



Appeal Decision

Hearing Held on 9 June 2021

Site visit made on 10 June 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2021

Appeal Ref: APP/J0405/W/20/3264411

1 Rosebery Close, West End, Hoggeston MK18 3RR

- 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 and Mrs Martin Baylis against the decision of Buckinghamshire Council - Aylesbury Area.
 - The application Ref 20/01808/APP, dated 6 June 2020, was refused by notice dated 23 November 2020.
 - The application sought planning permission for the erection of 2 agricultural dwellings with ancillary domestic garages, on land adjoining Hillview, Hoggeston, Buckinghamshire without complying with a condition attached to outline planning permission Ref 90/0639/AOP, dated 9 April 1991.
 - The condition in dispute is No 3 which states that: *the occupation of the dwellings shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in section 336 of the Town and Country Planning Act 1990, or in forestry, or a dependent of such a person residing with him or her, or a widow or widower of such a person.*
 - The reason given for the condition is: *to enable the Council to exercise proper control over the occupancy of the development.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Section 73 of the Town and Country Planning Act 1990 (the Act) allows for a grant of permission for the development of land without compliance with conditions subject to which a previous permission was granted. In *Finney v Welsh Ministers & Others*¹, the Court of Appeal held that an application under Section 73 may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission, that is the description of the development for which planning permission had originally been granted.
3. Although not raised in either of the parties' submissions, prior to the Hearing I wrote out to the parties seeking their views as to whether or not the appeal proposal would be acceptable in terms of Section 73 in light of the judgment in

¹ *Finney v Welsh Ministers & Others* [2019] EWCA 1868

Finney. These were provided to me before the Hearing and both parties were given the opportunity to provide a verbal rebuttal at the Hearing.

Background and Main Issue

4. Planning permission was granted on appeal² for two agricultural dwellings with ancillary domestic garages in 1991 subject to a number of conditions, one of which, condition 3, restricted the occupancy of the dwellings to persons employed or last employed in agriculture or forestry and their dependents. The planning permission was implemented and the two properties became known as Numbers 1 and 2 Rosebery Close (Nos 1 and 2). The appeal relates to No 1.
5. The appeal proposal seeks to vary condition 3 in respect of No 1 to enable it to be occupied on an unrestricted basis.
6. The main issue is therefore whether amending the condition would result in a conflict between it and the description of development and therefore whether or not the appeal is valid under Section 73 of the Act.

Reasons

7. The original planning permission was granted for two agricultural dwellings. Whilst an 'agricultural dwelling' is not specifically defined in planning law, it is clearly recognisable as a type of dwelling. The restrictive occupancy condition secures this and ensures its enforceability. In removing the agricultural occupancy condition, No 1 would cease to be an agricultural dwelling. As a consequence, whilst there would still be two dwellings on the site, one would be an unrestricted dwelling and one an agricultural dwelling. This would conflict with the operative part of the original permission.
8. The fact that *Finney* related to a proposed development is not relevant. In this regard, I am mindful of the judgement in *Parkview Homes Ltd v Chichester District Council*³ where it was held that the legal limits on the use of the provisions under Section 73 apply to all such applications. This includes those applications seeking to either modify an existing or an unimplemented development.
9. The Council suggested that it would be possible to vary the condition on the original planning permission to state that it would only apply to No 2. However, this would not remove the conflict with the description of the development. Furthermore, it would create a further conflict as the description would be for two homes but would only cover one.
10. Consequently, I conclude that amending the condition would result in a conflict between the amended condition and the description of development. For this reason, I find the appeal would not be valid under Section 73 of the Act.

Other Matter

11. I appreciate that this decision is not helpful to the parties. However, I am unable to express a view on the acceptability of the proposal, which would now need to be subject to a separate planning application, as to do so could fetter a future decision maker.

² T/APP/J0405/A/90/163903/P8

³ *Parkview Homes Ltd, R (On the Application of) v Chichester District Council* [2021] EWHC 59(Admin)

Conclusion

12. For the reasons set out above, I conclude the appeal should be dismissed.

Rachael Pipkin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Laurence Wilbraham	Of Phoenix Projects Ltd
Simon Wilkinson	Of the Wilkinson Partnership
Martin Baylis	Appellant

FOR THE COUNCIL:

Karen Fossett	Principal Planner
Anthony Atkinson	Of Acorus

Hearing Documents

Document 1	Comparables April 2021
Document 2	Best Price Guide, The Wilkinson Partnership
Document 3	Marketing details for Great Brickhill, Ivy Lane
Document 4	Best Price Guide – Sold Subject to Contract, The Wilkinson Partnership