



Planning Manager
Bury Council
3 Knowsley Place
Duke Street
Bury
BL9 0EJ

Our Ref: RG/G267L001
Date: 15th November 2023

Dear Sir

**S73 APPLICATION – VARIATION OF CONDITION 12 OF PERMISSION REF: 66958
WINDACRE WORKS, MATHER ROAD, BURY, BL9 6RB**

We are instructed by *Chris Balfe* to submit the enclosed S73 application seeking *Minor Material Amendments* to the above permission via the variation of Condition 12.

Application 66958 was approved in July 2021 and was in itself a S73 variation of previous application 64651.

Application 66958 sought the variation of Condition 2 by substituting revised drawings that included minor design adjustments such as steps to the front and new rear and side dormers.

Following the approval of 66958, applications were made and approved for the discharge of various conditions. Those included the part discharge of Condition 12 as confirmed by letter dated 22 March 2022 issued by the LPA. That letter confirmed that the full details that had been submitted pursuant to the condition were approved, but that the condition could only be part discharged until such point that the approved works are implemented.

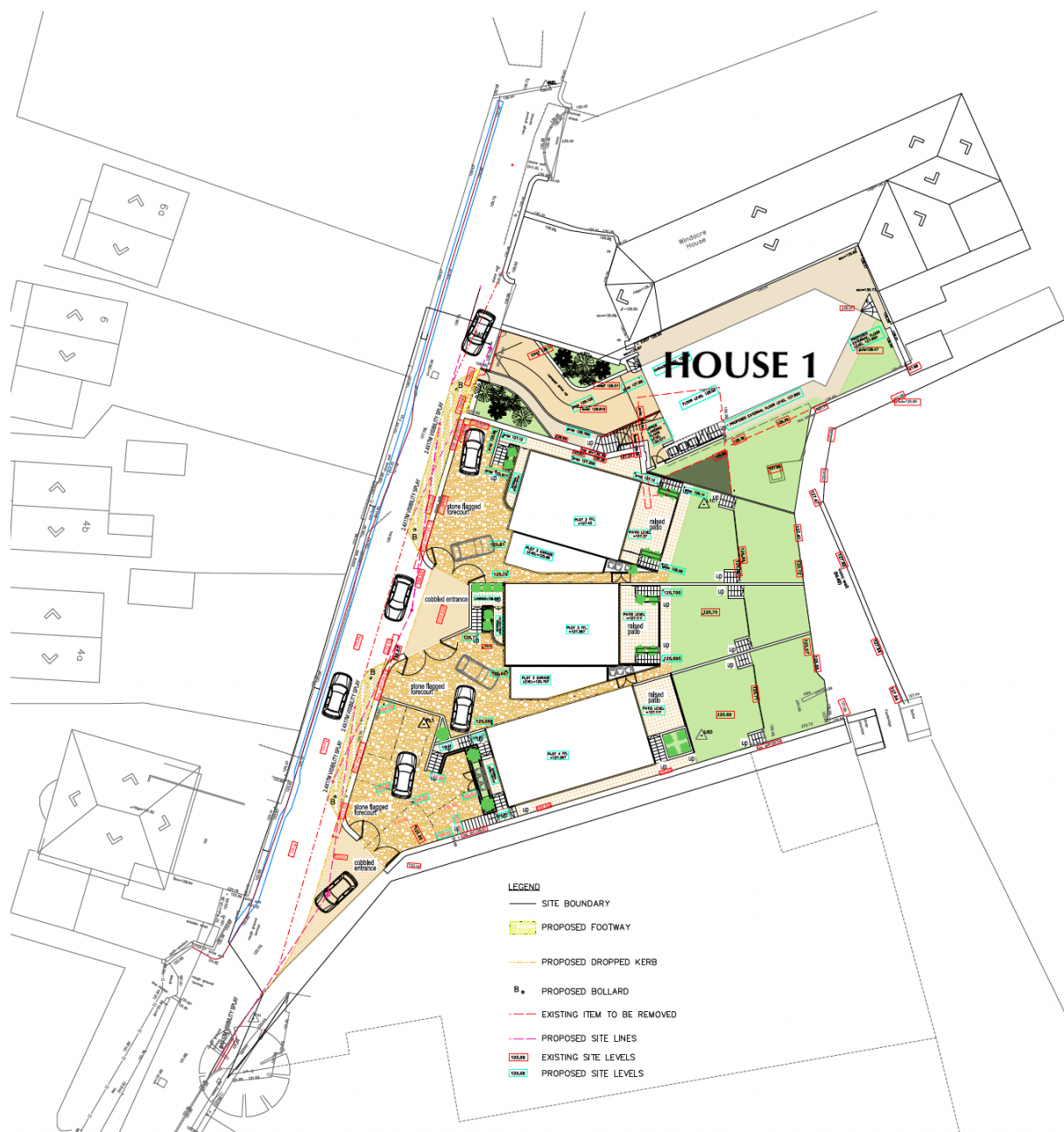
For the avoidance of doubt, the information that was submitted and approved pursuant to Condition 12 was submitted in two separate discharge submissions to the LPA, as below:

- On 10th September 2021, the following was submitted via the formal conditions discharge process:
 - Drawing ref: PRP11_F 'Proposed Site Plan' (Hawthorn Design Partnership)
- On 20th November 2021 the following information (prepared by Booth King) was submitted via the formal conditions discharge process:
 - Inspection of Carriageway Statement (dated 14 September 2021) [Ref: BJJ/BJJ/14233]
 - Speed Survey data



- The following drawings :
- 0700 Rev P1 – Site Location
 - 0701 Rev P1 – Existing Site Surveyed
 - 0702 Rev P3 – Site Clearance
 - 0703 Rev P3 – General Arrangement
 - 0704 Rev P3 – Highway Drainage

Since the approval of details approved under the various conditions, the development has commenced and the first house (marked as “House 1” on the extract below from drawing PRP11_F as approved pursuant to Condition 12) is now approaching completion.





Reason for seeking Variation of Condition 12

It is not the purpose of this S73 application to change the details of any of the works already approved under the auspices of Condition 12 (ie the details listed above). The Applicant is fully committed to undertake those.

The purpose is simply to request – for sound operational and logistical reasons - an extent of flexibility in the timeframe for completing the approved off-site highway improvement works. Specifically, the final part of Condition 12 currently states:

'The approved works shall be implemented to the satisfaction of the Local Planning Authority before the development is first occupied.'

This S73 seeks the alternative wording of that part of the condition to state:

'The approved works shall be implemented to the satisfaction of the Local Planning Authority before the occupation of the final (fourth) dwelling, or, in the event that the approved development as a whole is not completed by 31st January 2026, by that date (whichever is the sooner of those dates).'

The rationale for requesting the above variation relates to the extent of movement of heavy construction-related traffic that needs to utilise the section of to-be-improved highway that is the subject of the condition. The condition currently requires those improvement works to be implemented now (or in the very short term) before House 1 can be sold and occupied. The effect of this would be that, while the highway improvement works would be completed, they would subsequently and inevitably be damaged as a result of ongoing heavy construction traffic associated with the building of the next three houses.

Such damage (which would be regrettable, but almost certainly unavoidable) would undermine the purpose of the condition, which is to deliver a safe and satisfactory highway in a good condition.

It is also worth noting that the condition only requires those works to be carried out once. That being the case, if the improvement works were to be carried out at this early stage (ie now) and then subsequently damaged as a result of ongoing construction works, there is no requirement within the condition that the damage be rectified and the improvement works re-done. That scenario rather undermines the purpose of the condition.

Furthermore, because this development is being delivered by a 'small builder' (as opposed to a larger construction team), it is being rolled out on a house by house basis. That is perfectly reasonable and not unusual. That being the case, as each house nears completion, it will be connected to the utilities on a house by house basis. Given that those utilities are within the road, and in the event that the improvement works to the road were completed at this stage, it would be necessary for those to be re-completed on 4 separate occasions, which is clearly not



a sustainable scenario.

The Applicant considers that it is far more logical for the timing of the highway improvement works to be delayed to avoid the above scenarios, and that it would be more sensible to complete the improvement works at a later stage in the construction process when the prospect of damage to the improved road will be negligible.

It is for that reason that the suggested revised wording would require the road improvement works to be completed prior to the occupation of the final house.

We are mindful that the Council would wish to avoid a scenario whereby the development is only partially completed or stalls for a significant period of time. We suggest that this scenario is unlikely because there would be no good reason for Mr. Balfe to delay or not complete the project, for the obvious reasons that, first, the development will generate a healthy profit income for him and his family, and second, it may prove difficult (and dent values) to be attempting to sell houses whilst part of the site remains as a construction site. For those reasons, there is a clear and obvious incentive to Mr. Balfe to complete the development as a whole in the soonest possible period, and as such we anticipate that long delays are highly unlikely.

However, to mitigate against any such possible delay or stalled construction, we have suggested in the revised wording an alternative 'longstop date' of 31st January 2026 for the completion of the highway improvement works. The rationale for that date reflects the reality of the ongoing construction programme. The construction of House 1 has been occurring for well over a year and is still not quite completed. Mr. Balfe is building out the development in his own right, using his own small in-house construction team. Due to fewer constraints, it is not expected that the completion of the three remaining houses will take quite so long, but nevertheless a realistic timeframe for completing the development (allowing for possible slippage) is *up to* 3 years. It is for that reason that the longstop date has been suggested at 31st January 2026, which we suggest is a not unreasonable timeframe, but - if that causes the LPA particular issue - we would welcome discussion on the topic.

Ultimately, this S73 proposal does not seek to avoid or change any of the requirements or approved details of Condition 12, but simply to delay the improvement works to avoid an unfortunate (and probably inevitable) scenario whereby the works are completed at this early stage and then subsequently damaged, thereby undermining the objective of the condition to deliver a safe and good quality highway at the end of the development to serve not only the residents of the 4 new houses but also the wider users of this part of Mather Road.



We trust that we have satisfactorily explained the rationale behind the proposed S73 variation of Condition 12, and we look forward to receiving confirmation of receipt and validation of the application. Please do not hesitate to contact me if further information or clarifications are required.

Yours faithfully
for Roman Summer Associates Ltd

Richard Gee
Director