

Case Name: *Finney v Welsh Ministers & Ors* [2019] EWCA Civ 1868 (05 November 2019)

Full case: [Click Here](#)

Commentary:

This is a Court of Appeal decision in which Lewison LJ allowed the appeal and quashed the inspector's decision that held that section 73 of the Town and Country Planning Act 1990 can be used to obtain planning permission with an amended description of development, as well as conditions differing from those on the original permission.

The case concerned planning permission granted in 2016 for the installation and operation of two wind turbines, stated in the description of development as being of a height up to 100m. Condition 2 imposed on the decision notice provided that the development was to be carried out in accordance with a number of approved plans, of which one showed a wind turbine with a tip height of 100m.

The applicant applied under 73 of the TCPA 1990 to vary condition 2 and replace this plan with one that showed tip heights for the turbines up to 125 metres. The reason for application was clearly stated to "enable a taller turbine type to be erected".

The council refused to grant the permission and the applicant appealed to the Welsh Ministers against that refusal. The Inspector appointed allowed the appeal and granted the permission, after considering the effect of the proposed increase in height.

It was held in this appeal that changing the description of the permitted development was outside the power conferred by section 73. It is a question of statutory interpretation and section 73 is on the face of it limited to granting permission for the development of land "without complying with conditions" subject to which a previous planning permission was granted. The planning authority should therefore consider only the question of conditions. The permission granted pursuant to section 73 should permit the same development subject to different conditions. The appeal was allowed and the inspector's decision quashed.

For further comment please see Simon Rickett's blog post on this case:

<https://simonicity.com/2019/11/05/law-altered-on-altering-permissions-court-of-appeal-finney/>

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