

Our Ref: JB/CJ04C400595

Your Ref: PP-13442149

8 October 2024

Helen Leach

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Department for Business, Growth & Infrastructure

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Dear Ms Leach

VARIATION OF CONDITION 2 (APPROVED PLANS) FOR PART-RETROSPECTIVE MINOR AMENDMENTS TO 54 NO. DWELLINGS AND THE SITE-WIDE PLANS, AND THE VARIATION OF CONDITION 11 (LANDSCAPING) FOR IMPROVED LANDSCAPING AND THE REPLACEMENT OF FENCELINES WITH HEDGEROWS FOLLOWING THE GRANT OF PLANNING PERMISSION REF: 63533 AT FORMER BEVIS GREEN WORKS, MILL ROAD, WALMERSLEY, BURY, BL9 6RE

On behalf of our Client, Barratt Manchester Ltd ('the Applicant'), please find enclosed a submission for the variation of Condition 2 (approved plans) for part-retrospective minor amendments to 54no. dwellings and the site-wide plans, and Condition 11 (landscaping) for improved landscaping and the replacement of fencelines with hedgerows following the grant of planning permission ref: 63533 at Former Bevis Green Works, Mill Road, Walmersley, Bury, BL9 6RE.

Background to the Application

Full planning permission was granted on 6th February 2020 for '*residential development comprising 268no. dwellings (Class C3) with associated access, car parking, landscaping and open space*' (application ref: 63533). Since securing permission on site, Barratt Homes have commenced development and are undertaking the remediation, culvert and site preparation works across the entire application site under the original full application. A number of dwellings have already been built on site. Following the full planning permission, a NMA application (ref: 70288) was approved on 19th January 2024 for minor adjustments to the fencelines and managed areas to the rear of plots 167-173, 223, 224, 218-208, 202-192, and the plot positions of plots 258-266.

As discussed as part of our pre-application discussions, Barratt Homes are committed to the delivery of the site and it has been found that there is significantly more demand for Ellerton units, rather than the approved Maidstone units. Both the Maidstone and Ellerton house types are identical in the number and type of rooms, footprint and external space with the differences between them being minor and largely aesthetic (described in more detail later in this letter). They are, in planning terms at least, variations of the same house type but with different names for internal corporate purposes.

A number of the Ellerton house types have been built out and it is therefore necessary to formally vary the approved plans condition (Condition 2) to regularise this matter via a part-retrospective planning application, along with amendments to the site-wide plans and landscaping (Condition 11). This application is simply to substitute the approved plans and as such it does not need to reconsider the principle of development or other technical matters, as these have already been assessed and approved as part of the original full application (ref: 63533).

Scope of a Variation of Condition Application

Planning Practice Guidance¹ is clear that an application made under Section 73 of the Town and Country Planning Act 1990 can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission.

During pre-application discussions with the LPA, they concluded that a 'change of house type' application would be required, rather than a s73 or s96A application, due to the impact upon residential amenity from the proposed relocation of bedroom windows. There is no statutory definition of what a 'change of house type application' is. Despite this, the summary table at Annex A² of the Planning Practice Guidance states that applications under s73 can be assessed against the development plan and material considerations, under section 38(6) of the 2005 Act, and conditions attached to the existing permission. Therefore, the LPA are able to assess the impact on residential amenity of any amendment to a planning permission proposed by way of a s73 application.

We note that recent applications in Bury have been subject to 'change of house type' full applications but the proposed changes were substantial, for example changing the footprint and height of the dwellings, which is not the case in this application where only minor changes are proposed to the front and rear elevations. For example, application ref: 70229 comprised a change of house type application to remove dormers, increase the eaves heights, increase the width of the porches and internal alterations. Application ref: 70796 was also a change of house type

¹ Paragraph: 013 Reference ID: 17a-013-20230726

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864175/Annex_flexible_options.pdf

application, but again the changes were significant, including the rotation of the dwelling, reduction in its length by 1m and a single storey wrap around extension. Application ref: 68069 was submitted, but later withdrawn, for the southern parcel of this subject site to substitute the layout and house types which involved significant changes to the scheme from apartments to dwellings.

There have been some cases where s96A NMA and s73 VCOND applications have been granted in Bury to change the house type with minor amendments, which is more akin to what is proposed in this application. For example, application ref: 70407 was approved for amendments to the door canopies, house types and the omission of the alternative brick from the building façade. Application ref: 69389 was approved for a variation of Condition 2 (approved plans) for changes to the house type design including alterations to finishing materials, raising the roof eaves by 1m and revising the monopitch gable to a duo-pitch gable, enlarged windows, new kitchen windows and the installation of Juliet balcony doors with larger windows. Application ref: 66115 was approved for a NMA for minor adjustments to plot positions and the rebranding of previously approved house types, where the proposed development would change the names of the house types, but the design and layout of the house types would be as approved.

It is concluded that the amendments proposed in this application are minor material amendments to the design of the affected dwellings such that they would not alter the nature of the development and would not result in a development that would differ significantly from the approved permission. The proposed amendments relate to the approved plans (Condition 2) of application ref: 63533, and therefore fall within the scope of a s73 application.

Variation of Condition 2 (Approved Plans)

The following amendments are sought to the approved plans:

- Part-retrospective substitution of the 54no. approved Maidstone units with Ellerton, illustrated by the colour overlay on the attached Proposed Planning Layout (ref: 456/P/PL/04 Rev 07). This includes units 3, 4, 23, 26, 46, 47, 52, 53, 60, 61, 67, 68, 69, 74, 75, 84, 85, 109, 110, 116, 117, 119, 120, 125, 130, 131, 133, 144, 148, 155, 156, 157, 161, 162, 163, 169, 170, 173, 185, 186, 219, 220, 221, 223, 224, 226, 229, 230, 250, 255, 259, 260, 264, 265. A summary of the minor material amendments proposed are listed below:
 - The Ellerton and Maidstone house types are functionally identical in terms of envelope, but the roof pitch will be reduced from 35° to 30° from the approved Maidstone to the proposed Ellerton house type. In all other respects the materials/detailing and construction of the roof will be identical to the approved Maidstone.
 - The Ellerton front elevation door position and porch are shifted slightly outwards, further from the party wall. The header course over the ground floor front window will be removed for the Ellerton.

- The Ellerton front elevation will have a smaller window above the door on the first floor compared to the approved Maidstone, as a result of moving the main bedroom and ensuite to the front of the property.
- The Ellerton rear elevation bifold doors position will be shifted slightly outwards, further from the party wall. The Ellerton rear elevation will have a larger window on the first floor above the bifold doors to reflect the revised internal room layout to accommodate a bedroom instead of a bathroom on the approved Maidstone.
- The Ellerton side elevation ground floor window position will be altered slightly to facilitate the change from a lounge side window to a WC side window.
- Internal layout amendments involve the relocation of the WC on the ground floor, and on the first floor involves the relocation of the bath, ensuite and bed 3.
- Amendments to the approved material specification, as illustrated in the revised Materials Layout Plan (ref: 456/P/ML/04 Rev 08). This includes the following changes:
 - Updated plots 24-37, 71-73, 80, 83-85, 88-89, 121-122, 107-110, 190-202, and 208-218 from Forterra Woodside Mixture to Wienerberger Pembridge Red.
 - Updated plots 74-79 from Forterra Wentworth Mixture to Wienerberger Woodland Mixture.
 - Updated plots 71-136 and 190-268 from black doors to white doors.
- Updates to the approved boundary treatments to remove railings where present and substitute these with hedges on plots 28-38, 71-91, 92-123 and 190-268, as shown in the revised Boundary Treatments Layout Plan (ref: 456/P/BTL/04 Rev 04).
 - The changes to the boundary treatments will also be included in the variation of Condition 11 (below) to remove the fencing and add the hedgerows onto the landscaping plan.
- Amendments to the site-wide landscaping plan to enhance the landscaping specification (refs: c-1339-05 Rev C2, c-1339-06 Rev D2, c-1339-07 Rev B3).
- Amendment of the rear boundaries of plots 219-224 to accommodate a revised retaining wall specification. This is shown on all of the site-wide plans.

The table below sets out the proposed amendments sought to the relevant condition which relate to the approved plans:

Condition Number	Current Condition Wording	Proposed Condition Wording
2	This decision relates to drawings numbered 456/P/LP/02,	This decision relates to drawings numbered 456/P/LP/02,

456/P/PL/02 E, 456/P/ML/02 E, 456/P/HLL/02 E, 456/P/SHL/02 E, 456/P/RSL/02 E, 456/P/BTL/02 E, c-1339-02 Rev A, c-1339-03 Rev A, 456/P/SS/02, 456/P/DP/01, BALD 00CD 01, BALD 56SD 01, TBC 01, 2016/FAL/01, 2016/FAL/02, BHLN 00CD 01, BHLN 56SD 01, BKEY 00CD 01, BKIS 00CE 01, BKIS 00CI 01, BKIS 56SE 01, BKIS 56SI 01, BKNL 00CE 01, BKNL 00CI 01, BKNL 56SE 01, BLUT 00CD 01, BLUT 56SD 01, BMAI 00CE 01, BMAI 56SE 01, BMMS 00CD 01, BMMS 00CE 01, BMMS 56SE 01, BMMS 56SD 01, BTHO 00CD 01, BWIE 00CD 01, BWIE 56SD 01, 2010/DET/C/135, 2010/DET/C/1362010/DET/CS/01, NGF - TYPE 65 A, BS04 and the development shall not be carried out except in accordance with the drawings hereby approved.	456/P/PL/04 Rev 07, 456/P/ML/04 Rev 08, 456/P/HLL/04 Rev 04, 456/P/SHL/04 Rev 04, 456/P/RSL/04 Rev 04, 456/P/BTL/04 Rev 04, c-1339-05 Rev C2, c-1339-06 Rev D2, c-1339-07 Rev B3, 456/P/SS/02, 456/P/DP/01, BALD 00CD 01, BALD 56SD 01, TBC 01, 2016/FAL/01, 2016/FAL/02, BHLN 00CD 01, BHLN 56SD 01, BKEY 00CD 01, BKIS 00CE 01, BKIS 00CI 01, BKIS 56SE 01, BKIS 56SI 01, BKNL 00CE 01, BKNL 00CI 01, BKNL 56SE 01, BLUT 00CD 01, BLUT 56SD 01, BLLE X0HE 01, BLLE X0-I 01, BLLE 5SHE MX00 01, BLLE 56SI MX00 01, BMMS 00CD 01, BMMS 00CE 01, BMMS 56SE 01, BMMS 56SD 01, BTHO 00CD 01, BWIE 00CD 01, BWIE 56SD 01, 2010/DET/C/135, 2010/DET/C/1362010/DET/CS/01, NGF - TYPE 65 A, BS04 and the development shall not be carried out except in accordance with the drawings hereby approved.
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Variation of Condition 11 (Landscaping)

Condition 11 of permission ref: 63533 reads as follows:

The landscaping scheme hereby approved shall be implemented to the written satisfaction of the Local Planning Authority not later than 12 months from the date the building(s) is first occupied. Any trees or shrubs removed, dying or becoming severely damaged or becoming seriously diseased within 5 years of planting shall be replaced by trees or shrubs of a similar size and species to those originally required to be planted to the written satisfaction of the Local Planning Authority.'

As outlined in the section above, it is proposed to update the approved boundary treatments to remove railings where present and substitute these with hedges on plots 28-38, 71-91, 92-123 and 190-268, as shown in the revised Boundary Treatments Layout Plan (ref: 456/P/BTL/04 Rev 04). These changes have also been updated on the revised site-wide landscaping plans (refs: c-1339-05 Rev C2, c-1339-06 Rev D2, c-1339-07 Rev B3) to upgrade the landscaping specification to reflect the new BDW group standard on site in this application.

Planning Assessment

It is considered that the amendments proposed in this application are minor material changes to the dwellings, where the proposed revised design does not alter the nature of the development and would not result in a development that would differ significantly from the approved permission. The change in house type name for the 54no. dwellings from Maidstone to Ellerton is for internal purposes only, where the footprint and size of the dwellings would not be affected, and the proposed development would not be unduly prominent in the locality. It is therefore concluded that these changes fall within the scope of a s73 application.

It is considered that the principle of residential development has already been established through the granting of the previous full application on the site (application ref: 63533). The proposed amendments to the design and house type of the 54no. dwellings and the updates to the site-wide plans adhere to the principles and parameters of the previous approval and, as such, the principle of development is acceptable in accordance with the Development Plan.

In pre-application discussions, Bury Council raised the impact upon residential amenity from the proposed relocation of bedroom windows should be considered. The proposed amendments promote a high-quality residential development, the design of which has considered the site opportunities and constraints to ensure the delivery of a development which is both sympathetic and responsive to its surroundings. In relation to residential amenity, the main alteration for the proposed change of house type from Maidstone to Ellerton involves a slightly larger window on the rear elevation first floor above the bifold doors to accommodate a bedroom instead of the approved Maidstone smaller window for a bathroom.

Adequate separation distances to facing elevations of adjacent properties to avoid overlooking and protect privacy have already been demonstrated in the approved application ref: 63533. The proposed enlarged bedroom window on the first floor will be the same size as the adjacent

approved bedroom window on the first floor of the Maidstone housetype which did not give rise to any residential amenity concerns. Therefore, it is considered that there will be no negative impact on residential amenity in line with UDP Policies H2/1, H2/2 and EN1/1 and the related supporting documents and guidance.

The previous application was supported by a number of technical reports in regard to land contamination, ecology, trees, flood risk, transport assessment and noise, which demonstrated that the development would not result in any adverse impacts in accordance with the Development Plan. The proposed amendments do not affect these and lie in accordance with the conclusions and proposed mitigation measures of the various technical reports and, as such, the scheme accords with the Development Plan in this regard. Similarly, it has been agreed with the LPA that no new technical assessments are required to support this application, including a Biodiversity Net Gain assessment.

Finally, we can confirm that the applicant is content for the various conditions attached to the original full application to be applied to a permission for this application when granted. A deed of variation to the Section 106 legal agreement for the original permission has been provided to link the new consent to the original permission.

Summary

This s73 application (PP-13442149) is seeking permission for the variation of Condition 2 (approved plans) for part-retrospective minor amendments to 54no. dwellings and the site-wide plans, and Condition 11 (landscaping) for improved landscaping and the replacement of fencelines with hedgerows following the grant of planning permission ref: 63533.

It has been demonstrated that the proposed amendments are minor and fall within the scope of a s73 application and that the proposed revised design of the dwellings and house type does not alter the nature of the development and would not result in a development that would differ materially from the approved permission. The proposed amendments would still lie in accordance with the overall principles of the approved application and the policies against which this was approved. It is also considered that the proposed development would not be unduly prominent in the locality and would not impact residential amenity. The application should therefore be approved without delay.

Yours sincerely



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For and on behalf of Avison Young (UK) Limited

Submission Schedule

Document	Reference / Date	Author
Supporting Cover Letter	This document.	Avison Young
Application Forms, Certificates & Notices	-	Avison Young
Existing Approved Floor Plans, Elevations and Section Plans for Maidstone House Type	BMAI 00CE 01, BMAI 56SE 01.	BDW
Proposed Planning Layout	456/P/PL05/01	BDW
Proposed Floor Plans, Elevations and Section Plans for Ellerton House Type	BLLE X0HE 01, BLLE X0-I 01, BLLE 5SHE MX00 01, BLLE 56SI MX00 01.	BDW
Proposed Landscaping Plan	c-1339-05 Rev C2, c-1339-06 Rev D2, c-1339-07 Rev B3.	BDW
Proposed Boundary Treatment Layout	456/P/BTL05/01	BDW
Proposed Hard Landscaping Layout	456/P/HLL05/01	BDW
Proposed Materials Layout	456/P/ML05/01	BDW
Proposed Refuse Strategy Layout	456/P/RSL05/01	BDW
Proposed Storey Heights Layout	456/P/SHL05/01	BDW
Section 106 proforma and up to date title documents – deed of variation		