



Appeal Decision

Site visit made on 4 April 2023

by Ann Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2023

Appeal Ref: APP/R0660/W/22/3312537

Walker Barn, Buxton New Road, Rainow, Cheshire SK11 0AW

- 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 Bowers against the decision of Cheshire East Council.
 - The application Ref 20/2075M, dated 4 April 2020, was refused by notice dated 13 June 2022.
 - The application sought planning permission for the change of use for conversion of existing garage into a dwelling at Walker Barn, Buxton New Road, Rainow, Cheshire without complying with conditions attached to planning permission Ref: 19/5940M, dated 1 April 2020.
 - The condition in dispute is No. 2 which states: *The development hereby approved shall be carried out in total accordance with the following approved plans:*
Location Plan received 24/12/2019
Proposed Ground Floor Plan, Proposed Rear Elevation, Proposed Front Elevation, and Proposed Side Elevations, received on 24/12/2019
Proposed Site Plan received 16/03/2020
Except where varied by other conditions of this permission.
 - The reason given for the condition is: *For the avoidance of doubt and to specify the plans to which the permission relates.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address in the banner heading above is taken from the planning application form. However, this varies from the address given in the decision notice and the appeal form and upon which interested parties were consulted. I note that the address of the property is now 'Gritstone Cottage, Buxton New Road, Macclesfield, SK11 0AN'. However, for the purposes of the banner heading above, I have used the previous address to be consistent with the original planning permission to which the condition subject of the appeal was attached.
3. At the time of my site inspection the development subject of this appeal appeared to be substantially complete and occupied as a dwelling. However, for the avoidance of doubt and from the evidence before me, the building was not occupied as a dwelling at the time of the application. The application was therefore considered as an application under s.73 of the Town and Country Planning Act 1990. I have determined the appeal on this basis.
4. However, in *John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited* [2019] EWCA Civ 1868 (*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.

5. The main parties have been invited to submit comments in relation to the *Finney* judgment. Therefore, no parties would be prejudiced if I was to take *Finney* into consideration in the determination of this appeal. I have taken into consideration the responses received from the main parties and I have dealt with the appeal on this basis.
6. Given this background, the main issue is whether or not the condition can be varied, having regard to the Town and Country Planning Act 1990 (the Act) and other material considerations, including the *Finney* judgement.
7. Planning permission was granted in 2018 for the change of use of a garage to a dwelling (Ref 2018/4766M). Following this, a further planning permission was granted to vary the approved plans to include details of the foul drainage arrangement for the dwelling (Ref 2019/5940M). This permission was subject to several conditions, including Condition No 2, which set out the approved plans. The appellant now seeks to vary this condition and substitute plans depicting a larger dwelling than that approved and a detached garage.
8. The operative part of the original permission is explicit in referring to the ‘change of use for conversion of existing garage into a dwelling’. It does not infer any other works, including alterations or extensions. The appeal scheme would introduce an extension to the original building and the erection of a separate building for use as a garage. The effect of the appeal proposal would be to allow a fundamental change to the original permission that would create a conflict with the description which refers to the reuse of the building only.
9. Accordingly, 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.
10. I note the Council’s acknowledgement of the *Finney* judgment and acceptance that the incorrect procedure was followed in determining the application. While I sympathise with the appellant, the Council’s handling of the application, timeliness and cost has little to do with the planning considerations of the appeal before me which I have assessed on the evidence before me and my site visit.
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 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 and consequently, the merits or otherwise of the proposed development will not be considered.

Conclusion

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

Ann Veevers

INSPECTOR