



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date **01 July 2024**

Appeal Ref: APP/P1615/W/23/3333774

Harts Farm, Chapel Lane, Redmarley, Gloucester GL19 3JF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Jacques De Wit against the decision of Forest of Dean District Council.
 - The application Ref is P1106/23/FUL, dated 25 August 2023 was refused by notice dated 27 October 2023.
 - The application sought planning permission for alterations and extension to the dwelling to provide annexed accommodation by varying condition 03 attached to planning permission Ref P1009/10/FUL, dated 25 May 2010.
 - The condition in dispute is No 3 which states that: The extension/annexe hereby permitted shall be used solely for purposes ancillary to the occupation and enjoyment of the existing property "Harts farm" as a dwelling and shall not be occupied as an independent planning unit of residential accommodation.
 - The reason given for the condition is to preclude the establishment of a separate residential unit on the site having regard to Policy (R)FBE.1 of the District Local Plan Review.
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Decision

1. The appeal is allowed and planning permission is granted for the variation of condition 03 to planning permission P1009/10/FUL, to allow for flexible use either as an annexe or as a holiday let at Harts Farm, Chapel Lane, Redmarley, Gloucester GL19 3JF in accordance with the terms of the application, Ref P1106/23/FUL, and subject to the conditions set out in the attached schedule.

Applications for costs

2. An application for costs was made by Mr Jacques De Wit against the Forest of Dean District Council and a counter claim was made by the Forest of Dean District Council against Mr Jacques De Wit. These are the subject of separate decisions.

Preliminary matters and background

3. Harts Farm is a grade II listed building located outside of a defined settlement boundary, within the parish of Redmarley. In 2010, planning permission Ref: P1009/10/FUL was granted for alterations and an extension to the dwelling to provide annexed accommodation to the main house. The space was to provide separate living accommodation in the form of the attached annexe for members of the family.
4. The permission included a condition (condition 03) that required the use and occupation of the accommodation to be restricted for purposes incidental and

ancillary to the host dwelling known as Harts Farm, and to not permit the use of the accommodation as a separate dwellinghouse. Although originally used for accommodation to house family members, the appellant's circumstances have since changed and the purpose of the application was to allow a flexible use of the accommodation as either an annexe to the main dwellinghouse or for use as a holiday let.

5. The application that is the subject of this appeal was submitted under section 73 of the Town and Country Planning Act 1990 (the 1990 Act). This enables the development of land without complying with conditions subject to which a previous planning permission was granted. Although within the same use class, the Council firstly considered that the variation of the condition would alter the nature of the development in a way that would materially differ from the approved permission and that, consequently, the planning application fell outside the scope of s73 of the 1990 Act and instead the appellant would need to apply for full planning permission. Secondly, the proposed variation of the condition was considered to conflict with the National Planning Policy Framework, Policy CSP.1 of the Core Strategy, and Policy AP.1 of the Allocations Plan. Although no further reference was made to this perceived conflict.
6. Since the refusal was issued by the Council, an application for full planning permission for the flexible use sought by the application to vary the condition has been granted¹.

Main issues

7. Accordingly, I consider that the main issues in this case to be whether the proposal can be determined under s73 of the Town and Country Planning Act 1990 ('the Act'), and if so, the impact of the proposal to vary the condition having regard to national and local planning policy.

Reasons

8. The Planning Practice Guidance provides that "Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted".
9. In *Finney v Welsh Ministers & Others* [2019] EWCA Civ 1868, the Court of Appeal held that an application under section 73 of the 1990 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 planning permission had originally been granted. In '*Finney*', planning permission had been granted for "the installation of 2 wind turbines with a tip height of 100m". A section 73 application was submitted to vary the plans condition which would allow for the tip height to be increased to 125m. This was clearly contrary to the description of development which sought permission for a turbine of 100m in height.
10. In the case before me, the description of development contained within the original planning approval is "alterations and extension to the dwelling to

¹ Planning permission reference P1575/23/FUL granted on 17 January 2024

provide annexed accommodation". The variation of condition 03 as described in the application form and the Council's decision notice - "to vary the condition to allow a flexible use either, as an annexe, or as a holiday unit" could be considered to conflict with the description of development depending on the circumstances of the proposed holiday let use and whether the use would go beyond ancillary. I note the appellant states in correspondence with the Council that the proposal 'seeks a change of use, but not, arguably, a change that is necessarily a material change of use'. However, the Business Plan states that 'the intention is to have the property available for holidays throughout the year with occasional own use'.

11. Nonetheless, since that judgement, and as referred to in the appellant's submissions, the case of *Freddie Reid vs SSLUHC* [2022] EWHC 3116 (Admin) has been handed down by the High Court. In the Reid Judgement, a section 73 application sought to remove an existing condition that restricted the use of thirty-four self-catering holiday units to holiday accommodation and not any other purpose, including within Class C3 of the Use Classes Order². The Council in that case argued that by seeking to remove the condition, it would enable the units to be used as permanent residential dwellings, which would be contrary to the description of development.
12. The Court found that when a condition is removed, the operative part of the permission remains intact, albeit in an unconditional way. If the condition restricting the units to holiday accommodation was removed, the way the development could change would have no effect on the description. The Court held that what can be done with a use of the land arises not only from the description of development, but from the operation of law, for instance a lawful change of use to another purpose within the same Use Class by the operation of s55(2)(f) of the 1990 Act.
13. While the appeal before me relates to the variation rather than the removal of a condition, the Reid Judgement is of relevance to the appeal. In this case, the condition was imposed to restrict the use of the annexe accommodation for purposes ancillary to the occupation and enjoyment of the occupants of the existing property. The primary component use is therefore residential and the disputed condition's function was a way of controlling occupation, as distinct from controlling use. The variation of the condition to allow the annexe to be also used for holiday accommodation would make it less restrictive. As such, I consider there to be no conflict with the description from the planning permission if the disputed condition 03 were varied as proposed. This does not alter the need to consider as a matter of planning judgement, the planning merits of varying the condition.
14. I have been provided with a copy of the officer report (and decision notice) for permission reference P1575/23/FUL which considered the planning merits of the proposal to vary the condition to allow for a flexible use of the annexe to include holiday accommodation. Overall, it was considered that the proposal would amount to a material change and would be acceptable in principle, would preserve the special character and significance of the Listed Building, would not impact upon the living conditions of a neighbouring resident, and would not adversely affect highway safety. Accordingly, the proposal was considered to comply with the National Planning Policy Framework, Policies CSP.1, CSP.4,

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

CSP.7, Policies AP.1 and AP.4, Section 16(2) of the 1990 (Listed Buildings and Conservation Areas) Act. Having read the submissions, I have no reason to conclude to the contrary.

15. As such, I will vary the approval given to the details pursuant to condition 03 of planning permission Ref P1009/10/FUL, granted on 19 July 2010 by deleting the disputed condition and substituting others as suggested by the Council in their appeal submission and consistent with those attached to planning permission reference P1575/23/FUL granted on 17 January 2024 for the same development.

Conditions

16. Decision notices for the grant of planning permission under section 73 are required to restate the conditions imposed on earlier permissions that continue to have effect. It also provides the power to not attach conditions, which were previously imposed, or to attach modified versions of them.
17. Notwithstanding condition 03 (which is the subject of this appeal), the planning permission was subject to several other conditions some of which are no longer necessary given that physical works are complete and long established. As such, the Council has provided an updated list of conditions that continue to have effect.
18. In this regard, the requirements for the development to be carried out in accordance with the approved plans and using closely matching materials are no longer necessary as the original planning permission has been implemented. These conditions have subsequently been removed in my decision along with the disputed condition.
19. The remaining conditions as suggested by the Council and as replicated in the decision notice pursuant to P1575/23/FUL granted on 17 January 2024, are attached to this permission. The conditions are considered reasonable and necessary in planning terms and their addition maintains a consistent approach to the development.

Conclusion

20. For the reasons given above the appeal should be allowed.

S A Hanson

INSPECTOR

Schedule of Conditions

01. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
02. The approved annexe shall be used as an annexe or for holiday purposes only and shall not be used as an individual main or sole dwelling. When occupied as an annexe, the annexe shall be used solely for purposes ancillary to the occupation and enjoyment of the host property, Harts Farm as a dwelling and shall not be occupied as an independent planning unit of residential accommodation. When occupied as a holiday let a register of all occupiers, detailing dates, names and usual addresses shall be maintained by the owner and shall be kept up-to-date, and available for inspection at all reasonable hours by officers of the Local Planning Authority.
03. The annexe/holiday let hereby permitted shall be permanently retained in the ownership and management of the occupants of Harts Farm and shall not be sold off as a separate unit.
04. No use of the building for holiday purposes shall take place until the building has been fitted with an electric vehicle charging point. The charging point shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 and Manual for Gloucestershire Streets. The electric vehicle charging point shall be retained for the lifetime of the development unless they need to be replaced in which case the replacement charging point shall be of the same specification or a higher specification in terms of charging performance.