



Appeal Decision

Site visit made on 28 October 2024

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2025

Appeal Ref: APP/T9501/W/24/3339238

Gardeners Cottage, Harbottle, Morpeth, Northumberland NE65 7DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for 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 Roger Harrison and Ms Peta Warrington against Northumberland National Park Authority.
 - The application Reference is: 23NP0081.
 - The application sought planning permission for: Construction of a garden room at Gardeners Cottage, Harbottle, Morpeth, Northumberland, NE65 7DG without complying with a condition attached to Planning Permission Reference: 19NP0023, dated 17 April 2019.
 - The condition in dispute is No. 4, which states that: *The garden room hereby approved shall only be used for domestic purposes ancillary to the main dwelling house of Gardeners Cottage and shall not be used as a self-contained dwelling or for business or tourism use.*
 - The reason given for the condition is: *To maintain planning in the interests of the residential amenity of the area, in accordance with Core Strategy policy 3 and the National Planning Policy Framework (NPPF).*
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Decision

1. The appeal is dismissed, and planning permission for Construction of a Garden Room at Gardeners Cottage, Harbottle, Morpeth, Northumberland, NE65 7DG without complying with condition 4 attached to Planning Permission Reference: 19NP0023 is refused.

Applications for costs

2. An application for an award of costs was made by Mr Roger Harrison and Ms Peta Warrington against the Northumberland National Park Authority.
3. The Northumberland National Park Authority (hereinafter the Authority) have also made an application for an award of costs against Mr Roger Harrison and Ms Peta Warrington.
4. These applications form the subject of a separate decision.

Preliminary Matters

5. The appeal is made against the failure of the Authority to give notice of its decision on an application for planning permission. However, this appeal is somewhat unusual in that, in the first instance it is concerned with matters of administration, namely the validation of a planning application.

6. The appellants submitted a planning application, dated 31 July 2023, to the Authority which was received on 1 August 2023. The application was made under Section 73 of the Town and Country Planning Act 1990 (as amended) (hereinafter the Act) to carry out the development permitted by Planning Permission Reference: 19NP0023, dated 17 April 2019, without complying with a condition attached to that planning permission.
7. On 14 August 2023 the Authority advised the appellants by letter that it was unable to validate and register the planning application because it was of the opinion that the permission sought by the application fell outside the scope of what can be permitted by Section 73 of the Act.
8. In the first instance, the appeal falls to be determined on whether the Authority was in receipt of a valid planning application that it ought to have registered and processed. If the answer to this is in the affirmative, it will then be necessary to consider the merits of the application.
9. In its submissions, the Authority also argue that the appellants, in their appeal submissions, have changed their proposal in a substantive manner so as to be a different proposal from that for which planning permission was sought. In respect of this the Authority sets out that it considered the application as originally submitted as one to vary the condition whereas at appeal the appellants are seeking the removal of the condition without replacement. The Authority also notes that whilst the application originally set out 6 grounds for removing or varying the condition, this has expanded to 8 at appeal.
10. On the first point, Section 6 of the planning application form for the current application sets out two questions. The first asks "Please state why you wish the conditions to be removed or changed". The second asks "If you wish the existing condition to be changed, please state how you wish the condition to be varied". The appellant answered both of those questions by reference to Appendices to the application. There is an implication that by answering the second question in Section 6 the application sought to vary the condition. Nevertheless, Appendix B of the application submission is phrased in such a way as to indicate that the appellants would accept an alternative condition if it was considered necessary.
11. The operation of Section 73 of the Act, which will be considered in more detail later, is such that it allows an application for planning permission to be made to carry out development without complying with a condition attached to a previous grant of planning permission. Whilst some applications, such as those seeking to substitute different drawings for those originally approved, may seek to explicitly vary a specific condition, Section 73 of the Act has as its starting point the removal of the condition in question. On the merits of the application, it may be necessary to impose a new differently worded condition in order to allow permission to be granted.
12. The reference in the appellants submissions to granting their Section 73 application "unconditionally" when taken within the context of the rest of the submissions and evidence is, in my view, a reference to the removal of Condition 4 only.
13. With regard to the Authority's second point a comparison of the initial application supporting documents and the appellant's statement of case indicates that the

points initially made are essentially repeated albeit in a slightly disaggregated form and in a slightly different order than in the initial submissions.

14. Given this, I do not consider that the appellants appeal submissions are substantially different from those made at the time of the initial planning application.

Main Issues

15. In the light of the above, the main issues in this appeal are:

- Whether there was a valid planning application before the Authority, and if so;
- Whether the development proposed by the application falls within the scope of Section 73 of the Act, and if so;
- Whether the disputed condition is necessary having regard to the development plan for the area and the effect of the proposed development on the living conditions of neighbouring residential properties.

Reasons

Whether there was a valid application

16. An application made under Section 73 of the Act is an application for planning permission.
17. There are particular requirements in respect of planning applications. These are set out firstly in Section 62(2) of the Act but more precisely in The Town and Country Planning (Development Management Procedure) (England) Order 2015 (hereinafter the DMPO) which was made pursuant to Section 62(1) of the Act.
18. Article 7(1) of the DMPO sets out the general requirements for planning applications. These are that the application must be made in writing to the local planning authority on a form published by the Secretary of State (or a form to substantially the same effect) and include the particulars specified or referred to in the form. Article 7(1)(c) sets out a number of other provisions, however, these do not apply to planning applications made pursuant to Section 73 of the Act, or Section 73A(2)(c) of the Act (planning permission for development already carried out)¹.
19. DMPO Articles 13 and 14 relate to the service of notice of the application on any owner or tenant, other than the applicant, of the land to which the application relates and the provision of a certificate that this requirement has been satisfied. Section 65(5) of the Act sets out that a local planning authority shall not entertain an application for planning permission unless this requirement has been satisfied.
20. Article 11(2) of the DMPO sets out that when a local planning authority receives an application that, *inter alia*, complies with Article 7, includes the certificate required by Article 14, contains any local information requirements, and the fee required to be paid in respect of the application, it must as soon as is reasonably practicable, send to the applicant an acknowledgement of the application. Article 11(5) sets out that where, after sending an acknowledgement as required by paragraph (2),

¹ Collectively, the provisions of Article 7 are referred to elsewhere as the national information requirements.

the local planning authority consider that the application is invalid, they must as soon as reasonably practicable, notify the applicant that the application is invalid.

21. DMPO Article 12 sets out a procedure to be followed where there is a dispute over validation requirements in respect of local information requirements. It is, however, common ground that this is not applicable to this appeal.
22. The above points are summed up in the Planning Practice Guidance (PPG) which sets out that the submission of a valid application for planning permission requires:
 - (a) a completed application form
 - (b) compliance with national information requirements
 - (c) the correct application fee
 - (d) provision of local information requirements²
23. It has not been put to me that the appellant's application was deficient in any of these respects. Nor is there anything in the evidence that I have seen that would indicate otherwise. In this regard there was a valid application before the Authority which met the requirements of the Act and the DMPO. On its face, the appellants application was a validly made application, purporting to be made under Section 73 of the Act.
24. The Act does make provisions in Sections 70A to 70D for a local planning authority to decline to determine planning applications in certain circumstances but none of these apply in this case and the Authority has not cited these in its reasons. No other legislative provisions have been cited which would warrant turning the application away prior to registration.
25. I therefore find that the planning application was validly made, and the Authority should have registered it and proceeded to a determination.
26. Nevertheless, there is a distinction between a procedurally valid application and the merits of that application. Whether it was in fact the correct application to have made goes to its merits rather than its validity in terms of the Act and the DMPO. Any finding that the new permission sought by the application would be *ultra vires* Section 73 of the Act would need to follow a consideration of the application itself having regard to what was proposed; if necessary, the relevant requirements of the Development Plan; and any other material considerations including case law.

Whether the development proposed by the application falls within the scope of Section 73 of the Act

27. Planning Permission Reference: 19NP0023, dated 17 April 2019, granted planning permission for a development described on the decision notice as "Construction of a garden room". The planning application form for this application, at Section 3 – 'Description of Proposed Works', described the proposal as "The construction of a garden room within the curtilage of Gardner's Cottage, Harbottle, NE65 7DG. The garden room to be used for the amenity of the owners of the cottage and for occasional use as accommodation for visiting family and friends. The garden room will be ancillary to the use of the cottage and connected to the mains services of the cottage." Whilst the Decision Notice omits this additional

² PPG - *Making an application*. Paragraph: 016 Reference ID: 14-016-20140306

description and merely refers to a garden room, it does contain the wording “as described in Application Reference: 19NP0023 and in the plans and drawings attached to it.

28. That permission was granted subject to four conditions, including the disputed condition. The imposition of this condition was not challenged or disputed at the time. The planning permission was implemented, and the development has been carried out and brought into use. Section 73A of the Act provides that applications for planning permission may relate to development already undertaken if they are for permission to retain buildings or works, or to continue a use of land, without complying with some conditions subject to which a previous permission was granted.
29. Although a point is raised over the use of the term “householder planning application”, this matters not. It is defined in the DMPO, but the term is only in respect of the simplified procedure for planning appeals relating to house extensions and curtilage buildings. It does not have any specialised meaning outside of this context. Whilst local planning authorities commonly use a simplified “householder” planning application form, such forms merely omit questions or sections that are generally not applicable to smaller scale developments at dwellinghouses. Nor does the use of the term householder application imply or impart any particular legal status on a development. It is merely an administrative convenience.
30. There are only two types of planning permission defined in the legislation, “outline planning permission” and what is commonly referred to as “full planning permission”. The original planning application may have been made using a simplified application form but what resulted was a “full” planning permission, granted subject to a number of conditions.
31. The Authority’s letter to the appellant of 14 August 2023 set out that it could not register the application as valid because “as a matter of law, the nature and scope of the application does not fall to be determined under Section 73”.
32. Section 73 of the Act applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted and sets out at sub-section (2) that when determining such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
 - (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
 - (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
33. Subsections (4) and (5) set out that Section 73 of the Act does not apply to time expired planning permissions and cannot change a condition to extend the time in which a development must be begun, or reserved matters submitted. Neither of which is relevant here.

34. The purpose of an application under Section 73 of the Act is to obtain relief from conditions without the need to submit a second full application³. The courts have also held that the consequences of removing or varying the condition are a material consideration in whether permission (under Section 73 of the Act) should be granted⁴. The courts have also noted that the original planning permission comprises not merely the description of the development in the operative part of the planning permission, but also the conditions subject to which that development was permitted to be carried out⁵. The “operative part of the planning permission” refers to the description of the development contained within it.
35. The practical effect of a permission granted under Section 73 of the Act is to create an independent permission to carry out the same development as previously permitted, but subject to the new or amended conditions.
36. There is a body of case law in respect of the scope of Section 73 of the Act. Whilst this all relates to circumstances where an application under Section 73 had already been determined, it is equally relevant to the determination process.
37. The Authority’s position is that the development proposed by the application that forms the subject of this appeal would be fundamentally different from that which was originally granted planning permission. The Authority sets out that in reaching the conclusion that it could not validate the planning application it had regard to the judgements in R. v Coventry City Council Ex p. Arrowcroft Group Plc [2001] P.L.C.R. 7 and John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868. These judgements relate to the scope of Section 73 of the Act.
38. In *Arrowcroft* a new wording for a condition was proposed that would have resulted in a development which was not the same as that described in the planning permission. It was found that a local planning authority is able to impose different conditions upon a new planning permission, but only if they are conditions which the council could lawfully have imposed upon the original planning permission in the sense that they do not amount to a fundamental alteration of the proposal put forward in the original application. In *Finney*, a proposed varied condition, substituting an amended drawing for an originally approved drawing, would also have resulted in a development that conflicted with the description of the development on the planning permission. The court made it clear that Section 73 of the Act cannot be used to change the description of the development.
39. This is now reflected in the PPG which sets out that “There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission”⁶ and “Section 73 cannot be used to change the description of the development”⁷.
40. Both *Arrowcroft* and *Finney* relate to the variation of conditions attached to a grant of planning permission. The matter of removing a condition without replacing it with a new condition was considered in Freddie Reid v Secretary of State for Levelling Up Housing and Communities & Another [2022] EWHC 3116 (Admin). In this judgement it was held that when a condition is removed, the operative part of

³ See Pye v Secretary of State for the Environment & North Cornwall District Council [1998] 3 PLR 76.

⁴ See Allied London Property Investment Ltd v Secretary of State for the Environment & Another (1996) 72 P&CR 327

⁵ Pye v Secretary of State for the Environment & North Cornwall District Council [1998] 3 PLR 76.

⁶ PPG - Flexible options for planning permissions. Paragraph: 013 Reference ID: 17a-013-20230726

⁷ *Ibid* Paragraph: 014 Reference ID: 17a-014-20140306

the permission remains intact, albeit in an unconditioned way, and that the removal of the relevant conditions would have no effect on the description. The appellant relies primarily on *Reid*.

41. The matter of whether an application would give rise to a fundamental variation to the permission such that the application fell outside the scope of Section 73 of the Act, in circumstances where the proposed variation of the condition would not give rise to any conflict with the description of the development in that permission was considered in *Armstrong v Secretary of State for Levelling Up, Housing and Communities & Cornwall Council* [2023] EWHC 142 (KB).
42. This case concerned an application and subsequent dismissed appeal to vary a condition on a planning permission for a house to substitute a new set of drawings for the originally approved drawings. This would have had the effect of changing the design of the new house. The Inspector who determined the appeal found that the proposed modifications were too fundamental to be considered under a Section 73 application. In that case the judge found that there was no authority that indicates a Section 73 application which is consistent with the “operative part” of a planning permission is nonetheless outside the scope of Section 73 of the Act if it is considered to involve a “fundamental variation.” It should be noted, however, that *Armstrong* was concerned with operational development rather than use of a building and involved substituting a new condition for an existing condition. Consequently, is not wholly analogous to the circumstances in this case.
43. The findings of the judge in *Armstrong* were approved by the Court of Appeal in *Test Valley Borough Council v Chala Fiske* [2024] EWCA Civ 1541 which noted that although a substantial or fundamental alteration may be sought under Section 73 of the Act, that does not dictate the outcome of the application. The planning authority has ample jurisdiction to determine the planning merits of any such application.
44. It is therefore necessary to consider what planning permission was originally sought, and granted, for and then consider what the current, disputed, application sought planning permission for.
45. The decision notice for Planning Permission Reference: 19NP0023 refers to the construction of a garden room. On its face, this would describe a room within a garden but does not speak to the proposed use. The drawings submitted with this application have not been adduced in evidence although the report considered by the Authority’s Development Management Committee contains illustrations which reflect what has been constructed at the site⁸. Whilst the figure showing the floor plan shows the interior space divided into two areas, there are no annotations on the drawing to indicate the use of these spaces. The Committee Report, however, notes that the garden room would consist of a living/ sleeping area and a shower room. This is consistent with what I saw when I visited the site.
46. The expanded description on the planning application form includes the words “The garden room to be used for the amenity of the owners of the cottage and for occasional use as accommodation for visiting family and friends. The garden room will be ancillary to the use of the cottage and connected to the mains services of the cottage”.

⁸ Appellants’ Statement of Case Appendix 5 page 6.

47. “Amenity” is not defined in the planning legislation and, although commonly used in a planning context, it is not a term of art. The Oxford English Dictionary defines amenity as “a desirable or useful feature or facility of a building or place” and “the pleasantness or attractiveness of a place”. The former is the most likely meaning in the context of the wording on the planning application form.
48. Although the extended description on the application form sets out that the use as sleeping accommodation would be occasional, it also notes that the garden room would be ancillary to the use of the cottage. The appellant’s submissions in respect of the appeal set out that the permission was sought to provide additional en-suite accommodation to replace a small bedroom within the main house which was repurposed to a different use.
49. When considering the use of land or buildings in planning terms, the words ‘incidental’ and ‘ancillary’ do not strictly mean the same thing. An incidental use is one which is functionally related to the primary use, for example a garden shed at a dwellinghouse. An incidental use would not include anything that would fall within the primary or principal use of a building or land. An ancillary use is a use which is different in character to the primary use but carried on within the same planning unit where there is a primary overall use of the site, to which the other uses are ancillary. For example, in a factory with an office and a staff canteen, the office and staff canteen would normally be regarded as ancillary uses to the primary use as a factory.
50. It is also necessary to differentiate between the concepts of an “ancillary use” and an “ancillary building”. An ancillary building, as a physical object, is merely a building which associated with, but subordinate to, a principal building. This is irrespective of the use to which the building itself is put.
51. As set out in the original planning application, and elaborated on in the appellants’ appeal submissions in respect of this case, the purpose of the garden room is to provide additional living accommodation for the main house. Within this context, even if the outbuilding itself is described as ‘ancillary’ to the house, its use will not be.
52. Reading the planning application and the decision notice as a whole, what planning permission was sought for, and was ultimately granted permission for is, in effect, a residential addition to the main house, i.e. it would be part and parcel of the principal dwelling house. For all practical purposes, it can be viewed as another room in the house, albeit one which is physically separate from the main building. Its use would, therefore, be neither “incidental”, nor “ancillary”, but an integral part of the ordinary use of the dwellinghouse. The appellant recognises this in their submissions which state that “It (*the garden room*) provides separate primary residential accommodation “ancillary” to the cottage by way of replacement accommodation for the loss of a bedroom in the host property”⁹.
53. Having established this, it is necessary to turn to the current disputed application and what that application sought permission for.
54. On its face, the current planning application seeks planning permission for construction of a garden room at Gardner’s Cottage together with the expanded description included on the original planning application form. Section 73 of the

⁹ Appellants Statement of Case Appendix 9 (Part 2 of 3) Page 5

Act may only be used to seek planning permission for the same act of development as was originally permitted.

55. Section 6 of the planning application form for the current application sets out two questions. The first asks "Please state why you wish the conditions to be removed or changed". The second asks "If you wish the existing condition to be changed, please state how you wish the condition to be varied". The appellant answered both of those questions by reference to Appendices to the application.
56. Appendix A to the current planning application sets out on its fourth page that the objective of the Section 73 application is to "allow the applicants (and any subsequent owners) to use their ancillary accommodation building for Tourism purposes (as described in ground 5) [of that same document]". Ground 5 included in Appendix A states (highlighted in red in the copy provided to me), among other matters relating to why the condition should be removed and which are not directly relevant to this main issue, that in the absence of the disputed condition, use of the garden room in conjunction with the main house for a tourism use including holiday letting, or second home, or holiday home purposes would be perfectly lawful¹⁰. The appellant does accept in this ground that if the garden room were to be let or used independently of the main house that this would potentially represent a material change of use.
57. It should be noted at this point that the terms "holiday letting", "second home", and "holiday home" are not synonymous. In its commonly understood meaning a holiday let is a property that is let on multiple short terms to different people or groups of people and is a commercial or business venture. A second home by contrast is a fully furnished dwelling that is owned or rented by a single user but not used as their principal residence. The term holiday home is potentially interchangeable with the latter, but it is also a general term that could be used to describe the category of houses that are commercially let for holiday or other recreational use.
58. Although it is not explicitly stated in Appendix A, a benign reading of the stated objective of the Section 73 application together with the highlighted section of Ground 5 would point to the application seeking to remove a perceived barrier to the use of Gardeners Cottage and its associated garden room for short term holiday letting. This was subsequently clarified in an email from the appellants to the Authority dated 17 August 2023 following the Authority's letter declining to validate the application¹¹. The relevant section reads "For the avoidance of doubt; The application seeks to remove the constraint within the condition that prevents the ancillary accommodation building being used for tourism purposes in conjunction with the host building it is ancillary to. The application does not seek to gain planning permission for the use of the garden room for tourism purposes independently of the host building."
59. At Appendix B to the application, the appellants set out that should it be necessary, they would be prepared to accept a condition adopting the wording of one of the model conditions set out in the retained Appendix A to Department of the Environment Circular 11/95 - Use of conditions in planning permission. This condition reads "The extension (building) hereby permitted shall not be occupied at

¹⁰ Appellants' Statement of Case Appendix 9 (Part 2 of 3) Page 7

¹¹ Included in an email string submitted as part of the Authority's Questionnaire return and entitled "Other Relevant Information – 1045070 – Email from NNP to Applicant 21 August 2023".

any time other than for purposes ancillary to the residential use of the dwelling known as []". Whilst the appellants' final comments on the appeal indicate that they have now resiled from that position and would not accept an alternative condition, this was not the case at the time the Authority made its decision not to validate the application.

60. In contrast to Appendix A of the planning application, the appellants' in their main Statement of Case set out that "For the benefit of the appellants as current owners of Gardeners Cottage, Harbottle, Northumberland, NE65 7DG and their successor in title, We (the appellants) made a S73 application to remove or vary condition 4 of 19NP0023 in order to obtain clarity as to exactly what the development in question could lawfully be used for and the reasons why."¹²
61. Later in that same statement¹³, the objectives of the appeal are set out as "To allow the appellants (and any subsequent owners) to use their ancillary accommodation building for Tourism purposes (as described in ground 6 and highlighted in red text) in accordance with the Use Classes Order 1987 made under section 55(2)(f) of the TCPA and to remove all parts of the condition lacking justification." Ground 6 within the main statement of case does not include any highlighted text. I have assumed that this reference is a typing error and should refer to Ground 5 which contains red highlighted text essentially similar to that in Appendix A to the planning application.
62. In their Final Comments the appellants state that the Section 73 application "sought to use our "Garden Room" in accordance with the original description of development and the operation of law." It then continues "The use / uses sought by our S73 application is / are exactly the same use / uses granted by permission ref 19NP0023 dated 17th April 2019."
63. Whilst the appellants' reasons for making the application would not normally be a relevant consideration, it is nevertheless germane to the disputed matters in this appeal. Despite being phrased in a number of different ways, the submissions made in support of the appeal make it abundantly clear that the appellants wish to establish what the garden room may be lawfully used for now and in the future. The appellant has not adduced any evidence to the effect that the disputed condition has in any way prevented them from using the garden room in the manner set out on the original planning application form, namely for the amenity of the owners of the cottage and for occasional use as accommodation for visiting family and friends.
64. If the appellant wishes to assert existing use rights, the use of a Section 73 application is not the way to do so. Specific provisions exist in planning law for this purpose in Sections 191 and 192 of the Act. Simply removing the disputed condition would provide no clarity at all on "exactly what the development in question could lawfully be used for and the reasons why". Nor would replacing it with the model condition originally mooted by the appellant at the time of the application. The phrase "purposes ancillary to the residential use of the dwelling" is not definitive. Indeed, as set out above, "purposes ancillary to the residential use of the dwelling" would not include the residential use as part of the dwelling that it currently has, because that is part of the primary residential use and not an ancillary use. In addition, removing the disputed condition would not, to my mind,

¹² Appellants' Statement of Case Page 4, second paragraph.

¹³ *Ibid* Page 8

confer any lawful use rights on the principal building as the planning permission in question relates only to the garden room that it permitted.

65. Whether or not the main house could be used as tourist accommodation, or for holiday letting, without the need for planning permission is not as clear cut as the appellant asserts. The Planning Practice Guidance sets out that in England, outside of London where other rules apply, planning permission is not required to short-term let a dwelling house, so long as there is not a material change of use of the property¹⁴.
66. There is no statutory definition of 'material change of use'. However, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of any given case.
67. Within the context of a Section 78 appeal, it is not within my remit to make a determination on whether or not an existing or proposed use is, or would be, lawful. Even if it were, the appellants have not provided any information on how any possible or potential use of the main house together with the garden room for "holiday letting or second / holiday home purposes" might operate, or the form that might take.
68. Within their submissions made as part of this appeal the appellants set out that they are seeking to remove the condition to allow the garden room to be used in accordance with the planning permission that was granted in 2019. That use, as stated on the application form for the original application, is use "for the amenity of the owners of the cottage and for occasional use as accommodation for visiting family and friends".
69. However, to my mind the appellants' stated reasons for making the Section 73 application go beyond reconciling the planning permission that was granted with the development for which permission was sought in 2019. It is also *inter alia* seeking to establish that the use of the development permitted as commercially let holiday accommodation in conjunction with the main house would be lawful.
70. No substantive evidence has been put to me that shows that the use of the original house or the property as a whole for short term commercial letting would be lawful. The appellant's case is based on an erroneous assumption that it definitively would be. However, whether or not this would involve a material change of use has not been established, nor can it be established through the operation of Section 73 of the Act.
71. Put simply, the appellants have not made the correct type of application. Determining the lawfulness or otherwise of an existing or proposed use clearly falls outside of the scope of Section 73 of the Act. There are specific provisions in Sections 191 and 192 of the Act for this purpose. In addition, based on their own submissions, the appellants are seeking to establish whether a proposed use of the main house, albeit in conjunction with the garden room, for short term letting would be lawful. Planning Permission Reference 19NP0023 only relates to the construction of the garden room.

¹⁴ Planning Practice Guidance Paragraph: 118 Reference ID: 13-118-20180222

72. The Authority's position is that the Section 73 application effectively sought a change of use of the garden room to tourist accommodation, through removing the condition. From the appellants' evidence that is not quite the case. The appellant's position, as set out in their submissions is more nuanced. Although phrased in a number of different ways, reading the appellants' reasons for making the application together, it is more a case of the appellant, or future owners of, the property might wish to use the whole of the property as tourist accommodation at some future point.
73. Simply removing the disputed condition as the appellants wish would not, for the reasons set out above, provide any more clarity on the potential lawful uses of the building. Notwithstanding that the appellants have stated that they would not accept an amended condition, Section 73 of the Act does provide for planning permission to be granted subject to conditions differing from those subject to which the previous permission was granted. Beyond the appellants' initial suggestion that a condition adopting the wording of one of the model conditions set out in the retained Appendix A to Department of the Environment Circular 11/95 could be used, and which I have previously set out is not suitable, no alternative conditions have been suggested to me that would clarify "exactly what the development in question could lawfully be used for and the reasons why"¹⁵.
74. This notwithstanding, I am of the opinion that I could not formulate a condition that would set out exactly what the development in question could lawfully be used for and the reasons why. This would be to invite me to speculate as to any and all uses the appellant may wish to use their property for now or in the future and determine whether such uses were *de minimis*, ancillary, or incidental to the use of the principal building as a dwellinghouse within Class C3 of the Use Classes Order, or would represent a material change of use. In any event, it is not part of my role in this appeal to cast about for conditions that have not been suggested, nor to require further representations in order to place myself in a position in which I could modify Condition 4 in a way which has never been requested¹⁶.
75. All of that said, having regard to the judgement in *Reid*, would the proposal result in the description of the development being changed from that which was previously permitted? Planning permission was granted for a garden room which, as stated on the application form, was to be used for the amenity of the owners of the cottage and for occasional use as accommodation for visiting family and friends. Stripping out the disputed condition would not alter this description.
76. This notwithstanding, although framed as seeking permission for a development without complying with a condition attached to a previous grant of permission, from the appellant's own submissions, the proposal is additionally seeking to establish the lawfulness or otherwise of using the main house and the garden building for short term letting. Whilst the appellant contends that such a use would be lawful, as set out above, that is based on an erroneous assumption. Planning Permission Reference: 19NP0023 does not encompass the main house, only the construction of the garden room. The conditions attached to this permission do not bite on the main house. This approach to establishing lawfulness or otherwise is fundamentally incompatible with the purpose of Section 73 of the Act.

¹⁵ Appellants Statement of Case Page 4.

¹⁶ See *Top Deck Holdings Limited v Secretary of State for the Environment* J.P.L. 1991, Oct, 961-965; [1991] 1 WLUK 554 (CA (Civ Div)) and *Georgiou v Secretary of State for Communities and Local Government & Anor* [2011] EWCA Civ 775

77. All of this leads me to conclude that applying the findings of the judge in *Reid*, the removal of the condition would not alter the operative part of the permission in so far as it relates to the operational development e.g. the construction of a garden room. However, the submissions in support of the application made to the authority and subsequently made before me at appeal stray so far into the territory of Sections 191 and 192 of the Act that the appeal proposal cannot reasonably be considered within the ambit of Section 73 of the Act. An application made under Section 73 of the Act cannot be, at one and the same time, an application made under either Section 191 or 192 of the Act. For this reason, it would not be possible in practical terms to make a positive determination on the application. To do so would be a misapplication of Section 73 of the Act. Consequently, the appeal must fail on this point.
78. In any event, even if I were to consider that the disputed condition was unnecessary, its removal would not leave the appellants any further forward in their quest for clarity for the reasons that I have set out above.
79. I therefore conclude that the development proposed by the application does not fall within the scope of Section 73 of the Act.

Other Matters

80. As I have found that the application does not fall within the scope of Section 73 of the Act, it is neither necessary, nor appropriate, for me to consider the merits, or otherwise, of the disputed condition.

Conclusion

81. For the above reasons, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR