



Appeal Decision

Site visit made on 8 June 2023

by J Evans BA(Hons) AssocRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2023

Appeal Ref: APP/Q3115/D/23/3320508

Willows Reach, Mill Lane, Shiplake, Henley-on-Thames RG9 3LY

- 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 Julian Glasspole against the decision of South Oxfordshire District Council.
 - The application Ref: P22/S1193/HH, dated 22 March 2022, was refused by notice dated 13 February 2023.
 - The application sought planning permission for the Variation of condition 2 (approved plans) - two additional shipping containers for storage and associated roof/wall amendments to suit on planning application P18/S1837/HH. (As amended by plans received 28 November 2022 to render the exterior of containers).
Demolition of existing mono-pitched gymnasium, erection of replacement flat roof gymnasium to match the architectural style of the main house and garage building. Replacement front boundary treatment from close boarded timber fence to rendered blockwork with new vehicular gates.
 - The condition in dispute is No 2 which states:
That the development hereby approved shall be carried out in accordance with the details shown on the following approved plans, 2018.002.0002, 2018.002.0005, 2018.002.0001A and 2018.002.0100, except as controlled or modified by conditions of this permission.
 - The reason given for the condition is:
To secure the proper planning of the area in accordance with Development Plan policies.
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Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. After reaching my initial conclusions on the appeal proposal, I notified and sought further comments from the appellant and the Council, and I have taken the responses I have received into account in reaching my final decision.
3. The appeal property is a large contemporary dwelling, which I understand from the information before me, originally obtained planning permission in 2016¹ and has been subject to a number of subsequent revisions thereafter².

¹ Planning Ref: P15/S3912/FUL

² Including Planning Refs: P17/S2985/Ful; P18/S1092/FUL & P18/S3710/FUL

4. A separate application³ was granted for the '*Demolition of existing mono-pitched gymnasium, erection of replacement flat roof gymnasium to match the architectural style of the main house and garage building. Replacement front boundary treatment from close boarded timber fence to rendered blockwork with new vehicular gates.*'
5. The appellant wishes to vary condition 2 attached to this permission under section 73 of the Town and Country Planning Act 1990, in order to enable the substitution of drawings, to allow for the siting and external cladding of two shipping containers, one adjacent to the gymnasium, and the other adjacent to an existing garage.
6. The Planning Practice Guidance⁴ (the PPG) advises that section 73 cannot be used to change the description of the development. Further, the Court of Appeal⁵, has 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 permission, that is the description of the development for which planning permission had been granted.
7. The appeal proposal would introduce development that was not considered under the original planning permission, that being the two containers. If I were to allow the appeal, the description of the development, which I can not change, would inaccurately reflect what is proposed on the submitted plans. The development would therefore be outside of the scope of the description of the original planning permission and would result in a variation to the terms of the "operative" part of the original planning permission.
8. As a result, the appeal proposal would go beyond the parameters of what can be considered under section 73. In view of this conclusion, it is not necessary for me to consider the planning merits of the appeal proposal.

Conclusion

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

J Evans

INSPECTOR

³ Planning Ref: P18/S1837/HH

⁴ Paragraph: 014 Reference ID: 17a-014-20140306 Revision date: 06 03 2014

⁵ *Finney v Welsh Ministers & Carmarthenshire CC & Energiekontor (UK) Ltd* [2019] EWCA Civ 1868; [2020] JPL 524