
Appeal Decision

Site visit made on 9 August 2017

by Andrew R Hammond MSc MA CEng MIET MRTPI

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

Decision date: 18 August 2017

Appeal Ref: APP/T0355/C/16/3164340

Land between Lightlands Lane and Strande View Walk and Strande Lane, Strande Lane, COOKHAM

- 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 Samuel Driver against an enforcement notice issued by Council of the Royal Borough of Windsor and Maidenhead.
 - The enforcement notice, numbered 16/50445/ENF, was issued on 1 November 2016.
 - The breach of planning control as alleged in the notice is without planning permission the carrying out of building operations namely the siting of a metal container on the land.
 - The requirements of the notice are: remove from the land the metal container in the approximate position shown with the blue coloured cross on the attached plan.
 - The period for compliance with the requirements is 7 days after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) & (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background

2. The appeal site is an open field bounded by Lightlands Lane, Strande View and Strande Lane. There is no dispute that a structure has been placed or erected upon the appeal site. The council describe the structure as a metal container but clearly consider it to be a building as the enforcement notice attacks the carrying out of building operations. The appellant describes the structure as a portable site office used in conjunction with a free range hen operation on the land.
3. The structure appears to be a shipping container, estimated by the Council to be some 6m in length, adapted as a site office by the insertion of an end wall or walls, steel shuttered windows and a secure steel door. The structure sits on 4 adjustable feet on concrete slabs. For the sake of simplicity I have referred to the structure as a container throughout the decision but this should not be taken as any indication as to a conclusion as to whether the siting of the structure is or is not a building operation.

The Ground (b) Appeal

4. Under ground (b) the appellant pleads that the alleged breach has not occurred as a matter of fact in that the notice alleges the breach to be a building operation consisting of the siting of the container. However, as the structure is one that can be brought in ready-made and moved simply; and is not attached to the land there has not been a building operation.
5. The question of whether a structure is a building or a use of land is not that straightforward and each case must be considered on its merits and, where there is dispute, assessed as a matter of fact and degree.
6. Where there is a dispute as to whether the setting up of a portable building, including shipping containers used as a portable building, is a use of land or a building operation it is necessary to apply the tests set out in case law *Cardiff Rating Authority v Guest Keen Baldwin's Iron & Steel Co Ltd* [1949] 1QB 385 (endorsed by the Court of Appeal in *Skerrits of Nottingham Ltd v SSETR (No 2)* [2000] 2 PLR 102) that is that it was of a size to be constructed on site as opposed to being brought onto site; permanence; and physical attachment. No one test is determinative and all 3 need to be considered.
7. It is not disputed that the container was brought to site rather than constructed on site.
8. However it is also not disputed that it has not been moved since first being located on the site. In order to be moved the container would require specialist apparatus brought to site for the purpose. It may also reasonably be considered that the container is 'affixed' to the ground through its own weight.
9. Furthermore, although it was not possible to view inside the container during the site visit as it was securely locked and the appellant was unable to produce a key, the container appears to be connected to a water supply and to mains electricity.
10. There would, therefore, be a clear indication that the container has a degree of permanence in that it has not moved and there is no clear intention for it to be moved. As a matter of fact and degree, its siting constitutes a building operation, which is operational development.
11. The ground (b) appeal therefore fails.

The Ground (c) Appeal

12. Under ground (c) the appellant states that the use of land for the siting of a container for the purposes of agriculture does not require planning permission.
13. As reasoned above, it was not possible to view inside the container and hence confirm the assertion that its use is in association with agricultural use of the land.
14. Regardless, as explained above in regard to the ground (b) appeal, the siting of the container does constitute operational development which is not permitted by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 as the appeal site is less than 5 hectares.
15. There has, therefore been a breach of planning control and the appeal on ground (c) fails.

The Ground (a) Appeal

Main Issue

16. The main issue in the ground (a) appeal is the effect of the development on the flow of flood water and/or the capacity of the flood plain to store water.

Reasons

17. The appeal site is within a functional flood plain, Flood Zone 3B, defined as having a high probability of flooding from rivers and the 'land where water has to flow or be stored in times of flood'. The Environment Agency states that the entire field is located within the 5% annual exceedance probability (AEP) flood extent, meaning that the field has a 5% chance every year of flooding, and at least 75% of the field is also within the 20% AEP such that the majority of the site has a 20% chance of flooding every year. Local residents have provided evidence of the appeal site being flooded in recent years.
18. The appellant submits that the container is raised on legs some 49cm above ground level and could be raised further, the legs allowing for up to 1m clearance, such that it would be clear of the 1 in 100 year flood event with a 20% climate change allowance. At that height, it is asserted that the container would not impede the flow of flood water nor would it reduce the capacity of the area to store flood water.
19. The Planning Practice Guidance, at Reference ID: 7-047-20150415, explains that minor developments (less than 250m²) are unlikely to raise significant flood risk issues unless: they would have an adverse effect on a watercourse, flood plain or its flood defences; they would impede access to flood defence and management facilities; or where the cumulative effect of such developments would have a significant effect on local flood storage capacity or flood flows.
20. It is the Council's case that, notwithstanding the container being raised upon legs, potentially above the 1 in 100 year plus climate change level, would potentially adversely effect on the free flow of flood water as there can be no assurance that the void beneath the structure would not be obstructed by stowed items or flood debris. As a result, the Council suggest, the development would impede the flow of flood water and potentially increase the number of people or properties at risk from flooding, contrary to Policy F1 of the Royal Borough of Windsor and Maidenhead Borough Local Plan (LP) and paragraphs 100 to 103 of the National Planning Policy Framework (the Framework).
21. The appellant asserts that there can be no realistic blockage to flows from the small container raised above the ground. However there is no basis given for this assertion given the possibility of material being trapped within the space under the container in times of flood.
22. It is noted that the Framework, at paragraph 28, states that planning policies should support economic growth in rural areas by taking a positive approach to sustainable development. However this should be read in the context of the Framework as a whole including paragraph 14 relating to the presumption in favour of sustainable development. In relation to decision taking this paragraph states that this means approving development proposals that accord with the development plan without delay and where the development plan is absent, silent or relevant policies are out of date, granting permission unless any

adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies taken as a whole; or specific policies in the Framework indicate development should be restricted¹.

23. The development is contrary to national and development plan policy and for the reasons given above I conclude that the appeal on ground (a) should be dismissed.

The Ground (g) Appeal

24. Under ground (g) the appellant pleads that 7 days is insufficient time to comply with the requirements of the notice, particularly given a need to source a caravan to replace the container. The appellant has made no reasoned argument as to why an on-site facility is essential and the notice does not require the container to be replaced even if the siting of a caravan at the appeal site were to be acceptable, which is not under consideration in this appeal. Whilst the container would need to be moved using specialist equipment, possibly by a contractor, this would not be an unduly complex operation requiring an extended period and 7 days would be sufficient time to arrange for the removal of the container.

25. The appeal on ground (g) therefore fails.

Overall Conclusion

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Andrew Hammond

Inspector

¹ Including policies relating to locations at risk of flooding or coastal erosion.