



Appeal Decision

Site Visit made on 23 February 2021

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2021

Appeal Ref: APP/A5270/W/20/3259903

59 & 59A Eaton Rise, Ealing W5 2HE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 as amended (the Act) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Emil Moskofian against the decision of the Council of the London Borough of Ealing.
- The application Ref: 200472VAR, dated 11 February 2020, was refused by notice dated 1 April 2020.
- The application sought planning permission for conversion of building from two self-contained flats into seven self-contained flats: three storey rear extension with basement level excavation, single storey rear extension and three storey side infill extension; two dormer windows to the front facing roofslope; three rooflights to the front facing roofslope; single storey outbuilding to the rear garden for cycle and refuse storage, rear side access, and associated external elevation works and boundary treatment, without complying with a condition attached to planning permission Ref: 184748FUL, dated 4 February 2020.
- The condition in dispute is No.2 which states that: *The development hereby approved shall be carried out in accordance with drawing title number(s): Planning Statement (September 2018), Heritage Statement (September 2018), Location Plan, Existing Plans -16112119 Dwg: 01, Existing Elevations -16112119 Dwg: 02, Existing Block Plan 16112119 Dwg: 07, Tree Protection Plan (Drawing no. MW.19.0733.SK01.TPP), Arboricultural Impact Assessment including Tree Protection Strategy (prepared by Mark Welby dated 18th July 2019), Tree Survey Schedule APA/AP/2017/042, Proposed Site Plan 16-P1413-PL-100 Revision L (Received 31/10/2019), Proposed Floor plans 16-P1413-PL-101 Revision E (Received 29/05/2019), Proposed Elevations 16-P1413-PL-102 Revision J (Received 08/11/2019), Proposed Bins and Bikes Plan, and Street Elevation 16 - P1413 - 103 Revision C (Received 31/10/2019), Fence Details 16 P1413-05 Revision B (Received 31/10/2019), Proposed Bin and Bicycle Store 06 Revision A, Daylight and sunlight report (January 2019), Commercial Bollard Lighting Specification, CGI Image - V2A6542_Final, CGI Image - V2A6542_original_V01, CGI Image - image_017_original, CGI Image - image_017_V04, CGI Image - image003_original, CGI Image - image003_V06 no tree, CGI Image - image003_V06.*
- The reason given for the condition is: *For the avoidance of doubt, and in the interests of proper planning.*

Decision

1. The appeal is dismissed.

Application for costs

2. An application for an award of costs was made by Mr Emil Moskofian against the Council of the London Borough of Ealing. This application is the subject of a separate decision.

Background and Procedural Issues

3. I have drawn the attention of the parties to the case of *Finney v Welsh Ministers & Others* [2019] EWCA Civ 1868 ('Finney'). In that case, the Court of Appeal held that an application under section 73 of the Act may not be used to obtain a permission that would require a variation to the terms of the 'operative' part of the planning permission, namely the description of the development for which planning permission was originally granted.
4. The description of development in the original planning permission includes 'single storey rear extension'. However, the appeal proposal effectively seeks to amend the permission to allow, among other things, basement level excavation to be added to the single storey rear extension, as shown in the submitted drawings. As such, what is proposed would be incompatible with the description of development shown on the original decision notice. In the light of *Finney*, this description cannot be varied using the mechanism of section 73 of the Act. Therefore, it is not possible to amend the scheme by varying the 'plans' condition attached to the extant planning permission, in the way proposed. As such, I am unable to proceed to consider the planning merits of the case.
5. It is open to the appellant to seek a fresh planning permission, but not under section 73 of the Act.

Conclusion

6. I conclude that I cannot proceed to consider this appeal as it would be beyond my powers to do so under section 73 of the Act. On that basis, the appeal should be dismissed.

William Cooper

INSPECTOR