SUTHERLAND PROPERTY & LEGAL SERVICES LTD

PLANNING & ARCHITECTURAL CONSULTANCY SERVICE

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Development Management
Wiltshire Council
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Bythesea Road
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13th September 2023

RE: Little Orchard, Lower Kingsdown Road, Box, Wiltshire SN13 8BD

Dear Sir/Madam,

This supporting letter is provided in relation to the above planning consent which was approved by the council on 13 February 2019. When permission was granted, it was granted subject to a number of conditions. The condition which is of particular relevance here is condition number 2 (approved plans condition), which advises:

"*The development hereby permitted shall be carried out in accordance with the following approved plans:*

Plan as received by the LPA 15/11/18;

Existing Elevations, Floor Plans and Sections (Dwg No.: 900 / CAM/2018/1, Dated: October 2018;

Plan as received by the LPA 12/02/19;

Proposed Elevations & Floor Plans (Dwg No: 900 / CAM/2018/2, REV d, Dated: January 2019);

Plan as received by the LPA 13/02/19;

Existing and Proposed Block Plans and Location Plan (Dwg No: 900 / CAM/2018/2 Rev: C, Dated: February 2019);

and in accordance with the Construction Method Statement, as received by the LPA 13/02/19.

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

Having recently moved to the property, the Applicants have instructed Sutherland Property & Legal Services Ltd to make a s.73 application to regularise discrepancies between the approved plans (listed above) and the "as built" plans.

Scope of s.73 Applications

Relatively recent case law concerning the scope of operation of s.73 of the 1990 Act in relation to minor material amendments provides significant scope for amendments (variations) and we are of the view that this particular decision of the courts is relevant to the issue at hand here.

The case law in question concerns the case of *Armstrong v Secretary of State & Cornwall Council [2023] EWHC 176 (Admin)*, which was ruled upon by James Strachan KC on 27 January 2023. Strachan KC ruled that a Planning Inspector was incorrect to decide that an application to completely change the design of a new house should be refused because it did not fall within the scope of s.73 of the 1990 Act. A copy of the ruling is appended to this letter for ease of information.

S.73 is a means by which an application can be made to the local planning authority to amend conditions attached to a planning permission. S.73 applications are also quite often commonly referred to as applications for "*minor material amendment*".

The *Armstrong* case involved a site, in Cornwall, that had been granted full planning permission for the "*construction of one dwelling*". One of the conditions attached to the planning permission required the development to be carried out in accordance with approved drawings. The Claimant made a s.73 application to Cornwall Council (Council) to vary this condition by substituting new drawings. These new drawings would completely change the form and style of the proposed house.

The Council and the Planning Inspector refused the application on the basis that the Claimant's application was beyond the scope of s.73, arguing that the change would result in the development being materially and substantially different from what had originally been approved and was therefore not a "*minor material amendment*". In making their decision, the Council and the planning inspector referred to the Government's online Planning Practice Guidance (PPG).

The High Court pointed out that the concept of minor material amendments was introduced by the PPG, but that it does not appear in the planning legislation. Accordingly, s.73 was not limited in this way and the Planning Inspector had misdirected himself in making his decision by reference to this PPG concept. The High Court did recognise that the PPG was liable to confuse readers who, as the Planning Inspector had done, may infer that only minor material amendments to planning conditions fell within s.73.

The High Court also highlighted the distinction between the "*operative part*" of a planning permission (where the development permitted is described) and the planning conditions that are attached to that approved development, confirming that s.73 does not capture variations that affect the operative part.

Subsequently, as of 26th July 2023, the Government has updated the PPG - *Flexible options for planning permissions*, amending paragraphs 013 and 018 and removing paragraph 017.

Paragraph 013 of the PPG now clearly confirms that:

"*There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to condition and not the operative part of the permission*" (para 013, PPG *Flexible options for planning permissions*.)

In this case, in whichever form or style the house was constructed, if that house remained the only dwelling on site, there would be no change to the "*basic principle*" of the approved development. Mr Armstrong's application to substitute plans therefore fell within the scope of s.73 and should have been "*entertained and determined*".

The High Court did indicate that if the description of the approved development had been more prescriptive in the underlying planning permission, for example, permitting the "*construction of a single bungalow*", then the outcome may have been different. In this instance, it was clear to the High Court that there would have been no inconsistency with the operative part of the planning permission.

It is our view, based on the *Armstrong* court ruling referred to above, that the deviations from the approved plans at the application site do not affect the operative part of the original planning consent in any way, as the development being implemented still comprises the "*Demolish and replace existing dwelling*".

On that basis the Applicant has submitted an application under s.73 to vary condition number 2 of consent ref: 18/10970/FUL to remove reference to the approved plans set out in condition 2 and to insert reference to the following plans listed below, which have been submitted to amend the extant planning consent:

- Elevations and Floor Plans 900/CAM/2018/2 REV C (Dated September 2023)

The original planning permission will continue to subsist whatever the outcome of the application under s.73. S.73A of the 1990 Act provides, amongst other things, for retrospective applications to be made in respect of development which has been carried out without permission, and for applications for permission to authorise development which has been carried out without complying with some planning condition to which it was subject. In this instance, the s.73 process is deemed to be the most expedient way in which to regularise the deviations from the original permission.

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We look forward to working proactively with the local planning authority.

Yours faithfully,



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Enc: Copy of High Court ruling (Armstrong v SoS & Cornwall CC)