

High Court overturns council's refusal to consider developer's 'hopeless' planning applications

A developer has succeeded in overturning a council's decision to refuse to consider two planning applications for new homes on a greenfield site, after a judge ruled that the right of the local authority to make such a choice does not allow it to dismiss a proposal "on the basis that one officer regards the application as hopeless".

by [Michael Donnelly](#) 22 October 2024



Cardiff Civil Justice Centre (pic: cc-by-sa/2.0 - © Jaggery - geograph.org.uk/p/2818427/) Emma Austin

In 2023, Paul Evans made two applications for outline planning permission to Bridgend County Borough Council for the construction of homes on land north of Underhill Cottages, Tondur Road in the town of Bridgend in south Wales.

One application was for the construction of nine dwellings on what was termed parcel A of the site. The other was for the construction of nine dwellings on the remainder of the site, referred to as parcel B.

Evans had previously submitted six unsuccessful planning applications to develop the site with housing, his latest being in 2021, which sought consent for 15 homes. This was refused by the council and again on appeal.

According to the court judgment, the inspector had noted that the previous two appeals in respect of the site had been dismissed for similar reasons, including the “effect of the proposed development on the character and appearance of the area; the effect of the proposed development on the living conditions of future occupants; whether the development would result in the unacceptable loss of trees and features of importance for local ecology; and the effect of the proposed development upon highway and pedestrian safety”.

In January this year, the council notified Evans that it was declining to determine both applications.

“This local planning authority is exercising its right under section 70A of the Town and Country Planning Act 1990 (as amended) to decline to determine this application as a similar proposal has recently been refused by Bridgend County Borough Council and dismissed on appeal by Planning and Environment Decisions Wales (PEDW). The local authority is of the view that there has been no significant change in the development plan (so far as relevant to the application) nor any other material considerations since the similar application was refused and dismissed on appeal,” the council said in a letter.

Evans argued that it was “irrational of the [council] to form the opinion, in each case, that the development and the land to which the application related were the same or substantially the same as the development and the land to which the 2021 application related”.

In considering this, Judge Jarman concluded that the 2023 applications “could and should have been addressed separately”.

He continued that there was “no rational basis for concluding that either of them, each involving nine dwellings on part only of the site, was similar to the 2021 application which involved 15 dwellings over the whole of the site”.

The judge said he agreed with previous case law that “section 70A does not give the power to dismiss an application for planning permission on the basis that one officer regards the application as hopeless”.

Judge Jarman said that, in his judgment, “an application for outline permission for nine dwellings on approximately half of the area of the site cannot sensibly be regarded as substantially the same as an application for outline permission for 15 dwellings over the whole site”.

The judgment said that the differences between the 2023 applications and the 2021 application “may be such as to impact upon the reasons for refusal in respect of those and previous applications in respect of the whole site”.

The judge added that “whether they do or not will be a matter of detailed consideration on their own merits by the authority, but on the facts of this case in my judgment it is not legitimate to avoid such consideration by treating the two applications as one and then to use section 70A of the 1990 Act so as not to determine them.”

The judge concluded: “In my judgment, the high threshold of irrationality is met in this case. The decisions set out in the letters dated 21 January 2023 are quashed which means that the authority must determine them.”

[*Evans v Bridgend County Borough Council \[2024\] EWHC 2607 \(Admin\)*](#)

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