



Appeal Decision

Site Visit made on 29 September 2020

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2020

Appeal Ref: APP/B5480/W/20/3246291

Land to rear of 148-150 Parsonage Road, Rainham, RM13 9LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 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 Abdul Ghani against the decision of London Borough of Havering.
 - The application Ref P1723.19, dated 15 October 2019, was refused by notice dated 10 December 2019.
 - The application sought planning permission for "Proposed 3 x 3 bed and 1 x 2 bed terrace of houses and associated off-street car parking" without complying with a condition attached to planning permission Ref P1682.18, dated 24 June 2019.
 - The condition in dispute is No 2 which states that: *The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans (as set out on page one of this decision notice).*
 - The reason given for the condition is: *The Local Planning Authority consider it essential that the whole of the development is carried out and that no departure whatsoever is made from the details approved, since the development would not necessarily be acceptable if partly carried out or carried out differently in any degree from the details submitted. Also, in order that the development accords with Development Control Policies Development Plan Document Policy DC61.*
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Decision

1. The appeal is dismissed.

Background and Procedural Issues

2. Planning permission was granted in June 2019 for '*Proposed 3 x 2 bed and 1 x 1 bed terrace of bungalows and associated off-street car parking.*' The approved dwellings are single storey, flat-roofed structures located on a backland site. At the time of my site visit works to construct the dwellings were underway, with foundations and external walls already constructed.
3. The application was submitted under Section 73 of the Act to vary Condition No 2 of the permission by substituting a different set of plans to those approved. In short, it is proposed to add pitched roofs to each dwelling to provide an additional bedroom at first floor level within the roof space. In a covering letter submitted with the application, the appellant requested that the description of development be altered to read '*Proposed 3 x 3 bed and 1 x 2 bed terrace of houses and associated off-street car parking.*'
4. The Planning Practice Guidance (PPG) states that a Section 73 application may be used to seek a 'minor material amendment', where there is a relevant condition that can be varied. There is no statutory definition of a minor

material amendment but 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.

5. The PPG also states that Section 73 cannot be used to change the description of the development. This is supported by the recent Court of Appeal judgement in *Finney v Welsh Ministers & Ors (Rev 1) [2019] EWCA Civ 1868*. The Court held that it was beyond the powers of the decision maker under Section 73 to alter the description of development, as this is the operative part of the permission and Section 73(2) says that the planning authority must "consider only the question of conditions". It follows from *Finney* that where amending a condition would result in a conflict between the new condition and the description of development, that particular amendment is beyond the powers under Section 73 and cannot be made, a fresh planning application being instead required. An amendment can only be made provided the new condition does not fundamentally alter the proposal originally granted permission.
6. I regard the *Finney* judgement to be relevant to the appeal. Consequently, I sought the main parties' comments on it and have taken the responses into consideration.
7. In this case, the development permitted under Ref P1723.19 was for a specific mix of three two-bedroom dwellings and one one-bedroom dwelling. Whilst the appellant states that the description is arguably more detailed than necessary to describe the development, it is nonetheless the description on the decision notice. The appellant further states that the additional bedrooms could be used for other purposes. However, I have based my judgement on the plans and the requested change to the description, which as a matter of fact propose a development of three *three*-bedroom dwellings and one *two*-bedroom dwelling. This would differ materially from the description of development on the original decision notice which cannot be varied under Section 73.
8. Even setting aside the number of bedrooms, the change from single storey, flat roofed dwellings to dwellings with pitched roofs capable of providing internal accommodation is, in my judgement, a fundamental change to the scale of the permitted scheme which exceeds the scope of a minor material amendment.
9. Consequently, having regard to the facts of the case, I find that Condition No 2 cannot be amended as proposed without fundamentally altering the planning permission granted in 2019. The appeal therefore cannot be determined under the provisions of Section 73 and an application for full planning permission under Section 70 would need to be made.
10. I note the appellant's request that I nevertheless go on to consider the effect of the proposal on the character and appearance of the area. However, my findings on the procedural matters above are determinative and, therefore, it is not necessary for me to consider the merits of any other issues raised in this case, as they would not alter my overall decision.

Conclusion

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

K Savage INSPECTOR