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# Appeal Decision

Site visit made on 2 December 2016

**by D H Brier BA MA MRTPI**

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

**Decision date: 22 December 2016**

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**Appeal Ref: APP/T5150/C/16/3149471**

**Land adjacent to 453 Sunleigh Road, Wembley HA0 4NF**

- 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 Mr Yasir Malik against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 24 March 2016.
- The breach of planning control as alleged in the notice is the erection of metal shipping containers.
- The requirements of the notice are:
  1. Remove the metal shipping containers from the premises.
  2. Remove any equipment, items and materials associated with the development from the premises.
- The period for compliance with the requirements is 1 week.
- The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

## **Summary of Decision: The appeal is dismissed.**

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### **Procedural Matter**

1. In the concluding remarks in the grounds of appeal it is stated that if the ground (c) appeal fails, the appeal on ground (a) should succeed and planning permission should be granted in accordance with section 177(5) of the 1990 Act<sup>1</sup>.
2. It is not in my remit to consider the planning merits of this case. According to the appeal form, ground (a) has not been pleaded. Nor have the relevant fees been paid. As a result, there is no deemed application to be considered. My decision will therefore focus on the appeal on ground (c).

### **The Allegation**

3. The appeal concerns shipping containers that have been placed on a triangular shaped parcel of land at the southern end of Sunleigh Road. On my site inspection I saw that there are 4 containers, 3 large ones placed side by side parallel to each other, and a smaller one set at a right angle to the others. Although both parties' submissions refer to 3 containers, they have since confirmed that there are 4.
4. The appellant contends that the containers were not erected on site as the allegation implies – this seems highly improbable as containers such as these

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<sup>1</sup> Grounds of appeal, paragraphs 6.1, 6.2.

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are usually fabricated in specialist workshops. In this respect, the appellant's submission that the containers were delivered and placed on the land seems more plausible. However, mindful that the Council contend that what is on the land is now a building, and in the interests of getting the notice right, I consider the allegation ought more appropriately refer to the 'erection of a building comprising 4 containers'.

5. It is in my power to correct the notice as indicated, and as this would effectively be re-labelling the allegation, I am satisfied that this is an instance where the notice can be corrected without causing injustice to the parties.

## Appeal

6. The appeal is based on the premise that the containers are mobile chattels, not buildings or a structure, and permission was not required for their installation. The containers are in place temporarily, the intention is that they will only be there until early 2017. The containers are not fixed to each other or to the ground and are not welded together – they are bolted together temporarily and are readily moveable. The Council, on the other hand, regard the containers as a structure that has the character of a permanent building and so should be regarded as operational development.
7. The matter in dispute boils down to whether the containers in question constitute development under section 55 of the 1990 Act, and more particularly whether they or not they constitute a building. In this respect, I am mindful that the definition of a "building" set out in Section 336(1) of the 1990 Act includes "any structure or erection". I have also had regard to the Court of Appeal judgement in *Skerrits of Nottingham v Secretary of State for the Environment Transport and the Regions (No.2)* [2000] 2 P.L.R. which endorsed an earlier judgement in *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co. Ltd* [1949] 1 K.B. 385 which identified 3 primary factors as being relevant to the question of what was a "building", namely size, permanence, and physical attachment.
8. As regards size, instead of appearing as separate items, the containers in question have been physically joined to each other. It may be that the degree of work involved was not great and was fairly basic – the appellant's description of how they were bolted together has not been called into question – but it points to a degree of adaptation nonetheless; the containers have not been merely placed on the land. In this respect, there is an element of contradiction in the appellant's case. While it is stated that the containers are not fixed to each other, in the same paragraph<sup>2</sup> it goes on to say that the containers are bolted together. In addition, the appellant's own photographs show the bolts in place.
9. The result of all this is that the containers now appear as a single entity of some size. This is borne out by the appellant's indication that the overall dimensions are "24ft by 40ft by 9.6ft high" (7.3m by 12.2m by 2.9m). Setting aside that this calculation appears to have overlooked the smaller container, the magnitude of this is such that I regard it as a very weighty indicator that, instead of being chattels as the appellant contends, the containers in question constitute operational development. It may be that unscrewing the securing bolts to enable the containers to be detached from each other may not take

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<sup>2</sup> Appellant's written statement, paragraph 2.2

long, as the appellant indicates. This, however, does not cause me to depart from the view that the co-joined containers appear as a distinct, significant, readily discernible and sizeable single physical entity.

10. Turning to permanence, my attention has been drawn to the terms of the appellant's lease which indicates that the tenancy is on a one year basis and must be terminated on 23 February 2017. In particular, it is stated that "*the tenancy agreement is fixed term and not extendable*". It may be that a consequence of this is that the containers would be removed from the land in any event. But, this scenario is by no means certain, ultimately it could be down to the discretion of the landlord. The Council would have no power to enforce the terms of the lease. As a result, I am not inclined to attach much weight to this factor. It seems to me that the question of permanence in the context of section 55 is more concerned with the intrinsic nature of the containers rather than any contractual arrangements appertaining to the land.
11. According to the appellant, the containers have been in place since April 2016. This is somewhat at odds with the Council's photographic evidence which shows them in place on 10 March 2016. To my mind, this hardly suggests that the containers are a temporary expedient, or that their presence is fleeting or ephemeral. Likewise, the not insignificant external alterations brought about by the insertion of several windows, together with the installation of external lighting and a satellite dish, strongly suggest to me that the containers are rather more than a temporary arrangement.
12. Although works to the interior of a building are expressly excluded from the definition of development in section 55, the Council's photographs show that some of the sides of the containers have been removed to create an internal space. I regard these works, together with the internal "cladding and battening" referred to by the appellant, as further strong indicators of permanence. It may be that there is a market for altered containers, as is claimed, but this has little bearing on the question of permanence. I also observed that there are notices on some of the windows stating "Under Refurbishment". What is meant by this was not apparent on site, and is not mentioned by the appellant, but it hardly seems consistent with something meant to be a temporary.
13. As to physical attachment, the containers appeared to rest on wooden battens, but, despite the lights and satellite dish I saw, there did not appear any services connected to the containers. While this could be taken to lend support to the appellant's claim that the containers are not buildings, it seems to me that the very weight of the containers would be sufficient to secure them in place. There is nothing that shows they have been moved or re-positioned whilst they have been on the site. I see this as another indication that the containers are substantial and significant physical presences.
14. As the Council note, under Part 4 Class A of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), certain buildings and temporary structures are 'permitted development'. But, there is nothing that suggests that the circumstances set out in Part 4 apply here, nor has such a claim been made.
15. In the light of the foregoing, I find the particular circumstances of this case are such that, as a matter of fact and degree, rather than being mobile chattels, it is reasonable to regard the containers in question as a building. Accordingly,

therefore, the containers in question constitute operational development within the meaning of section 55 of the 1990 Act and for which planning permission is required. In the apparent absence of any such permission, I find that there has been a breach of planning control.

16. The appeal on ground (c) therefore fails.

17. I have had regard to the 2 appeal decisions cited in support of the appellant's case. However, mindful that each case falls to be considered on its own merits, it seems to me that the factors involved in the 2 instances referred to are quite different from those that apply here. I am not inclined therefore to attach great weight to them. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.

### **Formal Decision**

18. I direct that the enforcement notice be corrected in schedule 2 by the deletion of "metal shipping container structures to the premises" and its substitution by "a building comprising 4 shipping containers".

19. Subject to this correction, I dismiss the appeal and uphold the enforcement notice as corrected.

*D H Brier*

Inspector