



Appeal Decision

Site Visit made on 14 June 2021

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Appeal Ref: APP/U1105/W/21/3267313

**Goldcombe Farmhouse, Road from Gittisham Cross to Beech Walk Cross,
Gittisham EX14 3AB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr & Mrs Peter and Ann Stansell against the decision of East Devon District Council.
 - The application Ref 20/0912/VAR, dated 30 April 2020, was approved on 5 August 2020 and planning permission was granted subject to a condition.
 - The development permitted is the conversion of existing buildings to holiday dwellings (application for removal of Condition 5 of planning permission 84/P0792 to allow year round occupancy of the holiday dwellings and variation of Condition 6 of planning permission 84/P0792 to allow the Cider Barn to be used as an unrestricted residential dwelling).
 - The condition in dispute is condition 1 which states that: Neither of the units hereby approved shall be occupied by any one person or family for more than four successive weeks in any one year.
 - The reason given for the condition is: To ensure that the units are not used as permanent residential dwellings in accordance with Strategy 7 of the East Devon Local Plan 2013-2031.
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Decision

1. The appeal is dismissed.

Procedural Matters and Reasons

2. Outline planning permission (Council reference 84/P0792) was granted in July 1984 for the conversion of existing buildings to holiday dwellings. This concerned two outbuildings which adjoin each other and are located broadly north of the main house. Following the approval of the reserve matters the buildings were converted in around 1990. The units are now known as The Cider Barn, the northern most unit, and Owl Loft, a one bedroom unit within the roof space of the adjoining building
3. The outline permission (84/P0792) was subject to a number of conditions and of particular relevance to this appeal are conditions 5 and 6. These state:

Condition 5

The holiday units hereby created shall not be used for human habitation between December in any one year and February in the following year.

Reason - To ensure that the units are not used as permanent residential dwellings in view of their interrelationship and the relationship with the dwelling Goldcombe.

Condition 6

Neither of the units hereby approved shall be occupied by any one person or family for more than four successive weeks in any one year.

Reason - To ensure that the units are not used as permanent residential dwellings.

4. The effect of the conditions was to restrict the use of the converted buildings to short term holiday accommodation and this accords with the description of the development as "holiday dwellings". The evidence indicates that the buildings have been used as holiday accommodation in accordance with the permission.
5. The recent planning application (Council reference 20/0912/VAR) was an application for the removal or variation of a condition following the grant of planning permission. This was an application made under section 73 of the Town and Country Planning Act 1990. In particular, the application sought to remove Condition 5 of 84/P0792 to allow year round occupation of both units and the removal of Condition 6 of 84/P0792 in respect of The Cider Barn so that it could be used as an unrestricted residential dwelling. The effect of the approval of an application made under s73 is to grant a new planning permission, but with the same description of the development as originally permitted.
6. I am conscious of the judgement in *Finney v Welsh Ministers & Others [2019] EWCA Civ 1868*, where 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 i.e. the description of the development for which planning permission had originally been granted.
7. In this case, the Council granted the application (20/0912/VAR) and issued a new planning permission. The original description was included on the decision notice and the wording of condition 6 of 84/P0792 was reimposed (as a new and the only condition on the new permission). The effect of this new permission with its condition still restricts the occupation of both units to holiday dwellings and, thereby, complies with the original description of the development. Accordingly, the decision of the Council met with the approach as confirmed by the *Finney* judgement.
8. The present appeal seeks to remove Condition 1 of planning permission 20/0912/VAR, it appears in respect of both units. The effect of this would be to allow both units to be unrestricted dwellings. In this case, the appeal is made under s78¹ and the related s79 allows me to examine the decision of the Council to grant permission, under application 20/0912/VAR, as part of the considerations.
9. I wrote to the appellant and to the Council and sought their views regarding the implications of the *Finney* judgement to the present appeal. I have taken the representations into account in coming to my conclusions.

¹ The appeal is made under s78(1)(a) of the Town and Country Planning Act 1990. This provides the applicant with the right to appeal where a local planning authority refuse an application for planning permission or grant it subject to conditions. In determining such an appeal, s79(1) allows the Inspector to: (a) allow or dismiss the appeal, or (b) reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not) and may deal with the application as if it had been made to him in the first instance.

10. The appellant advises that by removing the condition on application 20/0912/VAR this would not have the effect of stopping or curtailing the use of the building as a holiday let, such a use could still continue. The appellant accepts that the removal of the condition would allow unrestricted occupation, but it is argued that the use in both cases is fundamentally the same i.e. residential.
11. I accept that the removal of the condition the subject of the appeal would not restrict or prevent the building being used as a holiday let. However, the stated intention of the application to the Council, and the appeal to remove the condition attached to application 20/0912/VAR, is for The Cider Barn (and it appears at the appeal also Owl Loft) to be allowed unrestricted residential use and this would go beyond the holiday dwelling use referred to in the description of the development.
12. Consequently, if planning permission was to be granted to remove the disputed condition (or condition 6 from the original permission) then this would lead to an unrestricted occupation of The Cider Barn which would be contrary to the operative part of the original planning permission. In accordance with the *Finney* judgement, removing the condition as requested would result in a conflict between the conditions, or lack of them, and the description of the development. Effectively the application and appeal seeks a change in the description of the development. Consequently, I conclude that this particular amendment is beyond the powers under s73 and cannot be made. In these circumstances, a fresh planning application would be required.
13. Accordingly, I am unable to examine the merits of the case made by the appellant regarding the lack of need for the holiday units and the benefits which are argued would follow from unrestricted residential use. It follows that the support of some local residents and businesses, and that the Parish Council raise no objection, are not matters which I can consider further.
14. I do, nevertheless, need to consider some matters further because of the scope of s79. This includes the decision (20/0912/VAR) of the Council, taking into account the scope allowed for by the *Finney* judgement. The original permission had seven conditions. Five of the conditions related to matters such as the submission of reserved matters, alterations to the access and the provision of a septic tank. These, as far as I am aware, have all been addressed. It is only conditions 5 and 6 of planning permission 84/P0792 that are applicable to the on-going operation of the units.
15. Condition 5 of planning permission 84/P0792 requires the units to remain empty between December and February. The development plan and National Planning Policy Framework (the Framework) seek to promote the rural economy and there is no policy or material planning consideration which would now require the holiday accommodation to remain empty for the period specified. This condition is, therefore, not necessary.
16. Condition 6, in conjunction with the description of the development, would effectively limit the occupation of the units to holiday accommodation. Such a condition is necessary and reasonable to achieve the intentions of limiting the use to holiday dwellings, as specified by the description of the development. While the condition is not the up-to-date wording of a holiday limitation, it is precise and allows some flexibility for the operators of the site to allow returning guests within the same year. I consider that the condition meets with

the tests for conditions set out in the Framework. To alter the wording of the condition may affect how the operators of the site have and wish to offer the site to holiday guests and thereby prejudice their interests, albeit I accept that they wish the condition to be removed in its entirety. Consequently, it is appropriate and reasonable to retain the condition as worded.

Conclusion

17. For the reasons explained above, I conclude that the request to remove the original condition 6 of permission 84/P0792, and the corresponding condition 1 on permission 20/0912/VAR, to allow the unrestricted residential use of one or both of the units is beyond the scope of the s73 application made to the Council. This would require the submission of a fresh planning application.
18. Procedurally, the decision of the Council to retain the condition limiting occupation to a temporary period is well founded and facilitates a residential holiday use that accords with the description of the original planning permission for holiday dwellings. I therefore agree with the decision of the Council in this matter and its decision does not require amendment. Consequently, I conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR