



Appeal Decision

Site visit made on 3 July 2025

by **M Cryan BA(Hons) DipTP MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 September 2025

Appeal Ref: APP/V5570/W/25/3362071

18 Bryantwood Road, London N7 7BE

- 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 Jakob Ollech against the decision of the Council of the London Borough of Islington.
- The application reference is P2024/3614/S73.
- The application sought planning permission for the erection of ground floor rear and side extensions in association with the subdivision of the property to two self-contained flats (1 x three-bedroom (4p) and 1 x two-bedroom (4p) without complying with a condition attached to planning permission reference P2023/0151/FUL, dated 12 April 2024.
- The condition in dispute is No 2 which states that:
The development hereby approved shall be carried out in accordance with the following approved plans:
 - BR.18.LP (location plan), BR.18.EX.101 (existing floor plans, basement, ground & first), BR.18.EX.102 (existing floor plans, second & roof), BR.18.EX.103 (existing front & rear elevations), BR.18.EX.104 (existing side elevation #01); BR.18.EX.105 (existing side elevation #02), BR.18.EX.106 (existing section A-A), BR.18.PR.201 Rev D (proposed floor plans, ground & first), BR.18.PR.202 Rev D (proposed floor plans second & roof), BR.18.PR.203 Rev D (proposed front & rear elevations), BR.18.PR.204 Rev D (proposed section), BR.18.PR.205 Rev D (proposed side elevation), Financial Viability Assessment dated 02.2023, Fire Strategy prepared by Complete Fire Safety Ref. CFS-2301 dated 20.02.2023, Analysis of site layout for Sunlight and Daylight prepared by Morgan Light Assessors dated September 2023, Energy & Sustainability Statement prepared by The PES dated 29 November 2023, Surface Water Drainage Strategy Report prepared by JMS group dated 14.12.23 rev EX23/228/12, Planning Statement prepared by Eade Planning Ltd dated January 2023.
- The reason given for the condition is:
To comply with Section 70(1)(a) of the Town and Country Act 1990 as amended and the Reason for Grant and also for the avoidance of doubt and in the interest of proper planning.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Jakob Ollech against the Council of the London Borough of Islington. This application is the subject of a separate Decision.

Preliminary and Procedural Matters

3. No 18 Bryantwood Road is a three-storey, mid-terrace property in a primarily residential area. The “original planning permission” (LPA ref: P2023/0151/FUL) was granted on 12 April 2024, allowing the erection of ground-floor rear and side extensions and a change of use from a single dwellinghouse with four bedrooms into two self-contained flats; a three-bedroom four-person flat on the ground floor, and a two-bedroom four-person flat on the first and second floors.

4. Since then, two dormer extensions have been erected at the back of the property; a substantial one occupying almost all of the main rear roof slope facilitating the use of the loft (third) floor as living accommodation, and a smaller one on part of the rear outrigger which has created a small room accessed from the half-landing between first and second floor levels. It is the appellant's case that these were built using permitted development rights for dwellinghouses available under the provisions of Schedule 2, Part 1, Class B of the GPDO¹.
5. The appellant now seeks to amend condition 2 of the original permission so that it refers to revised plans which include the new dormers and also, consequently, change the building's proposed internal layout. The Council refused the application to vary the condition because it considers that the proposed development would be substantially different from that approved by the original permission, and therefore cannot be considered under section 73 of the Town and Country Planning Act 1990 (as amended) (hereafter "the Act").
6. A Unilateral Undertaking ("UU") under section 106 of the Act was attached to the original permission. The effect of allowing this appeal would be to create a new planning permission and, as such, it is also necessary for me to consider planning obligations which may need to be applied to a new permission.
7. A further planning permission granted on 22 November 2024 (LPA ref: P2024/2079/FUL) allowed a development at the site described as "internal alterations in association with the subdivision of the property to two self-contained flats (1x3 bed and 1x2 bed)". This later permission ("the November 2024 permission") was referred to in both main parties' evidence. My attention was also drawn to another appeal decision (PINS ref: APP/N5660/W/23/3332277) ("the Lambeth appeal"), as well as caselaw relating to section 73 – notably *Finney*² and *Armstrong*³. I address all of these at relevant points of my reasons below.

Main Issues

8. Having regard to the background set out above, I consider that the main issues in this appeal are:
 - Whether the disputed condition could be varied through a section 73 application as sought by the appellant; and
 - If so, whether any planning obligations necessary to make the development acceptable could be secured on the new permission which would be granted.

Reasons

Section 73

9. Section 73 of the Act makes provisions for the determination of applications to develop land without compliance with conditions subject to which a previous planning permission was granted.
10. *Finney* established that 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 – that is, the description of the development for which the original

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

² John Leslie Finney vs Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868.

³ Mikael Armstrong v SSLUHC & Cornwall Council [2023] EWHC 142 (KB).

permission was granted. More recently, it was held in *Armstrong* that the scope of Section 73 is not limited to minor material amendments. In the light of these and earlier judgments⁴, the Planning Practice Guidance advises that “there is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission”⁵, and that “section 73 cannot be used to change the description of the development”⁶.

11. As was the case in the Lambeth appeal, the extensions – here, the two roof dormers – were constructed after the original planning permission was granted, but before the commencement of that development. It is the Council’s argument that, as the dormers were not in place at the time the original permission was granted, at the very least the description of development would need to be amended to include reference to the “retention of the existing dormers”. While there is no Lawful Development Certificate for the dormers it would be open to the appellant to apply for one but, while it is not necessary for me to attempt to pronounce definitively on the point here, there is no substantive evidence before me to suggest that they have not been added to the building lawfully. In my experience it is not usually necessary for a description of development to include words referring to the retention of existing lawfully-built features.
12. The amended plans before me would see both proposed flats increased in size compared to the original permission, and their internal layouts altered. Among other things, the three-bedroom flat originally proposed to be on the ground floor only would instead have a larger second bedroom and its third bedroom moved to the first floor; the second bedroom of the two-bedroom flat⁷ would be moved to the loft/third floor, and the space it originally occupied on the second floor would be incorporated into the first bedroom as a large “dressing area”.
13. The development which would follow from amending the plans as proposed would consist of the erection of extensions on the ground floor at the back and side of the existing outrigger. It would also comprise the subdivision of the property into two flats, one with three bedrooms and four bedspaces, and one with two bedrooms and four bedspaces. Notwithstanding the changes to the internal layouts and the larger size of the two flats, the scheme would still fit comfortably within the description of development used in the original permission.
14. I therefore conclude that the disputed condition could be varied through a section 73 application.

Planning Obligation

15. The UU attached to the original planning permission made provisions for the proposed development to be “car free” by committing the owner of the property to put in place measures to prevent occupiers of the two flats from holding or acquiring a residents’ parking permit within Islington other than in limited circumstances. The Council contends that this, and other provisions relating to the payment of a “carbon offset fee” and legal fees related to an affordable housing viability assessment, would also be required in the event of a new permission

⁴ For example, *R(Vue Entertainment Ltd) v City of York Council* [2017] EWHC 588 (Admin).

⁵ Paragraph: 013 Reference ID: 17a-013-20230726 Revision date: 26 July 2023.

⁶ Paragraph: 014 Reference ID: 17a-014-20140306 Revision date: 06 March 2014

⁷ Which, for whatever reason, is labelled “Bedroom 03” on the approved plans of the original permission.

being granted, and has drawn my attention to relevant development plan policies supporting their stance.

16. The carbon offsetting and affordable housing viability assessment fees are not, in fact, referred to in the UU attached to the original permission, though I infer from the relevant officer report provided to me that they are provided for in the UU attached to the November 2024 permission. While I note the appellant's criticism of the Council's approach to dealing with the planning obligation during this appeal, no substantive argument has been put to me suggesting that the measures sought are not necessary to make the development acceptable in planning terms. It also appears to me that they would be directly related to the proposed development, and fairly and reasonably related in scale and kind to it, and that they would therefore meet the statutory tests set out in Regulation 122 of the CIL Regulations⁸.
17. During this appeal, the appellant provided a UU intended to make provisions in respect of car-free housing and carbon emissions offsetting. However, this was incomplete – among other things, it was not dated, was not signed by the second party⁹, and did not include a Land Registry title plan identifying the site (though one was referred to in the definitions).
18. Given the shortcomings of the UU, I conclude that the planning obligations necessary to make the development acceptable could not be secured on a new planning permission.

Other Matter

19. The Council suggested that, in the event of my allowing this appeal, a condition should be imposed removing permitted development rights relating to changes of use between Use Class C3 (Dwellinghouses) and Use Class C4 (Houses in Multiple Occupation)¹⁰. That condition had not been imposed on the original permission, although it is on the November 2024 permission. However, while I note the appellant's objections to the imposition of such a condition, as I am dismissing the appeal on the basis of my conclusion on the second main issue it has not been necessary for me to consider the matter in further detail.

Planning Balance and Conclusion

20. While I have found that the disputed plans condition could be varied through this section 73 appeal, due to the shortcomings in the execution of the submitted UU I am not satisfied that the Council would be able to rely on it to secure the contributions necessary to make the development acceptable in planning terms. I therefore conclude that the appeal should be dismissed.

M Cryan

Inspector

⁸ The Community Infrastructure Levy Regulations 2010 (as amended)

⁹ Lendco Limited, the mortgagee of the site.

¹⁰ Under Schedule 2, Part 3, Class L of the GPDO.