

CHANGING A PLANNING PERMISSION AFTER IT HAS BEEN GRANTED

Graham Gover Solicitor LARTPI
RTPI CPD day 21 May 2019



*There is nothing permanent
except change*

Heraclitus

PROBLEMS

Lack of a single system of change: s73 and s96A

Limitations of both

Misunderstanding of both

Misleading PPG, conflict with case law.



SECTION 73

Applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.



SECTION 73

Applies to **applications for planning permission for the development of land** without complying with conditions subject to which a previous planning permission was granted.

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Whilst section 73 applications are commonly referred to as applications to "amend" the conditions attached to a planning permission, a decision under section 73(2) leaves the original planning permission intact and unamended.

Pye v The Secretary of State for the Environment and North Cornwall District Council [1999] P.L.C.R. 28

There exists two permissions: the original and the new. The applicant may choose whether to implement the original planning permission or the new planning permission

Pye v The Secretary of State for the Environment and North Cornwall District Council [1999] P.L.C.R. 28

SECTION 73

Applies to applications for planning permission for the development of land **without complying with conditions** subject to which a previous planning permission was granted.

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CONDITIONS ONLY, SO...

- cannot change the development description
- cannot change any of the application material where it is incorporated in the development description
- cannot change the plans unless there is a condition specifying the plans.

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SECTION 73

Applies to applications for planning permission for the development of land without complying with conditions subject to which a previous **planning permission** was granted.

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PLANNING PERMISSION

Planning permission only, so

- applies to 'full' consent
- applies to outline consent
- applies to permission granted by GPDO.

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PLANNING PERMISSION

- does not apply to reserved matters approval
- does not apply to expired permissions
- can't be used to change a condition specifying when development must be **begun.**

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PLANNING PERMISSION

- can't be used to change a condition specifying when development must be **begun**
- BUT
- planning permission granted by a development order specifies the date by which a change of use must be completed.

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PLANNING PERMISSION

GPDO 2015 as amended
Class O Office to residential C3

Conditions

0.2.(2) Development under Class O is permitted subject to the condition that it must be completed within a period of 3 years starting with the prior approval date.

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SECTION 96A

*(1) A local planning authority may make a change to any planning permission relating to land in their area if they are satisfied that the change is **not material**.*

How do you assess whether it is material?

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SECTION 96A

(2) In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.

Materiality is a matter of planning judgment.

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SECTION 96A

Is there a definition of a non-material amendment

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 must be satisfied that the amendment sought is non-material in order to grant an application under [section 96A of the Town and Country Planning Act 1990](#).

Paragraph: 002 Reference ID: 17a-002-20140306

Revision date: 06 03 2014

010

SECTION 96A

It must be of significance, of substance and of consequence. Put simply, it has to matter. That does not mean that it has to be harmful. However, an obvious lack of harm in planning terms may point to a lack of consequence and in turn of materiality, even possibly where the changes may themselves be extensive and/or numerous.”

APP/5450/A/09/2119243 25 June 2010

010

SECTION 96A

(3) The power conferred by subsection (1) includes power:

- (a) to impose new conditions;*
- (b) to remove or alter existing conditions.*

It is not

- an application for the development of land
- the grant of a new planning permission.

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SECTION 96A

(3) The power conferred by subsection (1)

includes power:

- (a) to impose new conditions;*
- (b) to remove or alter existing conditions.*

So what else is possible?

Development description?

Commencement?.

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SECTION 96A

Unlike applications for planning permission, including s73, the application may only be made *by or on behalf of a person with an interest in the land to which the planning permission relates*

Developer with an option to purchase?

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COMPARISON OF 73 AND 96A

Annex A: Flexible options for planning permissions

	s96A	S73
Is it a new permission?	No	Yes
Expiry date	Same as original (same permission)	LPAs impose the same date
Design and access statement?	No	No
Right of appeal?	No	Yes (s78)
Fee?	Householder £28 Rest £195	£195
Time limit	28 days	Same as original

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CHANGING THE PLANS

If there is a condition listing the plans, use s73

If the permission is for the development “subject to the plans received on 1 June 2017”

- Use s96A minor material amendment, then
- Use s73 to vary that condition.

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POWER OF THE LPA, S73

LPA may:

1. Grant the application with different conditions
2. Grant the application unconditionally (save for s91, s92 commencement)
3. Refuse the application.

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DISCRETION OF THE LPA

It is an application for the development of land

- the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted (so not its acceptability)
- the provisions of the development plan, so far as material to the application, and any other material considerations.

010

PPG

Guidance

Flexible options for planning permissions

Options for amending proposals that have planning permission.

Published 6 March 2014

From: [Ministry of Housing, Communities & Local Government](#)

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PPG

How are the conditions attached to a planning permission amended?

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.

Paragraph: 013 Reference ID: 17a-013-20140306

Revision date: 06 03 2014

010

[Planning Act 1990](#) to vary or
associated with a planning
the uses of a section 73
a minor material amendment,
relevant condition that can be varied

Reference ID: 17a-013-20140306

Annex A: Flexible options for planning permissions

	Application under section 96A for non-material amendment	Application under section 73 for development without compliance with original conditions /minor material amendment
Who can apply?	A person with an interest in the land.	In theory anybody. In practice, copyright considerations may limit it to the original applicant or someone authorised by them.
What is the application process?	Standard application form	
What is the application	Local planning authority has to be satisfied it is	Development plan and material considerations, under

PPG

Is there a definition of 'minor material amendment'?

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.

Pre-application discussions will be useful to judge the appropriateness of this route in advance of an application being submitted.

Paragraph: 017 Reference ID: 17a-017-20140306

Revision date: 06 03 2014

LIMITS - ARROWCROFT

Can't create a fundamentally different scheme, e.g.

Outline planning permission granted 1998 for 40,000 seat multi-purpose arena, 1 food superstore [ASDA] and 1 variety superstore [M&S] with associated small retail, service and community units

S73 application to substitute the variety store for up to six non-food stores.

Decision quashed.

LIMITS - ARROWCROFT

The variation has the effect that the "operative" part of the new planning permission gives permission for one variety superstore on the one hand, but the new planning permission by the revised conditions takes away that consent with the other.

R. v Coventry City Council ex p. Arrowcroft Group Plc [2001] P.L.C.R. 7

LIMITS - ARROWCROFT

*Thus the council is able to impose different conditions upon a new planning permission, but only if they are conditions which the council could lawfully have imposed upon the original planning permission in the sense that **they do not amount to a fundamental alteration of the proposal** put forward in the original application.*

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CORRECT TEST?

“minor material amendment” PPG

“not substantially different” PPG

“not a fundamental alteration” Arrowcroft.

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FUNDAMENTAL | FʌNDə'MENT(ə)L |

adjective

- affecting or relating to the essential nature of something or the crucial point about an issue: *the fundamental problem remains that of the housing shortage.*
- so basic as to be hard to alter, resolve, or overcome: *the theories are based on a fundamental error*
- forming a necessary base or core; of central importance: *the protection of fundamental human rights*

010



YORK COMMUNITY STADIUM



010



Approve Planning Permission

TOWN AND COUNTRY PLANNING ACT 1990

To:

Mr Daniel Brown
HOW Planning LLP
40 Peter Street
Manchester
M2 5GP

Application at:

Huntington Stadium Jockey Lane Huntington
York YO32 9JS

For:

Erection of 8,000 seat Community Stadium, leisure centre, multi-screen cinema, retail units, outdoor football pitches, community facilities and other ancillary uses, together with associated vehicular access, car parking, public realm, and hard and soft landscaping following demolition of existing structures

By:

Wrenbridge Sport York Limited And GLL

Application Ref No:

14/02933/FULM

Application Received on:

19 December 2014

Huntington Stadium Jockey Lane Huntington
York YO32 9JS
Erection of 8,000 seat Community Stadium, leisure centre, multi-screen cinema, retail units, outdoor football pitches, community facilities and other ancillary uses, together with associated vehicular access, car parking, public realm, and hard and soft landscaping following demolition of existing structures

Wrenbridge Sport York Limited And GLL

14/02933/FULM

on: 19 December 2014

ROVAL:

outdoor football pitches, community facilities and other ancillary uses, together with associated vehicular access, car parking, public realm, and hard and soft landscaping following demolition of existing structures

By:

Wrenbridge Sport York Limited And GLL

Application Ref No:

14/02933/FULM

Application Received on:

19 December 2014

CONDITIONS OF APPROVAL:

1 The development shall be begun not later than the expiration of three years from the date of this permission.

REASON: To ensure compliance with Sections 91 to 93 and Section 56 of the Town and Country Planning Act 1990 as amended by section 51 of the Compulsory Purchase Act 2004.

2 The development shall not be carried out otherwise than in complete accordance with the following plans:

AL(0)002 Rev H Masterplan 1:1250

AL(0)006 Rev D Site Plan 1:500
AL(0)010 Rev K GA Plan, Level 00 1:500
AL(0)011 Rev K GA Plan, Level 01 1:500
AL(0)012 Rev K GA Plan, Level 02 1:500
AL(0)013 Rev G GA Plan, Roof Level 1:500
AL(0)020 Rev E Elevations - North, South, East & West 1:500
AL(0)024 Detail Elevations 1:100
AL(0)036 Rev B East Stand Section 1:100
AL(0)037 Rev B East Stand Hub Section 1:100
AL(0)038 Rev B North & West Sections 1:100
AL(0)039 Rev B South Stand & Retail Section 1:100
AL(0)040 Rev A Section - East / West & North / South 1:250
AL(0)041 Rev B Leisure Sections 1:100
AL(0)042 Rev A Leisure Sections 1:100
General Arrangement (3955_LP 01 Rev.B
YCS(52)SP001 RevP02 Proposed Surface Water Drainage Network Key Plan
YCS(90)SP002 RevP02 External Works Proposed Finished Level Contours
YCS(52)SP011 RevP01 Proposed Surface Water Drainage Network
Exceedence Plan - 1 in 100 years + 20% Climate Change Allowance.
YCS(90)CH0002 Rev P002 dated 06/03/15
H-DR-0100 Issue 3
H-DR-0104 Issue 4
H-DR-0106 Issue 4
H-DR-0108 Issue 4
H-DR-0110 Issue 4
H-DR-109 Issue 3
LDA Design General Arrangement 3395_LP 01 Rev B

REASON: For the avoidance of doubt and to achieve an acceptable form of development.

S73 APPLICATION

Variation of condition 2 of application 14/02933/ FULM to allow **minor material amendments** to the approved drawings including an increase the height and length of the commercial development building with alterations to internal layout and an increase in cinema and restaurant floorspace; alterations to the internal layout of the East Stand and variations of permitted uses; alterations to the internal layout and permitted uses within the Leisure Centre

S73 APPLICATION

Approved: 12 screens with a capacity of 2,000

Sought: 13 screens with a capacity of 2,400 (20% increase)

Challenge by Vue Cinemas, “adverse impact on their cinema, fewer people visiting the City of York”.

PPG

Is there a definition of 'minor material amendment'?

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.

Pre-application discussions will be useful to judge the appropriateness of this route in advance of an application being submitted.

Paragraph: 017 Reference ID: 17a-017-20140306

Revision date: 06 03 2014

MINOR?

“That is in the context of the guidance using the word "minor" in relation to the exercise of the section 73 power. There is nothing in the section itself which limits it to what are called "minor amendments”

bio

MINOR?

“It is to be noted that section 73 itself, as I have said, does not in terms limit the extent to which an amendment of conditions can be made. It does not have, on the face of it, to be within the adjective "minor", whatever that may mean in the context.”

Per Collins J. in R (Vue Entertainment Ltd) v City Of York Council [2017] EWHC 588 (Admin)

bio

REASONS

*When one is concerned with **fundamental variations**, one must look, as it seems to me, to the permission as a whole in order to see whether there is in reality a **fundamental change**, or whether any specific part of the permission as granted is sought to be varied by the change of condition.*

bio

REASONS

*It is, I suppose, possible that there might be a case where a change of condition, albeit it did not seek to vary the permission itself on its face, was so different as to be what could properly be described as a **fundamental** variation of the effect of the permission overall. But it is not necessary for me to go into the possibility of that in the circumstances of this case because I am entirely satisfied that that does not apply in this particular case.*

bio

ADDENDUM TO VUE

MR STRAKER: could I ask for three things, none of which should be controversial. First, could your Lordship as a matter of form dismiss the application?

MR JUSTICE COLLINS: Yes.

MR STRAKER: Second, could your Lordship please award costs to the council?

MR JUSTICE COLLINS: Yes.

019

ADDENDUM TO VUE

MR STRAKER: Third, your Lordship, please may I have my book back?

MR JUSTICE COLLINS: Yes.

MR JUSTICE COLLINS: So far as costs are concerned?

MR WALTON: No opposition to any of those points, even the return of the book.

019

The Queen (on the Application of Wet
Finishing Works Limited)

- and -

Taunton Deane Borough Council

- and -

Strongvox Homes

[2017] EWHC 1837 (Admin)

Singh J.

019



DEVELOPMENT MANAGEMENT

The Deane House, Belvedere Road,
Taunton, Somerset, TA1 1HE
Website: www.tauntondeane.gov.uk/planning
Tel: (01823) 356356 Fax: (01823) 356329
Email: planning.admin@tauntondeane.gov.uk

MR S COLLIER
WHITE YOUNG GREEN PLANNING
HAWKRIDGE HOUSE
CHELSTON BUSINESS PARK
WELLINGTON
SOMERSET
TA21 8YA

TOWN AND COUNTRY PLANNING ACT, 1990

Application No: 43/11/0080
Proposal: ERECTION OF 84 NO. DWELLINGS AND ASSOCIATED WORKS AS ENABLING DEVELOPMENT IN CONNECTION WITH THE REPAIR AND RESTORATION OF LISTED BUILDINGS AT TONE MILL, MILVERTON ROAD, TONEDALE, WELLINGTON

Application Type: Full Planning Permission
Grid Reference: 312621.121791

Taunton Deane Borough Council under the above Act hereby GRANT PERMISSION for the above development for the following reason(s):

Reason: In accordance with the provisions of Section 91 Town and Country Planning Act 1990 (as amended by Section 51(1) of the Planning and Compulsory Purchase Act 2004).

- 2 The development hereby permitted shall be carried out in accordance with the approved plans listed in the Drawing Schedule dated 8 February 2012

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 Prior to their installation, details or samples of the materials to be used in the construction of the external surfaces (including ridge, hip, slate, sample panel of bricks and render be constructed on site) of the development together with details and sample panel for the retaining wall shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details, unless agreed in writing by the Local Planning Authority, and retained thereafter.

Reason: To ensure the development respects the local character and distinctiveness of the area in accordance with Taunton Deane Local Plan Policies S1 and S2.

- 4 Details for the provision and siting of a bus stop shall be submitted to and agreed by the Local Planning Authority prior to its installation. The bus stop shall be provided prior to the occupation of the first dwelling in accordance with the approved details and retained thereafter.

Application Type: Removal or Variation of Condition(s)
Grid Reference: 312711.121856

Taunton Deane Borough Council under the above Act hereby GRANT PERMISSION for the above development.

The development must be carried out in accordance with the application and accompanying plan(s) submitted to the Council and is only valid subject to compliance with the following condition(s):

- 1 The development hereby permitted shall be carried out in accordance with the approved plans listed in the Drawing Schedule dated 8 February 2012 approved pursuant to planning permission 43/11/0080, as superseded and supplemented by the following approved plans:

(A1) DrNo 408060 Rev A Site Location Plan
(A1) DrNo 408 051 Street Elevations Proposed
(A3) DrNo 408 059 Additional Proposed Plot - F 2 Bed Flat over Garage
(A3) DrNo 408 058 Additional Proposed Plot - E 2 Bed Flat over Garage
(A3) DrNo Additional Proposed Plot - D 2 Bed Flat Over Garage
(A3) DrNo 408 056 Additional Proposed Plot - C 2 Bed
(A3) DrNo 408 055 Additional Proposed Plot - B 2 Bed Flat Over Garage
(A1) DrNo 408 050 Site Plan As Proposed

Reason: For the avoidance of doubt and in the interests of proper planning.



PLANNING & ENVIRONMENT

The Deane House, Belvedere Road,
Taunton, Somerset, TA1 1HE
Website: www.tauntondeane.gov.uk/planning
Tel: (01823) 356356 Fax: (01823) 356329
Email: planning.admin@tauntondeane.gov.uk

MR S COLLIER
COLLIER PLANNING
54 GALMINGTON ROAD
TAUNTON
SOMERSET
TA1 5NW

TOWN AND COUNTRY PLANNING ACT, 1990 (AS AMENDED)

Application No: 43/15/0128
Proposal: **VARIATION OF CONDITION No 02 (APPROVED PLANS) OF APPLICATION 43/11/0080 FOR ALTERATIONS TO LAYOUT AND ADDITIONAL SIX UNITS AT TONE MILL, MILVERTON ROAD, WELLINGTON**

Application Type: Removal or Variation of Condition(s)
Grid Reference: 312711.121856

WET FINISHING WORKS

Housing scheme was acceptable only because it was enabling development for the nearby Grade II* mill owned by the claimant.

Strongox entered into a s106 to provide funds for its restoration, owner claimed the s73 application was *ultra vires*.

WET FINISHING WORKS

The ultra vires point was linked to the s106 (failure to consult, procedural irregularity) point, rather than arguing irrationality.

“an increase in the number of units permitted in 2016 even by one would render the permission granted then ultra vires section 73” said the Claimant

“not irrational” said the court.

bio

John Leslie Finney v Welsh Ministers v Carmarthenshire County Council, Energiekontor UK Limited

[2018] EWHC 3073 (Admin)

15 November 2018

bio

FINNEY V WELSH MINISTERS

Under appeal to the Court of Appeal

Installation and 25 year operation of two wind turbines, with a tip height of up to 100m, and associated infrastructure... granted 21 January 2016

bio

FINNEY V WELSH MINISTERS

Condition 2, development was to be carried out in accordance with a number of approved plans and documents which were specified. One such was a "figure" described as "3.1 Typical Wind Turbine Elevation 1:500 @A3". This showed a wind turbine with a tip height of 100m.

bio

FINNEY V WELSH MINISTERS

5 August 2016, s73 application to “remove or vary condition 2”

"To supersede 3.1 with 3.1a”, to permit tip heights for the turbines of up to 125m

Refused, unacceptable impact upon the landscape and would be contrary to local planning policy

010

FINNEY V WELSH MINISTERS

Allowed by Inspector on appeal

Finney

- 43% increase in blade length
- 40% increase in rotor diameter
- 104% increase in blade swept area
- The blade swept area being centered 10m higher.

010

FINNEY V WELSH MINISTERS

Development description:

two wind turbines, with a tip height of up to 100m

Condition 2 plans showing:

two wind turbines, with a tip height of up to 150m

010

FINNEY V WELSH MINISTERS

40. In accordance with the doctrine of precedent the decision of Singh J is of persuasive authority. In reality, I would depart from it only if I concluded that the reasoning process which underpinned it was wrong. I am not of that state of mind. It seems to me that the approach of Singh J is wholly consistent with the ratio and reasoning of Sullivan J in Arrowcroft and, further, allows the words of section 73 to be applied with an appropriate degree of flexibility.

010

AN INCREASE...

Of six dwellings. Of 400 cinema seats. Of taller wind turbine.

Minor material alteration?

Not substantially different?

Courts say it is not “fundamentally different”.

oia

WORKSHOP ONE SPRINGVALE PARK, RETFORD

WORKSHOP TWO HARPER'S NIGHTCLUB, GUILDFORD



WORKSHOP THREE MILL ROAD, EPSOM

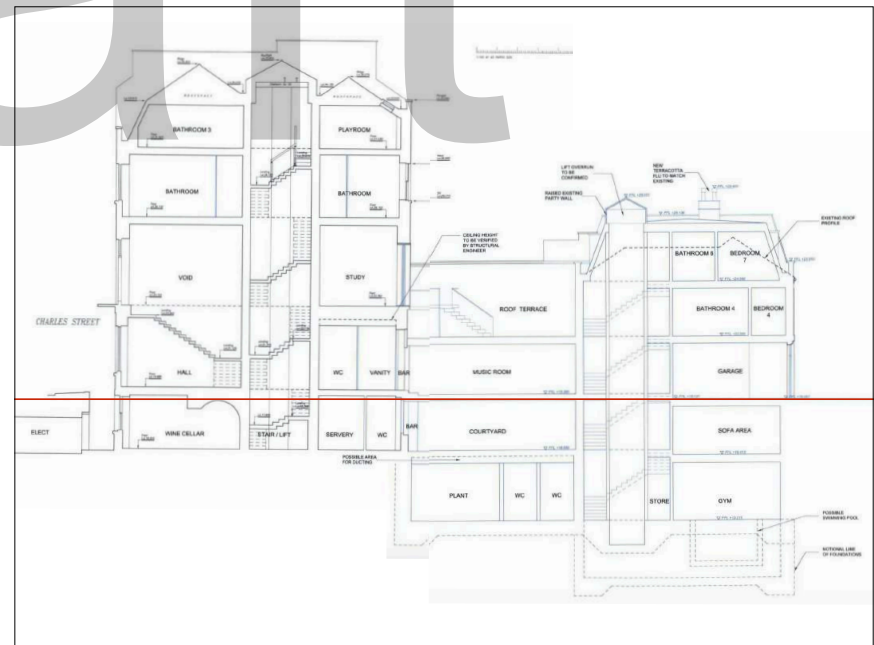
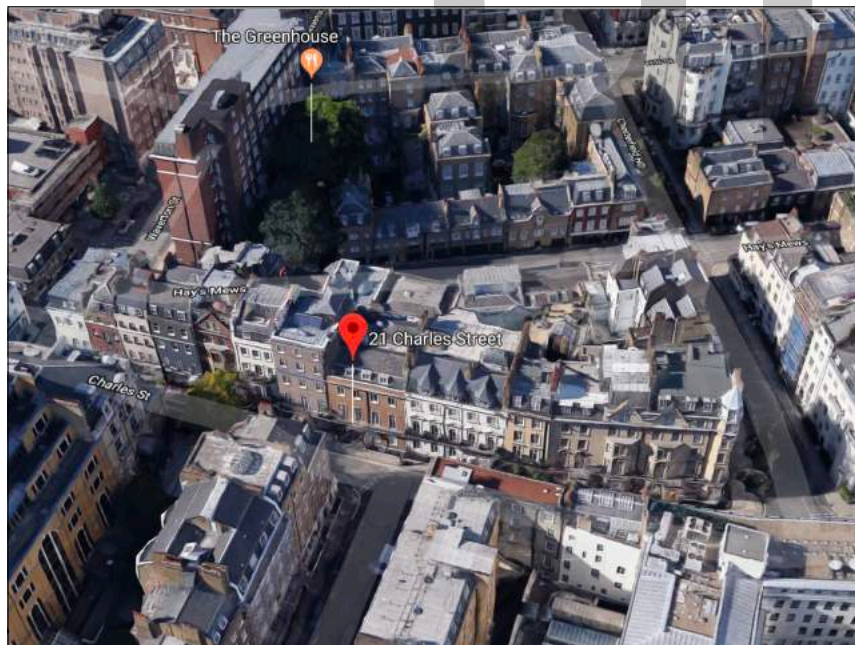


R (Stefanou) v

Westminster City Council [2017]

EWHC 908 (Admin)

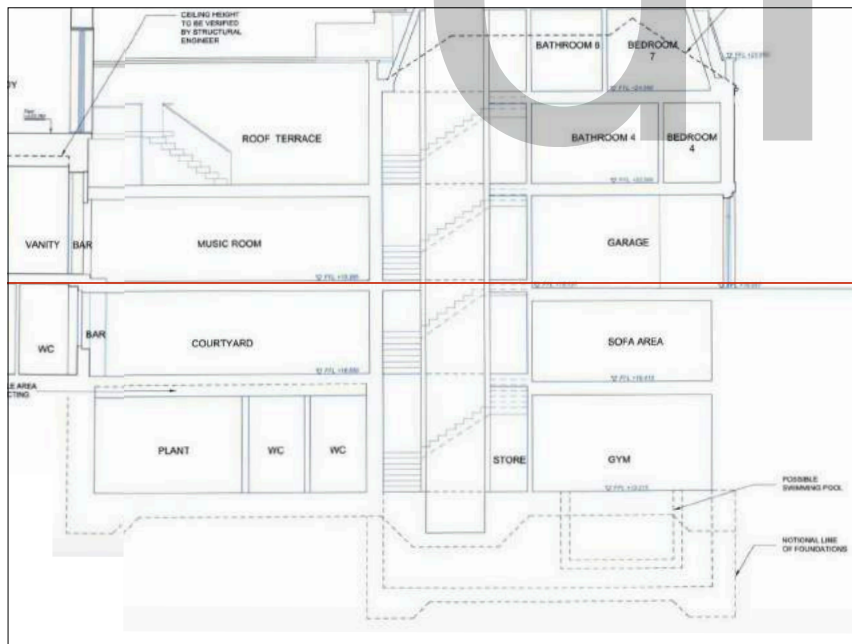
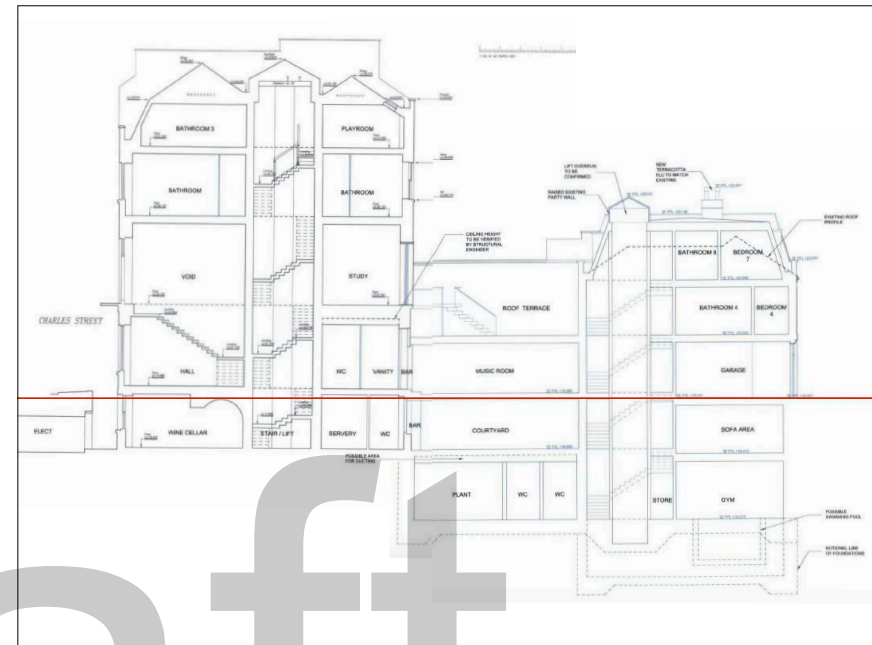
b1q



2008 PLANNING PERMISSION

"External alterations to existing dwelling at 21 Charles Street and 21 Hays Mews including ... redevelopment of the mews building to create sub-basement, lower basement".

b10



NEW STOREY IN LINK AREA

"There is a problem I am afraid.

Your proposals now include the addition of a new storey to the link. These are changes that are much more significant than non-material or other minor amendments.

Therefore I am afraid that you need to apply for the whole scheme, as revised. Applications for planning permission and listed building consent are required.

Clearly, in our assessment we will only focus on the revised elements, because the rest has consent".

b10

NEW CITY PLAN JULY 2016

“will ...

(3) not involve the excavation of more than one storey below the lowest original floor level”.

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CLAIMANT OBJECTED

S73 application made, as required

Claimant’s agent asked:

"if a fresh application were required whether the Council would have permitted it in light of the Council's latest policy on the development of basements in Westminster”.

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COUNCIL REPLIED

"I think it is likely such a proposal would be refused if it was submitted as a new application today.

This is of course a purely academic question given that, in our opinion, the planning permission and listed building consent have been commenced.”

S73 application approved.

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DECISION

The whole scheme had to be considered against the development plan and all other material considerations

Council wrongly focussed on the link building as the rest had been consented and a material start had been made.

Planning permission (“variation”) quashed.

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COMMENT

The original planning permission for the deeper basement exists, start has been made.

Why is this not a fallback position?

Cure: apply just for the link building.

bio

DRAFTING THE PERMISSION

Best practice is to follow the PPG

A decision notice describing the new permission should be issued, setting out all of the conditions related to it. To assist with clarity decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. Further information about conditions can be found in the [guidance for use of planning conditions](#).

bio

*London Borough of Lambeth v SSCLG and
Aberdeen Asset Management and others*

[2018] EWCA Civ 844

Court of Appeal

20 April 2018

bio

c/o Mr Kevin Watson
Swan Court
Worple Road
London
SW19 4JS


Lambeth

7th November 2014

DECISION NOTICE

Dear

DETERMINATION OF APPLICATION UNDER SECTION 73. TOWN AND COUNTRY PLANNING ACT 1990

The London Borough of Lambeth hereby approves the following application for the variation of condition as set out below under the above mentioned Act.

In accordance with the statutory provisions your attention is drawn to the statement of Applicant's Rights and General Information attached.

Application Number: 14/02553/VOC **Date of Application:** 19.05.2014 **Date of Decision:** 06.11.2014

Development At: Homebase Ltd 100 Woodgate Drive London SW16 5YP

For: Variation of condition 1 (Retail Use) of Planning Permission Ref: 10/01143/FUL (Variation of Condition 6 (Permitted retail goods) of planning permission Ref. No. 83/01916 (Erection of a DIY retail unit for Texas homeware and an industrial building for cow industrial polymers) granted on 17.09.85 to allow for the sale of a wider range of goods to include DIY home and garden improvements, car maintenance, building materials and builders merchants goods, carpets and floor coverings, furniture, furnishings, electrical goods, automobile products, camping equipment, cycles

Development At: Homebase Ltd 100 Woodgate D

For: Variation of condition 1 (Retail Use) of Planning Permission Ref. No. 83/01916 (Variation of Condition 6 (Permitted retail goods) of planning permission Ref. No. 83/01916 (Erection of a DIY retail unit for Texas homecare and an industrial building for cow industrial polymers) granted on 17.09.85 to allow for the sale of a wider range of goods to include DIY home and garden improvements, car maintenance, building materials and builders merchants goods, carpets and floor coverings, furniture, furnishings, electrical goods, automobile products, camping equipment, cycles, pet and pet products, office supplies and for no other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended))

Original Wording:

The retail use hereby permitted shall be used for the retailing of DIY home and garden improvements and car maintenance, building materials and builders merchants goods, carpets and floor coverings, furniture, furnishings, electrical goods, automobile products, camping equipment, cycles, pet and pet products, office supplies and for no other purpose (including the retail sale of food and drink)

DETERMINATION OF APPLICATION UNDER SECTION 73. TOWN AND COUNTRY PLANNING ACT 1990

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Original Wording:

The retail use hereby permitted shall be used for the retailing of DIY home and garden improvements and car maintenance, building materials and builders merchants goods, carpets and floor coverings, furniture, furnishings, electrical goods, automobile products, camping equipment, cycles, pet and pet products, office supplies and for no other purpose (including the retail sale of food and drink) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order.

Planning, Regeneration and Enterprise
Development Management
Phoenix House
10 Wandsworth Road,
London SW8 2LL

Telephone 020 7926 1180
Facsimile 020 7926 1171
www.lambeth.gov.uk
lambethplanning@lambeth.gov.uk

Proposed Wording

The retail unit hereby permitted shall be used for the sale and display of non-food goods only and, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), for no other goods.

Approved Plans unrestricted non-food goods
April 2008, drafted by V. J. Transport Impact Assessment Report Dated 08

Summary of the Reasons for Granting Planning Permission:

In deciding to grant planning permission, the Council has had regard to the relevant policies of the development plan and all other relevant material considerations. The development plan in Lambeth is the Lambeth Local Development Framework Core Strategy (adopted 19 January 2011) and the remaining saved policies in the 'Lambeth Unitary Development Plan (UDP) 2007: Policies saved beyond 5 August 2010 and not superseded by the Core Strategy adopted in January 2011' and the London Plan (adopted 22 July 2011.). Having weighed the merits of the proposal in the context of these issues, it is considered that planning permission should be granted subject to the conditions listed below. In reaching this decision the following Policies were relevant:

Lambeth Local Development Framework Core Strategy (2011)

Policy S1 - Delivering the Vision and Objectives
Policy S4 - Transport

London Borough of Lambeth Unitary Development Plan (UDP) 2007: Policies saved beyond 5 August 2010 and not superseded by the LDF Core Strategy January 2011:

Policy 9 - Transport Impact
Policy 14 - Parking and Traffic Restraint

Conditions

1 The development to which this permission relates must be begun not later than the expiration of three years

Conditions

1 The development to which this permission relates must be begun not later than the expiration of three years beginning from the date of this decision notice.

Reason: To comply with the provisions of Section 91(1)(a) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004)

2 Prior to the variation hereby approved being implemented a parking layout plan at scale of 1:50 indicating the location of the reserved staff car parking shall be submitted to and approved in writing by the Local Planning Authority. The use shall thereafter be carried out solely in accordance with the approved staff car parking details.

Reason: To ensure that the approved variation does not have a detrimental impact on the continuous safe operation of the adjacent highway (Policies 9 and 14 of the London Borough of Lambeth Unitary Development Plan (UDP) 2007: Policies saved beyond 5 August 2010 and not superseded by the LDF Core Strategy January 2011) Policies S4 of the Core Strategy 2011

3 Within 12 months of the implementation of the development hereby approved details of a traffic survey on the site and surrounding highway network shall be undertaken within 1 month of implementation of the approved development date and the results submitted to the local planning authority. If the traffic generation of the site, as measured by the survey, is higher than that predicted in the Transport Assessment submitted with the original planning application the applicant shall, within 3 months, submit revised traffic modelling of the Woodgate Drive/Streatham

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lambethplanning@lambeth.gov.uk

DECISION *14/02553/VOC*

CONDITIONS

1. Commence within three years
2. Before the variation is implemented, staff parking layout plan to be approved
3. Produce a traffic survey ...

So, no *condition* limiting the goods that could be sold

oia

OUTCOME

The varied “condition” was a description of a limited use of the premises, so more akin to a description of development

I’m Your Man Ltd, Altunkaynak, Wall etc

There is no material change of use from non-food to food (the basis of the case was a CLOPUD).

oia

PRIOR APPROVAL AND S73

*Justin Edward Pressland and
Hammersmith and Fulham LBC*

[2016] EWHC 1763

15 July 2016

oia



11A Hannell Road, London SW6 7RA

oia



PRESSLAND

14 conditions imposed dealing with parking, bin store, flood risk, soil contamination and monitoring

Section 73 application to remove 9 of them

"I regret to inform you that this application was found to be invalid and cannot be determined by this authority".

PRESSLAND

53. For the reasons given, an application may be made under section 73 of the 1990 Act for the development of land without complying with conditions subject to which a previous planning permission was granted by a development order. Those conditions include

1. Those subject to which any prior approval required under the development order was granted.
2. Planning permissions are granted subject to such conditions as may be imposed when either the permission or any subsequent required approval is granted.

PRESSLAND

Full discretion

The fact that any conditions in a development order itself were specified by the Secretary of State is not necessarily of itself a reason for refusal, any more than it would be if the previous conditional planning permission had been granted on appeal by the Secretary of State.

PRESSLAND

Any conditions, whether imposed by the Order itself, or by the authority under prior approval may be the subject of s73 application

Different consultation requirements Class 0 and s73.

010

S73 AND BEGINNING DEVELOPMENT

(5) Planning permission must not be granted under this section ... to change a condition subject to which a previous planning permission was granted by extending the time within which

(a) a development must be **started**;

010

CLASS 0 CONDITIONS

(2) Development under Class 0 is permitted **subject to the condition** that it must be **completed** within a period of 3 years starting with the prior approval date.

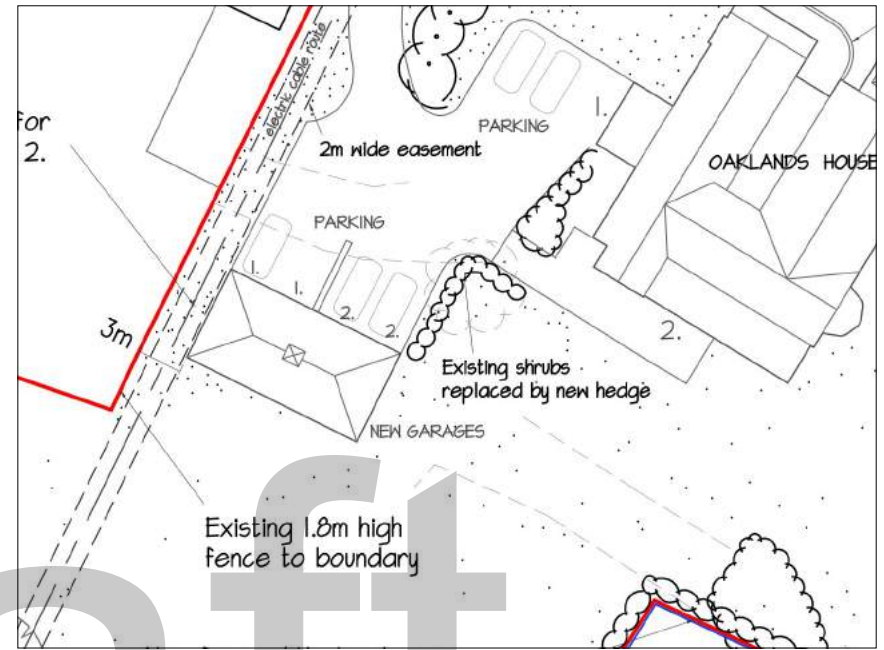
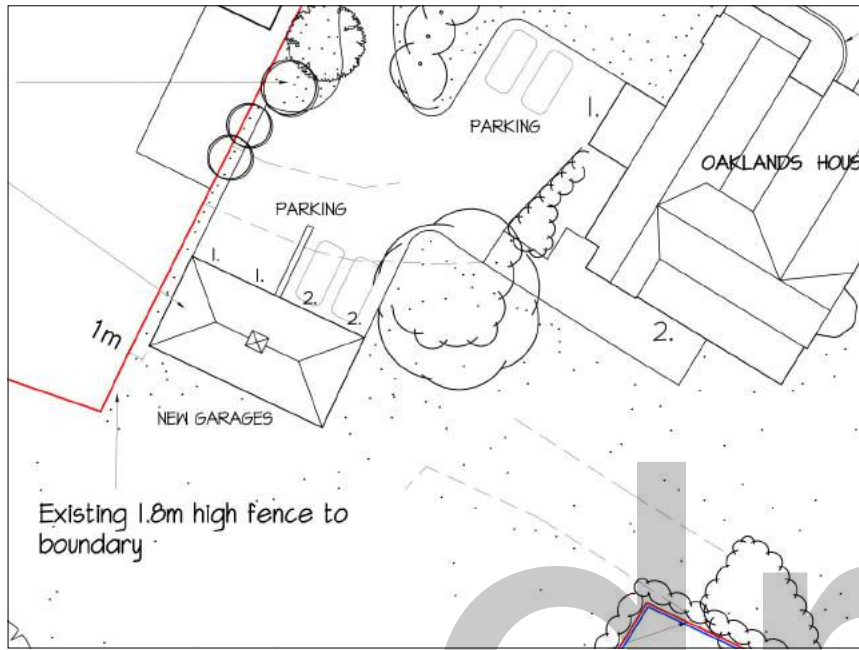
010

S73 AND CIL

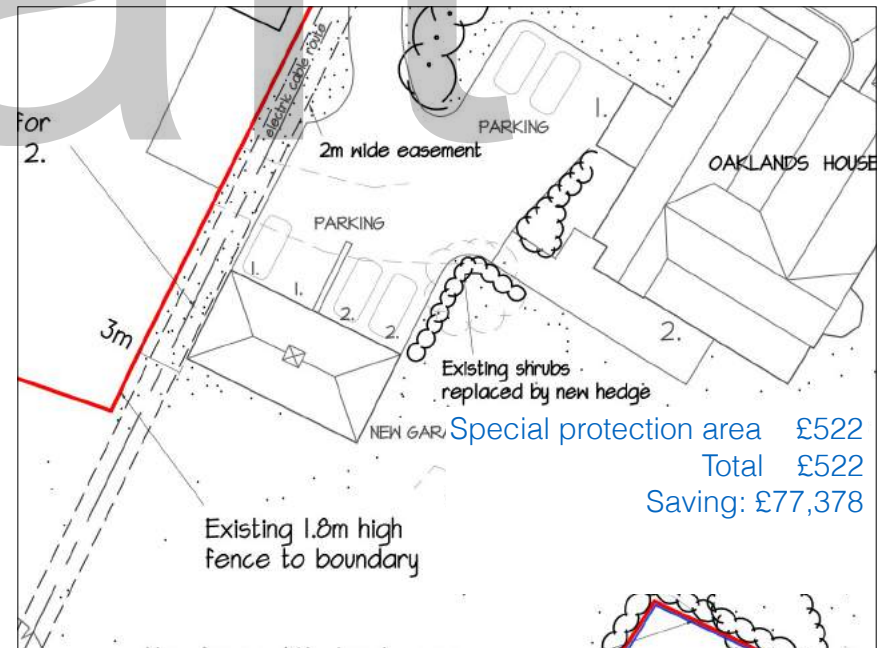
Planning permission granted after the WMS on small sites was set aside by High Court,

Four dwelling scheme caught tariff-style contributions of £77,900.

010



Special protection area £522
 Affordable housing £69,120
 Community facilities £4,140
 POS £4,118
Total £77,900



Special protection area £522
 Total £522
Saving: £77,378

S73 AND CIL

Special mention in the CIL Regs:

Meaning of “chargeable development”

When permission “first permits development”

Abatement provisions

010

S73 AND S106

Since a permission granted under s73 is a separate permission, a second s106 will be required

- new s106
- deed of variation (“modification”)

Or check the original deed.

010

S73 AND S106

8.12 Subject to the proviso to this clause if any Section 73 Consent is granted after the date of this deed:

8.12.1 the obligations in this deed shall relate to and bind such Section 73 Consent; and

8.12.2 the definitions of Application, Development and Planning Permission shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself.

010

S73 AND S106

8.12.5 the Council reserve the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it necessary to do so.

010

S73 AND EIA

The Town and Country Planning
(Environmental Impact Assessment)
Regulations 2017 are engaged because s73
is a “development consent”

s96A is unlikely to be engaged because the
changes are non-material.

draft