

Appeal Decision

Site visit made on 30 August 2024

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2024

Appeal Ref: APP/P2935/W/24/3338672

Land north of Togston East Farm, Togston, Morpeth NE65 0HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against the failure of the local planning authority to give notice within the prescribed period of a decision on an application for planning permission following the service of a non-validation notice under Article 12(3)(ii) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).
 - The appeal is made by Northumbrian Leisure Limited against Northumberland County Council.
 - The application Ref is 23/03213/FUL.
 - The development proposed is the change of use of agricultural land to static and touring caravan/holiday park with creation of 100no. pitches, associated infrastructure, landscaping and recreational areas.
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Decision

1. The appeal is dismissed.

Procedural Matters and Reasons

2. On 31 August 2023 the Council invalidated the planning application the subject of the appeal. There were three invalid reasons provided. However, the evidence before me indicates that shortly afterwards the appellant and the Council agreed that two of the invalid reasons had been satisfactorily resolved. The single unresolved invalid reason relates to the fee paid. The appellant paid a fee of £462 but the Council subsequently requested an additional payment of £23,693.
3. On 15 September 2023, the appellant served a notice on the Council under Article 12 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO). This was on the basis that the additional payment of £23,693 was not required and should, therefore, be waived. In response, the Council maintained its position that the additional fee was required.
4. The appellant subsequently lodged an appeal, and the appeal form confirms that the basis on which the appeal has been submitted is that the Council has failed to give notice of its decision within the appropriate period because of a dispute over the provision of local list documentation.

5. Therefore, the matter in dispute relates to the fee applicable to the development proposed. It does not relate to a dispute over documentation submitted as such. Accordingly, 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.

The article 12 dispute

6. Article 11 of the DMPO states that a planning application is invalid if it is not a valid application within the meaning of article 34(4) or, it is not a non-validated application within the meaning of article 34(5).
7. Article 34(4)(e) sets out that, in the case of a valid application, the particulars or evidence required by the local planning authority (LPA) under section 62(3) of the Town and Country Planning Act 1990 (the Act) must be included – this is the local list documentation. Article 34(5)(e) then sets out that a non-validated application must include the local list documentation except those documents specified by the applicant in a notice sent to the LPA under article 12(1) of the DMPO. In the case of both a valid or non-validated application, the requirement for a fee is separately set out at article 34(4)(f) and 34(5)(f) respectively.
8. Article 12 of the DMPO confirms the validation dispute procedure. Article 12(1)(b) states that the applicant can serve a notice of a validation dispute to the LPA when they consider any particulars or evidence requested do not meet the requirements set out in Article 34(6)(c). Article 34(6)(c) states that the particulars or evidence the LPA require to be included in the application must be, firstly, reasonable having regard in particular to the nature and scale of the proposed development; and, secondly, are about a matter which it is reasonable to think will be a material consideration in the determination of the application.
9. Altogether this means that local list documentation requirements are the only matter that an Article 12 validation dispute can concern itself with. The issue of the requisite fee to be paid is an entirely separate matter and falls outside of the scope of the validation dispute procedure. Consequently, there is no legitimate right to appeal on the grounds submitted by the appellant and, in this respect, the appeal is not valid.
10. However, Section 79 of the Act sets out, amongst other matters, that on an appeal made under Section 78 of the Act the Secretary of State may deal with the application as if it had been made to him in the first instance.
11. On this basis, and despite having found that the appeal falls outside the scope of the Article 12 procedure, I can, nevertheless, determine whether the fee which has been paid is correct and, in turn, the validity of the planning application.

The requisite fee

12. For a planning application to be valid, it must be accompanied by a fee required to be paid in respect of the application (article 34(4)(f) of the DMPO). The requisite fee is set out within the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (the Fee Regulations). The requisite fees within

the Fee Regulations have been the subject of amendments, the last being brought about via the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023. However, the planning application the subject of the appeal was submitted prior to these amendments coming into force, and the fee increases it introduced should not be retrospectively applied to the proposal. Therefore, and for the avoidance of doubt, I have had regard to the Fee Regulations as they stood at the time the planning application was submitted in August 2023.

13. Regulation 3 of the Fee Regulations requires a fee to be paid to the LPA, calculated in accordance with Schedule 1. Schedule 1, Part 1, Chapter 1 then requires that the fee payable shall be calculated in accordance with the table set out in Part 2 and paragraphs 11 and 14.
14. The Part 2 table sets out the fee payable in respect of different categories of development. This includes development involving the erection of buildings and that involving the material change in use of a building or land. In this case, the fee which has been paid to the Council is solely that for the making of a material change in use of land – category 13.
15. The Caravan Sites and Control of Development Act 1960 (the 1960 Act) defines the term caravan as being any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include— (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent.
16. Furthermore, the Caravan Sites Act 1968 (the 1968 Act) sets out what is meant by a twin-unit caravan. As a part of this and, in contrast with the definition of a caravan within the 1960 Act, the 1968 Act establishes size limitations for twin-unit caravans. These being a maximum length (exclusive of any drawbar) of 20 metres (m), maximum width of 6.8m and a maximum height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level) of 3.05m.
17. A caravan which would meet the descriptions laid out within the 1960 Act and the 1968 Act, as applicable, would be a mobile structure, and its stationing would, I accept, constitute a use of land rather than operational development.
18. However, it is a matter of fact and degree in each case as to whether these descriptions are met. Dependent upon primary factors such as a caravan's size, physical attachment and its degree of permanence, it may not be sufficiently mobile, may fail to meet the definitions laid out above and, instead, may constitute a building. How decisive each of these three factors of size, attachment and degree of permanence may be may also vary from case to case.
19. In the light of this, the emphasis placed upon whether caravans would remain in situ for more than 10 months per year when determining if a caravan should be treated as a building within the Council's Planning Fees and Charges Supplementary Guidance Document (SPG) I find to be

somewhat arbitrary and, consequently, of limited influence upon my decision.

20. The submitted site plan clearly depicts the siting of the caravans as being proposed, including the static caravans. The plan submitted showing the caravan plans and elevations is a "typical" plan only. It is unclear, therefore, how many of the caravans proposed to be sited on the land would match, or be similar to, this typical plan or how many would deviate from it and, if so, to what extent. This means that the design of the caravans, including any extent of attachment to the ground, in each instance is uncertain.
21. Moreover, the submitted typical plan provides no clear indication that that particular caravan or its associated veranda would not be permanently fixed to the ground and immobile. Neither does the plan make it clear to me that should any of the proposed caravans comprise of twin-units, that the height of the living accommodation to be provided measured internally from the floor at the lowest level to the ceiling at the highest level would not exceed 3.05m.
22. For these reasons, I have insufficient information before me to enable me to determine that the caravans proposed would be caravans having regard to the definitions within the 1960 and 1968 Acts and would not constitute buildings. Given this, I cannot conclude that, in turn, the Council's determination that the fee payable should be based upon the static caravans amounting to the erection of buildings (category 2 development) is incorrect.
23. In reaching these views, I have had regard to the appeal decisions¹ referenced by the appellant. Only the appeal decisions themselves are before me, not all the relevant plans nor evidence. This limits my ability to determine how comparable those cases are to that which is before me, and appeal decisions are heavily dependent on the case-specific evidence and circumstances. I have come to my own views on this case having regard to the evidence before me now, my own experience and its particular circumstances. For these reasons, the cited appeal decisions are not a strong influence upon my decision.
24. The Council have not included the 40 touring caravan pitches proposed within its category 2 fee calculation. Although the evidence before me does not make the reasons for this expressly clear, I expect that the Council have accepted that the stationing of touring caravans constitutes the making of a material change in use of land. I have no compelling reasons to adopt a different position.
25. A road is proposed to serve the development and provide access to the caravans. This road would involve operational development. As the road would be associated with the new holiday park development, and it would not be for a purpose incidental to the existing use of the agricultural land, this would constitute category 10 (2) development rather than category 8 development.

¹ Appeal Decision References APP/T2215/X/20/3263871, APP/P2935/C/22/3297343 and APP/P2935/X/23/3316993

26. Therefore, altogether I find that the proposal would involve development falling within categories 2, 10 and 13 of the Fee Regulations, Part 2, Scale of Fees table. In such circumstances, the Fee Regulations require that the fee payable is that which is the highest of the three categories. Therefore, and as cited by the Council, the category 2 fee is applicable.
27. As such a fee has not been paid I, like the Council, conclude that the planning application is invalid. In such circumstances I cannot proceed to determine the merits of the proposal, and the appeal should be dismissed.
28. I would add that, given the uncertainties in relation to the particular make and model of the static caravans proposed to be stationed on the appeal site, and the content of the SPG in this regard, the floorspace created by the development should be derived from the average size of a static caravan and any associated decking.

Conclusion

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

H Jones

INSPECTOR