

3 July 2024

London Borough of Richmond
Civic Centre
44 York Street
Twickenham
TW1 3BZ

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990
VARIATION OF CONDITION 2 OF 23/1655/VRC
85 CONNAUGHT ROAD TEDDINGTON TW11 0QQ**

I have been instructed by my Client to submit this application to vary condition 2 on the above referred planning permission, granted at appeal in October 2022.

It is proposed to vary this condition so as to allow for:

- The change to front boundary treatment and bin store which was already consented under 21/3703/FUL ([20/0419/DD01](#)).
- To raise the sill height of the consented windows on the rear elevation, so as to allow more flexible furniture layouts in the room

The site

Connaught Road is a wide, residential tree-lined street with a mixture of terraced, semi-detached and detached two and two and a half storey houses and apartment blocks with small front gardens.

Legal Framework & Guidance

Section 73 of the 1990 Act makes provision for, “the determination of applications to develop land without compliance with conditions previously attached”.

By 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.”*

Accordingly, pursuant to section 73(2)(a), a local planning authority may grant planning permission subject to conditions that differ from those attached to a previous permission and the legal power enjoyed by local planning authorities pursuant to section 73 of the 1990 Act is broad.

The Government has published guidance within its National Planning Practice Guidance (“NPPG”) stating that;

“An application can be made under section 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 section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied.”

and,

“There is no statutory definition of a ‘minor material amendment’ but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.”

The powers inherent to S73 were discussed at length in *Armstrong v Secretary of State for Levelling-Up, Housing and Communities & Anor [2023] EWHC 176 (Admin) (27 January 2023)* and the Courts confirmed that S73 is an enabling clause and that if Parliament had intended that the powers under S73 should be restricted to “minor material” or “non-fundamental” changes to

a condition, it could have clearly expressed this;

As to materiality of considerations, this is limited solely to the condition where variance as sought.

This is confirmed in the NPPG which states:

In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question.

The Amendments Sought

The following four drawings are submitted for consideration:

1910-PL.05-400 Rev B
1910-PL.05-401 Rev B
1910-PL.05-501 Rev A
1910-PL.05-510 Rev A

The varied condition to read:

The development hereby permitted shall be carried out in accordance with the following approved plans: Fire Safety Strategy; BREEAM PreAssessment Report; Energy and Sustainability Statement; Transport Statement; Viability Assessment; Residential Standards Statement; Water Calculator; Sustainability Checklist; Design and Access Statement; Basement Impact Assessment; Drawings: 1910-PL-200; 1910-PL-209; 1910-PL-210; 1910-PL-211; 1910-PL-212; 1910-PL-213; 1910-PL-240; 1910-PL-241; 1910-PL-250; 1910-PL-251; 1910-PL-252; 1910-PL-253; 1910-PL-254; 1910-PL-260; 1910-PL.05-300; 1910-PL.05-302; 1910-PL.05-500; 1910-PL.05-301; 1910-PL.05-501; 1910-PL.05-304 A; 1910- PL.05-303 Rev A; 1910-PL.05-310 Rev A; 1910-PL.05-400 Rev B; 1910- PL.05-401 Rev B; 1910-PL.05-501 Rev A, 1910-PL.05-503; 1910-PL.05-502; 1910-PL.05-510 Rev A, 1910-PL.05-520.

Paragraph 56 of the National Planning Policy Framework states “Planning conditions should only be imposed where they are:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;

6. reasonable in all other respects.”

The policy requirement above is referred to in this guidance as the six tests. The six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.

The table below provides commentary on the relevance of the six tests on the imposed condition.

necessary	As a statement of fact, the changes sought to the front boundary treatment and associated bin store have already been found agreeable by the Council, and there is no change of policy and/or circumstance which would permit the Borough to resile away from its previous determination. Whilst that consent has expired, the Courts have long held that previous permissions are material considerations. As to the rear window, the raising of the sill height is de minimis.
Relevant to planning	
To the development permitted	
enforceable	
precise	The condition would remain enforceable, just with reference to four different plans than currently consented
Reasonable in all other respects	The condition will remain precise as drafted. .
	As noted above, it passes the five previous tests and should therefore be varied.

The effect of the change

These works have already found agreeable by the LPA, and the consent notice and approved drawings are submitted with the application for the benefit of any external party.

Conclusion

The application should be uncontroversial, but should you have any queries regarding the above, please do not hesitate to contact me on 07545 264 252 or at Kieran@krplanning.com.

Yours Faithfully

A handwritten signature in black ink, appearing to read 'Kieran Rafferty', written over a horizontal line.

Kieran Rafferty

BA(URP)