



Appeal Decision

Hearing Held on 15 October 2019

Site visit made on 15 October 2019

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

Appeal Ref: APP/J3720/W/18/3218058

Greenacres, Waterloo Road, Bidford-on-Avon BS50 4JP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr James Wilson against the decision of Stratford on Avon District Council.
 - The application Ref 18/00845/VARY, dated 9 March 2018, was refused by notice dated 7 November 2018.
 - The application sought planning permission for change of use of land to use as a residential caravan site for eight gypsy families with a total of 16 no. caravans (8 static homes and 8 touring caravans) (part retrospective); together with associated hardstanding without complying with conditions attached to planning permission Ref 13/02455/FUL, dated 18 November 2013.
 - The conditions in dispute are Nos 2 and 4 which state that:
 - 2. The development hereby permitted shall be carried out in accordance with the submitted Site Layout Plan received by the Local Planning Authority on 23 September 2013.*
 - 4. No more than 16 no. caravan(s), as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time, of which no more than 8 no. shall be a residential mobile home.*
 - The reasons given for the conditions are:
 - 2. For the avoidance of doubt and to define the terms of the permission.*
 - 4. To define the extent of the permission.*
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Decision

1. The appeal is dismissed.

Procedural Matters and Background

2. The application which is the subject of this appeal seeks to vary conditions so that, amongst other things, a total of 14 static caravans can be placed on the site. The description of the extant planning permission states that the caravans on the site should be made up of "8 static homes and 8 touring caravans".
3. The extant planning permission also refers to "a site for 8 gypsy families" and there was some debate at the Hearing as to whether this description and any other controls, including the conditions, in effect restricts the planning permission to 8 pitches.

4. During the course of the Hearing it became apparent that the potential control over the number of pitches was a new issue which had not been addressed in the evidence before me. I kept the Hearing open so this issue could be considered further on the basis of written correspondence between the parties.
5. However, subsequent to the date of the Hearing, the Court of Appeal has issued the *Finney*¹ decision which concerns the limits of the power under section 73 of the Town and Country Planning Act 1990. This judgment addresses the powers conferred by section 73 with regards to the nature of what was permitted and the description of development. I have provided this decision to the parties and have taken account of comments raised.
6. The *Finney* case related to an appeal against a condition which limited the tip height of a wind turbine, and as a result the height would be increased from 100m to 125m. The 100m tip height was stated in the description of the development, and in allowing the appeal the Inspector changed the description to remove the reference to tip height. The Court of Appeal determined that that change was outside of the power conferred by section 73.
7. Mindful of *Finney*, if the appeal before me is allowed, the use of the site which may take place could differ from that given in the description of development, particularly in relation to the mix of caravan types and potentially in relation to the number of gypsy families. At the Hearing, I raised the issue of whether the description of development should be amended to reflect this, through the removal of references to the number of gypsy families and the specification of the mix of static caravans and touring caravans.
8. The appellant emphasises the differences between the *Finney* case and the appeal before me. In particular he sets out that *Finney* related to operational development whereas this appeal relates to a change of use. He contends that the description of development is not a continuing limitation on the use of the land and that once the planning permission had been implemented then the inclusion of the number of caravans in the description of development became redundant.
9. However, in the light of *Finney*, a change in the description of the permitted development is outside the power conferred by section 73. The original description of development would therefore remain within the operative part of the planning permission. If I were to allow this appeal and left the description of the permitted development intact, there would be a conflict between what was specified in the description (including "eight gypsy families" and "8 static homes and 8 touring caravans") and what the new conditions allowed (no restriction on the number of families and no more than 14 static caravans). Given the specific wording of the description of development, I am also mindful that *Finney* confirms that a condition altering the nature of what was permitted would be unlawful.
10. The appellant has provided a copy of an appeal decision² which considers that an increase in the number of caravans on a site from 6 to 12 would not amount to a material change of use and would be lawful. However, the purpose of section 73 is not to conclude on such matters. There are other routes available to the appellant to address these matters, including an application under

¹ *Finney v Welsh Ministers & Ors* - [2019] EWCA Civ 1868

² Appeal ref. APP/W3520/X/07/2039698

section 96A; a certificate of lawful use or development (CLD); or a fresh planning application. In this regard, I note that the appeal decision referred to by the appellant was in relation to a CLD and the Inspector's conclusions were therefore within a different context to the appeal before me.

11. Drawing the above together, and having regard to *Finney*, I conclude that there would be a conflict between the description of the development originally permitted and what the proposed conditions would allow, which would be unlawful.

Conclusion

12. I conclude that I cannot proceed to consider this appeal as it would be beyond my powers to do so under section 73. On that basis, the appeal should be dismissed.

David Cross

INSPECTOR

Appearances

FOR THE APPELLANT:

Philip Brown
James Wilson

Philip Brown Associates Ltd
Appellant

FOR THE COUNCIL:

Victoria Chadaway BSc(Hons) MRTPI
Jo Bozdoganli
Roger Thatcher

Stratford-on-Avon District Council
"
"

INTERESTED PERSONS:

Elisabeth Uggerløse
Bill Fleming
Harry Knight
Adam Wilson

Bidford-on-Avon Parish Council

Documents Submitted at the Hearing

1. Responses to a Planning Contravention Notice.
2. Details of planning application dated 26 September 2019 re. removal of Condition 3.

Documents Received Following the Hearing (by request of the Inspector)

1. Model Standards 2008 for Caravan Sites in England, Department for Communities and Local Government.
2. Comments from appellant on licensing arrangements for Gypsy caravan sites.
3. Comments from the main parties and the Parish Council with regards to the number of pitches.
4. Comments from the main parties and the Parish Council with regards to the *Finney* Court of Appeal decision.