

Mr N Cottrell
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Date: 24 January 2024
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By E-Mail

Dear Mr Cottrell

Development at Heyford Park – Proposed Temporary Car Processing Use

Thank you for providing me with information about the recent application by Upper Heyford LP for a temporary planning permission for '*Use of the eastern part of the southern taxiway and the adjacent Hush House building (Building 1368) for car processing operations plus associated works and portable buildings. Planning permission is sought for a 5 year period (LPA reference 23/02827/F).*'

You have asked me to clarify the relationship between the development that would be carried out pursuant to a permission if granted pursuant to this application, and the obligations in the planning agreement that binds the a large part of the land at Heyford Park dated 8 September 2022. This agreement, which I refer to as the 'Hybrid Agreement' was completed in connection with the grant of planning permission reference 18/00825/HYBRID. I refer to this permission as the 'Hybrid Permission'.

In the first instance it is useful to understand the planning history of the site at Heyford Park and the context for the Hybrid Agreement, before considering the relationship of the application for temporary planning permission against this context.

The initial planning approvals at Heyford Park

The Original Permission

Planning permission was originally granted on appeal for development of land at the Former RAF Upper Heyford under reference APP/C3105/A/08/2080594 ("the Original Permission"). The application was for development of the application site broadly in two parts: the New Settlement Area, and the Flying Field. An additional part of the application site was to be used for open space.

Prior to the grant of consent, a unilateral undertaking was entered into on 23 January 2009 ("the Unilateral Undertaking"). The whole area within the red line boundary was bound by the obligations in the unilateral undertaking but different obligations applied to different parts. The Unilateral Undertaking was supplemented by a further undertaking dated 13 November 2009 pertaining to elements of the development on the New Settlement Area; a planning agreement dated 18 March 2010 in respect of temporary education provision and public transport contributions related to the New Settlement Area; and a further planning agreement dated 7 July 2010 which provided security for the payments due under the undertakings in respect of the residential development of the New Settlement Area and payments in respect of associated education provision ("the Supplemental Obligations").

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In broad terms the development permitted by the original Permission on the New Settlement Area comprised residential and commercial development with supporting infrastructure (such as hotel, school, sports provision). On the Flying Field the development permitted comprised various changes of use including for vehicle preparation and car processing, and for other industrial and storage purposes. Car processing operations on the Flying Field were thereby authorised by the Original Permission. This use remains lawful notwithstanding the implementation of a subsequent permission in respect of part of the Flying Field as detailed below.

The New Settlement Permission

A separate planning application reference 10/01642/OUT ("New Settlement Permission") was subsequently pursued in respect of just the New Settlement Area, which was granted by Cherwell District Council on 22 December 2011 following completion of a planning agreement also dated 22 December 2011 ("Principal Agreement"). Pursuant to the terms of the Principal Agreement when the New Settlement Permission was implemented, the Unilateral Undertaking and the supplemental undertaking and agreements referred to in paragraph 2.3 were discharged insofar as they affected the New Settlement Area. Consequently the remainder of the land at Heyford Park, the Flying Field and the car processing operations thereon, continued to be bound by the terms of the Unilateral Undertaking and Supplemental Obligations.

The Hybrid Permission

A further planning application was made in 2018 under LPA reference 18/00825/HYBRID, resulting in the grant of "the Hybrid Permission" on 8 September 2022. The approach to the application reflected that adopted with the Original Permission, i.e. splitting the application site into two broad areas. A larger area was identified where residential and commercial development with associated infrastructure would be provided (the Pink Land), with a smaller Flying Field Area where the development permitted focussed on changes of use of buildings for employment and other commercial purposes, an area for (permanent) car processing and continued use of buildings areas and structures permitted by previous consents. The description of the approved development includes, inter alia, 20.3 ha of car processing use.

Condition 1 provided that application for approval of all the reserved matters for operational development had to be made to the Local Planning Authority before the expiration of ten years from the date of the permission, and the development begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later. In respect of the changes of use, condition 3 requires that the changes of use to which the permission relates have to be begun not later than the expiration of ten years beginning with the date of this permission. Condition 5 requires the submission and approval of a phasing plan for the entire application site.

The Hybrid Agreement

A new planning agreement ("the Hybrid Agreement") was entered into dated 8 September 2022, to control the development to be carried out pursuant to the Hybrid Permission. The obligations were split into those which bound the Pink Land (new settlement/development area) and those which bound the Green Land (the reduced Flying Field).

In order to regularise the position as between the obligations in the Hybrid Agreement and both the Principal Agreement (where development overlapped with the New Settlement Permission) and the Unilateral Undertaking and Supplemental Obligations (which continued to apply to those parts of the land benefitting from the Original Permission not subsequently covered by the Principal Agreement), the Nineteenth Schedule identified the previous obligations which had been triggered and remained to be complied with; in summary the Hybrid Agreement discharged the existing obligations which remained to be complied with and confirmed that they were to be replaced by the terms of the Hybrid Agreement (save in respect of some Countryside Access provisions in the Principal Agreement were to remain enforceable under the terms of that agreement).

The Hybrid Agreement also makes provision for the obligations in the Hybrid Agreement to bind 'Qualifying Permissions'; these are reserved matters approvals pursuant to the Hybrid

Permission, or standalone full planning permissions for part of the defined Development (development of the Site as set out in the Hybrid Application). The Hybrid Agreement also includes a provision confirming that nothing in the Hybrid Agreement prevents development being carried out pursuant to a planning permission other than the Hybrid Permission.

The application for temporary car processing

The first point to note about the application for a temporary car processing use within land at Heyford Park (23/02827/F) is that it does not constitute a Qualifying Application under the terms of the Hybrid Agreement, and will not generate a Qualifying Permission. In particular, the current application is not for a permanent car processing use, as planning permission is sought for the limited period of five years; this is not, therefore, part of the development authorised by the Hybrid Permission

Consequently, the current application for a temporary car processing use as set out in the current application will not be bound by the terms of the Hybrid Agreement. It has to be determined on its own merits, applying Section 38(6) of the Planning and Compulsory Purchase Act 2004. This determination should take account of the current planning context including the grant of the Hybrid Permission and the controls imposed on development pursuant to that consent.

In this context it must be noted that the development permitted by the Hybrid Permission is of a significant scale, to be delivered over a number of years. This is reflected in conditions 1 and 3 of the permission allowing the reserved matters approvals to be submitted, and changes of use implemented, over a period of 10 years. Further, the obligations in the Hybrid Agreement are phased with triggers for delivery of infrastructure or payment of contributions set primarily by occupations of Dwellings and Commercial Units (as permitted pursuant to the Hybrid Permission.

Taking account of the period over which applications for reserved matters approval may be submitted and changes of use be implemented, it is clear that the Dorchester Group, as principal developer at Heyford Park, is likely to seek to make productive use of parts of the site up to the point at which those parts are required for permanent development pursuant to the Hybrid Permission. I understand that is the context in which the application for car processing on a temporary basis has been submitted; this use can be undertaken temporarily in the location identified in the application, pending the establishment of this use in a permanent new location in accordance with the Hybrid Permission. This is itself dependent on the programming of other elements of the development at Heyford Park including the requirement to deliver other uses on parts of the temporary application site, and associated commercial considerations.

The site location plan for the temporary car processing application indicates that the red line boundary straddles the boundary between the Pink Land and the Green Land as defined in the Hybrid Agreement. Those parts of the Pink Land within the temporary application site are proposed for parts of the Creative City, a phase of residential development and extends slightly into the Core Visitor Destination Area which form part of Masterplan Area A as defined in the Hybrid Agreement. It is to the north east of the area identified for the provision of a new educational facility.

Notwithstanding the location of part of the site boundary for the temporary car processing use in within the Pink Land and Masterplan Area A in particular, the grant and implementation of the temporary consent (LPA reference 23/02827/F) would not engage any of the obligations in the Hybrid Agreement.

The obligations in the Hybrid Agreement that relate to Masterplan Area A prevent *Commencement of Development* on Masterplan Area A unless a plan for the Bus Route and Primary HGV Access has been approved by the County Council, and with *no Occupation of a Commercial Unit or Dwelling* in Masterplan Area A until, ultimately, the route has been provided to base course level. The defined terms used in relation to these obligations are framed by reference to the development permitted by the Hybrid Permission: commencement of

development pursuant to that permission, occupation of a dwelling constructed pursuant to that permission or a commercial unit constructed pursuant to that permission on the Pink Land. Consequently the use of any part of Masterplan Area A pursuant to a temporary consent will not trigger these obligations.

The trigger for provision of the bus and HGV access route prior to occupation of Masterplan Area A is linked to the need for this infrastructure to service the future development of Masterplan Area A, including the proposed new school. The provision of a temporary car processing use within part of this area does not provide justification for delivery of the bus and HGV access route in connection with the temporary use. It is understood that clarification is being provided to Oxfordshire County Council in respect of the vehicle movements associated with the temporary use which support your assertion that the consent for the temporary use will not significantly increase the existing volumes of traffic accessing the Flying Field from current levels and, most particularly, cannot be considered sufficient to require the delivery of the bus and HGV access route in connection with a 5 year temporary permission.

The programming of the development at Heyford Park is complex, particularly in view of the planning obligations to be complied with during the course of the development. I understand that the County Council is concerned about your ability to curtail the use of the car processing area given the need to deliver infrastructure such as the primary school.

The obligations for delivery of the Primary School were of particular concern when the Hybrid Agreement was under negotiation, although it was ultimately agreed (and secured) that no more than 150 Dwellings could be Occupied until a build contract was let for the Primary School, and no more than 400 Dwellings Occupied until the Primary School had been completed and transferred to the County Council. I understand that a reserved matters application is to be made shortly in relation to the school and indeed the bus route.

Given the location of the proposed Primary School site in proximity to the temporary car processing use, it will be necessary for you to exercise sufficient control of the leasing arrangements for the car processing use, such that you have the ability to terminate these arrangements, if necessary, in order for you to be able to deliver the school in accordance with the obligations in the Hybrid Agreement: failure to control the temporary use will otherwise prejudice the delivery of housing, and associated commercial, development. Of course, the grant of permission for a period of 5 years does not mean that the use has to continue for a full five-year period.

I understand that you are preparing a phasing schedule which can be shared with the both the District and County Councils to assist illustrate how the various phases of development permitted by the Hybrid Permission are intended to be implemented, and how the temporary car processing use complements this wider development.

Routeing Agreement

The existing Routeing Agreement for Heyford Park pertains to Regulated Development and Relevant Journeys, both of which are defined by reference to development pursuant to the Hybrid Permission and any Qualifying Permission. In addition, none of the earlier temporary permissions on the current application site (i.e. 13/01599/F, 18/02169/F and 20/03638/F) have been the subject of Routeing Agreements. Notwithstanding this, I understand that the proposed tenant (CEVA) has agreed to adhere to the 'established' routeing arrangements as part of their commercial lease and a letter confirming same has been provided to the local planning authority as part of the updated planning application pack.

Public Rights of Way

As noted above, the Countryside Access obligations which were imposed through the Principal Agreement have not yet been discharged in full. These obligations remain in place. However, although the route for the Aves Ditch Bridleway Connection has not yet been finalised, the grant of a temporary planning permission for car processing works on part of the Hybrid Permission site does not mean that it will no longer be possible to restore the bridleway to an

alignment inside and across the Flying Field. This is a matter for the Dorchester Group to discharge pursuant to the Principal Agreement, whether the route is proposed on a permanent basis, or could be moved on the expiration of the temporary permission.

Conclusion

I trust this letter assists in clarifying the relationship between the obligations which currently bind the land at Heyford Park, and what impacts there may or may not be, if the District Council granted permission for car processing on part of the Heyford Park site pending development pursuant to the Hybrid Permission. However if I can assist further then do not hesitate to contact me.

Yours sincerely



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