



Appeal Decision

Site visit made on 15 April 2025

by **E Grierson BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 May 2025

Appeal Ref: APP/D1590/W/24/3355704

Lynton House, 38 Kilworth Avenue, Southend-on-Sea SS1 2DT

- 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 M Nunn against the decision of Southend-on-Sea Borough Council.
 - The application Ref is 24/00985/AMDT.
 - The application sought planning permission for a change of use from 6-person HMO (class C4) to 8-bedroom HMO (sui generis), infill window at ground floor level on side elevation and provide associated bin and cycle stores at rear without complying with a condition attached to planning permission Ref 24/00441/FUL, dated 29 May 2024.
 - The condition in dispute is No 7 which states that: Notwithstanding the provisions of the Town and Country Planning Act 1990 (as amended) the development and use of the building as a House in Multiple Occupation subject of this permission shall not at any time be adapted to enable formation of more than eight (8) bedrooms and the property shall not be occupied by more than eight (8) residents at any one time with all eight (8) bedrooms for single occupancy only.
 - The reason given for the condition is: To ensure the use hereby approved accords with the development sought and so that it would offer acceptable living conditions for its occupiers in accordance with the National Planning Policy Framework (2023), Core Strategy (2007) Policies KP2 and CP4 and Development Management Document (2015) Policies DM1, DM3 and DM8.
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Decision

1. The appeal is dismissed.

Reasons

2. The condition in dispute sets out there will be no more than eight bedrooms within the property and that the property must not be occupied by more than eight residents at any one time, with all eight bedrooms for single occupancy only. The appellant is seeking to vary this condition to allow for an additional two bedrooms accommodating two occupants in the existing basement, resulting in a total of ten bedrooms and ten occupants within the property.
3. I have drawn the attention of the parties to the case of *John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (Uk) Limited*, otherwise known as 'Finney'. In that case, 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, in other words the description of the development for which planning permission was originally granted.
4. It follows from Finney that where amending a condition would result in a conflict between the new condition and the description of development, that particular amendment is beyond the powers under section 73 and cannot be made and a

fresh planning application would be required. The consequence to this is that an amendment can only be made providing the new condition does not fundamentally alter the original planning proposal for which permission had been granted.

5. Applying these principles to the current appeal, planning permission was originally granted for a change of use from a 6-person HMO (class C4) to an 8-bedroom HMO (sui generis). Based on the submitted plans, and as a matter of fact, the proposed variation to condition 7 would result in a 10-bedroom HMO. Regardless of whether the original permission has been implemented, this variation would be incompatible with the description of development on the original decision notice, which cannot be varied using the mechanism of section 73.

Conclusion

6. I have concluded that I cannot proceed to consider this appeal as it would be beyond my powers to do so under section 73 and on this basis, this appeal should be dismissed.

E Grierson

INSPECTOR