

Officer's Opinion



Case Number	HGY/2023/1166
Type	Removal/variation of conditions
Location	Ground Floor Flat, 15 Muswell Hill Road, Hornsey, London, N10 3JB
Proposal	Removal/Variation of condition 2 and 3 of planning permission with ref: HGY/2022/2295 to retain the existing terrace.
Case Officer	Ben Coffie
Review Date	23 August 2023
Applicant	E Cherniavsky
Agent	Mr - Young

Opinion

PROPOSED DEVELOPMENT AND LOCATION DETAIL

Proposed development.

The application seeks planning permission for the variation/removal Removal/Variation of condition 2 and 3 of planning permission with ref: HGY/2022/2295 to retain the existing terrace.

Site and Surroundings

The subject site is a semi-detached property converted into two flats. The site is not located in conservation area. The back garden of the property adjoins Highgate Woods.

Relevant Planning and Enforcement history

- HGY/2022/2295 - Single storey rear extension - Approved 30/09/2022
- HGY/2018/2291 - Conversion of existing property containing 2 x self-contained flats (C3 use) into a House in Multiple Occupation (C4 use) and associated formation of front roof dormer extension – Approved 13/03/2019.
- HGY/2015/3619 - Alterations and extensions to two existing flats including ground floor rear extension, new entrance doors, extension of existing first floor terrace and small extension to second floor rear dormer – Approved 01/02/2016.

- HGY/2015/1609 - Certificate of lawfulness for use of property as two flats – Approved 27/07/2015.
- OLD/1966/0197 - Erection of private garage in front garden. – Approved 06/07/1966

Consultation response

- N/A

LOCAL REPRESENTATIONS

The application has been publicised by way letters. The number of representations received from neighbours, local groups, etc. in response to notification and publicity of the application were as follows:

No of individual responses: 0

Objecting: 0

Supporting: 0

MATERIAL PLANNING CONSIDERATIONS

The main planning considerations raised by the proposed development are:

- Background
- Scope of a section 73 application Planning Officer Delegated Report
- Proposed change

Background

As noted above, the original permission (HGY/2022/2295) was granted for the works outlined above.

In the proposed plans of the approved application, the existing terrace was omitted. Planning permission was therefore granted with conditions 2 and 3 were attached which controls the approved plans and restrict the use of the flat roof as a terrace.

Condition 2 reads

The approved plans comprise drawing nos (1.1 Rev 00 & 1.2 Rev 00.). 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.

Condition 3 reads:

The flat roof area of the extension hereby approved shall not be used as a balcony, roof terrace, sitting out area or similar amenity area nor shall any railings or other means of enclosure be erected on top of or attached to the side of the extension without the grant of further specific permission from the Local Planning Authority.

Reason: To protect the amenity of adjoining properties and to comply with Policy SP11 of the Haringey Local Plan 2017 and Policy DM1 of The Development Management DPD 2017.

The current application seeks to vary condition 2 with new drawings (LPS1078) and remove condition 3 to allow the use of the existing terrace.

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 by 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 to be acceptable in principle at an earlier date. Consequently, the extent of the material planning considerations is 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.

In this case since the granting of planning permission, the same policy documents used in the assessment of the proposal are currently adopted. There are therefore no further policy documents that have been formally adopted that materially alter the assessment of the current proposal. The overall policy approach relating to the development in terms of the need to protect residential amenity and design and heritage considerations remain consistent.

Proposed Changes:

The current application seeks to vary condition 2 with new drawings (LPS1078) and remove condition 3 to allow the use of the existing terrace.

The retention of the existing terrace is acceptable in terms of its design and scale. It does not represent an intrusive or incongruous feature at the rear of the property. There is a considerable amount of upper floor rear terraces in the area and there is mutual overlooking into neighbouring garden areas. Therefore the retention of the terrace would not give rise to overbearing levels of loss of privacy through overlooking.

Consequently, the retention of the terrace would not cause significant changes to the character and appearance of the building, or to the residential amenity of neighbouring occupiers. Officers consider that existing terrace represents a minor feature that would not be sufficient to cause material harm, or a different outcome/ recommendation to the original decision to grant planning permission.

As such condition 2 can be varied and condition 3 of the approved planning permission (HGY/2022/2295) can be removed.

Conclusion

The retention can be considered to be minor material amendments to the approved scheme. All other relevant policies and considerations, including equalities, have been taken into account. Planning permission should not be granted for the reasons set out above. The details of the decision are set out in the RECOMMENDATION.

Conditions:

- 1 The development hereby permitted shall be begun not later than the expiration of 3 years from the date of the original grant of permission on the 30/09/2022.

Reason: This condition is imposed by virtue of Section 91 of the Town and Country Planning Act 1990 and to prevent the accumulation of unimplemented planning permissions.

- 2 The development hereby permitted shall be carried out in complete accordance with the approved plans and drawings listed in this decision notice, other than where those details are altered pursuant to the conditions of this planning permission.

Reason: For the avoidance of doubt and in the interests of proper planning.

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Reason: For the avoidance of doubt and in the interests of proper planning.

- 7 The development to which this permission relates must be begun no later than three years from the date of this decision notice, failing which the permission shall be of no effect.

Reason: This condition is imposed by virtue of Section 91 of the Town and Country Planning Act 1990 and to prevent the accumulation of unimplemented planning permissions.

Informatives:

- **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.
- **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: 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.

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