

SCOTT PLANNING

212 Cocking Solar PV
Certificate of Lawfulness Note
July 2022



Introduction

Scott Planning has been instructed by the Cowdray Estate to submit an application for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) in relation to the installation of solar PV panels to an estate cottage in the village of Cocking, known as number 212 Cocking.

The purpose of this note is to identify the relevant statutory framework that governs such development, and demonstrate that no further planning permission is required before the development is allowed to proceed. In this case, it is considered that the proposals would be permitted development, and so not require any express planning permission. This note should be read alongside the plans and photomontages prepared by T2 Architects, which illustrate the proposals.

Site Description

Number 212 Cocking is a semi-detached estate cottage of soft red brick construction under a darker reddish brown plain tiled hipped roof. Although apparently built as a pair, number 212 is distinguished by a prominent gabled projection to the right hand (northern) side of the front elevation. Both properties feature timber windows and external woodwork painted in the Cowdray Estate colours of yellow, which creates a distinctive appearance, as shown in the photo below.



Fig 1. 211 and 212 Cocking, front elevation

At the rear, both cottages have a catslide roof with gabled projections to the far end of each of the rear elevations, creating a ‘C’ shaped roof plan. These rear projections are clad with tile hanging externally but still represent visually prominent features to the rear of the cottages (see photo below). There is a large outbuilding to the immediate rear of the cottages which is split along the boundary. This building serves to partially obscure the rear elevation of the cottages when viewed from their rear gardens, as shown in the photo below.



Fig 2. 212 Cocking, rear elevation



Fig 3. 211 and 212 Cocking, view from garden of 212.

Historic mapping for the area has been inspected with a building corresponding to the current pair of cottages appearing on the 1910 OS Extract to the immediate south of a range of barns and referred to as Oldhouse Farm. This same arrangement appears on the 1898 Extract, although the mapping is slightly ambiguous, whereas the 1873 OS Extract appears to show an 'L' shaped building on the same siting as the pair of cottages (still referred to as Oldhouse Farm), with an outbuilding located to the rear.

The Cowdray Estate archive includes a plan dated 1882 showing the cottages as built, and labelled 'New Cottages, Oldhouse Farm'. This plan is copied below.

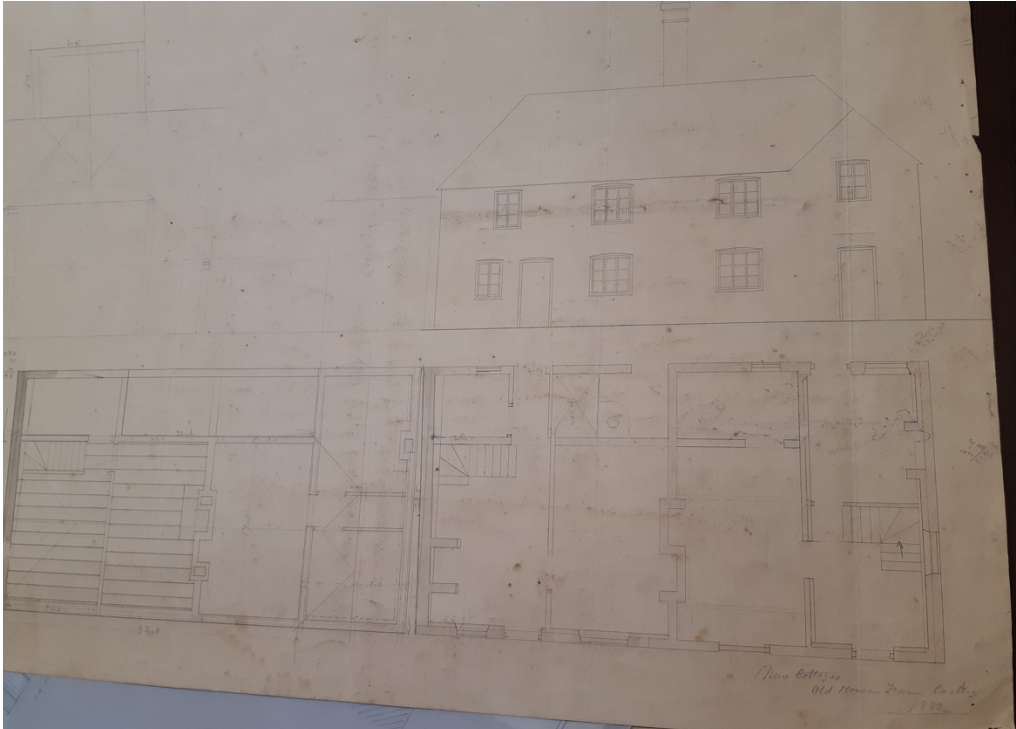


Fig 4. Plan of 211 and 212 Cocking, from Cowdray Archive.

This evidence would therefore suggest that the pair of cottages were built between 1882 and 1910, replacing an older single farmhouse on the same site, from which Oldhouse Farm likely obtains its name.

This type of redevelopment is common of the period when smaller independent farms were combined with larger holdings and the previous owners house was replaced with smaller houses to accommodate estate workers. It is also considered likely that the gable to the front elevation of number 212 was designed to replicate the form of the house it replaced, which had a projection to the northern end of the front elevation.

As shown in the location plan extract below, the pair of estate cottages sit well back in their plot, book-ended with converted barns to the north and south (Oldhouse Farm and Black Cat Barn) which sit closer to the main road. These barns, together with cottages lying further south serve to obscure oblique views of the cottages from the A286.

The cottage is not a listed building but it is located within the Cocking Conservation Area, as shown in the plan extract below.

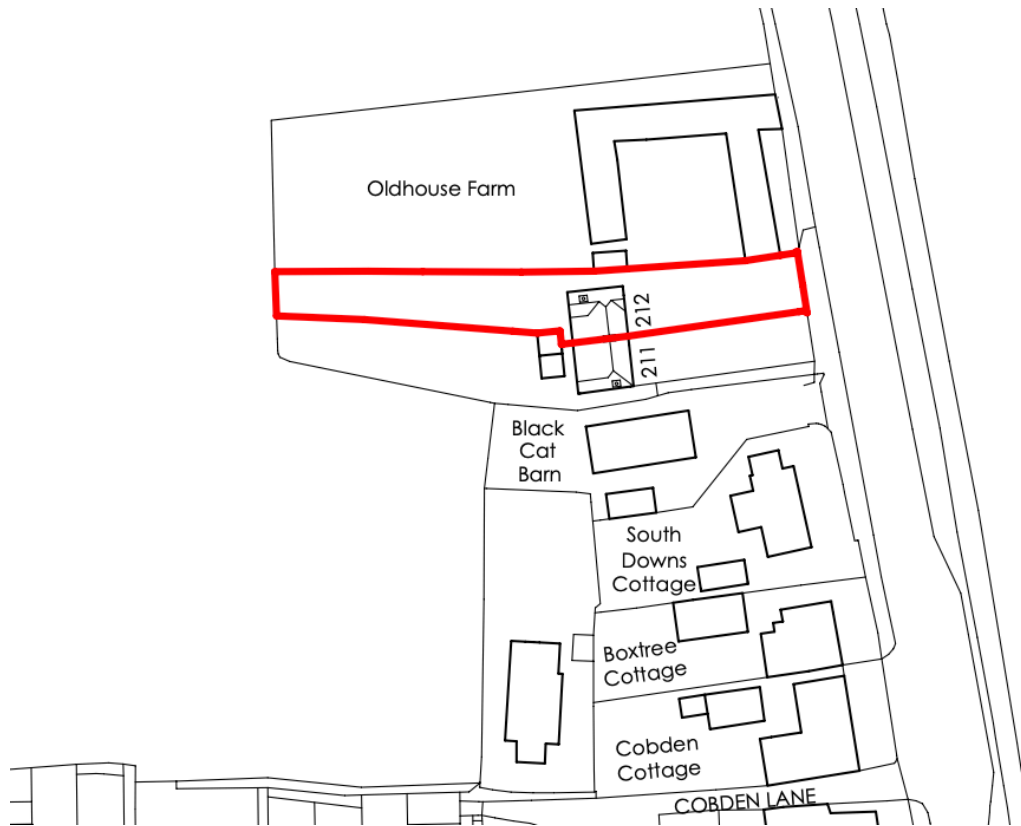


Fig 4. Location Plan extract

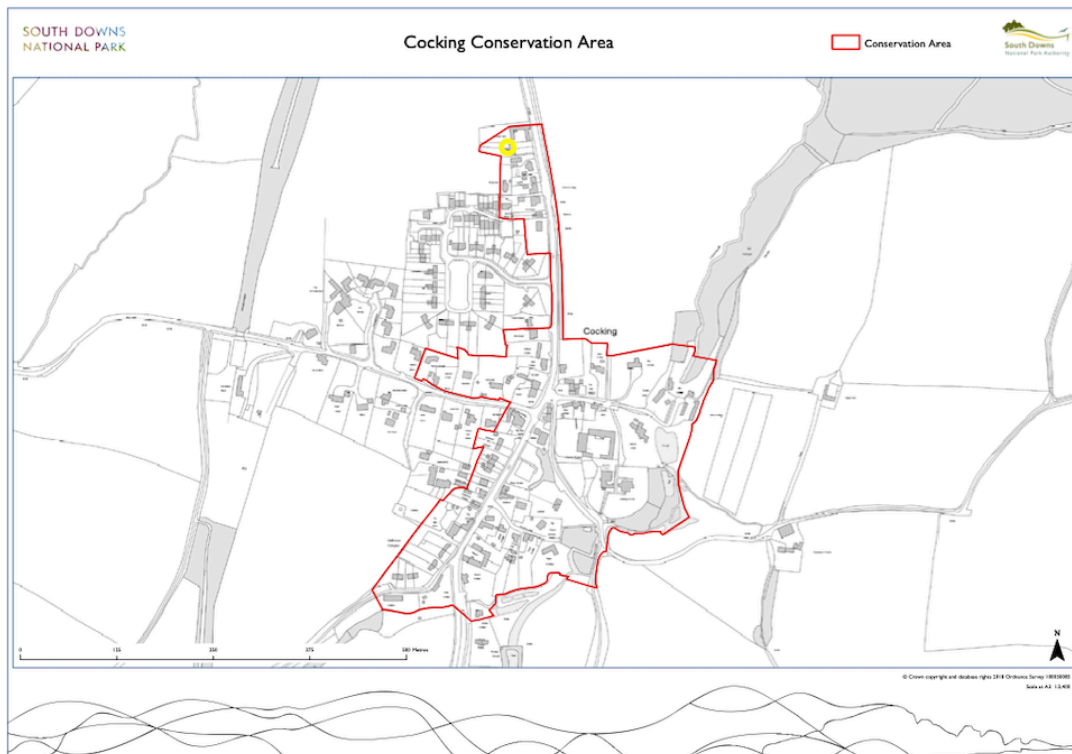


Fig 5. Conservation Area Plan, with site identified with yellow circle.

Certificate of Lawfulness

The legal basis for Certificates of Lawfulness is established within sections 191 – 193 of the Town and Country Planning Act 1990 (TCPA 1990). Section 192 of the TCPA 1990 relates to certificates of lawfulness for proposed use or development (CLOPUDs) and states that:

“(1) If any person wishes to ascertain whether—

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land,

would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.”

“(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.”

“(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.”

It is established that any consideration of a Certificate of Lawfulness application must be based on an assessment of whether the development is lawful, and not be influenced by any development plan policies as would be the case for an application for planning permission.

Permitted Development

The statutory basis for Permitted Development Rights (PDRs) are set out within the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Part 14 of Schedule 2 of the 2015 GDPO, sets out PDRs relating to renewable energy, including at Class A, the installation or alteration etc of solar equipment on domestic premises. The relevant text is extracted in full below:

Class A – installation or alteration etc of solar equipment on domestic premises

Permitted development

A. The installation, alteration or replacement of microgeneration solar PV or solar thermal equipment on—

- (a) a dwellinghouse or a block of flats; or
- (b) a building situated within the curtilage of a dwellinghouse or a block of flats.

Development not permitted

A.1 Development is not permitted by Class A if—

- (a) the solar PV or solar thermal equipment would protrude more than 0.2 metres beyond the plane of the wall or the roof slope when measured from the perpendicular with the external surface of the wall or roof slope;
- (b) it would result in the highest part of the solar PV or solar thermal equipment being higher than the highest part of the roof (excluding any chimney);
- (c) in the case of land within a conservation area or which is a World Heritage Site, the solar PV or solar thermal equipment would be installed on a wall which fronts a highway;
- (d) the solar PV or solar thermal equipment would be installed on a site designated as a scheduled monument; or
- (e) the solar PV or solar thermal equipment would be installed on a building within the curtilage of the dwellinghouse or block of flats if the dwellinghouse or block of flats is a listed building.

Conditions

A.2 Development is permitted by Class A subject to the following conditions—

- (a) solar PV or solar thermal equipment is, so far as practicable, sited so as to minimise its effect on the external appearance of the building;
- (b) solar PV or solar thermal equipment is, so far as practicable, sited so as to minimise its effect on the amenity of the area; and
- (c) solar PV or solar thermal equipment is removed as soon as reasonably practicable when no longer needed.

It is noted that the permitted development right is restricted in a Conservation Area, and is also removed on a listed building or scheduled ancient monument. There are no further restrictions which relate to National Parks or other protected landscapes.

In conservation areas, development is not permitted if the PV panels are installed on a wall that fronts a highway.

It is also noted that the PDR is conditional on the panels being sited, 'so far as is practicable', so as to minimise their effect on the external appearance of the building (at A2.(a)) and on the amenity of the area (at A2.(b)).

Small Scale Renewables TAN

This Technical Advice Note was approved by the SDNPA planning committee on 10 February 2022, and its purpose is to help applicants make successful planning applications. As such it is not directly relevant to this application for a Certificate of Lawfulness which must be decided only on the basis of whether the development is lawful.

Notwithstanding this, the TAN confirms that the SDNPA are committed to actions to reduce greenhouse gas emissions through its Corporate Plan and that responding to the climate emergency is a central priority of the NPA.

It is also noted that in Table 1 of the TAN, the NPA considers rooftop solar to be an appropriate form of microgeneration in all landscape character areas excepting only Landscape Character Type I: Major Scarps and S:Shoreline, neither of which apply to the current site.

Section 5 of the TAN contains reference to PDR set out within Part 14 of the GPDO, and confirms that the PDR do not apply to listed buildings and that there are ‘restrictions in the GPDO which relate to Conservation Areas’. The TAN does not go on to provide further guidance on how the NPA generally apply the PDR across the National Park.

Assessment against PDR

The table below provides an assessment against the particular requirements of Part 14, Class A of the GPDO, and the related restrictions and conditions.

PDR Ref	Requirement	Assessment	Pass
A	The installation etc of solar PV on a dwellinghouse or block of flats	The proposed PV panels are to be installed on a dwellinghouse	Yes
A.1 (a)	The PV panels must not protrude more than 0.2m (200mm) beyond the plane of the wall or the roofslope measured from the perpendicular with the external surface of the wall or roofslope.	The panels are to be fitted to the roofslope and will not project more than 0.2m beyond the plane of the roofslope.	Yes
A.1 (b)	The PV panels must not be higher than the highest part of the roof (excluding the chimney)	The panels will be sited below the ridge of the cottages, as shown on the submitted montage views prepared by T2 Architects.	Yes
A.1 (c)	In the case of land within a conservation area of which is a World Heritage Site, the panels must not be installed on a wall which fronts a highway.	The panels will be installed to the roof of the cottages and so will not be installed on any wall of the building, including that which faces towards (or ‘fronts’) the highway.	Yes
A.1 (d)	The panels must not be installed on a site designated as a scheduled monument.	The cottage does not form part of a site that is a scheduled monument	Yes

A.1 (e)	The panels must not be installed on a building within the curtilage of the dwellinghouse or block of flats if the dwellinghouse or block of flats is a listed building.	The cottage is not a listed building, not does it lie within the curtilage of any other listed building.	Yes
A.2 (a)	The panels are, so far as practicable, sited so as to minimise their effect on the external appearance of the building.	As shown in the view montages prepared by T2 Architects, the panels have been sited to the roofslope in an area that is designed to be as visually recessive as possible, due to the simple 2x3 arrangement of panels which gives a coherent appearance. The panels themselves have been selected to have a matt appearance so as to reduce likelihood of reflecting of solar glare. It is also noted that the simple form of the panels is similar to the rooflights found on the neighbouring barn conversions. The panels are therefore considered to be sited so as to minimise their effect on the appearance of the building.	Yes
A.2 (b)	The panels are, so far as practicable, sited so as to minimise their effect on the amenity of the area.	For the same reasons as those set out above, the panels are considered to be sited so as to minimise their effect on the amenity of the area.	Yes
A.2 (c)	The panels are removed as soon as reasonably practicable when no longer needed.	The panels will be removed when no longer needed.	Yes

Conclusion

For the reasons set out in the table above, it is considered that the proposed panels fully meet all requirements of Part 14, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. As such the panels are considered to be permitted development and therefore, lawful.

The Local Planning Authority is therefore invited to share this view and approve the CLOPUD application.

Although not directly relevant to the consideration of the current CLOPUD application, it is noted that solar PV panels have been installed elsewhere within the Cocking Conservation Area, on two adjacent properties located in Crypt Lane, as shown in the photos below. No planning history appears on the planning register for either of these two installations.



Fig's 6 and 7. Existing Solar Installations in Crypt Lane.