



Appeal Decision

Site visit made on 12 January 2023

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 APRIL 2023

Appeal Ref: APP/P5870/W/22/3304023

1 Grosvenor Road, Wallington SM6 0EG

- 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 Solo-Steven Gisanrin, on behalf of All Care 4 U Group Ltd, against the Council of the London Borough of Sutton.
 - The application Ref DM2021/02308 is dated 17 November 2021.
 - The application sought planning permission for "Application to vary condition 7 (Type of Use) of planning permission Ref: D2014/70186 for the "Demolition of kitchen, hallway, W.C and chimneys and erection of a part one part two storey rear extension and conversion of loft space involving the formation of three dormer extensions at rear and three rooflights at front in connection with the use of premises as a residential care home (part amendment to previously approved application reference 13/68417/FUL)" to allow for the property to be used as a residential family centre for no more than 10 adults and 10 children at anyone time" without complying with a condition attached to planning permission Ref DM2019/00499, dated 11 December 2019.
 - The condition in dispute is No 5 which states that: "The development hereby approved, shall be restricted to and limited to use as a Residential Family Centre for up to 9 parents requiring the support provided by the care staff and shall not be used for any other Class C2 (residential institutions) use as specified by the Town and Country Planning (Use Classes) Order 1987 (as amended) or benefit from any permitted change within Part 3 of Schedule 2 of Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending or revoking and re-enacting that Order), without the prior written approval of the Local Planning Authority.
 - The reason given for the condition is: To enable the Council to have control of any future development on the site as an uncontrolled C2 use could potentially cause harm to the amenity of neighbouring occupiers in accordance with Policy 29 of the Sutton Local Plan and public highway and parking in accordance with Policies 36 and 37 of the Sutton Local Plan.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted in 2019 (ref: DM2019/00499) for the appeal property to be used as a residential family centre for no more than 10 adults and 10 children at any one time. The Appellant is seeking to amend Condition No 5 of that permission to allow the property to now be used as a residential children's home to provide care for a maximum of 6 children/young people with 3 full time support workers present at all times.

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 (the Act).

Reasons

4. The judgement in *Finney*¹ established 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, 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. No representations in respect of this matter were received.
5. It follows from *Finney* that where there would be a conflict between the new condition and the original description of development, the amendment will be beyond the powers under Section 73 of the Act. Such an amendment therefore cannot be made, and a fresh planning application will instead be required.
6. There is no dispute between the Council and Appellant that the appeal proposal remains within the same use class (C2) as the original planning permission. However, the original description of development is prescriptive in clarifying the use of the property as a residential family centre for no more than 10 adults and 10 children. Amending Condition 5 of the original permission to allow the property to be used as a residential children's home as proposed would result in a condition that conflicts with the description of the original development.
7. Consequently, having regard to the facts of the case, I find that Condition No 5 cannot be amended as proposed without fundamentally conflicting with the planning permission granted under ref: DM2019/00499. 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.

Other Matters

8. I acknowledge the representations made by both main parties and interested parties in respect of the planning merits of the proposal. However, as I am dismissing the appeal for the reasons set out above, there is no need for me to consider these matters further.
9. I also recognise that the original planning permission which this appeal seeks to vary (ref: DM2019/00499) was itself a variation pursuant to Section 73 of the Act of an earlier planning permission (ref: D2014/70186) which altered the description of that development. However, this does not alter my findings above on the lawfulness of the proposal before me.

Conclusion

10. For the reasons given above, the appeal is dismissed.

Ryan Cowley

INSPECTOR

¹ John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868