



Appeal Decision

Site visit made on 22 February 2024

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th April 2024

Appeal Ref: APP/M2270/W/23/3330261

Bonzos Field, Goudhurst Road, Horsmonden, Tonbridge, Kent TN12 8AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr A Clemson against the decision of Tunbridge Wells Borough Council.
 - The application Ref 22/03575/FULL, dated 6 January 2023, was refused by notice dated 17 April 2023.
 - The development proposed is removal of fire damaged mobile home, stables and shed. Construction of detached, single storey three bedroom dwelling.
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Decision

1. The appeal is not determined, for the reasons set out below.

Procedural Matters

2. Section 79(1) of the Town and Country Planning Act 1990 (the Act) allows the Secretary of State to deal with an appeal as if it had been made to him in the first instance and s79(6) confirms that if during the determination of an appeal in respect of an application for planning permission, the Secretary of State forms the opinion that planning permission for the development could not have been granted by the local planning authority, he may decline to determine the appeal. Section 65 of the Act sets out requirements with respect to giving notice of applications for planning permission and s65(5) is clear that a local planning authority shall not entertain an application for planning permission unless any requirements imposed by this section have been satisfied.
3. Regulation 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the Regulations) confirms that an application for planning permission must be accompanied by a plan which identifies the land to which the application relates. Although not part of the legislation, the Planning Practice Guidance (PPG) advises that "The application site should be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (eg land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings)"¹.
4. In the case of this appeal, the red line extended to a public footpath, but not to the adopted highway. No other means of access to the site has been identified, nor does there appear to be the potential for there to be any other way to access the proposed development. It is my view that the land necessary to carry out the proposed development would include the land along the public

¹ Making an application Paragraph: 024 Reference ID: 14-024-20140306 Revision date: 06 03 2014

footpath until its point of connection with the adopted highway. The submitted plans therefore do not adequately identify the land to which the application relates.

5. This point was brought to the attention of the parties in a representation made to the Council during its determination of the application. A similar representation was also made direct to the appeal. It also identified that the public footpath was in multiple ownership, including a section of land which was not registered. This is a point which should have been comprehensively addressed prior to the original determination of the application by the Council, who subsequently consider that the application should not have been validated.
6. There is a discretion to allow an appeal to proceed notwithstanding a failure to comply with the statutory requirements. This discretion should only be exercised following full regard to all the circumstances². In this case, not only would notice have to be served on the owners of the footpath, there would have to be a newspaper advertisement as one of the landowners appears to be unknown. The failure to carry this out has the potential to cause prejudice. Furthermore, additional consultation could give rise to further issues which may be relevant to the interested parties in this case. I could not be certain that there would not be prejudice to those parties were further representations to be made.
7. I have found that the planning application the subject of this appeal was not validly made as the plans submitted with it did not identify all the land to which it related. Consequently, the correct steps to notify landowners were not taken. There would be the potential for there to be prejudice to interested parties were measures taken to address this during the appeal process. I therefore decline to determine the appeal.

J Downs

INSPECTOR

² Maximus Networks Ltd v SSHCLG & Others [2018] EWHC 1933 (Admin)