

7th May 2025

Dear Sir / Madam,

Application to vary condition 2 attached to AWDM/0615/13 to accommodate a revised site layout and amended design for Plot 1

Introduction

On behalf of our client, Harlington Homes Ltd, we are submitting an application pursuant to section 73 of the Town and Country Planning Act (1990) to vary condition 2 attached to application ref: AWDM/0615/13. The description of development is as follows:

Demolition of The Drive and redevelopment to provide four detached houses, together with access road, parking and landscaping (including felling of trees/replacement planting.

Whilst application ref: AWDM/0615/13 was followed by an application via Section 73 of the Town and Country Planning Act (1993) to amend the approved design of Plot 4, this permission was never implemented and has subsequently lapsed. AWDM/0615/13 proceeded to be implemented and is therefore the operative permission capable of amendment via Section 73.

Condition 2 attached to AWDM/0615/13 concerned the plans and documents subject to the approval and stated the following:

The development hereby permitted shall be carried out in accordance with the following approved plans including ground levels unless specified by any other condition attached to this planning permission:-

*Drawing No 5278 LOC 4 Date validated 18.6.13
Drawing No 5278 -32-J Date received 13.9.13
Drawing No 5278 -33 Date validated 18.6.13
Drawing No 5278 -34 Date received 13.9.13
Drawing No 5278 -41-B Date received 2.9.13
Drawing No 5278 42-A Date validated 18.6.13*

Drawing No 5278 -43-C Date received 15.7.13
Drawing No 5278 44-E Date received 2.9.13
LLD251 Existing Tree Schedule received 26.6.13
Bat Survey received 18.6.13
Bat Survey received 17.7.13
Ecological Survey: February 2005

As a starting point, it is helpful to clarify the scope of Section 73 as it relates to variation of planning permissions. Recent case law has helpfully clarified the scope of Section 73 to amend planning permissions. It is now understood that a subjective assessment of whether a proposal to vary a condition represents a “*minor material*” amendment to the planning permission unlawfully narrows the scope of a Section 73 application.

In *Armstrong v Secretary of State for Levelling-up, Housing and Communities & Anor* [2023] EWHC 176 (Admin)¹, the High Court considered whether a wholesale redesign of a previously approved dwelling could be dealt with via a Section 73 amendment. In summary, the High Court held that there is nothing within the wording of Section 73 that limits its scope to amendments that are “*minor*” in nature. The legislation simply refers to applications for planning permission for the development of land *without complying with conditions subject to which a previous planning permission was granted*. If it was the intention of Parliament to reduce the scope of the application to certain types of amendments, the legislation would have been expressly worded to enable such limitations to be made. The Court’s judgement therefore effectively diminishes the entire concept of a “minor material amendment”.

The Court went on to explain that only limitation to an amendment under Section 73 is that it must maintain consistency with the operative part of the development; i.e., works forming part of the description of the development and within the red line area of the original planning application. Should conflict be avoided in this regard, there is nothing to suggest that amendments to details pursuant to the conditions of the planning permission cannot represent fundamental or substantial variations to the permission. This does not mean that approval will automatically be granted to vary or remove a condition and each application will be assessed on its individual planning merits. In this case, key planning consideration will include the quality of the design and its relationship with the site and character of the area.

The description of development for the approved scheme did not refer to any specific detail relating to the proposed dwellings, e.g., dwelling style, architectural features, storey height or number of bedrooms. As a result, there is sufficient flexibility within the description to allow for a new designed to be approved under Section 73 without any conflict with the operative part of the development. The proposed amendments do not require any alteration to the approved site area for the application.

¹ The High Court’s judgement was recently upheld by the Court of Appeal in *Test Valley BC v Fiske* [2024] EWCA Civ 1541 and the principles identified in *Armstrong* therefore still apply.

Nature of Amendments Sought

Amendments are sought to the overall site layout to accommodate a relocated Plot 1 together with a new design for the dwelling. The overall site layout as shown in the submitted plans has also been updated to reflect the wider changes that have taken place on site over the years, namely the subdivision of the former Plot 3 to create two dwellings, which was approved under application ref: AWDM/0692/20. Given the need to ensure that only four dwellings are proposed in accordance with the description of development, the previously approved plot 2 has been removed from the site layout. No changes are required to the red line site area.

It should be noted that a separate application has been submitted to include two additional dwellings in this location, mirroring the layout approved under application ref: AWDM/0530/25, where three dwellings were approved within the former location of Plots 1 and 2. The present application should therefore be considered alongside this application for context.

To accommodate the amendments sought, it is requested that Condition 2 is varied to include updated drawings and replace those previously approved. The existing wording of this condition has been set out below with the drawings proposed to be replaced with updated drawings highlighted in green.

2. The development hereby permitted shall be carried out in accordance with the following approved plans including ground levels unless specified by any other condition attached to this planning permission:-

Drawing No 5278 LOC 4 Date validated 18.6.13

Drawing No 5278 -32-J Date received 13.9.13

Drawing No 5278 -33 Date validated 18.6.13

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Drawing No 5278 -41-B Date received 2.9.13

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Drawing No 5278 -43-C Date received 15.7.13

Drawing No 5278 44-E Date received 2.9.13

LLD251 Existing Tree Schedule received 26.6.13

Bat Survey received 18.6.13

Bat Survey received 17.7.13

Ecological Survey: February 2005

We therefore respectfully request that the Council varies Condition 2 in accordance with the above.

Parker Dann Ltd

07.05.2026

