



Appeal Decision

Site visit made on 19 May 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Appeal Ref: APP/M5450/C/20/3263297

Land rear of 7 South Close, Pinner, Middlesex HA5 5AE

- 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 Ian Harry against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice, numbered ENF/0396/18/P, was issued on 20 October 2020.
- The breach of planning control as alleged in the notice is:
 - (1) Without planning permission the material change of use of the Land to a builders yard and storage of materials associated with such unauthorised use ("**the Unauthorised Use**")
 - (2) Without planning permission, the siting of 3 shipping containers on the Land ("**Unauthorised Shipping Containers**")
- The requirements of the notice are to:
 - (1) Cease the Unauthorised Use on the Land.
 - (2) Remove the Unauthorised Shipping Containers from the Land.
 - (3) Remove from the Land all refuse, skips, building materials, vehicles and any other paraphernalia associated with the Unauthorised Use.
 - (4) Remove from the Land all materials and debris arising from compliance with the aforementioned requirement of the notice.
- The period for compliance with the requirements is two (2) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (e) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a varied compliance period.

Main Issues

1. The appeal on ground (e) concerns whether the notice was served in accordance with section 172 of the Act. Ground (b) concerns whether the matters alleged in the notice have occurred as a matter of fact; here the issue concerns 3 shipping containers. Ground (a) constitutes the deemed application for planning permission where the principal issues concern the effects of the development on the character and appearance of the area and of the living conditions of neighbouring residents. Ground (g) concerns whether more time should be allowed to comply with the notice, if it is to be upheld.

The appeal on ground (e)

2. Section 172(2) of the Act requires that any enforcement notice is served on the owner and occupier of the land to which it relates, and to any other person having an interest in the land that the Council thinks is materially affected by the notice. The appellant's complaint on this ground is not that the Council has served the notice on too few people, but on too many. That does not support

this ground of appeal, where the question is whether those people who should have been served with the notice have been served with it (and if not, whether any prejudice to them arises). The appellant does not contend that there has been any failure of service, and accordingly the ground (e) appeal must fail.

The appeal on ground (b)

3. The notice alleges the 'siting' of 3 shipping containers, which the appellant understands to mean an allegation of operational development. The Council confirm this to be their understanding too, although the notice does not expressly allege that operational development has occurred. The appellant does not deny that 3 shipping containers are on the land; rather, the contention is that the Council has misdescribed the breach of planning control. This would amount to an appeal on ground (c): that the matters alleged do not constitute a breach of planning control.
4. I am satisfied that a breach of planning control has occurred through the siting of the shipping containers. Either they are to be viewed as part and parcel of the unauthorised use (to which the requirements of the notice to remove all paraphernalia associated with the use would apply) or they amount to buildings for which planning permission is required. Were it necessary, I would be satisfied that the allegation could be corrected without causing any injustice to the appellant.
5. A building is defined in the Act to mean 'any structure or erection', and this definition has been interpreted to include structures which may not ordinarily be described as buildings, such as polytunnels or poultry units. Whether building operations have occurred is commonly assessed by reference to the so-called *Skerritts* factors¹ of size, permanence and degree of physical attachment to the land. The appellant points out that the containers are not fixed to the ground, and are deposited at the site in lorries rather like skips.
6. It appeared to me that the southernmost of the shipping containers, apparently used as an office, has been 'built in' by the addition of steps and what appeared to be an electricity supply. It has acquired some physical attachment to the land and appears to be a permanent feature. I am in no doubt that this is reasonably described as a building.
7. Likewise the other two containers to the northern part of the site. They do not appear to be 'built in' to the same degree as the 'office' building, but they too appear to be intended as permanent features. Although not appearing to be physically attached to the land, their sheer weight, size and bulk is sufficient to conclude that they are structures and hence buildings for the purposes of the Act. Therefore the appeal on ground (b) (or alternatively a ground (c) appeal) fails, and I find that the development as alleged in the notice has occurred and that it amounts to a breach of planning control.

The appeal on ground (a): the deemed application for planning permission

Character and appearance of the area

8. The development is accessed via a rear service lane running south from Village Way, to the rear of the commercial units with residences above on Rayners Lane and also to the rear of residential properties on South Close. The service

¹ *Skerritts of Nottingham Ltd v SSETR* [2000] 2 PLR 102

lane generally marks the transition from the commercial to residential properties in the area. The appeal site has been formed by severing the large rear garden to no 7 South Close and transforming the eastern part of it, as it adjoins the service lane, into the roofing contractor's depot that forms the subject of the notice. The western side of the service lane is not exclusively residential, with an electricity sub-station nearby north of the appeal site, as well as what appears to be a discrete parking area to the rear of no 6 South Close, but the general character transition takes place on either side of the lane.

9. Policy CS1.B of the Harrow Core Strategy states that 'garden development' will be resisted. The reference to 'garden development' is explained in the 'Garden Land Development' SPD to refer to a particular strategy of meeting the Borough's housing needs, and avoiding existing gardens to provide new housing. As this is not a residential development I do not find there to be any presumption arising from this aspect of the policy. The policy also seeks to resist proposals that would harm the character of suburban areas.
10. Notwithstanding the other non-residential facilities to the western side of the service lane, I find that the change of use, and the provision of buildings for the purpose, has resulted in a change to the previously residential suburban character. I am unable to agree with the appellant that the site is mostly related to its commercial context to the east, as I consider that the service lane marks a clear demarcation in character, and with no other non-residential uses making a comparable encroachment into any land or gardens to the west of it.
11. The site appears as a typical builder's compound, with the shipping containers and various items of equipment visible such as traffic barriers, signs and scaffolding, as well as roofing and building materials visible. The site appears well kept but its use is not at all commensurate with the character of the surrounding residential gardens. Therefore I find that the development has harmed the suburban character of the area in which the site lies, contrary to CS Policy CS1.
12. The London Plan of 2016 has recently been superseded by the 2021 London Plan, and accordingly the policies cited by the Council in the notice have been replaced. The London Plan (2016) Policy 7.4 required development to have regard to the function of the area in which it lies and for the buildings to provide high quality design that has regard to the pattern and grain of existing spaces and streets. Policy 7.6 required buildings to be appropriate to their surrounding residential context. These requirements are largely reflected in Chapter 3 of the 2021 London Plan especially policy D3, requiring development proposals to enhance local context, be of high quality and to respond to existing character. For the reasons given above, I do not find these requirements to be met here. Consequently I do not consider the development to accord with the development plan for the area insofar as it relates to matters of character and appearance.

Neighbouring living conditions

13. The Council's fourth reason for issuing the notice is that it alleges the use has a harmful impact on the living conditions of the occupiers of the Land and of the neighbouring properties. There are no residential occupiers of the Land itself, and the particular alleged impacts on the living conditions of neighbours are not specified. The shipping containers are said (reason 5) to be detrimental to

the visual amenities of neighbouring occupiers. Two neighbours have written in response to consultation, both principally raising matters of the visual impact of the development. The appellant says that the appeal site is minimally used, with no more than 4 visits each week in normal trading hours. A complaint is raised about 'noise and air pollution' but without further details. Harm of this nature is not alleged by the Council, and without further evidence I am unable to find that this complaint is substantiated.

14. Whilst one would not usually expect to observe shipping containers over the garden fence, it appears from the evidence before me that there is no unacceptable impact on the living conditions of neighbouring residents that arises from the buildings or the use of the appeal site. The complaints that are made about the visual impacts of the development illustrate its discordance with the residential character of the area, and above I explain why this is harmful. However, the complaints from neighbours about the spoiling of views and the devaluation of property prices do not in themselves reveal material planning matters that I can take into account.
15. The loss of the trees is not a matter within the scope of the enforcement notice, and nor is the boundary fence. The shipping containers and artefacts on the site are not substantially taller than the boundary fencing and do not appear to result in any overbearing impacts on the neighbours. I find no evidence of conflict with the policies in the development plan cited in the notice that seek to protect residential living conditions and no unacceptable harm to living conditions to arise from the development.

Other matters

16. A number of other matters are raised to seek to justify the development, and I have had regard to all the correspondence. It is said that the appeal site has been sold off from no 7 South Close with a fresh title number, and therefore that the prospects of it returning to garden land are nil. The notice does not seek the land's reinstatement as a garden, grassed or otherwise, but merely requires the elements of the use to cease and the buildings to be removed.
17. It is also suggested that planning permission could be granted temporarily, given that there are proposals to redevelop the land. It is sometimes appropriate to grant permission for a 'meanwhile' use in such circumstances, but I do not find that they apply here, because I have found the development to be harmful and because the prospects of successfully redeveloping the land for housing are uncertain.

Conclusion on ground (a) and the deemed planning application

18. Although I have found no evidence of unacceptable impacts on the neighbouring living conditions, I consider that the redevelopment of the site as alleged in the notice has had harmful impacts on the character and appearance of the residential area within which the site lies, and consequently that it is contrary to the development plan for the area. Subject to my findings on ground (g) I shall therefore uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The appeal on ground (g)

19. The appeal on ground (g) raises the question whether the period specified in the notice to comply with its requirements falls short of what should reasonably

be allowed. The starting point here is that the appellant has been entitled to assume success on other grounds, and cannot be expected to take steps to comply with the notice before it takes effect. Therefore, and contrary to what the Council say, the length of time now elapsed since the enforcement notice was issued is not relevant to my considerations on this ground.

20. The appellant explains that his business is locally based and that finding alternative premises will be difficult. In the light of my finding that there is no evidence of unacceptable harm to the living conditions of neighbours, and accepting the appellant's need to secure alternative premises without risk to the business, I conclude that the requested period of 12 months would be reasonable. Therefore I shall allow the appeal to the extent of varying the compliance period from 2 months to 12 months.

Conclusion

21. For the reasons given above I conclude that the appeal should not succeed, save to vary the compliance period. I shall uphold the notice with a varied compliance period and refuse to grant planning permission on the deemed application.

Decision

22. It is directed that the enforcement notice be varied by deleting "Two (2)" from paragraph 6 and replacing it with "Twelve (12)". Subject to that variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Laura Renaudon

INSPECTOR