Case Name: *Parkview Homes Ltd, R (On the Application Of) v Chichester District Council* [2021] EWHC 59 (Admin) (15 January 2021)

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Commentary:
In this judicial review claim the Defendant Council's decision to grant planning permission pursuant to s.73 of the Town and Country Act 1990 to Sussex Inns Limited was quashed.

The Original Permission granted the change of use of the "Vestry" to a bar and music venue, with a hotel above it. The s.73 Permission granted amended the opening hours and noise limits. The claim was brought by Parkview Homes Limited, who owns the adjoining property which is under development for residential accommodation.

The four grounds of challenge were:

(1) The s.73 Permission amounts to an unlawful variation of the Original Permission that is beyond the scope of the Council's powers under section 73 of the 1990 Act;

(2) It is irrational to rely upon an informative attached to the s. 73 Permission to secure noise mitigation necessary to make the development acceptable;

(3) The failure to publish the additional EHO consultation responses or consult the Claimant on the revised noise mitigation proposals was procedurally unfair;

(4) It was irrational to conclude that the proposed noise mitigation measures would ensure that there would be no harmful impact on the future residential occupants of 19 Southgate in the absence of any further assessments to demonstrate that acceptable noise levels could in fact be secured.

David Elvin QC, sitting as a Deputy High Court Judge, found the Defendant's decision to grant the s.73 Permission unlawful on the basis of Grounds 1 and 2 alone.

In respect of Ground 1, it was held that the s. 73 Permission infringes the Arrowcroft principle since the restriction imposed by the new condition 2 is inconsistent with the description of the development in the Original Permission. It is clear from the Finney decision that the operative terms of a permission cannot be changed pursuant to s. 73 and although the s. 73 Permission does not purport to amend the operative words, contrary to the ratio in Finney, it seeks to create the same effect by imposing conditions inconsistent with it.

In respect of ground 2 it was concluded that it was perverse of the Defendant through its officers to note the importance of the noise limiter but to fail to secure compliance by some means, or to consider deferral or even refusal, if compliance could not be secured.

David Elvin QC concluded that this is a case of multiple errors in the decision-making

process, including in the consultation process, and in the substance of the permission issued and therefore the decision and the s.73 Permission is quashed.

Case summary prepared by Amy Fender