
Appeal Decision

Site visit made on 2 May 2018

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2018

Appeal Ref: APP/M1595/C/17/3180800

Land known as land adjacent to The Old Chapel, Oxford Road, Horndon-on-the-Hill, Essex SS17 8PX

- 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 Edward Daize against an enforcement notice issued by Thurrock Borough Council.
- The enforcement notice was issued on 21 June 2017.
- The breach of planning control as alleged in the notice is Material change of use of the Land by the stationing of a metal storage container and support base on land adjacent to 'The Old Chapel', Oxford Road, Horndon on the Hill, Grays, Essex SS17 8PX.
- The requirements of the notice are:
 1. Remove the storage container and base from the Land.
 2. Clear away any materials as a result of step 1, from the Land.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice, subject to corrections, is upheld as set out in the Formal Decision at paragraph 11 below.

Preliminary Matters

1. An accompanied site visit was set up and the parties notified of the date and time. However, the appellant would not allow the Council officer to accompany me onto his land. With the agreement of the Council officer, third party and the appellant I was allowed onto the appellant's land and I viewed inside the container and walked the extent of his garden area.

The Notice

2. The allegation relates to a material change of use of land. However, this is a large container which rests on wooden boards and it cannot be moved without some form of lifting apparatus. Transportation off site would require it being lifted onto a vehicle. In my view, the weight of the container is such that it is affixed to the ground/boards through its own weight. It is of permanent and solid construction and has been at the site since early 2017. I therefore find that the act of development is not a material change of use but operational development. It is within my powers by virtue of s176(1)(a) to correct the allegation to reflect this finding, subject to being satisfied that no injustice or prejudice is caused to either party.

3. In my view, no party would be caused any injustice or prejudice by the correction of the allegation to one of operational development; their representations would not change. I will therefore correct the notice and determine the appeal on the basis of that corrected allegation.

Appeal on ground (f)

4. This ground of appeal is that the requirements of the notice are excessive and lesser steps would overcome the objections. The requirements are to remove the container and to clear away materials resulting from the removal of the container. The onus is on an appellant to suggest what lesser steps would be appropriate. No specific lesser steps have been put forward in this instance.
5. In my view, on the basis of the reasons given in the enforcement notice, the purpose of the notice is simply to remedy the breach of planning control that has occurred. There are no lesser steps other than removing the container and clearing away materials from the site that would suffice in this particular case.
6. I therefore find that the requirements of the Notice would not exceed what is necessary to remedy the breach of planning control that has occurred. The appeal on ground (f) fails.

Appeal on ground (g)

7. This ground of appeal is that the time given to comply with the Notice is too short. The Council have given one month for compliance. The appellant states that the container will be finished with and removed no later than October 2019.
8. I appreciate that the appellant wishes for the container to remain until he has finished storing items in it. However, that is not a justification for extending the period for compliance. I am required to consider whether or not it is reasonable to remove the container and clear away materials within a period of one month.
9. To my mind, one month would be sufficient time to organise the removal of the container by a contractor with an appropriate vehicle and then do some minor removal of materials. The actual time to carry out the removal of the container and materials would be less than a day's work, as they are not time consuming tasks. As such, one month would be a reasonable time in which to arrange compliance with the requirements. The appeal on ground (g) fails.

Other Matters

10. There is significant information from both the appellant and a third party concerning matters outside the scope of this appeal. This relates amongst other things to planning permission on other sites, legal action and the conduct of the Council. This is not relevant to the determination of this appeal on grounds (f) and (g).

Formal Decision

11. It is hereby directed that the enforcement notice be corrected by:
 - a) Deleting the words in the paragraph at section 3 and the substituting therefor 'Without planning permission the installation of a storage container on the Land'

- b) The substituting of 'four' for '10' in the second line of the first paragraph of section 4; and
- c) The deletion of the fourth paragraph of section 4 and substituting therefor 'The installation of a storage container on the land does not fall within any of the categories of development above and therefore constitutes inappropriate development. The installation of the container is therefore unacceptable in principle and contrary to the purposes of including land within the Green Belt. The installation of the container is also harmful to the openness of the Green Belt.'

Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Hilda Higenbottam

Inspector