

Case Name: *Finney v Welsh Ministers* [2018] EWHC 3073 (Admin) (15 November 2018)

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Commentary: The dismissal of an application under section 288 of the Town and Country Planning Act 1990 ("1990 Act") for an order to quash the decision of a Planning Inspector to allow an appeal against the refusal to grant planning permission pursuant to Section 73 of the 1990 Act.

Energiekontor UK Limited made an application back in January 2016 for installation of two wind turbines. In August 2016 it applied for the removal or variation of condition 2 (to carry out the development in accordance with approved plans) to enable a taller turbine to be erected. This application was refused because the increase in height would have an unacceptable impact upon the landscape and would be contrary to planning policy.

This was successfully appealed, and permission granted.

The Claimant, in this application, who had previously objected that the variation had an adverse effect on his residential amenity, challenged the Planning Inspector's decision on the basis that she had no power under section 73 to amend a condition which had the effect of directly contradicting the description of development permitted in the earlier permission.

Sir Wyn Williams dismissed the appeal for the following reasons:

1. The proper interpretation of the judgement in the Wet Fishing Works Case is that a variation pursuant to section 73 can be lawful notwithstanding that it may necessitate a variation to the terms of the planning permission which preceded the section 73 application.
2. The variation of the condition would not have constituted a fundamental alteration to the original proposal.

Case summary prepared by Amy Bennett