



Appeal Decision

Site visit made on 8 May 2024

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 June 2024

Appeal Ref: APP/J0405/X/23/3318584

Land to north west of Plough Orchards, Weston Turville HP22 5BG

- 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 Mr Nigel Cole-Hawkins & Mr Philip Sheppard against Buckinghamshire Council.
 - The application (Ref 22/3548/CPE) is dated 14 October 2022.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended (The Act).
 - The development for which a certificate of lawful use or development is sought is the stationing of two shipping containers.
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Formal Decision

1. The appeal is dismissed insofar as it relates to the red storage container. The appeal is allowed insofar as it relates to the blue storage container and attached to this decision is a certificate of lawful use or development describing the existing development which is considered to be lawful.

Preliminary Matters

Background and Approach

2. The appeal site is situated within a broadly rectangular grassed area, accessed from, and adjacent to, the end of the cul de sac known as Plough Orchards. Plough Orchards comprises a small development of terraced and detached dwellings. It is undisputed that the Council's Building Control completion records confirm the last property on Plough Orchards to be completed was No 8 on 4 August 2016.
3. The appellants' case is that the two metal shipping containers, one blue and one red, amount to operational development, and the containers have been stationed on the land for over four years without being moved. Accordingly they are lawful having regard to the provisions of Section 171B(1) of the Act.
4. Section 191(2) of the Act indicates development is lawful if no enforcement action can be taken in respect of it, because it does not amount to a breach of planning control or because of the passage of time, and provided it does not contravene the requirements of any enforcement notice then in force. Section 191(3) indicates that failure to comply with a planning condition is lawful if no

enforcement action can be taken because of the passage of time and provided it does not contravene the requirements of any enforcement notice or breach of condition notice (BCN) then in force.

5. I have not been told that there was any extant enforcement notice or BCN relating to the site at the time of this application. The Council served a BCN requiring the removal of temporary buildings and structures on land which included the site. The BCN was dated 28 November 2022. However I am required to consider the question of lawfulness at the time of the LDC application. As the BCN was served after that date, and so was not then in force¹, it does not bear on my deliberations in this case.
6. Having regard to the above, the appeal turns firstly on whether the structures in question constitute buildings and therefore amount to operational development, which is disputed by the Council. Secondly it must be demonstrated that if the containers are operational development, this was substantially completed at least four years before the date of the LDC application, and the containers were not merely part and parcel of or ancillary to an unauthorised use of the land². Thirdly it would be necessary to demonstrate that the containers were not dependent on a temporary planning permission which was conditional on their subsequent removal.

Third party representations

7. Objections to the development have been received on the basis that the containers are intrusive and unsightly and do not belong in a conservation area; also that access to the site is unsuitable for industrial traffic. However, my remit in this case is limited to the question of whether the containers are lawful. As such I am unable to make an assessment of the planning merits of the development.

Reasons

Operational Development

8. It is settled case law that the appropriate criteria for determining whether a structure constitutes a building are size, permanence and physical attachment.
9. In terms of size, it seems to me that the two structures each have a relatively substantial overall volume. Although each one was likely to have been brought to the site in one piece, it is likely they could not readily be moved without specialist mechanical lifting equipment. I consider the structures to be of sufficient size to constitute buildings.
10. With regard to permanence, I acknowledge that shipping containers are designed to be transported. However, having regard to the site photographs and aerial images, provided by the parties, it seems to me that the structures have been settled in place since the latter part of 2017. I consider the structures have sufficient permanence to be regarded as buildings, despite my

¹ S191(3) of the Act.

² *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598; *Kestrel Hydro v SSCLG & Spelthorne BC* [2016] EWCA Civ 784

finding, later in the decision, that it is likely the red container was relocated from part of the wider site.

11. In terms of physical attachment, the structures rest on timber beams. There is nothing that makes me consider the weight of such sizable structures would not be considerable and that they would not achieve the necessary affixation to the ground through their inherent weight. As a matter of fact and degree I therefore consider that the structures meet all of the tests for being buildings, and conclude they represent operational development having taken place. I have had regard to an appeal decision referred to me by the Council, where the Inspector observed that the siting of storage containers may not amount to operational development³. However, the information provided is limited, and in any event does not contradict my findings in this case.
12. The Council suggests that the stationing of containers may represent a use of the land, rather than operational development, and refer to a 2006 appeal decision in support of this point. However, I have also been provided with very limited information in relation to that case. Furthermore, it appears the Inspector in that case concluded the container in question could be easily removed, in comparison to the contrary conclusion I have drawn in this case; also that it was possibly being used to store equipment connected with maintaining the residential use of the land.

Whether the containers are part and parcel of an unauthorised storage use

13. The statutory declarations provided refer to the containers being used to store tools, since being sited there in September 2017. It was apparent from my visit that the containers are situated close to a small quantity of miscellaneous, informally placed items of building equipment and what appear to be waste materials. These externally placed materials are neither significant in quantity or widespread on the land and it is unclear whether any are being stored there or whether they have simply been discarded. Indeed an aerial image provided from 2022⁴ and also my observations at the time of the visit reveal the wider parcel of land as a whole, within which the appeal site is situated, to be heavily vegetated and not to have the character of a storage area.
14. Having regard to this, on the balance of probability, I do not accept that the containers are ancillary to a material change of use of the land to storage use. Rather, they tend to be the source of and fundamental to a storage use, focused within the containers themselves. I do not therefore agree with the proposition that the relevant period for immunity from enforcement action would be 10 years after the breach began, as provided by S171B(3) of the Act.

Completion of development

15. As set out above, for the development to gain lawfulness through the passage of time it would be necessary for the appellants to show, on the balance of probability, that the containers had been placed on the land at least four years prior to the date of application for the LDC, that is by 14 October 2018, and had remained in place since then.

³ Appeal ref: APP/X0415/X/14/2213873.

⁴ Appellant's appendix 13.

16. I have had regard to the aerial images (taken at various times between 2006 and 2022) and site photographs (taken at various times between March 2014 and September 2017) provided by the appellants⁵ and not disputed by the Council. It appears to me that these documents corroborate the statements made in the statutory declarations of the appellants that the two containers, subject to the current appeal, have remained in their current position since being moved there in September 2017. Given that any person who lies about the information contained in a sworn statement could be prosecuted for the crime of perjury, and if convicted may have to pay significant fines or be sentenced to time in prison, I give the statutory declarations significant weight. On the balance of probability the containers were in position at least 4 years prior to the date of application for the LDC, and have remained in place since then.
17. Notwithstanding this, I now need to go on to consider whether the containers may be sited in breach of any planning conditions.

Temporary permission

18. Schedule 2 Part 4 Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits the provision on land of buildings, movable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land. This permission is subject to conditions that apply once the operations have been carried out. Condition A.2.(a) notes that any building, structure, works, plant or machinery permitted by Class A is to be removed, and A.2.(b) that any adjoining land on which development permitted by Class A has been carried out is, as soon as reasonably practicable, to be reinstated to its condition before that development was carried out. This permitted development right remained unchanged from the previous 1995 version of the GPDO.
19. The Council has set out that the containers subject to the current appeal were only permitted temporarily, in accordance with the GPDO, on the basis that they were only required for storage purposes in connection with and on land adjoining the aforementioned residential development.
20. The aforementioned photographs appear to show residential development in progress at Plough Orchards during 2014 and 2015. An aerial image from 2015 appears to show land opposite nos. 7 and 8 Plough Orchards being used as a storage compound enclosure in connection with the development. This compound, it seems to me, is part of the broader area of land within which the current appeal site is located. There is no evidence to persuade me that this broader area of land does not form a single planning unit or that it does not adjoin the Plough Orchards development.
21. Statutory declarations made by the appellants in 2018 appear to confirm the storage of machinery, plant and building materials, within the aforementioned enclosure, associated with the Plough Orchards development and other local

⁵ See appendices 4, 13 and 14.

construction projects. This land in question adjoins that where the residential development was taking place.

22. A photograph dated May 2013⁶ indicates a red shipping container to be present somewhere on the broader area of land. The container features various identifying characteristics including patterns of rust marking on its surface and deformation to some of the panelling, such that it is highly likely to be the same container that is the subject of the present appeal. Whilst an aerial photograph from March 2017 appears to show the broader area of land as largely cleared of structures, the residential development having been completed by this time, there does appear to be a red coloured structure present on the land opposite No 8 Plough Orchards. Whilst the detail of this structure is unclear, the fact that it can be seen to cast a shadow indicates that it has reasonably substantial form. I consider it possible that this structure was the red container subject to the present appeal. This proposition is supported by the appellants' final appeal comments which refer to the red container being relocated from adjacent land. I am not persuaded that this container was not used in connection with the construction of the adjoining dwellings, prior to being moved to its current position.
23. Drawing these considerations together and notwithstanding the tightly drawn site location boundary in relation to the LDC application, on the balance of probability, I consider that the red container was not removed from the broader site, which adjoins the land where the residential development occurred. Rather, it was relocated within the same broader site. Accordingly, it is in breach of a condition of permitted development, as set out above, and is not lawful, there being no suggestion that the breach of condition has continued for at least the requisite 10 year period.
24. By contrast, the blue container, if it was previously on the broader site, appears to have been removed by March 2017. As such it would not be in breach of the permitted development condition. Accordingly, on the balance of probability, its present siting is likely to be lawful due to the passage of time.

Conclusion

25. S.191(4) of the Act allows the local planning authority to modify the terms of the application, giving a certificate in somewhat different terms so as to accord with the facts and evidence, rather than an outright refusal. The Secretary of State or Inspector can exercise the same power in s.191(4), on appeal, as the local planning authority has on the application.
26. Therefore for the reasons given above, and having considered all of the documentation provided by the appellants, I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the stationing of two shipping containers at Land to north west of Plough Orchards, Weston Turville HP22 5BG was well-founded insofar as it relates to the red shipping container only.

⁶ The reference to 2013 may be a typographical error. The photo may have been taken in 2015, to accord with the chronology of the appellant's submitted photographs. However, such an error, if there is one, makes no difference to the assessment.

27. However, insofar as it relates to the blue shipping container, I conclude that the Council's deemed refusal to grant a certificate of lawful use or development was not well-founded. The appeal succeeds to that extent. I will exercise, accordingly, the powers transferred to me under section 195(2) of the 1990 Act as amended, and grant a certificate relating to that part.

R Merrett

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 14 October 2022 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The stationing of the blue coloured shipping container, on the balance of probability, comprises an act of operational development which was substantially completed before 14 October 2018. It is not sited in breach of a planning condition and accordingly is lawful having regard to the provisions of s171(B)(1) of the Town and Country Planning Act 1990.

Signed

R. Merrett

Inspector

Date: 06 June 2024

Reference: APP/J0405/X/23/3318584

First Schedule

Stationing of blue coloured shipping container.

Second Schedule

Land to north west of Plough Orchards, Weston Turville HP22 5BG

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operation described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operation described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 06 June 2024

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Scale: Not to Scale

