



Appeal Decision

Hearing held on 1 March 2022

Site visit made on 1 March 2022

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2022

Appeal Ref: APP/H1840/W/20/3245884

**Shorthill Caravan Park, A449 Mitre Oak to Crown Lane, Crossway Green
DY13 9SH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73A of the Town and Country Planning Act 1990 (the Act) for the development proposed is the use of land for the stationing of caravans for residential purposes for 10 no. gypsy pitches, 1 site managers pitch together with the formation of additional hard standing and utility/dayrooms ancillary to that use, and the siting of 24 no. touring caravans for transit pitches for use by gypsy and travellers for which a previous planning permission was granted for a limited period.
 - The appeal is made by Mr Hubert O'Doherty against Wychavon District Council.
 - The application Ref 18/02270/CU was dated 18 October 2018.
 - The application sought planning permission for *the development proposed is the use of land for the stationing of caravans for residential purposes for 10 no. gypsy pitches, 1 site managers pitch together with the formation of additional hard standing and utility/dayrooms ancillary to that use, and the siting of 24 no. touring caravans for transit pitches for use by gypsy and travellers*. Planning permission for a limited period Ref W/14/00297/CU, on 24 February 2014.
 - The permission is subject to a condition requiring the cessation of the use on or before 4.5 years from the date of decision on APP/H1840/A/14/2229284 (the original permission).
 - The reason given for the condition is: 'in order to define the permission'.
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Decision

1. The appeal is dismissed, and planning permission is refused for the use of land for the stationing of caravans for residential purposes for 10 no. gypsy pitches, 1 no. site managers pitch together with the formation of additional hard standing and utility/dayrooms ancillary to that use, and the siting of 24 no. touring caravans for transit pitches for use by gypsy and travellers.

Applications for costs

2. An application for costs was made by the appellant against the Wychavon District Council. That application is the subject of a separate Decision.

Preliminary Matters

3. This appeal seeks to remove condition no.3, which was imposed on the original permission, time limiting the consent, which states: '*The use hereby permitted shall be for a limited period being the period of 4 and a half years from the date of this decision. At the end of this period the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use*

shall be removed, and the land restored to its condition before the development took place’.

4. It is agreed by both parties that the expiration of the time limiting condition imposed on the original permission, occurred at the end of January 2020. Nonetheless, the application subject of this appeal is dated 18 October 2018 and was therefore submitted whilst the original permission was extant. In addition, this appeal was submitted on 29 January 2020. Given the limited time before the expiry of the time limiting condition and the submission of the appeal, it was inevitable that the time limiting condition would expire during the course of the appeal.
5. Therefore, as the time limiting condition has expired, there is no extant permission to vary. However, where a use continues after the temporary period specified in the condition has expired, s.73A(2)(b) may be used to grant planning permission having retrospective effect. I have dealt with the appeal on this basis.
6. I accept that a s.73 application does not require the submission of drawings, including a site plan. However, in the case of the planning application, subject of this appeal, a site plan accompanied the application, which indicated that only part of the original site was to be considered. This submitted drawing excluded the location of the touring caravans for transit pitches for use by gypsy and travellers (the transit pitches). I have been presented with an either/or situation by the appellant, where it is advanced that the full site should be considered, as determined on the original permission, in the event that I found complications through considering part of the site. The Council raised concerns on this approach, but provided comments on both scenarios.
7. Given the details submitted, it is clear that the planning application for the appeal scheme was submitted to the Council for only part of the site that was approved under the original permission – i.e. omitting the transit pitches. This was also confirmed orally by the appellant at the Hearing. The appeal process should not be used to evolve a scheme and, in the interests of ensuring that no one with an interest in the outcome of the appeal is prejudiced, it is important that the details considered at appeal stage are essentially the same as those considered and consulted upon by the Council at planning application stage.
8. Therefore, consideration of the entire site, including the transit pitches, is not an option available to me in this instance, as it would evolve and materially alter the scheme that was originally submitted and potentially prejudice interested parties. I have therefore determined this appeal on the basis on the reduced site area, as shown on drawing 13_584B_ODOH1.

Main Issue

9. Given this background the main issue of this appeal is whether or not the condition can be removed as requested, having regard to the Act and other material considerations.
10. If so, it would be necessary to consider: Whether the proposed development would respect the scale of the nearest settled community, or whether it would dominate it; The general need for gypsy and traveller accommodation in the council area, and whether there is a need for additional sites for gypsies and travellers; The personal accommodation needs and circumstances of the

occupants of the appeal site, and the availability of alternative sites; and, Whether the proposed development would amount to “sustainable development” for the purposes of the national planning policy framework, with particular regard to its location.

Reasons

11. The planning application subject of this appeal follows on from a previous planning application¹ (the previous application), which was refused by the Council on 21 February 2018. The appeal scheme has resulted directly as a consequence from the outcome of the previous application.
12. The main parties have both sought opinion from Counsel in support of their relative positions on the s.73 application and whether or not the condition can be removed as requested. Consequently, a plethora of judgments have been referenced by the main parties, which I have had regard. Although, I do not agree with the Council that I could not create a new permission through s.73, I do find complications that prevent me from advancing beyond this technical matter.
13. Within both sets of judgments referenced by the main parties I find 2no. judgments² of particular relevance. It was held in *Lambeth* by the Supreme Court whether a condition restricting the use of the premises should be implied into a planning permission granted under s.73 by the local planning authority or, alternatively, whether the planning permission should be interpreted as containing such a condition. Summarising existing caselaw and interpretation, Lord Carnwath held that “Whatever the legal character of the document in question, the starting-point – and usually the end-point – is to find “the natural and ordinary meaning” of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense” and “The obvious, and...only natural, interpretation...is that the Council was approving what was applied for”.
14. I find in principle that a smaller site plan with a reduced red line could be used on a s.73 application, especially in the circumstances advanced by the appellant, for example a variation to the layout of a specific dwelling on a residential estate or the amendment of the opening hours of a retail unit located on a retail park. However, both theoretical scenarios would not necessarily require any changes to the description of the original development.
15. In *Finney*, the Courts established that an application under s.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 the original permission was granted. I accept that the time limiting element of the scheme is not listed within the description, but is by condition. Nonetheless, the appeal scheme is requesting that an element of the original development is no longer for consideration. The condition requested for removal would not necessarily affect the “operative” part of the permission itself. However, the submitted application seeks to exclude the transit pitches, which would require a change to the description.

¹ 17/01008/COU

² *Lambeth LBC V SSCLG & Aberdeen Asset Management, Nottinghamshire CC & HHGL Ltd* [2018] EWCA Civ 844, [2019] UKSC 33 (*Lambeth*) and *John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited* [2019] EWCA Civ 1868 (*Finney*).

16. I acknowledge, the possibility of the site being broken down into individual planning units and reference to a judgment³, where an approach, such that a split decision could be considered. However, as I am only considering part of the original site approved under the original permission, this is not an option available to me and therefore has little influence on my decision in this instance. I have also considered whether otherwise unacceptable development could be made acceptable through the use of conditions, but again, this is not possible, as the description of development would still require alteration.
17. Whilst I sympathise with the appellant, including his view that no other applications were available or suitable, I consider that the removal of condition no.3 as set out in the planning application submitted to the Council, would cause conflict with the original description of the development. Consequently, the grant of a new permission would result in conflict with *Finney*. In this instance, the creation of new planning permission omitting condition no.3 imposed on the original permission is beyond the powers under s.73 and cannot be made. In this case, no further action can be taken on the appeal, considering the above.

Conclusion

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

W Johnson

INSPECTOR

³ *Burdle v secretary of State for the Environment and another* [1972] 3 All ER 240

APPEARANCES

FOR THE APPELLANT:

Michael Rudd	Counsel – Kings Chambers
Matthew Green	Agent – Green Planning Studio Ltd
Joanne Taylor	Shorthill Caravan Park Manager

FOR THE LOCAL PLANNING AUTHORITY:

Howard Leithead	Counsel – No5 Chambers
Gavin Greenhow	Wychavon District Council
Denise Duggan	Wychavon District Council

HEARING DOCUMENTS

The following documents were submitted and accepted at the Hearing:

ON BEHALF OF THE APPELLANT:

- Hard copies of documents already submitted electronically (Updated Appeal Statement (the UAS); Appendices A to the UAS; Appendices B to the UAS; Updated Statement of Need For Gypsy and Traveller Pitches (the SON) and Appendices C to the SON.

ON BEHALF OF THE LOCAL PLANNING AUTHORITY:

- Legal Note dated 1 March 2022
- Explanatory note on 5 year land supply position (email sent at 10:45pm on 28 February 2022)
- Traveller and Travelling Showpeople Site Allocations Development Plan Document (email sent at 6:13pm on 28 February 2022)