

2nd October 2025

Director of Planning, Building Control & Licensing
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Lambert Smith Hampton
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Our Ref:
Your Ref:
File Ref:

Dear Sir / Madam,

Re: Erection of a pair of 2 storey semi-detached 3 bed dwellinghouses with associated landscaping and car parking - 127079/FO/2020

LSH act on behalf of NBL Chapel Limited, Northern Assurance Buildings, 9 – 21 Princess Street, M2 4DN in respect of the above site. Our client wishes by virtue of Section 73 of the Town & Country Planning Act 1990 to seek a amendment to a planning permission granted by your authority on the 20th August 2020 reference. **127079/FO/2020** The description of the development given in the council's decision notice is as follows: - *"Erection of a pair of 2 storey semi-detached 3 bed dwellinghouses with associated landscaping and car parking"*

The planning consent has been "lawfully implemented" Advice on the process of amending planning permissions that have already been granted is set out in Planning Practice Guidance – Paragraph References 17a-001-20140306 - 17a-018-20140306, entitled *"Flexible options for planning permissions"* The PPG outlines the two processes available to local planning authorities and applicants seeking to vary extant planning consents. The two processes are making either a Non-Material Amendment [NMA] (TCPA section 96A) or an application amending the conditions attached to a permission (application under Section 73 TCPA 1990)

The starting point for the consideration of whether either of the processes is acceptable is the description of the development given in the decision notice. Neither method of amendment is open to applicants if the amendments sought would result in a change to the description given in the planning consent.

In relation to the amendments sought by Constructive Thinking Studios as part of this application it is emphatically the case that the description of the development would be entirely unaffected. The proposal would remain as the *"Erection of a pair of 2 storey semi-detached 3 bed dwellinghouses with associated landscaping and car parking"*

Further there is no change whatsoever to the "red line" boundary of the site. In the light of the fact that the description is unaffected, and the site boundary is unchanged the proposals the subject of this proposal merit further consideration for determine the most suitable process. In making this assessment the starting point is that the Government's intention is that the process of affecting change to an existing consent are specifically indented to offer greater flexibility and avoid burdensome administration and cost.

We would further note that the proposal originally granted planning consent was not subject to Environmental Impact Assessment nor is the consent subject to a Planning Obligation (Section 106 Agreement). The site does not lie within a Conservation Area and the proposal does not affect the setting of a Listed Building.

Section 73 provides the statutory mechanism to carry out development without compliance with conditions attached to an extant planning permission. Applications pursuant to that provision are often referred to as applications to “vary” a planning permission. However, as is well established, the effect of a successful s.73 application is instead the grant of an entirely separate and new independent planning permission with different conditions attached. Such new consent does not revoke the previous permission which remains intact. There are then two separate planning permissions in existence for the same development and a developer has the choice which to implement.

It is also clear from the wording of s.73(2) that on considering an application, “*the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted*”. It is not open to the authority to re-determine the principle of the development which already has the benefit of planning permission, but only the conditions to which it is subject.

In *Armstrong v Secretary of State for Levelling-Up, Housing and Communities*, [2023] EWHC 176 (Admin) the High Court helpfully reviewed the workings of Section 73. In relation to a s.73 application to vary the plans for construction of a new dwelling, the issue was identified as follows by Mr James Strachan KC sitting as a Deputy High Court Judge:

“The main issue which arises from this claim is whether the Inspector lawfully concluded that the application would give rise to a fundamental variation to the permission such that the application fell outside the scope of s.73 of the TCPA 1990, in circumstances where the proposed variation of the condition would not give rise to any conflict with the description of the development in that permission. It raises a question as to the correct statutory interpretation of that provision.”

That decision is particularly helpful given that it specifically raised the issue as to whether an application which would give rise to a fundamental variation to the extant permission but not require a change to, or be in conflict with, the description of the development was out with the scope of s.73.

In that case, the description of the approved development was “Construction of one dwelling” on the site. It was subject to a condition requiring the development to be carried out in accordance with specified plans. A s.73 application to substitute plans proposed a dwelling in a different form and style to that previously approved. With significant similarities to the present matter, the authority refused the application on the ground that:

“The proposed revised design completely alters the nature of the development and would result in a development that would differ materially from the approved permission. As a result, this proposal goes beyond the scope of Section 73 of the Town and Country Planning Act 1990”

The inspector dismissed the appeal, finding that the nature of the development proposed would be “substantially different” to that approved and so could not be regarded as “a minor material amendment” and thus was not within the scope of s.73.

Having reviewed the authorities in detail, the Judge found that the inspector had acted unlawfully in rejecting the s.73 application on the ground that it was “a fundamental variation” of the permission despite not involving any conflict with the description of development permitted, setting out 6 reasons for his finding. In summary, they were:

1. There is nothing in the wording of s.73 limiting its application to amendments which do not involve a substantial or fundamental variation.
2. Section 73 cannot be used to vary the operative part of a planning permission, namely the description. It is an application for non-compliance with a condition. There is no need, justification or statutory purpose for reading in additional restrictions which are not expressed on the face of the statute. Notably, it was pointed out at *"If, as accepted to be the case here, an application for non-compliance with a condition does not lead to any conflict or inconsistency with the operative part of the permission, it is difficult to see why it is objectionable in light of the statutory purpose of section 73 and the TCPA 1990 itself."*
3. Had Parliament intended such applications to be restricted to non-fundamental variations to a condition, one would have expected that to be expressed in the language used and such could readily have been done.
4. In contrast, s.96A TCPA, which is a power to amend any part of a planning permission, including the operative part, is expressly constrained to "non-material amendments". That is a further indication that had Parliament wished to limit the s.73 power to prevent fundamental variations to conditions, it would have done so expressly.
5. Giving the words used their plain and ordinary meaning does not dictate the outcome of the s.73 application, but merely that the application should be assessed if the amendment sought is not in conflict with the description of the development. If it amounts to a fundamental change, that will be assessed on its merits as to whether it is acceptable in planning terms.
6. None of the caselaw supports the restriction in scope of s.73 applications to non-fundamental variations where there is no conflict with the operative part of the permission. On the contrary, all the cases where a s.73 application was found to be outside the scope of the statutory provision have been instances where the amendment is in conflict with the description of the development which cannot be changed pursuant to a s.73 application.

He therefore found that the inspector was wrong to apply a test of fundamental variation. Armstrong is clear authority for the proposition that an application is within the scope of s.73 provided that the proposed variation to a condition does not involve a change to, or is not in conflict with, the operative part of the extant permission, namely the description of development. Further, where there is no such conflict, a s.73 application can be made however material or fundamental the effects of the proposal. That is not the relevant test to apply as there is no such test in s.73 and none should be so incorporated.

The proposed change would reduce by one the number of car parking spaces associated with the development, thus the proposal would still remain *Erection of a pair of 2 storey semi-detached 3 bed dwellinghouses with associated landscaping and car parking* as the number of spaces is not expressly set out in the description of the approved development

We have attached with this application revised plans. We seek to vary condition 2 of planning permission reference. 127079/FO/2020. The revisions are articulated upon the revised plans, the total number of parking spaces is reduced from 5 to 4.

The proposed change would result in condition 2 being varied to replace 714-45-201PB REV B with plan reference REF1B RevB dated September 2025.

The site lies within easy walking distance of the shops and services in Didsbury and is less than 800m from the East Didsbury Tram stop. The site lies within easy walking distance of high frequently bus routes. The site is highly accessible by means of transport other than the private motorcar.

We would accordingly request that this application for amendment be approved, and the application granted thereby allowing a swift delivery of an approved development.

Yours sincerely,

Richard Moffat
For: Lambert Smith Hampton
Director

