



Appeal Decision

Site visit made on 8 April 2025

by R Cahalane BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th June 2025

Appeal Ref: APP/Y3615/W/24/3357375

1 The Bungalows, Mill Lane, Ockham, Surrey GU23 6QT

- 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 Mrs Andrea Larter against the decision of Guildford Borough Council.
- The application Ref is 24/P/01246.
- The application sought planning permission for the erection of a bungalow and a detached garage following demolition of the existing bungalow and outbuildings without complying with a condition attached to planning permission Ref 23/P/00830, dated 29 August 2023.
- 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: AS618/PA101 REV D2; AS618/PA104 REV D ; AS618/PA106 REV B ; and JHM/TB/PL01 received on 11 July 2022; AS618/PA103 REV H received on 8 August 2022, MB P3 Rev B received on 6 July 2023 and MB P2 Rev A received on 14 August 2023.
- The reason given for the condition is: To ensure that the development is carried out in accordance with the approved plans and in the interests of proper planning.

Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. Planning permission was first granted on 27 February 2023¹ for the erection of a bungalow and a detached garage (“the original permission”) following demolition of a bungalow and outbuildings. The original permission was then amended on 29 August 2023² under Section 73 of the Town and Country Planning Act 1990 (“the previous s73 permission”), varying the approved plans condition (condition 2) to make changes to the approved position of the bungalow and garage.
3. Development as approved under the previous s73 application then commenced. Another permission was granted on 04 December 2024³ for a further amendment (“the latest s73 permission”) relating to an increased roof height to the bungalow.
4. At the time of my site visit, it was apparent that construction of the new bungalow had commenced. Neither the detached garage approved under the original permission, nor the attached garage as currently proposed, had commenced. This level of works in which I observed do not appear to be in breach of the condition in dispute referred to in the above banner heading. These works therefore have no material effect on this appeal.

¹ Council Ref: 22/P/01211

² Council Ref: 23/P/00830

³ Council Ref:24/P/01513

5. The appeal scheme proposes a bungalow and attached garage. The original permission description of development includes the erection of a bungalow and a detached garage. I have therefore consulted the main parties on the implications of the Finney judgment⁴ on the proposal. Comments have been received from the Council which I have taken into account in arriving at my decision.

Main Issue

6. The main issue is the effect of the proposed variation of condition 2 of the original permission on the description of development or operative part of that permission.

Reasons

7. The Council has confirmed that the original permission description of development, or operative part of that planning permission, has not been changed by either the latest or previous s73 permissions. Following my site visit, and review of the details of the planning history referred to in the above Background and Procedural Matter section, I have no reason to disagree.
8. Therefore, the s73 appeal scheme, proposing a bungalow and attached garage, would change and be in conflict with the operative part of the original permission, insofar as the original description of development includes the erection of a bungalow and a detached garage.
9. The Finney judgment held that an application under s73 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 includes the description of the development for which the original permission was granted.
10. Notwithstanding the fact that the appeal scheme was determined by the Council, I find that to alter the original permission, from a bungalow and detached garage to a bungalow and attached garage, would mean that the resultant development would no longer accord with the original permission. Therefore, amending condition 2 would result in a conflict between it and the description of development or operative part of the original permission.
11. Therefore, having regard to the principles established by the Finney judgment, the proposed appeal scheme goes beyond the powers under s73. It thus cannot be determined through s73 and would require a new planning permission.
12. The appeal must therefore be dismissed and I am not required to consider further the matters in dispute between the parties.

Conclusion

13. For the reasons given above, the appeal is dismissed.

R Cahalane

INSPECTOR

⁴ John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868).