
Appeal Decisions

Site visit made on 4 August 2020

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 August 2020

Land known as Unit 16 and shipping container outside Unit 16, 17 Oak Lane, Littleport, Ely, Cambridgeshire CB6 1RS

Appeal 1 Ref: APP/V0510/C/20/3245008

Appeal 2 Ref: APP/V0510/C/20/3245009

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Mark Taylor (Appeal 1) and Mr Richard Taylor (Appeal 2) against an enforcement notice issued by East Cambridgeshire District Council.
 - The enforcement notice, numbered USE/18/00006 EN1, was issued on 18 December 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the change of use of an existing agricultural building to D2 use as a gymnastics club, and the use of a shipping container as a tea hut and waiting area ancillary to the gymnastics use.
 - The requirements of the notice are:
 - i. Cease the use of Unit 16 as a gymnastics club and permanently remove all gymnastics equipment and other items relating to the gymnastics club's use from the site.
 - ii. Cease the use of the shipping container outside Unit 16 as a tea hut and waiting area for the gymnastics club and permanently remove all items relating to the gymnastics club's use from the site.
 - The period for compliance with the requirements is three months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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DECISIONS

1. The appeals are dismissed and the enforcement notice is upheld.

REASONS

Appeals on ground (b)

2. The issue in this ground is whether the matters stated in the notice, which may give rise to the breach of planning control, have occurred as a matter of fact.
3. The appellants' case concerns the shipping container, not the use of Unit 16 by a gymnastics club. The appellants did not dispute that an empty shipping container was temporarily stationed outside Unit 16 but stated that it had been removed by the time the notice was served. The appellants could not state for

certain if the container was ever used as a waiting area by the gymnastics club, although it never formed part of the demise to the club.

4. According to the Council's representations the container was observed when the site was visited on 1 and 11 October 2019. On the first visit parents confirmed to officers they were waiting in the container for children taking a gymnastics class. A photograph taken on that date (1 October) showed a container with a sign attached saying Littleport Gymnastics Club Tea Hut Waiting Area. The container was no longer present when a site visit was undertaken on 22 January 2020. The Council was unable to say whether the container was on site and in use when the notice was served.
5. The Council's evidence is specific, based on observations on site visits. The photographic evidence supports the Council's version of events. There is no information to indicate that the reports were inaccurate. The appellants' knowledge was limited and uncertain. With these considerations in mind, the evidence is sufficiently reliable to conclude that as a matter of fact a shipping container was used as a tea hut and waiting area ancillary to the gymnastics use.
6. The appellants have not given a date when the container was removed, only that it was before the service of the notice. The relevant date is the date of issue, which need not necessarily be the same as the date of service. Additionally, a shipping container is a moveable structure and, even if it was not present on the actual day the notice was issued, it had been on site and in use as a facility of the gymnastics club shortly before.
7. The inclusion of the shipping container in the description of the alleged breach of planning control is justified. The appeals on ground (b) do not succeed.

Appeals on ground (c)

8. The issue is whether the matters stated in the notice, which consideration of the ground (b) appeals demonstrate have occurred, constitute a breach of planning control. The onus is on the appellants to prove their case. The standard of proof is the balance of probability.
9. The appellants' do not dispute that development in the form of a material change of use took place but maintain that it amounted to permitted development under Class R of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
10. It is sufficiently clear from the cited extracts from the GPDO that the appellants rely on Class R of Part 3 of Schedule 2 to the GPDO. Part 3 concerns changes of use and Class R is specific to agricultural buildings changing to a flexible commercial use. R. Permitted Development applies to development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a flexible use falling within Class A.1, Class A.2, Class A.3, Class B1, Class B8, Class C1 or Class D2 of the Schedule to the Use Classes Order. Paragraph R.1 sets out the circumstances when development is not permitted by Class R. Development permitted by Class R also is subject to the conditions set out in Paragraph R.2, and the procedures and timescales set out in Paragraph R.3.
11. The plan attached to the enforcement notice identifies Unit 16, together with the adjacent the shipping container. According to the appellants' information,

Unit 16 comprises some 248 m² of floor space. The unit is not a free-standing building but it forms part of a larger building of 1,904 m² that is divided into a total of three units (Units 15, 16 and 17).

12. The appellants' case relies on Unit 16 being sub-divided into Unit 16A (149 m²) and Unit 16B (99 m²). The procedure and information provided to the Council followed the requirements of paragraph R.3(1)(a) in so far as the Council was notified by email on 20 September 2019 of the proposal to begin the use of Unit 16A as a Class D2 gym club on 1 October 2019. Confirmation was given that there was no other Class R permitted development on the site.
13. The sub-division avoided the necessity of following a prior approval procedure set out in paragraph R.3(1)(b) where the cumulative floor space of the building or buildings which have changed use under Class R within an established agricultural unit exceed 150 square metres. However, the appellants have failed to adequately take account of the planning history of the building.
14. On 15 March 2019 planning permission was refused for a change of use of part of an existing agricultural building (Units 16 and 17) to Class D2 use (ref. 18/01730/FUL). When the planning application was made Unit 16 was already in use by a gymnastics club and permission was being sought retrospectively. Its use was first brought to the attention of the local planning authority in September 2018 following the reported relocation of the gymnastics club to the unit in August 2018.
15. Therefore by the time the appellants carried out the procedure in paragraph R.3 the Class D2 use had already commenced and been carried out for some time in Unit 16 as a whole, which also includes the space now referred to as Units 16A. The procedure in R.3(1)(a) must be carried out before changing the use of the site under Class R.
16. The appellants ground (c) case has concentrated on Unit 16A. No information is provided and no case is made in respect of the Class D2 use of the remainder of Unit 16, which forms part of the Land identified by the notice. The ground (b) appeals did not seek to dispute the Class D2 use of Unit 16 had occurred as a matter of fact. No case was presented that questioned the extent of the Land identified on the notice plan. The Council reported that when a site visit was carried out on 1 October 2019 a dividing wall within Unit 16 was some 2 metres high and did not extend the full height of the unit. A connecting doorway was visible. The two external doors to Unit 16 each had a sign in place for the gymnastics club. The appellants have not demonstrated a new smaller planning unit, with clear physical and functional separation, was formed. Even if sub-division of the planning unit did take place, the use of Unit 16A continued in the same D2 Use Class and no development took place as a result of sub-division. These considerations reinforce a conclusion that the purported exercise of Class R permitted development rights would not result in the gymnastics use becoming lawful. The Class D2 use of Unit 16A is unauthorised, as is the Class D2 use of Unit 16 as a whole.
17. I also have concern that paragraph R.1 has not been addressed by the appellants at all. In this case there is no evidence on the use of the building on the relevant dates and therefore the Class D2 use has not been shown to fall outside the circumstances when development is not permitted.

18. Furthermore, I have concluded that the shipping container was used by the gymnastics club and that it was in use on 1 October. The container was on land within the curtilage of Unit 16/Unit 16A, based on the interpretation of curtilage set out in Part 3. The appellants have not addressed whether or not the container counts towards the floor space total of 150 m² or put forward any evidence as to why its use as ancillary space to the gymnastics club was not a breach of planning control.
19. In conclusion, a material change of use of Unit 16 to D2 use occurred. The change of use constituted development requiring planning permission. No planning permission has been granted whether by application to the local planning authority or by means of a development order. More specifically the use of part of Unit 16, referred to as Unit 16A, does not benefit from the permitted development rights under Class R of Part 3 in Schedule 2 to the GPDO. The appellants failed to discharge the burden of proof in respect of the ancillary use of the shipping container. A breach of planning control has occurred, as described in enforcement notice. The appeals on ground (c) fail.

Conclusion

20. For the reasons given above I consider that the appeals should not succeed.

Diane Lewis

Inspector