Case Name: *Gluck v Secretary of State for Housing, Communities And Local Government & Anor* [2020] EWHC 161 (Admin) (31 January 2020)

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Commentary: On 5 March 2018, Mr Gluck made two applications to Crawley Borough Council for determinations as to whether prior approval was required for his proposed conversion of two office blocks on Stephenson Way in Three Bridges to 75 residential units under Class O of Part 3 in Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO").

Under paragraph W(11)(c) of Part 3 in Schedule 2 to the GPDO, CBC was required to determine Mr Gluck's applications within 56 days, by 1 May 2018. CBC missed that deadline and issued decision notices, refusing prior approval for both proposals on the basis that traffic generated by commercial premises on Stephenson Way would have an unacceptable impact on residents of the proposed units, on 8 May 2018 and 11 May 2018.

Mr Gluck appealed to the Secretary of State against CBC's decision to refuse prior approval in both cases. The appeals were unsuccessful. The inspector was satisfied that through his agent Mr Gluck had agreed in writing with CBC that the 56-day time limit should be extended and agreed with CBC's reasons for refusing prior approval.

In his application to the High Court to quash the appeal decisions, Mr Gluck relied upon the decision of Ockelton J in R (Warren Farm (Wokingham) Limited) v Wokingham Borough Council [2019] EWHC 2007 (Admin) and submitted that a time period specified in Schedule 2 of the GPDO for a determination by the local planning authority as to whether its prior approval is required in a particular case is incapable of being extended such that once it has expired without a decision being made the applicant may proceed with the development described in its application (in so far as it complies with the relevant terms of the GPDO).

Article 7 of the GPDO provides: "Where, in relation to development permitted by any Class in Schedule 2 which is expressed to be subject to prior approval, an application has been made to a local planning authority for such approval or a determination as to whether such approval is required, the decision in relation to the application must be made by the authority –

(a) within the period specified in the relevant provision of Schedule 2,

(b) where no period is specified, within a period of 8 weeks beginning with the day immediately following that on which the application is received by the authority, or

(c) within such longer period as may be agreed by the applicant and the authority in writing."

Holgate J rejected Mr Gluck's submission that this case falls within limb (a) of Article 7 because there is a 56-day time period specified in Schedule 2 for the determination of an application as to whether prior approval is required for development proposed under Class O and the argument that limb (c) is an alternative to limb (b) but not limb (a) such that a period specified in Schedule 2 is incapable of being extended (whether by agreement or otherwise).

Holgate J held that Article 7 must be read as if limb (c), which permits extensions in time, is an alternative to both limbs (a) and (b). The consequence of this is that any of the prior approval time periods specified either in Schedule 2 or in Article 7 are capable of being extended by an agreement by the applicant and the LPA in writing, and the decision in Warren Farm should not be followed.

Addressing Warren Farm, Holgate J explained that his differing interpretation of Article 7:

1. Did not produce internal consistency with the GPDO and the possibility of extending time under limb (c) is applicable just as much to the time periods referred to in limb (a) as to that described in limb (b);
2. Is preferable in the interests of good administration by enabling developers to agree extensions of time in all prior approval cases whenever they consider it to be appropriate and is likely to reduce delay and costs;
3. Is no less effective in promoting certainty because any variation of a time period is dependent upon the agreement of the applicant and the requirement for evidence in writing; and
4. Is not affected by the fact that Article 7 is not expressed to be a condition as the conditions in Schedule 2 and the provisions of Article 7 are inextricably linked and must be read together.

For these reasons, Holgate J concluded that the supposed difficulties regarding the interpretation of Article 7 in Warren Farm do not arise in this case giving sufficient justification for him not to follow Ockelton J's decision in that case.

Holgate J held that an extension had been agreed by Mr Gluck and CBC in writing. Rejecting the Mr Gluck's submission that it was necessary for both parties to sign a legal document or for there to be formal correspondence confirming the agreement sent by both parties, Holgate J confirmed that a verbal agreement made by both parties, which is separately evidenced in writing (for example by way of an email from the applicant to the LPA confirming what had been discussed and agreed verbally), is sufficient to constitute the agreement in writing required by statute.

The claims were accordingly dismissed.

Case summary prepared by Nikita Sellers