

Appeal Decision

Site visit made on 12 December 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 19 December 2016

Appeal Ref: APP/V3310/C/16/3151793

14 Janson Close, Bridgewater TA6 4XX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Michelle Heal against an enforcement notice issued by Sedgemoor District Council (the LPA).
 - The enforcement notice was issued on 26 May 2016.
 - The breach of planning control as alleged in the notice is: a material change of use of the Land from residential and parking to use of the Land as residential, parking and storage in the approximate position marked with a cross on the plan attached to the notice.
 - The requirements of the notice are as follows:
 1. Permanently cease the storage use of the Land.
 2. Permanently remove the shipping container from the Land edged and hatched in red on the plan attached to the notice.
 3. Restore the Land to its condition before the breach began.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on grounds (c), (e) and (f), as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for permission deemed to have been made under section 177(5) of the Act, as amended, does not fall to be considered.
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Decision

1. The appeal is dismissed (see formal decision below).

Matters of clarification and background information

2. As indicated above the relevant fee was not paid and so I am unable to consider the merits of the case and whether or not planning permission should be granted for the retention of the shipping container in the car park. The Council has referred to the relevant development plan policies but these do not fall to be considered in relation to the grounds pleaded.
3. The appellant's property is located within Janson Close, which is a short cul-de-sac on this residential estate in Bridgewater. The house (No 14) is one of four of a terrace, at the northern end of the cul-de-sac. To the east, and leading off from the eastern turning head, there is an access into a residential car parking area. This car park area is for the use of the residents including the appellant. The '*shipping container*', which facilitates the storage use, is located in a small rectangular space, off the main space, and on the northern boundary of the car park.
4. This space is stated by the appellant to be part of her '*parking allowance/garage space*' within the car park. It is being used, mainly, for the storage of a vintage tractor now belonging to the appellant's husband. This had originally belonged to his grandfather and is said to be a treasured family possession. The appellant indicates that the family had nowhere else to store the vehicle and did not consider that planning permission was required for the storage container since it was not a fixed

structure. Having considered planning advice and guidance relating to the use of such containers, the appellant concluded that the storage use was not only ancillary to the use of their house, but that it was also a valid use of their parking space within the communal car park.

5. A planning application (08/16/00048), dated 23 March 2016, for '*the retention of the use of land to site a storage container*', was refused permission by the LPA on 4 May 2016. The reason for refusal referred to the container's size, scale and design and indicated that the LPA considered it to an incongruous and harmful feature which was contrary to Policy D2 of the Sedgemoor District Core Strategy.

6. The appellant indicates that the above Refusal Notice was sent to the occupants of No 15 Janson Close, who had complained about the container. This address was also put on to the Council's Planning Online website. The appellant indicates that she was not even aware of the refusal of planning permission until she went to the Council office to find out about the outcome of the application.

7. At this point the enforcement notice was about to be served and the appellant contends that this put her at a disadvantage, in that it reduced the time she had to appeal (under section 78 of the Act), against the Council's refusal of planning permission for retention of the shipping container. The appellant had informed the LPA that, if required, she was willing to clad the container with timber and to attach a '*living roof*' for environmental reasons. It was considered that this would be beneficial as a wildlife habitat. I have seen, and have taken into account, an illustration of what was proposed.

8. I acknowledge the appellant's concerns about the matters relating to the Refusal Notice. However, I am only empowered to deal with the notice as drafted and under the three relevant grounds pleaded. If the appellant is still aggrieved about any matter relating to the refusal of planning permission, or the manner in which the LPA dealt with the application, then that would be a matter between her and the Council and is not something that I am empowered to resolve.

The appeal under ground (e)

9. I do not consider that the error, in sending the refusal notice to the wrong address, can carry any weight under the ground (e) appeal in this case. The LPA has accepted that the refusal notice was sent to the wrong address and, through their appeal statement, apologise to the appellant. However, it is indicated that the notice, the subject of this appeal, was correctly served to Mr and Mrs Heal at the correct address. That is clear from the submitted information and, on receipt of the notice, an appeal was able to be duly made by Mrs Heal. Thus no injustice was caused (with regard to the enforcement notice) due to the Council's error. I can only conclude, therefore, that the enforcement notice was properly served and the appeal must fail on ground (e).

The appeal under ground (c)

10. In this appeal the onus is on the appellant to show that, on the balance of probabilities, the alleged matter (the material change of use of the Land from residential and parking to use of the Land as residential, parking and storage) does not constitute a breach of planning control. The nub of the appellant's arguments is that the container is a non-permanent fixture which could be moved at any time. Reference is made to the development plan policies and that, in the appellant's view, Policy D3 (relating to sustainable construction) is more relevant.

11. However, as indicated above, the merits of what has been placed on the site is not for consideration. The only question under this ground is whether or not the siting

of the container and its use for storage purposes constitutes development that is a change in use of the land and, therefore, requires planning permission. The appellant applied for permission and as indicated above this was refused by the LPA

12. The Council refers to the tests for the siting of such items (as shipping containers) being originally set out in the case of *Cardiff Rating Authority v Guest Keen Baldwin [1949] 1 KB 385*. This decision and the need for three specific tests (as to what constituted 'a building' for the purposes of the Act) was reinforced by the cases of *Skerritts of Nottingham Limited v SSETR [2000]* and *R (Save Woolley Valley Action Group Ltd v Bath and North East Somerset [2012]*.

13. However, section 55 (1) of The Town and Country Planning Act 1990 (the Act) includes in the definition of the word 'development' the material change in use of the land. This is what the allegation in the notice is aimed at; a change in use of the land as opposed to the erection of a building on the land. Nevertheless, with regard to the three tests, I consider that because of its 'size' and physical presence in this particular location, the container is more akin to a 'building' than a mere chattel or moveable structure placed on the land.

14. In terms of 'permanence', whilst accepting that it could easily be moved, it is clear that the appellant wishes for it to become a more permanent storage unit and, in this respect, in its planning context it has an impact that would be significantly noticeable (in terms of its physical presence) if it remains in this location. I accept that in terms of its 'fixation' it is not bolted to the car park surface. However, the courts have held that such a unit can, simply by its weight be considered to be fixed to the ground.

15. However, even if the three above tests were considered not to have been met, in assessing whether or not a change of use is materially different from the previous use, it is the character, type and nature of the alleged use that should be evaluated against the previous use of the land. This is as an open car park for the surrounding houses. The character of usage of this car park, prior to the siting of the storage unit) is clear in that it remained relatively open in nature, normally without any built form and simply accommodating residents' cars and vehicles.

16. In contrast, with the shipping container added to the land, the character of usage and the physical appearance has been significantly and materially changed. In my view, as a matter of fact and degree, the planning unit of the car park only, has been altered and changed to a car park and an area for the siting of the shipping container for storage purposes. Although this is for use by the appellant's family, it cannot be said to be a use which is ancillary to the dwelling house at No 14. The storage use lies well outside of the residential curtilage of the appellant's dwelling. It lies within the car park which is a separate planning unit.

17. In my view, therefore, in siting the shipping container (whether a 'building' or not) within the car park and using it for a storage purpose, a material change of use has occurred as a matter of fact and degree. This change of use is a change of use of the land from a residential car park only to a mixed use for residential parking and a storage use. This change of use is not 'permitted development' and there is no planning permission in place. In fact a planning permission was refused for the retention of the shipping container. It follows that the appeal must fail on ground (c).

The appeal under ground (f)

18. The appellant has offered to clad the structure and to add a 'living roof'. However, such a structure in the car park would not overcome the harm which the LPA identified initially in its reason for refusing the application to retain the container and

later in its reasons for issuing the enforcement notice. I consider it necessary that the requirements are carried out in full. In my view, there are no lesser steps which would remedy the breach and/or the harm caused to amenity by the siting of the shipping container on the land and its use for storage purposes. The appeal also fails, therefore on ground (f).

Other Matters

19. In reaching my conclusions on the grounds of appeal, I have taken into account all other matters raised by the LPA and the appellant. These include the initial grounds of appeal in relation to each ground, the LPA statement and the other comments made by the appellant and submitted to the Planning Inspectorate.

20. However, none of these matters carries sufficient weight to alter my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision that the appeal should be dismissed.

Formal Decision

21. The appeal is dismissed and the enforcement notice is upheld.

Anthony J Wharton

Inspector