



Appeal Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 December 2021

Appeal Ref: APP/R5510/X/21/3279646

Land opposite 176-184 Fore Street, Eastcote, London HA5 2ND

- 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 Hawksmore Investments Limited against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 73373/APP/2020/4237, dated 18 January 2021, was refused by notice dated 13 May 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is: Use Class B8 – open storage.
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Decision

1. The appeal is dismissed.

Matters of clarification

2. Further to the case officer's letters to the parties, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on all of the submissions including any photographs submitted. The appellant and the Council have agreed to the appeal proceeding without a site visit and I am satisfied that, in dealing with it in this manner, no injustice is caused.

3. The LPA had notified neighbours in the locality of this LDC application (for the storage of shipping containers on the land) and there were 17 objections. However, these generally related to the planning merits of the use and thus cannot carry any weight with regard to my decision in this case. It is not a further planning application. Neither can the previous Inspector's reasons for refusing the previous appeal be taken into account since these too all related to the merits of the case. The LPA had also requested clarification of the anticipated layout, size and colouring of the containers. However, again, this information is not relevant to a LDC application.

4. The appellant indicates that the LPA has changed the description of the sought lawful use from '*the storage of shipping containers on the land...*' to '*the installation of shipping containers...*'. However, I do not consider that this affects what was clearly intended by the appellant: that is the seeking of a LDC to confirm that the placing on the land of up

to 50 shipping containers, for storage of goods, was lawful for planning purposes on the date of the application. It is indicated by the appellant that the LDC was applied for to establish whether the use of the site, in whole or in part, for the intermittent open storage of containers, fell within the lawfully-established and unlimited open storage uses within Class B8. It is on this basis that I have dealt with the appeal.

Introduction and background information

5. The appeal site lies within the Metropolitan Green Belt, on the edge of the built-up area of Hillingdon. For Local Plan purposes it is within the open countryside. However, the predominantly residential area of Eastcote lies immediately to the east and further away to the north-east and south-east. The precise location of this 1,900m² site is on the west side of Fore Street, opposite to Nos.176 – 184. To the south of the site and also to the west of Fore Street there are/were, amongst other buildings, various glass house and horticultural structures.

6. An LDC for an unlimited open storage Class B8 use of the site was granted in 2015. The land is still used for this purpose, together with what has been referred to as '*a combination of individual commercial operations*'.

7. In September 2019 planning permission was refused for a change of use of the land from '*unrestricted Class B8 open storage*' to a restricted use for '*the positioning of up to 68 shipping containers for self-storage use*'. An appeal (APP/R5510/W20/3244914) was dismissed on the basis that the proposed positioning of the containers for storage use constituted inappropriate development within the Green Belt; that it would have a significant impact on the openness of the Green Belt and that it would cause moderate harm to the character and appearance of this part of Eastcote.

The gist of the case for the Appellant

8. It is stressed that the lawful use of the land is for Open Storage within Class B8 as granted in 2015 and that the use continues in an unrestricted manner which has neither since been abandoned nor intensified to an extent that there is any materially different use of the land. Reference is made to the Use Classes Order and that Class B8 is still in place after recent changes and is for a '*use for storage and distribution*'.

9. It is acknowledged that the lawful existing use of open storage involves '*other operations*' but, in the LDC application it is indicated that the question was asked as to whether the proposed use for the storage of shipping containers goes beyond the lawful use. The nature of open storage is referred to as including: the bringing of items or goods onto land; their retention there for a period and their being taken away. It is indicated that this could include a degree of '*re-packaging*', but in this case this is not intended.

8. In support of the LDC application it is indicated that the shipping containers would be used for the storage of goods and that normally they would be delivered to the site pre-filled with goods and later taken away within 2 to 3 months. It is stressed that they would not be fixed to the ground and would not be provided with any services such as water or electricity. It is also indicated that once removed from the site the containers would be replaced with similar ones which would be positioned in variable locations on the site. It is confirmed that there could be typically up to 50 containers stored on site and that their height is 2.6m to top of any first container and around 5.2m in height where containers are stacked on top of one another.

9. It is contended that the formal reasons for refusal are unclear as they relate to the necessity for planning permission for such storage on the site. However, it is not suggested through either the application of this appeal, that the stationing of shipping containers is anything other than development in terms of the s.55 definition. It is considered that this formal reason should not take into consideration whether there is a need for such planning permission in any event. This is because of the previous confirmation by the LPA that the land in question has a lawful use for open storage.

10. It is stressed that the LDC sought is for the intended use of land, in particular for the open storage of shipping containers. It is agreed that this is a form of development that would require specific planning permission if it were not for the existence of the previous LDC confirming that the land has a permanent right to be used for open storage (unless abandoned, which is not alleged here).

11. It is indicated that the containers are not intended to remain indefinitely on the land but are to be brought to the site and taken away from time to time. As for normal storage and distribution, they will contain goods which require to be held for later use or sale (both off-site). Many will contain goods but some others may be empty and merely being held for later use elsewhere.

12. It is indicated that vehicles will need to enter the land to bring the containers onto the site and to take them away. In view of the size of individual containers, this will involve vehicles with a lifting capacity no different from where, for example, a holiday chalet or static caravan is transported and positioned on site where there is planning permission (or established use) for the use of land for the siting of static holiday caravans. The process does not itself involve the erection of a building (a 'building operation') for which planning permission would itself be required, but is incidental to the lawful use of the land.

13. It is contended that in its early consideration of the LDC application, the LPA appeared to be treating it as one for planning permission. Questions as to intended siting could conceivably be relevant to intensity of the use of land but those relating to intended colours of containers were clearly not relevant.

14. It is contended that the LPA has not alleged that the proposed positioning or placing of containers would result in an intensification of use such that a materially-different use is intended by this application and appeal and merely asserts that the placing of containers is, by definition, a '*building operation*'. It does so without reference to the existing and confirmed lawful use.

15. By virtue of subsection (f) of s.55 of the Act that the term '*development*' excludes '*in the case of ... land ... used for a purpose of any class specified in an order made by the Secretary of State under this section [i.e., the Use Classes Order 1987], the use of the ... land or, subject to the provisions of the order, of any part of the ... land, for any other purpose of the same class*', confirming that continued open storage use would not be development.

16. Reference is made to the long been debate about whether a particular operation is a '*building operation*' or an '*other operation*', for which normal operations for regular open storage use would be operational development. The question arises here as to whether the storage of containers, as expressed in the application and along with the clear

confirmation therein of lack of permanence, could conceivably be considered as a 'building operation'.

17. References are made to s55 of The Act; to the Use Classes Order; to case law and to other appeal decisions on the same subject of stationing containers on land. It is stressed that Case law and development management decisions by LPAs and Inspectors provide no clear standard answer but that cases are treated on their merits on the basis of fact and degree, taking into account the nature of the operation and its degree of frequency (i.e. the permanency of the outcome).

18. Reference is made to the fact that Planners and developers will '*quote scripture to their own purpose*' and that any individual interpretation in a decision should not be taken as a golden rule to be implied in other decision-making. Two specific decisions are quoted. In the quoted decision (near Hereford) of 2012 by the LPA, it is indicated that the Inspector concluded that '*an intention that the containers are to be placed with the prospect of some permanence*' indicated that there would be a physical change of some permanence to the land.

19. In this case it is clear that the already-certified use of the land is for open storage and that this includes any ancillary operational uses for that purpose. Such lawful open storage cannot take place without the bringing in of goods, materials and necessary equipment, any necessary (non-industrial) processes such as re-packaging for distribution, and for the taking away of goods, materials and necessary equipment – these clearly being 'operations'. Whether these are 'building operations' or 'other operations' is a matter of judgement but the appellant's case is that the mere positioning (even if requiring specialist lifting equipment built into delivery transport) clearly falls into 'other operations' already included within the certified lawful use, as a form of off-loading.

20. It is considered that this view is reinforced by the intended and lack of permanence expressed in the request for a LDC. In the application it was made clear that the intended use indicated that '*the containers would neither be fixed to the ground nor provided with services (such as water or electricity) and would be used themselves for storage of goods, all within Use Class B8*'.

21. It is also indicated that the containers would '*normally be delivered to the site already containing goods and later taken away in the same form within 2-3 months, to be replaced in variable locations by other containers*'. It is contended that this would be a normal Class B8 storage operation of bringing items to the site, undertaking no processes on the site, and then taking them away in the same form after a limited period. Thus, making it clear that there is no intention for permanence and that this is wholly different from the earlier application for the permanent positioning of containers on the land. It is argued that the facts and degrees differ substantially from the Hereford appeal decision.

22. A second appeal decision relating to the positioning of containers is also quoted (APP/U1240/X/16/3159530). It is stressed that in that case the Inspector concluded that the stationing of the containers on the land did not amount to a building operation. This was because they were not physically attached to the ground; they were not connected to any services and could easily be lifted onto a vehicle. It is stressed that this is the case for this appeal and that the situation differs from the approach adopted in the 2012 Hereford case and has an even lower degree of permanence than this later 2017 appeal.

23. Reference is made to the delegated report whereby it is pointed out that the LPA explicitly recognises that the containers would be 'delivered to, taken away, or moved within the site' and 'capable of movement', implying lack of permanence. It is stressed that the lawful use for open storage has no time limit(s) or expiry date; that it remains in place now and can only be lost through abandonment.

24. It is contended that the only remaining LPA argument is that full containers are heavy and require specialist lifting equipment, such that it is their weight that turns them into '*buildings*'. However, it is indicated that this is not true of containers in a standard shipping container depot, they are not buildings. It is indicated that it is clearly also not true of other forms of sizeable objects (e.g., bridge spans, boats, concrete piping, mobile homes) which similarly require specialist lifting equipment but would not be regarded otherwise as '*anchored by their own weight*'.

25. It is considered to be clear from any brief review of decisions made by other LPAs (both positive or negative and depending on the circumstances) that the positioning of containers is classified as a use of land rather than a building operation. Officers' reports analysing such a proposed use typically consider proposals based on the facts of a particular case, normal relevant planning policies and material considerations, and arriving at a decision on the basis of a balanced planning judgement.

26. Submitted reports include one from the LB Hillingdon, for a case in Northwood – where the LPA described a scheme as a use of land in the following terms: '*The proposal is for the Change of use of the land from agricultural to Use Class B8 (Storage) involving the installation of 36 self-storage shipping containers and associated works to provide a total of 624sqm of container based storage.*'

27. In conclusion it is accepted that the storage of containers and use of land for their storage would normally be a form of '*other operation*' under section 55(1) of the TCPO 1990, requiring an application for planning permission. It is also accepted that in such cases, a wide range of planning considerations would come into play, including, as in this case, green belt, positioning, colouration, transport factors, etc. as were indeed considered when the application for permanent positioning was made (and refused/dismissed).

28. However, it is stressed that the land already benefits from a valid and extant LDC for Open Storage within Class 8, which continues and has not been abandoned. Recognising this differentiation from land without planning permission or established lawful use, confirmation of that lawful use as including the storage of containers is now sought. It is contended that the proposed storage (as proposed in the application) falls within the wide range of items permissible for storage within the established and continuing lawful use for open storage within Class B8.

The gist of the case for the Council

29. It is contended by the LPA that the installation of shipping containers constitutes development by virtue of the provisions set out in section 55 of the Town and Country Planning Act 1990.

30. The LPA indicates that the proposed containers are of a size such as to be portable, but they would be likely to require specialist lifting equipment in order to be delivered to,

the site; to be taken away, or moved within the site. It is argued that although they would be capable of movement, they would have a permanent character on the land.

31. The containers would be anchored in place by their own weight and for these reasons the containers would have a high degree of permanence. Furthermore, there would be no limit on the length of time that they would remain in any particular position on the site. The ability to move them around is not considered to remove the significance of their presence in planning terms.

32. Given the number of containers across the site, it is argued that the proposal would physically change the character of the land and present contiguous rows of buildings on an open site. Whilst not physically attached to either the land or any utilities, as a matter of fact and degree, the proposed development is considered to be a building operation. For these reasons the development would involve the erection of new buildings and structures for which planning permission is required.

33. Reference is made to the Section 55 of the Act and the definition of '*building operations*'. The Council indicates that, in order to qualify as '*building operations*' for the purposes of the Act, operations must relate to a building. The Council also stresses that the term '*building*' in section 336(1) of the 1990 Act has a wide meaning, including any structure or erection and that case law is clear in concluding that the definition of '*building*' should be interpreted to include structures which would not ordinarily be described as buildings.

34. The LPA refers to the appellant's case being predicated on the fact that there is an established Class B8 use on the site which includes open storage and therefore that the storage of up to 50 storage containers is ancillary to the main use not requiring planning permission. It is noted that the Appellant suggests that the placement of large shipping containers for 2-3 months and then their replacement with more shipping containers on the land, once the shipping containers are removed is not development requiring planning permission. The LPA strongly disagrees and is of the view that the storage/installation of shipping containers on the land is development requiring planning permission.

35. With regard to the changed the description of development from the '*storage of shipping containers*' to the '*installation of shipping containers*', the LPA indicates that the description of development was not amended to substantiate its case. It was amended to reflect what was understood to be proposed on site. In any case, the LPA maintains the storage of shipping containers requires planning permission.

36. The LPA consider that the Reason for Refusal is clear and that regardless of the lawful use of the site, the storage of up to 50 shipping containers at this site is development as set out in Section 55 of the Act. Although it is accepted that the portable containers may be stored for a temporary period and then taken away to be replaced by other containers in a slightly different position, it is stressed again that specialist lifting equipment would be required in order to be delivered, taken away or moved.

37. Although capable of movement it is argued that the containers would have a permanent character; would be anchored in place by their own weight and, therefore, would have a high degree of permanence. It is further argued that there would be no limit on the length of time that they would remain on site whether in a single position or by virtue of being removed around the site.

38. It is contended that the ability to move them around does not remove the significance of their physical presence in planning terms. Given the number of containers across the site, it is considered that the proposal would physically change the character of the land and present contiguous rows of buildings on an open site. Whilst the containers would not be physically attached to either the land or any utilities, as a matter of fact and degree, they would constitute a '*building operation*'.

39. The appellant's reference to the movement/replacement of static caravans is not accepted. The LPA considers that this is not a relevant example, stating that there is no permission in place the storage of up to 50 shipping containers. That example would only be relevant if there was permission in place for the storage of shipping containers which is not the case here.

40. Neither does the LPA accept the appellant's contention that the storage of up to 50 shipping containers is incidental to the use of the site. Although one shipping container could be considered to be incidental to the use of the site, the storage of a large number of shipping containers is not considered incidental due to the high degree of physical presence and permanence.

41. With regard to the other appeal examples submitted in support of the appellant's case, the LPA considers that there is a distinct difference between one or two containers on a site that may be considered ancillary to the use, but up to 50 containers is significantly different in terms of the character of usage of the land and is, therefore, development which would require planning permission.

42. On the suggestion that the appellant is unclear as to how the decision was arrived at and who had made the final decision, the LPA stresses that regardless of which Officer made the decision, the final decision issued by the LPA was made on the basis that the proposal to provide up to 50 shipping containers constituted development requiring planning permission.

My Assessment

43. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reasons are well founded. As indicated above, the planning merits of the case do not fall to be considered and the relevant test, relating to the submitted evidence, is '*the balance of probability*'.

44. National Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient information to support a LDC application and that, without sufficient, precise and unambiguous information (my underlining), a LPA may be justified in refusing to grant a certificate. However, PPG also indicates that if an LPA has no contrary evidence itself and there is none from others to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application.

The main issue

45. The main issue is whether or not, on the date of the LDC application, the proposed storage/installation of up to 50 shipping containers on the land was lawful for planning purposes, by virtue of it falling within the current lawfully-established and open storage Use Class B8.

Introduction

46. There is no dispute that the lawful use of the land is for open storage within Use Class B8, as granted in 2015. Such a use allows for storage and distribution purposes. It is also the case that this use can continue in an unrestricted manner; that it has not been abandoned and that there is no suggestion that up until the application date, the use has not been intensified to an extent that there was any materially different use of the land.

47. It is also the case that the lawful existing use of open storage involves '*other operations*' and that the nature of open storage can include: the bringing of goods/items onto land; their retention there for a period and their being taken away. This can also include a degree of '*re-packaging*', although in this case the appellant indicates that this is not the case.

48. In this case it is indicated that the shipping containers would be delivered to the site pre-filled with the goods and later taken away from the site within 2 to 3 months. The containers would not be fixed to the ground and would not be provided with any services. It is also indicated that once removed from the site the containers would be replaced with similar ones which would be positioned in variable locations on the site. It is confirmed that there could be typically up to 50 shipping containers with a height of 2.6m to the top of any first container and around 5.2m where two are stacked.

49. The appellant accepts that the stationing of shipping containers on the land constitutes development in terms of the s55 definition and that this is a form of development that would require specific planning permission. However, in this case it is considered that because the land has a permanent right to be used for open storage, this authorised use would include what is now proposed in relation to the storage of up to 50 shipping containers on the land.

Whether the proposal falls within the lawful Use Class B8

50. Having considered all of the submissions I do not consider that the LDC application proposal falls within the lawful Use Class B8. My reasons for reaching this conclusion are set out below.

51. Whilst acknowledging that the shipping containers are portable, it is evident that when arriving at the site; when leaving or when being moved around to the variable locations on the land they would require specialist lifting. When left in whatever position on the site and particularly if stacked, I consider that, by virtue of their weight alone, they would be considered as being fixed to the ground. I agree with the LPA that even though moveable, once in position each and every one of the containers would be '*anchored to the land*'. Where stacked the weight would be greater and this would emphasise their fixation to the ground.

52. I accept that none would be connected to any services. However, irrespective of how long any particular container or stack of containers might remain in one position, I consider that, as a matter of fact and degree, they would be perceived as being physically attached to the land. However many times an individual container might be moved, whenever it was uplifted and set down again, the result would be that it was seen as a permanent fixture. I accept that the containers might not be permanent structures in the sense that a purpose-built warehouse or storage building might be and that they could be removed within 2 to 3 months. However, for the period of being positioned on the site,

they would be perceived as being '*permanent*' in relation to their function of providing storage facilities on the land for a particular period.

53. I consider that, as a matter of fact and degree, the storage operations on the land would result in a series of storage 'structures' or 'buildings' being moved from place to place. Each time one was moved, or a new container was brought in to replace another, the action of setting down the unit on the land would trigger a new operation, which in my view, materially alter the character of usage of the Class B8 open storage use.

54. I also share the LPA's concerns relating to the fact that there would be no limit on the length of time the shipping containers might remain on the land or indeed in any one location. Although it is stated that there would be a 2 to 3 month turnover, empty containers could be left on the land for considerably longer periods. I also agree with the LPA that the ability to move them around does not remove the significance of their presence in planning terms and the effect on the characterisation of the use of this large open site.

55. The number of containers at any one time located across the site will also have a material effect on the use of the land. I agree with the LPA that the character of the land would be physically changed by the contiguous rows of temporary buildings on the site. Whilst physically attached to either the land, as a matter of fact and degree, I consider that the positioning of the containers as proposed would constitute a '*building operation*' involving the placing of temporary buildings and structures on the land.

56. Section 55 indicates that '*building operations*' for the purposes of the Act must relate to a building and section 336(1) of the Act defines such as including any structure or erection. Case law is also clear in concluding that the definition of '*building*' should be interpreted to include structures which would not ordinarily be described as buildings. Clearly such shipping containers might not ordinarily be described as buildings but, in this case, taking into account the above factors, I conclude that the shipping containers, as a matter of fact and degree, equate to being buildings (temporary or otherwise) for the purpose of this specific application/appeal and for which express planning permission would be required.

57. For the above reasons I do not consider that the proposed use can be compared in character of usage to a Class B8 open storage use. It follows that I do not consider that the lawful Class B8 use includes this proposed use of the land for the storage/installation of the shipping containers.

Other Matters

58. I agree with the LPA that the appellant's reference to the movement/replacement of static caravans is not a relevant example in this case. As indicated, there is no permission in place for the storage of up to 50 shipping containers on the land and I do not consider that the comparison to the operations of a shipping terminal is relevant in this case.

59. Like the LPA I do not accept the appellant's contention that the storage of up to 50 shipping containers is incidental to the use of the site. Although one shipping container could be considered to be incidental, the storage of a large number of shipping containers is not considered incidental due to the high degree of physical presence and permanence and the effect on the site in terms of how it is used.

60. I have taken into account the other appeal examples submitted in support of the appellant's case. However, as stressed by the LPA, there is a distinct difference between one or two shipping containers being stationed on a site that may be considered ancillary to the use of the land, and up to 50 containers which in effect amount to a series of 'temporary buildings' being moved around the site. These are significantly different in terms of the character of usage of the land, the movements within the site and movements to and from the site.

61. In reaching my final conclusion in this appeal I have taken into account all of the submissions made on behalf of the appellant and by the Council. These include all of the application submissions; the initial appeal documents; the detailed statements; the delegated report and any final submissions.

62. However, none of these outweigh my conclusions that, at the time of the LDC application the proposed use of the storage/installation of up to 50 shipping containers on the land did not fall within the lawful Class B8 open storage use. It follows that the appeal must fail and a LDC is not issued.

Formal Decision

63. The appeal is dismissed and a Lawful Development Certificate is not issued.

Anthony J Wharton

Inspector