



Invicta Planning Ltd.
Chart House
10 Western Road
Borough Green
Kent
TN15 8AG

Tel: 01732 885563

Planning Department
Gravesham Borough Council
Civic Centre
Gravesend
DA12 1AU

BY PLANNING PORTAL

23 July 2024

Dear Sir/Madam

**S.73 APPLICATION TO VARY CONDITION 2 OF PLANNING PERMISSION 20210757
CUSTOM HOUSE, THE TERRACE, GRAVESEND**

Please find enclosed an application submitted under S.73 of the Town and Country Planning Act 1990 (as amended) to amend Condition 2 of planning permission 20210757 relating to the site at Custom House, The Terrace, Gravesend. This application is submitted on behalf of our client, Custom House (Gravesend) Limited.

Background

Planning permission was granted for the redevelopment of Custom House to provide 27no. new homes in November 2023. The application description was permitted as follows:

Redevelopment of the site including demolition of the southern part of the workshop building and existing corridor link at first floor level between Custom House and the outbuildings and conversion of Custom House, the coachhouse and outbuildings to include extensions, the Old Boathouse and the Boathouse with external alterations and erection of a new three storey building to provide 27 residential units (6 x 1 bed, 15 x 2 bed and 6 x 3 bed) with associated landscaping and parking.



Invicta Planning Ltd.
Chart House
10 Western Road
Borough Green
Kent
TN15 8AG

Tel: 01732 885563

Subsequently, a Non-Material Amendment has been submitted to amend the application description of planning permission 20210757 to remove reference to housing mix. This application was granted on 22 July 2024.

Development Proposals

The Site consists of Custom House, Custom House Outbuilding, Workshop (and Old Boathouse), Boathouse, the Gazebo, and a new three-storey building consented under planning permission 20210757.

The proposed amendments to the previously consented scheme are set out on the submitted plans and supporting Design and Access Statement. These include the installation of new internal partition walls together with the installation of 2no. new rooflights proposed to the workshop next to the 4no. rooflights approved under the current planning permission, and 1no. new rooflight to the new build next to the 3no. rooflights approved under the current planning permission.

The extant permission allows for the provision of a purely market housing development and was subject to extensive discussions with Gravesham Borough Council. The owners have subsequently been approached by a charitable organisation, Pinnock's Charity, who wish to purchase the Site and use the property as almshouses, providing 27no. affordable family homes (mainly for people coming from GBC's own housing register).

In order to facilitate Pinnock's Charity financial threshold, the number of bedrooms within the scheme needs to be increased by an additional 9no. bedrooms (from the 56no. previously consented) to provide additional family sized accommodation. This has been achieved through internal reconfiguration of the approved development; the total number of new homes remains the same as approved. All the proposed dwellings would remain to meet the Nationally described space standards.

The proposed alterations would result in a well-balanced housing mix. The amended housing mix is outlined below:

Previous permission	Number of Bedrooms	Proposed
6	1-bedroom	7



Invicta Planning Ltd.
Chart House
10 Western Road
Borough Green
Kent
TN15 8AG

Tel: 01732 885563

15	2-bedroom	9
6	3-bedroom	4
	4-bedroom	6
	5-bedroom	1
27	Total	27

Condition 2 of planning permission 20210757 provides a list of approved plans. In order to facilitate the proposed amendments, this application seeks to vary Condition 2 to provide a revised list of approved drawings. As such, the table below sets out the plans to be superseded and the revised drawing numbers.

Those not listed in the table remain the same as set out on the decision notice for Planning Permission 20210757.

Superseded Drawing Number	Drawing Description	Revised Drawing Number
1735-025-B	Custom House Main Building 1 of 2 Proposed Plans	1735-025-SK-E
1735-026-B	Custom House Main Building 2 of 2 Proposed Plans	1735-026-SK-F
1735-028-C	Custom House Outbuildings Proposed Plans	1735-028-SK-G
1735-030-A	Unit 20 Workshop Proposed Plans	1735-030-SK-C
1735-031-A	Units 21, 22, 23 and 24 The Boathouse Proposed Plans	1735-031-SK-B
1735-032-A	Units 26, 27 and 28 New Build Proposed Plans	1735-032-SK-D

Scope of S.73 Application

The Scope of an application made under Section 73 has been the subject of recent High Court Case Law known as the 'Armstrong' Case (Armstrong v Secretary of State for Levelling-up, Housing and Communities & Anor [2023] EWHC 176 (Admin)). Mr James Stachan KC sitting as deputy judge of the High Court found that:



Invicta Planning Ltd.
Chart House
10 Western Road
Borough Green
Kent
TN15 8AG

Tel: 01732 885563

"Section 73 is clearly intended to be a provision which enables a developer to make a section 73 application to remove or vary a condition, provided of course that the application does not conflict with the operative part of the planning permission.

But provided there is no inherent conflict or inconsistency with the "operative part" of the planning permission – in this case the construction of a single dwelling – the planning merits of that proposed change can be assessed on its merits. No such assessment has occurred. As part of that assessment, the decision-maker will be able to consider whether the proposed change (fundamental or otherwise) is acceptable or not in planning terms, taking account of any representations received."

In the Armstrong Case, it was found that the term 'minor material amendment' as commonly used to refer to S.73 applications is not reflected in the wording of the legislation. There is nothing within the legislation which restricts an application under S.73 to minor material amendments or non-fundamental variation. Section 73 is intended to be a provision that enables a developer to remove or vary a condition, provided such application does not conflict with the operative part of the planning permission.

As such, provided there is no inherent conflict or inconsistency with the operative part of the planning permission (the single dwelling in the case of Armstrong), the proposed change can be assessed on its planning merits. A S.73 can therefore potentially allow for more substantial changes subject to consideration of Development Plan Policy and other material considerations.

The Operative part of the planning permission is the description of the permitted development. In this case, there is no difference between the operative part of the permission and the proposed amendments. Both applications allow for 27no. units of residential accommodation. As such, in principle the proposals could comply with S.73 subject to consideration of the planning merits of the changes.

The proposed amendments are minor in nature and, as set out above, have resulted from a range of factors. However, the principles established in the previous consent remain reflected in the proposals.

As detailed above, there is no restriction under S.73 in relation to the scale of changes which can be granted. The proposed amendments do not result in any fundamental changes in compliance with adopted planning policies or cause any adverse impact upon any other material planning considerations. The



Invicta Planning Ltd.
Chart House
10 Western Road
Borough Green
Kent
TN15 8AG

Tel: 01732 885563

proposed amendments would therefore fall within the scope of S.73 of the Town and Country Planning Act 1990 (as amended) and should therefore be granted.

Application Fees

The application fee for a variation of condition is £293. This has been paid through the Planning Portal.

Next Steps

I trust the above and enclosed is sufficient to allow the application to be registered and validated; however, if you require any further information, please do let me know.

Yours sincerely,

Hannah Rusbridge
Senior Planner



Invicta Planning Ltd.
Chart House
10 Western Road
Borough Green
Kent
TN15 8AG

Tel: 01732 885563