
Appeal Decision

Site visit made on 9 December 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

Appeal Ref: APP/W4223/C/19/3228020

K W Autos Limited, Kinders Mill, Kinders Lane, Greenfield, Oldham OL3 7BL

- 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 J Ward of KW Autos against an enforcement notice issued by Oldham Metropolitan Borough Council.
 - The enforcement notice was issued on 4 April 2019.
 - The breach of planning control as alleged in the notice is despite the refusal of planning applications PA/339289/16 and PA/339759/17 on the basis of the development causing substantial harm to the significance of the Grade II Listed Buildings overlooking the site and the dismissal of APP/W4223/W/17/3173684 by the Planning Inspector on the same basis, the siting of 8 shipping containers for use as a storage facility on the Land without planning permission.
 - The requirements of the notice are permanently remove the 8 shipping containers from the Land.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)[b] [c] and [f] of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is hereby directed that the enforcement notice be corrected by replacing '8' with '7' in the text 'the siting of 8 shipping containers' in section 3 and, in section 5 replacing '8' with '7'. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. I have taken the address from the enforcement notice. Although the address on the appeal form differs slightly, it is evident from the evidence before me that they relate to the same site.

Background

3. Application Ref PA/339289 for a shipping container storage area was refused in 2017. A resubmission, reference PA/339759 was also refused. Both applications were considered by an inspector at appeal, reference APP/W4223/W/17/3169132 and APP/W4223/W/17/3173684, both appeals were dismissed.

Ground (b)

4. An appeal on ground (b) is made on the basis that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The onus of proof is on Mr Ward to show that some or all of the alleged matters had not in fact occurred by the time the notice was issued, on the balance of probabilities.

The appellant asserts that there are 7 containers on site, not 8. The Council has accepted, through their Statement of Case, that there are 7 shipping containers on site and not 8. I saw that there were only 5 present on site, four green and one blue shipping container.

5. The Council assert that the notice is capable of being amended from 8 to 7 containers to overcome this deficiency without any injustice to the appellant. It seems to me, from the evidence before me, that the appellant is well aware what he has done and what the Council is seeking to achieve through the notice. Furthermore, the appellant confirms in his final comments that the error could be corrected. Therefore, there would be no injustice to the appellant in correcting the enforcement notice accordingly.
6. The appeal succeeds to a limited extent insofar as I will correct the allegation and the requirement so that it refers to 7 shipping containers and not 8.

Ground (c)

7. An appeal made under ground (c) is made on the basis that there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development"). The appellant asserts that the alleged breach is permitted development under the Town and Country Planning (General Permitted Development)(England) Order 2015 (GDPO)(as amended), specifically Part 7.
8. It is not disputed that the containers are operational development in terms of Section 55 of the Town and Country Planning Act 1990. Having regard to the legal authorities in *Barvis v SSE* (1971), *Skerrits of Nottingham v SSE* (2000) and *Save Woolley Valley Action Group Ltd v Bath & NE Somerset Council* (2012) and having regard to the 3 aspects of their size, permanence and physical attachment to the land, I agree that the shipping containers would constitute a building for the purposes of the GPDO.
9. It is also not disputed that the use of the site is industrial and that storage would be acceptable on the site. Part 7 Class H of the GPDO permits the erection, extension or alteration of an industrial building or a warehouse. Development is not permitted by Class H if (f) the development would lead to a reduction in the space available for the parking or turning of vehicles.
10. The appellant asserts that the site has sufficient parking and turning space, despite the shipping containers being placed on the site and that there would be no harm to highway safety. However, I have no substantive evidence before me to support this view, furthermore, this is not the test contained within Class H (f). It is quite common for industrial sites to utilise much, if not all of the available space within a site for parking and turning of vehicles. What constitutes space available for the parking or turning of vehicles will vary from site to site. A key question for this appeal is what space was available for the parking or turning of vehicles and would there be a reduction in this space as a result of the siting of the shipping containers?
11. The appeal site comprises an extensive yard area and a number of buildings. The yard is accessed via an access which is located on the corner of Kinders Lane and Boarhurst Lane. The yard is laid with a mixture of tarmac and gravel with no clear areas for parking or turning of vehicles delineated. I saw that vehicles are parked across the site with no obvious restrictions, including areas

adjacent to the shipping containers. The shipping containers have led to a reduction in the space available for the parking or turning of vehicles and therefore fail to comply with paragraph H.1(f). Accordingly, it is not development which is permitted by the GPDO and the appeal under ground (c) fails.

Ground (f)

12. An appeal made under ground (f) is made on the basis that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. The appellant suggests that there could be other locations within the site that wouldn't conflict with H(f) and that the Council has drawn the red-line around the entire site to prevent relocation of the shipping containers. S173(4) and (5) of the 1990 Act as amended provide that a notice may seek to remedy the breach of planning control. However, a notice may not remove lawful use rights. Were the appellant to identify a location within the site which would comply with the requirements of the GPDO, and as such would be permitted development, the notice would have no effect.
13. The appellant has not put forward an alternative location within the site, nor is it clear to me where within the site the requirements of H(f) would not be breached. Accordingly, I do not consider that lesser steps have been demonstrated that would overcome the Council's objections, and the appeal on ground (f) must fail.

Conclusion

14. Having had regard to all other matters raised, it is concluded that the appeal should not succeed and so the enforcement notice should be upheld subject to the minor corrections I have outlined above.

M Savage

INSPECTOR