



Appeal Decision

Site visit made on 8 August 2024

by H Senior BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2024

Appeal Ref: APP/N5660/W/23/3332277

47 Tankerville Road, London SW16 5LW

- 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 Kohn against the decision of the Council of the London Borough of Lambeth.
 - The application Ref is 23/02724/VOC.
 - The application sought planning permission for conversion of existing dwelling into two self contained residential units (1 x 3 bedroom and 1 x 2 bedroom) without complying with condition attached to planning permission Ref 21/02501/FUL, dated 11 April 2022.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the approved plans listed in this notice.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of existing dwelling into two self contained residential units (1 x 3 bedroom and 1 x 2 bedroom) at 47 Tankerville Road, London SW16 5LW in accordance with the application Ref 23/02724/VOC, without compliance with condition number 2 previously imposed on planning permission Ref 21/02501/FUL, dated 11 April 2022 and subject to the conditions in the attached schedule.

Applications for costs

2. An application for an award of costs was made by Mr Kohn against the Council of the London Borough of Lambeth. This application is the subject of a separate decision.

Background and Main Issue

3. Application Ref 21/02501/FUL sought permission for the conversion of existing dwelling into two self-contained residential units (1 x 3 bedroom and 1 x 2 bedroom). Following this, but before it was implemented the building was extended following an application for prior approval¹ and in addition a Lawful Development Certificate was issued for a rear dormer loft extension and rooflights to the front roof slope². The current application seeks to amend condition 2 to reference revised plans to include the subsequent extensions to the building.

¹ Ref 22/01840/PDE

² Ref 21/03514/LDCP

4. The main issue is whether the condition in dispute can be varied through an application under s73 of the Town and Country Planning Act 1990 (the Act).

Reasons

5. The Council considers that the proposal cannot be considered under section 73 of the Act as it would be substantially different to the approved planning application.
6. The Armstrong judgment³ advises that the scope of section 73 is not limited to minor material amendments. Furthermore, the Planning Practice Guide (PPG) advises that there is no statutory limit on the degree of change permissible to conditions under s73, so long as the changes only relate to conditions and not to the operative part of the permission⁴.
7. The judgment in Finney⁵ 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. In this case the description of development remains the same.
8. Although the layout and size of the flats has changed, the description of development is the same as on the original application and so therefore the Armstrong judgment is relevant to my consideration of the appeal.
9. The extensions were constructed after the original application to convert the building to two flats but prior to the conversion taking place. Although there is no evidence before me that the appellant intended to continue to use the building as a single dwelling the extensions were lawfully constructed and therefore this is not an issue that is relevant to the appeal before me.
10. The amended plans would increase the size of both flats and vary the layout compared to the approved plans, although the number of bedrooms would remain the same. The revised plans include the extensions and indicate that there would be 3 bed roomed flat on the ground floor and a two bed roomed flat on the first and second floors. I also acknowledge that a subsequent planning application for 2 x3 bed roomed flats has been approved by the Council. I have however determined the appeal on the basis of the plans before me, on face value, not an assumption that rooms could be used in another way.
11. I conclude therefore that the proposed development can be varied through an application under s73 of the Act.

Other Matters

12. I acknowledge the objections from neighbours with regard to the application. There have been a number of applications made to alter and extend the building and it has a complicated planning history. I can however only have regard to the evidence before me in my determination of the appeal. The possible use of the property as a House in Multiple Occupation is not a matter that is before me in this appeal. The extensions to the property are lawfully constructed under permitted development rights and whether the building

³ Armstrong v Secretary of State for Levelling-Up, Housing and Communities [2023] EWHC 176.

⁴ Paragraph: 013 Reference ID: 17a-013-20230726.

⁵ John Leslie Finney vs Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868.

would be in use as a single dwelling or two flats would not cause additional harm to the living conditions of neighbouring occupiers. The host building has consent for use as a two flats and I therefore do not consider that the proposal would lead to overdevelopment of the site. As the appeal is regarding a condition attached to a previous approval car parking is not a matter before me. If the site is untidy this is a matter for the Council.

13. None of the other matters raised alter or outweigh my conclusion on the main issue.

Conditions

14. By allowing this appeal a new planning permission is created. The Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under S73 should restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event these have since been discharged, that will be a matter which can be addressed by the parties.
15. I have imposed a condition stipulating the timescales for which development must start. I have amended the condition such that it reflects the date of the original permission. A decision made under S73 cannot extend the time period within which a development must start. For certainty, I have imposed a condition establishing the approved plans.

Conclusion

16. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

H Senior

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 11 April 2025.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos TR.47: /BP, /EX.01, /EX.02, /EX.03, /EX.04, /PR.101, /PR.102. Location Plan.
- 3) Prior to the occupation of the development hereby permitted, details of the provision to be made for cycle parking shall be submitted to and approved in writing by the local planning authority. The cycle parking shall thereafter be implemented in full in accordance with the approved details before the use hereby permitted commences and shall thereafter be retained solely for its designated use.

- 4) Prior to the occupation of the development hereby permitted, details of waste and recycling storage and management for the development shall be submitted to and approved in writing by the local planning authority. The waste and recycling storage shall be provided and managed in accordance with the approved details prior to the occupation of the development hereby permitted, and shall thereafter be retained solely for its designated use. The waste and recycling storage areas/facilities should comply with the Lambeth's Refuse & Recycling Storage Design Guide (2013), unless it is demonstrated in the submissions that such provision is inappropriate for this specific development.

End of Schedule