

Officer Report

Application Number:	HGY/2023/2493
Application Type:	Non-Material Amendment
Address:	Land At Townsend Yard, London, N6 5JF
Proposal:	Non-Material Amendment to planning permission HGY/2020/1326 to alter design and layout of Unit 1 to incorporate fire brigade access through an alleyway at ground floor level.
Case Officer:	Matthew Gunning
Valid Date:	18/09/2023
Applicant:	Mr Mark Owen
Agent:	Mr Mark Owen

RECOMMENDATION

Approve

1. INTRODUCTION

This application seeks a non-material amendment to the approved application HGY/2020/1326 which granted permission for the demolition of existing buildings on this site and the construction of 7 mews dwellings with associated landscaping.

The amendments sought in this application are to alter design and layout of Unit 1 to incorporate an access through an alleyway at ground floor level.

2. NON-MATERIAL AMENDMENTS

Legal/ policy context

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 (LPAs) must be satisfied that the amendment sought is non-material in order to grant an application.

Applications for non-material amendments can arise following the design and build stages of a development project, where it is not uncommon that new or unforeseen issues may arise (either prior to or during the implementation phase), that require making an amendment to the originally consented plans.

3. BACKGROUND TO THIS APPLICATION AND FIRE SAFETY ISSUES

The original application ref: HGY/2020/1326 as submitted included information in relation to access and fire safety, specifically swept path analysis which demonstrated that a Fire Tender would be able to access the site in an emergency and turn within Townsend Yard.

The LFB, a non-statutory consultee for planning, were consulted on this application and commented accordingly, outlining the following:

“The Commissioner is satisfied with the proposal. Other comments: The Commissioner would expect the proposals to meet the recommendations of Approved Document B section B5 for access and facilities for the fire service. Where the proposals do not meet the aforementioned guidance, clear indication should be provided concerning how it is proposed that compliance with Requirement B5 of Schedule 1 of the Building Regulations 2010 is to be demonstrated”.

Following the approval of planning permission The LFB raised concerns about access from Highgate High Street to Shepard’s Cottage/ 36a, namely the alleyway being narrow in parts, i.e. 730mm, with 750mm being the general minimum width of a doorway for firefighting access. The LFB then attended the site in an attempt to use the current provisions for access, the LFB indicated that the provisions were too tight (due to obstructions i.e. trees etc) to undertake the appropriate manoeuvre with a fire appliance.

On the submission of such comments the LPA made the applicant/ agent aware of these concerns and advised on the need to explore and consult with the LFB on proposals to meet the relevant requirements with respect of fire safety/ Building Regulations, with thereafter such detail needing to be approved by the relevant building control body, in this case an Approved Inspector as opposed to the Council’s Building Control service.

In respect of Shepard’s Cottage/ 36a, while there is no current right of way / prescribed route over the application site, to this property, as well as a difference in ground levels between the two sites, the applicant is proposing to provide an alleyway through the first dwelling to allow the passage of fire brigade personnel to the rear of the cottage, should it be needed. The alleyway will be gated, and it will be accessible by the fire brigade using a fire brigade key. The deed of ownership in respect of this dwelling which will host the alleyway, will state that the alleyway needs to be left clear at all times. Access beyond this by the owner of Shepard’s Cottage would need to be agreed civilly between the developer or the subsequent owner(s) of Unit 1.

In respect of LFBs concerns about the turning circle on Townsend Yard, the applicant points out that this can be achieved with the implementation of the planning application, namely the removal of the existing wall and vegetation, and the set back of the new homes (as now in part implemented with the works carried out) as such making the road wide enough to turn as per tracking provided in their Fire Strategy, submitted for approval to the Approved Inspector and sent to LFB to comment on.

In respect of the issue of passing over private land, the applicant points out that all of the land on Townsend Yard is private and has sought legal advice in respect of the different title entries and outlines that part of those rights consist of rights to pass and repass over, on foot and within vehicles between points. It is accepted that rights of way can be contested and in this instance the Council cannot arbitrate on such matters, with this being a civil matter.

Equally, notwithstanding the issue of rights of way, the Fire authority has the right to cross over all private land in the event of fire, under the Fire and Rescue Services Act 2004 Section 44.

Notwithstanding the above points, with in the Fire Strategy it is outlined that if it is not possible for a fire appliance to turn at the end of Townsend Yard, a fire pump appliance can reverse 20m from the High Street, as indicated in

the Fire Strategy prepared, with the provision of sprinklers becoming necessary in the most remote dwellings for the purposes of meeting building regulations.

4. PUBLICITY

As an application under Section 96A is not an application for planning permission, the existing Town and Country Planning (Development Management Procedure) (England) Order 2010 (DMPO) provisions relating to statutory consultation and publicity do not apply. Therefore the LPA have discretion in whether and how they choose to inform other interested parties or seek their views.

In this instance the owner of Shepherd's Cottage/ 36a Highgate High Street, local amenity groups and the LFB were notified on this application. At the time of preparing this report 30 representations were received, some of which relate to the merits of the original application HGY/2020/1326. Most of the representations received relate to fire safety and access and are summarised below:

- Application should be considered as an amendment as opposed to a non-material amendment;
- Purpose of the proposed alleyway not explained in application;
- Changes to this application are insufficient for fire access;
- Requirements by LFB have not been considered / concerns for fire safety remain unresolved;
- Escape corridor provided does not provide the LFB with access to handle a potential fire;
- No consultation with the LFB/ the LFB were never properly consulted;
- Passageway being created to allow fire brigade access to Shepherd's Cottage and emergency escape for the occupant in case of fire are welcomed but there is still no viable solution offered for a fire engine to turn around or other service vehicles,
- Owner of Shepherd's Cottage will also need an irrevocable right of way to use the passageway;
- Objection to 'Fire Strategy Report Rev 2' raising concerns in summary -in relation to representing of Shepherd's Cottage; flaws in respect of the design of the access route; question as to whether the occupant of Shepherd's Cottage will equally be given a key; raise concerns about the alleyway not offering a viable alternative means of escape; concerns that a fire engine not being able to reverse into the lane if vehicles are parked on the High Street opposite; the yard being too narrow between No 42 and No. 44 Highgate High Street for a fire appliance to reverse.

(Note: As we have sought to understand the current/ parallel position in respect of building regulations a copy of fire strategy rev 2 (2003) was sent to us by the applicant, in turn being placed on file/ on-line for information purposes as opposed to being a formal document considered in assessing this planning application)

London Fire Brigade –Comments were received from the LFB as set out below. These were sent to the applicant and their Fire Consultant to address (within their Fire Strategy). The fire applicant's fire strategy has been reviewed by the Approved Inspector in consultation with the LFB. However ultimately the consideration for the LPA is whether the changes are non-material or not. It is for the applicant to ensure they can secure compliance with building regulations.

- It is unclear if the Listed Cottage meets the minimum expectations of ADB V1 with regards to Requirement B5: Access and facilities for the fire service, including suitable hose laying distances.

LPA Comment: Information provided in Fire Strategy / distance from fire truck drawing has been provided. This was sent to LFB by the applicant's Approved Inspector. The LPA has also sent this to LFB for any further comments before making a decision on this application, however the LFB have provided no further comments to date despite this being followed up on a number of occasions (16th January and 15th February 2023). Salus Approved Inspectors have however confirmed to the LPA that the fire strategy for the development has been approved. Ultimately, as reflected above, this is not a matter for consideration by the LPA but a building regulations matter.

- Ensure the access gates and alleyways are available at all times for fire appliances and firefighter access, draw your attention to the recommendations of Fire Safety Guidance Note GN 29:

LPA Comment: This is addressed in Fire Strategy sent to LFB, as above and not a matter for consideration by the LPA but a building regulations matter.

- Any locks on the escape routes are to be simple fastenings that are easy to operate, operable from the side that people are escaping, and without the need to manipulate more than one mechanism to ensure quick and safe egress, this includes the gate to the alleyway.

LPA Comment: The Fire Strategy explains that the alleyway will be gated, and it will be accessible by the fire brigade using a fire brigade key. The deed of ownership in respect of this dwelling which will host the alleyway, will state that the alleyway needs to be left clear at all times. Ultimately this is not a matter for consideration by the LPA but a building regulations matter.

Salus Approved Inspectors: - “The amendments to plot 1 do not have any adverse effect on the fire strategy for the development of 7 mews houses at Townsend Yard for which we have approved the fire strategy. The proposed passageway would also allow fire brigade access to the existing cottage”.

5. APPRAISAL

As detailed in Section 2 above, the decision of the LPA has to be based on whether there is a ‘non-material’ change to the development, and not on the planning merits of the proposal in terms of the Development Plan and other material considerations.

Changes to Unit 1

As referred to above the non-material amendment here is to alter the design and layout of Unit 1 to incorporate an access route through this first dwelling to allow the passage of fire brigade personnel to the rear of the cottage, should it be needed.

The original plans as approved showed a solid door in the location where this gated access route will now be introduced. It is considered that the variation here in terms of having a gate opposed to a solid door will not have a material impact on the overall appearance of this terrace of houses or the surrounding area. The fenestration to the front and rear elevations with this Unit will also change as part of the design changes. This end unit as originally approved is already slightly different in height, appearance and layout to the other houses in the terrace as such meaning it can accommodate such changes, without being discernible.

The changes here will also necessitate a reduction in the floorspace to Unit 1 to accommodate the passageway and internal wall, however the unit size (67.8 sq.m) will still meet the requisite London Plan standards (58sq.m) and be of an acceptable layout.

As such the proposed amendments to the scheme as shown in the drawings are considered to be non-material and acceptable in planning terms.

The proposal still satisfies/ meets the legal test of Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires the Local Authority to pay special attention to the desirability of preserving the character and appearance of a conservation area/ setting of listed buildings.

On this basis, the non-material amendments can be granted.

4. RECOMMENDATION

GRANT Non-Material Amendment

INFORMATIVE: For the avoidance of any doubt the gate to the alleyway through plot 1 is to be a 'Corten Gate Woodland Pattern' with Fire Brigade Lock as detailed in drawing 1240-4004, with the other changes to the front elevation shown in drawing 1240-1006.

Informatives:

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