
Appeal Decision

Site visit made on 12 November 2024

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2025

Appeal Ref: APP/P1615/W/24/3347448

The Elms, Crowgate Lane, Chaxhill, GL14 1QS

- The appeal is made under section 78 of the Town 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 failure to respond to notice served under Article 12(1) of the Town and Country Planning (Development Management Procedure (England) Order 2015 (as amended).]
 - The appeal is made by Mr J Lamb against Forest of Dean District Council.
 - The application Ref is P1436/23/FUL.
 - The development proposed is the change of use of land to private Gypsy site and associated works.
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Decision

1. The appeal is invalid and I am unable to proceed to consider the planning merits of the case.

Main Issue

2. Whether or not the planning application should have been validated by the Council; and in the event that I find it should have been validated.

Reasons

3. The planning application was made in full. The submission included the planning application and a number of documents, including plans and statements. According to the Council the application is invalid as the correct fee was not paid prior to the date that the statutory biodiversity net gain condition became a requirement for minor developments, as such additional information is required to validate the application.
4. The appellant disputes this, arguing that the application was made prior to the requirement coming into force. The Biodiversity net gain Planning Practice Guidance (PPG) provides dates where planning permissions are exempt from biodiversity net gain. It states that Biodiversity net gain has only been commenced for planning permissions granted in respect to an application made on or after 12 February 2024. Permissions granted for applications made before this date are not subject to biodiversity net gain. A further temporary exemption applies for non-major development until 2 April 2024.
5. Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO), which was the Order in force at the time the scheme was submitted, sets out the particulars that must accompany an application. Article 34(4) of the DMPO provides a list of requirements for an

application to be a 'valid application' which includes; (a) the requirements set out in article 5, 6, or 7; and (f) any fee required to be paid in respect of the application.

6. It goes on to state that a valid application is taken to have been received when the application, and such of the documents, particulars or evidence referred to above as are required to be included in, or to accompany, the application have been lodged with the appropriate authority mentioned in article 11(1) and the fee required to be paid has been paid.
7. The application was submitted on the 30 October 2023 and a fee paid via the planning portal (£462). Due to various reasons the Council deemed the application to be invalid and a letter was sent to the appellant on the 8 November 2023. Whilst further information was submitted on the 8 December 2023 the Council advised that the application remained invalid. Additionally, the Council advised the appellant that on the 6 December 2023 planning application fees were increased, requiring a further £116 to be paid.
8. Due to the application remaining invalid and no further information being submitted the Council refunded the original fee on the 5 February 2024. This was brought to the appellants attention on the 13 March 2024 following their payment of the additional £116. As such, the application remained invalid as the appropriate fee had not been paid. On the 18 March 2024, the appellant advised that they would pay the £462. This fee was paid on 11 April 2024.
9. The appellant was advised by the Council on the 3 April 2024 that, as the application remained invalid after the temporary exemption date of the 2 April 2024 that biodiversity net gain now applied. As such, further information relating to biodiversity net gain was required to be submitted.
10. The appellant argues that the application was 'made' on 30 October 2023, and whilst it was invalid, there is no requirement within the PPG for an application to be valid. As such, it is their view that the application would therefore be valid as, apart from the biodiversity net gain requirements, all other information and the fee has been provided.
11. I have had regard to the appellants submission that they consider there to be a difference between an application being 'made' and an application being 'valid.' Nevertheless, if this were the case it would mean that applications lacking any details, or an application form with no plans or technical information with no prospect of being made valid could be considered to be made. It is therefore my opinion that it would be illogical to conclude that an invalid application could meet the requirements of a 'made application'. Based on the information before me I consider that in order to be exempt from the biodiversity net gain condition, a valid application would need to have been made by the 2 April 2024.
12. On the 12 February 2024 amendments were made to Article 7 of the DMPO to require additional information on biodiversity net gain at validation stage. Article 7(1A) requires that an application for planning permission must be accompanied by information relating to the biodiversity condition and goes on to provide a list of requirements. On the 3 April 2024, the Council provided details of information required to make the application valid. No such information was provided by the appellant and the application remained invalid.

13. In light of the above, the application has not provided the detail required to be validated. I conclude that the application is invalid and I am unable to consider the planning merits of the proposed development.

Other Matters

14. The appellant has requested additional time to undertake additional works relating to biodiversity and landscape matters. These would relate to the material planning considerations of the scheme and not matters relating to validation. As such, I see no reason that these documents would be necessary for the determination of this appeal.

Conclusion

15. The application is invalid and the appeal should not continue. In these circumstances the planning merits do not fall to be considered.

Tamsin Law

INSPECTOR