



Appeal Decision

Site visit made on 15 February 2022

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2022

Appeal Ref: APP/Z3825/W/21/3272936

**Stonehouse Farm, Handcross Road, Plummers Plain, West Sussex
RH13 6NZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73A of the Act for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr G Cooper against the decision of Horsham District Council.
 - The application Ref DC/19/1650, dated 13 August 2019, was refused by notice dated 29 October 2020.
 - The application sought planning permission for provision of sustainable drainage system for management of waters emanating from and in connection with a previously approved dairy unit (under application DC/06/1106), comprising 5 reedbeds, 3 attenuation ponds and importation of material for associated raising of land levels (Field located to the northeast of the existing farm buildings) without complying with a condition attached to planning permission Ref DC/07/2250, dated 6 November 2008.
 - The condition in dispute is No 3 which states that: The proposed works, the subject of this permission, shall not be implemented other than in association with the construction of the proposed dairy processing unit the subject of planning permission DC/06/1106 and not in isolation or in connection with any other purpose.
 - The reason given for the condition is: The site lies in an area where, in accordance with policy DC1 of the Local Development Framework General Development Control Policies 2007, development which cannot be justified as essential to the needs of agriculture or forestry would not normally be permitted.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal seeks permission for the development allowed under planning permission reference number DC/07/2250 (the original permission) but without complying with the disputed condition. The reedbeds and attenuation ponds as allowed by the original permission have been constructed.
3. The planning application form and accompanying statement outlines the proposal to, in effect, vary the disputed condition to include reference to leisure use (fishing) and educational use. The appellant's statement of case suggests the condition could be revised to read "The three ponds and ancillary reed beds are to be used solely for sustainable drainage in association with the proposed dairy processing unit the subject of planning permission DC/06/1106 and such leisure or educational purposes as approved.". The submissions are clear in stating the intention is to amend the condition to allow use of the ponds for leisure fishing and educational purposes.

4. The appellant's submissions also refer to a proposal to allow the appeal development with the disputed condition either totally removed or varied to omit the final element that reads "and not in isolation or in connection with any other purpose". However, these proposed revisions are different to those indicated within the planning application documents and which have been considered by the Council and interested parties. I am concerned that prejudice or injustice may be caused if I take into account the latest suggested variations to the condition. Therefore, my decision is based on the original proposal to amend the disputed condition as indicated on the planning application form and in line with the alternative wording as set out above.

Main Issue

5. The main issue is whether section 73 of the Act allows the development permitted under the original permission subject to an amended condition 3 that refers to leisure and education purposes.

Reasons

6. The judgement handed down in *Finney v Welsh Ministers and Others* [2019] EWCA Civ 1868 (herein referred to as *Finney*) held that when considering applications under section 73(1) of the Act, the local planning authority must only consider the question of conditions. Such applications cannot be used to obtain planning permission that requires a variation to the terms of the 'operative' part of the original planning permission. Also, *Finney* established that amendments cannot be made to conditions so that a discrepancy would be created with the description of development.
7. The operative part of the original permission makes no reference to the development being used for any other purpose apart from the management of water. As such, the proposed amendment with reference to leisure and educational uses would allow the site to be utilised for purposes that are not explicitly referred to in the description of permitted development. Therefore, it would introduce a clear disparity between the operative part of the original planning permission and the revised condition.
8. Moreover, the Planning Practice Guidance (PPG)¹ suggests that minor material amendments should result in a development which is not substantially different from the one which has been approved. However, compared to the water management use as permitted, it is likely the proposed introduction of leisure and education uses would lead to more visitors coming to and moving around the site and other such activities. Even if the suggested uses are carried out to a limited extent as described by the appellant, the proposed revision to the condition would potentially lead to a development that is significantly different in terms of the nature of its use. As such, the proposed revision should not be treated as a minor material amendment under the terms of the PPG.
9. Therefore, and having regard to *Finney*, I conclude that section 73 of the Act does not allow the development granted under the original planning permission subject to an amended condition 3 that refers to leisure and education purposes as proposed. Instead, it would be necessary for an application to be made seeking planning permission for a change of use of the site.

¹ Planning Practice Guidance, Flexible options for planning permissions section, Paragraph: 017
Reference ID: 17a-017-20140306, Revision date: 06 03 2014.

Other Matters

10. The appellant argues that the disputed condition has been satisfied as the works allowed under the original planning permission have been implemented. However, it is not my role in dealing with this appeal to conduct an exercise as to whether the development granted under the original planning permission has been carried out in accordance with planning conditions. In any event, such a factor fails to address my findings in respect of the main issue.

Conclusion

11. For the above reasons, I conclude that the appeal should be dismissed.

Jonathan Edwards

INSPECTOR