

Havant Borough Council
Civic Centre Road
Havant
PO9 2AX

Planning Portal Ref: PP-14231044
LPA Ref: APP/19/01226

22nd September 2025

Dear Sir/Madam,

**Proposal: Application under Section 73 for the variation of Condition 2 (approved plans list) and Condition 17 (landscaping details) relating to planning application APP/19/01226.
Land West of Coldharbour Farm Road, Emsworth**

Please find attached a completed electronic Section 73 application relating to application APP/19/01226, which was granted planning permission on 22nd March 2024, for the construction of 44 dwellings with access, open space, landscaping and the diversion of Footpath No.71.

This S73 application seeks to regularise the as-built footpath alignment at Coldharbour Farm Road, with the primary aim being to secure a safe and suitable pedestrian route. The application seeks to vary Condition 2 which lists the approved plans together with Condition 17 which shows the approved landscaping scheme.

The plans submitted to vary Condition 2 of planning permission APP/19/01226 are listed below;

Proposed Location Plan

Drawing 28165-WD102C Existing Site Location Plan.

Proposed General Arrangement Plans

Drawing JUBB_XX_XX_DR_C_120 Rev C3- Proposed Levels

Drawing JUBB_XX_XX_DR_C_500 Rev C9- Drainage Layout

Drawing JUBB_XX_XX_DR_C_700 C2- Surfacing Plan

The plans submitted to vary Condition 17 of planning permission APP/19/01226 are listed below

Proposed Landscape Plans

Drawing GLS_090_151_1300 Rev C to replace GLS_090_151_1300 Rev B- Landscape General Arrangement plan

Drawing GLS_090_151_1500 Rev C to replace GLS_090_151_1500 Rev B- Landscape Planting Plan

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Drawing GLS_090_151_1600 Rev B to replace GLS_090_151_1600 Rev B- Hard Landscape Plan

Following discussions with the Local Planning Authority, this Section 73 application seeks to vary the condition listing the approved plans, substituting in an updated location plan and layout to reflect the as-built footpath and associated minor adjustment to the red line. The revised boundary remains wholly within adopted highway or land controlled by the applicant. The application also seeks to vary Condition 17 which shows the approved landscaping scheme to ensure that all approved layouts are consistent.

This application is required by virtue of minor adjustments which have been proposed during the S278 Technical Approval Process. These relate principally to a shift in the crossing point on Coldharbour Farm Road by approximately 7.5 metres east. The carriageway alignment itself remains unchanged. These adjustments were necessitated by two constraints that emerged during detailed design and technical review with HCC:

- The approved footpath alignment directly conflicts with the headwall of an existing culvert and cannot be constructed as drawn;
- The gradient of the consented footpath would have been approximately 1:12, rendering it non-compliant with DDA standards and unacceptably steep from a user accessibility perspective.

Planning Practice Guidance confirms that there is no statutory restriction on the scope of a Section 73 application, provided it does not alter the *operative part* of the permission i.e. the description of development. Where the approved plans are secured by condition (as they are in the original permission here), it is lawful to substitute a revised site plan.

In *Armstrong v Secretary of State for LUHC* [2023] EWHC 176 (Admin), the High Court clarified that Section 73 is not limited to minor material amendments. Its sole constraint is that it cannot be used to vary the description of the development which is consistent with the earlier decision in *Finney v Welsh Ministers* [2019] EWCA Civ 1868.

Further, the Court of Appeal in *Fiske v Test Valley BC* [2024] confirmed that Section 73 can be used to authorise substantial changes via amended conditions, provided those changes are consistent with the description of development. There is no separate legal test about whether the change is “fundamental” and it comes down solely to compatibility with the original permission.

In this case, the revised red line is modest and logically drawn. It reflects the as-built footpath alignment, which was adjusted on site in response to practical constraints and stakeholder feedback. The route remains within the general location shown on the approved plans, and the development as a whole remains entirely consistent with the original consent.

It is also relevant that the Section 106 agreement refers to the S278 works (including the footpath) as being “*shown in principle*”. That language indicates that the layout was not intended to be fixed in absolute detail, and supports the use of a Section 73 to regularise the alignment as delivered.

Prior to the submission of this application, the applicant did approach Havant Borough Council to ascertain the appropriate route for regularising this amendment. Confirmation was received on this basis from the Council’s Legal Team to confirm that this can be dealt with under Section 73 providing;

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1. The description of the development does not change (i.e. the operative part of the permission); and
2. The red line plan and access plan are drawings listed in one of the conditions.

I can confirm that the description of development does not change as a result of this amendment, and the red line and access plans are currently listed under Condition 2 of planning permission APP/19/01226. As such a Section 73 application has been prepared.

It is also acknowledged that a variation will be required to the original S106 Agreement as a result of this amendment. I can confirm that this will be dealt with under separate cover alongside this application.

I hope that the submission is in order, and I will look forward to receiving confirmation that the application is valid. However, should you require any further information, please do not hesitate to contact me on the number above.

Yours faithfully,

Kind regards,

Harriet Lobacz MRTPI
Senior Planner
Henry Adams LLP