



Appeal Decision

Site visit made on 21 January 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th February 2020

Appeal Ref: APP/K3605/W/19/3238325

154 Portsmouth Road, Cobham, Surrey KT11 1HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Andrew Mahendru against the decision of Elmbridge Borough Council.
 - The application Ref 2019/0312, dated 29 January 2019, was refused by notice dated 23 May 2019.
 - The application sought planning permission for a detached single storey store room (87sqm) following demolition of existing sheds (107sqm) without complying with a condition attached to planning permission Ref 2012/3176, dated 12 November 2012.
 - The condition in dispute is No 2 which states that: *the development hereby permitted shall be carried out in strict accordance with the following list of approved plans: MR11/12 05A rev B, 06A rev B, 07A rev B & 08A rev B received on 25 September 2012.*
 - The reason given for the condition is: *to ensure that the development is carried out in a satisfactory manner.*
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Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. The appeal relates to an application made under section 73A of the Town and Country Planning Act 1990 ('the Act') which sought to vary condition 2 of planning permission granted by the Council under its reference 2019/0312 for development that was described as 'detached single storey store room (87sqm) following demolition of existing sheds (107sqm)' ('the existing permission').
3. Condition 2 of the existing permission relates to the approved plans. At the time of my visit, development on the site was underway. While incomplete, it is apparent that the scale of the building and its fenestration do not reflect these approved plans. The appellant proposes to vary condition 2 and specify updated plans which reflect the changes already made to the existing permission.
4. The reason given for the imposition of the condition on the existing permission was to ensure that the development is carried out in a satisfactory manner. The Council refused the current proposal on the grounds that there would be harm to the character and appearance of the area resulting in conflict with the requirements of the development plan.

5. The Planning Practice Guidance (PPG) states that in deciding an application under section 73 of the Act, it is only the disputed condition subject of the application that should be considered - it is not a complete reconsideration of the application¹. It further highlights that it would not be appropriate to amend conditions in circumstances where the resulting modifications would result in a development which is substantially different from the one which has been approved².
6. In a recent case, the courts have also clarified the scope of powers available under section 73 of the Act³, confirming that there are no powers under this Act to materially change the nature of a development. This case was not referred to within evidence submitted by parties to the appeal. Nevertheless, given the pertinence of the matters raised within this judgement to the appeal before me, the main parties were given an opportunity to comment on it and have done so. I have taken the comments raised into account in my reasoning.

Reasons

7. The existing permission provides for a 'detached single storey store room (87sqm) following demolition of existing sheds (107sqm)'. The changes now proposed include an increase to the height and footprint of the building as well as the materials and fenestration.
8. The main parties agree that the changes include an increase in the building's width of 0.1m, and an increase in its depth of 0.4m. These changes would result in an uplift in the size of the building, and the internal area of the building as now proposed is annotated on the submitted plans as around 98sqm. As a consequence, the increased footprint of the building would result in a clear conflict between the terms of the development shown by the drawings at condition 2 and the description of the development which appears on the face of the planning permission and which refers to a single storey store room (87sqm).
9. To allow the appeal would therefore give planning permission for a development which would be materially different from the original permission. Accordingly, and with reference to the PPG, the outcome sought by the appellant would be beyond the scope of the application under section 73 which is before me. Furthermore, there are no powers under section 73 to vary the description of the development itself.
10. For these reasons, I conclude that it would be outside the remit of this appeal to amend the scheme by varying the 'plans' condition attached to the extant planning permission in the way proposed. It would be open to the appellant to seek a fresh planning permission, but not under section 73 of the Act. I have not therefore proceeded to consider the planning merits of the case which have been put to me as these could not alter the outcome of the appeal.

Other Matters

11. I accept that the appellant submitted the application in good faith and incurred associated costs in doing so. However, while I am sympathetic to the

¹ Paragraph: 031 Reference ID: 21A-031-20180615

² Paragraph: 001 Reference ID: 17a-001-20140306

³ *Finney v Welsh Ministers, Carmarthenshire County Council and Energiekontor (UK) Ltd* [2019] EWCA Civ 1868 dated 5 November 2019

appellant's situation and the potential for further costs arising following an unsuccessful outcome of this appeal, this is not a factor which can alter my findings above that allowing the development proposed by this appeal would exceed my powers in this instance.

12. I acknowledge representations made by interested parties raising concerns over the proposal. However, as I am dismissing the appeal on other substantive grounds it is not necessary for me to consider these issues further. I also note reference within representations to the storage container which is currently located to the rear of the building, and commercial use of the garden to 152 Portsmouth Road but these do not form part of the proposal which is before me to consider as part of this appeal.

Conclusion

13. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR