



Appeal Decisions

Site visit made on 7 May 2025

by **J Moore BA (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 July 2025

Appeal A Ref: APP/D3640/D/24/3352014

53 Tekels Avenue, Camberley, Surrey, GU15 2LB

- 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 Robin Roopun against the decision of Surrey Heath Borough Council.
 - The application Ref is 24/0512/PMR.
 - The application sought planning permission for *erection of a two storey front, side and rear extension, front porch with associated works* without complying with a condition attached to planning permission Ref 20/0632/FFU, dated 18 November 2020.
 - The condition in dispute is No 3 which states that: The proposed development shall be built in accordance with the following approved plans: pec-01, pec-02, pec-08, pec-09, pec-10, pec-11, pec-12 and pec-13 unless the prior written approval has been obtained from the Local Planning Authority.
 - The reason given for the condition is: For the avoidance of doubt and in the interest of proper planning and as advised in ID.17a of the Planning Practice Guidance.
-

Appeal B Ref: APP/D3640/D/24/3352015

53 Tekels Avenue, Camberley, Surrey GU15 2LB

- 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 Robin Roopun against the decision of Surrey Heath Borough Council.
 - The application Ref is 24/0537/PMR.
 - The application sought planning permission for *erection of a two storey front, side and rear extension, front porch with associated works* without complying with a condition attached to planning permission Ref 20/0632/FFU, dated 18 November 2020.
 - The condition in dispute is No 3 which states that: The proposed development shall be built in accordance with the following approved plans: pec-01, pec-02, pec-08, pec-09, pec-10, pec-11, pec-12 and pec-13 unless the prior written approval has been obtained from the Local Planning Authority.
 - The reason given for the condition is: For the avoidance of doubt and in the interest of proper planning and as advised in ID.17a of the Planning Practice Guidance.
-

Decision

1. Appeal A and Appeal B are dismissed.

Preliminary Matters

2. The Council's Officer Reports (OR) which considered the appealed applications indicate that at the time the applications were determined, the existing dwelling had been partially demolished, and construction had commenced to include foundations, and that permission ref 20/0632/FFU was being implemented. This position is not contested by the appellant.
3. At my visit, a roof structure was largely in place. For the avoidance of doubt, it is not the role of an Inspector in a section 78 appeal to determine whether any works

have been or are being lawfully undertaken, nor whether any works are in accordance with any approved scheme.

4. Although I have determined each appeal on its own merits, I have considered them together to avoid duplication. There is some confusion in the appeals before me, which I set out below.
5. In each appeal, the application forms clearly seek to vary condition No 3 (three) of permission Ref: 20/0632/FFU dated 18 November 2020, which I shall refer to as the original permission, and these are the details used in my banner heading for each appeal.
6. Each application form sets out how the appellant wishes condition No 3 to be changed as: *To substitute drawings 21.24.20, 21.24.21 and 21.24.22 for the previously approved drawings reference pec-04, pec-09, pec-10, pec-11, pec-12 and pec-13*. However, the third reason for refusal for each appealed application refers to a proposal to vary condition No 2 (two), in contrast to the variation of condition No 3 (three) as stated on each application form. There is no substantive evidence of any agreement to change the description of the proposals from that sought.
7. The evidence indicates that a permission to vary condition No 3 of the original permission was granted on 12 January 2024 (Ref 23/1176/PMR). This is given to allow for alterations to the stonework and to include three dormers to the rear elevation. I shall refer to this as the first variation scheme. The decision notice for the first variation scheme includes three conditions, with the plans condition being condition No 2 and detailing five drawings.
8. In each appeal, the proposed floor plans depict the proposed ground and first floor with an annotation: *"Second Floor unchanged from previous approval"*. The elevation drawings for Appeal A annotate three elevations as *'unchanged'*, and the front elevation in Appeal B is annotated in the same manner. These elevations are not the same as those on drawings identified in the decision notice for the original permission. Furthermore, the plans of the original permission proposed for substitution do not include a second-floor plan or a roof plan for the main part of the dwelling. This accords with the OR for the Appeal B scheme, which sets out that for the original permission, no floor plans detailing the second floor were submitted, no staircase was shown for access to the second floor, but there two dormers were proposed in the front roof slope.
9. The OR for Appeal B sets out that the proposed accommodation within the roof space is *"as shown in the floor plans submitted for the approved previous variation 23/11/76/PMR"*, but this matter is not addressed in the OR for Appeal A. However, each OR references the planning history to include the first variation scheme and each appealed application.
10. The title and annotations of drawing ref: 21-24-04 for the first variation scheme refer to the ground and first floor. However, the layout annotated as the ground floor appears to be that for the second floor, and the layout annotated as the first floor appears to be the roof plan.
11. In summary, the approved plans for the first variation scheme appear to demonstrate a proposed second floor and roof plan of the main part of the dwelling, but the proposed floor plans in each appeal (as stated on the application

forms) and the original permission (as listed in condition No 3) do not include any proposed second floor and roof plan of the main part of the dwelling. If I were to substitute the plans as sought on the respective application forms, this would not include a plan demonstrating the second-floor layout and roof plan. The application forms seek to vary condition No 3, but this would not accord with the numbered plans condition attached to the permission for the first variation scheme.

12. Having regard to all the evidence before me, it seems to me that the Council took account of the first variation scheme and determined each appeal scheme on that basis. Such an approach would support the fact that various proposed plans of the appeal schemes refer to elevations being unchanged and the second floor being as previously approved. It would also support the fact that the main parties refer to 'the approved scheme' and the proposed variances from that scheme. Consequently, I shall determine the appeals on the same basis, and I consider that neither party would be prejudiced by my approach, even though this does not strictly conform to each proposal as sought on the application forms.
13. On 12 December 2024, the National Planning Policy Framework (the Framework) was revised. The further amendment made on 7 February 2025 does not constitute a change to policy. The revisions do not have a significant bearing on the matters at dispute between the parties in this case. I have therefore found it unnecessary to seek further comments on this matter, as neither party would be prejudiced by my consideration of the revised Framework.

Main Issues

14. For each appeal, the third reason for refusal concerns whether the proposal would fall within the scope of section 73 of the Town and Country Planning Act 1990 (as amended) ('The Act'). In each case, the Council's OR refers to the *Finney* judgement¹, and the appellant accepts that there is no power to grant applications under section 73 for development that is not in substance the same as the description of works originally consented. Therefore, there is no dispute that as per *Finney*, applications under section 73 of the Act cannot amend the operative part of the permission by amending the description of development. The dispute concerns whether the proposals are of the same substance as the description of development that was originally permitted. If not, then permission could not be granted. Consequently, this is my first main issue.
15. Having regard to all the evidence before me, I therefore consider the main issues to be:
 - whether each proposal would be within the scope of section 73 of the Act; and if so,
 - the effect of each proposal upon the character and appearance of the area, and for Appeal A including the effect upon protected trees; and
 - for Appeal B only, the effect of the proposal upon the living conditions of neighbouring occupiers at No 51 Tekels Avenue.

Reasons

Section 73 – Appeal A and Appeal B

¹ John Leslie Finney vs Welsh Ministers & Others [2019] EWCA Civ 1868

16. Having regard to the description of development for the original permission (as set out in my banner heading for each appeal), it refers to a singular extension form, to be of two storeys to the front, side and rear, along with a front porch and associated works.
17. The evidence indicates that the pre-existing dwelling included an irregular building line to its front elevation. The plans for the original permission and the first variation scheme show a front porch arrangement sited forward of the pre-existing entrance, with a two-storey extension proposed to be attached to the front elevation, to align with the projecting part of the existing front elevation. The proposed two-storey extension wraps around the front corner, to extend the dwelling out to one side before turning to meet the rear elevation. Consequently, I am satisfied that those plans clearly accord with the description of development in the original permission and clearly demonstrate an extension in the singular form.
18. The proposed plans for Appeal A clearly indicate an additional element to be attached to the side part of the proposed two-storey extension. The proposed plans clearly indicate that this structure would accommodate a boot room and garage on the ground floor, with a storage space to the floor above and a dormer window in its front and rear roof planes. I note that the appellant's statement of case describes this proposed additional structure as 'a single storey side extension/garage with storage in the roofspace' and the Council's reasons for refusal describe it as a single storey extension.
19. The appellant suggests that as this additional element would include two floors, it would be two-storey. However, this position takes no account of the fact that proposed storage area is significantly smaller in size than the ground floor and the proposed roof form would restrict its internal height. For these reasons, the additional structure is clearly one of 1.5 storeys, and this is a common planning term to describe such an arrangement. Such a scale of extension would not accord with a two-storey extension in the singular form.
20. In Appeal B, the proposed scheme would exclude any previously approved arrangement of three separate balconies to the existing rear elevation of the dwelling and instead include a structure of single storey height across the rear elevation with a roof terrace above its flat roof enclosed by a balustrade. This single storey structure would adjoin the rear part of the proposed two storey extension. The single storey element in Appeal B would therefore not accord with a two-storey extension in the singular form.
21. The use of the word 'part' in the context of the number of storeys is a common way to provide precision and/or clarity to the nature of a singular extension with variances in height, including an extension that wraps around more than one elevation. In my judgement, the extension as proposed in Appeal A would be part two storey and part 1.5 storey, and in Appeal B, it would be part two storey and part single storey. For these reasons, each proposal would not accord in substance with the description of development as originally permitted insofar as it relates to a singular extension of two storey form.
22. Furthermore, the Appeal B proposal would include a roof terrace above the additional single storey structure. A roof terrace is self-evidently not referred to in the original description of the development. It is not clear what factors lead the

appellant to contend that the proposed roof terrace would be accommodated within the original description of development.

23. It seems to me that a storey implies a degree of enclosure to include a ceiling or roof, whereas a roof terrace indicates an open space above built form, such that it would have a means of access and/or a form of enclosure surrounding it to enable its use as an outdoor space. I note that the Council's Residential Design Guide Supplementary Planning Document 2017 (RDG) provides guidance in relation to single storey, two storey and three storey elements of development proposals, as well as roof terraces and balconies. It therefore seems to me that a distinction is made between such terms in the RDG, such that a roof terrace would not imply a further storey in the Council's guidance. In any event, the proposed roof terrace in Appeal B would not alter my overall finding that the appeal scheme would no longer include a two-storey extension in a singular form.
24. Whether or not the dwelling would still be extended by two storeys at the rear in the Appeal B scheme, or to the side in the Appeal A scheme does not alter my findings.
25. In each case, the appellant suggests that the Council could have proactively sought the submission of an application to alter a description of development under section 96A of the Act. However, there is no dispute that the applications were validly made on the prescribed form to vary a condition under section 73, and the Council duly proceeded to determine them accordingly. Given the Council's concerns as to the material effects of each proposal, I see no reason why the Council would have invited an application to alter the description. Consequently, this matter does not affect my findings.
26. I therefore conclude that each proposal would not fall within the scope of the section 73 of the Act and the grant of a new permission in each appeal would cause a fundamental and substantive conflict with the operative part of the permission. Given this conclusion, no further action can be taken on the appeals.

Conclusion

27. For the reasons above, I conclude that Appeal A and Appeal B should be dismissed.

J Moore

INSPECTOR