



Appeal Decision

by **S A Hanson BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 July 2021

Appeal Ref: APP/Y3940/X/21/3270607

114 Downs View, Bradford-on-Avon, BA15 1PW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr & Mrs Simon Humpage against the decision of Wiltshire Council.
 - The application Ref 20/06979/CLP, dated 17 August 2020, was refused by notice dated 8 October 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The for which a certificate of lawful use or development is sought is the placement of a 20ft long x 8ft wide x 8ft 6in high shipping container for domestic storage purposes in the garden of the property. The container will be set into the ground so that the height from ground level to the top of the container does not exceed 2.5 metres.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers¹.
3. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Council is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.
4. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

¹ The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

Main Issue

5. This is whether the Council's decision to refuse to issue an LDC was well-founded. The decision turns on whether the provision of a shipping container for domestic storage purposes within the garden of the residential property would require planning permission.

Reasons

6. The appeal site is a semi-detached property situated on a corner plot in a residential street. The proposed shipping container would be sited to the side of the property adjacent to the public highway. Shipping containers are generally not considered to be buildings but, in some circumstances, they are capable of being classed as such. Established case law² identified three primary factors as being relevant to the question of what was a "building". These are: (a) size; (b) permanence; and (c) physical attachment.
7. The shipping container is of solid steel construction. Although not physically attached to the ground, its sheer weight and size, and proposed siting below natural ground level, would suggest that it could not easily be moved, thereby giving it a degree of permanence.
8. The Courts have made it clear that no one test is conclusive, but the degree of permanence may, in itself, tilt the balance when weighed with other factors. It is the Council's case that the shipping container has a degree of permanence and mindful of the matters highlighted above, I see no reason to disagree.
9. Planning permission is granted by virtue of permitted development rights for certain types of development subject to specified conditions and limitations. Class E Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants permission for the provision within the curtilage of a dwellinghouse of any building, enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, subject to certain conditions and limitations.
10. The Council refused the application for the LDC because the proposal was considered not to constitute permitted development under Schedule 2, Part 1, Class E, E.1 (e) of the GPDO. This part of the GPDO at criterion (e) (ii) indicates that development is not permitted if the height of the building or enclosure or container would exceed 2.5m and would be within 2m of the boundary of the curtilage of the dwellinghouse. The Council takes the view that when taking into account the natural land levels, the container would measure 2.6m high and therefore the proposal would not have been lawful at the time of the application. There is no disagreement that in all other respects Class E is met and I have no reason to conclude otherwise.
11. The appellant argues that although the proposed container is 2.59m in height, to ensure that the structure would not exceed 2.5m in height, it would be dug into the ground.
12. The Government's Permitted Development Rights for Householders – Technical Guidance, dated September 2019, (the Technical Guidance) whilst not

² Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1QB 385, endorsed by the Court of Appeal in Skerritts of Nottingham Ltd v SSETR (No.2) [2000] 2 PLR 102

determinative, provides useful guidance on the interpretation of the GPDO. It states that the height of any building, enclosure or container should be measured from the highest ground level immediately adjacent to the building, enclosure or container at its highest point.

13. The application site is gently sloping and the land, in preparation for the container, has been lowered. The application drawings show the maximum height of the structure would be 2.47m when measured from the lowest ground level and 2.295m when measured from the highest ground level next to the proposed container.
14. The Council's reason for refusal is that the proposed container would have a height that would exceed 2.5 m and whether or not the container is sunk into the ground, it would still exceed the height limitations for a building in this position. But their argument does not take into account the Technical Guidance's advice that the height of the building, enclosure or container should be measured from the highest ground level immediately adjacent to the building, enclosure, or container to its highest point. Class E is not concerned with digging below ground level. What is important is how far the new building would protrude above ground level once complete, or in this case, once in place.

Conclusion

15. For the reasons given above I conclude, on the evidence available that the Council's refusal to grant a certificate of lawful use or development in respect of the placement of a shipping container within the garden to the side of 114 Downs View, Bradford-on-Avon, BA15 1PW was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended.

S A Hanson

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 17 August 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed placing of a shipping container for domestic storage purposes associated with the main dwellinghouse at 114 Downs View, Bradford-on-Avon BA15 1PW, as shown on the application plans: 1633-003 Rev D (Block Plan), 1633-005 Rev A (Cross Section thro' Shipping Container installation); and 1633-006 (Storage Container Elevations).

The operation would have been permitted development by virtue of article 3(1) and Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) and would not constitute development requiring planning permission.

Signed

S A Hanson
Inspector

Date: 23 July 2021

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First Schedule

The placement of a 20ft long x 8ft wide x 8ft 6in high shipping container for domestic storage purposes in the garden of the property. The container will be set into the ground so that the height from ground level to the top of the container does not exceed 2.5 metres.

Second Schedule

Land at 114 Downs View, Bradford-on-Avon, BA15 1PW

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 23 July 2021

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Land at: 114 Downs View, Bradford-on-Avon, BA15 1PW

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Scale: Not to scale

