

Quarryplan Successfully Challenge DOE Planning Fee

An application was submitted to DOE for a washing plant with, inter alia, settlement ponds to be located within an existing sand and gravel quarry. The planning application was accompanied by a fee of £345 under category 5 of the Planning (Fees) Regulations (Northern Ireland) 2005 (as amended).

On receipt, the Department returned the application as invalid; explaining that the incorrect fee had accompanied the same. The Department advised that the fee should be made under fee category 8 and the fee to be paid was **£1863** and not **£345**. The premise for the Department's application of fee category 8 was that the proposed development was 'operational development' and, due to the provision of settlement ponds, the proposal extended beyond the description of 'plant' as stipulated in category 5. Furthermore, the Department considered that the settlement ponds were mineral development falling within category 8(d) of the Fees Regulations.

The Applicant appealed to the Planning Appeals Commission (the Commission) under Article 33 of the Planning (Northern Ireland) Order 1991 regarding the Department's decisions to invalidate and process the planning application.

Quarryplan, representing the Appellant, provided evidence that the washing plant, including the settlement ponds, did not fall within fee category 8(d). It was maintained that the settlement, or silt ponds, form an integral part of the washing plant mechanism. Therefore, the settlement ponds are part and parcel of the same plant and plant site. It was also contended that it was inequitable for a mineral operator to apply for planning permission for plant/equipment and to pay the same fee category previously charged for the mining operation itself.

In their case, the Department itemised the each key component of the washing plant, including the settlement ponds. The Department considered that the development of the settlement ponds amounts to operational development and mining development, which invokes a higher planning fee. The Department highlighted that their in-house, unpublished guidance with

respect to fees advises that settlement ponds are mining operations and are required to be charged in line with fee category 8. It was also understood that the Department has been advised by its audit department to apply fee category 8(d). A representative from the audit unit was not present at the hearing.

Following the hearing, the Commission found that the Department had erroneously applied fee category 8(d). The Commission agreed with the Applicant's position and stated that *"the washing process requires a water supply and the proposed settling ponds...could be...properly described as tanks. The settling ponds would be connected to the...machinery by pipes, thereby forming an essential integral part of a close system. Based on these considerations, [the Commission does] not consider that the provision of the facility would comprise separate building and engineering operations but rather one discrete act of development"*.

The Commission agreed with the Appellants evidence that the washing (processing) of minerals involves a separate development process, which would take place after the minerals have been won and worked; that is to say uncovered and extracted. The Commission dismissed the Department's unpublished (in-house) fee guidance as *"irrelevant"*.

The Commission's finding held that the correct fee category was category 5. Therefore, the Appellant had, under the provisions set out within the Planning (General Development) Order 1993 (as amended), submitted a valid planning application.

The Commission went on to decide the Appellant's planning application. The Department offered to objections to the proposed development and the planning permission was granted subject to conditions referring to, inter alia, hours of operation.

Comment: The Appeal demonstrates that there is an alternative to simply accepting the Department's view with respect to planning fees to be charged for planning applications and the validation process itself. The wording of Articles 7 and 11 of the Planning (General Development) Order 1993 (as amended) provides a broad interpretation to validation. The Department would have been better served, in this case, meeting with the applicant and

considering his position before returning the application. This was tabled by the Applicant, but the offer was not taken up by the Department.

It is understood that the Department has been guided by its auditors with respect to the application of fee categories. Again, it may be better served in allowing professional and technical officers to apply the fee categories correctly and only offering advice on matters where there is acute variance regarding the fee.

Prevailing guidance advises that the Department should consider each case on its own merits. However, with respect to the fee categories, these are set. Accepting an incorrect fee provides the Department with the confidence to charge that fee for similar applications; ostensibly setting a precarious standard for customers. The Applicant's actions have ensured that, at least for washing plant and at least for the time being, fee category 5 shall apply.

Similar matters, with respect to the Fees Regulations, have been raised by the Department regarding planning applications for concrete batching and coated road-stone plants, where the processed mineral stored in bays is considered by the Department to be 'stockpiled mineral' therefore requiring a higher fee [category 8(c)]. As the Commission has highlighted, the plant site is separate development applied for following the winning and working of the raw material. Therefore, the ancillary uses within the site are separate to the winning and working of mineral also and can be considered as integral to the processing unit or plant site. Furthermore, it would appear to be incongruous to apply a fee of £1863 (the fee applied to the winning and working of minerals) to the storage of processed materials employed within a batching or road-stone plant if the processing of the mineral is in itself (as the Commission has highlighted) development which is separate from the winning and working of minerals!

For further information, please contact Gareth McCallion at Quarryplan.