

Our Ref: 24137/CPJ/am
Your Ref: PP-12906960
Email: [REDACTED]

Broadwall House
21 Broadwall
London SE1 9PL

21 March 2024

Planning Department
London Borough of Barnet
2 Bristol Avenue
Colindale
NW9 4EW

Dear Sir / Madam,

**APPLICATION UNDER SECTION 73 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) FOR THE VARIATION OF CONDITIONS 2 AND 6 OF PLANNING PERMISSION N10157A
5 BULWER ROAD, NEW BARNET, BARNET EN5 5JD**

We write on behalf of our client, Harklam Developments Ltd, to submit an application under Section 73 of the Town and Country Planning Act 1990 (the "Act") to amend conditions on planning permission ref. N10157A at 5 Bulwer Road, Barnet EN5 5JD.

Planning permission reference N10157A, dated 09 June 1992, granted consent for:

"Change of use of Telephone Exchange to B1 Light Industrial Use"

This application (Planning Portal Ref: PP-12906960) seeks to amend Conditions 2 and 6 of the consent. It is considered that the imposition of these Conditions is not consistent with the six tests for conditions, as required by the NPPF. Indeed, the Conditions, as currently worded, go beyond what is required in order to make the development acceptable for the reasons set out on the decision notice and are therefore deemed not to be necessary.

The proposals seek a relaxation in the restrictions on the extent of car parking that needs to be retained to facilitate the site's use and on its hours of operation. The variation of these conditions will enable greater flexibility for the building's future use, in line with national and local policy, as set out within this letter.

The following documents have been submitted in support of this application:

- Completed Application Forms;
- Completed CIL Form 1;
- Planning Statement prepared by Firstplan (included in this letter);
- Site Location Plan (via Planning Portal);
- Proposed Site Plan (ref. BAT001-002);
- Transport Technical Note prepared by TTP Consulting; and
- Travel Plan prepared by TTP Consulting.

The requisite fee of £293 has been paid online, together with the £64 planning portal admin fee. Further to this, the LB Barnet 'Fast Track' fee of £1095.67 (incl. VAT) for Services 13, 14 and 15 has been paid direct to LB Barnet via BACS transfer. A copy of the payment receipt and application will be submitted via email to planning.premium@barnet.gov.uk as required.

Site and Surroundings

The application site comprises a two-storey building with basement and converted attic, known as 'Constable House', and its associated car parking area, which is to the western side of the building. There is a single storey ancillary building to the rear (southern) boundary of the site. The application site was originally a Police Station, and is known to have been converted from a Telephone Exchange to a Light Industrial Use with associated parking for 21 cars in June 1992. The application site has most recently been in office use. It is noted that both the originally consented 'B1 Light Industrial' use and most recent Office Use now fall under Class E of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. There are no land use restrictions on the permission and the building is considered to have open Class E use.

The main building is sited to the eastern side of the plot, with both the building and parking area accessed from the northern side from Bulwer Road. The surrounding area is largely residential in character. The site and its immediate context are demonstrated at Figure 1.

Figure 1. Views of Application Site



In terms of London Borough of Barnet Local Plan, the site is not subject to any site-specific policy designations and is not within a Conservation Area. The site is not statutorily listed but is locally listed. There are no Tree Preservation Orders on the site. The site is in Flood Zone 1, an area with low probability of flooding.

Details of Conditions 2 and 6 of Planning Permission ref. N10157A

Condition 2

Condition 2 of the permission states:

“Before this development is occupied turning space and parking spaces shall be provided and marked out within the site in accordance with a scheme to be approved by the Local Planning Authority and that area shall not thereafter be used for any purpose other than the parking and turning of vehicles.”

The reason for the imposition of the condition is noted as:

“To ensure that parking and associated works are provided in accordance with the Councils standards in the interests of safety and the free flow of traffic.”

This application seeks to amend this condition and proposes a revised car parking layout for approval and retention. A new Proposed Site Plan (ref: BAT001-002) is provided and demonstrates the retention of a parking area to include 9 parking spaces, with southern end of the site instead offering an area which can be used more flexibly by potential future occupiers and offers parking provision that better aligns with current parking standards.

Condition 6

Condition 6 of the permission states:

“That no work shall be carried out on the premises at any time of Sundays or Public Holidays, before 8am or after 1pm on Saturdays, or before 8am or after 6pm on other days.”

The reason for the imposition of the condition is noted as:

“To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties.”

This application seeks to amend this condition to provide more flexibility over the weekday operating hours, alongside removing the weekend hours.

It is noted that Condition 6 had previously been varied to extend the weekday operating hours, under application ref. N10157C/03 dated 22 October 2003. This approved the following change to the wording of Condition 6 (with the reasoning remaining as per the original permission):

“No work shall be carried out on the premises at any time of Sundays or Public Holidays, before 8am or after 1pm on Saturdays, or before 8am or after 7pm on other days.”

As set out in Government guidance (Paragraph: 015 Reference ID: 17a-015-20140306), permission granted under Section 73 takes effect as a new, independent permission and a Section 73 decision notice “*should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect.*”

However, in this case, the Decision Notice for the previous Section 73 permission (ref. N10157C/03) did not list in full the conditions as applied to the original consent. As such, for completeness, this application seeks to vary the original consent (ref. N10157A) to create a separate new, independent permission, which the applicant would implement to wrap up both changes.

For ease of reference, copies of both decision notices have been provided at Appendix 1 and Appendix 2.

Appendix 1
Appendix 2

Planning Guidance – Use of Planning Conditions

Paragraph 55 of the National Planning Policy Framework (NPPF, 2023) states that:

“Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions”.

Paragraph 56 of the NPPF makes clear that planning conditions should be kept to a minimum, and only imposed where they are:

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

6. reasonable in all other respects

The NPPG confirms that each of the six tests needs to be satisfied for each condition which an authority intends to apply.

Paragraph 21a-001-20140306 of the NPPG further states that:

“The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls”.

It goes on to state that any proposed condition that fails to meet one of the six tests should not be used. In the context of this application, consideration is specifically given to Test 1 ‘necessary’.

In terms of ‘necessary’, guidance and caselaw has demonstrated that in order to impose a condition, there must be a definite planning reason for it. In addition, if a condition is found to be wider in scope than is necessary to achieve the desired objective, typically set out in the reason for the imposition of the condition, it will fail the test of necessity.

Justification for Minor Material Amendment

Condition 2

In order to address the variation of this Condition, it is important to consider the reason for its imposition. As set out on the decision notice at Appendix 1, the justification for Condition 2 is:

“To ensure that parking and associated works are provided in accordance with the Councils standards in the interests of safety and the free flow of traffic.”

The above reason makes no reference to any development plan policies; however, in respect of traffic and parking conditions NPPF Paragraph 115 states that:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe”

This application seeks to amend this condition and proposes a revised car parking layout for approval and retention. To support the revision, a new Proposed Site Plan (ref: BAT001-002) is provided and demonstrates the retention of 9 parking spaces (including 1no. accessible space) within the car park; with provision of an area to the southern side which can be used more flexibly and will support the building’s Class E use. It is envisaged the space could continue to be used for car parking or as servicing, storage or outdoor amenity space to suit the needs of a future occupier. The intention is to provide maximum flexibility for any future Class E tenant. An extract of this plan is provided at Figure 2.

Figure 2. Extract of Proposed Site Plan



This will increase the desirability and usability of the site for a future occupier, which will both assist in securing the site’s reoccupation and in reducing car dependency and the number of vehicles within Barnet, which is consistent with planning policy objectives across the Development Plan.

The following revised wording for Condition 2 is proposed:

“Space to accommodate the parking and turning of vehicles shall be provided and marked out as shown on drawing BAT001-002 and shall thereafter be retained and the shown parking spaces shall not used for any purpose other than the parking and turning of vehicles.”

In this regard, the application is supported by a Transport Technical Note prepared by TTP Consulting, which demonstrates that the reduction in the area to be retained for car parking would be entirely acceptable, concluding that:

“In summary, it is considered that:

The site is in an accessible location served local bus routes and is close to New Barnet Train Station;

A reduction in car parking on site would accord with current planning policy, which seeks to reduce use of the private car;

A Travel Plan has been prepared that contains a range of measure to encourage and facilitate the use of non car modes of transport for trips to and from the site; and

There is capacity in the vicinity of the site to accommodate any increase in demand for on street parking.

It is therefore concluded that the proposed variation of condition 2 of the 1992 planning consent to allow flexible use of part of the on site parking area would be acceptable from a transport perspective.”

The application is also supported by a Travel Plan prepared by TTP Consulting. This is an outline document that is intended to be developed and implemented by the future occupier of the building, to encourage and facilitate travel to/from the site by sustainable modes of transport.

In light of the above, as currently worded, Condition 2 is considered to fail tests set out within the NPPF, specifically Test 1 'necessary'. This is because it goes beyond what is required to make the development acceptable and ensure compliance with transport policy objectives, which have changed in the 30+ years since the original grant of planning permission. The existing condition is wider in scope than is considered necessary to achieve the desired objective, which is to maintain the benefit of parking and in the interests of safety and the free flow of traffic.

As demonstrated by the Transport Note and Travel Plan, the proposed variation of Condition 2 to incorporate a smaller parking area will ensure that these objectives remain fulfilled. Accordingly, the condition can be varied as requested.

Condition 6

In order to address the variation of this Condition, it is important to consider the reason for its imposition. As set out on the decision notice at Appendix 1, the justification for Condition 6 is:

“To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties.”

As noted above, this condition had previously been varied to extend the weekday operating hours, under application ref. N10157C/03 dated 22 October 2003. This approved the following change to the wording of Condition 6 (*our underlining*) with the reasoning remaining as per the original permission:

“No work shall be carried out on the premises at any time of Sundays or Public Holidays, before 8am or after 1pm on Saturdays, or before 8am or after 7pm on other days.”

This application seeks to further amend this condition to provide more flexibility over the weekday operating hours. The proposed amended wording for Condition 6 is:

“The premises shall not be used before 07:00 or after 19:00 on weekdays, or at any time on Saturdays, Sundays or Public Holidays.”

This amendment will increase the desirability and usability of the site for a future occupier and assist in securing its reoccupation, which is consistent with planning policy objectives across the Development Plan. While it is noted this would form a minor increase in the operational hours on weekdays (by one hour over those previously permitted under application ref. N10157C/03), this would be offset by the removal of Saturday operating hours, and retention of the restriction on operation on Sundays and Public Holidays. It is considered that extending the operating hours would provide enhanced flexibility of potential occupiers of the building without being detrimental to the residential amenities of the area. This is wholly in line with the previous consent to amend the operating hours at the site.

These hours are deemed appropriate for Class E uses, which are uses deemed appropriate in a residential area, as outlined in the Use Classes Order. As such, the proposed amendment is still considered to achieve the desired objective of the condition, which is to protect the amenity of neighbouring occupiers of their properties. As currently worded, Condition 6 is considered to fail tests set out within the NPPF, specifically Test 1 'necessary'. This is because it goes beyond what is required to make the development acceptable and ensure compliance with policies seeking to protect residential amenity.

Conclusion

In light of the above, the amendments proposed ensure that conditions 2 and 6 meet the six tests set out within the NPPF and are no wider in scope than is required in order to make the development acceptable.

The proposals are driven by the Applicant's ambition to enhance the flexibility and desirability of this building. These amendments will assist in securing a suitable, long-term occupier for the building and bring its use in line with the Government's objectives for Class E uses. This amendment is considered to be wholly acceptable, and we therefore request that this Minor-Material Amendment is permitted at the earliest opportunity.

We trust that the information enclosed is sufficient to enable the Council to process and determine the application. However, should you require anything further or clarification on any point, please do not hesitate to contact me.

Yours Sincerely



CHRIS PIRIS-JONES
Director

Encs.

**APPENDIX 1 | DECISION NOTICE FOR
APPLICATION REF. N10157A**



LONDON BOROUGH

PLANNING GROUP (BARNET HOUSE)
1255 HIGH ROAD
WHETSTONE

DIRECTOR TONY WILLIAMS CEng MICE

LONDON N20 0EJ

TECHNICAL SERVICES

Tel. No. 081 446 8511

TOWN AND COUNTRY PLANNING ACT 1990
GRANT OF PLANNING PERMISSION

Applicant: Mr B Williams
Agent: D L Jackson
Address: 41 Old Park View
ENFIELD
Middx
EN2 7EG

Application No: N10157A
Registered Date: 21st April 1992

TAKE NOTICE that the Barnet London Borough Council, in exercise of its powers as Local Planning Authority under the above Act, hereby:

GRANTS PLANNING PERMISSION for:-

Change of use of Telephone Exchange to B1 Light Industrial Use.

at:-

5, Bulwer Road, NEW BARNET, Herts

as referred to in your application and shown on the accompanying plan(s):

subject to the following CONDITION(S):-

01

This development must be begun no later than five years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act, 1990.

02

Before this development is occupied, turning space and parking spaces shall be provided and marked out within the site in accordance with a scheme to be approved by the Local Planning Authority and that area shall not thereafter be used for any purpose other than the parking and turning of vehicles.

Reason: To ensure that parking and associated works are provided in accordance with the Council's standards in the interests of safety and the free flow of traffic.

03

Before the building hereby permitted is occupied the proposed window in the North East and South-East elevations facing Lytton Road shall be glazed with obscure glass only and shall be permanently retained.

Reason: To safeguard the privacy of neighbouring residents.

04

The equipment provided for ventilation and fume extraction which are to be used by reason of granting of this permission shall be installed and operated so as to prevent any nuisance from fumes and/or paint odours to occupiers of neighbouring premises.

Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties.

05

All machinery and equipment including air conditioning, fume and extraction system is to be used by reason of the grant of this permission shall be installed and operated so as to prevent transmission of noise (and vibration) into any adjacent properties.

Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties.

06

That no work shall be carried out on the premises at any time on Sundays or Public Holidays, before 8am or after 1pm on Saturdays, or before 8am or after 6pm on other days.

Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties.

INFORMATIVE(S):-

01

The plans accompanying the application are:- Site plan; Location plan

02

Access is for small vehicles only and unsuitable for heavy vehicles.

DIRECTOR TONY WILLIAMS CEng MICE

TECHNICAL SERVICES

Date of Decision: 9th June 1992

Date of Issue: 25 JUN 1992

Signed: T M JEFFREY
Controller of Development Services 

NOTES

1. Your attention is drawn to the attached Schedule which sets out the rights of an applicant who is aggrieved by a decision of the Local Planning Authority.
2. This notice relates solely to the grant of planning permission and does not purport to convey any approval or consent which may be required under the Building Regulations or for any other statutory purpose.

**APPENDIX 2 | DECISION NOTICE FOR
APPLICATION REF. N19157C/03**

Head of Planning,
Barnet House, 1255 High Road, Whetstone, London. N20 0EJ
Contact Number: 020 8359 4677

PLANNING

Applicant: Mr. S. N. Colthorpe
Agent: Mr. S. N. Colthorpe
36 Oakleigh Park South
Whetstone, London
N20 9JP

Application No: N10157C/03
Registered date: 24 July 2003

TOWN AND COUNTRY PLANNING ACT 1990

GRANT OF PLANNING PERMISSION

TAKE NOTICE that the Barnet London Borough Council, in exercise of its powers as Local Planning Authority under the above Act, hereby:

GRANTS PLANNING PERMISSION for:-

Variation of condition 6 (hours of use) of planning permission N10157A dated 9.6.1992. Change of use of telephone exchange to B1 light industrial to allow the premises to be used between 8am and 7pm Monday to Friday. (Hours for Saturday remain the same 8am - 1pm and no working Sundays and Bank Holidays).

At:- 5 Bulwer Road Barnet Hertfordshire EN5 5JE

as referred to in your application and shown on the accompanying plan(s):

Subject to the following condition(s):-

- 1 No work shall be carried out on the premises at any time on Sundays or Public Holidays, before 8am or after 1pm on Saturdays, or before 8am or after 7pm on Monday to Friday.

Reason:

To ensure that the development does not prejudice the enjoyment by neighbouring occupiers of their properties.

INFORMATIVE(S):-

- 1 The plans accompanying this application are:- Four unnumbered and letter dated 16 September 2003.

Date of Decision: 22 October 2003

Signed



**Acting for Development
Control Planning Manager**

**Graham Beattie
Director of Environment**

NOTE(S):-

- 1 Your attention is drawn to the attached Schedule which sets out the rights of an applicant who is aggrieved by a decision of the Local Planning Authority.
- 2 This Notice relates solely to a planning decision and does not purport to convey any approval or consent which may be required under the Building Regulations or any other statutory purpose.