



Appeal Decision

Site visit made on 5 September 2025

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

an Inspector appointed by the Secretary of State

Decision date: 19 September 2025

Appeal Ref: APP/M1595/W/25/3364094

91A Clarence Road, Grays, Essex RM17 6RA

- 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 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Richard Soetan against the decision of the Thurrock Borough Council.
 - The application Ref is 25/00116/CV.
 - The application sought planning permission for "*Conversion of existing property into x2, 2 bed dwellings and erection of a two storey rear extension*" without complying with a condition attached to planning permission Ref 23/00523/FUL, dated 23 June 2023.
 - The condition in dispute is No 2 which states that "*No development shall be carried out other than in accordance with the following plans/drawings^A*".
 - The reason given for the condition is: For the avoidance of doubt.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Planning permission was granted in June 2023 for the development described under the fourth bullet point in the banner heading above. This development would result in the creation of two 2-bedroom dwellings following the construction of a 2-storey rear extension.
3. A section 73 application was submitted and subsequently refused which sought planning permission without complying with condition 2 of the June 2023 planning permission. The amendment sought would result in development comprising the erection of a 2-storey rear extension, roof level additions on the main and outrigger roofs and the creation of a 3-bedroom dwelling with an office within the expanded upper floors of the property. At the time of my site visit the rear and roof level additions were in place.
4. The Courts¹ have established the principle that an application under section 73 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

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)

amending a condition would result in a conflict between what the amended condition requires and the description of development then the amendment is beyond the powers of section 73 and cannot be made.

5. In this case, allowing the variation of condition 2 would enable the erection of substantial roof level additions and the formation of a larger dwelling on the upper floors of the appeal property. This scale and nature of development would fall outside, and would be in a clear conflict with, the description of development of the scheme approved in June 2023.
6. Therefore, the creation of new planning permission varying condition 2 imposed on the original permission in the manner proposed is beyond the powers of section 73 and cannot be made. As such, the proposed alterations to the appeal property do not require consideration.
7. The fact that the Council has chosen to validate and determine the application does not give me licence to ignore the aforementioned case law.

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

^A Plan Numbers:

Reference	Name	Received
2206 - 01	Site location and block plan	30th May 2023
2206 - 02	Existing plans	30th May 2023
2206 - 03	Existing elevations	30th May 2023
2206 - 04	Proposed plans	30th May 2023
2206 - 05	Proposed elevations	30th May 2023
2206 - 06	Existing and proposed roof plan	30th May 2023
91CL-A-03-001	Existing ground floor plan	30th May 2023
91CL-A-03-002	Existing first floor plan	30th May 2023
91CL-A-03-004	Existing roof plan	30th May 2023
91CL-A-06-001	Existing elevations	30th May 2023
91CL-A-06-002	Existing elevations	30th May 2023
91CL-A-06-003	Existing elevations	30th May 2023
91CL-A-06-004	Existing elevations	30th May 2023