



Appeal Decision

Site visit made on 21 January 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 4 February 2020

Appeal Ref: APP/Y0435/C/19/3234738

Red House Public House, 1 Wolverton Road, Newport Pagnell MK16 8BG

- 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 King Arthur Inns Ltd against an enforcement notice issued by Milton Keynes Council.
 - The enforcement notice was issued on 11 July 2019.
 - The breach of planning control as alleged in the notice is:
 - 'i) Without planning permission the placing of a storage container, 2 Porta cabins, a refrigerated unit, a tarpaulin shack and miscellaneous junk items unconnected to the public house.
 - ii) Without planning permission, the erection of timber screening exceeding 2 metres in height acting as a means of enclosure.
 - ii) Without planning permission, the erection of front boundary fencing exceeding that contained within planning permission 17.02833/FUL.'
 - The requirements of the notice are:
 - 'i) Remove all timber screening running across the former pub beer garden as shown on the attached plan.
 - ii) Reduce the front boundary fencing to no more than 1.8m as approved under planning permission 17/02833/FUL.
 - iii) Remove the 2 single storey flat roofed buildings (Porta cabins) shown on the attached plan within the western section of the public house curtilage.
 - iv) Remove the miscellaneous materials stored behind the timber screening consisting of a refrigerated unit, storage container, pallets, also including the additional outdoor storage of a larger quantity of miscellaneous junk items and Tarpaulin shack unconnected with the public house.'
 - The period for compliance with the requirements is four 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.
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Decision

1. It is directed that the enforcement notice be corrected by

- The deletion of the comma between the words 'unit' and 'a tarpaulin shack' and the insertion of the word 'and' between 'unit' and 'a tarpaulin shack' in paragraph 3 i); and
- The deletion of the words 'and miscellaneous junk items unconnected to the public house' in paragraph 3 i).

and varied by:

- The insertion of the words 'as shown on the Appendix B plan attached' after the word 'shack' in paragraph 3 i);
 - The insertion of the words 'as shown on the Appendix B plan attached' after the word 'enclosure' in paragraph 3 ii);
 - Delete the words 'attached plan' in paragraphs 5 i) and iii) and substitute thereto with the words 'Appendix B plan attached'.
 - Delete requirement iv) in paragraph 5 and substitute it with the following words 'remove the refrigerated unit, storage container and Tarpaulin Shack shown on the attached plan'.
2. Subject to these corrections and variations the appeal is dismissed, and the enforcement notice is upheld.

The Notice

3. The Notice states in paragraph 4 that it appears to the Council that the breach of planning control has occurred within the last four years. On that basis it is clear to me that the Council regards the alleged breaches of planning control as operation development to which the 'four year' time limit applies.
4. The allegation does not refer to the plan attached to the Notice. A plan is referred to in i) and iii) of the requirements, however there are two plans attached to the Notice. I will therefore vary these requirements to refer to Appendix B which is the plan showing the location of the various elements in the Notice. In addition, in the interests of clarity I will vary the allegation to include reference to Appendix B in sub paragraph 3 i) and 3 ii) of the allegation. These variations will not result in prejudice or injustice to either party.

Appeal on ground (c)

5. This ground of appeal is that those matters, if they occurred, did not constitute a breach of planning control.
6. The appellant accepts that the two portacabins, timber screening exceeding 2m tall and front boundary fencing exceeding 1.8m tall are breaches of planning control.
7. The Council accept that reference miscellaneous junk items may need to be pursued through further action. I am satisfied that the miscellaneous junk does not constitute operational development and is a use of land. As such, I will correct the allegation to exclude reference to miscellaneous junk items and will vary the requirements to remove reference to these items. Whether or not the use of land for the storage of miscellaneous junk items is a material change of use is not a matter before me.
8. In relation to the 'refrigerated unit' the appellant states it was a refrigerated van on wheels. The Council do not refer to the refrigerated unit within their submissions to the appeal. At the time of my site visit the refrigerated unit had been removed from the appeal site. However, it is for the appellant to demonstrate on the balance of probabilities that the refrigerated unit was not a breach of planning control or was not operational development. In the absence of substantiated evidence, notwithstanding its removal, there is no justification for a variation to the allegation or the requirements in relation to the

refrigerated unit as it has not been demonstrated, on the balance of probabilities, that the refrigerated unit was not a breach of planning control or not operational development on the date that the Notice was issued.

9. The appellant considers that the storage container and the tarpaulin shack do not constitute a breach of planning control because they are not operational development within the meaning of section 55 of the Act. While the appellant refers to both the Tarpaulin Shack and Storage Container being within an area identified as storage on the site plan associated with planning permission reference 17/02833/FUL this is not relevant to whether or not they are operational development.

Operational development

10. A building is defined in section 336 of the Act as including any structure or erection and any part of a building, but not plant or machinery comprised within a building. In *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385, which was endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102 three primary factors were identified as decisive on what was a building:
 - a) That it was of a size to be constructed on site, as opposed to being brought onto the site;
 - b) Permanence; and
 - c) Physical attachment.

No one factor is decisive.

Tarpaulin Shack

11. The tarpaulin shack comprises a framework of vertical and roughly horizontal timber elements with tarpaulin on three of its sides. There is no roof covering over the horizontal timbers. It is a very haphazard structure. However, it appears to have been constructed on site, is permanent having been on the site for over 18 months. In my view, this structure constitutes a building operation. The appeal on ground (c) in relation to the Tarpaulin Shack fails.

Storage Container

12. The storage container is what is often referred to as a 'shipping container'. It has been on site since September 2017. It is a large container and a variety of things are stored in it including furniture, garden maintenance machinery, garden umbrellas, washing machine, fridges etc. The appellant states these are associated with the operation of the public house. The container was brought on to the site and is anchored by its own weight.
13. I note the appellant states that the storage container is readily mobile and can be relocated in minutes. However, there is no indication of how it is readily mobile, and it has not been demonstrated or explained in the submitted evidence. In my experience, due to the size of a such a container, particularly height and length, and taking into account it's weight, it would require special lifting equipment to be moved from its location. Considering the lack of substantiated evidence from the appellant of how it would be possible to move the container I consider that the evidence of its mobility has not been demonstrated in a precise and unambiguous way.

14. There is no substantiated evidence that the container has been moved since it was brought to the appeal site and thus it has been permanently in its current location with no indication that it is likely to be moved either within the appeal site or off of the appeal site. As such, I consider it is a permanent unit. Taking these matters into consideration I am satisfied that the storage container, as a matter of fact and degree, should be regarded as a building within the definition provided in section 336 of the Act, to which the four-year rule should apply.
15. The appellant has also stated that it is its intention to utilise the storage container to store construction equipment in during the car park extension works scheduled to begin in late 2019. However, works did not appear to be underway at the time of my site visit and the storage within the container was not related to construction equipment. In the scenario planned in relation to the car park extension the appellant considers the storage container would be permitted development by virtue of Schedule 2 Part 4 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. Class A Part 4 is headed 'Temporary buildings and structures' and states that the provision of land of buildings, moveable structures, works, plant or machinery is permitted development subject to certain limitations and conditions. While the storage container currently does not comply with the limitations and conditions set out in Class A, which the appellant accepts, this does demonstrate that the appellant considers the storage container is a temporary building or structure for the purposes of Class A. Whether or not the future use of the storage container would fulfil the limitations and conditions of Class A is not a matter before me and not relevant to this appeal.
16. In the light of the evidence before me I find that due to the degree of permanence taken together with the size of the container, as a matter of fact and degree, demonstrates that the storage container is operational development which required planning permission. The appeal on ground (c) in relation to the storage container fails.

Conclusion on ground (c)

17. I have concluded that the Tarpaulin Shack and the Storage Container are operational development for which planning permission was required. I have also found that the evidence in relation to the refrigerated unit is imprecise and ambiguous and thus it has not been demonstrated on the balance of probabilities that the refrigeration unit is not a breach of planning control or operational development. However, I do accept that the miscellaneous junk part of the allegation is not operational development. The ground (c) appeal succeeds to this limited extent in relation to the miscellaneous junk and I will correct the allegation and vary the requirements accordingly.

Conclusion

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

Hilda Higenbottam

Inspector