



Appeal Decision

Site visit made on 8 February 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Appeal Ref: APP/X1355/C/21/3286438

48 Windermere Terrace, Stanley, Co Durham DH9 7QU

- 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 David Flipping against an enforcement notice issued by Durham County Council.
 - The enforcement notice is dated 12 October 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission the operational development consisting of the locating of a shipping container in the front garden of the property forward of the principal elevation of the dwelling house.
 - The requirements of the notice are: a. Permanently remove the shipping container from the land.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (c)

2. The appeal on ground (c) is that there has not been a breach of planning control. Under ground (c), the onus of proof lies on the appellant.
3. Section 55(1) of the 1990 Act says that 'development' includes the carrying out of building, engineering, or other operations. Such operational development comprises activities which result in some physical alteration to the land with some degree of permanence.
4. A building is defined by section 336 of the 1990 Act as including any structure or erection. The courts have held that three primary factors to establish what constitutes a building are (a) that it is of a size to be constructed on site, as opposed to being brought onto the site, (b) permanence and (c), physical attachment. No one factor is decisive.
5. The appeal site at 48 Windermere Terrace is a two storey end of terrace dwelling occupying a prominent corner location. The container that is the subject of the appeal is located in the garden of No 48. The appellant argues that the container is temporary and does not fall into the definition of development. He confirms that no groundworks were required for the siting of the container and that it is not secured to the land.
6. Whilst the container may not have been constructed on site, it is a sizeable metal structure that is undoubtedly very heavy even when empty. Its weight

alone is likely to provide a reasonable degree of physical attachment to the land. Given its size and likely weight, such a structure could not be moved by the appellant himself, as he confirms. He states that it would require specialist lifting equipment in the form of a crane and/or a tilted bed trailer to remove the container. Therefore, although the appellant describes it as relatively easy to remove, these circumstances indicate a significant degree of permanence, as does the storage use that the appellant describes. There is little in the evidence to suggest that its use is intended to be temporary.

7. Due to its size and scale, the container also has a physical presence which alters the characteristics of the domestic curtilage of the dwelling. Instead of the previously open garden area, it adds development where none previously existed. I saw that the container was prominent in longer views of the property from the surrounding area.
8. I have had regard to Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which relates to the provision within the curtilage of a dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse. Development is not permitted if any part of the building or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. In this case, there is no dispute between the parties that the container occupies such a position in front of the principal elevation of No 48.
9. Taking these factors in combination, I am satisfied that the container amounts to operational development for which planning permission is required.
10. The appeal on ground (c) therefore fails.

The appeal on ground (f)

11. The appeal on ground (f) is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
12. The appellant suggests that the container could be relocated to the hard standing area adjacent to the side elevation of the house, as shown in the alternative site plan at his Appendix 1. He submits that this would bring the development within the limitations of Schedule 2, Part 1, Class E of the GPDO.
13. However, insufficient information has been provided to allow a full and proper assessment against the limitations of Class E. For example, the capacity of the container has not been disclosed. In any event, the Proposed Elevations drawing seems to show that the container stands at approximately 3.56m in height. This dimension alone takes the structure outside the height limits in paragraph E.1(e)(iii). In the absence of compelling evidence to the contrary, I am unable to be certain that this proposed new location would bring the container within permitted development rights.
14. The appellant suggests that a further option would be to screen the container by attaching trellising to it in order to cover it with plants such as clematis or ivy. This would be instead of the fencing. He suggests that this solution could be secured by condition. However, there is no ground (a) in this appeal. Therefore, it is not open to me to grant a conditional planning permission, as is suggested here. In any event, I am not convinced that planting would mitigate

the visual impact of the container as the presence of a substantial structure would remain obvious in the surrounding area.

15. The purpose of the notice is to remedy the breach and this can only be achieved by the removal of the container. The requirements are therefore commensurate with that purpose, and so the appeal on ground (f) fails.

Conclusion

16. For the reasons above, the appeal is dismissed and the enforcement notice is upheld.

Elaine Gray

INSPECTOR