



Appeal Decision

Site visit made on 19 November 2021

by **S Edwards BA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10th January 2021

Appeal Ref: APP/P2114/W/21/3274249

New House Farm, 471 Newport Road, Cowes PO31 8PS

- 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 Andrew Gallop against the decision of Isle of Wight Council.
- The application Ref 20/01850/RVC, dated 24 October 2020, was refused by notice dated 21 December 2020.
- The application sought planning permission for demolition of existing dwelling; proposed replacement dwelling & associated works; swimming pool and pool house (revised scheme) without complying with conditions attached to planning permission Ref P/01282/18, dated 10 January 2019.
- The conditions in dispute are Nos 2 and 9 which state that:
- (2) *'The development hereby permitted shall only be carried out in complete accordance with the details shown on the submitted plans, numbered 51-2017 revision C, 51-2017 CD revision B, 51-2017-4 revision G and 514-2017-3 revision G'.*
- (9) *'Within 3 months of the occupation of the replacement property as shown on drawings 51-2017-3 revision G and 51-2017-4 revision G, the existing dwelling known as New House Farm, 471 Newport Road, shall be demolished to ground level and all associated materials removed from the site'.*
- The reasons given for the conditions are:
- (2) *'For the avoidance of doubt and to ensure the satisfactory implementation of the development in accordance with the aims of policy DM2 Design Quality for New Development of the Island Plan Core Strategy'.*
- (9) *'In order to ensure that the existing property is removed from site before the replacement dwelling hereby permitted is first occupied, in order to ensure that the development hereby permitted is carried out in accordance with the requirements of policy DM2 (Design Quality) and DM12 (Landscape, Seascape, Biodiversity and Geodiversity) of the Island Plan Core Strategy'.*

Decision

1. The appeal is dismissed.

Procedural Matters

2. In *Finney v Welsh Ministers & Others*¹, the Court of Appeal held that an application under Section 73 of the Town and Country Planning Act 1990 (the Act) 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.

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

3. Although the Court of Appeal's judgment had not been raised by the main parties, they were provided the opportunity to submit their views during the course of the appeal, as to whether or not the Section 73 appeal would be acceptable, in light of the *Finney* case.

Background and Main issue

4. Planning permission was granted in January 2019 for a replacement dwelling sited further back within the site than the original property. This was notably subject to a condition requiring the demolition of the original property within a set timeframe. As the replacement dwelling has now been constructed, there would be a breach of condition 9, if the original property known as New House Farm was not demolished within 3 months of the occupation of the replacement dwelling. The appellant however seeks to retain the original property and use it as self-contained holiday accommodation.
5. The main issue is therefore the effect of amending and/or removing the disputed conditions, in the context of an appeal made under Section 73 of the Act.

Reasons

6. The description of development of the original planning permission refers, amongst other things, to the demolition of the existing dwelling and the construction of a replacement dwelling. In *Finney*, the Court of Appeal held that the description of development in an existing planning permission cannot be amended at all. Only the conditions can be varied.
7. If the conditions in dispute were amended and/or removed, the original dwelling would not be demolished, and two properties would in effect remain on the site. And if I were minded to allow this appeal, the description of development (there is no distinction between use and built development) would remain intact and there would be a conflict between what is detailed in the description and the new permission.
8. As part of a new permission, the approved plans would show the two properties being retained on the site, and there would no longer be a condition requiring the demolition of the original dwelling. Given the principles established by *Finney*, the conditions would in effect alter the nature of what was originally permitted, which would be unlawful and go beyond the powers available under Section 73 of the Act. Any amendments could only be made provided that the new condition(s) do not fundamentally alter the original planning proposal for which permission had been granted. In that context, a fresh planning application would therefore be required.

Conclusion

9. In light of the *Finney* judgment, what is being sought goes beyond the powers available in the context of a Section 73 appeal, given that the description of development cannot be altered and that the conditions should be consistent with it. On this basis, the appeal fails.

S Edwards

INSPECTOR