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## Appeal Decision

Site visit made on 21 October 2025

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 09 December 2025

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**Appeal Ref: APP/H1840/D/25/3359134**

**218 Droitwich Road, Fernhill Heath, Worcester WR3 7UA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant planning permission under section 73 of the 1990 Act for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr C Bamford against the decision of Wychavon District Council.
  - The application Ref is W/24/02082/HP.
  - The application sought planning permission for the removal of a garden room and erection of a two-storey extension without complying with a condition attached to planning permission ref: 17/00307/HP.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. An enforcement notice for the development which the s.73 application sought to regularise is the subject of a separate decision (ref. APP/H1840/C/25/3358435).

### Reasons

3. Planning permission was granted under 17/0030/HP in 2017 for the removal of a garden room and erection of a two-storey extension to the side of the dwellinghouse. The two-storey extension was not built in accordance with the approved drawings.
4. To regularise the planning position, the appellant submitted an application under s.73<sup>1</sup> of the 1990 Act to vary the design of the extension. This application was subsequently refused (ref. W/24/02082/HP) on the grounds that the development was unduly dominant and incongruous within the street scene and failed to appear subservient to the host dwelling, resulted in overlooking, and that the increase in the bedroom numbers without adequate parking provision would cause highway safety concerns.
5. The Council also reasoned that there was no evidence to demonstrate that the development commenced within the three-year time limit. Consequently, it considered that a s.73 application was not an appropriate mechanism to regularise the retrospective development. An enforcement notice was issued in December 2024. The notice does not recognise the 2017 permission as forming a basis for remedying the breach of planning control in accordance with section 173(4)(a) of the 1990 Act, implying that the permission had lapsed unimplemented.

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<sup>1</sup> Application for Removal or Variation of a Condition following Grant of Planning Permission

6. The appellant asserts that a material start was made in February 2020 by demolishing the garden room and digging foundations for the rear wall of the extension in accordance with the approved plans. No pre-commencement conditions were attached to the permission. Work ceased due to the Covid pandemic and resumed in 2023, with what the appellant describes as “minor changes” to simplify the build.
7. Under s.56 of the 1990 Act, development is taken to be begun when a material operation comprised in the development is carried out. However, case law, including *Atwill, R (On the Application Of) v New Forest National Park Authority* [2023] EWHC 625 (Admin), which I brought to the parties’ attention, confirms that the operations relied upon must be ones properly undertaken pursuant to the grant of planning permission. The Court in *Atwill* held that works cannot be treated as implementing a permission if they ultimately form part of an unauthorised development. Thus, if the development differs materially from those plans, the works cannot be treated as lawfully implementing the permission.
8. In essence, it is not the intention behind the works or whether some of the earlier works – done within the time limit for commencement – were in accordance with what was permitted; what matters is whether the finished building is materially different from what was permitted, such that it constitutes a breach of planning control.
9. A material difference is a change to the approved plans that is substantial enough to alter the nature or scope of the development. These changes go beyond minor tweaks and can affect things such as: the size or scale of the building (e.g., increased height, footprint, or volume); design and appearance (e.g., major changes to elevations, roof form, or fenestration); and impact on surroundings (e.g., overlooking, overshadowing, or highway safety).
10. The width of the extension has been increased by approximately 1.4m to the common boundary, enlarging the floor area over two floors. The ground floor, originally intended as garage space, now provides primary living accommodation as a self-contained annexe. While the garage door remains externally visible on the front elevation, three small openings have been inserted at head height, and a pedestrian door has been installed alongside. At first floor level, fenestration intended for an en-suite bathroom has been replaced with full-length glazed French doors and a Juliette balcony for a bedroom.
11. In my judgement, the changes differ materially from the 2017 permission. There are planning consequences to these changes in terms of the potential impact of the development on the living conditions of the neighbouring occupants concerning outlook and privacy, and the effect of the development on the character and appearance of the host dwelling and the street scene. The increase from three to five bedrooms also raises concerns about parking provision and highway safety.
12. Applying the principles in *Atwill* to the circumstances of this case, I find that the demolition of the garden room and the laying of foundations for the rear wall cannot properly be regarded as material operations pursuant to permitted development. Even if that was the intention at the time, the reality is that these operations have ultimately formed part of the unauthorised development.
13. Consequently, the original 2017 permission has lapsed. Section 73(4) of the 1990 Act provides that s.73 does not apply if the previous planning permission was

granted subject to a time condition within which the development was to be begun and that time has expired without the development having been begun. That is what has occurred here, and so a s.73 application cannot be used to regularise the development, which is unauthorised.

### **Conclusion**

14. The development materially departs from the approved plans and therefore does not constitute lawful implementation of the 2017 permission. In the absence of a valid permission, the section 73 application cannot succeed.

*S A Hanson*

INSPECTOR