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27th April 2020

Planning Department
Folkestone & Hythe District Council
Civic Centre
Castle Hill Avenue
Folkestone
Kent, CT20 2QY

submitted via Planning Portal

Dear Sir or Madam,

**Folkestone Gateway - Land opposite Action Carpets, Park Farm Road, Folkestone, Kent
Section 73 Application to vary conditions attached to Y18/1043/SH
Planning Portal reference: PP-08677318**

On behalf of Ravensbourne Investments Limited, we hereby submit planning application under Section 73 of the Town & Country Planning Act 1990, as amended, to make changes to the approved drawings as listed in condition 2 attached to planning permission Y18/1043/FH dated 4th December 2018 to make external alterations to the permitted hotel block and to change the internal layout.

The application is accompanied by this cover letter, substitute drawings and a Technical Note on highways from Icen Projects Ltd.

Planning permission Y18/1043/FH is a variation of an earlier permission granted under reference Y18/0066/SH. The description of development of Y18/1043/FH reads:

'VARIATION OF CONDITIONS 2 (DRAWINGS), 11 (BUS STOPS) AND 12 (SHARED FOOTWAY) OF PLANNING PERMISSION Y18/0066/SH FOR THE REDEVELOPMENT OF THE SITE TO PROVIDE A HOTEL (4,979 SQM GIA) (USE CLASS C1), RESTAURANT AND CAFE FLOORSPEACE (847 SQM GIA) (USE CLASS A3) AND TWO 'DRIVE THROUGH' UNITS (TOTAL 451 SQM GIA) TOGETHER WITH A NEW VEHICULAR AND PEDESTRIAN ACCESS FROM PARK FARM ROAD, PARKING, SERVICING AND ALL HARD AND SOFT LANDSCAPING. THE ALTERATIONS ARE TO ENABLE THE RESTAURANTS (A3) TO BE REMOVED FROM THE HOTEL BUILDING AS WELL REVISIONS TO THE FOOTPRINT, EXTERNAL APPEARANCE AND SITING OF THE APPROVED BUILDINGS, AND ALTERATIONS TO THE CAR PARKING, VEHICULAR CIRCULATION, PEDESTRIAN ACCESS AND LANDSCAPING.'

Condition 2 lists the approved drawings. The existing permission for the hotel building does not cap the number of rooms in the hotel and therefore the only controlling mechanism on the amount of hotel rooms is the approved internal layout of the hotel. Therefore, had the applicant implemented and construct the development in accordance with the approved plans, it could lawfully increase the number of hotel rooms without the need for any further permission.

The consequence of the internal layout changes is that the number of rooms permitted from 131 to 160 rooms. However, the floorspace remains 4,979 sqm GIA, which is consistent with the description of development. This allows for the alterations to be secured under Section 73 of the Town & Country Planning Act, as amended.

The Planning Practice Guidance explains that there is no statutory definition of a ‘minor material amendment’ but that it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved. The most recent case law in respect of the Section 73 is within the *Finney v Welsh Ministers* [2019] EWCA Civ 1868 case where the judgment held:

“.....On receipt of such an application section 73(2) says that the planning authority must “consider only the question of conditions”. It must not, therefore, consider the description of the development to which the conditions are attached. The natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development.....If the inspector had left the description of the permitted development intact, there would in my judgment have been a conflict between what was permitted (a 100 metre turbine) and what the new condition required (a 125 metre turbine). A condition altering the nature of what was permitted would have been unlawful. That, no doubt, was why the inspector changed the description of the permitted development. But in my judgment that change was outside the power conferred by section 73.....”

Given that the 4,979 sqm figure is within the description of development and this figure remains, the Council can lawfully treat this submission under Section 73. The plans as listed in condition 2 of planning permission Y18/1043/FH to be substituted are as follows:

Approved plans		Substituted plans	
Title	Reference	Title	Reference
Proposed Masterplan	16610-302 P08	Proposed Masterplan	5339 (00) 100
Hotel Ground Floor Plan	16610-310	Hotel Ground Floor Plan	5339 (00) 101
Hotel First and Second Floor Plans	16610-311	Hotel First and Second Floor Plans	5339 (00) 102
Hotel Third and Fourth Floor Plans	16610-312	Hotel Third and Fourth Floor Plans	5339 (00) 103
Hotel Fifth Floor and Roof Plans	16610-313	Hotel Fifth Floor and Roof Plans	5339 (00) 104
Hotel Elevations 01	16610-322 P02	Hotel Elevations 01	5339 (00) 201
Hotel Elevations 02	16610-323 P02	Hotel Elevations 02	5339 (00) 202
-	-	Proposed Masterplan - Phasing	5339 (00) 111

An additional phasing drawing has been added to this Section 73 application to reflect the applicant’s intention not to bring forward the drive through units initially. Therefore, my client does not wish to be liable for the CIL payment that would be due on commencement of these two units.

Accordingly, the applicant wishes for the permission to be expressly dealt with in a phased manner consistent with Regulation 8 (3) of the CIL Regulations 2010, as amended. It will be necessary to discharge the relevant conditions as they apply to phases 1a and 1b prior to commencement of development.

The phasing plan has also been subject to a separate application under Section 96A of the Town and Country Planning Act 1990, as amended, in order to attach the drawing to permission Y18/1043/FH.

There are only two planning issues that need to be addressed as a result of this Section 73 application, namely:

- The design and appearance of the new elevations
- The effect on parking and the highway network of the additional 29 rooms

The part six storey, part four storey building remains as permitted and the revised proposals fall within the envelope of the approved building. The main changes compared to the approved position are as follows:

- The internal arrangements were reviewed and modified in order to increase the number of rooms while preserving the same volume. This is possible by making the rooms narrower.
- The ground floor was reviewed and modified in order to meet the needs created by the increase in the number of rooms.
- The facades and fenestration were reviewed and modified in order to respect the new internal arrangements.
- The facade treatment and use of materials was reviewed and modified. The new approach provides a contemporary and high quality appearance while being reflective of the overall massing previously approved.

In their report to committee in respect of the permitted scheme under Y18/0066/SH, the Council stated (paragraph 9.23) that:

'As such it is not considered that the development of a six storey high building is objectionable in principle subject to the external appearance being high quality.'

It also stated in paragraph 9.24:

'There is no objection made to the design approach to either the hotel/ restaurant building or to the drive through units, subject to the aforementioned conditions, as they are considered to be entirely appropriate to their surroundings and in keeping with the character of the industrial estate. The signage would also be subject to a detailed application for advertisement consent.'

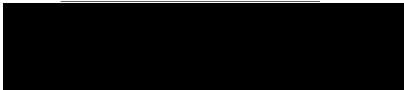
The permission will still be subject to a planning condition on materials and lighting and similarly the advertisement shown is indicative only and would be subject to advertisement consent. The expected materials and design philosophy remain in order to deliver a high-quality development, with the main changes concerning the treatment of windows and the extend of full height glazing.

In respect of parking and highways, the TN from Iceni Projects provides the justification. There are 232 parking spaces, as permitted, plus 10 caravan parking spaces and 12 motorcycle spaces. The TN, which in fact tests a higher number of rooms, demonstrates that the proposals are acceptable in traffic and transport terms with no material impact on the local highway network. Furthermore, the proposed level of car parking can meet the expected demand whilst also being restrictive thus promoting sustainable transport. The conclusions of the TA from the previous scheme remain valid and therefore there should be no transport related reason why this application should be refused.

This application has been submitted under Section 73 of the Town and Country Planning Act 1990, as amended, to substitute the approved drawings under condition 2 to allow for revisions to the internal layout of the permitted hotel building and revisions to its external appearance. Our client is actively seeking to deliver this scheme and is concluding the commercial arrangements with a new hotel operator. Therefore, we trust that the application can be validated on receipt and supported by the Council as soon as possible.

If there are any queries, please do not hesitate to contact me.

Yours sincerely,



Peter Keenan
Director
For and on behalf of
Q+A Planning Ltd