
Appeal Decision

Site visit made on 5 April 2018

by Andrew Hammond MSc MA CEng MIET MRTPI

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

Decision date: 01 May 2018

Appeal Ref: APP/T0355/C/17/3179697

Wyevale Garden Centre, Dedworth Road, Windsor, SL4 4LH

- 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 GFL Management and Wyevale Garden Centre against an enforcement notice issued by Council of the Royal Borough of Windsor and Maidenhead.
 - The enforcement notice, numbered 16/50010/ENF, was issued on 15 June 2017.
 - The breach of planning control as alleged in the notice is without planning permission the erection of two large canopies and the installation and siting of a metal storage container (otherwise known as the office/rest room cabin) in association with the car wash use of part of the car park.
 - The requirements of the notice are
 - i. Unbolt and dismantle the two canopies identified on the plan in the approximate position shown with a green cross;
 - ii. Remove from the land all materials resulting from step i;
 - iii. Disconnect all utilities from the metal container (otherwise shown as the office/rest room cabin) identified on the plan in the approximate position shown with a blue cross;
 - iv. Remove the metal container (otherwise shown as the office/rest room cabin) from the land.
 - The period for compliance with the requirements is 28 days after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) & (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

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

Reasons

2. The appeal site is a garden centre located within the Metropolitan Green Belt.
3. Planning permission was granted on appeal in 2010 for the material change of use of part of the land (at Windsor Garden Centre) to a car wash facility with the siting of a storage and office shed. The Inspector took the view that the shed (some 2.3m x 1.9m) appeared ancillary to the overall garden centre development.
4. The appellant explained that in December 2011 the operator moved to a new location and installed a larger shed (3.6m x 1.8m) and then in June 2012 two

metal containers (2m x 1.8m and 1m x 1.8m) and a timber container 6m x 2m were installed.

5. The appellant further explained that in December 2015 a new operator took over and replaced the various containers with 2 new metal containers with a total floorspace of 17.4 m². Two canopies, fencing and wash screens were also installed at this time.

The Ground (d) Appeal

6. Under ground (d) the appellant pleads that it is too late to take action against the canopies (one of which appeared to have been removed, permanently or temporarily, at the time of the site visit) and the larger of the containers which serves as an office and rest cabin. The appellant also suggests that the container does not constitute operational development.
7. Section 171B(1) of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 imposes a four year time limit on taking enforcement action in relation to a breach of planning control consisting of operational development.
8. The canopies were installed in December 2015, some 18 months before the issue of the enforcement notice. There is, therefore no immunity against action against the canopies.
9. The appellant argues that the metal container enforced against is a) not operational development and b) replaces previous containers.
10. Whether or not a structure such as a container is operational development or a use of land depends, amongst other things, on the degree of permanence. Whilst the container is not fixed to the ground it is clearly intended to be a permanent component of the car wash facility. This view is confirmed by the decision of a previous Inspector in the determination of appeal ref. APP/T0355/W/16/3160308, against refusal of planning permission (ref 16/00635) for the installation of a double canopy; wash screen; two cabins for office/rest room and secure storage; water storage tank; and fence. The Inspector concluded that the containers (including that in question here) are robust, heavy duty and not of an insubstantial construction. Whilst not physically attached to the land, he concluded, they are of a weight and solidity that in practice ensures that they are fixed. The containers are also connected to services. The Inspector therefore concluded, as a matter of fact and degree, that the storage containers are buildings. There is no reason to disagree with this conclusion.
11. The appellant argues that the container enforced against constitutes the replacement of a building in the same use as and not substantially larger than that which it replaced, hence, it is argued, the container is not inappropriate development in the green belt. Whether or not the container is inappropriate development in the green belt goes to the planning merits of the case which do not fall to be argued under a ground (d) appeal.
12. The two metal containers installed in 2015 replaced a number of structures including a timber shed which served as the office/rest room. The larger container, that enforced against, is a much more substantial structure, entirely different to the timber shed it replaced. The breach of planning control began

on the date the metal container was installed and not the date of installation of the timber shed it replaced.

13. The metal container had not been in place for 4 years prior to the issue of the enforcement notice.

14. The ground (d) appeal fails.

The Ground (f) Appeal

15. Section 174(2)(f) of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 states that an appeal may be brought on the ground that "the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".

16. Planning merits are to be considered only where ground (a) has been pleaded, that is that planning permission should be granted for what is alleged in the notice, and the fee paid. There is no provision in the statutory scheme capable of being read as containing a discretion to grant or refuse planning permission where the only ground of appeal is ground (f).

17. The ground (f) appeal suggests that the large metal container should be retained along with one of the canopies, representing a net reduction in development and harm to the green belt and that planning permission should be granted for the reduced scheme.

18. As explained above, in the absence of a ground (a) appeal there is no scope or power to reach such a conclusion in the current appeal. Anything short of full compliance with the requirements of the notice would not remedy the breach of planning control or remedy any injury to amenity which has been caused by the breach.

19. The ground (f) appeal must, therefore, fail.

Other Matter

20. The appellant has suggested a number of conditions which would be acceptable were the appeal to be allowed. The imposition of conditions would only be possible in the event of a successful ground (a) appeal. There is no appeal under ground (a).

Conclusion

21. For the reasons given above I consider that the appeal should not succeed.

Andrew Hammond

Inspector