



Appeal Decision

Site visit made on 7 December 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2021

Appeal Ref: APP/Z5630/X/21/3269510

**Kingsmeadow Fitness and Athletics Centre, Kingsmeadow Stadium,
422A Kingston Road, Kingston Upon Thames KT1 3PB**

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Miss Heather Coates on behalf of A.F.C Kingston Youth against the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 20/02603/CPU is dated 19 October 2020.
 - The application was made under section 192(1) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the installation of a storage container.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal is made against a failure of the Council to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development for the proposed installation of a storage container. The Council subsequently issued a decision which was to refuse the application.

Main Issue

3. Section 192(2) of the Town and Country Planning Act 1990, as amended (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them 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. The planning merits of the proposed development are not relevant in this appeal and the main issue is whether the Council's deemed refusal to grant a Certificate of Lawful Use or Development (LDC) would have been well founded.

Reasons

4. The proposal is for the installation of a 20ft storage container for use by A.F.C Kingston Youth on land at Kingsmeadow Sports Ground. The appellant rents pitches from the operator and requires a container to store the equipment they

use for their football training and matches. The shed they currently utilise is no longer suitable. The container would be sited on an area of hardstanding within the sports ground and adjacent to other containers which are utilised for similar purposes. The appellant is not aware that those other containers benefit from a grant of planning permission and believes that the container which would be used for storage would be a lawful use of the land.

5. The Council do not suggest that there would be a material change of use of the land in this case but consider that the installation of the storage container on the land would be a building operation. Section 55 (1A) advises that for the purposes of the Act "building operation" includes, amongst other things, *(d) other operations normally undertaken by a person carrying on business as a builder*. In this regard, it is also necessary to consider whether the container would be a building. Section 336 of the Act says:

"building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building;

6. The Council refer to the tests for the siting of such items and what constitutes 'a building' for the purposes of the Act, as being set out in the cases of *Skerritts of Nottingham Limited v Secretary of State for the Environment, Transport and the Regions [2000] 2 P.L.R. 102* and *R (Save Wooley Valley Action Group Ltd) v Bath and North East Somerset Council [2012] EWHC 2161 (Admin)*. Those tests relate to size, permanence and physical attachment.
7. The container would be approximately 6m long, 2.5m wide and 2.5m high. In its planning context it would have an impact that would be significantly noticeable, in terms of its size and physical presence. In terms of 'permanence', although the container would be able to be moved with the right equipment, the appellant states that they require the storage space whilst they are renting the pitches at the sports ground. There is no evidence to indicate that this would be for only a short period of time or as a temporary measure. Moreover, it is clear that the appellant wishes the container to be a permanent storage solution for the club. In terms of 'fixation', I appreciate that the container may not be bolted or physically attached to the ground. However, the courts have held that such a unit can, simply by its own weight, be considered to be fixed to the ground.
8. With regard to the three tests, I consider that because of its size, physical presence and degree of permanence, in this particular location, a building operation would occur within the meaning of development under s55 (1) of the 1990 Act. The container is a building rather than a mere chattel or moveable structure placed on the land, and it would not be a temporary structure. Furthermore, the container would not be permitted by any provision in the Town and Country Planning (General Permitted Development) (England) Order, 2015, as amended.
9. I appreciate the circumstances of the appellant and recognise their frustration as they have sought to gain the requisite planning advice. However, those concerns are not for my consideration in this appeal. Furthermore, I do not know the exact planning circumstances around the other containers which have been installed on the site, and those other containers are not before me.

Conclusion

10. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the installation of a storage container would have been well founded and the appeal should fail. I will exercise accordingly the powers transferred to me in Section 195 (3) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR