



Appeal Decision

Site visit made on 27 November 2020

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 4 January 2021

Appeal Ref: APP/Y3615/W/20/3246726

Holmdale, Holmbury Hill Road, Holmbury St Mary, Dorking RH5 6NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Littlewood against the decision of Guildford Borough Council.
 - The application Ref 19/P/01646, dated 20 September 2019, was refused by notice dated 6 November 2019.
 - The application sought planning permission for the construction of a chicken shed following demolition of the existing chicken shed without complying with a condition attached to planning permission Ref 16/P/02012, dated 22 November 2016.
 - The condition in dispute is No 2 which states that: the development hereby permitted shall be carried out in accordance with the following approved plans: AS525/200, AS525/EX04, AS525/03B, received on 11 November 2016.
 - The reason given for the condition is to ensure that the approved development is carried out in accordance with the approved plans and in the interest of proper planning.
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Procedural Matters

1. The application relates to variation of condition 2 (drawing numbers) of planning application 16/P/02012 approved on 22 November 2016. The development that is effectively in dispute has taken place and therefore it should be considered under Section 73A.

Decision

2. The appeal is dismissed.

Reasons

3. In *Finney v Welsh Ministers & Others* [2019] EWCA Civ 1868 the Court of Appeal held that an application under s73 may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission ie, the description of the development for which planning permission had originally been granted.
4. The *Finney* principles to be applied in s73 application (appeal) decision making:
 - 4.1.1 *The description of development in an existing planning permission cannot be amended at all. Only the conditions can be varied;*

- 4.1.2 If amending a condition would result in a conflict between it and the description of development then that particular amendment is beyond the powers under s73 and cannot be made (a fresh planning application would be required);*
- 4.1.3 In any event, any amendment can only be made provided the new condition does not fundamentally alter the original planning proposal for which permission had been granted.*
5. The operative part of this development is its description which was 'construction of a chicken shed following demolition of the existing chicken shed'. What has been constructed is not a chicken shed. Part of it is currently used for chickens, but this is only a small part in relation to the whole. The structure has been built to a high standard, and fitted out for human accommodation with kitchen type units and sanitary fittings. It is a mixed use chicken shed and what is described as an art studio. Quite clearly amendment of the condition would result in amendment of the description of the development and is not permitted. To my mind there is no justification to amend the requirement to complete the development in accordance with the drawings.
 6. When considering whether something has been constructed in accordance with a planning permission, the extent that the development that complies with the plans submitted has to be considered as well as the extent that it does not accord with the plans.
 7. The building that has been constructed has very similar dimension to that which obtained planning approval and the materials it is constructed from are very similar. There is some use by chickens.
 8. However, the building that has been constructed is different from that applied for. It has 5 bays rather than 4, there has been the introduction of two large windows, installation of a septic tank, the artist studio occupies 3 of the 5 bays, the chicken store has been removed, the chicken run and mesh area reduced in size, the building is insulated, a wood burning stove has been inserted, there is a shower room and partially completed what appears to be a kitchen area.
 9. The use of the building is substantially different, and the character of the building is substantially different. I conclude overall that it is not similar enough to the planning permission to be encompassed by it.
 10. I note the argument that it is an ancillary building. However, the application is on the site of a previous chicken house, the area of land noted as the application site did not include the residence, but the parkland. I note that the use as an artist studio and keeping of chickens as a hobby for the owners can be an incidental or ancillary use associated with a house. However, they are different uses and the use as an artist studio is not encompassed in the description. The description was not for ancillary uses but for a chicken house and this is not a chicken house.
 11. I conclude that what has occurred is not considered to be a minor material amendment and there is no justification to amend condition 2 to planning permission 16/P/02012.

Graham Dudley

Planning Inspector