



Appeal Decision

Site visit made on 11 September 2025

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

an Inspector appointed by the Secretary of State

Decision date: 13th January 2026

Appeal Ref: APP/U5360/W/25/3368603

25 Corsham Street, Hackney, London N1 6DR

- 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 Broughton Estates Limited against the decision of the Council of the London Borough of Hackney.
- The application reference is 2024/2841.
- The application sought planning permission for the construction of a first-floor rear extension, 2 no. front dormer, 2 no. rear dormer roof extensions and relocation of existing plant to facilitate the use of the property as office and sounds studios (Class E) without complying with a condition attached to planning permission reference 2024/1748, dated 16 October 2024.
- The condition in dispute is No 1 which states that:
"The Development hereby permitted shall only be carried out and completed strictly in accordance with the submitted plans hereby approved and any subsequent approval of details."
- The reason given for the condition is:
"To ensure that the development hereby permitted is carried out in full accordance with the plans hereby approved."

Decision

1. The appeal is dismissed.

Reasons

2. On 16 October 2024 the Council granted planning permission for extensions and alterations to the appeal property, the approved development being described as the "construction of a first-floor rear extension, 2 no. front dormer, 2 no. rear dormer roof extensions and relocation of existing plant to facilitate the use of the property as office and sounds studios (Class E)". I refer to this as "the original permission".
3. The appellant subsequently applied under section 73 of the Town and Country Planning Act ("the Act") seeking the approval of alternative plans. The rationale for this, as set out on the section 73 application form, was that it would "facilitate an increase in the third-floor floor area [and] enhance the consented scheme by integrating the second-floor dormers into a cohesive volume at the third-floor level while maintaining the horizontal articulation of the building's form".
4. The Council described the development on the section 73 decision notice as being "to combine the approved dormer roof extensions as one single roof extension". It gave a single reason for refusing the application:
"The proposed extension would have a detrimental impact upon the character and appearance of the host property and surrounding area. As such the proposed development is contrary to policies D1 'London's form, character and capacity for

growth' and D3 'Optimising site capacity through the design-led approach' of the London Plan (2021), Policy LP1 'Design Quality and Local Character' of the Hackney Local Plan."

This appeal is made against that refusal.

5. The scope of section 73 has been considered by the Courts; *Finney*¹ established that it 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 permission was granted. More recently, Holgate LJ set out in *Fiske*² a useful guide to the restrictions on section 73 applications, including that they need not be limited to minor material amendments, but (reinforcing *Finney*) that they "may not result in a permission, the operative part and/or the conditions of which are inconsistent with the operative part of the earlier permission, either in terms of the language used or its effect".
6. The Planning Practice Guidance says 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"³, and that "section 73 cannot be used to change the description of the development"⁴. The question of whether the variation of plans sought by the appellant would fall within the scope of section 73 of the Act had not been raised by the Council (or any other party), and I therefore sought comments on the matter from the main parties.
7. In response, the Council "acknowledged that there would be a difference in terms of the reference to the number of rear dormers between the original permission and the appeal proposal" but they considered "there is a *de minimis* argument such that a marginal change (in description terms) would not trigger the *Finney* principle, nor would it amount to a fundamental alteration of the proposal put forward in the original application". They went on to say that although "the scale of the appeal rear roof extension is greater than that approved as part of the parent permission, the proposed development subject of the appeal would result in a lesser number of rear roof extensions and, therefore, would be more limited in scope than the parent permission", and that "there are no conditions attached to the parent permission that make specific reference to a certain number of dormer roof extensions that would necessarily preclude a lesser development being built out under that extant permission, for example involving only 1 rear dormer". The appellant agreed with the Council's comments, noting that it aligned with their own assessment and pre-application discussions with the Council.
8. The approved plans for the original permission show two dormers on the rear roof slope of the appeal property, in line with the description of development. The plans for which the appellant is now seeking approval show that there would be one dormer on the rear roof slope. That the single dormer would be much larger than the two allowed by the original permission is not, in terms of whether it would be within the scope of section 73, a significant consideration in this case – as I have set out above, section 73 is not necessarily limited to minor amendments. However, a scheme with one two-storey dormer cannot sensibly be said to fall within the description of development which says there would be two rear

¹ John Leslie Finney vs Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868

² Test Valley Borough Council v Chala Fiske [2024] EWCA Civ 1541

³ Paragraph: 013 Reference ID: 17a-013-20230726 Revision date: 26 July 2023

⁴ Paragraph: 014 Reference ID: 17a-014-20140306 Revision date: 06 March 2014

dormers – in the language of the judgments cited above, such a development would be inconsistent with the operative part of the earlier permission.

9. Perhaps unusually, I therefore find myself somewhat at odds with both main parties. The creation of a new planning permission varying the approved plans as sought would go beyond the powers provided by section 73 of the Act, and as such the appeal must be dismissed. As the appeal fails for what might be described as a “technical” reason, it has not been necessary for me to consider the planning merits of the scheme; this could not alter my overall conclusion, and to do so may unreasonably fetter the Council’s decision making on any future proposal which might come forward.

Conclusion

10. For the reasons set out above, and having had regard to all other matters which have been raised, I conclude that the appeal should be dismissed.

M Cryan

Inspector