



Appeal Decision

Site Visit made on 11 October 2021

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 November 2021

Appeal Ref: APP/P2114/W/21/3268190

The Aviator, Scotchells Brook Lane, Lake PO36 0JP

- 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 J Woodhouse against the decision of Isle of Wight Council.
 - The application Ref 20/00989/RVC, dated 23 June 2020, was refused by notice dated 26 August 2020.
 - The application sought planning permission for proposed conversion of restaurant to four holiday apartments without complying with a condition attached to planning permission Ref 19/00443/FUL, dated 15 November 2019.
 - The condition in dispute is No 4 which states that: *'The four holiday accommodation units hereby permitted shall only be used as holiday accommodation and shall not be used at any time as a main or permanent residence. The owner(s) or manager(s) of the accommodation shall maintain an up-to-date register listing the names of the occupiers of the units, the dates of occupation, and their main or permanent address of residence. The register shall be made available to the Local Planning Authority on request following reasonable notice'*.
 - The reason given for the condition is: *'To ensure that the accommodation is only used as tourist accommodation in the interests of the Island's tourism economy in accordance with the aims of Policies SP1 (Spatial Strategy) and SP4 (Tourism) of the Island Plan Core Strategy and the Good Practice Guide for Tourism'*.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal building was not in any active use. Works were in progress to alter it internally and externally and to partition it into four units. It is not clear if this is in connection with development approved by planning permission Ref 19/00443/FUL (the planning permission) or the development anticipated by the appellant in appeal application Ref 20/00989/RVC (the appeal application).

Background and Procedural Issues

3. The condition in dispute (No 4) was imposed when the Council granted the planning permission, which is for the change of use of the appeal building from a restaurant to four holiday apartments. Notwithstanding the description of development in the banner heading above, which is taken from the application form¹ and matches the description of development in the Council's decision notice for the planning permission, the appellant seeks the removal of condition

¹ Section 4

No 4 so that the appeal building can instead be used as four residential apartments (dwellings)².

4. In the appeal form³, the appellant stated that the description of development had not changed from that given in the application form but has, nonetheless, described the development as something different, namely 'Removal of condition 4 on 19/00443/FUL to allow four holiday apartments to be used for residential use'. This is the description used by the Council in the appeal application decision notice. Even if this changed description was agreed by the main parties, it is not the description of development that was applied for in the appeal application or granted by the Council in the planning permission.
5. Section 73 of the Act⁴ allows for applications for the development of land without compliance with conditions imposed on an existing planning permission. In the case of such applications, subsection 73(2) makes it clear that the only question that may be considered is that of the conditions subject to which a planning permission should be granted — ie, the same development but potentially different conditions. Furthermore, in the *Finney*⁵ case, the Court of Appeal held that the scope of 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 a planning permission — ie, to the description of the development for which planning permission had originally been granted.
6. In this current appeal, the effect of removing condition No 4 would be to facilitate the use of the appeal building as main or permanent residences, which this condition specifically prohibits. In those circumstances the use of the appeal building as dwellings would differ from that in the description of development in the planning permission. Accordingly, it is evident that condition No 4 cannot lawfully be removed in the way sought by the appellant without giving rise to an untenable conflict with the terms of the planning permission. This conflict arises because to do so would fundamentally alter the nature of the development, at odds with the description of development and purpose for which the planning permission has been granted.
7. I appreciate that the Council entertained, and then determined, the appeal application with a revised description of development and issued the decision that it did. Moreover, in that context, that the appellant has sought to address the Council's reasons for refusal, albeit including matters already rehearsed by the appellant at application stage in the appeal application. Nonetheless, in the circumstances of this case, the removal of condition No 4 is outside of my powers to do so under section 73 and I cannot proceed any further to consider this appeal or the planning merits of the proposal. The appellant may pursue a fresh planning permission for what he seeks, but not under section 73.

Conclusion

8. For the reasons given above, I conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR

² Application form section 5, Planning Statement, Grounds of Appeal and Final Comments by BCM

³ Section E

⁴ Town and Country Planning Act 1990, as amended

⁵ *Finney v Welsh Ministers & Others* [2019] EWCA Civ 1868