



Appeal Decision

Site visit made on 28 January 2025

by **Jonathan Edwards BSc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 January 2025

Appeal Ref: APP/T3725/W/24/3355431

54 Kenilworth Road, Leamington Spa, Warwickshire CV32 6JW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) 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 J Kohli against the decision of Warwick District Council.
 - The application Ref is W/24/0266.
 - The application sought planning permission for proposed conversion from single dwelling to form 5no. 1 bedroom and 3no. 2 bedroom apartments. Demolition of existing single storey side extension and erection of replacement single storey side extension (re-submission of previously withdrawn W/19/1562) without complying with a condition attached to planning permission Ref W/20/0312, dated 10 July 2020.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawings 03K, 05J and 06C, and specification contained therein, submitted on 15 June 2020.
 - The reason given for the condition is: For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies BE1 and BE3 of the Warwick District Local Plan 2011-2029.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission reference number W/20/0312 (the original permission) is subject to a number of conditions. The disputed condition 2 requires the development to be carried out in accordance with details shown on specified drawings. The application leading to this appeal seeks to carry out the development allowed under the original permission but without complying with the drawings referred to in the disputed condition. In effect, the application seeks to vary the condition so that it requires the development to be carried out in accordance with different drawings.
3. I have sought the main parties' view on the implications of the judgement handed down in *Finney v Welsh Ministers and Others [2019] EWCA Civ 1868* (herein referred to as *Finney*) in the determination of this appeal and I have had regard to the responses. Notwithstanding the Council's reasons for refusing planning permission, I consider the main issue is whether section 73 of the Act allows the development allowed by the original permission to be subject to a planning condition that requires the works to be carried out in accordance with the revised drawings.

Reasons

4. The Finney judgement held that applications under section 73 of the Act cannot be used to obtain planning permission that requires a variation to the terms of the 'operative' part of the original planning permission. Also, amendments cannot be made to conditions so that a discrepancy would be created with the description of development.
5. The original planning permission allows the conversion of the appeal property to apartments, the demolition of an existing extension and the erection of an extension to the side of the property. In addition to these elements, the revised plans subject of this appeal show the installation of a new external fire escape and the erection of a conservatory/garden room to the rear of the property.
6. The 'operative part' of the original planning permission does not mention the additional elements to the rear of the property as shown on the submitted plans. Therefore, if I allow the appeal, there would be a clear disparity between the operative part of the permission and a revised condition 2 that requires the development to be carried out in accordance with drawings that show the fire escape and rear extension. Also, in light of Finney, I am not allowed under section 73 of the Act to grant planning permission with a different description of development to that as set out on the original permission.
7. The Council determined the planning application leading to this appeal without raising concern over the implications of the proposed condition in light of the Finney judgement. Nonetheless, I conclude that section 73 of the Act does not allow the grant of a new planning permission subject to the proposed condition as it would require the development to accord with plans that show significant additional elements not referred to in the operative part of the permission. Instead, it would be necessary for an application to be made that seeks planning permission specifically for the erection of the proposed fire escape and rear conservatory additions.
8. The Council's refusal reasons relate to the effect of the proposed fire escape on the living conditions of adjoining properties and on the character and appearance of the area, including its effect on the qualities of Leamington Spa Conservation Area. However, in light of my conclusion above there is no need to arrive at a view on these matters as it would not affect the determination of this appeal.

Conclusion

9. For the above reasons, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR