



Appeal Decision

Site visit made on 10 December 2024

by **L Francis BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 March 2025

Appeal Ref: APP/M1520/W/24/3350442

443 Rayleigh Road, Thundersley, Benfleet, Essex SS7 3ST

- 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 Josh Pereira against the decision of Castle Point Borough Council.
- The application Ref is 24/0132/VAR.
- The application sought planning permission for the demolition of single storey rear extension and erection of single storey rear/side extension without complying with conditions attached to planning permission Ref 23/0725FUL, dated 29 January 2024.
- The conditions in dispute are Nos 2 and 3 which state that:
 2. The development hereby permitted shall be carried out in accordance with the approved plans listed on this decision notice.
 3. The external surfaces of the development hereby approved shall be treated in accordance with the details specified on the submitted plans or shall be of similar appearance to the materials used in the construction of the exterior of the existing dwellinghouse.
- The reasons given for the conditions are: (2) For the avoidance of doubt and in order to achieve satisfactory development of the site and (3) In the interest of visual amenity.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. Permission was granted in January 2024 for a single storey rear and side extension. The appeal application sought to vary the plans condition (2) and materials condition (3) to allow a terrace on the roof of the extension along with associated alterations.
3. In the Court of Appeal judgment, *John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (Uk) Limited [2019] EWCA Civ 1868* (the Finney judgment) it was established that an application under section 73 of the Town and Country Planning Act 1990 (as amended) (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, which would include the description of the development for which the original permission was granted. As it was not presented in evidence, both main parties were given the opportunity to comment on this judgment and how it relates to the appeal. Comments were received from the appellant, which I have taken into account in my decision.

4. In light of the above, the main issues are:

- whether the appeal proposal can be considered under section 73 of the Act; and, if so,
- the effect of the appeal proposal on the living conditions of the neighbouring occupiers with particular regard to privacy, outlook and overshadowing.

Reasons

Section 73

5. The description of development on the original permission (Ref: 23/0725FUL) referred to the “demolition of single storey rear extension and erection of single storey rear/side extension”. The original description of development contained no reference to a first-floor terrace. The appeal proposal would therefore conflict with the original description of development. It follows that this particular amendment is beyond the powers under section 73 of the Act and a fresh planning application would be required.
6. I note the appellant’s point that the Council determined the application and did not consider the proposed changes to go to the heart of the development. Nevertheless, the Finney judgment is clear that an application under section 73 of the Act may not be used to obtain a permission that would require a variation to the operative part of the planning permission.
7. Given my findings above, it is not necessary for me to go on to consider the appeal proposal’s effect upon the living conditions of the neighbouring occupiers.

Conclusion

8. For the reasons given above, the appeal should be dismissed.

L Francis

INSPECTOR