



Appeal Decision

Site visit made on 15 October 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 NOVEMBER 2024

Appeal Ref: APP/E5330/W/23/3331848

185 Herbert Road, Greenwich, Woolwich SE18 3QE

- 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 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms Joy Eseroghene Igun against the decision of the Council of the Royal Borough of Greenwich.
 - The application Ref is 23/2327/MA.
 - The application sought planning permission for demolition of existing residential building (Class C3) and garage and construction of a 2-storey building containing 6 self-contained flats together with landscaping and parking without complying with a condition attached to planning permission 21/2538/F, dated 5 October 2021.
 - The condition in dispute is No 2 which states that: "The development hereby permitted shall be carried out in accordance with the following approved plans: 01A, 02, 03, 04, 05A, 06A, 07A, 08, 09, "Planning, Design and Access Statement ref FR/H.185" "Proposal for fire and rescue service access compliance," Groundscore Contaminated Land Assessment, Groundscore Flood Risk Assessment, Overnight Car Parking Surveys, Arboricultural Impact Assessment ref HRW0-01, Daylight, Sunlight prepared by EEABS, Overshadowing Assessment dated June 2020 and Energy Statement dated September 2021."
 - 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 dismissed.

Preliminary Matters

2. Section 73 of the Town and Country Planning Act 1990 (the Act) allows for a grant of permission for the development of land without compliance with conditions subject to which a previous permission was granted.
3. In *Finney v Welsh Ministers & Others*¹, the Court of Appeal held 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, which is the description of the development for which planning permission had originally been granted.
4. Although not raised in either of the parties' submissions, during the consideration of the appeal I invited both parties to provide written submissions of whether or not such a proposal would be acceptable in terms of Section 73 in light of the judgment in *Finney*. Both parties were also given the opportunity to provide a rebuttal.

¹ *Finney v Welsh Ministers & Others* [2019] EWCA 1868

Background and Main Issue

5. Planning permission was granted for the erection of a two-storey building containing six flats subject to a number of conditions, one of which provided a list of approved plans. The appeal before me seeks to amend that condition as the appellant seeks to erect a building on site of a different design to that approved by adding an additional storey and two additional flats.
6. Given the above, the main issue is therefore whether amending the condition would result in a conflict between it and the description of development and therefore whether or not the appeal is valid under Section 73 of the Act.

Reasons

7. The appeal proposal seeks to add an additional storey and two additional flats to the approved development. The original description of development included the number of storeys and the number of flats. That is the “operative” part of the planning permission.
8. Although the appellant has sought to argue that the current proposal would not conflict with the original description of development this is based on advice from the Council to apply to vary the approved plans.
9. However, amending condition 2 to reflect the proposed plans and provide an additional storey and two additional flats would clearly result in a conflict between the amended condition and the description of development.
10. For this reason, and taking account of the Finney judgment, I find that amending the condition would result in a conflict between it and the description of development and, therefore, the appeal is not valid under Section 73 of the Act.

Other Matters

11. Given my finding on the validity of the appeal I am unable to express a view on the acceptability of the proposal, which would now need to be subject to a separate planning application, as to do so could fetter a future decision maker.

Conclusion

12. For the reasons given above the appeal should be dismissed.

K Townend

INSPECTOR