



Supporting Planning Statement

Section 73 Application to Vary Planning Permission
Ref. 71532

Kemp Heaton Avenue, Bury

Prepared on behalf of Hargreaves

August 2026

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1. Introduction

- 1.1 Hive Land & Planning are submitting this application on behalf of Hargreaves under Section 73 of the Town and Country Planning Act 1990 (as amended). The application seeks to vary conditions attached to planning permission ref. 71532 for the approved development at Land at Kemp Heaton Avenue, Bury. The approved development comprises:

“Erection of 18 no. supported living apartments (Class C2) and 25 no. dwellings (Class C3), construction of a new vehicle access point and associated parking and landscaping.”

Summary of Proposed Changes

- 1.2 The proposed changes are as follows:
- Variation of Condition 2 to substitute a limited number of approved drawings to reflect minor amendments to the approved scheme, including removal of louvres from the proposed apartment block, changes to the layout of the parking court to the rear of Plots 1–5 and the associated EV charging layout, with no reduction in the total number of parking spaces, and minor amendments to boundary treatments.
 - Variation of Condition 15 to reference the revised Foul and Surface Water Drainage Design Drawing, incorporating a surface water pumping chamber in place of the previously indicated hydro-brake arrangement (only change).
 - Variation of the wording of relevant pre-occupation conditions (Conditions 5, 6, 8 and 23) to allow those conditions to be satisfied on a phased basis, thereby enabling completed and compliant parts of the development to be occupied without requiring completion of site-wide works that are not necessary to make those elements acceptable in planning terms.
- 1.3 The application does not seek to make any alterations to the existing consent which would introduce any new material planning impact. The proposal is therefore appropriately advanced through Section 73, which enables a local planning authority to grant planning permission for the same development subject to varied conditions. Government planning practice guidance confirms that Section 73 can be used to make a material amendment by varying or removing conditions

associated with a planning permission, provided the change relates to conditions and not to the operative part of the permission.

Planning Application Documents

- 1.4 The application is supported by a proportionate package of information which is sufficient to allow the Local Planning Authority to understand the scope of the proposed variations, assess their planning implications, and impose clear and enforceable revised condition wording. The submitted information relates directly to the conditions proposed to be varied and demonstrates that the amendments are limited, justified and capable of being controlled through appropriately worded conditions.

Table 1: Application documents

Document/ Plan	Prepared by
Cover Letter	Hive Land & Planning
Application form and certificates	Hive Land & Planning
Planning Supporting Statement	Hive Land & Planning
Plans relating to variation of condition 2: - Apartment Block Elevations 12551-AEW-AB-XX-DR-A-0522 Rev C02 - Landscape 387 03 V - Boundary Treatments 387 04 Q - Detailed Planting Plan 1 of 2 387 05 L - Detailed Planting Plan 2 of 2 387 06 L - Proposed Site Plan 12551-AEW-SI-XX DR-A-0503-P29 - EV Charging Plan 12551-AEW-XX-XX-DR-A-6001 Rev C03	AEW/ SLD
Information relating to variation of condition 15: Drainage strategy 13753-CRH-ZZ-XX-RP-C-0001-P2	Campbell Reith
Information relating to variation of wording to conditions 5, 6, 8 and 23: - Phased Handover Plan - Suggested condition wording (within Planning Supporting Statement)	Hargreaves/ Hive Land & Planning

2. Planning Background

2.1 Planning permission was originally granted under reference 70015 for the approved development at Kemp Heaton Avenue. This permission was subsequently varied by a Section 73 permission under reference 71532, which represents a new standalone planning permission and the latest extant consent for the site. The current application is therefore made under Section 73 of the Town and Country Planning Act 1990 to vary condition(s) attached to permission 71532, which itself varied the original consent 70015.

2.2 The following table provides a summary regarding the status of the discharging of conditions:

Condition	Summary of condition requirement	Status / position
1	The development must be begun not later than 12 July 2027.	Monitoring condition. No discharge application required.
2	Development to be carried out in accordance with the approved drawings listed in the decision notice.	Further S73 application to be submitted to vary the approved plans (subject of this application)
3	Development shall only be carried out in accordance with the details approved under condition 3 of permission 70015.	Discharged / approved under permission 70015. No further action identified.
4	Contaminated land preliminary risk assessment, site investigation/risk assessment and remediation strategy to be submitted and approved before development commences, where required.	Discharged / approved under permission 70015. No further action identified.
5	Where remediation is required, the approved remediation strategy must be carried out within agreed timescales, with a Site Verification Report submitted and approved prior to the development being brought into use.	Phase 1 submitted. Application approved.
6	Prior to occupation, electric vehicle charging points shall be installed and made available for use, with EV chargepoints to be 7kW as a minimum.	Further S73 variation required to allow phased discharge / occupation (subject of this application).
7	Development shall only be carried out in accordance with the details approved under condition 7 of permission 70015.	Discharged / approved under permission 70015. No further action identified.
8	Prior to occupation or beneficial use, a signed statement/declaration by a suitably competent person must confirm the site is, or has been made, safe and stable for the approved development, including	Application to discharge condition submitted and refused. Further S73 variation required to allow phased

	methods, findings and completion of any remedial works/mitigation for past coal mining activity.	discharge / occupation (subject of this application).
9	Development shall only be carried out in accordance with the details approved under condition 9 of permission 70015, with any mitigation measures implemented in full during the course of development.	Discharged / approved under permission 70015. No further action identified.
10	No works to trees or shrubs shall occur between 1 March and 31 August unless a detailed bird nest survey by a suitably experienced ecologist has been carried out immediately prior to clearance.	Compliance condition. No discharge application required.
11	Development shall only be carried out in accordance with the measures in Sections 4.4.2 to 4.4.4 of the Preliminary Ecological Appraisal relating to amphibians, hedgehogs and badgers.	Compliance condition. No discharge application required.
12	Development shall only be carried out in accordance with the details approved under condition 12 of permission 70015.	Discharged / approved under permission 70015. No further action identified.
13	Development shall only be carried out in accordance with the details approved under condition 13 of permission 70015.	Discharged / approved under permission 70015. No further action identified.
14	Landscaping scheme to be implemented not later than 12 months from the date the building(s) is first occupied, with replacement planting required for any trees or shrubs removed, dying, damaged or diseased within 5 years of planting.	Compliance condition. No discharge application required.
15	Drainage to be carried out in accordance with the submitted Foul & Surface Water Drainage Design Drawing 13753-5050, Rev P1 dated 09/08/2023, prepared by Campbell Reith. Prior to occupation, the drainage schemes shall be completed in accordance with the approved details and retained thereafter.	Further S73 application to be submitted to vary the reference to the drainage design drawing (subject of this application).
16	Development shall only be carried out in accordance with the details approved under condition 16 of permission 70015. The approved plan shall be adhered to throughout construction and retained/used for the intended purpose for the duration of construction.	Discharged / approved under permission 70015. No further action identified.
17	Development shall only be carried out in accordance with the details approved under condition 17 of permission 70015. The approved details shall be implemented to an agreed programme.	Discharged / approved under permission 70015. No further action identified.
18	Where estate roads are not to be adopted, or no adoption agreement has been reached, details of future management and maintenance arrangements for the estate road shall be submitted and approved prior to occupation. The road shall then be maintained in	Condition discharge application submitted. Decision pending. No further variation to wording identified.

	accordance with the approved details until a private management and maintenance company is established.	
19	Turning facilities shown on the approved plans shall be provided before the areas of the development to which they relate are first occupied and maintained free of obstruction thereafter.	Compliance condition. Wording already allows for phased occupation by reference to the areas of development to which the turning facilities relate.
20	Turning facilities shown on the approved plans shall be provided before the areas of the development to which they relate are first occupied and maintained free of obstruction thereafter.	Compliance condition. This repeats condition 19.
21	Minimum hardstanding lengths of 5.0m at all dwellings shall be provided and thereafter maintained.	Compliance condition. No discharge application required.
22	Car parking shown on the approved plans shall be surfaced and made available for use prior to each dwelling/part of the site to which it relates being occupied and maintained thereafter.	Compliance condition. Wording already allows for phased occupation by reference to each dwelling/part of the site.
23	Bin storage arrangements shall be provided within the curtilage of each dwelling in accordance with Waste Management's Guide to Refuse Collection Requirements & Storage Methods for New Developments.	Further S73 variation required to allow phased discharge / occupation (subject of this application).
24	Development shall only be carried out in accordance with the details approved under condition 24 of permission 70015.	Discharged / approved under permission 70015. No further action identified.
25	Development shall only be carried out in accordance with the details approved under condition 25 of permission 70015.	Discharged under 70015. Further Condition discharge application submitted. Decision pending to reflect change to the parking court to the rear of plots 1-5. No further variation to wording identified.

2.3 Following detailed design development and engagement with Bury Council, it has become necessary to regularise a small number of amendments to the approved scheme and to amend the wording of relevant conditions to better reflect the practical delivery of the development. The changes were initially pursued through a Section 96A non-material amendment application, however Bury Council has confirmed that a Section 73 application is the appropriate mechanism to vary the relevant conditions and provide clear and enforceable wording.

- 2.4 The applicant has also reviewed the approach taken in the Green Street Section 73 application in Radcliffe, which sought to vary conditions attached to an existing permission and included reference to a phasing plan. That precedent is directly relevant in principle, as it demonstrates that condition wording may be varied through Section 73 to reflect phased delivery and occupation where the planning safeguards remain secured.

3. Scope of the Proposed Variations

3.1 This application seeks permission for the following variations:

- **Variation of Condition 2** to substitute updated approved drawings reflecting:
 - removal of louvres from the proposed apartment block;
 - amendments to the parking layout to the rear of Plots 1–5 and related EV charging layout (no reduction in the total number of parking spaces);
 - minor amendments to boundary treatments, including acoustic fencing alignment and related landscape plan updates.
- **Variation of Condition 15** to reference the revised Foul and Surface Water Drainage Design Drawing (13753-CRH-ZZ-XX-RP-C-0001-P2), including a surface water pumping chamber. The pumping chamber is required because the drainage must pass beneath a high-pressure gas main, resulting in drainage levels being below the outlet level and necessitating pumping to achieve the same discharge outcome. The principle of surface water drainage remains unchanged, the outfall remains the same, and the restricted discharge rate of 6.17 litres per second remains secured.
- **Variation of Conditions 5, 6, 8 and 23** to enable relevant requirements to be satisfied on a phased basis. This is required to ensure that completed parts of the development can be occupied where the relevant condition requirements have been met for that phase, without requiring unrelated works across the remainder of the site to be completed before occupation can occur. The existing wording means that where conditions require works to be completed before occupation of the dwellings, those conditions should be varied to allow each condition to be satisfied in phases.

Scope of Section 73

3.2 The principle of development has already been established through the grant of planning permission ref. 71532. The current application does not invite the Council to reconsider the acceptability of the approved development as a whole. Rather, the application is confined to the planning merits of varying the relevant conditions so that the permission can be implemented in a clear, practical and enforceable manner.

3.3 Section 73 of the Town and Country Planning Act 1990 applies to applications for planning permission for the development of land without complying with conditions attached to a previous permission. The local planning authority is required to consider the question of the conditions subject to which permission should

be granted. Government guidance also confirms that permission granted under Section 73 takes effect as a new, independent permission for the same development, subject to new or amended conditions, and that Section 73 cannot be used to change the description of development or extend the implementation period.

- 3.4 The proposed variations fall within the scope of Section 73. They relate to approved drawings and condition wording only. They do not alter the operative description of development, do not increase the scale or quantum of development, and do not give rise to any materially different planning consequences from those already assessed through the extant permission.

4. Appraisal of Proposed Amendments

Variation of Condition 2 — Approved Drawings

- 4.1 This application proposes the substitution of a limited number of drawings listed under condition 2 with updated drawing revisions, as summarised within the Approved Plans Comparison Schedule in the table below.

Plan Title	Drawing Ref (to be superseded)	Proposed Plan	Summary of Change	Justification for Amendment
Changes to the Proposed Street Elevations Plan and Apartment Block Elevations				
Apartment Block Elevations	12551-AEW-AB-XX-DR-A-0522 P02	12551-AEW-AB-XX-DR-A-0522 Rev C02	Removal of louvres to the apartment block	The louvres have been removed as they cannot be adequately fixed to UPVC window frames and would create ongoing maintenance and cleaning issues, particularly access to clean windows behind the louvres. Their removal does not materially affect the external appearance of the building and represents a minor design refinement, with no impact on the scale, massing, or design intent of the apartment block.
Changes to the proposed Hard Landscape				
Proposed Site Plan	12551-AEW-SI-XX-DR-A-0503-P26	12551-AEW-SI-XX-DR-A-0503-P29	Parking layout to the rear of the bungalows (plots 1-5) on St Peter's Road has change to accommodate substation. The number of spaces across the site remains the same.	The parking layout to the rear of plots 1-5 has been locally realigned to accommodate the substation, bin store serving Peachment Place, and existing level changes to the rear of neighbouring properties on Bronte Avenue. The total number of parking spaces across the site remains unchanged.
Landscape	387 03 U	387 03 V	Gabion baskets to the rear of the apartment building have been removed and there is a small change to the line of the acoustic fencing.	Gabion baskets to the rear of the apartment block are no longer required as the area can now be graded to the appropriate levels following detailed site clearance, cut and fill assessment, and refined level design. This represents a minor landscape design update arising from improved site understanding and does not affect the approved layout or function of the space.
Boundary Treatments	387 04 P	387 04 Q	The line of the acoustic fencing is amended slightly to reflect construction parameters.	The alignment and extent of the acoustic fencing has been amended slightly to reflect construction parameters and to ensure consistency with the approved acoustic assessment. The change rationalises the boundary treatment without materially altering its purpose or performance.
Detailed Planting Plan 1 of 2	387 05 K	387 05 L	Amended to reflect the changes to the line of acoustic fence and hard standing to provide	No changes to the quantum or species of planting. Drawings updated to provide consistency due to proposed change to parking and acoustic fence line.

			consistency across the approved drawings.	
Detailed Planting Plan 2 of 2	387 06 K	387 06 L	Amended to reflect the changes to the line of acoustic fence and hard standing to provide consistency across the approved drawings.	No changes to the quantum or species of planting. Drawings updated to provide consistency due to proposed change to parking and acoustic fence line.
EV Charging Plan	12551-AEW-XX-XX-DR-A-6001 P05	12551-AEW-XX-XX-DR-A-6001 Rev C03	Confirm delivery of 44 charge points but with slightly amended locations, regularised through amendment.	Updated to reflect the revised parking layout as above. Condition 6 requires EV charging points to be installed and made available to use prior to occupation. The updated plan reflects the as built provision.

- 4.2 The proposed changes are confined to drawing updates and do not introduce a materially different development when compared with the consented scheme.
- 4.3 Taken together, the amendments to Condition 2 are limited, proportionate and necessary to regularise the deliverable scheme. They do not undermine the design quality, residential amenity, highway safety, parking provision, landscaping strategy or overall planning balance underpinning the extant permission.

Variation of Condition 15 — Foul and Surface Water Drainage

- 4.4 Condition 15 currently requires the drainage for the development to be carried out in accordance with the principles set out in the submitted Foul and Surface Water Drainage Design Drawing 13753-5050 Rev P1, prepared by Campbell Reith, and secures a restricted surface water discharge rate of 6.17 litres per second.
- 4.5 The proposed variation is required to reference the revised drainage drawing and include a surface water pumping chamber (13753-CRH-ZZ-XX-RP-C-0001-P2). This single change has arisen because the drainage route must pass beneath a high-pressure gas main, resulting in drainage levels being below the outlet level and therefore requiring pumping to achieve the same discharge outcome. The pump is therefore a technical response to a third-party infrastructure constraint rather than a change arising from any increase in the scale, intensity or nature of the development. It is important to note that this change is reflected in an update to the previously submitted Floor Risk Assessment and Drainage Strategy (August 2023). Page 2 of the report demonstrates that this document has been updated solely to reflect this change.
- 4.6 The fundamental drainage strategy remains unchanged. The principle of surface water drainage remains as approved, the outfall remains the same, and the restricted discharge rate of 6.17 litres per second remains secured by condition. The pumping chamber would be below ground and would not appear materially different from a typical manhole cover. As such, the variation would not increase flood risk, would not alter the approved discharge restriction, and would not result in any material visual, residential amenity or infrastructure impact.
- 4.7 The revised wording of Condition 15 should therefore reference the updated drainage strategy (reference: 13753-CRH-ZZ-XX-RP-C-0001-P2)

Variation of Pre-Occupation Conditions to Allow Phased Occupation

- 4.8 The application also seeks to vary the wording of Conditions 5, 6, 8 and 23 to support phased occupation. The purpose of this variation is not to weaken the requirements of the conditions, but to ensure they operate proportionately and practically in the context of a phased delivery programme.
- 4.9 The existing condition wording requires certain matters to be completed “prior to occupation” or before the development is brought into use. Where applied on a site-wide basis, this wording could prevent occupation of completed homes or apartments even where all relevant mitigation, infrastructure and servicing requirements for that particular phase have been satisfied. This would be disproportionate where outstanding works relate to later phases or to parts of the site that are not necessary to make the occupied phase acceptable.
- 4.10 A Phasing Plan has been submitted in support of this Section 73 application to demonstrate how the development is intended to be delivered and occupied in discrete phases. The purpose of the plan is to provide a clear framework for applying the relevant pre-occupation conditions to the part of the development to which they relate, rather than requiring all site-wide works to be completed before any dwelling, apartment or phase can be occupied. This is particularly important in the context of Conditions 5, 6, 8 and 23, which relate to matters such as remediation verification, ground stability, EV charging and bin storage. Each of these requirements can be appropriately secured before occupation of the relevant phase, provided the necessary works, infrastructure or verification serving that phase have been completed and approved. The phasing approach therefore does not remove or weaken the planning controls imposed by the original permission; instead, it ensures that those controls operate in a precise, enforceable and proportionate way. This is necessary to support practical delivery of the approved development and to avoid an unreasonable situation where completed and compliant homes are prevented from being occupied because separate works associated with later phases remain outstanding. The submitted Phasing Plan therefore provides the evidential basis for the requested condition variations and demonstrates that phased occupation can take place without prejudice to residential amenity, highway safety, drainage, ground conditions, servicing arrangements or any other planning safeguard secured by the extant permission.

4.11 The suggested revised condition wording is set out in the table below, which has been prepared on the basis of the approach taken in the Green Street Section 73 application in Radcliffe.

Condition	Existing condition wording	Suggested varied wording to allow phased occupation
Condition 5 – Remediation verification	“Following the provisions of Condition 4 of this planning permission, where remediation is required, the approved Remediation Strategy must be carried out to the satisfaction of the Local Planning Authority within agreed timescales; and A Site Verification Report detailing the actions taken and conclusions at each stage of the remediation works, including substantiating evidence, shall be submitted to and approved in writing by the Local Planning Authority prior to the development being brought into use.”	Where remediation is required pursuant to Condition 4, the approved Remediation Strategy shall be carried out in accordance with the approved details and agreed timescales. No dwelling, apartment, or phase of the development shall be occupied or brought into beneficial use until a Site Verification Report relating to that dwelling, apartment, or phase has been submitted to and approved in writing by the Local Planning Authority. The Site Verification Report shall detail the actions taken, conclusions reached and any substantiating evidence relevant to that dwelling, apartment, or phase. Any remediation and verification works required for later phases shall be completed and approved before those later phases are occupied or brought into beneficial use.
Condition 6 – Electric vehicle charging	“Prior to occupation, electric vehicle charging points shall be installed and made available for use. EV chargepoints shall be 7kW as a minimum. Mode 3, 7kW (32A) single phase, or 22kW (32A) three phase, and for 50kW Mode 4 rapid charging may be required. British Standard BS EN 61851-1:2019 to be used.”	Prior to the first occupation of any dwelling, apartment, or phase of the development, the electric vehicle charging points serving that dwelling, apartment, or phase shall be installed and made available for use in accordance with the approved EV charging details. EV chargepoints shall be 7kW as a minimum, unless otherwise agreed in writing by the Local Planning Authority. Mode 3, 7kW (32A) single phase, or 22kW (32A) three phase charging shall be provided as appropriate, and British Standard BS EN 61851-1:2019 shall be used. The approved EV charging points shall thereafter be retained and maintained for use.

Condition 8 – Coal mining / ground stability verification	“Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.”	Prior to the first occupation of any dwelling, apartment, or phase of the development, or that dwelling, apartment, or phase being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person shall be submitted to and approved in writing by the Local Planning Authority confirming that the relevant part of the site serving that dwelling, apartment, or phase is, or has been made, safe and stable for the approved development. The statement or declaration shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity in relation to that dwelling, apartment, or phase.
Condition 23 – Bin storage	“Bin storage arrangements shall be provided within the curtilage of each dwelling in accordance with Waste Management's 'Guide to Refuse Collection Requirements & Storage Methods for New Developments'.”	Prior to the first occupation of each dwelling, apartment, or phase of the development, bin storage arrangements serving that dwelling, apartment, or phase shall be provided in accordance with Waste Management's 'Guide to Refuse Collection Requirements & Storage Methods for New Developments'. The approved bin storage arrangements shall thereafter be retained and made available for use at all times.

5. Conclusion

- 5.1 This Section 73 application seeks to vary conditions attached to planning permission ref. 71532 to regularise a limited number of drawing amendments, update the approved drainage details, and amend relevant pre-occupation conditions to allow the development to be occupied on a phased basis. The proposed variations are limited in scope and do not alter the approved description of development, the quantum of residential accommodation, the overall layout strategy, or the planning balance established through the extant permission.
- 5.2 The amendments to the approved drawings are minor and arise from detailed design development and practical construction requirements. They do not result in any material impact on design quality, residential amenity, highway safety, parking provision, landscaping, drainage, or any other planning consideration. The revised drainage arrangement maintains the approved surface water drainage principles, outfall and restricted discharge rate, with the pumping chamber required solely as a technical response to site infrastructure constraints.
- 5.3 The proposed phased wording for Conditions 5, 6, 8 and 23 would ensure that the conditions continue to operate effectively, while allowing completed and compliant parts of the development to be occupied where the relevant requirements have been satisfied. This approach would not remove or weaken any planning control, but would provide a clearer, more proportionate and enforceable basis for delivery of the approved development.
- 5.4 For these reasons, the proposed variations are considered acceptable in planning terms and remain consistent with the scope and purpose of Section 73. The Local Planning Authority is therefore respectfully requested to grant permission subject to the varied conditions set out within this statement.

Planning Supporting Statement Kemp Heaton Avenue, Bury