



Appeal Decision

Site visit made on 21 February 2023

by Ann Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2023

Appeal Ref: APP/W5780/W/22/3306630

Garages at Bush Close, London IG2 7NL

- 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 Tolner against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 2173/22, dated 28 June 2022, was refused by notice dated 23 August 2022.
 - The application sought planning permission to 'Demolish garages. Erection of seven self-contained flats (C3) with associated parking, refuse and amenity space' without complying with a condition attached to planning permission 2098/20 dated 16 November 2020.
 - The condition in dispute is No. 2 which states that: *The development hereby permitted shall be carried out in accordance with the following approved plans: 040-IG27NL-URB-ZZ-XX-VC-A-0002 Rev 1, 040-IG27NL-URB-ZZ-XX-VZ-A-0002 Rev 1, 040-IG27NL-URB-ZZ-XX-DR-A-002101 Rev 1, 040-IG27NL-URB-ZZ-XX-DR-A-002201 Rev 1, 040-IG27NL-URB-ZZ-XX-DR-A-002301 Rev 1, 040-IG27NL-URB-ZZ-XX-VZ-A-1001 Rev 1, 040-IG27NL-URB-ZZ-XX-VZ-A-1002 Rev 1, 040-IG27NL-URB-ZZ-RP-DR-A-1011 Rev 1, 040-IG27NL-URB-ZZ-00-DR-A-102101 Rev 1, 040-IG27NL-URB-ZZ-01-DR-A-102102 Rev 1, 040-IG27NL-URB-ZZ-02-DR-A-102103 Rev1, 040-IG27NL-URB-ZZ-RP-DR-A-102104 Rev 1, 040-IG27NL-URB-ZZ-E1-DR-A-102201 Rev 1, 040-IG27NL-URB-ZZ-D1-DR-A-102202 Rev 1, 040-IG27NL-URB-ZZ-E2-DR-A-102203 Rev 1, 040-IG27NL-URB-ZZ-E3-DR-A-102204 Rev 1, 040-IG27NL-URB-ZZ-E4-DR-A-102205 Rev 1, 040-IG27NL-URB-ZZ-XX-DR-A-102301 Rev 1, 040-IG27NL-URB-ZZ-SB-DR-A-102302 Rev 1, 040-IG27NL-URB-ZZ-SB-DR-A-102401 Rev 1, 040-IG27NL-URB-ZZ-SB-DR-A-102402 Rev 1, 040-IG27NL-URB-ZZ-SB-DR-A-102403 Rev 1, 040-IG27NL-URB-ZZ-SB-DR-A-102404 Rev 1, 040-IG27NL-URB-ZZ-SB-DR-A-102405 Rev 1, 040-IG27NL-URB-ZZ-SB-DR-A-102406 Rev 1, 040-IG27NL-URB-ZZ-SB-DR-A-102407 Rev 1, 040-IG27NL-URB-ZZ-XX-DR-A-102408 Rev 1, Site Location Plan, Design & Access Statement (ref 040-G2 7NL), Sustainability Statement (ref 040-IG2 7NL), Landscape Maintenance Plan (ref 040-IG2 7NL), Daylight and Sunlight Assessment (ref 3540 Issue 1, September 2020), Parking Beat Survey (ref 418.09978.00001), Two Tier Bike Rack Specifications, Ali SLIDE SL Technical Information, Radmat Med0-Living Green Roof System, NORclad Timber Cladding Guide.*
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description in the banner heading above is taken from the application form. Although different to that on the Council's decision notice, it is the description used in the original planning permission and is therefore correct.
3. The appellant seeks to increase the number of flats to that approved and revise the design of the scheme to accommodate the additional flat. The appeal therefore seeks to vary Condition No.2 of the original permission specifying the plans to reflect the amended designs.
4. The main parties have been invited to submit comments in relation to the Court of Appeal *Finney*¹ judgment. Therefore, no parties would be prejudiced if I was to take *Finney* into consideration in the determination of this appeal and I have dealt with the appeal on this basis.

Main Issue

5. The main issue is whether or not the condition can be varied, having regard to the Act² and other materials considerations, including the *Finney* judgment.
6. If so, it would be necessary to consider the character and appearance of the site and surrounding area, whether the proposed development would provide a suitable arrangement of private outdoor amenity space for future occupiers, and the effect of the proposal on local parking provision.

Reasons

7. In *Finney*, the Courts established that an application under s.73 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.
8. The appeal scheme seeks that the number of flats allowed on the site is increased to 8. The original development is still a consideration and the condition requested for variation would affect the "operative" part of the permission, as it would require a change to the description, which refers to 7 flats.
9. I note the Council's acknowledgement of the *Finney* judgment and acceptance that the incorrect procedure was followed in determining the application. I have not been provided with any information from the appellant in relation to the *Finney* judgment.
10. Having regard to the principles in the *Finney* judgment, I consider that the proposal as set out in the application to the Council would result in a discrepancy with the description of development. If I were to allow the appeal, and the substitution of the approved plans, that would necessitate a change to the original description of development, beyond the scope of s.73 of the Act, as set out in the *Finney* judgment.
11. In this instance, the creation of a new planning permission varying Condition No.2 imposed on the original permission and replacing it with the suggested

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

² Town and Country Planning Act 1990

variation is beyond the powers under s.73 and cannot be made. The effect is, in this case, that no further action can be taken on the appeal.

Conclusion

12. For the reasons set out above, I conclude that the appeal should be dismissed.

Ann Veevers

INSPECTOR