



Penderfyniad ar yr Apêl

gan Robert Sparey MPlan

Person a benodir gan Weinidogion
Cymru

Dyddiad: 24/03/2023

Appeal Decision

by Robert Sparey MPlan

A person appointed by the Welsh
Ministers

Date: 24/03/2023

Appeal Ref: CAS-02228-C9S6W1

Site address: Tyn Terfyn Caravan Park, Llanrwst Road, Tal y Bont, Conwy, LL32
8YX

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed person.

- The appeal is made under section 62ZB of the Town and Country Planning Act 1990.
- The appeal is made by Mr Peter Davidson against a notice of invalidity issued by Conwy County Borough Council.
- The Council's reference is DC/0/49900.
- The notice was issued on 27 September 2022.
- The application is for "Change of use of land for the siting of 15 timber lodges and associated works (part retrospective)".
- The requirements of the notice as issued are: "Therefore the following are required to validate the application."
 1. The application fee balance of £1840.
 2. Pre Application Consultation report.
 3. All documents required to satisfy the Local Validation List.
 4. Amended plans that show the proposed solar panels.
- The appeal is made on the ground set out in section 62ZB(2)(b) of the Town and Country Planning Act 1990 (as amended) [the 1990 Act].

Background

1. This appeal was originally determined on 15 November 2022. That decision was subject to Judicial Review and was quashed by the Courts on 24 February 2023 and the appeal remitted for redetermination.

Decision

2. The appeal succeeds in part on ground 2(b) and the Notice of Invalidity is varied by substituting requirement 1 with the following wording:

Pay the relevant fee in accordance with the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits (Wales) Regulations 2015 (as amended) on the basis that the proposed lodges constitute development of Category 2(b)(iii) in Part 2 of Schedule 1 to those Regulations.

Procedural Matters

3. The appellant's submission indicates that requirement 4 of the notice has now been supplied to the Local Planning Authority (LPA), so it is not in dispute between the parties. I will therefore not comment on that requirement in this decision.
4. Whilst for this type of appeal it is normally expected that the LPA's representations will consist of the contents of the notice of invalidity, Regulation 5 of the Town and Country Planning (Validation Appeals Procedure) (Wales) Regulations 2016 ['the 2016 Regulations'] allows the appointed person to request further information. In this instance I considered it appropriate to request a statement of reasons from the LPA in relation to their calculation of the fee. The LPA provided this information within the required timescale and the appellant was afforded an opportunity to respond. I have taken the LPA's statement and the appellant's response into account while determining this appeal.

Reasons

Requirement 1: The Fee

5. With regards to the first requirement in the notice, the relevant fee is determined by the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 (as amended) ['the Fees Regulations']. Guidance on determining the fee is provided in the Welsh Government's Development Management Manual Section 7 Annex: Calculating the Fee ['Section 7 Annex'] (<https://gov.wales/development-management-manual>).
6. The main point of dispute between the parties in relation to the first requirement of the notice is whether the correct fee would be that for an application for dwellinghouses. Regulation 2 of the Fees Regulations defines 'dwellinghouse' for the purposes of those regulations as "... a building which is used as a single private dwellinghouse and for no other purpose". This is supplemented by advice in paragraph 10.1 of Section 7 Annex that clarifies that a dwellinghouse could include "a holiday flat, if self contained and owned by a private owner (**but not if let on a short-term basis to paying guests**)", my emphasis added.
7. The description of development on the application form does not indicate the proposed use of the lodges. However, the planning statement supporting the application makes it clear at paragraph 1.4 that the application "seeks approval for larger holiday lodges instead of those approved under planning permission 0/45457". It is open to the LPA to seek a revised description of development through the determination process should they consider it necessary, but I am satisfied that it is clear that the application seeks consent for lodges to be let on a short term basis to paying guests, and therefore falls outside the definition of 'dwellinghouse' within the Fees Regulations.
8. Category 2 of the table in Part 2 of Schedule 1 of the Fees Regulations sets the fee for the erection of buildings that do not fall within:
 - Category 1 – The erection of dwellinghouses,
 - Category 3 – The erection, on land used for the purposes of agriculture, of buildings to be used for agricultural purposes,

- Category 4 – The erection of glasshouses on land used for the purposes of agriculture,
 - Category 5 – The erection, alteration or replacement of plant or machinery
 - Category 7 - 7(a) the carrying out of operations (including the erection of a building) within the curtilage of an existing dwellinghouse, for purposes ancillary to the enjoyment of the dwellinghouse as such, or the erection or construction of gates, fences, walls or other means of enclosure along a boundary of the curtilage of an existing dwellinghouse; or 7(b) the construction of car parks, service roads and other means of access on land used for the purposes of a single undertaking, where the development is required for a purpose incidental to the existing use of the land).
9. It is evident that, in terms of the Fees Regulations, the proposed development does not fall into Categories 1, 3, 4, 5 or 7. The application is for full planning permission where the area of the gross floor space to be created by the development exceeds 75 square meters and therefore attracts the fee specified in Category 2(b)(iii). The appeal under ground 2(b) in relation to requirement 1 is successful in that the application is not one to which the fee stated in the notice applies. The fee must therefore be recalculated using the correct Category. I will amend requirement 1 to reflect this.

Requirements 2 (Pre-Application Consultation Report) and 3 (Local Validation List)

10. Notwithstanding my finding above that the proposed lodges do not constitute 'dwellinghouses' within the meaning of the Fees Regulations, the main issues in the appeal in relation to Requirements 2 and 3 are whether the lodges constitute dwellinghouses in relation to the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Use Classes Order) and whether the proposal constitutes 'major development' in for the purposes of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (as amended) ['the DMPO'].
11. While the Notice of Invalidity was served on 27 September 2022, it is a well-established principle that planning decisions must be made on the basis of the laws and policies which are in place at the time the decision is made. I will therefore have regard to the recent amendments introduced by the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2022.
12. It seems clear to me that holiday lodges would fall within Class C6 of the Use Classes Order, Short-term lets, i.e. "Use of a dwellinghouse for commercial short-term letting not longer than 31 days for each period of occupation". As the proposed 15 units would constitute dwellinghouses for these purposes, the proposal does meet the definition of Major Development set out in Article 2 of the DMPO.
13. The application is therefore one to which the requirement for Pre-Application Consultation under Section 61Z(1) of the 1990 Act relates, as per Article 2B of the DMPO. The application is therefore also subject to the 'Local Validation List' requirements by virtue of Section 62(3) of the 1990 Act and Articles 8(1)(f) and 8(2) of the DMPO. The appeal under ground 2(b) in relation to requirements 2 and 3 is therefore unsuccessful.

Conclusion

14. For the foregoing reasons and having had regards to all other matters raised, I find that the appeal should succeed in part on ground 2(b) and the Notice of Invalidity should be varied to amend requirement 1. Subject to this variation I conclude that the Notice should be upheld.

Robert Sparey

Mr Robert Sparey

Appointed Person