

06 April 2022

Mr Richard Hart

Team Leader (Development Management)
Planning and Regeneration Services
Gravesham Borough Council

Dear Mr Hart

Application for Non-Material Amendment for minor changes to consented Class O prior approval application (ref 20210962) at Joynes House, New Road, Gravesend.

I hereby submit an application for a non-material amendment to the above approved development under reference 202110962. This is one of four applications relating to this building. (See plan in Appendix 1).

As briefly discussed on the telephone, Councils have the ability to entertain amendments to Class O applications by virtue of the following:-

1. General Permitted Development Order 2015 in Paragraph W (Procedure for applications for prior approval under Part 3) provides discretion through sub-paragraph 12 (W.12):-

(12) The development must be carried out—

(a) where prior approval is required, in accordance with the details approved by the local planning authority;

(b) where prior approval is not required, or where sub-paragraph (11)(c) applies, in accordance with the details provided in the application referred to in sub-paragraph (1),

unless the local planning authority and the developer agree otherwise in writing.

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2. Section 96A(1) of the T&C PI Act provides that an LPA “*may make a change to any planning permission.... relating to land in their area if they are satisfied that the change is not material*”.

“The Permission” in respect of Class O Prior Approval schemes is actually granted by the GPDO. This is made clear in Article 3 of the GPDO 2015 which provides that:

“(1) Subject to the provisions of this Order....., planning permission is hereby granted for the classes of development described as permitted development in Schedule 2.

(2) Any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2.”

On the basis that a Prior Approval decision is therefore akin to a normal planning permission (albeit granted through the GPDO), it follows that the ability to amend planning permissions (either by S73 or 96A) should be afforded to such decisions. This has been confirmed by the following case law.

- The High Court Judgment in *Pressland v Hammersmith and Fulham LBC* [2016] EWHC 1763 (Admin) confirmed that it was possible to make a S73 application to amend any of the conditions imposed by the LPA in a prior approval application, or indeed the conditions imposed by the Secretary of State in the GPDO Order itself (paragraph 52 of the judgment). In other words, for the purposes of amending a prior approval scheme, a Prior Approval determination under the General Permitted Development Order 2015 was tantamount to a normal planning permission (albeit it is a General Consent made by Government) and, therefore it is possible to amend such schemes in the same way as normal planning applications.
- The Fulford Court of Appeal Judgment in *R. (on the application of Fulford Parish Council) v York City Council* [2019] EWCA Civ 1359 confirmed that S96A could be used to amend changes to different types of planning permissions (in this particular case reserved matters approvals):

[35] “In my judgment, the “planning permission” to which [section 96A](#) refers is the package consisting of the grant of planning permission itself, together with any conditions to which the grant is subjected, whether the conditions are imposed at the time of or subsequent to the grant of permission.”

As a Section 96A amendment does not result in a new “permission” (unlike a Section 73), there are no implications relating to the inability to submit new Class O applications through the GPDO.

3. Legal commentary:-

- See Article here [Can a developer make an application for a non-material amendment under section 96A Town and Country Planning Act 1990 to amend a prior approval of permitted development? | Global law firm | Norton Rose Fulbright](#)

4. Precedents:-

There are numerous examples of NMA Applications for Prior Approval Applications including the following:-

- LB Richmond application reference 14/3498/NMA for: “*Change of use from Class B1(a) to Class C3 residential comprising three flats. [Application for a Non Material Amendment to Prior Approval 14/3498/P3JPA to allow a change of position of access staircase and modification to internal arrangement]*”
- Reigate and Banstead - 19/01964/NMAMD1 for :- Non-Material Amendment to 19/01964/PAP30 : Changes to the internal layout plan of the flats. Warwick House 67 Station Road Redhill Surrey RH1 1QU.
- London Borough of Harrow - Non-Material Amendments to Prior Approval P/0326/17 dated 06/03/2017 for Conversion of Offices (Class B1a) to 14 Self-Contained Flats.

In view of the above I consider there to be little doubt that the Prior Approval scheme in question can be amended through Section 96A of the T&C Planning Act 1990.

The amendments are sought in order to provide a more spacious and improved layout of a number of the proposed units. There will be no change in the total number of flats to be created, in this case 13 units. Each flat will meet the Nationally Described Space Standards, as required by Article 3 (9A) of the GPDO. In terms of the prior approval issues, each habitable room of each flat will have access to ample natural daylight. There will have no implications for flood risk, contamination, nor impacts from commercial noise. Similarly there will be no additional highway impacts given the good level of parking available on-site and safe access arrangements, as acknowledged in the Officers Report for the original Class O applications.

For all of these reasons and given the discretion afforded to Councils to agree changes to approved schemes by Paragraph W of the GPDO and the case law cited above, it is considered that there is no justifiable reason not to accept the proposed changes as non-material amendments to the consented scheme.

If you have any queries or require any further information please do not hesitate to contact me.

Yours sincerely

Ruth Harding (Gemini Planning Services Ltd)

APPENDIX 1 – Plan showing Original Class O applications relating to Joynes House

