DELEGATED REPORT

Application Reference:	PL/2023/06066
Application Type:	Lawful Development Certificate
Site Address:	COMBE BARN, GRITTLETON, CHIPPENHAM, SN14 6AQ
Proposal:	'Lawful Development Certificate: Existing Use' Application Relating to the Lawful Commencement of Planning Permission 18/11700/FUL.
Recommendation:	Refuse to grant certificate

PROPOSAL

An application for a Lawful Development Certificate (LDC) has been submitted to the Local Planning Authority (LPA). The purpose of the application is establish that development for which the planning permission was granted under permission 18/11700/FUL was lawfully begun before 28 March 2022 through a material operation, as defined in s56 of the Town and Country Planning Act 1990 .

LEGISLATION

The statutory framework covering lawfulness for lawful development certificates relating to existing use or development is set out in section 191(2) of Town and Country Planning Act 1990.

CONSULTATION RESPONSES & REPRESENTATIONS

There is no statutory requirement to consult third parties, including Town/Parish Councils or neighbours.

The Parish Council and neighbours were consulted, and a site notice was displayed.

Grittleton Parish Council provided the following response -

Holding objection.
Based on the information available in application 18/11700/FUL, the discharge of condition 20/ 06526/DOC, refused application PL/2022/04708 and the current application there is inconsistency in the evidence presented. Should further information be presented to clarify the application the Parish Council would be prepared to re consider their opinion.

ASSESSMENT

The main issue is whether, on the balance of probability, the works carried out amount to a material commencement of the planning permission granted in 2019.

The LPA needs only to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application.

Information provided by the applicant

- Application form
- Cover Letter
- Evidence of Installation of the Drainage System ('the photographs') by agm Ltd ref AGM 2023 003
- Invoice from R.Gernonn Builders/P&W Construction Ltd (dated 10 February 2023)
- Invoice from P&W construction Ltd (dated 10 February 2023) Includes amount to Gernon Builders same as above & amount to Prangle & Wren
- Statutory Declaration Annabel Anstey (applicant) (dated 14th July 2023)
- Statutory Declaration Clive Anstey (applicant) (dated 14th July 2023)

Other evidence available

- Planning History
- Aerial imagery (public online)

LPA review of evidence

Section 56, subsection 2, (4)(c) of the 1990 Act as amended indicates that a material operation means, amongst other things, the laying of any underground main or pipe to the foundations, or part of the foundations, of a building, or to any such trench as is mentioned in (4)(b) above

Cover Letter and Application Form

The cover letter sets out the applicant's sequence of events and introduces the evidence. It is described that the original application was approved on the 28th of March 2019 and had an associated expiry date of the 28th of March 2022. As part of its consent, the permission had a total of 10 conditions attached to it, of which Condition 1 required commencement of the development within a time period of three years (or before the 28th of March 2022). Furthermore, both Condition 3 and Condition 5 relating to foul and surface water drainage were Pre-Commencement conditions.

Following the approval of this consent, a discharge of conditions application was submitted to Wiltshire Council in August 2020 and subsequently approved in November 2020 (Ref: 20/06526/DOC). This confirmed that the submitted material appropriately satisfied both Pre-Commencement Condition 3 and Condition 5.

It is explained that the associated drainage system was installed in January 2021, before the expiry of the permission and that this demonstrated that the development had formally 'begun'. Photographs are included showing the works undertaken and the letter explains that the applicants confirm that the installation of this drainage system was in strict accordance with the submitted material that was approved by Wiltshire Council as part of the Discharge of Conditions application.

The letter explains that the builder's invoices are further evidence of the installation of a drainage system constituting a 'building operation' when assessed against the definition contained within the legislation.

Statutory Declarations

Statutory declarations completed by both applicants. Mr Clive Anstey and Mrs Annabel Anstey make the two following statements -

1. The drainage system, in complete accordance with the approved plans as part of planning application 20/06526/DOC (relating to application 18/11700/FUL), was installed and completed on the 18th of January 2021 and has remained in situ on the land ever since this date.

2. The accompanying document marked Exhibit: 'Evidence of Installation of the Drainage System - AGM 2023 003', has been appendaged to this declaration for the purposes of Point 1, as above.

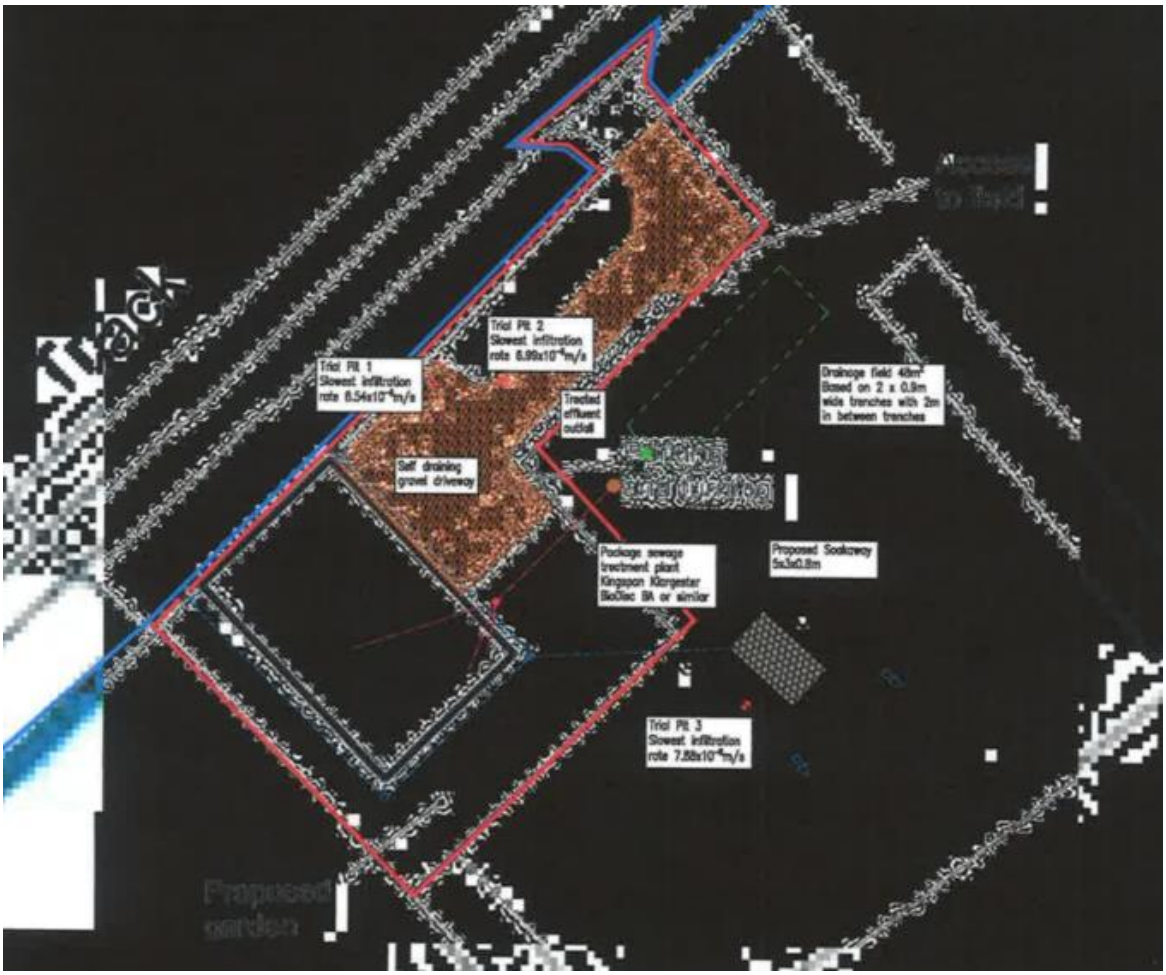
Other evidence submitted and available contradicts the statements that the drainage scheme has been installed in accordance with the approved details. The photos and later map aerial images/extracts provided indicated that the approved system has not been installed. Whilst the LPA does not disqualify these statements entirely, the evidence is contradictory an inconclusive.

Planning History

On **28 March 2018** Planning Permission was granted to convert a former barn to a single storey dwelling (18/11700/FUL refers). The decision was subject to a number of conditions, including that the development shall be begun before the expiration of three years from the date of the permission (28 March 2022).

In **December 2019** a preapplication request submitted by the applicant in respect of an alternative proposal This raised the structural integrity of the existing barn, and its viability for conversion to a dwelling. Given the confidential nature of preapplication enquiries the content is not included within the report at this time though it is a material consideration forming part of the planning history available to the LPA in determining this application.

In **August 2020** an application was made to discharge conditions 3 and 5 of the 2018 permission in relation to foul and surface water drainage (20/06526/DOC refers). Among the approved documents is a 'Drainage Strategy' drawing by Cole Easdon ref 7428/501 A. This proposes a klargester biodisc (or similar) sewage treatment plant with drainage field installed to the east of the proposed dwelling along with a surface water soakaway (see extract below).



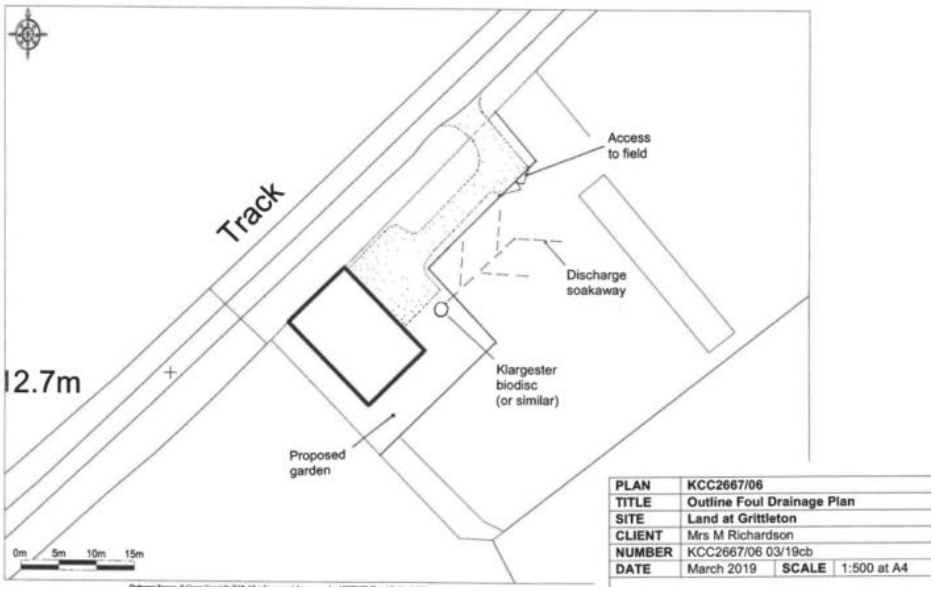
In **April 2021** an application was submitted for what was described as the *Erection of an agricultural building* on land immediately adjacent to the west of the application site (PL/2021/03878 refers). This was a retrospective application with Section 5 of the application form stating that work began on this building on **10 February 2021**. The Council has also received conflicting information provided on behalf of the applicant stating that work on this building commenced in November 2021. This application was withdrawn by the applicant after officers explained that and oak framed building, described as a garage in correspondence with the applicant, was not appropriate within the open countryside and AONB. It was explained that the excessive scale is overtly domestic appearance would appear as an unsightly intrusion into the open landscape. The proposal was not appropriate agricultural development within the open countryside. Of particular relevance is section 13 of the application form which states that the foul sewage from the development would be disposed of by a package treatment plant with surface water being disposed of by soakaways.

The invoices from Gernon Builders and P&W Construction submitted in support of this application stated to relate to drainage works installed in January 2021 are dated **10 February 2021**.

In **June 2022**, a retrospective application was submitted seeking retrospective permission for what was described as *Erection of an agricultural/equestrian building (revised proposal) and formation of stables (retrospective) and riding arena* on land immediately adjacent to the west of the application site

(PL/2022/04774 refers). This application contained a number of omissions and inaccuracies. Despite efforts by the LPA to obtain an appropriate level of information, the scope of the application proposal in terms of the intended land use and the associated operation development could not be properly understood and the application was refused.

Also in **June 2022**, an application was made for the *Conversion of an agricultural building to form a single dwellinghouse, associated curtilage and access driveway (Revised proposal).* In the application form submitted with this application, in answer to the question *Has the work or change of use already started?* It is answered *No.* There is no mention in the cover letter of this application to the 2018 permission remaining extant or a drainage system having been installed. Also of relevance is that this application includes an outline foul drainage plan KCC2667.03.03/19CB which indicates a 'klargester biodisc (or similar) installed to the north-east of the property as previously approved.



Slightly confusedly, the application form included with this 2022 application states under **Foul Sewage** that the foul drainage arrangements are '*unknown*'. It is important to note that these statements and plans are submitted as part of a formal planning application (subject of signed declaration) after the date this LDC application claims that the drainage to the west of the building was installed and completed to serve the proposed dwelling (i.e February 2021). There is no mention in this 2022 application of an alternative drainage scheme already having been installed to the south east of the site to serve the dwelling and the application still proposes a foul scheme which is in line with the DOC approved plan by Cole Easdon referenced above. This 2022 application was later refused as it contained insufficient information for the landscape, drainage, visual and amenity impacts to be properly understood. It was also not demonstrated that the building was capable of conversion in accordance with CP48 of the WCS.

Taking the statements made in the 2022 application at face value; either the foul drainage arrangements for the dwelling were unknown or that the application proposed a foul treatment plant in line with the scheme that was approved under the DOC application relating to the 2018 permission as this was the plan included in the submission. Neither of these scenarios align with the claims within this application that the drainage

installed in 2021 was intended to serve the converted barn. Most critically, the application form submitted in June 2022 clearly states that the development/use has not begun.

What can be ascertained from the information available, is that the drainage works (which are on the adjoining land) were undertaken immediately before work began on the unauthorised detached building on the adjoining land. It is not unreasonable for the LPA to conclude that the drainage works formed part of a wider scheme of unauthorised development particularly where a statement has been made in June 2022 confirming development/use had not begun at that time. Whether or not the drainage system has capacity to take connection from the 2018 application site is not the determining factor as to whether this particular material operation is comprised within the planning permission in question.

Rather than providing evidence of a drainage system comprised of the 2018 permitted schemes, the information provided is only evidence of a drainage scheme being installed on land adjacent to the application site immediately before construction of the unauthorised building begins on land adjacent to the application site.

There is no disagreement that the installation of drainage can constitute the material start of a development, unauthorised or subject of a planning permission. The evidence in this case however does not demonstrate that the drainage works undertaken represent a material start of the planning permission granted in respect of the barn conversion which included a different approved drainage scheme and in relation to which, a later application was made, still proposing a different drainage scheme.

There is very clear evidence available to the LPA which appears to contradict the information that has been provided in support of this application.

Builder Invoices

The invoices are dated February 2021. They do not provide evidence relating to any specific works only that work has been undertaken at the address referred to as Combe Barn. They do not provide evidence that the material operation comprises of the planning permission subject of the LDC application.

CONCLUSION

Statements within the Application Form and Design & Access Statements (cover letter) submitted to the LPA within the 2022 planning application (PL/2022/04708) contradict the statements included in the Statutory Declarations provided in support of the applicants claim. The application form for conversion of the same barn submitted in June 2022 clearly states development/use has not begun.

The invoices only confirm that works carried out at the site described as Combe Barn prior to 10 February 2021 they are not evidence that any material operation undertaken represent a material start of the 2018 planning permission relating to conversion of the barn.

Whilst the **photographs** do show a material operation that can typically constitute the material start of *a* development, they quite clearly show a drainage installed in a different location to the west of the application site. Contrary to the statement made in the cover letter and Statutory Declarations (point 1), they do not

show the installation of a drainage system *in strict accordance with the submitted material that was approved by Wiltshire Council as part of the Discharge of Conditions application.*

The photographs are dated **January 2021** this is when the applicant states the drainage system was installed. The planning application submitted in 2021 seeking retrospective permission for the detached building on the land immediately adjacent to the application site included the land that the photographed drainage system has been installed on. The application form accompanying the 2021 application stated that work began on constructing the unauthorised building on **10 February 2021** and that the proposal required a **Sewage Treatment Plant** (Application Form – Section 13).

Whilst the LPA does not disqualify the **statutory declarations** provided, they are contradicted by the applicants own photographic evidence and planning history. The weight of the statements are clearly outweighed by other clear evidence available to the Council

In summary, the evidence provided in support of the applicant's claim is not considered to be sufficiently unambiguous, precise or factual to demonstrate that the material operation referred to in the applicant's supporting documents, photographs and statements constitute a material operation comprised in the planning permission 18/11700/FUL.

The LPA is not satisfied that the legal tests are met in relation to the commencement of development and considers that the 2018 permission has expired. A Lawful Development Certificate cannot be granted.

RECOMMENDATION

That the application for a Lawful Development Certificate is REFUSED for the following reason;

The evidence provided in support of the applicant's claim is not considered to be sufficiently unambiguous, precise or factual to demonstrate that the material operation referred to in the applicant's supporting documents, photographs and statements constitute a material operation comprised in the planning permission 18/11700/FUL.

The LPA is not satisfied that the legal tests are met in relation to the commencement of development and considers that the 2018 permission has expired. A Lawful Development Certificate cannot be granted.