



Appeal Decision

Site visit made on 16 January 2024

by A James BSc (Hons) MA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 February 2024

Appeal Ref: APP/B5480/W/23/3326153

Montana, Colchester Road, Havering, Romford RM3 9SF

- 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 Lewis Newton against the decision of the Council of the London Borough of Havering.
- The application Ref P0508.23, dated 14 March 2023, was refused by notice dated 24 May 2023.
- The application sought planning permission for demolition of the existing dwelling and the erection of 2 x 3-bed 2 storey semi-detached dwellings with habitable roof space, together with provision of rear off-street parking and private amenity space and installation of hard standing, without complying with conditions attached to planning permission Ref P2025.21, dated 22 March 2022.
- The conditions in dispute are Nos 2 and 16, which state that:
"2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans (as set out on page one of this decision notice)."
"16. There shall be no car parking within the front boundary of the site at any time and before the building(s) hereby permitted is first occupied, provision shall be made within the rear of the site for 2 car parking spaces and thereafter this provision shall be made permanently available for use, unless otherwise agreed in writing by the Local Planning Authority."
- The reasons given for the conditions are:
"2. For the avoidance of doubt and to ensure that the development is carried out as approved."
"16. To ensure that car parking accommodation is made permanently available to the standards adopted by the Local Planning Authority in the interest of highway safety and residential amenity (Local Plan policies 23 and 24)."

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Both main parties have been given the opportunity to comment on the implications of the Finney¹ judgement and subsequent judgements, on this appeal. I have taken all comments received into account in reaching my Decision.

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

Main Issue

3. The main issue is whether the proposal to remove/vary the conditions can be dealt with under section 73 of the Town and Country Planning Act 1990 (as amended) (the Act).

Reasons

4. Planning permission was granted on 22 March 2022 (Ref: P2025.21) to demolish the existing dwelling and construct 2 nos. 3 bed dwellings, together with the provision of rear off-street parking. The consented scheme included a garage and an area of hardstanding to the rear of each dwelling, which would be accessed from Fairford Way. This appeal seeks to remove Condition 16 of the consented scheme, which prevents car parking to the front of the site and seeks to ensure that the car parking spaces to the rear are provided and permanently retained. This appeal also seeks to vary Condition 2, which requires the development to be carried out in accordance with the approved plans.
5. The Finney judgement established that an application under section 73 of the Act 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.
6. The provision of rear off-street parking forms part of the description of the development for which planning permission was granted. The appellant ascertains that they would still maintain the rear driveway, which would connect to the rear storage area and hardstanding, and would provide visitor parking, as well as an area to store camper vans/caravans, trailers etc. The consented scheme clearly shows an area of hardstanding and garages to the rear of the properties. The plans before me indicate that the area around the storage buildings would form part of the garden for the proposed dwellings. No hard surfacing is shown on the proposed plans and only pedestrian access is shown to the gardens from the road to the rear. I have therefore determined the appeal based on the plans before me.
7. Consequently, the appeal scheme which does not show rear off-street parking would affect the "operative" part of the permission and conflict with the description of the development. As a result, the appeal scheme would necessitate a change to the description of the development, which is beyond the scope of section 73 of the Act, as set out in the Finney judgment and subsequent judgements. This appeal therefore cannot be determined under the provisions of section 73 of the Act and a new planning application is required.
8. Given my findings above, with those being determinative, it is not necessary for me to consider the merits of the case, as it would not alter my overall decision.

Conclusion

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

A James

INSPECTOR