

Appeal Decision

Site visit made on 26 May 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 26 June 2017

Appeal Ref: APP/D3125/X/16/3161574

**Land rear of The Heyes, Churchill Road, Kingham, Chipping Norton
OX7 6TA**

- 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 (hereinafter "certificate").
 - The appeal is made by Mr Lee Foster against the decision of West Oxfordshire District Council.
 - The application ref. 16/00807/CLP, dated 18 February 2016, was refused by notice dated 16 May 2016.
 - The application was made under section 192(1) (a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate is sought is described at section 8 of the application form as "Use of land as a touring caravan site for up to 5 caravans by an exempted organisation, as defined by the Caravan Sites and Control of Development Act 1960."
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The residential plot containing a mobile home for one gypsy family is known as "The Hayse" according to a sign at the entrance. Plans submitted by the Council mention "The Hayes". For the avoidance of doubt, I shall continue with the name "The Heyes" as recorded on the application form, the appeal form and the Council's decision notice.

Main issue

3. I consider that the main issue is whether the Council's decision to refuse to grant a certificate was well founded.

Reasons

4. When reading Schedule 2, Part 5, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) with the First Schedule of the Caravan Sites and Control of Development Act 1960, it is clear that caravan sites approved by exempted organisations with no more
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- than 5 caravans stationed at any time are ordinarily held to be permitted development.
5. The permitted development provisions of the GPDO are however constrained by Article 3(4) of the GPDO. This rules out permitted developments that would be contrary to any condition imposed by any planning permission granted under Part 3 of the 1990 Act as amended.
 6. The Heyes was established pursuant to such a planning permission, issued under ref. 10/0791/P/FP on 15 July 2010 (the planning permission). This permitted the change of use of the land to site a caravan for one gypsy family (part retrospective). In the interests of visual amenity, condition 6 states "No commercial activities shall take place on the land, including the storage of materials." The Heyes residential plot is defined by blue lines on the plan submitted with the application for the certificate.
 7. The appeal (application) site is the land defined by red lines, the greater part of which is an agricultural field to the south of The Heyes. The appeal site also includes firstly, the northern end of an established access drive, which is owned by others, serves The Heyes, and leads, beyond a secure gate, to open land and a woodyard to the south, and secondly, an adjacent roughly rectangular piece of land on the eastern side of part of that access drive. I shall refer to this latter piece of land as Area R to conform to the text adopted by the Council. Both the access drive and Area R also fall within the blue-edged land (that is the residential land permitted under the planning permission). The Council's statement sets out in considerable detail the physical extent of these two areas of land. I note that the stated dimensions have not been subsequently challenged by the appellant, who did not respond to the local planning authority's statement.
 8. Whilst I understand the appellant's observations about the concept of planning units, the appeal site undoubtedly incorporates a sizeable part of the land authorised for residential use as the permitted gypsy residential caravan site at The Heyes. In any event, in view of the existence of a planning condition this case is not primarily one about any potential material change of use of a planning unit. The main issue turns on whether the site's planning history, namely condition 6 of the planning permission, would rule out the permitted development rights referred to in paragraph 4 above.
 9. There appears to be broad agreement between the parties that the planning permission did not explicitly and could not practically authorise a change of use of the northern end of the established access drive (including its junction with Churchill Road) to residential use. It remains as a bona fide vehicular access and in practical terms it would remain as the initial access point off Churchill Road, whether being used by the residential occupiers of The Heyes, by other users who travel beyond the secure gate or by users of the proposed touring caravan site. The Council does not assert a breach of condition 6 in respect of this established access drive. Clearly, condition 6 does not affect the field at the rear of The Heyes either.
 10. The scenario with Area R is rather different. The Council's undisputed measurements for Area R refer to a width of between about 4.2 m to 7.0 m, a length of approximately 19 m and an area of some 105 sq. m. It forms a

sizeable part of the western edge of the approved residential land. Whilst the larger part of it appears to lie outside the gated confines of the residential plot as constructed and consists in part of a parking area and a rough access track to the field to the south, it remains land that only has a lawful residential use in accordance with the terms of the planning permission.

11. In effect, condition 6 would prevent any form of commercial activity within Area R. I agree with the Council that this would include the potentially high number of people and vehicles, including touring caravans, coming to and going from the field to the rear, where the touring caravans would presumably be sited, were Area R simply to be used as a means of access only. This would amount to a notable degree of commercial activity all year round on residential land. It would be restricted by condition 6. Furthermore, there would in all probability, as the Council suggests, be some form of security, waiting and reception procedures put in place within Area R.
12. The Council demonstrates that the north-western part of Area R would not necessarily be required for access purposes and could theoretically be used for a wide variety of other purposes directly related to the commercial touring caravan site. No conditions are available in certificate cases like this to prevent such uses occurring. It may also be possible to position one touring caravan (or conceivably 2 such caravans) on this part of Area R. The degree to which this area would be used for commercial activities would depend to a large extent upon the preferences of the managers of the site.
13. The Council is also alert to the possibility that the mobile home at The Heyes could have some form of management/reception/security function associated with the proposed touring caravan site use. However, this mobile home is not included in the appeal site as such and any certificate which may be granted could only apply to the red-edged land specified.
14. Still, I find that it is inevitable that commercial activity, contrary to condition 6, would take place within Area R for the reasons given. I therefore find in favour of the Council with regard to Area R. The proposed development would be development for which planning permission is required. That cannot be granted by the GPDO because of the breach of condition 6. The scheme would therefore require an express grant of planning permission by the local planning authority as it does not amount to permitted development under the terms of the GPDO read as a whole.

Conclusion

15. I have had regard to all other matters raised in the written representations, but for the reasons given above, I conclude that the Council's refusal to grant a certificate was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andrew Dale

INSPECTOR