



Appeal Decisions

Site visit made on 11 January 2022

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 8 February 2022

Appeal Ref: APP/Y3940/C/21/3283658

Land at Henley Court, Henley Lane, Box, Corsham, Wiltshire SN13 8BX

- 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 Victor Levine against an enforcement notice issued by Wiltshire Council.
 - The enforcement notice was issued on 26 August 2021.
 - The breach of planning control as alleged in the notice is operational development comprising the erection of a building comprised of five shipping containers and an attached lean-to structure and operational development comprising the erection of the foundations, slab, damp proof course and external wall courses of a building.
 - The requirements of the notice are a) demolish in full the unlawful building comprised of five shipping containers and an attached lean-to structure, b) demolish in full the unlawful foundations, slab, damp proof course and external wall courses of a building and c) permanently remove all material resulting from requirements a) and b) from the land.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice be corrected by the deletion of the words "and external wall courses of a building" in the allegation and replacing with the word "walls". It is also directed that requirement c) be amended to delete the words "and b)".
2. Subject to this correction and variation the appeal is allowed, in so far as it relates to the foundations, slab, damp proof course and walls and planning permission is granted for the erection of the foundations, slab, damp proof course and walls at land at Henley Court, Henley Lane, Box, Corsham, Wiltshire SN13 8BX.
3. The ground (f) succeeds to a limited extent, and it is directed that the enforcement notice be amended by the addition of "/remove from the land" in requirement a) following the word "demolish".
4. Subject to the variation identified above the appeal is dismissed insofar as it relates to the erection of a building comprised of five shipping containers and an attached lean-to structure and 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.

Reasons

Ground (c)

5. There are elements of this that could be considered as a ground (b) argument, but I have dealt with the matter under the heading of ground (c).

Containers

6. The appellant claims that the building comprised of five shipping containers and an attached lean-to structure is not classed as a building. He also considers that the foundations, slab, damp proof course and walls benefit from planning permission under Permitted Development rights granted by virtue of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the "GPDO").
7. The main considerations in the matter of the containers include size, degree of permanence and physical attachment to land.
8. The containers have been placed together to effectively form a single storage structure with the addition of a timber lean-to structure with plastic roof at junctions. The containers are not accessible between them, with a large change in level. I accept that two of the containers are at a lower level, placed against a retaining wall, but these rise up above the retaining wall and have a vertical section of plastic sheeting between the lower and upper containers. Some containers have roofing material where they meet, which connects them together.
9. The result is that they are physically attached and have an appearance and perception of the structure as a whole. The sections of roof that join containers and the lean-to structure are firmly attached. The appellant says this is to weatherproof between the containers. That may be the case, but it physically joins them and this together with the lean-to structure makes them not simple movable containers. The resulting overall structure is a large, monolithic structure.
10. Two of the containers were brought to the land in 2018 and the other three in 2019. The containers are large, heavy, robust steel structures and the lean-to is a solid timber structure with plastic roof. This large, robust structure has been in position for a considerable period of time, which indicates a high degree of permanence of the structures. The appellant notes that the containers can be removed in the future when no longer needed. However, the structure that is in place has demonstrated a degree of permanence. The fact that it can be removed if required in the future does not make it a temporary mobile structure and this is not readily the case because the structures are attached to each other and the lean-to.
11. It was difficult to see the bases of most of the containers, but where visible they do not appear to have any excavated foundations. There is a simple arrangement of concrete blocks laid on the ground. There does not appear to be any formal attachment to the ground. However, these containers are so heavy that they do not need formal fixings to remain permanently in place. Effectively the weight is the fixing/attachment.

12. A "Building" is defined widely in Section 336 (1) of the Town and Country Planning Act 1990 as including any part of a building and any erection or structure.
13. The planning officer did not complain of the arrangement at the time of a visit in relation to a previous planning situation, but as noted that was not in relation to construction of a building. Containers at that time may have been moved relatively quickly and not have had the same degree of permanence.
14. I appreciate there is a planning permission related to part of the land and this allowed for some storage, but that limited the storage to a height of 2m; the containers are much larger than that, even if they had remained as simple movable containers
15. I conclude overall that because of the size of the overall structure, the attachment of the lean-to structure and the effective attachment to the ground, this is a building/structure coming within the definition of Section 336(1) and operational development.
16. I note that there were chicken sheds in the general location in the past, but those have been removed and the present arrangement is considered on its merits.
17. The resulting building/structure does not benefit from planning permission by application or because of any part of Schedule 2 of the GPDO.

Hardstanding

18. The appellant claims that the hardstanding is a patio and walls and not a building and that it is a replacement of a previous patio that was there for 20 years adjacent to the old piggery.
19. The removal of one patio and replacement with another is not a matter of maintenance and repair where the ground level has been substantially altered and a new retaining structure built. These are engineering operations and development. It is the formation of a new structure and must be treated as such.
20. The hardstanding is not the subject of any permitted development for amongst other matters, it exceeds 5 square metres area, is not made of porous materials and there is no provision for direct surface water run-off to a permeable or porous area or surface.
21. It is difficult to conclude whether what is built is the final product or if a building was intended. Certainly, there is a damp-proof membrane under the concrete, and some damp-proof membrane in the vertical wall upstand. The 'entrance' in from one area has the appearance of the start of a door opening, but that could just be coincidence. In contrast, if it were intended to be a building the outside walls would be expected to be cavity walls, and these do not appear to be. Overall, I cannot conclude that this was going to continue into a building of some type and will amend the allegation accordingly.
22. However, what has been built does not comply with permitted development and is a building/engineering operation that requires planning permission.
23. I conclude that this is operational development that requires planning permission.

24. The appeal fails on ground (c).

Ground (a)

25. I consider that the main issues are:

- Whether the proposal would be inappropriate development in the Green Belt, having regard to the revised Framework and any relevant development plan policies.
- The effect on the openness of the Green Belt.
- The effect of the proposal on the character and appearance of the area and setting of the listed building.
- Whether the harm by reason of inappropriateness, and any other harm would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

26. The land comprises a mixed use of three dwelling houses and agricultural land and is within the North Wiltshire Green Belt and is part of an Area of Outstanding Natural Beauty.

Inappropriate Development

27. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt, but exceptions to this are: a) buildings for agriculture and forestry; b) the provision of appropriate facilities for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building; d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces; e) limited infilling in villages; f) limited affordable housing for local community needs; g) limited infilling or the partial or complete redevelopment of previously developed land.

28. The appeal structures do not fall within any of the exceptions. The appellant suggests that the structure may be used for agricultural purposes, but this is not actually the case. The planning contravention notice shows that the main building is for storage purposes of the appellant's possessions while the buildings here are let out and not for agriculture.

29. The hardstanding is not for agricultural purposes. On the appellant's case it is a patio and not on the evidence, for agricultural purposes.

30. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Openness

31. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

32. The containers are large and prominent because of their overall bulk and have a considerable impact on the openness of the Green Belt. The appellant's claim of lack of public visibility does not reduce the impact of the structure of the openness of the Green Belt. I also acknowledge that some storage has been

permitted in this location, but the arrangement of these containers is very bulky and impacts openness of the Green Belt.

33. The hardstanding has a significantly lesser impact on the Green Belt, because it is a much less bulky structure. Because the ground is lower, that impact is offset in this location. Overall, it has a de minimis impact on the openness of the Green belt.

Character and Appearance

34. The Framework sets out the purposes of Green Belts, which include “...to assist in safeguarding the countryside from encroachment”.
35. The development plan includes the Wiltshire Core Strategy [CS].
36. CS Policy 51 notes that development should protect, conserve and, where possible, enhance landscape character and must not have a harmful impact upon landscape character, while any negative impacts must be mitigated as far as possible through sensitive design and landscape measures. The special qualities of Areas of Outstanding Natural Beauty (AONBs) are to be taken into account, where great weight will be afforded to conserving and enhancing landscapes and scenic beauty.
37. CS Policy 57 indicates that high standard of design is required in all new developments. Development is expected to create a strong sense of place through drawing on the local context and being complementary to the locality.
38. CS Policy 58 states that development should protect, conserve and, where possible, enhance the historic environment.
39. The arrangement of the containers is ad-hoc and utilitarian. The lean-to is bolted to it in a basic way, as are the roofs that join the containers together. This is very poor design. Even with the camouflage netting by the track the appearance is very poor. The group of containers harm the rural and agricultural character and appearance of the area.
40. The appeal structures are near to grade II listed agricultural buildings. Their significance and special architectural and historic interest relate in part to the origins and character of agricultural buildings and the setting contributes to its history as part of an agricultural holding. The appeal structures are, because of their proximity and location, within their setting. Because of their poor and utilitarian design they have a negative impact on the setting of the listed buildings. The development does not accord with policies that aim to protect the area, including CS Policy CS51, CS57 and CS58.

Special Circumstances

41. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
42. I have taken into consideration the container further along the road, but this does not affect the harmful impact that the proposal has and I attach little weight to its presence. I also note that there have been no complaints about the development, but that does not mean there is no public interest in

maintaining the planning system and in particular the Green Belt. I also do not consider that there are any public benefits that overcome the harm to the listed buildings. Given the impact of the development on the Green Belt, historic buildings and AONB, I attach limited weight to these matters.

Hard Standing

43. The hardstanding is set next to the existing piggery, and the appellant explains that there was a hardstanding in this position. Whilst it is a hard surface, there are no public drains nearby to surcharge and the water can filtrate into the surrounding ground. The structure is reasonably constructed with natural stone and is of a high quality of design. As it is located behind the Piggery building it has no adverse impacts on the character and appearance of the surrounding area, including the Green Belt, the AONB or the setting of the nearby listed buildings.
44. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. I have found the effect on openness is negligible and while great weight is to be attached to inappropriateness, I conclude that any harm to the Green Belt is de minimis. It complies with CS Policies 51, 57 and 58, so in the limited respect of the foundations, slab, damp proof course and walls planning permission is granted and ground (a) succeeds.

Ground (f)

Containers

45. The appellant considers that it is unreasonable to require the containers to be demolished, rather than being removed from the site. I do not think the Council require the containers to be demolished and simple removal as part of the overall demolition of the building would be acceptable. I shall require the notice to be modified to make this clear.
46. The ground (f) succeeds to a limited extent and the notice will be modified to account for this.

Ground (g)

Containers

47. The appellant considers it would be more appropriate and reasonable for the period to be 12 months given the personal circumstances of the landowner who does not have an alternative location to store the items at present and the nature of the breach which he considers is very minor and not having any adverse/public safety impacts. I consider that the containers can be demolished/removed in the time allocated by the Council. The impact of the containers has been considered in ground (a) and found to cause harm to matters of considerable public interest. There are facilities around the country to store items and there has been no demonstration that these would not be available to the appellant. The appeal on ground (g) fails.

Graham Dudley

Planning Inspector

