



Appeal Decision

Site visit made on 29 January 2025

by **R Bartlett PGDip URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 March 2025

Appeal Ref: APP/D2510/W/24/3349119

Brackenborough Lawn, Cordeaux Corner, Brackenborough, Louth, LN11 0SZ

- 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 Wolds Park Homes Ltd against the decision of East Lindsey District Council.
- The application Ref is N/019/01685/21.
- The application sought planning permission for outline application (with layout and means of access to be considered) for the erection of a new leisure complex, erection of 137 holiday lodges, construction and formation of new vehicular access, pedestrian walkways, cycling path and parking facilities, erection of bunding up to 3 metres in height with associated landscaping works and detailed application for change of use, extensions and alterations to existing house and outbuildings to provide amenity rooms, storage space, office and shop, without complying with conditions attached to planning permission Ref N/019/01569/09, dated 14 February 2011.
- The conditions in dispute are Nos 5 and 6 which state that:
- Condition 5 - The lodges hereby approved must only be occupied for holiday purposes and must not be used as a person's permanent or main place of residence.
- Condition 6 - The owners/operators of the holiday park must maintain an up-to-date register of the names of all the owners/occupiers of the individual holiday lodges on the site and of their main home addresses and they must make this information available to the Local Planning Authority upon request.
- The reason given for both conditions is:
- The application has been approved for holiday purposes only. The application site lies in a location beyond a settlement boundary and no information has been provided to show that general market housing is required in this small hamlet. This condition has been imposed in relation to Policy T16 in the East Lindsey Local Plan Alteration 1999, Policy 13a in the East Midlands Regional Plan 2009 and Planning Policy Statement 1 - Delivering Sustainable Development and Planning Policy Statement 3 - Housing.

Decision

1. The appeal is dismissed.

Main Issue

2. The Council refused to remove the holiday occupancy conditions imposed on the original planning permission, and to impose a new condition restricting occupancy of the holiday lodges to permanent residential accommodation by persons over 55 years of age, on the basis that this would result in an unsustainable form of residential development in the countryside whereby future occupiers of the lodges would have poor accessibility to everyday services and facilities.
3. However, this raises another important question, which is whether the removal of the holiday occupancy conditions, and the imposition of a residential occupancy condition for persons aged over 55, would fall within the scope of Section 73 (S73) of the Town and Country Planning Act 1990 (as amended) (the Act), having regard to what was originally approved. The views of both main parties have been sought on this matter, and I have taken their responses into account in reaching my decision.

Reasons

4. The appellant is firmly of the view that the proposal would fall within the scope of S73 of the Act and points out that the Council and the Planning Inspectorate validated the application and the appeal on this basis. However, the validation of applications is set out under The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO). This is further summarised in the Planning Practice Guidance (PPG), which sets out the information that must be submitted with an application to make it valid. Neither the application or appeal were deficient in any of these respects and as such they were valid in procedural terms.
5. Whether or not the correct type of application was made, goes to the merits of the case having regard to what is proposed, and relevant material considerations, rather than its validity in terms of the DMPO. I accept that the Council initially determined the application on the basis that it did fall within the scope of S73, but that does not mean that I should disregard my concern. Having considered the matter further, the Council has now confirmed its view that the proposal to impose a new residential occupancy condition for over 55s, would conflict with the original description of the development, and as such, would fall outside of the scope of S73.
6. The purpose of an application made under S73 of the Act is to obtain relief from conditions without the need to submit a further full or outline application for the same development. My emphasis is on the fact that a new permission granted under S73 must be for the same development as that originally granted. The original planning permission was that described in the banner heading of this decision letter. From reading the original decision notice as a whole, planning permission was sought for, and granted permission for, a holiday and leisure use. This is reflected not only in the description of development, but also in the original conditions, the original S106 agreement, the policies and material considerations against which the development was assessed, and the Council's reasons for granting planning permission and imposing the conditions in question.
7. Question 5 of the submitted application form, dated July 2021, refers to the supporting information. The Planning Statement dated July 2021, states at paragraph 3.1: *"The current submission seeks to remove the planning conditions from planning permission reference N/019/01569/09 and allow year round occupation of the lodges. It is intended that the site would become a location for permanent residential accommodation for those over 55 years in age."* It goes on to state at paragraph 3.3: *"Occupation of the lodges would be controlled by a planning condition restricting their ownership/occupation to those who meet the age criteria."*
8. It is therefore clear that the application sought a fresh planning permission, with the existing holiday occupancy conditions removed, and a new permanent residential occupancy condition for persons over 55 years old imposed. A Supplemental Agreement under S106A of the Act was submitted during the course of the appeal, which seeks to delete clauses and definitions in the original agreement relating to "holiday purpose" and "short term rental periods" and to introduce definitions relating to qualifying persons and co-residents, and to restrict the occupancy of the timber cabins to qualifying persons and their co-residents as their permanent residence.
9. Whilst I acknowledge that the appellant has not sought to amend the description of development, the fact remains that by removing the holiday occupancy conditions, imposing an over 55s residential occupancy condition, and varying the S106 agreement accordingly, the development is no longer the same as that originally applied for and granted. Although both proposals would result in the construction of self-contained living accommodation, restricting the use of this accommodation to permanent residency by persons over 55, rather than for holiday use, would amount to a fundamental change between what was originally granted planning permission and what is now being

proposed. S73 does not permit a fundamental alteration to the permitted development by the addition or removal of conditions.

10. In *Arrowcroft*¹, it was held that a S73 determination involves only the question of conditions subject to which planning permission should be granted. It does not and cannot alter the nature of the planning permission. Consequently, any conditions imposed under S73 cannot be inconsistent with the nature of the planning permission. Although it is possible to impose different conditions under a fresh planning permission granted under S73, that is only the case if they are conditions which could lawfully have been 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*², it was found that an amended condition cannot be imposed if it would result in a development that conflicted with the description of the development.
11. In this case, a condition restricting the occupancy of the holiday lodges to permanent residencies by persons over 55, could not have lawfully been imposed or required in relation to the original planning permission, as such a restriction would not have met the test of fairly and reasonably relating to the development being permitted, which was essentially a holiday lodge and leisure park. Furthermore, such a condition would prevent the proposed holiday lodges from being used for holiday purposes, in conflict with the description of development for holiday lodges. The amended S106 agreement would fail the legal tests for planning obligations on the same grounds, it would not be directly, fairly and reasonably related to the description of development proposed.
12. In response to my concerns relating to the scope of S73, the appellant states that an over 55s condition was proposed due to the lack of such provision in the local area, and that the condition was also suggested by the County Council to ensure no impact on the provision of education. Regardless, of the reasons for the over 55s occupancy condition, the application was submitted, advertised and determined on the basis that this was proposed, and the appellant's case in support of their application and appeal, relies heavily throughout on the occupation of the development being restricted to over 55s. It is important that I determine the appeal on the same basis that it has been submitted, to avoid prejudicing the Council and other interested parties.
13. My attention has been drawn to other S73 case law, namely *Reid*³, *Armstrong*⁴ and *Fiske*⁵. However, these differ from *Arrowcroft* and *Finney* in that the conditions in those cases were being removed not varied or replaced with different ones that would result in a conflict between the description of development and the conditions. I acknowledge that removing the conditions in question would not alter the original description of development, but imposing an over 55s residential occupancy condition would conflict with it.
14. I am aware that substantial changes can be made to a development using S73 to amend the originally approved plans. However, the case before me does not seek to amend the plans, it seeks to replace the holiday occupancy conditions with an over 55s residential occupancy condition, in direct conflict with the original description of the development for holiday lodges. The description of development and operative part of the original planning permission cannot be amended under S73. In my view the proposed removal of holiday use conditions and their replacement with an over 55's residential condition would materially change the scope of the original planning permission. Granting a new planning permission under S73 incorporating an over 55s occupancy condition would introduce a fundamental inconsistency between the condition and the description of development contained in the notice of permission.

¹ *R. v Coventry City Council Ex p. Arrowcroft Group Plc* [2001] P.L.C.R. 7

² *Finney v. The Welsh Ministers* [2019] EWCA Civ 1868

³ *Reid v Secretary of State for Levelling Up, Housing and Communities* [2022] EWHC 3116 (Admin)

⁴ *Armstrong v Secretary of State for Levelling-Up, Housing and Communities & Anor* [2023] EWHC 176 (Admin)

⁵ *Test Valley Borough Council and Fiske* [2024] EWCA Civ 1541

15. I therefore conclude that the appeal does not fall within the scope of Section 73 of the Act. It is therefore neither necessary, nor appropriate for me to consider the merits, or otherwise, of the disputed conditions.

Conclusion

16. For the reasons given above, I conclude the appeal should be dismissed.

R Bartlett

INSPECTOR