



MAPLE
— PLANNING &
DEVELOPMENT LTD

Planning Services
Mid Sussex District Council
Oaklands Road
Haywards Heath
West Sussex
RH16 1SS

15/09/26

Ref: 302

Dear Sir,

**Section 73 Application to vary Condition 2 of Planning Permission DM/24/1716:
Proposed erection of one self-build detached house.
Chandlers, Turners Hill, Crawley Down, RH10 4EY.**

Enclosed herewith is an application submitted pursuant to Section 73 of the Town and Country Planning Act 1990, to vary a condition attached to an earlier grant of planning permission.

Planning permission was granted on 15th October 2025 for the erection of a single self-build detached house (DM/24/1716). That permission was subject to the standard condition requiring that the approved development begin not later than three years from the date of the decision.

Condition 2 of the planning permission requires that the development be carried out in accordance with the approved drawings. This application seeks to vary that condition, such that it refers to a new set of drawings.

Fundamentally, the applicant wishes to pursue a proposal for a modified design for the new dwelling. The overall external siting and layout of the proposed development remains largely as previously granted planning permission.

The changes proposed relate to the external form, detailing and fenestration of the proposed house. The amended version as now presented represents a more considered, higher quality architectural approach to realisation of the development.

In this regard, it is important to explore the scope of Section 73.

Section 73 establishes the ability to submit applications 'to develop land without compliance with conditions previously attached'. It states that:

'On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted'

A proper interpretation of this was established in the case of 'Armstrong v Secretary of State for Levelling-Up, Housing and Communities & Anor [2023] EWHC 176 (Admin) (27 January 2023)'.

This was a judgment of James Strachan KC (sitting as a Deputy High Court Judge) following a challenge to an Inspector's appeal decision pursuant to Section 288 of the Town and Country Planning Act 1990 (TCPA).

The applicant for planning permission, who later became the claimant, had applied to vary the approved plans condition of a permission for the construction of a single dwelling on the site.

The local planning authority and subsequently the Inspector on behalf of the Secretary of State ("the Defendant") refused to grant permission on the basis that the amended design of the building differed materially from what had previously been approved. The claimant, brought the challenge on the basis that both of the decision-makers had misunderstood the scope of Section 73 of the TCPA, and the Court agreed.

The judge found that, whatever the architectural style of the building, the proposal to amend the approved plans condition did not conflict with the operative part of the permission – the permission would remain for a single dwellinghouse.

Six key reasons for the first part of the judgment were set out, in summary as follows:

1. The wording of Section 73 itself does not limit its application as far as the extent of the change – it provides simply that the only consideration is the conditions subject to which permission should be granted;
2. The requirement that a Section 73 consideration may be limited only to non-compliance with conditions is restrictive – there is no obvious need to read in any additional restriction;
3. Section 73 is enabling – if Parliament had intended that the powers under Section 73 should be restricted to "minor material" or "non-fundamental" changes to a condition, it could have clearly expressed this;
4. The wording of Section 96A is helpful context, given that Parliament expressly limited its scope to changes judged to be "non-material". That is a more wide-ranging power, given that it can amend the operative part of the permission in contrast to S73, in which only conditions can be considered;
5. Allowing a Section 73 application which does not affect the operative part of the permission to be submitted does not dictate the outcome of that application. The Inspector had failed to consider whether there was any conflict between what was proposed and the operative part of the permission and because of that error, he had not considered the planning merits of the proposal;

6. The case law referred to on behalf of the Defendant provided no support for the Defendant's arguments.

It had been submitted on behalf of the Defendant that the relevant test was whether the proposed change would represent a fundamental variation to what had been permitted. The test of "fundamental" had arisen from the judgment in *R (Vue Entertainment Ltd) v City of York Council* [2017] EWHC 588 (Admin), in which Collins J had contemplated a hypothetical situation in which a change proposed to a condition might be so different as to be a fundamental variation of the permission overall.

In that case, though, the judge had not considered it necessary to ponder that possibility further as it had not arisen on the facts in *Vue*. Accordingly, in the instant case the judge found it an unconvincing authority for the proposition that Section 73 should be restricted and further indicated that such a situation was "difficult to conceive".

The judge noted the well-established tests for the imposition of conditions and reasoned that, given those tests, most conditions are fundamental to the grant of permission. A Section 73 application is therefore likely to involve a significant or fundamental change to the permission. Limiting the consideration of an application only to non-fundamental variations would significantly diminish the scope of Section 73 in a way that does not make sense, particularly given that the planning merits of the proposal must still be considered.

The judge concluded that, even if he was wrong about all of the foregoing, he would have quashed the Inspector's decision. This was because if Section 73 applications are in fact limited to minor material changes to a condition, the Inspector in this case did not properly address what would constitute a fundamental variation – he was preoccupied with the change to the form and architectural style of the building, rather than a fundamental change to the permission itself. Additionally, the Inspector had misdirected himself in relying on the Planning Practice Guidance and its concept of "minor material amendments", rather than considering whether the proposal was a fundamental change: he had in fact described the key issue in the appeal as whether or not the proposal was a minor material amendment.

The judge concluded that the Inspector would not necessarily have made the decision to dismiss the appeal if he had understood that Section 73 was not limited in scope to minor material amendments.

Exactly the same principles apply in this case. An amendment to the design approach will not change the operative part of the planning permission in any way at all. This is especially so, given that the house now proposed occupies broadly the same siting, orientation and external layout as the consented dwelling.

For the reasons explored above, it is hoped that an approval pursuant to Section 73, for the variation of Condition 2 of Planning Permission DM/24/1716, will be forthcoming in due course.

In the meantime, it is also hoped that sufficient information has been provided in order to allow the application to be registered. If, however, you should require any additional information then please do not hesitate to contact me.

Yours faithfully,

Paul Webster MRTPI
DIRECTOR