



Appeal Decision

Site visit made on 27 June 2025

by **S Poole BA(Hons) DipArch MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 July 2025

Appeal Ref: APP/Q5300/W/25/3364116

36 Slades Hill, Enfield EN2 7EE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Magerou against the decision of the Council of the London Borough of Enfield.
 - The application Ref is 25/00071/VAR.
 - The application sought planning permission for redevelopment of site by the erection of a 1x 3-storey block to front and 1x 2-storey block to rear to accommodate 6 dwellings with dropped kerb including closing of the two existing access points, together with associated parking spaces, cycle stores, refuse stores and landscaping without complying with a condition attached to planning permission Ref 24/01482/FUL, dated 8 July 2024.
 - The condition in dispute is No 2 which states that the development hereby permitted shall be carried out in accordance with the approved plans and documents*.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Planning permission was granted in July 2024 for the development described under the fourth bullet point in the banner heading above. This development would result in the creation of 2 buildings, namely a 3-storey building at the front of the site and a 2-storey block at the rear to enable the creation of 6 dwellings.
3. A section 73 application was submitted and subsequently refused which sought planning permission without complying with condition 2 of the July 2024 planning permission. The amendment sought would result in development comprising a total of 3 separate buildings. Instead of a terrace of 3 houses at the rear, the appeal proposal would result in a semi-detached pair of houses and a separate detached house.
4. The Courts¹ have established that an application under s73 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) may not be used to obtain a new permission that would require a variation to the terms of the 'operative' part of the planning permission, namely the description of the development for which the original permission was granted. In other words, if amending a condition would

¹ John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868 R (Fiske) v Test Valley Borough Council [2023] EWHC 2221 (Admin)

result in a conflict between what the condition requires and the description of development then the amendment is beyond the powers of s73 and cannot be made.

5. In this case, allowing the variation of condition 2 to enable the creation of 3 buildings within the appeal site would result in a clear conflict with the description of development of the scheme approved in July 2024. Whilst I note that the description of development could have been phrased differently to exclude the reference the 2 separate blocks, I must consider the actual description of development cited on the decision notice, which is factually accurate.
6. In this instance, the creation of new planning permission varying condition no.2 imposed on the original permission in the manner proposed is beyond the powers under s.73 and cannot be made. As such, the merits of the proposed variation cannot be considered.
7. Whilst the Council has determined the application without acknowledgement of the case law, that does not allow me to do the same.

Conclusion

8. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should fail.

S Poole

INSPECTOR

* Approved drawings and documents listed under Condition 2:
1131-DFA-PL-113, Proposed typical cycle store A; Biodiversity Net Gain Calculation authored by Green Shoots Ecology, 2nd May 2024; 1131-DFA-SK001, Proposed First Floor Plan; Design and Access Statement; Daylight and Sunlight Report authored by MES Building Solutions, 10th April 2024; 1104 P01_Drainage Construction Details Sheet 2 of 2; 1103 P01_Drainage Construction Details Sheet 1 of 2; Drainage Statement authored by Chiltern Design Limited, 11th April 2024; Sustainability Statement, ref 24065, 4th April 2024; 1131-DFA-PL-002; 1131-DFA-PL-005; 1131-DFA-PL-004; 1131-DFA-PL-003; Highway Safety Impact Form; Landscape Design Report, MTC089R01, Rev 1, 02.05.24; MTC86P01 05; 1131-DFA-PL-104; Planning Statement; Preliminary Ecological Assessment, Green Shoots Ecology, May 2024; 1131-DFAPL-114; 1131-DFA-PL-101; 1131-DFA-PL-108; 1131-DFA-PL-107; 1131-DFA-PL-106; 1131-DFA-PL-103; 1131-DFA-PL-102; 1131-DFA-PL-105; 1131-DFA-PL-110; 1131-DFA-PL-111; 1131-DFA-PL-109; 1102 P01; 1101 P01; 1105 P01; 1131-DFA-PL-112; SuDS proforma; 1131-DFA-PL-001; Transport Technical Note, TTN/5094/A - Rev B, 16.04.24; BS5837 Tree Survey.