



Appeal Decisions

Site Visit made on 19 October 2021

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2021

Appeal A Ref: APP/V5570/W/21/3267458

88 Tollington Way, Islington, London N7 6RP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Mark Oulds against London Borough of Islington.
 - The application Ref P2020/3065/S73 is dated 28 October 2020.
 - The application sought planning permission for the demolition of single storey store and workshop. Construction of new building comprising 1 x 2 bed flat at lower ground floor, 1 x 3 bed flat at ground floor, 1 x 1 bed flat at first floor and 1 maisonette at second and third floor levels without complying with a condition attached to planning permission Ref P062150, dated 6 December 2006.
 - The condition in dispute is No 4 which states that: The development hereby approved shall be completed in all respects in accordance with the plans and details submitted and approved unless otherwise required by condition, and no change shall take place without the prior express permission of the Local Planning Authority.
 - The reason given for the condition is: To ensure the Authority may be fully satisfied that the detail of the proposal to which it gives planning permission is implemented exactly, because of the nature of the development.
-

Appeal B Ref: APP/V5570/W/21/3267459

88 Tollington Way, Islington, London N7 6RP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Mark Oulds against London Borough of Islington.
 - The application Ref P2020/3066/S73 is dated 28 October 2020.
 - The application sought planning permission for the demolition of single storey store and workshop. Construction of new building comprising 1 x 2 bed flat at lower ground floor, 1 x 3 bed flat at ground floor, 1 x 1 bed flat at first floor and 1 maisonette at second and third floor levels without complying with a condition attached to planning permission Ref P062150, dated 6 December 2006.
 - The condition in dispute is No 4 which states that: The development hereby approved shall be completed in all respects in accordance with the plans and details submitted and approved unless otherwise required by condition, and no change shall take place without the prior express permission of the Local Planning Authority.
 - The reason given for the condition is: To ensure the Authority may be fully satisfied that the detail of the proposal to which it gives planning permission is implemented exactly, because of the nature of the development.
-

Decisions

1. Appeals A and B are dismissed and planning permission is refused for amendments to previously approved plans (Planning Permission P062150, date 06/12/2006) condition 4 relating to demolition of single storey store and workshop. Construction of new building comprising 1 x 2 bed flat at lower ground floor, 1 x 3 bed flat at ground floor, 1 x 1 bed flat at first floor and 1 maisonette at second and third floor levels.

Preliminary Matters

2. The development granted planning permission in 2006 by the Council was started in October 2009, but work is currently ongoing and it has not yet been completed to a point whereby the building is occupied.
3. Appeals A and B have been submitted as the Council did not validate either planning application and thus did not proceed to make a determination on either scheme within the prescribed period. The dispute as to why the applications were not validated has informed the first main issue set out below. I note in respect of Appeal B that, if the Council had progressed the application to a decision, it would have approved the scheme subject to conditions. I have no reason to disagree with the Council's assessment in this regard.

Main Issues

4. The main issue in both Appeals A and B is whether or not the proposed changes to the disputed condition would materially alter the original description of development. If not, the second main issue in respect of Appeal A is the effect of the proposal on the character and appearance of the area.

Reasons

Materially alter the original description of development

5. The leading judgement relevant to this case is *Finney v Welsh Ministers & Others* [2019] EWCA Civ 1868. This Court of Appeal judgment set out that a Section 73 application may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission i.e. the description of the development for which planning permission had originally been granted.
6. Having regard to the principles in this judgement, the description of development on the existing planning permission does not refer to any external terraces, privacy screens or balustrades. Whilst windows and doors formed part of the approved scheme, replacing windows with doors would facilitate terraces on the first, second (Appeal B) and third floors (Appeal A). Furthermore, the parapet would be taller and privacy screens and/or balustrades would be added. Compared to the approved plans, these would be new built components to the building. The approved scheme included a terrace to serve flat 2 and a patio to serve flat 1 but these relate to the basement and ground floor, and condition 11 attached to that decision prohibits the use of the roof areas of the ground, first and second floor extensions.
7. The schemes subject of Appeals A and B would result in additional built form and the use of the flat roofs of the ground, first and second floors. They would be fundamental alterations of the development originally approved and result in changes to the character and appearance of the building. Setting aside the merits of the latter, the proposals would result in a discrepancy with the

description of development and if I were to allow either appeal, and the substitution of the approved plans, there would be a knock-on effect that would alter the original planning permission. Therefore, I conclude that the changes proposed cannot be dealt with as a Section 73 application. The effect is to dismiss the appeal, though it is open to the appellant to apply for planning permission for the revised development.

Character and appearance

8. Given my conclusion in respect of the first main issue, it is not necessary for me to explore the effect of Appeal A on the character and appearance of the area as it would not change the outcome of the appeal.

Other Matter

9. Living conditions concerns are raised by neighbours in respect of the appeals but given the outcome of my decision I have not considered them further.

Conclusion

10. For the reasons set out above, I conclude that Appeals A and B should be dismissed, and planning permission refused.

Andrew McGlone

INSPECTOR