

# Where does Finney leave us?

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- Rule 1: in granting permission under s 73, the operative part/description of development cannot be amended
- Rule 2: there cannot be a contradiction between the operative part and the conditions

## What does Finney NOT say?

- That a *material* change to a planning permission cannot be achieved under s 73
  - It can be, and indeed s 73 would (now) serve no purpose if it could not
- That the rules about interpretation of planning permission have changed... so the first task is to construe the original planning permission

## Easy(?) cases

- Finney: “operative part” should have remained “up to 100m”; a condition showing a turbine at 125m tip height would create an inconsistency – breaks Rule 1, and would have broken Rule 2 if description had survived
- Wet Finishing Works [2018] PTSR 26: permission for “84 NO. DWELLINGS AND ASSOCIATED WORKS”, proposal was for “VARIATION OF CONDITION No 02 (APPROVED PLANS) OF APPLICATION 43/11/0080 FOR ALTERATIONS TO LAYOUT AND ADDITIONAL SIX UNITS AT TONE MILL, MILVERTON ROAD, WELLINGTON” – breaks Rule 2
- Cases where description cannot be contradicted (and need not be amended) by proposed change (e.g. substituting a materials condition) – lawful

## Hard cases

- Description of development expressly refers to plans (“in accordance with drawings XXX and YYY”), and the proposal involves a change to a plan. Does it breach Rule 2? Can the resulting permission be properly interpreted?
- What if the description has already been “amended” by an earlier s 73?
- What about where the description of development expressly incorporates “the application”?
- What about a description containing some wholly irrelevant information (e.g. “the erection of a DIY retail unit for Texas Homecare...” in *Lambeth*)?

## Validity (1)

- Can an “historic” s 73 permission be relied on where:
  - It has been granted with an amended description?
  - There is an inconsistency between the description and the conditions?
- General principle: “Applicants for planning permission are entitled to rely on the local planning authority to discharge the responsibilities placed upon it... when they are granted planning permission they are entitled to rely upon it as a lawful grant of permission unless it is set aside by a court”

*Regina (Gerber) v Wiltshire Council* [2016] 1 W.L.R. 2593, [55]

## Validity (2)

- The validity of conditions *can* sometimes be challenged in later appeals and proceedings (see e.g. Newbury DC v SSE [1981] AC 578; Tarmac Heavy Building Materials UK Ltd (2000) 79 P. & C.R. 260; Earthline Ltd [2003] 1 P. & C.R. 24)
- If a condition was imposed in breach of Rule 2, might need to be careful about a subsequent application based on its continued existence and effect

- “Section 73 cannot be used to change the description of the development.”  
(Paragraph: 014 Reference ID: 17a-014-20140306)
- “Depending on the case, it may be possible for the local planning authority to impose a condition making a minor modification to the development permitted. It would not be appropriate to modify the development in a way that makes it substantially different from that set out in the application.”  
(Paragraph: 012 Reference ID: 21a-012-20140306)



## The search for a new approach

- Rationalising “operative” part
  - On application form
  - In response to LPA amendment
  - On appeal
  - By 96A?
- Amended DMPO or guidance on form of planning permissions? (...see Lambeth too)
- The Supreme Court in Finney?