



Appeal Decision

Site visit made on 3 June 2025

by N Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 JULY 2025

Appeal Ref: APP/B1930/W/25/3360953

23 Mount Pleasant, St Albans, Hertfordshire AL3 4QU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs Alan McCartney against St Albans City & District Council.
- The application Ref is 5/2024/1424.
- The application sought planning permission for Variation of Condition 2 (approved plans) and removal of Conditions 4 (written scheme of archaeological work) and 5 (post-excavation project) to omit approved basement and alter the design and layout of approved dwelling of planning permission 5/2022/1982 dated 18/11/2022 for Demolition of existing dwelling and construction of five bedroom dwelling with basement, associated parking and landscaping and new vehicle crossover.
- The conditions in dispute are Nos. 2, 3, 4, 5, 10 and 15 which state that:

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan, 1705.10 Rev D, 1705.16 Rev A, 1705.12 Rev C, 1705.14 Rev A, 1705.15 Rev A, 1705.13 Rev B, 1705.11 Rev F.

3. No development shall take place (excluding demolition and site clearance) until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been approved in writing by the Local Planning Authority. Sample materials should be made available on site when discharging this condition. Development shall be carried out in accordance with the approved details.

4. No development-related works shall take place within the site until a written scheme of archaeological work (WSI) has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include a programme of archaeological monitoring and excavation where required followed by off-site work such as the analysis, publication, and archiving of the results, together with a timetable for completion of each element. All works shall be carried out and completed in accordance with the approved scheme, unless otherwise agreed in writing by the Local Planning Authority. This must be carried out by a professional archaeological organisation in accordance with the agreed written scheme of investigation.

5. Following the completion of the fieldwork and the post-excavation assessment in Condition 4, appropriate resources will be agreed with the Local Planning Authority for the post-excavation project generated by the archaeological WSI in Condition 4. This will include all necessary works up to and including an appropriate publication and archiving and will include an agreed timetable and location for that publication.

10. No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include (a) proposed finished levels and contours; (b) means of enclosure; (c) car parking layouts; (d) other vehicles and pedestrian access and circulation areas; (e) hard surfacing materials; (f) minor artifacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); (g) proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc, indicating lines,

manholes, supports etc.); (h) retained historic landscape features and proposals for restoration where relevant; (i) existing trees to be retained.

15. The development hereby permitted shall not be commenced (excluding above ground demolition and site clearance) until drawings showing existing levels and proposed slab levels have been submitted to and approved in writing by the Local Planning Authority.

- The reasons given for the conditions are:

2. For the avoidance of doubt and in the interests of proper planning.

3. To ensure that the finished appearance of the development is satisfactory. To comply with Policies 69 and 85 of the St. Albans District Local Plan Review 1994.

4. To ensure that adequate opportunity is provided for archaeological research on this historically important site. To comply with Policy 111 of the St. Albans District Local Plan Review 1994.

5. To ensure adequate opportunity is provided for archaeological research on this historically important site. To comply with Policy 111 of the St Albans District Local Plan Review 1994 and the National Planning Policy Framework.

10. To ensure satisfactory landscape treatment of the site in the interests of visual amenity. To comply with Policy 74 of the St. Albans District Local Plan Review 1994.

15. To enable the Local Planning Authority to exercise proper and considered control over the development as a whole, in compliance with Policy 69 of the St. Albans District Local Plan Review 1994.

Decision

1. The appeal is dismissed and planning permission for Variation of Condition 2 (approved plans) and removal of Conditions 4 (written scheme of archaeological work) and 5 (post-excavation project) to omit approved basement and alter the design and layout of approved dwelling of planning permission 5/2022/1982 dated 18/11/2022 for Demolition of existing dwelling and construction of five-bedroom dwelling with basement, associated parking and landscaping and new vehicle crossover is refused.

Preliminary Matters

2. There was discrepancy in terms of the conditions that were sought to be considered between the application form, the Council's validation letter and appellant's and the Council's statements. As this scheme relates to an appeal against the Council's failure to determine the application within the prescribed time, I have no decision notice to take an inference from. I have, therefore, had regard to the description of development on the appeal form; notwithstanding that this conflicts with the description and conditions listed on the application form.
3. I have further noted that the appellant is seeking to approve details required by a condition in relation to conditions 3, 10 and 15. However, I am not aware that the appellant is seeking to vary or remove these conditions and an application under s73 of the Act is not the proper procedure to discharge these details. Accordingly, I have not gone on to consider these matters any further here.

Main Issues

4. The main issue of the appeal is the effect that varying the conditions would have on the description of development and/or operative part of the permission.

Reasons

5. The Finney judgement¹, and reinforced by Fiske², sets out that a s73 application may not be used to obtain planning permission that would require a variation to the operative part of the permission, or in other words, to change the description of development for which permission has already been granted. The Courts have held that the description of development in an existing planning permission cannot be amended at all.
6. It follows from the above that where amending a condition would result in a conflict between the new condition and the description of development, then that particular amendment is beyond the powers under s73 and such an application cannot be made.
7. The appeal proposal seeks, inter alia, to vary the approved plans to reduce the number of bedrooms from 5 to 3, remove a basement and modify the design of the proposed dwelling. The proposal would, consequently, result in a discrepancy with the original description of development due to the reduction in the number of bedrooms and exclusion of the basement.
8. Although this may result in a lesser amount of development being proposed, it does not alter the fact that it still incorporates a change from the original description of development. Were I to allow the appeal this would fundamentally change this description from that which was originally sought. Regardless of the merits, or otherwise, it is not within my gift to alter that description.
9. The variation of the conditions proposed under this appeal would therefore fail to accord with the principles set out in the Finney judgement. The appeal must therefore be dismissed on that ground. I appreciate the appellant's requests for me to go on to review the merits of the case, but, in light of my findings, it is not necessary for me to consider the wider areas of dispute.

Conclusion

10. For the reasons given above the appeal should be dismissed.

N Bowden

INSPECTOR

¹ John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (Uk) Limited

² Fiske v Test Valley BC & Woodington Solar Limited