



Appeal Decisions

Site visit made on 5 February 2025

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th February 2025

Appeal Ref: APP/J1535/W/24/3342115

14 Tycehurst Hill, Loughton, Essex IG10 1BU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Bala Balendra against the decision of Epping Forest District Council.
- The application Ref EPF/0224/24, dated 1 February 2024, was refused by notice dated 28 March 2024.
- The application sought planning permission for *"the part demolition of existing building. Two storey side and rear extension with internal alterations. Second floor within roof space."* without complying with a condition attached to planning permission Ref EPF/0599/23, dated 12 September 2023.
- The condition in dispute is Condition No.2 which states that: *"The development hereby permitted shall be carried out in accordance with the following approved plans: 02 Rev A and 03"*.
- The reason given for the condition is: *"In the interests of design quality."*

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Bala Balendra against Epping Forest District Council and is the subject of a separate decision.

Preliminary Matters

3. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024 and updated on 7 February 2025. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach
4. The application was submitted retrospectively. During my site visit I observed some minor differences between the development 'as built' and the 'proposed plans'. For the avoidance of doubt, I have considered the appeal on the basis of the proposed plans¹.
5. I have also dealt with another appeal² on this site. That appeal is the subject of a separate decision.

¹ Drawing Ref: 100

² Appeal Ref: APP/J1535/W/24/3355254

Background and Main Issue

6. Section 73A of the Town and Country Planning Act 1990 (the Act) provides that applications for planning permission may relate to development already undertaken if they are for permission to retain buildings or works, or to continue a use of land, without complying with some conditions subject to which a previous permission was granted.
7. Planning permission was granted for the part demolition of existing building, two storey side and rear extension with internal alterations and a second floor within roof space. The current application seeks to amend Condition No. 2 to substitute the approved plans for revised plans which include works to demolish additional parts of the original building. The Council refused planning permission stating that the building has been demolished beyond what was previously assessed and cannot be varied under Section 73A of the Act. The appellant disputes this.
8. Therefore, the main issue is whether the condition in dispute can be varied through an application under Section 73A of the Act.

Reasons

9. The Planning Practice Guidance³ (the PPG) states that an application made under Section 73 of the Act can be used to make a material amendment by varying or removing conditions associated with a planning permission. It further states that there is no statutory limit on the degree of change permissible to conditions under Section 73, but the change must only relate to conditions and not to the operative part of the permission.
10. The matter of whether an application would give rise to a fundamental variation to the permission such that the application would fall outside of the scope of Section 73 of the Act, and the circumstances where the proposed variation of the condition would not give rise to any conflict with the description of the development were considered in the *Armstrong*⁴ judgment.
11. The judgment in *Finney*⁵ 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.
12. The description of development as approved refers to partial demolition and various extensions and alterations. As such, the appellant states that whilst it is accepted that the extent of demolition exceeds the amount which was originally intended that the works which have been undertaken fall within the operative part of the original permission. Conversely, 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.
13. It is not disputed by both main parties that the extent of demolition and rebuilding has been substantially more than that indicated on the approved plans. The appellant states that despite their intention to retain the parts of the existing dwelling shown on the approved plans, the demolition works which were carried out were

³ 013 Reference ID: 17a-013-20230726

⁴ *Armstrong v Secretary of State for Levelling-Up, Housing and Communities* [2023] EWHC 176.

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

necessary as a result of problems encountered by the builder undertaking the works and who took the decision to demolish and rebuild the walls.

14. The amended plan provided with the appeal shows a substantial proportion of the existing dwelling has been demolished and rebuilt including the side and front elevation walls, with the only retained wall shown on the submitted plans as being a section of an internal wall. In addition to the amended plans, an image has been provided within the appellant's statement of case illustrates the extent of demolition which took place, and how little of the original dwelling was retained. I appreciate this image represents only a snapshot in time. However, the entire first floor of the existing dwelling has been demolished, together with the majority of the ground floor.
15. Whether these works constitute partial demolition as per the approved description of development, or a replacement dwelling as advanced by the Council is a matter of planning judgment. The Hewlett⁶ case underlined the basic principle that it is the totality of acts of improvement that should be looked at in determining, as a matter of fact and degree, whether a resulting dwelling was the same building, albeit altered and improved, or a new one.
16. Whilst neither the original description of development nor the planning conditions imposed sought to control the extent of demolition permissible. There was a reasonable expectation that parts of the existing structure as shown on the approved plans would be retained. However, based on the evidence before me, and for the reasons set out above, very little of the existing dwelling has been retained. I have not been provided with any detailed evidence to justify the extent of demolition that took place. Therefore, in the absence of any detailed evidence regarding the sequencing of works and the use of reclaimed materials, I am unable to reach any other conclusion that the dwelling as built, as a matter of fact and degree amounts to a replacement of the original building.
17. I acknowledge that the resultant dwelling is of a broadly similar appearance to the originally approved scheme. Nonetheless, the works which have been carried out involved the rebuilding of the entire first floor and roof structure of the building, together with the majority of the ground floor. As such, this does not alter my findings in that the works which have been carried out exceed what was permitted under the original scheme. Therefore, notwithstanding the guidance within the PPG which advises that there is no statutory limit on the degree of change permissible, I consider that the works which have been undertaken amount to a fundamental change to the original planning permission.
18. For the above reasons, I find that the proposal goes beyond what the original description of development permitted and amounts to the replacement of the existing dwelling. For these reasons, the proposed development cannot be varied though an application under Section 73 of the Act.

Conclusion

19. For the reasons given above, I conclude that the appeal should be dismissed.

K Lancaster INSPECTOR

⁶ Hewlett v Secretary of State for the Environment and Brentwood District Council (1984)