



Appeal Decision

Site visit made on 31 October 2023

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th January 2024

Appeal Ref: APP/W1905/W/23/3317730

Land rear of 21 & 23 Crossfield Road, Hoddesdon, Hertfordshire EN11 0HL

- 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 DPA (London) Ltd against the decision of Broxbourne Borough Council.
 - The application Ref 07/22/1098/F, dated 17 November 2022, was refused by notice dated 13 February 2023.
 - The application sought planning permission for demolition of existing detached garage and shed and erection of two one bedroom semi-detached bungalows without complying with a condition attached to planning permission Ref 07/21/0250/F, dated 6 December 2021.
 - The condition in dispute is No 2 which states that the development hereby permitted shall be carried out and completed in accordance with the proposals contained in the application and any plan or drawing submitted therewith.
 - The reason given for the condition is to ensure the development is carried out as permitted.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application form identifies the site address as 21 Crossfield Road, which is not consistent with the site address given on planning permission Ref 07/21/0250/F. The appellant has confirmed the site address should be the same as that for which permission was granted. I have therefore used the original site address in the heading above.
3. The development granted planning permission under application Ref 07/21/0250/F was described as "... erection of two one bedroom semi-detached bungalows". The amendment sought to condition No 2 is for it to refer to a plan other than those submitted with the original planning application, namely plan No 1612_320 Proposed Floor Plan, dated November 2022. This plan seeks to increase the size of the bungalows and would result in them becoming two-bedroomed units. Therefore, the proposed variation to condition No 2, if allowed, would result in a conflict between the varied condition, relating to two-bedroomed bungalows, and the description in the original planning permission for one-bedroom bungalows.
4. In the case of *John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (UK) Limited* [2019] EWCA Civ 1868, the Courts established that an application under section 73 of the Town and Country

Planning Act 1990 (the Act) may not be used to obtain a permission that would require a variation to the operative part of the planning permission, that is the description of development. This means the description in an existing planning permission cannot be amended. Only the conditions can be varied.

5. Given the description in the original permission in this appeal cannot be changed, it follows that I am unable to vary the condition to enable development other than that referred to in the description of development. It is not open to me to vary the description of development. A fresh planning application would be required to increase the number of bedrooms in the proposed bungalows.
6. The appellant contends the substance of the application to vary condition No 2 is the proposal to increase the size of the bungalows, and that the number of bedrooms is not material. As set out above, the number of bedrooms is material because of the description in the original planning permission.
7. I have considered the other case law referred to by the appellant. In the case of *I'm Your Man v SSE* [1998] WL 1042297 (*I'm Your Man*), the change of use granted planning permission was found to be permanent, even though the description of development stated the change of use would be for a temporary period of seven years. This was because no condition had been imposed on the planning permission requiring cessation of the use after that time. However, the absence of restriction via condition related to the manner in which the use could be exercised, not to the use itself.
8. In the permission that is the subject of this appeal, the words in question in the description of development do relate specifically to the nature of the use that was granted permission, and not to the manner in which it is to be exercised. Consequently, a limitation via condition like the one found to be absent in *I'm Your Man* was not necessary.
9. The case of *Winchester CC v SSCLG* [2013] EWHC 101 (Admin), [2015] EWCA Civ 563 relates to a planning permission for change of use to a travelling show people's site and not to a proposal involving the addition of a bedroom, as suggested by the appellant. Be that as it may, the case established that no conditions were necessary for the local planning authority to enforce against use by people who were not travelling show people. The case is relevant to this appeal insofar as it is an example of a description of a proposed use that is operative even when not limited by condition.
10. For the reasons outlined above, I conclude that the appeal scheme falls outside the scope of section 73 of the Act, and therefore that a new planning application is required. That being so, no further action will be taken on the appeal.

Conclusion

11. For the reasons set out above, I conclude the appeal must be dismissed.

C Carpenter

INSPECTOR