

OFFICER REPORT FOR DECISION UNDER DELEGATED AUTHORITY

APPLICATION NO: P0991.22

WARD : Emerson Park

Date Received: 20th June 2022

ADDRESS: 14 WOODLANDS AVENUE
HORNCHURCH

PROPOSAL: Variation of Condition No. 2 (Accordance with Plans) of Planning Permission Ref: P1274.21 dated 02/09/2021 to allow for an extension to first floor western wing and inclusion of new front garden wall.

DRAWING NO(S): 0423(EX)02A
0423(PR)01H
0423(PR)02I
0423(PR)04G
0423(EX)01B
0423(PR)06E
0423(PR)07D
0423(PR)08
0423(PR)05F

RECOMMENDATION : It is recommended that **planning permission be REFUSED** for the reason(s) given at the end of the report

SITE DESCRIPTION

The application site is a large regular shaped plot located in Sector 6 of the Emerson Park Policy Area. The site contains an L - shaped two storey detached dwelling with a hipped roof, part brick, part timber cladding and timber frame finishes and elements.

DESCRIPTION OF PROPOSAL

This is a S73 application to vary the accordance with plans condition of application reference P1274.21. The purpose of the application is to allow for an extension to first floor western wing and inclusion of new front garden wall.

RELEVANT HISTORY

P0387.22 - Variation of Condition No. 2 (Accordance with Plans) of Planning Permission Ref: P1274.21 dated 02/09/2021 to permit amendment to proposed footprint and inclusion of new front garden wall (Two storey side extension (western elevation). Two storey side extension with part single storey rear extension (eastern elevation). Two storey rear bay extension (western elevation). Loft conversion to include 3No. rear roof lights and front extension.)
Withdrawn - Invalid 26-04-2022

P1274.21 - Two storey side extension (western elevation). Two storey side extension with part single storey rear extension (eastern elevation). Two storey rear bay extension (western elevation). Loft conversion to include 3No. rear roof lights and front extension.
Apprv with cons 03-09-2021

P0359.19 - Two storey side extension (Western elevation). Two storey side extension (Eastern elevation). Part single storey rear extension and rear balcony at first floor. Loft

CONSULTATIONS/REPRESENTATIONS

RELEVANT POLICIES

STAFF COMMENTS

Principle was established through the earlier grant of permission. This application concerns the variation of Condition 2 (accordance with plans) to formalise departures from the consented scheme and to address conditions imposed upon the earlier consent. It is proposed to increase the footprint of the approved first floor western wing and inclusion of a new front garden wall.

The Planning Practice Guidance (PPG) states that a Section 73 application may be used to seek a 'minor material amendment', where there is a relevant condition that can be varied. There is no statutory definition of a minor material amendment but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.

The PPG also states that Section 73 cannot be used to change the description of the development. This is supported by the recent Court of Appeal judgement in *Finney v Welsh Minsters & Ors* (Rev 1) [2019] EWCA Civ 1868. The court held that it was beyond the powers of the decision maker under Section 73 to alter the description of the development, as this is the operative part of the permission and Section 73(2) says planning authority must "consider only the question of conditions". It follows from *Finney* that where amending a condition would result in a conflict between the new condition and the description of development, that particular amendment is beyond the powers under Section 73 and cannot be made, a fresh application being instead required. An amendment can only be made provided the new condition does not fundamentally alter the proposal originally granted permission.

Given the change in description of proposal of planning permission granted 03-09-21, a variation of condition cannot be applied.

RECOMMENDATION

It is recommended that **planning permission be REFUSED** for the following reason(s):

1. Refusal non standard

Given the addition of proposed new front boundary walls incorporating vehicular access and a pedestrian gate, which would have material impact upon the street-scene and potential impact upon the health of the trees, the proposed development would materially differ from the description of the approved scheme with respect to the original decision notice. Hence the proposed variation could not be varied under Section 73 of the Act. The description of development would be changed which would be against the advice given in National Planning Practice Guidance and contrary to the finding of the Court of Appeal judgement in *Finney v Welsh Ministers & Ors* (Rev 1) (2019) EWCA CIV 1868 and therefore the application would require a fresh planning application.

1 Refusal - No negotiation

Statement Required by Article 35 (2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015: Consideration was given to seeking

amendments, but given conflict with adopted planning policy, it was necessary to issue a decision as close to the statutory timeframe as possible as opposed to seeking amendments which would have significantly delayed the application.

Authorising Officer: Habib Neshat
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15-08-2022
