



Appeal Decision

Site visit made on 16 August 2022

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2022

Appeal Ref: APP/D3125/W/21/3288375

Little Willow Oxford Road, Eynsham, Witney, OX29 4BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 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 Elvis Price & Mrs Jill Hoggett against the decision of West Oxfordshire District Council.
 - The application Ref 21/01187/S73, dated 16 March 2021, was refused by notice dated 16 September 2021.
 - The application sought planning permission for: *Non Compliance with condition 3 of Planning Permission 10/0813/P/FP to allow no more than 3 caravans (of which no more than two shall be a static caravan or mobile home) to be stationed on the site at any one time* without complying with a condition attached to planning permission Ref 13/0190/P/S73, dated 1 February 2013.
 - The condition in dispute is No 1 which states that: *No more than three caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than two shall be a static caravan or mobile home) shall be stationed on the site at any one time. Any caravans positioned on the site shall be capable of being lawfully moved on the public highway without division into separate parts.*
 - The reason given for the condition is: To limit the visual and neighbour amenity impact of the development. (Policy BE2 of the West Oxfordshire Local Plan 2011).
-

Decision

1. The appeal is dismissed.

Applications for costs

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

Preliminary Matters

3. The description in the banner heading above is taken from the application form. Whilst there is a different description on the Council's decision notice, there is clarification from the main parties within their submissions that this description was incorrect.
4. The main parties have been invited to submit comments in relation to the *Finney*¹ judgment. Therefore, no parties would be prejudiced if I was to take *Finney* into consideration in the determination of this appeal. I have taken into consideration the responses received from the main parties and I have dealt with the appeal on this basis.

¹ John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868

Main Issue

5. Given this background the main issue of this appeal is whether or not the condition can be removed/varied as requested, having regard to the Act and other material considerations, including the *Finney* Judgment.
6. If so, it would be necessary to consider: Whether the proposed development would provide sufficient amenity space for residents; the character and appearance of the site and surrounding area; flood risk and highway safety. The personal accommodation needs and circumstances of the occupants of the appeal site, and the availability of alternative sites would also likely require consideration.

Reasons

7. 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.
8. The appeal scheme is requesting that the number of caravans/mobile homes to be allowed on the site is increased to 6no. The original development is still a consideration and the condition requested for removal/variation would affect the “operative” part of the permission, as it would require a change to the description, which refers to 3no. caravans.
9. I sympathise with the appellant and acknowledge the comments received from the main parties with regard to *Finney*, and their views that there is no conflict with the proposal. However, I consider that the removal/variation of condition no.1 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*.
10. In this instance, the creation of a new planning permission removing condition no.1 imposed on the original permission and replacing it with the suggested variation proposed under the application subject of this appeal 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

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

W Johnson

INSPECTOR