
Appeal Decisions

Site visit made on 27 July 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2021

Appeal A Ref: APP/Y0435/W/20/3265618

The Pink Punter, 2 Watling Street, Bletchley, Milton Keynes MK2 2BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr F McMahon against the decision of Milton Keynes Council.
 - The application Ref 20/02405/FUL, dated 22 September 2020, was refused by notice dated 23 November 2020.
 - The development proposed is described as provision of storage containers (retrospective).
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Appeal B Ref: APP/Y0435/C/20/3263042

Land at Pink Punters, 2 Watling Street, Bletchley, Milton Keynes MK2 2BS

- 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 F McMahon against an enforcement notice issued by Milton Keynes Council.
 - The enforcement notice was issued on 15 October 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised change of use from Sui Generis (Night Club) to mixed Sui Generis and B8 open storage use.
 - The requirements of the notice are: Cease the use of the Land for B8 open storage by removing the six (6) storage containers from the Land.
 - The period for compliance with the requirements is Two (2) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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Decisions

Appeal A

1. The appeal is dismissed

Appeal B

2. The appeal is allowed and the enforcement notice is quashed.

Procedural Matters

2. The development the subject of Appeal A is the provision of storage containers through operational development on land at The Pink Punter and for use in connection with the nightclub. The application is described as retrospective,

and I noted on my site visit that the containers are already in place. I have determined the appeal on that basis.

3. The enforcement notice the subject of Appeal B alleges that the provision of those storage containers has resulted in a material change of use of the Land. Consequently, my considerations in Appeal B are confined to the alleged material change of use and not to any operational development that may have occurred.
4. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. The main parties were given the opportunity to comment on any relevant implications for the appeal and have not therefore been prejudiced. I have had regard to the responses and the Framework in reaching my decision.

Appeal A

Main Issues

4. The main issues in this case are the effect of the development on:
 - the character and appearance of the area; and
 - flood risk.

Reasons

Character and appearance

5. The development comprises six shipping containers. The containers are sited adjacent to the north eastern boundary of the site and adjacent to the River Ouzel. They are constructed in metal, finished in a dark green colour and supported on steel legs which are bolted to the ground. There are four containers at ground level with two larger containers stacked above them.
6. The existing night club and associated manager's accommodation occupy a prominent location adjacent to the road and located in the north and western part of the site. It is a dominant 2/3 storey timber framed building constructed beneath a series of gabled and steep pitched roofs. Its curtilage includes a large split level car parking area, including areas for drop off, collection and taxi ranks. In addition, a number of lower ground floor ancillary workshop/storage areas are situated beneath the upper parking area.
7. The containers are situated away from the road and on the lower part of the site. However, the two upper floor units are clearly visible from the road frontage. By reason of its height, the container stack is particularly conspicuous when travelling in a northerly direction along Watling Street and on the approach to Fenny Stratford, Bletchley.
8. Whilst I appreciate that the site is located within an area designated for employment purposes, the site's context is a location on the edge of the settlement, adjacent to a river and a main arterial route leading to open countryside. The nature of neighbouring development along and visible from Watling Street is predominantly traditional built form, with some open areas including car parking and mature landscaping. The materials and box form of the containers introduces an incongruent and industrial character to the site which detracts from the visual qualities of the area.

9. I understand that the containers were put in place to provide additional storage capacity for the night club whilst extensive refurbishment of the premises took place during the COVID-19 lock down. However, from my observations on my site visit, those works are now generally complete, and the venue has re-opened. It seems to me that with some re-organisation there is sufficient capacity within the existing on-site storage buildings to accommodate the nightclub's props and associated materials currently stored in the containers. Furthermore, should additional capacity be required, it would be more appropriately accommodated within a purpose-built structure, designed to reflect the character of the existing buildings on the site.
10. I conclude that the containers have a harmful effect on the character and appearance of the area. The development is contrary to the development plan, and in particular with the design aims of Policies D1, D2 and D3 of the Milton Keynes Plan, adopted 2019 (LP) which seeks to ensure that new development, amongst other things, relates to the existing buildings and plot and does not detract from the character of the existing building or surrounding area. I also find conflict with Policy D9 of the LP which only provides for temporary buildings to meet a demonstrable short-term need.

Flood Risk

11. The Council are concerned that the application was not accompanied by a Flood Risk Assessment (FRA). Policy FR1 of the LP requires all applications for new development to be accompanied by an appropriate FRA where they fall within Flood Zones 2 or 3.
12. The appellant has provided an extract of the Environment Agency Flood Maps which appears to indicate that part of the appeal site where the containers are sited lie within Flood Zones 2/3. However, taking into account the existing site levels in relation to the adjoining watercourse, and recognising that other areas at the same level as the containers within the appeal site are not shown on the flood maps to be at risk of flooding, there is merit in the appellant's claim that the maps at the scale shown are unlikely to be completely accurate. In addition, evidence from historical flood data suggests that the whole of the appeal site is located within Flood Zone 1.
13. The storage units are sited on an area of existing hardstanding and supported on a steel frame with legs. As such, their development is not going to increase surface water run-off from the site or increase the risk of flooding elsewhere. Furthermore, no objections were received to the development from the Lead Local Flood Authority.
14. Taking into account the nature of the development, existing site conditions and topography, I conclude that the provision of the storage containers would not be at risk from or contribute to the risk of flooding elsewhere. Thus, whilst there would be some technical conflict with Policy FR1 of the LP, material considerations in this instance indicate that the development should not be refused for reasons relating to flood risk.

Conclusion

15. For the reasons given above and taking into account all other matters raised, I conclude that whilst the storage containers would not be at risk from or contribute to the risk of flooding elsewhere, they would have a harmful effect

on the character and appearance of the area. There are no conditions or other material considerations which would outweigh the conflict with the development plan when read as a whole and the Appeal A should be dismissed.

Appeal B

Appeal on ground (b) and ground (c)

16. The main issue in a ground (b) appeal is whether as a matter of fact the Land was in use for open storage. If those matters did occur, the ground (c) is that those matters do not constitute a breach of planning control. The burden of proof falls on the appellant to make out their case.
17. There does not appear to be any dispute between the parties that containers are being stored on an area of existing hardstanding within the site and that those containers are in use for storage. The appeal on ground (b) therefore fails. However, it is the appellant's view that the containers are being used to store items used in connection with the primary use of the site as a night club. The storage use is therefore incidental to the night club and no material change of use has occurred. A main consideration is whether a significant difference in the character of the activities and use can be identified when compared to the lawful use.
18. A starting point is to identify the planning unit, which is the most appropriate physical area to assess the materiality of the change. A useful working rule is to assume that the unit of occupation is the appropriate planning unit.
19. The Land identified by the enforcement notice includes Pink Punter's night club with associated manager's accommodation, and a large area of land to the south east of the night club building which includes its car parking area, on-site dropping off and collection areas, and taxi ranks. It also includes a series of lower ground storage/workshop buildings which sit beneath the upper car park and which have planning permission for and are used for storage purposes ancillary to the use of the night club. There is no physical separation between the night club, the underground storage buildings, car parking and delivery areas and the land where the container storage use is taking place. I conclude that the appropriate planning unit comprises all of the Land identified in the notice.
20. During my site visit I was able to view the full extent of the night club and observe how the existing buildings on the site are utilised, including how the business operates throughout the site. I was also afforded access to all of the containers to view their contents. I observed that the ground floor containers are predominantly storing items/props utilised in the night club's theme nights, including Christmas and Halloween decorations. In addition, smokeless fuel for use in the various open fire pits found within the site was stored in one of the containers and scaffolding units in another. The appellant advised that scaffolding is routinely used throughout the site to assist with the maintenance of the property. One of the upper floor containers was empty and the other which was accessed directly from the nightclub building had miscellanies' items from the night club stored within it.
21. The containers are sited on a relatively small section of the site and the open storage use is both functionally and physically related to the primary night club use. From the evidence before me, including my own observations on my site

visit, I have no doubt that the storage use on the site is incidental and ancillary to the use of the nightclub. Whether or not the containers are permanent fixtures is not a consideration in Appeal B, where the appeal is against an allegation in the notice aimed at a material change in the use of the land, as opposed to the erection of a building on the land. Furthermore, the planning merits of the use are also not relevant in an appeal under ground (c).

22. My conclusion is that as a matter of fact and degree, there is only one main activity on the Land. The open storage use is incidental to the primary use of the site as a night club and the character of the planning unit has not materially changed. A material change of use has not occurred and the appeal on ground (c) succeeds.

Conclusion

23. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice is quashed. In these circumstances, the appeal on grounds (d) and (a), and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Elizabeth Pleasant

INSPECTOR