



Appeal Decision

Site visit made on 12 January 2023

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th February 2023

Appeal Ref: APP/T5150/W/22/3301173

23 Buckley Road, London NW6 7LY

- 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 Robert Lazarus against the decision of the Council of the London Borough of Brent.
 - The application Ref 21/3487, dated 4 September 2020, was refused by notice dated 17 January 2022.
 - The application sought planning permission for conversion of flats/HMO into 3x self-contained flats (2 x 2bed and 1 x 3bed) to include single storey rear and side infill extension, 2nd floor rear extension, rear dormer window, 1x front rooflight and alterations to fenestration ('CAR-FREE' DEVELOPMENT) without complying with a condition attached to planning permission Ref 15/4343 dated 4 December 2015.
 - The condition in dispute is No 4 which states that: Occupiers of the residential development, hereby approved, shall not be entitled to a Residents Parking Permit or Visitors Parking Permit to allow the parking of a motor car within the Controlled Parking Zone (CPZ) operating in the locality within which the development is situated unless the occupier is entitled; to be a holder of a Disabled Persons Badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970. For the lifetime of the development written notification of this restriction shall be included in any licence transfer lease or tenancy agreement in respect of the residential development. For the lifetime of the development a notice, no smaller than 30cm in height and 21cm in width, clearly informing occupants of this restriction shall be displayed within the ground floor communal entrance lobby, in a location and at a height clearly visible to all occupants. On, or after, practical completion but prior to any occupation of the residential development, hereby approved, written notification shall be submitted to the Local Highways Authority confirming the completion of the development and that the above restriction will be imposed on all future occupiers of the residential development.
 - The reason given for the condition is: Reason: In order to ensure that the development does not result in an increased demand for parking that cannot be safely met within the locality of the site.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Permission was granted in 2015 for the conversion of the building into three self-contained flats. The Appellant is now seeking to amend Condition No 4 of that permission to allow for one of the flats to be able to apply for a parking permit

3. The main issue is whether or not the proposed amendment to the approved development can be dealt with through an application under section 73 of the Town and Country Planning Act 1990 (as amended).

Reasons

4. The judgement in *Finney*¹ established that an application under section 73 may not be used to obtain a permission that would require a variation to the terms of the 'operative' part of the planning permission², that is, the description of the development for which the original permission was granted. I invited the main Parties to comment on the implications of the judgement for this appeal and I have taken the submitted comments into account in reaching my Decision.
5. It follows from *Finney* that where there would be a conflict between the new condition and the original 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 conflict with the development originally granted permission as described on the decision notice. In this case, the development permitted under Ref: 15/4343 was for three self-contained flats forming a car-free development. Amending the condition would no longer mean the approved development is car-free and would differ materially from the description of development on the original Decision Notice.
6. Consequently, having regard to the facts of the case, I find that Condition No 4 cannot be imposed as proposed without fundamentally conflicting with the planning permission granted under ref: 15/4343. 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.
7. I note the appellant's comments that the car-free element of the original planning permission is also covered by Condition 4, which wasn't the case in *Finney*. Nevertheless, any amendment to Condition 4 to allow for a parking permit would have the effect of seeking to alter the "operative" part of the planning permission granted under ref: 15/4343, which is not possible for the reasons set out.

Other Matters

8. I acknowledge the Appellant's and Council's comments in relation to the Council initially providing parking permits in error. However, as I am dismissing the appeal for the reasons set out above, there is no need for me to consider this matter further.

Conclusion

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

A Hickey

INSPECTOR

¹ John Leslie Finney vs Welsh Ministers & Others [2019] EWCA Civ 1868

² the operative part of the planning permission in the terms used by Sullivan J in *Pye v Secretary of State for the Environment* 19987