



Appeal Decision

Site visit made on 26 April 2021

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 July 2021

Appeal Ref: APP/P2935/W/20/3249579

86-90 Front Street East, Bedlington NE22 5AB

- 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 due to, as the appeal form states, a dispute over provision of local list documentation.
 - The appeal is made by J&W Lowry Ltd against Northumberland County Council.
 - The application Ref: 19/04938/FUL, is dated 17 December 2019.
 - The development proposed is described as 'Resubmission of approved planning application 17/02932/FUL. Erection of new building comprising of 12 self-contained 1 bedroom apartments (use class C3) for specialised independent supported living with associated external works and car parking.'
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Decision

1. The appeal is dismissed.

Procedural Matters and Reasons

2. The appeal was submitted on 24 March 2020 on the basis that the Local Planning Authority (LPA) 'failed to give notice of its decision within the appropriate period because of a dispute over provision of local list documentation.' As the main issue of dispute between the parties concerned the payment of a fee rather than the submission of local list documentation, the validity of the application and the appeal was queried by the Planning Inspectorate.
3. Following correspondence with the appellant, the Planning Inspectorate confirmed that the appointed Inspector would examine the fees issue as a precondition for establishing the validity of the appeal. I have therefore considered this matter at the outset of my Decision. I am satisfied that no main party has been prejudiced by this approach.
4. Planning control is overseen by a comprehensive body of legislation that sets out how it is to operate. This comprises what an application is required to include and what elements are within the scope of consideration by the LPA at application stage and an Inspector appointed by the Secretary of State at appeal stage.
5. The requirements, in so far as they are relevant to this appeal, are set out in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (the Fees Regulations) and the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO).

6. The appellant submitted an application for the 'demolition of existing building and construction of new building comprising of 12 independent living bedrooms for adults with specialist healthcare needs with associated car parking in under-croft area' on 15 August 2017. During the determination of the application the number of units proposed was reduced to 11 and the scheme was subsequently granted approval by the LPA on 8 January 2019¹. A variation of condition 2 (approved plans) of the permitted scheme was granted approval by the LPA on 22 November 2019². The appellant then submitted a revised application (the subject of the appeal) on 17 December 2019, increasing the number of units proposed from 11 to 12 and with some minor amendments to the scheme³.
7. In submitting the revised application the appellant did not include the payment of a fee. He contends that, as the application satisfies the relevant sections and conditions set out in paragraphs (1) and (2) of Regulation 8 of the Fees Regulations, the proposal benefits from a 'free go'. Following consideration of the revised application, the LPA refused to validate and determine it until the appellant submitted a further fee. The LPA concluded that the addition of a unit was 'a significant change' and was not exempt from the payment of a fee.
8. Subsequently, on 24 January 2020, the appellant served a notice on the LPA under Article 12 of the DMPO. This was on the basis that, 'the additional information which has been requested (the fee) is considered unreasonable and therefore the applicant requests that the requirement be waived.' In addition, on 24 March 2020, this appeal was submitted to the Planning Inspectorate.
9. The main issue of disagreement between the parties concerns whether or not the revised application benefits from a 'free go', having regard to Regulation 8 of the Fees Regulations and the Planning Practice Guidance⁴. Principally, whether or not the revised proposal is of the same 'character or description' as the development already permitted, as required in section 8(1)(a) of the Fees Regulations.
10. However, in the first instance, consideration needs to be given as to the validity of the appeal, having regard to the matters covered under validation disputes as outlined within the DMPO.
11. Article 7(1) of the DMPO sets out the general requirements for planning applications and Article 11 stipulates the general provisions relating to applications. Article 11(2)(e) and Article 11(3) cover local list requirements and refer the reader to Article 34. Crucially, under Article 11(2) the matter of a fee (Article 11(2)(f)) is separate from any local list requirements.
12. Article 34(4) of the DMPO sets out what a valid application is and Article 34(5) sets out what a non-validated application is. Article 34(4)(e) and Article 34(5)(e) are the references to the local validation list. Article 34(6) sets out when these apply. Comparable to the above, fees are mentioned separately from other requirements (under Article 34(4)(f) and Article 34(5)(f)).
13. Central to the consideration of this appeal, Article 12 of the DMPO confirms the validation dispute procedure. Article 12(1)(b) states that the applicant can

¹ Application Ref: 17/02932/FUL. Proposed demolition of existing building and construction of new building comprising of 11 independent living bedrooms, with associated car parking.

² Application Ref: 19/02744/VARYCO.

³ Application Ref: 19/04938/FUL.

⁴ Planning Practice Guidance, Paragraph: 040 Reference ID: 22-040-20141017.

serve a notice of a validation dispute to the local planning authority when they consider 'any particulars or evidence required do not meet the requirements set out in Article 34(6)(c).' Article 34(6)(c) states: (c) the particulars or evidence the authority require to be included in the application— (i) are reasonable having regard, in particular, to the nature and scale of the proposed development; and (ii) are about a matter which it is reasonable to think will be a material consideration in the determination of the application.

14. On this basis, the legislation is clear that local validation list requirements are the only thing that a 'validation dispute' appeal can concern itself with. The issue of whether or not a fee is required to be paid is an entirely separate matter and falls outside of the scope of the validation dispute procedure set out in Article 12 of the DMPO. Consequently, there is no legitimate right to appeal on these grounds and, in this respect, the appeal is not valid. Even if it were the case that, as stated by the appellant, the LPA failed in their duty under Article 12(3), (4) and (5) of the DMPO, this outcome would not be altered.
15. Furthermore, even if I considered there to be a legitimate right to appeal, section 8(1)(a) of the Fees Regulations is unequivocal in stating that it is the LPA which needs to be satisfied that the development is of the same character or description as the development to which the application relates. As such, it is a matter for the LPA to assess and conclude upon and not within my jurisdiction as an Inspector appointed by the Secretary of State to make a judgement on.
16. The appellant strongly contests the LPA's interpretation of Regulation 8 of the Fees Regulations and their assessment of whether or not the revised application and development satisfies the relevant sections and conditions. However, it is the LPA's considered opinion that the application does not meet section 8(1)(a) and that a further fee is therefore payable. As a fee is due and has not been paid, the application cannot be considered as valid under Article 11(6)(b) of the DMPO and therefore neither can the appeal. The fact that a fee was paid for the original application which was submitted for 12 units is not determinative in this instance, as the LPA have deemed that the two applications are sufficiently different enough to warrant a further fee.
17. Taking the above into account, the only conclusion that I can reasonably reach is that the appeal should fail. Consequently, it is not necessary for me to consider the planning merits of the case.

Other Matter

18. I am aware of the representations made by several interested parties objecting to the proposal on a number of grounds and which highlight alleged procedural inadequacies by the LPA. Nevertheless, the procedural issues raised fall outside the extent of matters which can be considered as part of an appeal under section 78 of the Act. In addition, of the planning matters which can lawfully be assessed as part of the appeal, given my findings above, it is not necessary for me to examine these issues further.

Conclusion

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

F Cullen INSPECTOR