



Rochdale Borough Council
Smith Street
Rochdale
OL16 1XU

PP-13945794
2025UK406240
8 May 2025

Dear Sir/Madam,

Section 73 application for the removal of Condition 5 on Planning approval: 24/00328/FUL

We write on behalf of our client, Northern Accident Repairs Ltd (the applicant), in relation to planning permission 24/00328/FUL for the following development:

“Change of use from commercial, storage and distribution [Use Classes E(g) and B8] to vehicle/car body repair shop (Use Class B2), with associated works including installation of flues and erection of 2.4m high perimeter paladin fence”

This is a Section 73 application to remove condition 5 attached to planning ref: 24/00328/FUL.

The fee of £671.00 (inc. VAT) has been paid directly via the Planning Portal (PP-13945794), along with the approved plans sent as part of this original applications submission.

Section 73 Application:

Section 73 of the Town and Country Planning Act 1990 allows Local Planning Authorities (LPAs) to amend or remove specific conditions attached to a planning consent without altering anything else but the condition(s) in question. Thus, preventing the need for a new application to be submitted.

It is clear a Section 73 is the appropriate mechanism to secure the proposed amendment.

Condition 5:

This S73 application seeks to remove Condition 5 from the approved planning application under reference 24/00328/FUL. Condition 5 currently states that:

‘Prior to first use of the development, 12 replacement trees shall be planted within the application site. If the replacement trees are removed, dies, becomes severely damaged or seriously diseased within five years of planting, the trees shall be replaced by trees of a similar size and species.

Reason: To ensure that the site is satisfactorily landscaped having regard to its location and the nature of the proposed development and in accordance with policies P3, DM1, G6 and G7 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.'

This condition refers to Policies P3, DM1, G6 and G7 of the adopted Rochdale Core Strategy, extracts which bear particular relevance to this application can be seen below:

Policy P3: *'We will require all new developments, including associated landscaping, regardless of location in the borough, to adhere to the highest standards of design'*

Policy DM1: *'All development proposals, including changes of use of land and buildings, extensions and alterations, will be expected to demonstrate that they:*

- Are of high quality design and take the opportunity to enhance the quality of the area*
- Are compatible with surrounding land uses, both in terms of its impact upon those uses and the impact of the surrounding land uses upon the amenities of future users.'*

Policy G6: *'We will expect development proposals and other proposals affecting green infrastructure to:*

- h. Protect ancient woodlands and hedgerows, support new woodland and tree planting in new developments, and replace removed trees from a site at a ratio of 2:1'*

Policy G7: *'We will ensure that sites and features of biodiversity and geodiversity importance are given full and appropriate recognition and protection. Opportunities for enhancing biodiversity and geodiversity, creating new sites and features of interest and improving opportunities for public enjoyment will be supported. No development should result in a net loss of biodiversity or geodiversity interest in the borough and overall development in the borough should result in a net gain.'*

This S73 application seeks to remove Condition 5 on the basis that the request for replacement trees is unrelated to the granted planning permission and therefore cannot be enforced via a planning condition.

Justification:

As set out in *Armstrong v Secretary of State for Levelling-up, Housing and Communities & Anor [2023] EWHC 176*, a Section 73 application can be made to remove a condition provided that the application does not conflict with the operative part of the planning permission. The permission in question is a change of use of a commercial, storage and distribution building to a vehicle body repair shop with the erection of a 2.4m perimeter fence. As such the 'operative' part of this permission relates solely to the use of the building and the erection of the perimeter fence. The removal of Condition 5 will have no impact on the overall change of use and erection of fencing and therefore this Section 73 should be considered appropriate.

Furthermore, paragraph 57 of the NPPF states that, *“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other aspects.”*

As detailed in the Preliminary Ecological Appraisal, Arboriculture Impact Assessment and Topographical survey there are six tree stumps located along the northern area of modified grassland. Within the Officer's report it is identified that these trees were felled at some point between 'November 2023 and October 2024'. However, given that these trees appear as 'stumps' on the Topographical survey dated 29th February 2024, it can be confirmed that the trees were felled before the application 24/00328/FUL was submitted and thus cannot be considered within the application's decision. At the time of the application, there were no trees along the grass verge adjoining Riverside Drive.

There is also nothing included with the approved submission pack that states an intention to remove any trees along the verge and there is no reference to the removal of trees within the description of development.

Furthermore, it is noted in the Officers Report that the Tree Officer was consulted and provided no comments on arboricultural matters.

The Planning Practice Guidance states at Paragraph: 001 Reference ID: 21a-001-20140306 that Planning conditions should be *'tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls.'* As a result planning conditions must relate to aspects within the permission and should not be used to tackle issues external to the works included within a permission.

In accordance with the above, Policy G6's requirement for replacement trees at a 2:1 ratio is unjustified and does not relate to any works that have occurred or will occur as a direct result of the planning permission.

With regard to the other landscaping policies referred to in the decision notice, the wider context of development has been deemed appropriate and the enhancement methods stated in the Ecology Report have been declared acceptable by the Greater Manchester Ecology Unit.

Summary:

It has been demonstrated that the inclusion of condition 5 under planning application reference 24/00328/FUL is not necessary and is not relevant to the development permitted, and therefore its inclusion is not in line with the NPPF or National Planning Practice Guidance.

It is therefore requested that condition 5 of planning application 24/00328/FUL is removed via this S73 application.



We trust that the information provided is sufficient for the Council to validate the application, however if any further information is required please do not hesitate to get in touch.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Callum Crow', written in a cursive style.

Graduate Planner
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