



# Officer Report

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| <b>Application Number:</b> | <b>HGY/2023/2472</b>                                                                                                                                                                                                                                          |
| <b>Application Type:</b>   | <b>Non-Material Amendment</b>                                                                                                                                                                                                                                 |
| <b>Address:</b>            | 1-6 Crescent Mews, Hornsey, London, N22 7GG                                                                                                                                                                                                                   |
| <b>Proposal:</b>           | Non-material amendment following a grant of planning permission HGY/2019/1183 to amend the trigger point of conditions 10 (Excavations/earthworks) (Network Rail) , 11 (OPE) (Network Rail) and 12 (Demolition/refurbishment method statement) (Network Rail) |
| <b>Case Officer:</b>       | Valerie Okeiyi                                                                                                                                                                                                                                                |
| <b>Valid Date:</b>         | 15/09/2023                                                                                                                                                                                                                                                    |
| <b>Applicant:</b>          | Mr Jacob Biren                                                                                                                                                                                                                                                |
| <b>Agent:</b>              | Mr Justin Mills                                                                                                                                                                                                                                               |

## **RECOMMENDATION**

### **Approve**

#### 3.1 Approved development

Demolition of the existing buildings, retention of slab level, perimeter wall along northern boundary of site, and wall adjacent to Dagmar Road gardens, and redevelopment of the site to provide two 3 storey blocks fronting Crescent Mews, a part 1/part 2 storey block adjacent to Dagmar Road and a 4 storey building to the rear comprising 30 residential units (Use Class C3), including 3 disabled car parking spaces, associated landscaping and cycle parking within the development and a new paved and landscaped lane at the front of the development with street lighting. Installation of vehicle and pedestrian access gates at entrance to mews and erection of boundary treatment to the rear of the commercial units.

#### 3.2 Proposed amendments

This application seeks approval for amendments to the trigger points of the following conditions which require approval from Network Rail.

#### Condition 10 (Excavations/earthworks)

The current wording of Condition 10 (Excavations/earthworks) reads;

All excavations/earthworks carried out in the vicinity of Network Rail property/structures must be designed and executed such that no interference with the integrity of that property/structure can occur. If temporary works compounds are to be located adjacent to the operational railway, these should be included in a method statement for approval by Network Rail. Prior to commencement of

works, full details of excavations and earthworks to be carried out near the railway undertaker's boundary fence should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker and the works shall only be carried out in accordance with the approved details. Where development may affect the railway, consultation with the Asset Protection Project Manager should be undertaken. Network Rail will not accept any liability for any settlement, disturbance or damage caused to any development by failure of the railway infrastructure nor for any noise or vibration arising from the normal use and/or maintenance of the operational railway. No right of support is given or can be claimed from Network Rails infrastructure or railway land.

Reason: To ensure the development can be implemented safely in relation to the operational needs and integrity of the adjoining railway line.

This application seeks to amend the wording of Condition 10 (Excavations/earthworks) to read:

All excavations/earthworks carried out in the vicinity of Network Rail property/structures must be designed and executed such that no interference with the integrity of that property/structure can occur. If temporary works compounds are to be located adjacent to the operational railway, these should be included in a method statement for approval by Network Rail. Prior to **below ground works carried out in the vicinity of Network Rail property/structures**, full details of excavations and earthworks to be carried out near the railway undertaker's boundary fence should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker and the works shall only be carried out in accordance with the approved details. Where development may affect the railway, consultation with the Asset Protection Project Manager should be undertaken. Network Rail will not accept any liability for any settlement, disturbance or damage caused to any development by failure of the railway infrastructure nor for any noise or vibration arising from the normal use and/or maintenance of the operational railway. No right of support is given or can be claimed from Network Rails infrastructure or railway land.

Reason: To ensure the development can be implemented safely in relation to the operational needs and integrity of the adjoining railway line.

#### Condition 11 (OPE)

The current wording of Condition 11 (OPE) reads;

At least six weeks prior to works commencing on site, Network Rail's 'Asset Protection Project Manager (OPE)' MUST be contacted. The OPE will require to see any method statements/drawings relating to any excavation, drainage, demolition, lighting and building work or any works to be carried out on site that may affect the safety, operation, integrity and access to the railway.

Reason: To ensure the development can be implemented safely in relation to the operational needs and integrity of the adjoining railway line.

This application seeks to amend the wording of Condition 11 (OPE) to read:

At least six weeks prior to works commencing on site **in the vicinity of Network Rail property/structures**, Network Rail's 'Asset Protection Project Manager (OPE)' MUST be contacted. The OPE will require to see any method statements/drawings relating to any excavation, drainage, demolition, lighting and building work or any works to be carried out on site that may affect the safety, operation, integrity and access to the railway.

Reason: To ensure the development can be implemented safely in relation to the operational needs and integrity of the adjoining railway line.

#### Condition 12 (Demolition/refurbishment method statement)

The current wording of Condition 12 (Demolition/refurbishment method statement) reads;

Any demolition or refurbishment works must not be carried out on the development site that may endanger the safe operation of the railway, or the stability of the adjoining Network Rail structures. The demolition of buildings or other structures near to the operational railway infrastructure must be carried out in accordance with an agreed method statement. Approval of the method statement must be obtained from Network Rail's Asset Protection Project Manager before the development can commence.

Reason: To ensure the development can be implemented safely in relation to the operational needs and integrity of the adjoining railway line.

This application seeks to amend the wording of Condition 12 (Demolition/refurbishment method statement) to read:

Demolition/refurbishment method statement (Network Rail) Any demolition or refurbishment works must not be carried out on the development site that may endanger the safe operation of the railway, or the stability of the adjoining Network Rail structures. The demolition of buildings or other structures near to the operational railway infrastructure must be carried out in accordance with an agreed method statement. Approval of the method statement must be obtained from Network Rail's Asset Protection Project Manager before the development **in the vicinity of Network Rail structures** can commence.

#### 3.2.1 Internal comments received:

Although no consultations are required for an NMA, the amended wording of conditions 10 (Excavations/earthworks, 11 (OPE) and 12 (Demolition/refurbishment method statement) was considered by Network Rail in order to ensure the re-wording of the conditions, still achieves its original purpose.

Network Rail comments: We are satisfied with the NMA regarding the amendments of the wording of the conditions.

## 4. 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.

This application seeks amendments to the trigger points of conditions 10 (Excavations/earthworks) and 11 (OPE) to allow some ground works to take place on the site, but far enough away from Network Rail property/structures without needing the prior approval of Network Rail for these particular works.

This application seeks amendments to the trigger points of condition 12 (Demolition/refurbishment method statement) to allow some demolition works to take place on the site far enough away from Network Rail property/structures, without needing the prior approval of Network Rail for these particular works.

Officers do not have any objection to the re-wording of the above conditions, as Network Rail will still have control over works within the vicinity of Network Rails assets and infrastructure, through the requirement of method statements needing to be submitted to Network Rail and the LPA for assessment and approval. The tweaks to the condition allows for other works to be undertaken without undermining on the whole purpose of these conditions being imposed on the planning consent - protecting Network Rails assets and infrastructure.

Network Rail have been consulted on the changes to the conditions and have do not object.

The tweaks to the conditions are non material in nature as it does not alter the overall control the conditions have over protecting National Rail assets and infrastructure, when other conditions of the consent are discharged.

The proposed new wording of the conditions are agreed accordingly.

On this basis, it is considered that a non-material amendment can be granted.

## 5. RECOMMENDATION

GRANT Non-Material Amendment subject to an informative as follows:

For the Avoidance of doubt, conditions 10, 11 and 12 of planning permission reference HGY/2019/1183 shall read as follows:

### **Condition 10: PRE COMMENCEMENT: Excavations/earthworks (Network Rail)**

All excavations/earthworks carried out in the vicinity of Network Rail property/structures must be designed and executed such that no interference with the integrity of that property/structure can occur. If temporary works compounds are to be located adjacent to the operational railway, these should be included in a method statement for approval by Network Rail. Prior to **below ground works carried out in the vicinity of Network Rail property/structures**, full details of excavations and earthworks to be carried out near the railway undertaker's boundary fence should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker and the works shall only be carried out in accordance with the approved details. Where development may affect the railway, consultation with the Asset Protection Project Manager should

be undertaken. Network Rail will not accept any liability for any settlement, disturbance or damage caused to any development by failure of the railway infrastructure nor for any noise or vibration arising from the normal use and/or maintenance of the operational railway. No right of support is given or can be claimed from Network Rail's infrastructure or railway land.

Reason: To ensure the development can be implemented safely in relation to the operational needs and integrity of the adjoining railway line.

#### **Condition 11: PRE COMMENCEMENT: OPE**

At least six weeks prior to works commencing on site **in the vicinity of Network Rail property/structures**, Network Rail's 'Asset Protection Project Manager (OPE)' MUST be contacted. The OPE will require to see any method statements/drawings relating to any excavation, drainage, demolition, lighting and building work or any works to be carried out on site that may affect the safety, operation, integrity and access to the railway.

Reason: To ensure the development can be implemented safely in relation to the operational needs and integrity of the adjoining railway line.

#### **Condition 12: PRE COMMENCEMENT: Demolition/refurbishment method statement (Network Rail)**

Demolition/refurbishment method statement (Network Rail) Any demolition or refurbishment works must not be carried out on the development site that may endanger the safe operation of the railway, or the stability of the adjoining Network Rail structures. The demolition of buildings or other structures near to the operational railway infrastructure must be carried out in accordance with an agreed method statement. Approval of the method statement must be obtained from Network Rail's Asset Protection Project Manager before the development **in the vicinity of Network Rail structures** can commence.

Reason: To ensure the development can be implemented safely in relation to the operational needs and integrity of the adjoining railway line.

#### **Informatives:**

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