



Appeal Decision

Site visit made on 12 December 2023

by K Allen MEng (Hons) MArch PGCert ARB

an Inspector appointed by the Secretary of State

Decision date: 29th December 2023

Appeal Ref: APP/Y0435/D/23/3331534

5 Park View, Tickford Street, Newport Pagnell, Milton Keynes MK16 9AD

- 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 Andrew Lockely against the decision of Milton Keynes Council.
 - The application Ref 23/01730/HOUM, dated 1 August 2023, was refused by notice dated 25 September 2023.
 - The application sought planning permission for the erection of a single storey rear extension with roof lantern, first floor rear dormer with Juliet balcony, front and rear rooflights, and side flank elevation windows at ground and first floor without complying with a condition attached to planning permission Ref 23/00551/HOU, dated 23 May 2023.
 - The condition in dispute is No 1 which states that: The approved development shall be carried out in accordance with the following drawings/details: Received 11.05.2023, A202 Rev A - Proposed elevations, A201 - Floor plans – Planning, A200 - Site and roof plan and Received 16.03.2023, A104 Rev A - Location Plan.
 - The reason given for the condition is: For the avoidance of doubt and in accordance with the requirements of The Town and Country Planning (General Development Procedure) (England) Order 2015.
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Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. Planning permission was granted in May 2023 for “the erection of a single storey rear extension with roof lantern, first floor rear dormer with Juliet balcony, front and rear rooflights, and side flank elevation windows at ground and first floor” under reference 23/00551/HOU (the original planning permission).
3. The application which is the subject of this appeal, was submitted under S73 of the Town and Country Planning Act 1990 (The Act) to vary condition 1 of the original planning permission by substituting a different set of plans to those approved. In short, it is proposed to amend the plans to add an additional dormer at second floor level to increase the usable floorspace within the roof and allow space for an additional ensuite.
4. The Planning Practice Guidance (PPG) states that a S73 application may be used to seek a “minor material amendment”, where there is a relevant condition that can be varied. There is no statutory definition of a minor material amendment, but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from

the one which has been approved. The PPG also states that S73 cannot be used to change the description of the development. This is supported by several decisions made by the Court of Appeal Judgments including that of *Finney v Welsh Ministers & Ors* (Rev 1) [2019] EWCA CIV 1868 (Finney).

5. The Court held that it was beyond the powers of the decision maker under S73 to alter the description of the development, as this is the operative part of the permission and S73(2) states that the planning authority must consider only the question of conditions. It follows, from Finney, that where amending a condition would result in a conflict between the new condition and the description of the development, that the particular amendment is beyond the powers under S73 and cannot be made. A fresh planning application is instead required. An amendment can only be made provided the new condition does not fundamentally alter the proposal originally granted permission. I regard the Finney Judgment to be relevant to the appeal and the parties have had the opportunity to comment on the validity of the appeal.
6. The development permitted via the original planning permission was specific as to what permission was sought for and this now forms the description on the decision notice. Based on the plans before me, there is conflict with the original development description, the proposal would differ materially from the description of the development on the original decision notice which cannot be varied under S73. I find that the proposed amendment would be a fundamental change to the scale of the permitted scheme, with fundamentally different impacts and considerations, which exceeds the scope of a minor material amendment.
7. I appreciate that the Council could have invalidated the application prior to issuing a decision notice. However, this has not altered my findings on the appeal and does not lead me to an alternative conclusion.
8. Consequently, having regard to the facts of the case, I find that condition 1 cannot be amended as proposed. The appeal therefore cannot be determined under the provisions of S73 and an application for a revised planning permission under S70 would need to be made. Given my findings on the procedural matters as outlined above, with those being determinative, it is not necessary for me to consider the merits of any other issues raised in this case, as they would not alter my overall decision.

Conclusion

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

K Allen

INSPECTOR