



Appeal Decision

Site visit made on 27 February 2024

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 April 2024

Appeal Ref: APP/A5270/W/23/3323684

259 Acton Lane, Ealing, Chiswick W4 5DG

- 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 Ocarina Management Ltd against the decision of London Borough of Ealing.
 - The application Ref is 230299VAR.
 - The application sought planning permission for conversion of building into three self-contained residential units; single storey rear extension; alterations from hip to gable end; rear roof extension to main roofslope; installation of two rooflights to front roofslope; associated internal and external alterations including changes to front, side and rear elevations fenestration (following demolition of external staircase and demolition of existing garages at rear of no. 259 Acton Lane); and provision of refuse and cycle storage (revised description) without complying with a condition attached to planning permission Ref 222053FUL, dated 8 December 2022.
 - The condition in dispute is No. 2 which states that: the development hereby approved shall be carried out in accordance with drawings titled: 1 (REV.A), 2 (REV.A), 3 (REV.A), 4 (REV.E), 5 (REV.E), 6 (REV.E), 7 (REV.E), 8 (REV.E), 9 (REV.B).
 - The reason given for the condition is: for the avoidance of doubt and in the interest of proper planning.
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Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. Planning permission was granted for conversion of building into three self-contained residential units; single storey rear extension; alterations from hip to gable end; rear roof extension to main roofslope; installation of two rooflights to front roofslope; associated internal and external alterations including changes to front, side and rear elevations fenestration (following demolition of external staircase and demolition of existing garages at rear of no. 259 Acton Lane); and provision of refuse and cycle storage (revised description). A condition controlling the development permitted was imposed for the avoidance of doubt and in the interest of proper planning. Condition 2 therefore states, that the development hereby approved shall be carried out in accordance with drawings titled: 1 (REV.A), 2 (REV.A), 3 (REV.A), 4 (REV.E), 5 (REV.E), 6 (REV.E), (REV.E), 8 (REV.E), 9 (REV.B). The proposed development seeks to vary this condition to substitute the approved plans with new drawing references to increase the size of the rearmost unit from one bed to two bed.

3. In doing so however, the current appeal under Section 73 of the Town and Country Planning Act 1990 would 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. To this end, the original permission as set out above reads, *'Conversion of building into three self-contained residential units; **single storey rear extension**; alterations from hip to gable end; rear roof extension to main roofslope; installation of two rooflights to front roofslope; associated internal and external alterations including changes to front, side and rear elevations fenestration (following demolition of external staircase and demolition of existing garages at rear of no. 259 Acton Lane); and provision of refuse and cycle storage (revised description)'*. Bold emphasised by the Inspector.
4. There are no powers under Section 73 of the Act to grant a new planning permission with a different operative part to that contained in the original permission. If amending a condition would result in a conflict between it and the description of development, then that particular amendment is beyond the powers under Section 73 and cannot be made (a fresh planning application would be required). Accordingly, as a conflict has arisen with the original description of the development, the appeal cannot therefore be dealt with under Section 73 and will be dismissed on this ground. In such circumstances, there is no need to consider any of the wider issues.

Conclusion

5. For the reasons given, the appeal is dismissed.

N Teasdale

INSPECTOR