The Planning Inspectorate

Appeal Decision

Site visit not required

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 07 May 2020

Appeal Ref: APP/C1625/X/19/3241637
Land at Coombe, Wotton-Under-Edge, Gloucestershire

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr & Mrs A Ninnis against the decision of Stroud District Council.
- The application Ref S.19/0659/CPE, dated 26 March 2019, was refused by notice dated 21 May 2019.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is that the development (an agricultural storage building) was lawfully implemented in accordance with the details approved as part of application S.13/1871/AGR, under Part 6 of the General Permitted Development Order 2015.

Decision

1. The appeal is allowed and a Lawful Development certificate is attached.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision

Background to the Appeal

3. In February 2013 the previous owner of the land submitted an application (S.13/0304/AGR) to determine whether prior approval was required for an agricultural barn. The Council deemed that prior approval was required because of the site's location in the Cotswolds AONB. A further application was then made (S.13/1871/AGR) in August which was approved by the Council.

4. This is the subject of some dispute. The appellant describes it as a prior approval application subsequent to the determination that prior approval was required. They say they received a decision indicating prior approval was granted. The Council appear to accept this is accurate but state that it was a mistake as they say a full planning application was required – although I am not sure why? They further state that in January 2014 an application for planning permission was received for the replacement of an existing building with a modern agricultural building. However, they accept that a decision was issued, in June 2014, for the prior approval application (1871/AGR). It is not clear what happened to the application for full planning permission.

Unhelpfully neither party has provided any of the relevant applications or decisions.

5. Setting this confusion to one side it seems the applicant (the previous landowner), believed he had received prior approval for the new barn and the necessary access track and began construction of the track. Once that was complete, around May 2015, the land was put up for sale and purchased by Mr & Mrs Ninnis, the appellants. They contacted the Council and received advice that they could proceed to construct the barn. This is not disputed by the Council. However such advice would have been informal and not binding on the Council.

6. The barn was substantially completed and in use by October 2018 and it seems was built in accordance with the plans attached to the prior approval application (1871/AGR). However the Council were concerned that the barn did not benefit from prior approval because the appellants did not farm 5ha or more, as required by the GPDO. The appellants made an LDC application to confirm the barn was lawful but that was refused because the holding was less than 5ha, hence this appeal.

Reasons

7. The first issue is that when the prior approval application was granted it was based on the provisions of the 1995 GPDO (as amended), but this has subsequently been replaced by the 2015 GPDO. It is accepted by the parties that the provisions, as far as they are relevant to this appeal are similar. The effect of the replacement of one Order by another is covered by the 1978 Interpretation Act and, in the case of the GPDO by s61 of the 1990 Planning Act.

8. The affect of the Interpretation Act is that if development that was granted prior approval under the old GPDO could still be granted prior approval under the new one, then it should be treated as if it is permitted by the new Order. In this case the Council say that it could not be permitted by the 2015 Order as the appellants no longer have a 5ha or greater agricultural holding. The appellants dispute this as they have an informal arrangement to farm land comprising over 7ha.

9. However, before turning to this several court cases[1] have dealt with the issue of permissions granted by the previous Order. The outcome, as argued by the appellant, is that a permission is crystallised once prior approval has been granted. Thus any changes in the 2015 GPDO that would make the permission unimplementable can be ignored and the permission is safe.

10. However, in this case it is accepted that the relevant requirements, restrictions and conditions remain the same. In effect the change of GPDO is a red herring, the issue remains whether or not a change in the appellants' circumstances after the grant of prior approval can affect the lawfulness of that grant. The Council argue that the fact (as they see it) that the appellant did not have an agricultural unit of 5ha or more at the time he began work on the barn means that the development of the barn is now outwith the limits of Part 6 and so is unlawful. This gives rise to three issues. Firstly, was the development commenced by the original applicant by the construction of the

[1] In particular R (oao Orange Communication Services Ltd & Ors) v Islington LBC [2006] EWCA Civ 157

access track; secondly, can a prior approval that has been granted then be rendered null and void by a change in circumstances on the ground; and thirdly did the appellants have an agricultural holding of more or less than 5ha at the time they began work on the barn.

11. The appellants argue the track is an essential part of the barn development, because without it the barn cannot be accessed. It was also part of the original prior approval application and so was part of the development that was granted prior approval. Thus, rather like in the case of a planning permission for a dwelling, digging the footings can be considered sufficient to have commenced the development and so keep the planning permission alive thereafter.

12. However, the Council point out that the track was included only on the plans supplied with the original request for a determination whether or not prior approval was required (0304/AGR). That request was titled "general purpose agricultural machinery and fodder store with access track". Nevertheless, the actual application for prior approval (1871/AGR) did not include the access track. As I say, I have not seen these plans or the applications. The appellants have included at Appendix D to their statutory declaration a plan they have called "Council approved plan of barn at Coombe". This clearly shows the access track and the barn. It is not clear which application this was attached to, but it cannot have been 1871/AGR unless the Council are completely wrong. If they had been, I would have expected this to have been noted by the appellants as it affects their case regarding the implementation of the permission.

13. The planning permission is granted by the GPDO, not the prior approval process. The latter is a condition attached to the permission and is required to have been successfully completed in order to validate the permission. Thus the plans provided as part of the request for a determination as to whether prior approval is needed or not and the plans attached to the prior approval all must form the planning permission. There is no requirement for the prior approval plans to cover any more than is needed to obtain that approval. However, I am not sure this takes us much further forward, as the planning permission has already been crystallised by the grant of prior approval as per the Court of Appeal judgement in the Orange case.

14. I shall assume the planning permission was crystallised and preparatory works begun before the sale of the land. At that point I shall assume for the sake of argument the agricultural unit was less than 5ha. Does that matter? I think that it does. The planning permission that has crystallised was granted by 3(1) of the GPDO. This says (and I paraphrase) "subject to the provisions of this Order…..planning permission is hereby granted for the classes of development described as permitted development in Schedule 2". In this case that is Part 6 "*Agriculture and forestry*", class A "*agricultural development on units of 5ha or more*" A.(a) "*The carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area* of — *(a) works for the erection….of a building….. which are reasonably necessary for the purposes of agriculture within that unit*". Thus the planning permission is for all the matters in italics above. It is subject to conditions requiring prior approval of certain matters and so on. Once the development subject to that permission is completed then that planning permission is spent. However, until substantial completion, the building has to comply with the requirements of the planning permission granted. Otherwise it is simply not the development that was granted planning

permission. As the planning permission includes the requirement to be on an agricultural holding of 5ha or more then it follows that a barn built on a smaller holding would not be the permitted development, even if when the prior approval was granted the holding was of a sufficient size.

15. It follows therefore that the change in the size of the agricultural unit could be fatal to the lawfulness of the barn if that change happened prior to substantial completion.

16. The situation regarding the size of the holding is that the appellants own the site, which is 1.58ha in area. In addition they have an informal tenancy on land at Foxholes Farm, which is nearly 4 miles away and comprises 5.96ha of land. This informal tenancy is supported by Mr Mackenzie the owner of Foxholes Farm and in the appellants' statutory declaration, which also explains how their farming activities operate. I have seen nothing to cast any doubt on this and so have every reason to believe it is an accurate summary of the situation.

17. There is no requirement for the holding to be contiguous or for there to be formal tenancy arrangements in place. In this case I consider the evidence is sufficient to convince me the appellants did have an agricultural holding of over 5ha when they constructed the barn and so they did lawfully implement the barn that was granted prior approval by the Council. I shall issue a lawful development certificate accordingly.

Other matters

18. The lawful use of the barn is for agriculture, any other use may well require planning permission and this would be a matter between the appellants and the Council in the first instance.

19. There has been considerable interest from local residents, many of whom are concerned as to the size of the barn, its impact on the AONB and the potential for other uses. However, my jurisdiction in this appeal is limited to the narrow issue on which the LDC was applied for. Was the barn lawfully constructed within the terms of the prior approval granted by the Council?

20. The fact that other agricultural applicants have not been asked to prove the size of their holdings in order to gain prior approval is irrelevant. The 5ha requirement is part of the GPDO and so remains whether enforced by the Council or not.

21. The Council have provided suggested conditions in the event that I allowed the appeal but conditions are not applicable for an LDC appeal.

Simon Hand

Inspector

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 26 March 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason: at the time the development in question was carried out the agricultural holding was over 5ha.

Signed

Simon Hand
Inspector

Date 07 May 2020
Reference: APP/C1625/X/19/3241637

First Schedule

The development (an agricultural storage building hatched in black on the plan) was lawfully implemented in accordance with the details approved as part of application S.13/1871/AGR, under Part 6 of the General Permitted Development Order 2015

Second Schedule

Land at Coombe, Wotton-Under-Edge, Gloucestershire

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

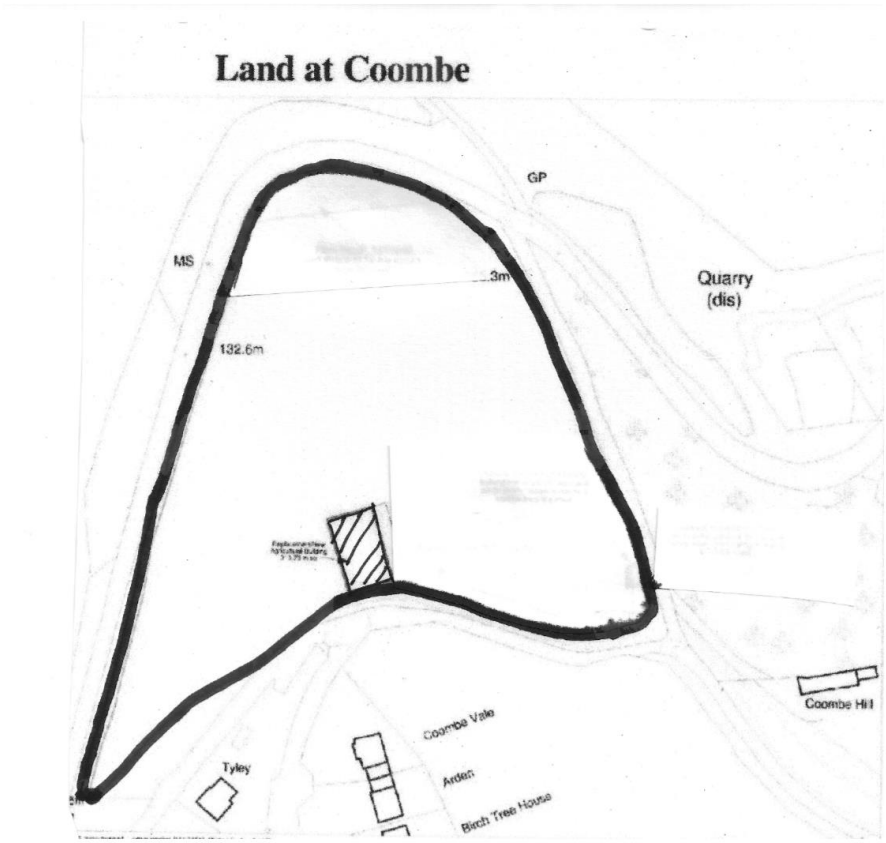
The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 07 May 2020

by Simon Hand MA

Land at: Coombe, Wotton-Under-Edge, Gloucestershire

Reference: APP/C1625/X/19/3241637

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