
Appeal Decision

Site visit made on 1 March 2022 by S Witherley CIHCM MRTPI

Decision by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2022

Appeal Ref: APP/Y5420/D/21/3284781

11 Gladwell Road, London N8 9AA

- 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 Jonathan Graber against the decision of the Council of the London Borough of Haringey.
 - The application Ref: HGY/2021/1745, dated 9 June 2021, was refused on 4 August 2021.
 - The application sought planning permission for 'the erection of single storey side and rear 'wraparound' extension; installation of zinc cladding to existing rear dormer roof extension and enlargement and alterations to its windows; Insertion of roof lights in rear dormer and rear roof slope' without complying with a condition attached to planning permission Ref: HGY/2020/0451, dated 8 April 2020.
 - The condition in dispute is No. 2 which states: The approved plans comprise drawing nos; 4166/PL (Design and Access Statement); GA 001 P;); GA 005 PL; GA 010 PL; GA 011 PL; GA 012 PL; GA 013 PL; GA 014 PL; GA 015 PL; GA 016 PL; GA 017 PL; GA 305 PL; GA 310 PL; GA 311 PL REV.1; GA 312 PL; GA 313 PL; GA 314 PL REV.1; GA 315 PL; GA 316 PL; GA 317 PL. The development shall be completed in accordance with the approved plans except where conditions attached to this planning permission indicate otherwise or where alternative details have been subsequently approved following an application for a non-material amendment.
 - The reason given for the condition is: In order to ensure the development is carried out in accordance with the approved details and in the interests of amenity.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Background and Main Issue

3. Section 73 of the Town and Country Planning Act 1990 (the Act) makes provision to apply for planning permission to carry out development without complying with a condition or conditions to which an earlier planning permission was granted. The practical effect of Section 73 is that, if the application is permitted, a new planning permission is created that is subject to different conditions. The original planning permission remains intact and un-amended. The developer then has the choice of which permission to implement.

4. The original planning permission under reference HGY/2020/0451, dated 8 April 2020, was described on the decision notice as follows: *Erection of single storey side and rear 'wraparound' extension; installation of zinc cladding to existing rear dormer roof extension and enlargement and alterations to its windows; Insertion of roof lights in rear dormer and rear roof slope.*
5. The application subject of this appeal, planning reference HGY/2021/1745, refused on 4 August 2021, sought the *Variation of condition 2 (approved plans) of planning permission reference HGY/2020/0451 to amend roof/loft level, including rear dormer changes.* The application was refused on the grounds of its impact upon the character and appearance of the property and surrounding area.
6. The Council accepted the application under S73, however, the recent judgement in *Finney v Welsh Ministers and Others* [2019] EWCA Civ 1868 clarified that such applications cannot permit development that goes beyond the operative part of the original planning permission i.e. beyond the description of development for the originally approved scheme.
7. The parties were contacted with regard to that judgement to seek their views on whether the amended scheme fell within the scope of that which could be considered within the scope of an application under S73. The Council did not respond to the request, but I have considered the response of the appellant in my reasoning below. It would not be lawful to grant planning permission under S73 for a development that was substantially beyond the description of that originally approved. The appropriate course of action would be to submit a new planning application which could be consulted on and considered accordingly.
8. In view of the above, the first main issue is to consider whether the application is one that can be considered under the scope of S73. If not, the appropriate course of action would be to dismiss the appeal so that a new planning application could be made. If the proposal would fall within the scope of S73 then the second main issue of the effect on the character and appearance of the building and surrounding area will be considered.

Reasons

9. Having regard to the description and the approved plans of the original approved scheme, this did not include an extension of the existing dormer over the outrigger at the rear of the property. Rather, the proposal included elements to clad the dormer and make alterations to its windows and add a rooflight, as well as a ground floor extension and other minor alterations.
10. It is considered that the appeal proposal represents a fundamental alteration to the original scheme that would result in a development of a significantly different nature from that which was originally granted planning permission. This is because it involves a substantial addition to the existing dormer window over a section of roof that is currently unaltered and that was not being significantly changed by the original permission.
11. The additional roof extension would project out beyond the rear facing plane of the existing dormer by a significant degree, directly along the boundary between the appeal property and the neighbouring dwelling. In the context of a householder application in a tightly knit urban area, the addition of a

substantial roof extension in close proximity to neighbouring properties cannot be considered as a minor material amendment to the original scheme in my view. It would introduce a form of development that was completely absent from the description of development originally approved.

12. As such, the proposal does not fall within the limited scope of what may be considered under S73 and the appeal must fail for this reason. I recognise that the appellant may be aggrieved by this decision and that they followed advice from the Council at the time of making the application. Nonetheless, any appeal decision must comply with relevant caselaw. In light of the Finney judgement, any decision to allow the proposal, if the Inspector was so minded, would not be legally sound and could be subject to legal challenge. In those circumstances, the most appropriate course of action is to dismiss the appeal and allow the appellant to submit a new planning application to the Council, if that is what they choose to do.

S Witherley

APPEAL PLANNING OFFICER

Inspector's Decision

13. I have considered all the submitted evidence and the Appeal Planning Officer's report and, on that basis, I agree with the recommendation and shall dismiss the appeal.

Chris Preston

INSPECTOR