



Appeal Decisions

Site visit made on 25 February 2025

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th March 2025

Appeal Ref: APP/A0665/W/24/3350431

Lower Rock Farm, Crimes Lane off Tattenhall Lane, Beeston, Cheshire, CW6 9UA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure 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 Mr Scott Ward against Cheshire West and Chester Council.
 - The application Ref is 24/01654/FUL.
 - The development proposed is minor alterations to the south end of public footpath no4 to create a diverted route for the benefit of the public and the property owner.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Scott Ward against Cheshire West and Chester Council. This application is the subject of a separate decision.

Main Issue

3. This appeal against the Council's failure to give notice of a decision results from a validation dispute between the main parties. The main issue, therefore, is whether, or not, the planning application should have been validated by the Council.

Reasons

4. The planning application for alterations to create a diverted route of a Public Right of Way (PROW), that is now the subject of this appeal, was submitted on 7 June 2024 using a householder application form and with the payment of the associated application fee.
5. The Council wrote to the applicant on 28 June 2024 to advise that the application was incomplete and could not be validated as a householder application. There followed an exchange of emails where appellant sought to demonstrate that the proposal was within a residential curtilage and that a householder application was the correct type. This exchange culminated in an email from the appellant, dated 16 July 2024, stating that if the application was not validated as submitted, then there would be no alternative but to lodge an appeal on the grounds of non-determination 'as is the procedure under Article 12'. This was, effectively, a notice under the validation dispute process at Article 12 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO).
6. Following further correspondence from the appellant, the Council wrote on 22 July 2024 revising its position from that set out in the 28 June 2024. It indicated

that the PROW team had advised that plans including the existing and proposed route of the footpath should be resubmitted and incorporated into an earlier, undetermined, planning application. It further advised that if the earlier planning application were permitted then an application to divert the PROW should be made under section 257 of the Town and Country Planning Act (the Act). Such correspondence represented a Non-Validation Notice under Article 12 of the DMPO.

7. The Planning Practice Guidance clarifies that planning permission is only needed if the work being carried out meets the statutory definition of 'development' as set out in section 55 of the Act¹. There is nothing before me that suggest that the proposed alterations to create a diverted route of the footpath, as proposed within the application, would involve the carrying out of building, engineering, mining or other operations, nor is there compelling evidence that it would involve a material change in the use of land. Accordingly, the proposal does not constitute development, householder or otherwise.
8. Planning permission cannot be granted for something that does not constitute development and, therefore, it follows that a 'valid' planning application has not been, nor ever could be, submitted. Consequently, I can only dismiss the appeal.

Other Matters

9. I have had regard to the appellant's justification for the proposed footpath diversion and to the suggested conditions. I also note that the appellant has been attempting to gain consent for such a diversion since 2018. However, as these are not matters relating to the validity of the application, they are not relevant to the determination of this appeal.

Conclusion

10. For the reasons set out above, I conclude that the appeal should be dismissed.

Elaine Moulton

INSPECTOR

¹ Paragraph: 001 Reference ID: 13-001-20140306