
Appeal Decision

by **S J Papworth DipArch(Glos) RIBA**

an Inspector appointed by the Secretary of State

Decision date: 17 June 2020

Appeal Ref: APP/U2235/W/18/3218587

The Green Barn, Water Lane, Hunton ME15 0SG

- 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 Mrs Donna Mendham against the decision of Maidstone Borough Council.
 - The application Ref 18/501120/FULL, dated 27 February 2018, was refused by notice dated 14 June 2018.
 - The application sought planning permission for change of use from agriculture to agriculture and residential for one gypsy family (personal to Mr & Mrs Mendham) and stationing of one mobile home without complying with conditions attached to planning permission Ref APP/U2235/A/02/1104824 (Council Ref MA/02/1380), the Appeal Decision being dated 23 July 2003.
 - The conditions in dispute are Nos 1 and 2 which state:
 - 1) The uses hereby permitted shall be carried on only by, and the mobile home hereby permitted shall be occupied only by, Mr Lance Mendham and/or Mrs Donna Marie Mendham and their dependent children living with them. When the site ceases to be occupied by Mr Lance Mendham and/or Mrs Donna Marie Mendham the uses hereby permitted shall cease and the mobile home and all associated residential structures and paraphernalia shall be removed from the land and the land restored to its former condition. The reason given for the condition was that planning permission would only be justified as the personal circumstances of Mr and Mrs Mendham warranted an exception to the general policies that militated against such a permission (Appeal Decision paragraphs 31 and 32).
 - 2) No more than 1 mobile home and no more than 1 touring caravan to be used only for purposes ancillary to the residential use of the mobile home hereby permitted, shall be stationed on the land at any time. The reason given for the condition was to control the scale of the development but allow the stationing of a touring caravan as no harm would occur in visual terms (Appeal Decision paragraph 33).
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Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. The application which is the subject of this appeal seeks to vary conditions so that there would be 4 additional mobile homes on the site, making a total of 5. The original Condition 2) from 2003, as set out in the headings above, allowed for a mobile home and a touring caravan on the single pitch then permitted. The Application Form referred to children having come of age and there being a need for more accommodation and for that reason, Condition 1) and the reference to dependent children would need to be varied as well, and that was included in the description on the Appeal Form.

3. A subsequent application was made to the Council for the same variation of conditions (Ref 19/505670/FULL), which the appellant describes as providing further information in answer to the Reasons for Refusal in the current case.
4. In the event, the Council refused to determine that later application and wrote to the appellant's agent on 4 May 2020 with the conclusion that *'section 73 cannot be used here to place an additional 4 mobile homes (plus the 1 mobile home and 1 tourer). A new application is required to deal with the change in policy and associated impacts. Given this, we will be withdrawing the application from the statutory register as a decision cannot lawfully be issued, considering the provisions of Finney.'*
5. 'Finney' is a reference to a Court of Appeal¹ judgment concerning a challenge to an Appeal Decision on a section 73 appeal to vary a condition that limited the tip height of a wind turbine blade. The Court of Appeal determined that the change in that case was outside of the power conferred by section 73.
6. The contents of the Council's letter of 4 May 2020 and the note to the Planning Inspectorate which accompanied it were the subject of further submissions from the main parties which I had invited. Having regard to these latest submissions and the Finney judgment, I consider that were the appeal before me to be allowed, the use of the site would differ from that given in the description of development, that is to say, *'change of use from agriculture to agriculture and residential for one gypsy family (personal to Mr & Mrs Mendham) and stationing of one mobile home'*. To change the description would be beyond the power conferred by section 73, while to vary the condition but keep the description intact would result in a conflict between what was specified in the description and what the new conditions allowed.
7. Given the specific wording of the description of development, I am mindful that the Finney judgment confirms that a condition altering the nature of what was permitted would be unlawful.
8. Being satisfied that consideration of the merits of the case would be not be appropriate, and that all necessary submissions on the procedural matters were before me in writing, I determined that the appeal procedure be changed under section 319A from a Hearing to Written Representations and that in view of my conclusions on the procedural matters, there was no need for a site visit.
9. It is open to the appellant to seek a fresh planning permission by way of a new application, but not by way of a section 73 change to the extant permission.

Conclusion

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

S J Papworth

INSPECTOR

¹ Finney v Welsh Ministers [2019] EWCA Civ 1868