



Appeal Decision

Site visit made on 12 September 2023

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2023

Appeal Ref: APP/P0240/W/23/3320841

Land adjacent to Chiltern View, Higham Road, Higham Gobion MK45 4RB

- 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 Nicky Murphy against the decision of Central Bedfordshire Council.
 - The application Ref CB/22/03536/VOC, dated 1 September 2022, was refused by notice dated 31 October 2022.
 - The application sought planning permission for erection of an agricultural barn without complying with a condition attached to planning permission Ref CB/21/04807/FULL, dated 8 April 2022.
 - The condition in dispute is No 2 which states that: "*The approved structure shall only be used for agricultural purposes*".
 - The reason given for the condition is: "*To prevent an inappropriate use and harm to the visual amenity of the area*".
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Decision

1. The appeal is dismissed.

Reasons

2. As set out above, S73 of the Town and Country Planning Act allows for a grant of permission for the development of land without compliance with conditions subject to which a previous permission was granted. This means the development that would be granted planning permission under a S73 application would be the same as the previous permission, but subject to different conditions.
3. The parties agree that the scope of S73 is not limited to minor material amendments, and significant changes to a development may be able to be made under a S73 application. However any new condition must not result in a conflict with the description of development, which would be unchanged from the previous permission.
4. In this case the appellant seeks planning permission for an agricultural building with the following condition: "*The approved structure shall only be used for agricultural purposes and any other use considered appropriate in the countryside*" instead of the existing condition set out in the header above. However a 'any other use' referred to in the suggested condition would be a non-agricultural use which would directly conflict with the description of the development which would remain to be an agricultural barn. As a result, it is not possible to grant a planning permission under S73 with the condition

suggested by the appellant in place. Rather, to use the building for non-agricultural uses, a fresh planning application would be necessary.

5. It is therefore not necessary for me to consider the planning merits of the development with the suggested condition in place.
6. It was also not unreasonable for the Council to impose the disputed condition restricting the use of the building to agricultural uses as that was the use granted planning permission. The disputed condition therefore does not restrict economic growth or rural diversification.
7. I have been referred to two appeals where planning permission was granted for agricultural barns where there were no conditions attached which expressly prevented non-agricultural uses. However, non-agricultural uses of those buildings would be contrary to the planning permissions; which were both specifically for agricultural buildings.

Conclusion

8. As the suggested condition would be in conflict with the description of development the appeal is dismissed.

A Owen

INSPECTOR