ELLISDON ARCHITECTURAL ASSOCIATES
DESIGN - PLANNING - CONSTRUCTION

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SUBMISSION STATEMENT

'Butlers'
Tower Hill
Horsham
RH13 8HY

March 2024

Section 73 application to approved planning permission DC/21/2283 relating to condition number condition number 1.

OUTLINE

This minor material amendment submission follows seeks permission to vary the approved design as approved under DC/21/2283.

DC/21/2283 has approval for essentially two parts. The West end (shown green on the proposed plans) and the East end (shown blue on the proposed plans). The West end has fully commenced and is nearing construction while the design of East end has not commenced and has since been through a cost analysis and is now subject to changes hence this application.

DESIGN CHANGES

The new design seeks to reduce costs by simplifying the complex structural requirements. A contemporary flat roof is proposed with a partial vaulted area to maximize glazing and still reducing the amount compared the approved scheme.

MATERIALS (Refer to images at bottom of document) (Please refer to submitted elevation drawings)

Roof: Dark zinc cladding will be applied to the pitched part of the proposal which will match the details approved under DC/21/2283 for the said East & West developments.

The flat roof will be a grey rubber / fibre glass finish to match the details approved and used elsewhere.

Walls: Sections of the proposal will contain face brick cladding which match the existing dwelling house. A small section to the front elevation will contain a band of stone cladding which will match the West end development – as approved.

The majority of the new cladding is proposed to be ‘Silver Birch, Eco-Scape slatted cladding. Part of the existing rear two structure will have its existing tile hanging removed and replaced with said ‘Silver Birch’ to allow and sympathetic transition between existing and new.

Fenestration: The existing windows and doors of the dwelling house are white UPVC. DC/21/2283 permits the East & West developments to have dark grey windows and doors. This application seeks to maintain the approved grey colour but also replace all of the existing white UPVC windows and doors in a dark grey finish to match said previous approval.

CIL

Self build exemption for residential annexes and extensions has been claimed and granted for DC/21/2283.

WATER NEUTRALITY

The local authority stated within the decision notice;

“There is no clear or compelling evidence to suggest the nature and scale of the proposed development would result in a more intensive occupation of the dwelling necessitating an increased consumption of water that would result in a significant impact on the Arun Valley SAC, SPA and Ramsar sites, either alone or in combination with other plans and projects. The grant of planning permission would not therefore adversely affect the integrity of these sites or otherwise conflict with policy 31 of the HDPF, NPPF paragraph 180 and the Council's obligations under the Conservation of Habitats and Species Regulations 2017.”

The changes proposed under this section 73 application are not different in terms of occupancy levels or size. The changes are visual only and not use more water than the approved scheme and our legitimate fall back position.

HIGH COURT DECISION WITH REGARDS TO SECTION 73

Section 73 of the 1990 Act provides for applications for planning permission to develop land without complying with previously imposed planning conditions. The local planning authority can grant permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should be kept.

The only limits imposed by the wording of s73 itself is on the type of amendment which can be affected are as follows:

The amendment must be facilitated through an amendment to a condition.
The original planning permission must have been lawfully implemented or still be capable of implementation. The amendment cannot have the effect of extending the time within which a development must be begun or within which an application for approval of reserved matters must be made. The amendment cannot display the biodiversity gain condition which will automatically be imposed on every planning permission granted In England for a date to be appointed.

The recent High Court case of Armstrong v Secretary of State for Levelling-Up, Housing and Communities and Another [2023] EWHC 176 (Admin), considered the scope of s73 application. The High Court confirmed that s73 application is not just limited to “minor material amendments” and that Planning Practice Guidance (“PPG”) introducing the concept of “minor material amendment” in the guidance is confusing, when there is no such reference to it in section 73 of the Town and Country Planning Act 1990 (amended) (“the 1990 Act”) and case law doesn’t support such interpretation.

Cornwall Council refused this application and stated that the revised design “completely alters the nature of the development and would result in a development that would differ materially from the approved permission and as a result, the proposal went beyond the scope of S73 of the 1990 Act”. Mr Armstrong appealed Cornwell Council’s decision, and the Planning Inspector dismissed the appeal. The Planning Inspector held that the application “goes beyond the parameters of a minor

material amendment and cannot be considered under section 73.” Mr Armstrong challenged the Planning Inspector’s decision in the High Court.

The main issue for consideration for the High Court was whether the planning inspector had lawfully concluded that the application would give rise to a fundamental variation to the permission such that the application fell outside of the scope of the s73, where the condition being varied did not change the description of the development. The High Court allowed the appeal and quashed the planning inspector’s decision. The High Court held that the form or the architectural style was not specified in the description of the development and had the description been more prescriptive of type and style, then the situation may have been different.

MATERIAL IMAGES:

SILVER BIRCH ECO SCAPE SLATED CLADDING



DARK GREY WINDOWS AND DOORS



STONE BANDING TO MATCH EAST END DEVELOPMENT



ZINC ROOF FINISH TO MATCH EAST AND WEST DEVELOPMENTS AS APPROVED

