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IHBC GUIDANCE NOTES

Alterations to Listed Building Consents: Application of S.19 of the Planning (Listed Buildings and Conservation Areas Act 1990)

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This is one of a series of occasional Guidance Notes published by The Institute of Historic Building Conservation (IHBC). IHBC Guidance Notes offer current and recent guidance into topics that we consider crucial to the promotion of good built and historic environment conservation policy and practice. The Notes necessarily reflect knowledge and practice at the time they were developed, while the IHBC always welcomes new case examples, feedback and comment to research@ihbc.org.uk for future revisions and updates.

1. Introduction

1.1 This guidance note seeks to clarify the position in respect of the application of S.19 of the Planning (Listed Buildings and Conservation Areas) Act 1990 when faced with variations to proposals already approved through the grant of Listed Building Consent. For example, the many Local Planning Authorities include conditions that list the approved drawings that they must be adhered to as part of the consent. Hence, it may be argued that as the approved drawings are a condition, they can be varied under s.19.

1.2. Section 19 allows variation or discharge of conditions as set out below:

S.19 Application for variation or discharge of conditions

- (1) Any person interested in a listed building with respect to which listed building consent has been granted subject to conditions may apply to the local planning authority for the variation or discharge of the conditions.
- (2) The application shall indicate what variation or discharge of conditions is applied for.
- (3) Sections 10 to 15 apply to such an application as they apply to an application for listed building consent.
- (4) On such an application the local planning authority or, as the case may be, the Secretary of State may vary or discharge the conditions attached to the consent, and may add new conditions consequential upon the variation or discharge, as they or he thinks fit.

(5) But a variation or discharge of conditions under this section must not:

- a) vary a condition subject to which a consent was granted by extending the time within which the works must be started;
- b) discharge such a condition.

1.3 A Local Planning Authority can also revoke or amend a LBC through a S.23 Order [\[1\]](#), but this is subject to procedures and expediency.

2. Legal Position

2.1 With respect to Listed Building Consent and Planning Approvals, only the written description is fundamental to the consent. Section 19 allows variation or discharge of conditions, therefore, as long as the proposed variation to the approved drawings falls within the meaning of the written description, an application under S.19 can be made and if registered Ss. 10-15 of the Planning (Listed Buildings and Conservation Areas) Act 1990 would apply.

2.2 If a condition attached to a consent requires adherence to approved drawings, then it's the wording that contains the condition, not the drawing to which S.19 refers. A drawing is a drawing, not a condition.

2.3 Non-adherence to the approved drawings in the execution of a Listed Building Consent does not ipso facto invalidate the consent; it is a breach of a condition not to adhere to the approved drawings, but the consent still exists. A breach of a Listed Building Consent condition is, however, a criminal offence that carries a sanction of imprisonment of up to two years, or a fine, or both.

2.4 Only a new application for LBC would require the statutory consultations.

3. Recent Case Law

3.1 This has recently been dealt with (in the context of amending a planning permission) by the Court of Appeal in [Finney v Welsh Ministers \[2\]](#). That concerned a planning permission for a wind turbine with blades of 100m height, subject to a condition that the permission be implemented in accordance with various numbered drawings. One of those, 3.1, showed blades with a tip height of 100m. The developer now wished to vary the condition so as to substitute drawing 3.1a, which showed blades of 125 tip height. The inspector recognised that this would be significantly taller, and conducted an inquiry on that basis, and allowed the variation of condition that had been proposed – but also varied the 'operative' part of the permission so as to read 'permission for a wind turbine with blades of 125m height', as she realised that the old description would be inconsistent with the new condition and the drawings to which it now related.

The variation was sought, and granted, under TCPA, s.73, which is the equivalent of PLBCA, s.19 (and the position is the same in England as in Wales).

3.2 The Court held that it was not possible to use section 73 to vary the operative part of the permission, but only so as to vary the conditions – and not to vary conditions if the result was to vary the substance of the development itself.

S.42 *On receipt of such an application section 73 (2) says that the planning authority must “consider only the question of conditions”. It must not, therefore, consider the description of the development to which the conditions are attached. The natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development. That coincides with Lord Carnwath’s description of the section as permitting “the same development” subject to different conditions. Mr Hardy suggested that developers could apply to change an innocuous condition in order to open the gate to section 73, and then use that application to change the description of the permitted development. It is notable, however, that if the planning authority considers that the conditions should not be altered, it may not grant permission with an altered description but subject to the same conditions. On the contrary it is required by section 73 (2) (b) to refuse the application. That requirement emphasises the underlying philosophy of section 73 (2) that it is only the conditions that matter.*

3.3 Leave to appeal to the UK Supreme Court was refused.

4. Example scenarios

4.1 Where LBC (or planning permission) is granted for the replacement of old steel-framed windows with new timber-framed ones, subject to a condition that the new windows are to be in accordance with the specification forming part of the application, it would presumably be possible to substitute a revised specification; but not if the new specification were to be for plastic-framed windows.

4.2 And if the consent is given for the construction of ground floor extension, and subject to conditions that it be constructed as shown on drawing 1234 and using bricks Type X, it would be possible to vary the conditions so as to require compliance with drawing 1234A, showing a single-storey extension 1 metre longer, or the use of bricks Type Y. If it were not possible to make such variations, there would be little point to section 19. But it would not be possible to substitute drawing 1234B, showing a two-storey extension.

5. Conclusion

This stresses the importance of the published description in being clear as to the size (as well as the number of storeys) and materials where relevant. Where applications are amended through negotiations it is important to then agree a new description that includes the agreed changes to the original description as

that then becomes the 'operative' part of the consent. This would overcome situations when some applicants may wish to use the condition route to revisit the negotiations and pitch in for something closer to what they originally applied for.

6. Summary

6.1 If an application is made for variation or discharge of a condition under S.19 of the Planning (Listed Buildings and Conservation Areas) Act 1990, ss. 10-15 apply.

6.2 If a condition attached to a consent requires adherence to approved drawings, then it's the wording that contains the condition, not the drawing to which it refers. The consent is only valid if the approved drawings are adhered to.

6.3 Non adherence to the approved drawings in the execution of a LB consent does not ipso facto invalidate the consent; it is a breach of a condition not to adhere to the approved drawings, but the consent still exists.

6.4 The Court held that, in relation to Planning Permission, it was not possible to use Section 73 of the Town and Country Planning Act 1990 to vary the operative part of the permission, but only so as to vary the conditions; and not to vary conditions if the result was to vary the substance of the development itself.

IHBC Legal Panel (February 2022)

ENDNOTES

1. Ss 23-26 Planning (Listed Buildings and Conservation Areas) Act 1990
2. [Finney v Welsh Ministers](#)