Murrell v Secretary of State for Communities and Local Government

Also known as: R. (on the application of Murrell) v Secretary of State for Communities and Local Government

Positive/Neutral Judicial Consideration

Court
Court of Appeal (Civil Division)

Judgment Date
3 December 2010

Where Reported
[2010] EWCA Civ 1367
[2010] 12 WLUK 127
[2012] 1 P. & C.R. 6
[2011] J.P.L. 739
[2010] N.P.C. 120
[2011] C.L.Y. 2539
Judgment

Subject
Planning

Other related subjects
Local government

Keywords
Agricultural buildings; Local government; Permitted development; Permitted development; Planning; Planning policy guidance; Time limits

Judge
Rix LJ;
Smith LJ;
Richards LJ

Counsel
For the appellants: Niall Blackie.
For the first respondent: Daniel Kolinsky.
For the second respondent: No appearance or representation.

Solicitor
For the appellants: FBC Manby Bowdler LLP.
For the first respondent: Treasury Solicitor.

Case Digest

Summary

A planning inspector had erred when considering a determination of an application for prior approval of a permitted development under the Town and Country Planning (General Permitted Development) Order 1995 Sch.2 Pt 6 para.A2(2) by focusing on policies where the principle of development was a main issue and thereby treating the matter more as concerning a determination of an ordinary planning application.

Abstract

The appellants (M) appealed against a decision (*[2010] EWHC 1045 (Admin), [2010] J.P.L. 1587*) upholding the first respondent secretary of state's decision, by a planning inspector, that the second respondent local authority had not erred in refusing to grant M prior approval to build a cattle shelter.

M proposed to erect a cattle shelter. Under the Town and Country Planning (General Permitted Development) Order 1995 Sch.2 Pt 6 para.A the development was permitted subject to conditions in para.A2(2) including M applying to the local authority for a determination as to whether its prior approval was required in relation to the siting, design and external appearance of the building. M applied on a standard form for such a determination. The local authority responded that the application was invalid as it did not comply with statutory requirements, including having been on an out of-date form and requiring further documents. M sent a new completed form and the requested documents to the local authority. The local authority acknowledged receipt of the form but 22 days later, 30 days after it had received the original application, it determined that prior approval was required and that such approval was refused as the proposed development did not comply with planning policies. M appealed but their appeal was dismissed by the planning inspector. M further sought to quash that decision but it was upheld.

M submitted that (1) their first application to the local authority was valid and so the 28-day period specified in para.A2(2)(iii) of the Order expired and permission for the development accrued; (2) the inspector failed to take into account or misinterpreted the Planning Policy Guidance 7 Annex E and she erred by approaching the matter as if it were an ordinary application for planning permission.

Held

Appeal allowed.

(1) An application for determination as to whether prior approval was required did not need to be accompanied by anything more than a written description of the proposed development and of the materials to be used and a plan indicating the site, together with the required fee. In practice it was advisable to use an up-to-date standard form and to provide the information referred to in the standard form, because that would facilitate the local authority's consideration of whether prior approval was needed and, if so, whether it should be given, and would minimise the need for the provision of further information at a later stage. When an application was submitted, it engaged a two-stage process. Firstly, it was to be considered whether prior approval was required. If the local authority determined that such approval was not required it should notify the applicant accordingly. If it determined that such approval was required and notified the applicant of that decision, it then moved on to the second stage in which it had eight weeks, or such longer period as might be agreed in writing, to decide whether to give its approval. A local authority could require further details at any time. In the instant case, the first application complied with the statutory requirements and was a valid application. The statutory 28-day period for consideration of the need for prior approval ran from that date. Mistakes made by the local authority in handling the application and the fact that M submitted a new form and further plans in accordance with the local authority's request did not stop the clock running or otherwise affect the position. On the expiry of the statutory period permission accrued, *R. (on the application of Orange PCS Ltd) v Islington LBC [2006] EWCA Civ 157, Times, January 24, 2006, [2006] 1 WLUK 306* applied (see paras 28-31, 33-34, 38-43 of judgment). (2) The question of prior approval under para.A2(2) of the Order only arose in respect of a permitted development within Class A. Such development was permitted subject to the conditions in para.A2, which did not affect the principle of development. As the PPG 7 Annex E guidance stated, if the requirements under the Order were met, the principle of whether the development should be permitted was not for consideration in the prior approval procedure. However, in the instant case, the inspector considered policies where the principle of development was very much in issue and in relation to the impact on visual amenity her decision read more like the determination of an ordinary planning application than that of an application for prior approval. It could therefore not be said that the inspector adopted the correct approach (paras 45, 47-50). (3) The inspector's decision was quashed (para.51).

