
Appeal Decisions

Site visit made on 10 December 2019

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 12th January 2020

Appeal A Ref: APP/W1525/C/19/3226330

Appeal B Ref: APP/W1525/C/19/3226331

Land at Land North East of Field 2284, Maltings Road, Battlebridge, Wickford, Essex SS11 7RH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Brian Seebright and Appeal B by Mrs Marina Seebright against an enforcement notice issued by Chelmsford City Council.
 - The enforcement notice was issued on 11 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the building operation of locating a container.
 - The requirements of the notice are:
 - (i) Demolish or otherwise remove the building shown outlined in green at the approximate location on the attached plan.
 - (ii) Remove from the land any material resulting from the action taken at step (i).
 - (iii) Restore the land affected by the works carried out at steps (i) and (ii) by seeding with grass seed.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)[c] of the Town and Country Planning Act 1990 as amended.
-

Appeal C Ref: APP/W1525/C/19/3226332

Appeal D Ref: APP/W1525/C/19/3226333

Land at Land North East of Field 2284, Maltings Road, Battlebridge, Wickford, Essex SS11 7RH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal C is made by Mr Brian Seebright and Appeal D by Mrs Marina Seebright against an enforcement notice issued by Chelmsford City Council.
 - The enforcement notice was issued on 11 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a building.
 - The requirements of the notice are:
 - (i) Demolish the building shown outlined in blue at the approximate location on the attached plan.
 - (ii) Break up the concrete foundation slab shown outlined in blue at the approximate location on the attached plan.
 - (iii) Remove from the land all material and debris resulting from the action taken at steps (i) and (ii).
 - (iv) Restore the land affected by the works carried out at steps (i), (ii) and (iii) by seeding with grass seed.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)[d] of the Town and Country Planning Act 1990 as amended.
-

Decisions

1. Appeals A and B are dismissed, and the notice is upheld.
2. Appeals C and D are dismissed, and the notice is upheld.

Procedural Matters

3. The appellants were unable to attend the site visit but were content that it be carried out as an unaccompanied site visit. Consequently, the Council officer who was present took no part in the site visit.
4. On their appeal forms the appellants have selected ground (c) in respect of their appeal regarding the container and ground (d) in relation to the building. However, given the evidence before me it is clear that they intend to appeal on the basis that it is too late to take enforcement action against the container (ground (d)) and that the building is permitted development (ground (c)). The Council's statement deals with the appeals on this basis. Therefore, the parties would not be prejudiced if I follow the evidence and consider Appeals A and B on ground (d) and Appeals C and D on ground (c).

Appeals A and B – Ground (d)

5. An appeal on ground (d) is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
6. Planning permission has not been granted for the container which occupies a corner of the site close to Maltings Road. It follows that there has been a breach of planning control at some stage in the past but that the breach has become immune from enforcement action due to the passage of time, which, for the installation of a container is 10 years. The appellants say that the container has been on the land for in excess of 18 years and they have provided corroboration of this in the form of a written statement from an occupant of Maltings Road.
7. Whilst the evidence establishes that a container has been on site for in excess of 10 years, works have been carried out to the container in the more recent past. In the Planning Contravention Notice (PCN) which was completed by the appellants in November 2018 reference is made to repairs to the roof and the intention to clad the sides of the container to improve its appearance. The photographs which form part of the evidence show a container on the site prior to works being carried out after the land was acquired by the appellants in April 2018. It is a standard rectangular shape with a flat top, constructed in metal with full height doors to one end. There were no other buildings on the site at that time, consequently whilst the length of time it had been in situ might have made moving the container around on the site difficult it was conceivable.
8. Photographs taken by the Council in January 2019 show a roof having been constructed over and beyond the extent of the container. I noted this feature during my site visit. The roof makes the container much more difficult to manoeuvre around the site and the presence of the new building which is the subject of Appeals C and D increases the likelihood that it would remain in one

place. Thus, in combination the alterations and additions to the container have changed its nature from an essentially portable structure into a permanent building in this location.

9. The time period for the establishment of immunity from enforcement for the operational development which has been carried out is 4 years from the date on which the operations were substantially completed. It is clear from the evidence that the works took place since April 2018, therefore it is not possible to demonstrate the relevant 4-year period in this case and the works are not immune from enforcement action.

Appeals A and B - Conclusion

10. For the reasons given above I conclude that Appeals A and B should not succeed.

Appeals C and D - Ground (c)

11. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is also a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
12. The appellants refer to advice from the Planning Portal which gave them the impression that with a building, the container, they could install a portable building. The appellants do not refer to a particular Class of the Town and Country Planning General Permitted Development Order, but they do note limitations in terms of the height of the building which they say that they have adhered to. The Council has regarded this reference as pointing towards a consideration under Class E, which is argued does not apply in this instance because the site does not form part of the curtilage of a dwelling house. I have reached the same conclusion given that there is no reference by the appellants to any residential use at the site.
13. The appellants evidence in relation to their internet search 'planning portal for demountable buildings' does not elaborate on the basis upon which they regard the building as being permitted development. It follows that, in the absence of any evidence to the contrary the matters alleged in the notice do not constitute permitted development.

Appeals C and D - Conclusion

14. For the reasons given above I conclude that Appeals C and D should not succeed.

Other Matters

15. The appellants have provided submissions in relation to the needs of their business, the potential for additional employment and the benefits of the occupation of the site in terms of its appearance, drainage and security for adjacent occupiers. As none of the appeals were made under ground (a), i.e. that planning permission should be granted, the merits of the development do not fall to be considered in this case and I have not given weight to these matters.

Sarah Dyer

Inspector