



Appeal Decision

Site visit made on 22 June 2022

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2022

Appeal Ref: APP/L3245/W/21/3289513

Longville Arms, B4371 From Wall Under Heywood Darby Lane To Former South Shropshire District Boundary Easthope, Longville In The Dale, TF13 6DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mitchells Electricals (Mr Alf Murray) against Shropshire Council.
 - The application Ref 21/03048/VAR is dated 17 June 2021.
 - The application sought planning permission for the conversion of outbuilding to provide holiday let unit without complying with a condition attached to planning permission Ref 1/05/17285/F, dated 12 September 2005.
 - The condition in dispute is No 2 which states that: "a) No person, family or group of persons shall occupy any part of the holiday accommodation hereby approved for a period of more than 4 consecutive weeks; b) Not less than 10 weeks shall elapse between each period of occupancy by the same person, family or group of persons"
 - The reasons given for the condition is: "To ensure that the development approved is not used to establish a permanent residential use, contrary to Policies SDS3, SDS4 and ED3 of the South Shropshire Local Plan".
-

Decision

1. The appeal is dismissed and planning permission is refused.

Applications for Costs

2. An application for costs was made by Mitchells Electricals (Mr Alf Murray) against Shropshire Council. This application is the subject of a separate decision.

Preliminary Matters

3. The Council have not provided an up to date statement, instead using the statement for a previous appeal¹ at the site. It would appear, that had the Council determined the application, they would have refused it. The Council's objections to the removal of the holiday use restriction condition would have been on the grounds of inadequate amenity standards for a residential dwelling and adverse living conditions for future occupants due to the shared access arrangement, no outside amenity space and proximity to the main public house building resulting in the potential for noise and disturbance to the occupants of the appeal building. The Council also objects to the removal of the condition on the grounds that no affordable housing contribution is being offered or that

¹ APP/L3245/W/20/3254576

removal of the condition would not adversely affect the vitality of the pub and the local community.

Main Issue

4. The main issue is whether or not the changes to the disputed condition would fundamentally affect the description of development of the planning permission originally granted.

Reasons

5. Relevant advice is set out in the Planning Practice Guidance 'Flexible Options for Planning Permissions'. This explains² that there is no statutory definition of a 'minor material amendment' but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved. The guidance makes it explicit that section 73 cannot be used to change the description of development.
6. *Finney v Welsh Ministers & Others [2019] EWCA Civ 1868* (Finney) sets out that a section 73 application may not be used to obtain planning permission that would require a variation to the 'operative' part of the planning permission, in other words, the description of development for which planning permission has already been granted. It follows from Finney that where amending a condition would result in a conflict between the new condition and the description of development, then that particular amendment is beyond the powers under section 73 and cannot be made.
7. Having regard to the principles of the Finney judgement, the original permission was specific in allowing only holiday let use and, from that, condition 2 stated that no person, family or group of persons shall occupy any part of the accommodation for a period of more than 4 consecutive weeks and there must be a 10 week gap between each period of occupancy by the same person or group of persons. The reason for that condition clearly stated that it was imposed in order to ensure that a permanent residential use was not established.
8. The proposed removal of condition 2 seeks to predominantly allow the use of the building as a residential dwelling. The removal of the condition would allow persons occupying the building to do so as their permanent residence.
9. This would be a fundamental alteration of the development already approved and permit a development, beyond the scope of what was previously considered acceptable, and likely to result in changes to the character and nature of the use. Setting aside any merits to the changes, the proposals would result in a discrepancy with the original description of development and, were I to allow them, there would be a knock-on-effect in altering the terms of the original planning permission.
10. Whilst no new buildings or other physical development are proposed, the appeal scheme would represent a material change of use and therefore constitute development under section 55 of the Act. However, the proposed variation of condition would fundamentally conflict with the description and extent of the original planning permission.

² Reference ID: 17a-017-20140306

11. The proposal therefore cannot be considered as a minor material amendment under section 73 of the Act. The effect is to dismiss the appeal, although it is open to the appellant to apply for planning permission for a revised development. To permit the variation proposed under this appeal would fail to accord with the principles set out in *Finney*. The appeal must therefore be dismissed on that ground, and without any consideration of the substantive planning matters that arise. In this case, those that relate to living conditions, affordable housing and vitality and viability of a public house and the community.

Conclusion

12. For the reasons set out above, I dismiss the appeal.

Tamsin Law

INSPECTOR