



Appeal Decision

Site visit made on 23 August 2021

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2021

Appeal Ref: APP/K3415/W/21/3274167

Sheriffs Ride, Stafford Road, Lichfield WS13 8JA

- 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 T Wrighton against the decision of Lichfield District Council.
 - The application Ref 20/00890/FUL, dated 6 July 2020, was refused by notice dated 4 November 2020.
 - The application sought planning permission for the erection of 2no replacement buildings for use as accommodation ancillary and incidental to Sheriffs Ride without complying with a condition attached to planning permission Ref 16/00755/FUL, dated 18 November 2016.
 - The condition in dispute is No 2 which states: The refurbished barn hereby approved shall be occupied in a manner which is wholly ancillary to the residential use of the dwelling known as Sheriff's Ride and shall not be used, sold or let as a separate dwelling unit.
 - The reason given for the condition is: For the avoidance of doubt and in accordance with the applicant's stated intentions, in order to meet the requirements of policy BE1 of the Local Plan Strategy and the Government guidance contained within the National Planning Policy Guidance.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. S73 applications 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 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. *Finney* established that it is beyond the powers under s73 to amend a condition that would result in a conflict between it and the description of development.
3. Although not raised by the main parties I sought both their views on the implications of *Finney* for this appeal. Only the Council responded, and I have taken their views into account in deciding this appeal.

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

4. I acknowledge that the appeal site is located within the 15km buffer zone of influence for the Cannock Chase Special Area of Conservation (SAC). Although not forming part of the Council's reason for refusal, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SAC. I will return to this matter later in my decision.

Background and Main Issue

5. Planning permission was granted for two replacement buildings to be used as accommodation ancillary and incidental to Sheriffs Ride subject to a number of conditions. One of these conditions required the refurbished barn to be occupied in a manner which is wholly ancillary to the residential use of the dwelling known as Sheriffs Ride.
6. The appeal proposal seeks to remove this condition to enable the building to be occupied as an independent dwelling house.
7. Notwithstanding the Council's refusal reasons, the main issue is whether s73 of the Act allows the development allowed by the original permission without the disputed condition.

Reasons

8. The operative part of the original permission is explicit in referring to the replacement buildings as being ancillary and incidental to Sheriffs Ride.
9. The proposed removal of the condition and its restrictions on occupancy would allow the appeal building to be used as a dwelling separate from Sheriffs Ride. The appellant does not seek to change the description of development as allowed under the original permission. However, their intention is to remove the condition in order to enable the accommodation to be occupied as an independent dwelling house. The building would therefore not be ancillary and incidental to the residential use of Sheriffs Ride.
10. The effect of the appeal proposal would be to allow a fundamental change in the use of the building to a separate, independent living unit. This would create a disaccord with the operative part of the original permission that refers to the building being used as accommodation ancillary and incidental to the main dwelling.
11. Accordingly, the removal of the condition would result in a conflict with the original description of development. As such, and having regard to *Finney*, I conclude that s73 of the Act does not legally permit the development granted under the original planning permission to be altered in this way because it would fundamentally change its 'operative' nature. Instead, it would be necessary for an application to be made seeking approval for the change of use of the building.

Other Matters

12. As highlighted above, the appeal site falls within the 15km buffer zone of influence for the Cannock Chase SAC. The condition relates to an existing building which has been occupied. The reasons for the condition did not relate to the SAC. Given the nature of the appeal, I am satisfied that there would be no likely significant effect from the condition being removed. Therefore, there

would be no adverse effect on the integrity of the European site. My finding in this respect is a neutral factor which does not serve to weigh either for or against the proposal.

Conclusion

13. For the reasons given above the appeal should be dismissed.

L M Wilson

INSPECTOR