

Appeal Decision

Site visit made on 13 July 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 28 July 2017

Appeal Ref: APP/W1850/X/17/3168389
Lea Villa Residential Park, Lea, Ross-on-Wye HR9 7GP

- 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 J and E Fury against the decision of The County of Herefordshire District Council.
 - The application ref. 163592, dated 9 November 2016, was refused by notice dated 4 January 2017.
 - The application was made under section 192(1) (a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate is sought is “use of land for the stationing of four caravans for the purposes of human habitation in the area shown in red on the accompanying plan”.
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Decision

1. The appeal is allowed and attached to this decision is a certificate describing the proposed use which is considered to be lawful.

Preliminary matters

2. A clear description of the proposal does not appear on the application form. The description of the proposal in the last bullet point in the heading above is taken from the appeal form and the statement submitted in support of the application. It broadly corresponds with that found on the Council’s decision notice. The address in the heading above follows the more succinct version provided on the Council’s decision notice, except I have used what I believe to be the correct postcode.
 3. An application for a certificate enables owners or others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action.
 4. For the benefit of third parties I should say that a certificate is not a planning permission. Thus, the planning merits of the proposed development are not relevant, and they are not therefore issues for me to consider, in the context of an appeal made under section 195 of the 1990 Act as amended.
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5. My decision must rest on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in this appeal rests on the appellant. The test of the evidence is made on the balance of probabilities. The assessment is based on whether or not the proposed development would be lawful if begun at the time of the application.

Main issue

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

Reasons

7. Lea Villa Residential Park is a long-established site for static caravans or park homes. It has an extensive planning history, as recorded within Annex B of the Council's statement. This residential park home site also benefits from a certificate granted in October 2014 under ref. P142613/U for the use of land for the siting of 52 caravans used for residential purposes and occupied by persons of 50 years of age and over. This appeal and the application to which it relates are only concerned with a roughly triangular piece of ground on the northern edge of Lea Villa Residential Park beyond the park homes numbered 38 and 39. The October 2014 certificate actually included the widest, southern segment of the appeal site.
8. The triangular piece of ground has recently been cleared of vegetation. A toilet block has been demolished. The earlier boundary structures – concrete posts and wire – are still in evidence. However, in the recent past new timber fencing has been fitted just inside those structures around all the boundaries.
9. The Council's decision notice states that: "In the absence of sufficient evidence, and on the balance of probabilities, the Council does not consider that the area forms part of the existing caravan site. As such, the stationing of caravans on the site would not constitute lawful development."
10. For the avoidance of doubt, the expression "caravan site" is defined in the Town and Country Planning Act 1990 as amended as having the meaning given in section 1(4) of the Caravan Sites and Control of Development Act 1960. This says that it means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed.
11. The case put by the appellants relies primarily on the planning history. Two items are of particular relevance. Under ref. 21965 planning permission was granted in July 1966 for the use of land as an extension to the existing caravan site with vehicular access thereto. Under ref. 27525 planning permission was granted with conditions in November 1969 for the use of land as a permanent site for caravans. It appears to be common ground between the parties that both planning permissions were implemented and that they contain no planning conditions restricting the number of caravans or the layout of the caravan park. Whether or not a site licence specifies a maximum number of caravans is of little relevance as it would be issued under separate legislation and would serve a different purpose. It would not affect my interpretation of the planning permissions which establish the principle of land use.

12. In seeking to establish whether the subject piece of ground forms part of the caravan site areas for which the planning permissions were granted in July 1966 and November 1969, the parties have been somewhat hampered by the reproduction of the relevant planning documents on microfilm. Still, I have considered the interpretations which have been placed on the planning history documents by the parties.
13. Insofar as the July 1966 planning permission is concerned, I cannot distinguish a bold or otherwise clear solid line underneath the indicative straight red line produced at page 3 of the Council's statement between the top two "Rs". There is a dotted line but this is also shown passing across adjacent fields. It is more likely than not that the site area for this planning permission followed the clear solid lines forming a triangular shape at the northern end, reflecting the land ownership boundary.
14. The Council says that there was no block plan submitted/available on microfiche in relation to the November 1969 planning permission. Nonetheless, from that planning permission, a plan has been produced at Annex D of the Council's statement and within the appellants' statement showing a toilet block and a sewage disposal unit within the appeal site. I note that the toilet block is shown sited beyond the Council's indicative straight red line referred to in the paragraph above. This plan also shows established side boundaries running south-north towards a point and lacks any obvious east-west site boundary that would suggest the toilet block was positioned at the very edge of the caravan site.
15. It seems highly unlikely that the northern wall of the toilet block would have formed the northern edge of the caravan site given the presence of the sizeable sewage disposal unit beyond and the need to maintain the toilet block building and the sewage disposal unit over the longer term. How accessible or not the area behind the toilet block was is not entirely clear from the Council's aerial photographs. The removal of fencing from the back gardens of the park homes at nos 38 and 39 might not be significant in this regard bearing in mind that substantial new fencing work appears to have taken place around the appeal site in general since November 2016.
16. Perhaps given the site's slightly awkward shape, the installation of the sewage disposal unit and the position of the toilet block, the site behind the toilet block has not been as well used as other parts of Lea Villa Residential Park. It clearly became overgrown with vegetation. I am told by the appellants that the land was put to use for the storage of tools and other equipment used in the maintenance of the site when the residential park was acquired by the appellants. Be that as it may, it is more significant that there has been no suggestion that the land has, at any stage, been put to some other alternative use, being a land use which would not be in conjunction with the land on which the caravans have been stationed at Lea Villa Residential Park.
17. Drawing all the above together, I find on the balance of probabilities that the appeal site is part of the established caravan site here, being within the boundaries associated with the two historic planning permissions for a caravan site. The land has remained as part of the caravan site and has not been put to a separate, alternative use. Given the construction of those planning permissions, in particular the absence of conditions on the number of caravans,

and the fact that the appeal site forms only a very small part of the overall site, it is clear that the stationing of four caravans would not amount to the making of a material change in the use of the land at Lea Villa Residential Park. It follows that this would not be development as defined in section 55 of the 1990 Act as amended and that planning permission would not be required for the use described in the application for the certificate.

18. For the reasons given above and taking into account all other matters raised, I conclude, on the evidence now available, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will therefore exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Dale

INSPECTOR