



Appeal Decision

Site visit made on 4 January 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2021.

Appeal Ref: APP/Q3305/C/20/3258757

Land at Faulkland, Radstock, Somerset BA3 5XD

- 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 Miss Samantha Gilbert against an enforcement notice issued by Mendip District Council.
- The enforcement notice was issued on 3 August 2020.
- The breach of planning control as alleged in the notice is without planning permission and within the past ten years the stationing of two shipping containers on land.
- The requirements of the notice are: (i) Cease the use of the land for the stationing of two storage containers. (ii) Permanently remove the storage containers from the land.
- The period for compliance with the requirements is three 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. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Preliminary Matters

1. The enforcement notice is directed at a material change in the use of land. The two shipping containers are stationed in an open field laid to grass. The containers do not rest on a concrete pad or footing and there are no connections to services such as electricity or water. There is no firm evidence that the containers are used for purposes other than agriculture. However, the setting up on land of shipping containers as portable buildings is generally regarded as a building or engineering operation. The containers are of substantial size, individually and cumulatively. They are essentially permanent features, having been situated in the field for a considerable period of time. Also, the weight of the containers is such that they are unlikely to be easily moved, physically attaching them to the ground. Therefore, as a matter of fact and degree, in my view the stationing of the containers on the field has involved a building operation.
2. Using the power under s176 (1)(a) of the Act¹ I shall correct the notice accordingly to refer to operational development, with consequential corrections to the reasons for issue and the requirements. In doing so, there would be no injustice. In particular, the appellant has not been denied an opportunity to make an appeal on ground (d) that it was too late to take enforcement action;

¹ The Town and Country Planning Act 1990 (as amended).

there is clear evidence to show that the containers have not been in situ for more than four years prior to the issue of the notice.

3. There is no deemed planning application arising from an appeal on ground (a). Therefore, planning merits arguments, including the proposed measures aimed at mitigating the visual impact of the containers, are not before me. Whilst I appreciate that the appellant sought to cooperate with the Council throughout the time leading up to the issue of the notice, that also has no bearing on the appeal considerations.

Ground (c) appeal

4. The ground of appeal is that the matter alleged in the notice did not constitute a breach of planning control. It is for the appellant to show that an appeal on this ground should succeed, the relevant test of the evidence being on the balance of probability.
5. The undertaking of a building operation involves 'development' as defined in s55 (1) of the Act. Planning permission is required for the development of land, having regard to s57 (1) of the Act. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) at Article 3, Schedule 2, Part 6, Class A, only permits development providing an agricultural building where it is on 'agricultural land' comprised in an 'agricultural unit' of 5 hectares or more in area and; where the building is reasonably necessary for the purposes of agriculture within the unit. The permission granted is also subject to limitations and conditions, including a requirement to obtain approval from the Council of the siting, design and external appearance of an agricultural building before development is carried out.
6. I understand that items and equipment are kept securely in the containers to maintain the field in agricultural use and that they are also used to store hay cut from the field. Even so, there is no firm evidence to show that the field meets the qualifications for Class A development set out above and that the containers are reasonably necessary for the purposes of agriculture within the unit. There is also no firm evidence to show that all of the relevant limitations and conditions of Class A have been complied with. Whilst the containers' cumulative floor area might be less than 150 m², it is not clear how that is relevant to agricultural buildings. The Planning Portal is intended to provide assistance but is not conclusive of the need for planning permission. In the absence of planning permission being granted by the GPDO or a grant of express planning permission, the containers are in breach of planning control.
7. Therefore, the appellant has not been able to show to the required standard that the stationing of the containers did not constitute a breach of planning control and the ground (c) appeal fails.

Conclusion

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

Formal Decision

9. It is directed that the enforcement notice be corrected by:

- In paragraph 3, deleting "and within the past ten years".
- In paragraph 4, substituting the reference in the first sentence to ten years for "four years".
- In paragraph 5, deleting step (i) and renumbering step (ii) to step (i).

Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR