



Appeal Decision

Site visit made on 15 July 2025

by **Paul Griffiths BSc(Hons) BArch IHBC**

an Inspector appointed by the Secretary of State

Decision date: 18 November 2025

Appeal Ref: APP/H1705/W/25/3359514

Basingstoke Power Generation Plant, Basing Road, Old Basing RG24 7AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for 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 Conrad Energy (Developments) II Limited against Basingstoke and Deane Borough Council.
 - The application Ref is 23/00619/ROC.
 - The application sought planning permission for the installation of an energy storage development enclosed with a 2.43 metre high fence without complying with a condition attached to planning permission Ref.19/03097/FUL, dated 10 March 2020.
 - The condition in dispute is No.1 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (Drawing No.P0232/56); Site Plan (received 09/12/2019); South Elevation (received 09/12/2019); North Elevation (received 09/12/2019); West Elevation (received 09/12/2019); and East Elevation (received 09/12/2019).
 - The reason given for the condition was: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Reasons

2. As outlined in the header above, the originating application was made under s.73 of the Town and Country Planning Act 1990 (as amended) and relates to a planning permission granted in 2020 for what was described as the installation of an energy storage development enclosed with a 2.43 metre high fence.
3. Through the vehicle of s.73, the appellant seeks a new grant of planning permission for an energy storage development of a substantially different design, on the same site, and seeks to achieve that by substituting a new set of plans, for the previous set.
4. Following the line of the judgment in *Fiske*¹, which itself follows on from the judgments in *Finney*² and *Armstrong*³, I have no issue at all with the significant scale of change to the scheme proposed, as a general principle. However, that must depend on there being no resulting conflict with the operative part of the original permission; that operative part being the 'installation of an energy storage development enclosed by a 2.43 metre high fence'.

¹ *Fiske v Test Valley BC & Woodington Solar Ltd.* [2024] EWCA Civ 1541

² *Finney v Welsh Ministers, Carmarthenshire CC & Energiekontor (UK) Ltd.* [2019] EWCA Civ 1868

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

5. The difficulty I have with what is proposed is that the relevant plan submitted with the application⁴ show an energy storage development enclosed by a fence of a different height (2.4 metres). While the difference might be considered small, it is in my judgment material, and as a result, a grant of planning permission under s.73, in the manner sought, would create an obvious conflict with the operative part of the original permission, which refers to a fence 2.43 metres high.
6. In the interests of fairness, I sought the views of the main parties on this situation. The appellant responded by submitting a revised plan, showing the fence at a height of 2.43 metres rather than 2.4 metres. That, it seems to me, is an acceptance, albeit tacit perhaps, of the difficulty I identified.
7. However, and as the Council pointed out, the revised plan⁵ might show a fence of the correct height, but it also depicts a fence of substantively different design to that shown on the application plan⁶. Substitution of this revised drawing might well raise issues around fairness, as was considered in the case of *Holborn Studios Ltd.*⁷ which refined the findings of the earlier *Wheatcroft*⁸ judgment.
8. The judgment in *Holborn Studios Ltd.* identified two tests. The first is a substantive test which involves consideration of whether a change of this sort involves a 'substantial difference' or a 'fundamental change' to the proposal such that it would result in a 'different application'. The second test is procedural and relates to whether the proposed amendment would cause unlawful procedural unfairness to anyone involved in the appeal, and if so, whether such unfairness could be cured, for example by further consultation.
9. In my view, the amendment sought here is of a magnitude that would make a 'substantial difference', or 'fundamental change', to the scheme such that it would result in a 'different application'. To take it into account would, as far as I am concerned, result in procedural unfairness to those involved in the appeal, and third parties in particular. I have considered whether this difficulty might be dealt with by further consultation but as the *Procedural Guide – Planning Appeals – England* makes clear, the appeal process should not be used to evolve a scheme. On that overall basis, I am not prepared to take the revised plan into account.
10. As such, the difficulty I identified remains and on that basis it is my conclusion that the conflict between the plans submitted with the application under s.73 and the operative part of the original permission, means that a grant of planning permission in this case, in the manner sought by the appellant, would be beyond the powers granted under s.73.

Conclusion

11. On that overall basis, the appeal must fail.

Paul Griffiths

INSPECTOR

⁴ Drawing No.CEL-STD-PF-G-700: METAL PALASADE (sic) SECURITY FENCE

⁵ Drawing No.CEL-STD-TF-GA-704 Rev.A TIMBER CLAD FENCE PALISADE GATE

⁶ As the drawing titles make clear

⁷ *Holborn Studios Ltd. v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

⁸ *Bernard Wheatcroft Ltd. v SSE* [JPL 1982 P37]