



Appeal Decision

Site visit made on 7 December 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 6 January 2022

Appeal Ref: APP/H1840/C/21/3280126

Martinbrook Farm, Lower Town, Claines, Worcester, WR3 7RY

- 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 I Hurley against an enforcement notice issued by Wychavon District Council.
- The enforcement notice was issued on 2 July 2021.
- The breach of planning control as alleged in the notice is Without planning permission, operational development comprising of the siting of 22 storage containers for independent self-storage business use.
- The requirements of the notice are To permanently remove all storage containers sited within the area hatched green on the attached plan.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation and a correction in the terms set out below in the Formal Decision.

The Notice

1. The enforcement notice requires all storage containers sited to be permanently removed. In the interests of clarity, I shall add to this requirement wording to the effect that the containers must be removed from the Land (as defined in the notice). I do not consider that this would result in injustice to either party since it does not appear that there is any doubt as to the intention of the notice in this respect.

The site and planning history

2. The appeal site is an area of land within an existing rural industrial estate. As at the date of the notice, there were 22 storage containers on the site, and the appellant has advised that four of these are in use for commercial self-storage, with the others used for domestic self-storage. The site is accessed from the east by a rural lane known as Kennels Lane and from the west by a lane referred to as the Lower Town route.
3. The industrial site has a fairly extensive planning history, which I shall not repeat in full here, but which includes a recent partially retrospective

application for 50 self-storage containers, which was refused¹ (2020 Application).

The Appeal on ground (b)

4. The appeal on ground (b) is that the matters alleged in the notice have not occurred. The onus of proof rests with the appellant, the relevant test of the evidence being on the balance of probability.
5. The appellant argues that the matters alleged have not occurred on the basis that the siting of storage containers does not constitute operational development. The appellant's position is that the storage containers are moveable, not fixed to the ground, are relatively small and lightweight and represent a 'temporary structure'. The Council, by contrast, submits that by reason of their size, permanence and degree of physical attachment, the storage containers should be considered to be operational development.

Whether or not operational development

6. Section 55 of the Town and Country Planning Act 1990 as amended (1990 Act) states that development requiring planning permission means the carrying out of building, engineering, mining or other operations in, on, over or under land; or the making of a material change in the use of any buildings or other land.
7. As to whether the storage containers represent operational development, I firstly consider whether they are buildings since, if so, siting them on the land would likely be a building operation. Section 336(1) of the 1990 Act states that a "building" includes "any structure or erection", and the courts have ruled that regard must be had to size, permanence and degree of physical attachment, but no single factor is decisive².
8. Turning then to size, the storage containers individually are of such size that they could be transported onto site ready-made. However, even individually, and undoubtedly in combination, they are of sufficient size that they are not too small to represent a building. Smaller items have certainly been found to be buildings.
9. As to permanence, on the evidence before me, the proposed use of storage containers means that they would be likely to be on site for a period of years, rather than months or weeks. As such, although the potential for them to be moved in one piece individually points to them having less permanence than something which would need to be taken apart into its constituent parts in order to be moved, nonetheless, they would be sufficiently permanent to have significance in the planning context³.
10. As to the degree of physical attachment, the storage containers do not appear to be physically attached to the ground. However, their size and construction materials mean that they are very securely held in place by their own weight.
11. Drawing all of these points together, I find on the evidence before me and as a matter of fact and degree that the storage containers would be of such a size, and would have such a degree of permanence, as to render them buildings within the meaning of s336(1) of the 1990 Act. I find thus that the process of

¹ Ref 20/01990/FUL

² See *Skerritts of Nottingham Ltd v SSETR & Harrow LBC (No.2)* [2000] EWCA Civ 5569

³ in the sense of how long an item is in situ for, rather than introducing an assessment of planning merits

these being sited on the land represents operational development and the appeal on ground (b) therefore fails.

The Appeal on ground (c)

12. The appeal on ground (c) is that the matters alleged (if they occurred) do not constitute a breach of planning control. Again, the onus is on the appellant to make their case on the balance of probability.
13. The appellant's argument on ground (c) relies upon the success of the ground (b) appeal, since the appellant's submission is essentially that the siting of the storage containers is not operational development, and that the purpose for which the containers are sited does not constitute a material change of use.
14. The Council does not suggest that a material change of use has occurred, and I have no reason to disagree with that approach on the evidence before me. However, I have found that the siting of the containers does represent operational development and accordingly, the appeal on ground (c) fails.

The Appeal on ground (a) and the deemed planning application (DPA)

Main Issue

15. The main issue is the effect of the development on highway safety in the vicinity of the appeal site.

Reasons

Site context

16. The section of Kennels Lane closest to the appeal site is unlit, narrow, has a limited number of small passing places and lacks a footway, with steep banks preventing use of parts of the verge by pedestrians for refuge. The road geometry means there is poor forward visibility in places, and also poor backwards visibility for reversing. From Kennels Lane, a right turn into the appeal site is very constrained and is not feasible for many heavy goods vehicles (HGVs) without overrunning the highway verge.
17. The route through Lower Town does not have the same issue in respect of turning into the appeal site as Kennels Lane, but it shares many of the same limitations otherwise. In the vicinity of the appeal site, it is essentially an unlit narrow rural lane with limited passing places, no footway, and poor visibility in places due to the geometry of the road and vegetation. There are numerous dwellings along this route and close to the appeal site, along with some a little further along Kennels Lane also. Both of these lanes give access to a bridleway adjacent to the appeal site.
18. The rural industrial estate within which the appeal site is located contains a number of different businesses, which appear to generate movements by a variety of vehicles larger than the private car, including HGVs. Residents of Lower Town report conflicts between pedestrians and vehicles.

Trip data

19. The appellant submits that self-storage is a 'passive land use' which creates very little traffic generation. The appellant's highway consultant states that the commonly used Trip Rate Information Computer System (TRICS) database

does not provide data for uses comparable to the situation in respect of the self-storage uses at the appeal site. The appellant therefore relies on data from a Self-Storage Association UK Report to provide applicable trip data.

20. As outlined above, only 4 of the 22 containers enforced against are apparently currently used for commercial self-storage. However, the appellant does not dispute that all 22 containers could in principle be used for commercial self-storage, which typically, I understand, generates a higher level of vehicle movements than domestic self-storage. The appellant therefore puts forward trip data applicable to both an exclusive commercial self-storage use, and also for a mixed commercial and domestic self-storage usage.
21. If all containers were in commercial self-storage use, by the appellant's calculations, the daily trip rate would be 10.68 trips per day. If they were primarily occupied for domestic self-storage use, as is apparently currently the case, the daily trip rate is calculated as 4.12 trips per day. The appellant lives adjacent to the site and monitored all vehicles accessing the storage containers over a 7 day period in February 2021, representing 6 days of operation. It was noted that the only vehicles visiting the containers over that period were cars, vans and pickup vehicles.

Analysis

22. The appellant submits that the number of trips expected even from a commercial self-storage use would not of themselves be significant in highway safety terms. I acknowledge that the vehicle movements resulting from the self-storage use, even for commercial self-storage are relatively modest.
23. However, I am conscious of the significant constraints of the highway network in the immediate vicinity of the appeal site as outlined above. I do not have detailed information as to the total number of vehicle movements associated with other businesses on the appeal site. However, in view of the number and type of businesses operating, it appears probable that these already result in a significant number of movements by vehicles larger than the typical private car.
24. As such, in these circumstances, on the available evidence, even a modest increase in vehicle movements, particularly by vehicles larger than the private car, would result in highway safety concerns. These would be in the form of increased risk of conflicts between such vehicles and vulnerable road users in the carriageway given the poor visibility, lack of passing places, need for long reversing manoeuvres and limited availability for pedestrian refuge.
25. The appellant also seeks to demonstrate that, as compared to the previous use of the green hatched area for open storage, there would be an overall reduction in HGV movements. The 2020 Application Transport Statement outlines that the area containing 22 shipping containers was previously used for fence contracting operations. The appellant has submitted that, based on 'on-site observations', the area 'proposed for container storage use' resulted in some 3-4 HGV movements per day.
26. However, the appellant's evidence in this regard is not robust; reference is made to 'on-site observations' but I have no detailed information as to the period over which such observations were made, nor any detailed records of those observations.

27. I acknowledge the appellant's observations of vehicle types accessing the storage containers over a 7 day period. However, in my view it is very likely that not all vehicles accessing the containers would be cars or light vans only, since to fill the containers from a normal car/light van size load would require a fairly high number of visits to the container. The potential for a commercial end-user for the self-storage containers also results in a greater likelihood of larger vehicles accessing the containers, as does the potential for customers to use more than one container. Indeed, the appellant seems to acknowledge the possibility at least of larger vehicles accessing the containers in the future, albeit that apparently large removal vans have not visited the storage containers to date.
28. I do not consider that the 30 mph speed limit alters the position as regards highway safety since this does not overcome issues related to vehicles not having space to pass each other. The absence of evidence of collisions does not mean that no highway safety issues exist, since this does not include accidents not involving personal injury, and discounts any 'near misses' which would not be recorded. The imposition of a weight limit on Kennels Lane also would not overcome my concerns given that this would push all restricted heavy goods traffic to the Lower Town route, which is also significantly constrained as outlined.
29. The appellant refers to the appeal development as being less impactful in highway safety terms than 'other allowable development if pursued'. However, such a fallback position appears on the evidence before me to be purely theoretical. In view of the significant limitations of both the Kennels Lane and Lower Town routes, it would not be possible to properly mitigate against adverse highway safety impacts in the absence of evidence that the land needed to make safety improvements is in the control of the appellant or the highway authority.
30. I therefore find that the appeal development has a harmful effect in terms of highway safety in the vicinity of the appeal site. It is contrary to policies SWDP4 and SWDP21 of the South Worcestershire Development Plan (2016) (SWDP) which require that proposals address road safety. Conflict arises also with policies NCT1 and NCRE2 of the North Claines Neighbourhood Plan (2017) which seek to ensure that new development, including for employment uses, is appropriate in terms of its impact on highway safety. It would also not be in accordance with the highway safety aims contained within paragraphs 110 and 111 of the National Planning Policy Framework (2021) (the Framework).

Other Matters

31. The industrial estate is a well-established employment site, which makes an important contribution to the local economy. I acknowledge in this regard that national policy contained in paragraphs 81, 84 and 85 of the Framework encourages supporting businesses to invest, expand and adapt, along with the supporting of economic growth in rural areas. Local policy contained in policies SWDP 2, 3, 8 and 12 of the SWDP encourage delivery of job creation opportunities, economic prosperity, and offer support for employment in rural areas.
32. These aspects offer only modest support in respect of the appeal development since I have no detailed evidence to set out the benefits of the appeal

development in economic terms as compared to the previous use of the appeal site.

33. I note that there is no in principle objection to the development from a land use perspective and that it would have no impact on the living conditions of nearby residents nor as regards visual impact on the landscape. However, the aspects cited in these regards have only neutral effects and do not weigh positively in favour of the appeal development.

Conclusion on Ground (a) and the DPA

34. The appeal development results in harm as regards highway safety and economic/social benefits put forward are due only modest weight. I therefore find that the appeal development conflicts with the development plan, read as a whole, and no material considerations have been advanced which outweigh that conflict and the harm found. It does not therefore represent the sustainable development in respect of which the Framework creates a presumption in favour. On this basis, and taking into account all other matters raised, the appeal on ground (a) fails and planning permission should be refused in respect of the DPA.

The Appeal on ground (g)

35. The appeal on ground (g) is that the period for compliance in the notice falls short of what is reasonable.
36. The appellant explains that if the notice is upheld, sufficient time would need to be allowed for notice to be served on the tenants of the storage containers and for them to seek alternative storage locally and to relocate stored items. Time would then also be needed to enable the appellant to remove and dispose of the storage containers.
37. The appellant does not provide any specific notice period that they are required to comply with but I agree that a three month period would in the circumstances not allow enough time for tenants to seek alternative storage and for the storage containers to be removed. A period of twelve months would though in my view be an unacceptably long period to extend the highway safety harm found. I therefore find that a period of 6 months would strike the right balance in allowing sufficient time for the requirements to be complied with, but bringing the harm resulting from the development to an end as swiftly as possible. The appeal on ground (g) succeeds to this extent and the notice shall be varied accordingly.

Overall Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

39. It is directed that the enforcement notice is varied by:

- in paragraph 5.1 the deletion of the wording '3 months' and substitution of '6 months';

and corrected by:

- in paragraph 5.1 the insertion of the words 'from the Land' after the word 'remove'.
40. Subject to the variation and the correction, the appeal is dismissed, 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.

V Bond

INSPECTOR