

Appeal Decision

Site visit made on 20 September 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 13 October 2016

Appeal Ref: APP/L3625/X/16/3142388

Kingswood Hall, Margery Wood Lane, Lower Kingswood, Surrey KT20 7BA

- 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 Michael Heighes of The Kingswood Hall Estate against the decision of Reigate & Banstead Borough Council.
 - The application Ref 15/00937/CLP, dated 28 April 2015, was refused by notice dated 24 July 2015.
 - The application was made under section 192(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 the construction of a concrete hardstanding for landing and take-off of helicopters.
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Summary Decision: The appeal is dismissed.

Applications for costs

1. An application for costs was made by Reigate & Banstead Borough Council against Mr Michael Heighes of The Kingswood Hall Estate. An application for costs was also made by Mr Michael Heighes of The Kingswood Hall Estate against Reigate & Banstead Borough Council. These applications are the subject of separate Decisions.

Reasons

2. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that 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 shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is firmly on the appellant to show that, on the balance of probability, the proposed development would have been lawful at the time the application was made to the Council.
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3. The proposed development comprises the construction of a concrete hardstanding for landing and take-off of helicopters together with a 3m pole for a wind sock. These two elements of the proposed development fall to be considered against separate provisions set out in Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
4. The provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such is permitted by Article 3, Schedule 2, Part 1, Class F of the GPDO, subject to the limitations set out at Classes F.1. The Council is satisfied that the proposed hardstanding complies with the limitations at Class F.1, and I see no reason to take a different view.
5. The provision of the 3m pole for a wind sock is not permitted by Class F but could potentially be permitted development under Article 3, Schedule 2, Part 1, Class E of the GPDO. Under Class E, the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted, subject to the limitations set out at Classes E.1, E.2 and E.3. The Council is satisfied that the proposed 3m pole complies with the limitations at Classes E.1, E.2 and E.3 and again I see no reason to take a different view.
6. The common denominator in respect of Class E and Class F is that, in order to be permitted development, the proposed development must be within the curtilage of a dwellinghouse. There is no dispute that Kingswood Hall is a dwellinghouse for this purpose. The matter in dispute is whether the proposed development is within the curtilage of Kingswood Hall.
7. The vehicular access to Kingswood Hall is from Margery Wood Lane, from where the access drive leads north-east to a parking area adjacent to the entrance in the west elevation of the house. The area to the north of this access road and the house itself is laid out as a formal garden, mostly laid to lawn, but with a number of mature trees. The northern boundary is defined by a wall, which extends to the south in a short section with a gated entrance.
8. The south elevation of Kingswood Hall includes a raised terrace, with centrally located steps down to garden level. The garden to the south of the house is formally laid out, with a linear lawn flanked in either side by a line of mature trees. At the southern end of the lawn is a garden monument feature, aligned with the centrally located steps in the terrace. This precise alignment with the main house appears intentional and provides a distinct link between the two. The southern boundary is marked by trees and shrubs, such that the garden area to the south of the house displays a strong sense of enclosure.
9. The eastern extent of this garden area is defined at the southern end by a hedge, with a wire fence within it, and to the north of that by a timber fence. It follows that the areas described above, namely the formal gardens to the north, west and south of Kingswood Hall, are largely defined by boundary treatments and/or planting. This well-defined area shares the common function of providing a formal garden space to Kingswood Hall, with which it is intimately associated. This defined garden space is the undoubted curtilage of Kingswood Hall. It is therefore necessary for me to go on to consider whether the remainder of the site also falls within the curtilage of Kingswood Hall.

10. Beyond the discrete area of formal gardens around Kingswood Hall itself, the function of the remainder of the site is different. This area is mostly comprised of a series of paddocks and grass meadows. There are isolated buildings, such as a stable block, and it is within this area, albeit just to the east of hedge and timber fence that defines the boundary of the formal garden, that the menage is sited. The land is within the same ownership as Kingswood Hall and the appellant explains that it used for purposes ancillary to the dwellinghouse as such, including for the grazing, exercise, training and riding of horses.
11. However, the term curtilage defines an area of land in relation to a building and not a use of land. Whilst the appellant may use the land for the grazing, exercise, training and riding of horses ancillary to the dwellinghouse at Kingswood Hall, these are not purposes intimately associated with that building. I acknowledge that the area of paddocks and meadows beyond the formal gardens associated with Kingswood Hall are possibly within the same planning unit and this is a point to which I return below. But the area of paddocks and meadows are physically separated from that building by a line of mature trees, a hedge and fencing, and have a different function to the formal garden area. For these reasons, the area of paddocks and meadows does not have the same intimate association with Kingswood Hall as a building as does the formal garden area.
12. Moreover, it is at this point that the planning history of the site becomes relevant. In December 1983, appeals were allowed for, amongst other things, the establishment and construction of a horse breeding unit (APP/5368/A/83/001992 & APP/L3525/A/83/003608). The appellant claims that the application subject to those appeals was to change the use of the land from domestic curtilage to a stud, but can I find nothing in the Inspector's decision to support that. Indeed, it is evident from the Inspector's reasoning that one of the main issues before him was the potential loss of good quality agricultural land and, at paragraph 35 of his decision, he refers in terms to the loss of the appeal site from agricultural use. It is therefore apparent to me that the Inspector was considering a change of use from agricultural use to equestrian use, rather than from a residential use to equestrian use.
13. Further evidence that the paddocks and grass meadows were used for agricultural purposes is that the land was at one time subject to temporary Agricultural Tenancy. The latter is of course not a planning permission and expired in 1985, but this would be consistent with the finding of the Inspector in December 1983 that the land was in agricultural use. The appellant contends that the land then changed back to domestic curtilage but I have been provided with no documentary evidence to support that in terms of, for example, a planning permission for residential use of the land prior to a change to agricultural use. The change of use from agricultural to residential in 1985 would have required planning permission but there is nothing in the planning history to suggest that any such permission was ever applied for or granted.
14. In 2009, planning permission was granted for the redevelopment and extension of Kingswood Hall under reference P/09/00101/F. The drawing accompanying that application (Drawing No. 823 dated February 1991) includes a location plan which extends to the full area claimed by the appellant to represent the curtilage of Kingswood Hall although, on the copy provided to me, the site area is not shown edged in red or delineated in any other way. Consequently, I am not convinced that this plan assists in defining the curtilage of Kingswood Hall.

15. The Council has issued a Certificate of Lawfulness for Proposed Use or Development, dated 4 August 2012, to the effect that it is satisfied that the development permitted under planning permission P/09/00101/F has been lawfully implemented. The appellant contends that, because the permission has been lawfully implemented, all of the land subject to that application now falls within residential curtilage of Kingswood Hall. This would include the menege and therefore the site for the proposed helipad.
16. I do not agree. As set out above, the term curtilage defines an area of land in relation to a building and not a use of land. The full implementation of planning permission P/09/00101/F would result in a larger building than that which exists at present, but that does not necessarily indicate that the new curtilage would extend to the full area subject to the application. The curtilage may become enlarged as a result of implementing permission but the function of the menege and the wider area of land would remain unchanged as being not intimately associated with the building. It is not for me to speculate on the extent of the new curtilage but I am satisfied that it would not include the menege and the site for the proposed helipad.
17. In any event, Section 192(2) of the 1990 Act indicates that an application for a LDC is to determine whether the use or operations described in that application would be lawful if instituted or begun at the time of the application. In this case the relevant date is 28 April 2015. As part of my site visit, I was able to view the foundation trench for the extension to Kingswood Hall permitted under planning permission P/09/00101/F. It is on the basis of this foundation trench that the Council are satisfied that this permission has been lawfully implemented. It is however obvious that the extension permitted by that permission has not been constructed beyond that trench and, by definition, had not been constructed on the date on which the LDC application was made. The curtilage under consideration in this appeal is therefore not that of Kingswood Hall as consented to be extended under planning permission P/09/00101/F. It is the curtilage of Kingswood Hall as it stood on 28 April 2015 which, as it transpires, is the same as that on the date of my site visit.
18. It follows that I have no evidence to indicate that the land beyond the formal garden area described above has the benefit of planning permission for residential use. I recognise that, in the recent planning history, the Council has determined a number of planning application under the suffix "HHOLD", which I understand to denote a householder application. However, this is a procedural tool for the registering of planning applications and I do not attach any weight to the use of that suffix for the purpose of denoting the lawful use of the land.
19. In this context, my attention has been drawn to planning permission 16/00494/HHOLD dated 4 April 2016. This application was for a replacement stable building which would be sited in the area that the appellant now asserts is within the residential curtilage of Kingswood Hall. Attached to that permission is an Informative that explains that, notwithstanding the application was submitted as a householder application, it was the Council's view that the location for the replacement stable building was outside the residential curtilage of Kingswood Hall. It is in my view instructive to note that, in a letter dated 28 April 2016, the appellant sought to rely on that Informative to avoid paying the Community Infrastructure Levy. I have great difficulty in reconciling that action with the appellant's assertion that this same land is within the curtilage of Kingswood Hall for the purposes of this appeal.

20. The correct interpretation of this planning history clearly has important implications in terms of determining the extent and nature of the planning unit of which Kingswood Hall forms a part, although that is not a matter before me. The issue before me is the whether the location for the proposed helipad is within the curtilage of Kingswood Hall. In that respect, even if the whole of the land suggested by the appellant was in the one planning unit and in residential use, both the function and location of the menege are not intimately associated with the building that is Kingswood Hall. For that reason, and as a matter of fact and degree, I find that the menege is outside the curtilage of that building. It follows that the proposed helipad, which would occupy the same position, would also be outside the curtilage of Kingswood Hall.

Other Matters

21. Although the focus of evidence in this appeal has been on the whether the proposed development is within the curtilage of Kingswood Hall, I am mindful that permitted development rights granted by Article 3, Schedule 2, Part 1 of the GPDO only apply to development that can be regarded as being incidental to the enjoyment of the dwellinghouse as such. In the context of Classes E and F of Part 1, the term 'required' has been held in the courts the mean 'reasonably required'. However, neither of the parties has commented on this in relation to the development proposed under this application and consequently there is no information before me on this point. Nevertheless, even if I were to find that the use was incidental to the enjoyment of the dwellinghouse as such, the proposed helipad would not be permitted development in any event for the reasons set out in my decision relating to being located outside the curtilage of Kingswood Hall.
22. The appellant has referred to informal advice given by Council officers in pre-application discussions and also to correspondence by the Council with the National Trust in relation to the construction of the menege. The Council is not bound by the advice of its officers, which is in any event open to interpretation, and the correspondence referred to by the appellant does not carry the force of formal decisions made by the Council. I have therefore based my decision on the planning history as determined by the formal decisions of the Council on planning applications and the decision of Inspectors on appeal.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of a concrete hardstanding for landing and take-off of helicopters at Kingswood Hall, Margery Wood Lane, Lower Kingswood, Surrey KT20 7BA was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Formal Decision

24. The appeal is dismissed.

Paul Freer

INSPECTOR