



Appeal Decision

Site visit made on 4 June 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 June 2020

Appeal Ref: APP/H0724/C/20/3247170

9 Rosebery Road, Hartlepool TS26 8JZ

- 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 Rory Barr against an enforcement notice issued by Hartlepool Borough Council.
 - The enforcement notice was issued on 31st January 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the siting of a shipping container.
 - The requirements of the notice are: (i) Remove the shipping container from the land. (ii) Restore the land to its condition before the breach took place, including the re-erection of all boundary structures.
 - 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. The appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (c)

2. The appeal on ground (c) is that there has not been a breach of planning control.
3. The appeal site at 9 Rosebery Road is a two storey semi-detached dwelling occupying a corner location. Prior to the siting of the container that is the subject of the enforcement notice, the rear plot was bounded on the side by a close boarded timber fence. The rear boundary was formed by the door of the previous garage, with sections of fence on either side. On my site visit, I saw that the fencing has been replaced with a block wall to the side of the plot. The container now forms the rear boundary, and meets the return section of the new side wall.
4. The appellant states that the container was installed for security reasons. He says that it temporarily replaces the garage, and argues that it should be classed as a temporary structure, and as such should be exempt from planning control.
5. Section 55(1) of the 1990 Act says that 'development' includes the carrying out of building, engineering, or other operations. Such operational development comprises activities which result in some physical alteration to the land with some degree of permanence. A building is defined by section 336 of the 1990 Act as including any structure or erection. The courts have held that three

- primary factors to establish what constitutes a building are (a) that it is 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.
6. It is likely that the structure was brought to site, and not constructed there. It is not obvious whether it is fixed to the ground, or whether it sits under its own weight. Nevertheless, it appears to join the rear side wall of No 9 and also the side boundary fence of the neighbouring property.
 7. It is a substantial metal structure that is undoubtedly very heavy even when empty. Given its size and likely weight, such a structure could not be moved at all easily, and not without some form of specialist lifting equipment. Therefore, although the appellant describes it as 'portable', these circumstances indicate a significant degree of permanence.
 8. I saw that the container is prominent in close views along the street. Due to its size and scale, the container has a physical presence which alters the characteristics of the domestic curtilage of the dwelling. Instead of the previous fence, it adds a development of a significantly different visual character to the dwelling and its surroundings. Drawing these factors together, I am satisfied that the container may be considered as a building for the purposes of the 1990 Act.
 9. I have had regard to Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which relates to the provision within the curtilage of a dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse. The appellant says the container is used to store materials and site tools. The Council argue that there is insufficient information to determine whether the use is incidental or not.
 10. However, even if it can be shown that the use is incidental, new buildings under Class E are subject to height restrictions. For building, enclosures or containers within two metres of the boundary of the curtilage of a dwellinghouse, the height should not exceed 2.5m. In this case, the appellant and the Council agree that the container itself is 2.59m high. I note the appellant's contention that this does not go up by a full number. However, the fact remains that the height of the container exceeds 2.5m and so this factor alone takes it outside the limits of permitted development.
 11. The appellant makes reference to the requirements of Policy QP4 of the Hartlepool Local Plan, which deals with the layout and design of new development. However, as ground (a) has not been pleaded in this appeal, it is not open to me to take into account the planning merits of the development.
 12. Drawing these strands together, the container constitutes development for which planning permission is required, and so a breach of planning control has occurred. The appeal on ground (c) thus fails.

Other Matters

13. The appellant has not pleaded ground (g), which is that the time given to comply with the notice is too short. Nonetheless, as the appeal process has coincided with the national coronavirus crisis, I have taken into account his further comments with regard to timescale.

14. The appellant cites personal family circumstances, and also the need to finish the kitchen and extension at No 9. In view of these factors, he states that he needs at least until the end of September 2020 to complete the requirements. However, I note that four months is given in the enforcement notice, which at the time of writing of this appeal decision, will allow a compliance period extending into October 2020. That being the case, there is no need for me to consider an extension to the four month period.

Conclusion

15. For the reasons above, the appeal is dismissed, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR