



Appeal Decision

by Susan Heywood BSc(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2024

Appeal Ref: APP/Y3940/W/23/3317020

**Oaksey Park Golf and Leisure, Oaksey Park, Oaksey, Malmesbury
SN16 9SB**

- 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 John Cooper against the decision of Wiltshire Council.
 - The application Ref PL/2022/03356, dated 27 April 2022, was refused by notice dated 5 November 2022.
 - The application sought planning permission for the erection of 12no. two and three bed holiday lodges and covered parking / bin storage and associated access without complying with conditions attached to planning permission Ref N/10/01773/S73, dated 30 July 2010.
 - The conditions in dispute are Nos 9, 11 and 12 which state that:
 - **Condition 9:** *Notwithstanding the Town and Country Planning (Use Classes) Order 1987 and the Use Classes (Amendment) Order 2005 (or any Order revoking and re-enacting those Orders, with or without modification), the building(s) Hereby (sic) permitted shall be used for holiday accommodation only and for no other purpose.*
 - **Reason:** *This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access and planning policies pertaining to the area, would not permit permanent residential accommodation.*
 - **Condition 11:** *The building(s) hereby permitted shall not be occupied as a persons' (sic) sole or main place or residence.*
 - **Reason:** *This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access and planning policies pertaining to the area, would not permit permanent residential accommodation.*
 - **Condition 12:** *The owners / operators of the site shall maintain an up-to-date register of the names of all owners/occupiers of individual units on the site, and of their main home addresses, and shall make this information available at all reasonable times to the Local planning Authority.*
 - **Reason:** *This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access and planning policies pertaining to the area, would not permit permanent residential accommodation.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's appeal statement indicates that an amendment to the application was sought, during the Council's consideration of the proposal, to

include the removal of Condition 14. Condition 14 on the original permission (N/10/01773/S73) requires the development to be implemented in accordance with the then submitted documents and plans.

3. Whilst it appears that the Council took into account amended plans in reaching their decision, the Committee Report and the Council's decision notice only refer to Conditions 9, 11 and 12 as being under consideration. They do not therefore appear to have amended the application to include Condition 14. Accordingly, if I were to consider the removal of Condition 14 in this appeal, it would be prejudicial to the Council and others who may have wished to make comments on this change to the application description. I have therefore considered the appeal on the basis that it seeks to remove Conditions 9, 11 and 12 only.
4. The appellant seeks to remove the conditions outlined above and replace with a condition allowing permanent occupancy by persons over 55 years of age only. The original permission stated that the development was for holiday lodges and the conditions sought to restrict the development to this type of accommodation.
5. The main parties have been invited to submit comments in relation to the Court of Appeal *Finney* judgment¹ and I have had regard to these comments. Consequently, no party would be prejudiced if I was to take *Finney* into consideration in the determination of this appeal and I have dealt with the appeal on this basis.

Main Issue

6. The main issue is whether or not Conditions 9, 11 and 12 can be removed and replaced with the suggested condition restricting occupancy to over 55s, having regard to the Town and Country Planning Act 1990 (the Act) and other material considerations, including the *Finney* judgement.
7. If the conditions could be varied, it would be necessary to consider whether the development would provide a suitable site for housing for over 55s, having regard to its location and local and national policies relating to development within the countryside; the need for the development; the accessibility of the site to local services and facilities whilst also having regard to the Council's housing land supply situation.

Reasons

8. In *Finney*, the Courts established that an application under s.73 of 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 the original permission was granted.
9. In this case, the conditions requested for removal, and the suggested replacement condition, would affect the "operative" part of the permission as it would require a change to the description of development for which the original permission was granted, which refers to holiday lodges.

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

10. I note the appellant's view that as the existing and proposed occupancy of the dwellings would fall within Class C3 of the Use Classes Order², an application under S.73 would not alter this original Use Class. However, the original description of development does not restrict the dwellings to Class C3 only, it specifically restricts them to holiday lodges. Consequently, the fact that holiday lodges and over 55s housing would fall within the same Use Class is not material to the consideration of whether the conditions can be removed and replaced as proposed, having regard to s.73 of the Act and the *Finney* judgement.
11. The Council accepts that, notwithstanding its decision to refuse the application, the proposed removal and replacement of the conditions would create a *Finney* conflict. They consider that the appeal is invalid for this reason and that a new full planning application would be required for the erection of housing for over 55s.
12. Having regard to the principles in the *Finney* judgment, I consider that the proposal as set out in the application to the Council would result in a discrepancy with the original description of development. If I were to allow the appeal, it would result in a change to this description, from holiday lodges to housing for over 55s.
13. I therefore conclude that the creation of a new planning permission, removing Conditions 9, 11 and 12 imposed on the original permission and replacing it with the suggested new condition, would be beyond the powers under s.73 of the Act and, having regard to the *Finney* judgement, the changes cannot be made. The effect is, in this case, that no further action can be taken on the appeal.
14. I cannot therefore consider the merits of the proposal as to do so would prejudice a future decision maker on any full application which may be submitted.

Conclusion

15. For the reasons set out above, I conclude that the appeal must be dismissed.

S Heywood

INSPECTOR

² Town and Country Planning (Use Classes) Order 1987 (as amended)