts of large-scale basement development beneath existing buildings, where this is identified as an issue locally.

Para. 3.10.6 of the London Plan recognises that smaller-scale basement excavations, where they are appropriately designed and constructed, can contribute to the efficient use of land, and provide extra living space. Para. 3.10.4 equally highlights the need to manage sensitively through the planning application process potential impact on the local environment and residential amenity. Para. 3.10.5 goes on to say that impact assessments prior to construction should consider the effects on the ground-borne vibration environment and propose appropriate mitigation, especially for surrounding residents.

Whilst the works would largely be outside the footprint of the existing building, the site is not located within flood risk zones 2 or 3. Given the sloping nature of the site towards the south, the proposed extension would largely be located above ground level. The lower ground floor part of the extension has been significantly reduced from that as part of the previously approved scheme and

would also be largely located above that of the existing ground given the levels changes. As such, surface water discharge to the ground would not be significantly affected.

It is noted that the Council's Building Control Team were consulted as part of the previously approved application at the site and raised no concerns with regards to potential land instability at the site arising from the construction of the extension. The structural integrity of such works would need to satisfy the modern-day building regulations and separate permission would be required under Building Regulations. In addition, the necessary party-wall agreements with adjoining owners would need to be in place. The purpose of the Building Control/ Building Regulations is to ensure that the engineering design is professional and competent, the construction work is undertaken in a skilful and proficient manner and that the sequence of working on site are properly planned and carried out.

Trees

DM Policy (2017) DM1 'Delivering High Quality Design' states that the Council will expect development proposals to respond to trees on and close to the site.

The proposed development would result in the loss of a small number of trees to facilitate the development. However, a arboricultural survey and method statement has been submitted as part of the application, assessing the trees proposed to be removed being category C trees and are not of sufficient quality to retain. The majority of the trees on and adjoining the site would be retained, including that of the higher category B trees within the site. Details of tree protection measures have been submitted as part of the application and a condition is to be attached to ensure that these measures are implemented prior to works commencing on site to ensure these trees would be retained during construction works.

The application site does not fall within any specific policy designation in relation to ecology. The proposed extension would allow for the retention of the majority of the trees on the site and given the residential nature of the use of the site, the immediate locality is not an intrinsically dark landscape. As such, the proposed development would have a limited and acceptable impact upon levels of potential wildlife within the locality.

Conclusions

The proposed extensions are considered to be in keeping with the architectural integrity of the host property and would preserve the character appearance of this part of the conservation area and would not impact unacceptably upon the residential and visual amenities of neighbouring occupiers or result in the loss of trees of special amenity value.

All other relevant policies and considerations, including equalities, have been taken into account. Planning permission should be granted for the reasons set out above. The details of the decision are set out in the RECOMMENDATION.

CIL APPLICABLE

The increase in internal floor area would exceed 100 sq.m. and therefore the proposal is liable for the Mayoral or Haringey's CIL charge. Charging rates have been updated for both CIL charges. Based on the information given on the plans, the updated Mayoral CIL charge will be £8,068.75 (125 sqm x £64.55) and the updated Haringey CIL charge will be £49,202.5 (125 sqm x £393.62 (Indexation included)). This will be collected by Haringey after/should the scheme is/be implemented and could be subject to surcharges for failure to assume liability, for failure to submit a commencement notice and/or for late payment, and subject to indexation in line with the construction costs index. An informative will be attached advising the applicant of this charge.

RECOMMENDATION

Grant permission subject to the following (updated) condition(s):

Conditions:

- 1 The approved plans comprise drawing nos (P-Si-10-001, P-00-20-010, P-01-20-011, P-B1-20-012, E-W[1]20-013, E-S-20-014, E-E-20-015, E-E-20-016, X-AA-20-017, X-CC-20-019, X-EE-20-021, Arboricultural Method Statement, 1417-KC-XX-YTREE-TPP01Rev0, Design & Access Statement, Heritage Statement & Construction Method Statement). 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.

Reason: In order to ensure the development is carried out in accordance with the approved details and in the interests of amenity.

- 2 The development hereby permitted shall be begun not later than the 18th November 2023.

Reason: To ensure the commencement timescale for the development is not extended beyond that of the original planning permission granted on 18th November 2020 Haringey ref: HGY/2020/2352 and to prevent the accumulation of unimplemented planning permissions in accordance with the provisions of the Planning & Compulsory Purchase Act 2004.

- 3 The external materials to be used for the proposed development shall match those specified in the application form.

Reason: To safeguard and enhance the visual amenities of the locality in compliance with Policies DM1, DM8 and DM9 of the Development Management Development Plan Document 2017.

- 4 Save for the proposed demolition of the concrete walled planter at ground floor level at the front of the property, no development shall start until all those trees to be retained, as indicated on the approved drawings, have been protected by secure, stout, exclusion fencing erected at a minimum distance equivalent to the branch spread of the trees and in accordance with BS 3998:2010 and to a suitable height. Any works connected with the approved scheme within the branch spread of the trees shall be by hand only. No storage of materials, supplies or plant machinery shall be stored, parked, or allowed access beneath the branch spread of the trees or within the exclusion fencing.

Reason: In order to ensure the safety and well-being of the trees on the site during constructional works that are to remain after building works are completed consistent with Policy G7 of the London Plan 2021, Policy SP11 of the Haringey Local Plan 2017 and Policy DM1 of The Development Management DPD 2017.

- 5 No part of any structure hereby granted shall be used as a roof terrace or balcony.

Reason: In order to protect the amenity of occupants of the adjoining residential properties consistent with Policy SP11 of the Haringey Local Plan 2017 and Policy DM1 of The Development Management DPD 2017.

- 6 The development hereby approved shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as No.4 Broughton Gardens and shall not be used as an independent dwelling or for commercial purposes, without the prior approval in writing of the local planning authority.

Reason: In the interests of the amenities of the area and to comply with London Plan 2021 Policy D6 and Haringey Local Plan 2017 Policy SP2 which set out appropriate standards and requirements for all new dwellings.

- 7 Save for the proposed demolition of the concrete walled planter at ground floor level at the front of the property, no development shall take place, including any works of demolition, until a Method of Construction Statement, to include details of:

- a) parking and management of vehicles of site personnel, operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials;
- d) programme of works (including measures for traffic management);
- e) provision of boundary hoarding behind any visibility zones;
- f) wheel washing facilities;

have been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented and retained during the demolition and construction period.

Reasons: To ensure there are no adverse impacts on the free flow of traffic on local roads and to safeguard the amenities of the area consistent with Policy T4 of the London Plan 2021, Policies SP0 of the Haringey Local Plan 2017 and with Policy DM1 of The Development Management DPD 2017.

Informatives:

- **INFORMATIVE: Community Infrastructure Levy**
The applicant is advised that the proposed development will be liable for the Mayor of London and Haringey CIL. Based on the information given on the plans, the updated Mayoral CIL charge will be £8,068.75 (125 sqm x £64.55) and the updated Haringey CIL charge will be £49,202.5 (125 sqm x £393.62 (Indexation included)). This will be collected by Haringey after/should the scheme is/be implemented and could be subject to surcharges for failure to assume liability, for failure to submit a commencement notice and/or for late payment, and subject to indexation in line with the construction costs index.
- **INFORMATIVE: Land Ownership**
The applicant is advised that this planning permission does not convey the right to enter onto or build on land not within his ownership.
- **INFORMATIVE: Party Wall Act**
The applicant's attention is drawn to the Party Wall Act 1996 which sets out

requirements for notice to be given to relevant adjoining owners of intended works on a shared wall, on a boundary or if excavations are to be carried out near a neighbouring building.

- **INFORMATIVE: Hours of Construction Work**
The applicant is advised that under the Control of Pollution Act 1974, construction work which will be audible at the site boundary will be restricted to the following hours:-
8.00am - 6.00pm Monday to Friday
8.00am - 1.00pm Saturday
and not at all on Sundays and Bank Holidays.