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Ms Alison Webster
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Development Management
Civic Centre
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10 October 2023

VIA PLANNING PORTAL
REF. PP-12048543

Dear Ms Webster

CLIFTON SLIPWAYS, WEST STREET, GRAVESEND: PLANNING APPLICATION UNDER S73 OF THE TOWN AND COUNTRY PLANNING APPLICATION TO VARY CONDITIONS 2 AND 7 OF PLANNING PERMISSION REF 20191122

On behalf of our client, Quinn Estates Limited on behalf of Downriver Properties Ltd, we are pleased to submit a planning application under Section 73 of the Town and Country Planning Act (as amended) to amend the development permitted under planning permission ref. 20191122, granted in December 2020, which relates to the redevelopment of land at Clifton Slipways.

This application proposes amendments to conditions 2 and 7 attached to planning permission 20191122. The changes outlined within the cover letter address the amendments to the permitted development which are necessary to deliver the development on safety and viability grounds.

a. Planning Application Submission

The application has been submitted via the Planning Portal (ref: PP-12048543). It is accompanied by the following documents:

1. Planning Application Forms inc. relevant certificates.
2. Transport Technical Note- Ref. 18-091-004 Rev C, as updated October 2023, prepared by Charles & Associates.
3. Addendum to the Design and Access Statement, As updated October 2023 (18.137_V2).
4. The application drawings as outlined in the drawing schedule at Appendix 1.

The application fee of £234 has been paid by Quinn Estates via the Planning Portal.

b. Background Context

Planning permission was granted on 4 December 2020 for the redevelopment of Clifton Slipways. The description of development was recently amended by way of a non-material amendment under s96a

of the Town and Country Planning Act (as amended) (ref. 20230155), and the development as permitted is for:

The erection of two buildings to provide residential units (Use Class C3) with associated vehicle parking, cycle storage, highway works, and landscaping. Building 1 comprises the erection of a 23 storey tower on the north side of West Street to provide residential dwellings with B1a floor space at ground floor level; and Building 2 from four storeys to 12 storeys on the south side of West Street which will provide residential dwellings. The proposal includes the restoration and adaptation of the existing pier structure to provide public and private amenity space to include the erection of Business units (Class B1a) and a cafe (Class A1/A3).

As you are aware from discussions with both officers in the planning department, and the Council's regeneration team, Quinn Estates is keen to facilitate the implementation of this permission at the earliest opportunity. However, the scheme as permitted is not viable and does not comply with more recent fire safety regulations. It cannot, therefore, be delivered in its current form.

We are therefore seeking to vary conditions 2 and 7 attached to planning permission ref. 20191122 as set out below to ensure the expeditious delivery of this key investment into Gravesham Town Centre Opportunity Area.

c. Proposed Amendments

To provide a scheme which can be delivered, the following amendments are sought to the scheme as approved under planning permission ref.20191122.

Stuart Road Block

1. Removal of full basement at lower ground floor (level -2). This level previously provided accommodation for the bin store and plant – to be relocated to Levels 0 and -1 respectively.
2. Reduction of building footprint at Level -1 (no change to the vehicular access position). This will result in a reduction of 23 car parking spaces at this level from 57 to 34. The changes to the basement levels reduce excavation and material removal cost.
3. Replacement of part of the car parking at Level 0 (loss of 32 spaces) with nine residential units. This would increase the number of dwellings to 236. Total number of parking spaces at Level 0 is 22.
4. Access to Level 0 parking area moved by 1.5 metres to accommodate floor plan changes.
5. Relocation of bin store from level -2 to level 0.
6. Amendment to residential stair core positions to enable two stair cores to access top storey of the building.

To confirm, the amendments to the proposed scheme result in the following changes:

	Approved scheme	Proposed Scheme	Net change
Dwellings	227	236	+9
Car Parking Spaces	111	56	-55
Cycle Spaces	227	240	+13

Housing Mix Changes

The proposed updated housing mix is outlined in the table below. The additional 9 units are proposed to be 2-bed units.

	Approved Scheme	Proposed Scheme
1-bed	90	90
2-bed	56	65
Total	137	146

Affordable Housing

The extant planning permission secures 22 Discounted Market Rent (DMR) units to be delivered within the Stuart Road building. During the consideration of the original application, the viability assessment at the time showed that the delivery of policy compliant affordable housing was not viable, and this was agreed by the Council (see Supplementary Committee Report). Officers in this report note that the applicant was pressed to deliver an affordable housing offer on-site and all parties agreed on the approach to deliver 22 DMR units as part of the scheme.

Due to significant build cost inflation, outstripping value increase in this location, the viability position has worsened since this application was considered in July 2020. Quinn Estates understands the importance of providing an affordable product on-site, and is therefore not proposing to reduce the level at this time. However, it is requested that the associated legal agreement is varied, through a deed of variation, to allow for these units to either be discounted market rent or discounted market sales. This should provide further flexibility for these to be delivered.

The Pier

Quinn Estates remains committed to a scheme which delivers the restoration works to the Pier; this represents a £2 million investment into this asset which will significantly boost the public realm in this location to the benefit of the town centre opportunity area. It is also committed to the provision of the 16 workspaces along the Pier.

However, within the s106 agreement attached to the existing permission, the occupation of more than 50% of the private dwellings is limited until 1) the Pier restoration has been completed to the satisfaction of the Council; and 2) the workspaces have been built.

Given the viability issues with the current permission, we consider it appropriate to review the existing clause within the s106 Agreement. Additional funds to deliver the business units speculatively, and the Pier works being completed before more than 50% of the private units are occupied, contribute to the gap in viability of the scheme. Accordingly, we request this trigger is extended for the works to the Pier being completed so as to reflect 50% of the completion of the West Street Tower, and workspaces built out when economically viable to do so. Again, this can be dealt with through a deed of variation to the original s106 agreement.

d. Suggested Approach

It is considered that the proposed amendments can be considered by way of an application under s73 of the Town and Country Planning Act, which facilitates amendments to an approved scheme by way of varying condition(s).

There is very recent High Court case law, *Armstrong vs. SoSLUHC*, 2022, which provides very clear guidance on how legislation set out within s73 of the Planning Act should be applied. The Deputy High Court Judge, James Strachan KC, clarified in his decision that there is nothing in a s.73 application

which limits an application to vary or removal a condition to “minor amendments” or to “amendments which do not involve a “substantial” or “fundamental” variation to the original scheme. Indeed, he describes the Planning Practice Guidance which talks about “minor material amendments” in relation to s.73s as “*liable to confuse*” and putting an “*impermissible gloss to the scope of s.73 which has the propensity to misdirect the reader*”.

Instead, the key question in determining whether the approach set out within s73 of the Act can be applied to vary a condition(s) attached to a planning permission is whether the amendment to the condition is consistent with the operative part of the original permission. If the amended scheme fits in within the description of development, that is what counts in terms of determining whether changes to a scheme can be dealt with under s73; even if the new scheme is fundamentally different to the old scheme.

This application seeks to vary conditions 2 and 7. Condition 2 sets out the list of the approved plans, to reflect changes to the scheme including a small increase in the number of dwellings (by just 4%), a reduction in the level of car parking and amendments to the internal layout to reflect updated fire safety regulations. Condition 7 is a highway condition which refers to a plan, and this needs to be amended to reflect the change to the scheme and planning drawings under condition 2.

This application for non-compliance with conditions 2 and 7 does not lead to any conflict or inconsistency with the operative part of the permission, and in line with the above case law accords with the statutory purpose of section 73 and the TCPA 1990 itself.

As noted by Deputy Judge Strachan the effect of giving the words used in s.73 their plain and ordinary meaning so as to allow an application to be made for non-compliance with any planning condition which is not in conflict with the operative part of permission does not dictate the outcome of that application. It simply means that the application can be considered. Any such application would then fall to be determined on its planning merits in the usual way, following receipt of consultation.

It is noted that there are several older cases which can be read as suggesting something different - i.e. s.73 applications do not apply for “*fundamental*” changes. But those older cases are (now) explained as being cases like Finney where there would have been an inconsistency between the new scheme and the operative part of the earlier permission.

As noted during pre-application discussions, there are number of examples of local authorities having accepted amendments to planning permission via the s73 route where it considers the scheme does not conflict with the operative part of the permission. One of the most “significant” in terms of the extent of changes accepted by both the London Borough of Ealing and the Mayor relates to ‘Greenford Quay’. Both parties accepted that planning permission could be granted via the s73 route to provide an additional 153 units (original development was for c. 2,000 units, a 7.6% uplift). The S73 procedure is a commonly accepted route to facilitate changes to a scheme during the course of delivery, and one that is entirely acceptable in this case to enable the delivery of much needed housing to Gravesham on this key regeneration site.

e. Proposed Variation to Condition 2 and 7

To facilitate the proposed changes, Conditions 2 and 7 will need to be amended. A deed of variation to the legal agreement dated 26 November 2020 will also be required.

Condition 2

Condition 2 relates to “approved plans” and states that “*The development hereby permitted shall be carried out only in precise accordance with the following approved details, plans and specifications*” as set out in the list of approved plans.

The schedule at Appendix A sets out the amended plans with the new revision numbers where applicable. These should be listed in the amended condition if GBC is minded to grant planning permission.

Condition 7

Condition 7 relates to highway works and will be required to be amended as follows (see **bold and underlined**):

*"No above ground construction work shall take place before a detailed highway scheme (to accord substantially with Drawing No 18-091-004 **Rev. A** contained in the Transport Assessment) and to include arrangements for an interim phased scheme if necessary, has been submitted to and approved, in writing, by the Local Planning Authority in consultation with the Local Highway Authority. For the avoidance of doubt this shall include details of construction and surface finishes for roads, footpaths, cycle-ways and car parking areas. The development shall only be completed in accordance with the approved details to be delivered through agreement (including timeframe) with the Local Highway Authority".*

Deed of Variation

Amendments to the signed s106 legal agreement will be required to:

1. enable the 22 discounted market rent units to be either discounted market rent or sale; and
2. change the trigger for the completion of the Pier works being completed from 50% to 90% of the private units being occupied.

f. Assessment of the Proposed Changes

At the outset we note that the statutory development plan for the site remains unchanged since the grant of planning permission in 2020. This comprises the Gravesham Local Plan Core Strategy (2014) and the saved policies in the Gravesham Local Plan First Review (LPFR) November 1994. The consideration of the proposed changes therefore take place against the same statutory development plan policies as the original planning permission.

Additional Residential Development

The proposed development will help deliver a key development site within the Gravesham Town Centre Opportunity Area, and specifically within the "East of Town Centre and Riverside area". The relevant Policy in the Council's Development Plan (Core Strategy CS 05) still applies, which seeks to ensure Gravesham Town Centre is the principal focus for town centre related economic and social activity in the borough. This will be achieved, amongst other things, by encouraging residential uses which provides a satisfactory living environment, and Clifton Slipways is identified in the Core Strategy as a location for residential use. The Policy specifically sets out that it will support the redevelopment of under-utilised sites where this makes more efficient use of the site and improves townscape character.

The proposed amendments will enable the delivery of this residential development, which will significantly improve the townscape character of the area. The provision of an additional nine residential units in this sustainable location is a positive outcome of the proposed changes, and will make a helpful contribution to the Council's housing stock and contribute positively to helping the Council move towards meeting its Five Year housing land supply, which currently falls significantly short at just 3.27 % (January 2021).

The principle of additional residential uses is wholly acceptable in this location, on a town centre, brownfield site, which is allocated for residential development in the statutory development plan.

Delivery of Employment Uses

The scheme remains committed to delivering the significant investment into restoring the Pier and ensuring a long-term management plan for its maintenance. This will ensure the Pier is available for public access and recreation. The scheme will also deliver the proposed workspaces.

The Section 106 agreement which is attached to planning permission ref. 20191122 requires the workspaces and pier restoration to be completed prior to occupation of 50% of the private dwellings. However, due to the viability issues as outlined above, it is requested that the trigger is extended to 90%.

Whilst it is noted that economic uses are supported in principle in the town centre opportunity area, this is not a policy requirement for the acceptability of a scheme on this site, including Core Strategy Policy CS 05 which relates to development in this East of Town Centre and Riverside area. Investment and delivery of this key "landmark gateway" town centre site alone would have a positive knock-on effect on the wider regeneration of Gravesend Town Centre which will have significantly positive economic impacts on the local economy. Accordingly, in policy terms and on balance, it is considered that the extension of the trigger to enable more private units to be occupied ahead of the completion of the business units is acceptable. The changes will ensure this scheme is delivered, which can then provide an opportunity to establish a high-quality benchmark development in this town centre location to attract further investment and raising the profile of Gravesend as a location.

Reduction in Car Parking Spaces

With regard to the reduction in car parking spaces, it is noted at the outset that this site is a highly sustainable town centre site. It is within walking distance of the railway station which offers regular services into London. In the determination of the original planning application, ref 20191122, officers recognised that around half of the local population do not have access to a car, and the reduction in car parking spaces at the time from 124 to 111 was specifically welcomed (Committee report para. 5.203). Indeed, it was noted that with the highly sustainable location of the development, being within walking distance to public transport links, the development was not required to comply strictly with the parking standards (para. 5.205).

Currently, the Council uses the Kent Vehicle Parking Standards which it adopted in July 2006 as Supplementary Guidance. This recognises that the control of parking at new developments is one way of promoting more sustainable forms of transport. It also recognises that parking takes up a large amount of space and has a direct influence on the efficiency of land use, the density of development achieved and its cost. The Parking Standards document states that the parking provision determined for a development should follow an assessment of the travel options by all types of transport that are already available or that can be provided.

The enclosed Transport Note, prepared by Charles Associates, confirms that the Clifton Slipways site benefits from a highly sustainable location in Gravesend town centre, with good connections by multiple modes of transport and proximity to public car parks. It also highlights how travel behaviour has changed in recent years which is reflected in current market expectations for new housing in town centres.

The proposed changes to the scheme would result in an overall provision of 0.23 car parking spaces per dwelling. This level is supported by local planning policy and would align with recent planning decisions in Gravesend town centre and elsewhere in Kent. High levels of cycle parking provision have been retained in the revised scheme, which sees an uplift in spaces to reflect the increase in residential unit. Further, the Car Club provision in the original scheme has been retained and strengthened with the provision of at least two vehicles. Discussions are taking place with Enterprise to operate this. This is seen as a key strength of the scheme; allowing residents to make occasional journeys without the administrative burden and expense of traditional car ownership. It is envisaged that the Car Club vehicles would be positioned in the laybys on West Street and Stuart Road so that the general public can use the vehicles as well as Clifton Slipways residents. This will complement the existing sustainable travel opportunities in Gravesend and provide site residents and the wider community with an alternative to traditional car ownership. The provision will start with a single vehicle on a 5-year rolling contract, with a second vehicle to be introduced once the first vehicle is being used regularly - Enterprise has suggested that this is triggered at 30% utilisation of the first vehicle. As for the original

application, the details of the Car Club provision will continue to be secured via the existing Section 106 Agreement.

It is therefore appropriate that there is a further reduction in parking spaces to be provided on this very sustainable site, and there remains a commitment to the provision of a car club in this location. The proposals would therefore remain acceptable in relation to transport and highways terms.

g. Concluding Remarks

We trust the sufficient information has been provided both in the above letter and the suite of documents submitted to accompany this application under Section 73 of the Act, and trust that you will be able to progress it without delay. However, in the meantime, should you require any additional information, or would like to discuss any aspect of the submission, do not hesitate to contact me.

We look forward to hearing from you in due course.

Yours sincerely,

HYoung

Hannah Young
ASSOCIATE DIRECTOR

cc.	Ben Geering	-	Quinn Estates Ltd
	Joe Selby	-	Selby Capital
	Tim Goode	-	Hollaway Architects

APPENDIX 1: DRAWING SCHEDULE

Drawing Title	Approved drawing number	Approved Rev.	New Rev.
Existing Plans			
Block Plan	19.057.100.01	P0	No change
Existing Site Plan	19.057.100.02	P0	No change
GA Plans			
Site Location Plan	18.137.100.00	P1	No change
Block Plan	18.137.100.01	-	No change
Proposed Site Plan	18.137.100.03	P1	P2
Landscape Masterplan	0176-L06	V4	No change
Stuart Road Block			
Car Park - Level 00	18.091.009	C	No change
Car Park - Level 01 Parking Review	18.091.011	C	No change
Stuart Road Block - Level -2	18.137.300.00	P1	No change
Stuart Road Block - Level -1	18.137.300.01	P3	P7
Stuart Road Block - Level 0	18.137.300.02	P3	P7
Stuart Road Block - Level 1	18.137.300.03	P1	P4
Stuart Road Block - Level 2-3	18.137.300.04	P1	No change
Stuart Road Block - Level 4	18.137.300.05	P2	P8
Stuart Road Block - Level 5	18.137.300.06	P1	P6
Stuart Road Block - Level 6-9	18.137.300.07	P1	P5
Stuart Road Block - Level 10-12	18.137.300.08	P1	P5

Stuart Road Block - Roof Level	18.137.300.09	P1	P3
Stuart Road Block - Elevation A	18.137.310.00		P4
Stuart Road Block - Elevation B	18.137.310.01		P3
Stuart Road Block - Elevation C	18.137.310.02		P4
Stuart Road Block - Elevation D	18.137.310.03		P4
Stuart Road Block - Section A	18.137.320.00	P1	P2
Pier Development			
Pier - Level 1	18.137.400.00		No change
Pier - Level 1.5	18.137.400.01		No change
Pier - Site Sections B-B	18.137.400.02		No change
Pier - Elevation	18.137.400.10		No change
Site Sections			
Site Section A-A	18.137.500.00		No change
Site Section B-B	18.137.400.02 -		No change
Sea Defence Wall			
Conceptual Sea Defence Wall Section A - A	HC-2269-1601	E	No change
Conceptual Sea Defence Layout	HC-2269-1600	D	No change
Conceptual Sea Defence Wall Section B - B	HC-2269-1602		No change