



Appeal Decision

Site visit made on 9 April 2024

by **F Wilkinson BSc (Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 May 2024

Appeal Ref: APP/C2741/W/23/3330369

Pasture Farm, Main Street, Deighton, York YO19 6HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr John R Knowles of Knowles Ltd against the decision of the City of York Council.
 - The application reference is 23/00024/FUL.
 - The application sought planning permission for the erection of 1 no. single storey dwelling and 1no. single storey dwelling following conversion and connection of 2no. barns without complying with a condition attached to planning permission Ref 21/02437/FUL, dated 14 April 2022.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following plans:- Drawing Pack 19047 Revision P01, received on 24/02/2022.
 - The reason given for the condition is: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Planning Practice Guidance¹ states that there is no statutory limit on the degree of change permissible to conditions under an application made through section 73 of the Town and Country Planning Act 1990 (as amended) (the Act), but the change must only relate to conditions and not to the operative part of the permission. This is supported by the judgement in *John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited* [2019] EWCA Civ 1868 (the *Finney* judgement) which established that an application under section 73 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.
3. It follows from the *Finney* judgement that where there would be a conflict between the new condition and the original description of development, that particular amendment is beyond the powers under section 73 of the Act.
4. The main parties were invited to submit comments in relation to the *Finney* judgement. Therefore, no parties would be prejudiced if I was to take the *Finney*

¹ Paragraph: 013 Reference ID: 17a-013-20230726

judgement into consideration in the determination of this appeal. I have had regard to the responses received from the main parties.

Main Issue

5. Against this background, the main issue is whether the condition in dispute can be varied, having regard to the Act and other material considerations, including the *Finney* judgement.

Reasons

6. In April 2022, planning permission was granted for the erection of a single storey dwelling and a single storey dwelling following the conversion and connection of two barns. The development was permitted subject to several conditions including no. 2 as detailed above, which requires the development to be carried out in accordance with the approved plans. The appellant now wishes to amend the design of the new build dwelling.
7. The proposed changes to the design of the new build dwelling are described as including the widening of the footprint of the building by around 440mm, increasing its height by approximately one metre, lowering the ground floor level into the ground by around 300mm, and reducing the roof pitch. Changes are also proposed to the internal layout. This includes the introduction of accommodation at what is described as 'first floor' on the submitted plans. There would also be the addition of a dormer window to the rear and a window in each gable to serve the accommodation at first floor.
8. I appreciate that the proposed windows would either be on the ground floor or above the height of the eaves. I also acknowledge that the dwelling as proposed would be lower in height than the nearby dwelling at Pasture Farm.
9. However, both parties have identified that the proposed plans for the dwelling would be for a one and a half storey dwelling. This is set out in paragraph 5.8 of the Council's officer report and paragraph 2.10 of the appellant's appeal statement. In addition, the table at paragraph 4.46 of the appellant's appeal statement identifies the building height of the approved scheme as 'single storey' and the appeal proposal as '1.5 storeys'. In my view, this implies a dwelling that would no longer be 'single storey'.
10. The proposed plans show accommodation over two levels whereas the approved plans have accommodation at ground floor only. In my judgement, through introducing an additional level of accommodation at first floor, albeit making use of the roof space, the proposed variations to the dwelling mean that it would no longer be described as a single storey dwelling.
11. Consequently, the condition as proposed would affect the operative part of the original permission, as it would require a change to the description, which refers to a single storey dwelling. If I were to allow the appeal and grant a new planning permission varying condition no. 2 with the substitution of the approved plans with those proposed, that would be beyond the scope of section 73 of the Act, as it would necessitate a change to the original description of development.
12. The appeal therefore cannot be determined under the provisions of section 73 of the Act. The effect is that no further action can be taken on the appeal and so the merits or otherwise of the proposal need not be considered.

Conclusion

13. For the reasons set out above, I conclude that the appeal should be dismissed.

F Wilkinson

INSPECTOR