



Appeal Decisions

Site visit made on 10 December 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 14 March 2020

Appeal A: APP/W1715/C/18/3217979

Land at the corner of Peewit Hill and West End Road, Burlesdon SO31 8BL

- 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 James Kerslick against an enforcement notice issued by Eastleigh Borough Council.
 - The enforcement notice was issued on 16 November 2018.
 - The breach of planning control as alleged in the notice is Without planning permission, the siting of a container, approximate position shown edged in blue, on the attached plan.
 - The requirements of the notice are: Remove the container, approximate position shown edged blue on the attached plan, from the land.
 - The period for compliance with the requirements is stated as "3 weeks".
 - 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.
-

Appeal B: APP/W1715/W/19/3234928

Land at Peewit Hill, Burlesdon, Southampton, Hampshire SO31 8BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr James Kerslick against the decision of Eastleigh Borough Council.
 - The application Ref F/18/84421, dated 9 November 2018, was refused by notice dated 12 February 2019.
 - The development proposed is described as '*to keep the gates on the Peewit Hill entrance.*'
-

Summary of Decisions

1. Appeal A is dismissed and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.
2. Appeal B is allowed and planning permission is granted for the retention of the access gates on land at Peewit Hill, Burlesdon, Southampton, Hampshire SO31 8BL in accordance with the terms of the application Ref F/18/84421, dated 9 November 2018.

Preliminary matters

3. With regard to Appeal A, no appeal has been made on ground (a) which means no deemed planning application that would have effectively sought permission for the retention of the container in situ falls to be determined. As such, I am unable to take into account any planning merits and impacts arising from the development. In the circumstances, the planning policies cited by the Council

in the reasons for issuing the enforcement notice have no relevance to this particular appeal.

4. In Appeal B the proposal as described on the application form is in narrative form. As such, I have changed the description to reflect that set out on the Council's decision notice.

Matters concerning the Enforcement Notice

5. The enforcement notice mentions there has been a breach of planning control, namely the carrying out of development without the required planning permission. It goes on to refer to the container as a physical structure and, although the notice does not specifically say that the alleged breach has occurred within the last four years, the Council leads me to understand that the container has been in situ since October 2018. No mention is made of the container's use nor its purpose and the Council has confirmed that it regards the container as a structure, constituting an unauthorised building operation. I agree and find that it is operational development for the detailed reasons given in my findings on the ground (c) appeal. I am, therefore, correcting the notice to reflect this approach.
6. The period for compliance merely states "3 weeks." This is imprecise and represents a flaw in the notice. Although the appellant has not made an appeal on Ground (g), such that he might consider that the compliance period falls short of what would be reasonable in the circumstances, in his representations on the Ground (f) appeal he does say that he would be happy to move the unit to another part of the land as he does not consider it to be a permanent structure. Irrespective of the merits of this appeal it suggests a readiness to move the container.
7. Given the above, I am satisfied that 3 weeks represents a reasonable period to effect the notice's requirement and I am satisfied that the wording of the notice in this regard can be corrected for clarity without causing injustice to either main party. In light of this I shall correct the notice, accordingly.

Appeal A

The appeal on Ground (b)

8. The appeal on ground (b) is whether, under the notice as corrected, the matter alleged to be a breach of planning control has occurred as a matter of fact. The appellant must show on the balance of probability that those matters have not occurred. The relevant date is that of the issue of the notice.
9. In his grounds of appeal the appellant says that the container has been adapted for habitable use and has been repurposed for use as a caravan. However, at my site visit the door to the container was opened and it was clearly being used for general storage purposes. The appellant confirmed this verbally at the site visit, and the significant degree of storage inhibited access to within, impeding a full inspection.
10. By way of s29(1) of the Caravan Sites and Control of Development Act 1960 a caravan means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer). The container might satisfy the construction test and, despite it having been retained in the same

position for some time, its modest size relative to a defined caravan's maximum dimensions and lack of attachment to the ground, would meet the size and mobility tests. Nonetheless, at the time of my visit, there was no sign of any residential use. The window spaces are covered up externally and, despite the appellant's claims, there is no compelling evidence before me to suggest that the container has ever been adapted for habitable purposes or previously lived in.

11. The appeal on ground (b) therefore fails.

The appeal on Ground (c)

12. The appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof on matters of fact is on the appellant, and is on the balance of probabilities.
13. The container is a metal shipping type unit measuring approximately 7.3m in length, 3m in width and 2.5m in height, situated on an expanse of hardstanding. Although at my site visit I noted that the container was not affixed to the ground I have had regard to the Council's comment as to the length of time since the container was brought onto the land, a point which the appellant does not dispute.
14. Physical attachment to the ground is not regarded in itself to be conclusive as to what might constitute a building operation but it is a factor to be weighed in the balance. In this case, although the container appears to stand directly on the ground, its own weight provides the necessary stability. I consider that the size and weight, and what appears as a considerable degree of permanence, are decisive factors.
15. Relating to this ground the appellant's representations are in respect of the container's movability, the fact that it has been painted green to blend in with its surroundings and the consideration that it poses no threat to underlying ground cover, wildlife or trees at the site.
16. Section 55 of the Act includes in the definition of the word 'development' the carrying out of 'building, engineering, mining or other operations in, on, over or under land.' Section 57(1) goes on to say that, subject to the provisions of the section, planning permission is required for the carrying out of any development of land. Section 336(1) includes in the definition of the word 'building' any structure or erection, and any part of a building, as so defined. Accordingly, the term 'building' has a wide definition, and this has been interpreted by the Courts to include structures which would not ordinarily be described as buildings.
17. Relevant case law reveals that there is no single conclusive answer as to what constitutes a building operation. In *Barvis*¹ three tests are set out; the size of the building or structure, the degree of permanence, and the degree of physical attachment to the land. No one factor is decisive.

¹ *Barvis v SSE* [1971] 22 P and CR 710

18. In the *Woolley Valley*² case, which involved poultry units mounted on skids so that they could be pulled around the field by a tractor, it was held that the Council did not direct itself correctly in terms of significance in the planning context. The poultry units were permanently in their field and there was no limit on the length of time that they would remain there. The ability to move them around the field did not remove the significance of their presence in planning terms. Indeed, this is a potentially relevant factor in the current appeal when assessing the significance of the container's presence in the planning context.
19. The container is positioned on the expanse of hardstanding towards the centre of the site and, despite the vegetative screening around the site's perimeter, I still find that the container's size is significant in the planning context. The fact that it has been stationary since being brought onto the land gives it a permanent character. Also, although not readily visible from the Peewit Hill carriageway, pedestrians walking closer to the site's entrance would still be able to glimpse views of the container through the gates and these factors serve to reinforce my conclusions on this matter. I noted that the container is painted green, but this does not provide for any significant mitigation.
20. As a matter of fact and degree I therefore consider that the container is a building and its erection constitutes operational development. The container's siting is not covered by any permitted development entitlement and, as a matter of fact and degree, its placing on the land amounts to development for which planning permission is required. As this has not been granted the alleged matter constitutes a breach of planning control. Given my findings the appeal on ground (c) does not succeed.

The appeal on Ground (f)

21. The appeal on ground (f) is that the requirements of the enforcement notice exceed what is necessary. When an appeal is made on ground (f) it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be to remedy the breach of planning control or to remedy any injury to amenity.
22. The notice says that the reasons for issue involves the consideration that the container has introduced a built form to the detriment of the open and undeveloped nature of the site. Given this, and the fact that the notice requires for the container's removal, I consider its purpose is to remedy the breach.
23. Apart from the appellant's comment indicating that he would be prepared to re-position the container to another part of the land to be "completely out of line-of-site" there are no specific proposals before me to suggest where on the site that might be. Besides, in light of my findings I am not convinced that moving the container within the site would diminish the materiality of the development. The appeal on ground (f) therefore fails.

² R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council [2012] EWHC 2161 (Admin)

Appeal B

Reasons

24. The metal double-gates provide security to the appeal site at its entrance close to Peewit Hill's junction with West End Road. They are not solid in form, instead appearing as a series of brown coloured metal bars and at a height of some 2.7m they are taller than the previous gates which they have replaced.
25. The site itself, lying within an identified Strategic Gap zone between settlements, is surfaced with a substantial area of hardstanding, giving the impression of a former commercial site which has been cleared of its buildings.
26. The Council, in its decision to refuse planning permission for the gates' retention, refers to the development creating an urbanising feature in the countryside. The immediate opposite side of Peewit Hill, however, is residentially developed as is a near section of West End Road. The appeal site is surrounded and screened by trees, and the gates do not interfere with wider views of such.
27. Interested parties have raised concerns as to the gates being industrial and intrusive. However, with the entrance to the site being significantly set back from the highway this lessens any visual impact arising from the development which performs a practical function. Another concern relates to vehicles entering and leaving the site safely but, with the gates set back significantly from the highway, I consider that highway safety is unaffected by the development. Moreover, the local highway authority has not raised objections to the development. It is understood that some vegetation was cleared to facilitate the gates' installation but, from the degree of tree coverage close to the entrance, this appears to have been limited, and would not have constituted any significant threat to wildlife.
28. I find that the development does not conflict with the objectives of policies 59.BE and 1.CO of the Eastleigh Borough Local Plan Review (LPR). The form and design of the gates are appropriate to their contextual setting and the scale of the development does not impact unacceptably on the countryside. The Council's emerging replacement Local Plan has been submitted for its examination and I afford only limited weight to the policies cited therefrom, namely S7 and DM1. That said, their aims are consistent with those mentioned from the LPR.
29. Accordingly, I conclude that the development is not harmful to the character and appearance of the area, and there is no material conflict with saved policies 1.CO and 59.BE.
30. For the reasons given above, and having had regard to all matters raised, the appeal is allowed.

Formal Decisions

Appeal A:

31. It is directed that the enforcement notice be corrected by the deletion of the wording under the heading termed 'The matters which appear to constitute the breach of planning control' and its substitution with:

"Without planning permission, the siting of a container, constituting operational development, in the approximate position shown edged in blue, on the attached plan."

The wording under the heading 'Time for Compliance' shall also be deleted and substituted with:

"3 weeks after the date this notice takes effect."

32. Subject to these corrections, the enforcement notice is upheld.

Appeal B:

33. The appeal is allowed and planning permission is granted for the retention of access gates on land at Peewit Hill, Burlesdon, Southampton, Hampshire SO31 8BL in accordance with the terms of the application Ref F/18/84421, dated 9 November 2018.

Timothy C King

INSPECTOR