



Appeal Decision

Site visit made on 20 February 2024

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th February 2024

Appeal Ref: APP/E0345/W/23/3324763

73 Mount Pleasant, Reading RG1 2TF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) 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 M Ashraf against the decision of Reading Borough Council.
 - The application Ref 221905, dated 1 August 2022, was refused by notice dated 12 April 2023.
 - The application sought planning permission for development described as the change of use from dwellinghouse (Class C3) to 5 bedroom small HMO (Class C4) including a single storey rear extension without complying with a condition attached to planning permission Ref 220045, dated 10 May 2022.
 - The condition to be varied is No 2 which states that: The development hereby permitted shall ONLY be carried out in accordance with the following approved plans:
 - Location Plan – 1930 EX10-001 Received on 12/01/2022
 - Proposed South Elevation – 1930 PL13-101b
 - Proposed North Elevation – 1930 PL13-102a
 - Proposed Ground Floor Plan – 1930 PL13-001b
 - Proposed First Floor Plan – 1930 PL13-002b
 - Proposed Second Floor Plan – 1930 PL13-003c
 - Proposed Roof Plan – 1930 PL13-004b
 - Proposed East & West Elevations – 1930 PL13-100c
 - Proposed Site Plan – 1930 PL10-002b Received on 07/04/2022.
 - The reason given for the condition is: For the avoidance of doubt and to ensure that the development is carried out and adhered to in accordance with the application form and associated details hereby approved.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The main parties have also been given an opportunity to comment on the implications of the *Finney v Welsh Ministers & Others [2019] EWCA Civ 1868* ("Finney") judgement on the proposal. Whilst no comments have been received from the appellant, the Council has commented, and I have taken these into account in reaching my decision.

Background and Main Issue

3. Planning permission has been granted for the change of use from a dwellinghouse (Class C3) to a 4-bedroom house of multiple occupancy ("HMO")

(Class C4), including a single storey rear extension¹. The current appeal seeks permission to vary the approved drawings to increase the number of bedrooms in the HMO from 4 to 5.

4. The main issue is whether or not the variation of the condition would fundamentally affect the description of development of the planning permission originally granted.

Reasons

5. The Finney judgement sets out that a section 73 application may not be used to obtain planning permission that would require a variation to the 'operative' part of the planning permission, in other words, the description of development for which planning permission has already been granted.
6. It follows from Finney that where amending a condition would result in a conflict between the new condition and the description of development, then that particular amendment is beyond the powers under section 73 and cannot be made.
7. The appeal proposal seeks to vary the approved plans to increase the number of HMO bedrooms from 4 to 5. The proposal would consequently result in a discrepancy with the original description of development and, were I to allow it, would fundamentally change the description of development that has been originally asked for.
8. The variation of the condition proposed under this appeal would fail to accord with the principles set out in Finney. The appeal must therefore be dismissed on that ground and there is no need for me to consider the wider areas of dispute.

Conclusion

9. For the reasons set out above, I dismiss this appeal.

N Praine

INSPECTOR

¹ Reading Borough Council Ref: 220045