



Appeal Decision

Site visit made on 3 January 2020

by Mark Dakeyne BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 February 2020

Appeal Ref: APP/G2713/W/19/3236564

The Workshop, Stokesley Road, Brompton, Northallerton DL6 2TY

- 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 C Bird against the decision of Hambleton District Council.
 - The application Ref 19/00016/MRC, dated 3 January 2019, was refused by notice dated 28 June 2019.
 - The application sought planning permission for the making of a material change of use of land from agriculture to mixed agricultural and residential use by siting a static caravan and a touring caravan for residential use with domestic paraphernalia without complying with a condition attached to planning permission Ref APP/G2713/C/13/2198583, dated 13 February 2014.
 - The condition in dispute is No 2 which states that: *There shall be no more than 1 pitch on the land, and on the pitch hereby approved no more than 2 caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended) shall be stationed at any time, of which only 1 caravan shall be a static caravan.*
 - The reason given for the condition is: *To protect the character and appearance of the area.*
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by C Bird against Hambleton District Council. This application is the subject of a separate decision.

Background and Procedural Issues

3. The condition in dispute was imposed when the appeal was allowed in 2014. The description of development of the planning permission granted on appeal refers, amongst other things, to the 'siting of a static caravan and a touring caravan'. The proposal would result in two static caravans/mobile homes and one touring caravan on the site.
4. Since the decision was made and the appeal lodged, the Court of Appeal has issued the Finney judgement¹ 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

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

- what was permitted and the description of development. I have provided this judgement to the parties and have taken into account the comments made.
5. The Finney case related to an appeal against a condition which limited the tip height of a wind turbine. As a result of the proposal, the height would have been 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 the change was outside of the power conferred by section 73.
 6. Mindful of Finney, if the appeal before me is allowed, the use of the site which would take place would differ from that given in the description of development, namely that the one static caravan would become two.
 7. The appellant emphasises the differences between the Finney case and the appeal before me. In particular she sets out that Finney related to operational development whereas this appeal relates to a change of use. Furthermore, it is submitted that, it is the change of use of the land from agricultural to mixed agricultural and residential use that constitutes the development and that has already taken place. The limit to the number of caravans is provided by the condition, not the material change of use.
 8. 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 and what the new condition allowed. Given the specific wording of the description of development, I am mindful that Finney confirms that a condition altering the nature of what was permitted would be unlawful.
 9. 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 condition would allow. A condition altering the nature of what was permitted would be unlawful. The Finney case is going to the Supreme Court, but my decision is based on the law as it currently stands.
 10. It is open to the appellant to seek a fresh planning permission but not under section 73 of the Act.

Conclusion

11. 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.

Mark Dakeyne

INSPECTOR