



Appeal Decision

Site visit made on 10 June 2024

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 June 2024

Appeal Ref: APP/Z1510/C/23/3332100

Gosfield Shopping Village, Petersfield Farm, Petersfield Lane, Gosfield, Essex CO9 1PU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Charles Dawson against an enforcement notice issued by Braintree District Council.
- The notice was issued on 28 September 2023.
- The breach of planning control as alleged in the notice is without planning permission: The unauthorised development consisting of the siting of a shipping container modified to link into an existing building and used in connection with a new heating boiler facility that serves the existing commercial uses on the site. (As shown in the approximate area marked in yellow on the attached plan¹).
- The requirements of the notice are to: Remove the unauthorised shipping container from the land, (shown marked in yellow on the attached plan).
- The period for compliance with the requirement is: 3 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: Subject to corrections, the enforcement notice is upheld.

Procedural matters

1. The appeal has been made solely on ground (b) that those matters alleged in the enforcement notice (the Notice) have not occurred. However, some of the arguments presented suggest that, even if they had, they should not require planning permission. These are matters more relevant to an appeal on ground (c), that those matters (if they occurred) do not constitute a breach of planning control. The Council has responded to all of the submissions made and, therefore, no injustice would arise if I were to consider the appeal on both grounds. On both grounds, the onus of proof is on the appellant and the required standard is on the balance of probabilities.
2. The appellant has also provided some reasons that the development might be considered acceptable in planning terms. However, as no appeal has been made on ground (a), that planning permission should be granted for the matters alleged, and no fee has been paid for such an appeal, then these matters do not fall to be considered.

The Notice

3. Before determining the appeal, I have a duty to put the Notice in order. It is important that the alleged breach of planning control and the requirements of the Notice are consistent and that the Notice is clear and precise. I have

¹ Reference to a plan here is a reference to the plan attached to the Enforcement Notice.

- powers under section 176(1)(a) of the 1990 Act to correct any defect, error or misdescription in the Notice, provided that no injustice would be caused.
4. There is a minor wording difference in sections 3 and 5 of the Notice in that the location of the shipping container is described as being 'in the approximate area marked in yellow' on the attached plan within the allegation, and 'shown marked in yellow' in the requirements. The scale of the plan and clarity of the yellow shading makes it difficult to pinpoint the location, so the wording of the allegation is preferable. I shall correct the requirements to match.
 5. The reference in the allegation to the yellow shaded area appears as a separate sentence. As this is clearly intended to relate to the container described in the foregoing sentence, I shall delete the full stop and word 'as' separating them, and replace with a comma, in the interests of clarity and consistency with the requirements. As it is abundantly clear what is being targeted by the Notice and this can be easily identified on the site, no injustice would arise if I were to make the above corrections.
 6. The alleged breach of planning control is also described as 'Without planning permission: The unauthorised development consisting of...'. The Notice can only be concerned with an alleged breach of planning control. It is unnecessary and unclear for the words 'unauthorised development' to appear in the allegation as this could be construed to relate to alternative legislation. It is sufficient to simply refer to the absence of planning permission in setting out why a breach of planning control is alleged. It is clear in this case that the appellant has understood why there is an alleged breach of planning control, so no injustice would arise if reference to unauthorised development were removed. I shall also correct the Notice in this way, and also remove the word unauthorised from the requirements of the Notice in the interests of precision and consistency.

Ground (b)

7. The Notice relates to a storage container sited close to buildings at Petersfield Farm. I saw the container, and bags of timber within it, at my site visit. In an adjacent building, I saw a heating boiler. The boiler is connected to ducting, part of which runs from the boiler, out of the building in which it is sited, and into the container. The ducting appears to be cemented to the container at the point of entry. From there, perforated ducting has been fixed to the internal container walls. It is said that this is to allow secondary hot air from the boiler to be supplied to the container.
8. In the first instance, the appellant's case on ground (b) is that the alleged breach of planning control is misleading because it could infer that the container was put in place to store a new heating boiler facility. However, the wording of the allegation is that it is 'used in connection with a new heating boiler facility' that serves other uses on the site. To say that this could imply that it houses or stores that heating boiler requires additional or alternative words to be read into the allegation. As written, the allegation is clearly that the container is used 'in connection with' the heating boiler.
9. The appeal submissions indicate that the container was being used to store and dry logs for the winter. My own observations are consistent with such a use. There is no suggestion that the logs or timber might not be stored or dried in

connection with the boiler. Therefore, on the balance of probabilities, I find the way that the allegation is described to be correct in that regard.

10. It is further suggested that the 'new' heating boiler facility was actually a pre-existing installation and that reference to it has been included in the Notice to exaggerate the works that have occurred. However, it is clear that the Notice targets the container. It does not target the heating boiler or its housing. As such, whether the heating boiler is 'new' or not is somewhat academic and does not result in an allegation that does not reflect the matter that has occurred.
11. For clarity, though, I will correct the notice to remove the word 'new' for the avoidance of doubt. It is clear from the appellant's submissions that they understand that the Notice is targeting the container, so no injustice would arise from this.
12. Ultimately, the Notice clearly alleges the siting of a shipping container that has been modified to link into an existing building. That container, the modification and link described, and a use that, is more likely than not to be in connection with the heating boiler, are obviously present on the site. Accordingly, subject to the minor correction that is only required for clarity, the matters alleged in the Notice have occurred and the appeal on ground (b) must fail.

Ground (c)

13. The appellant's submissions, suggest that the container should not require planning permission on the basis that it is only temporary and is a movable structure. It is also suggested that the only alterations to the boiler housing are small scale repairs or improvements but, whether or not that is the case, the Notice does not target such works, so those alterations are not before me.
14. As described above, the container itself may not have been anchored to the ground, but it has been physically fixed to the adjoining building and the boiler by the ducting. The ducting is fixed within the container and so it has become an integral part of the installation. Even if the scale of work were small, it would appear that dismantling that, such that the container could be removed, would require some effort. The container could not simply be lifted and removed.
15. Nor is there any substantive evidence about the length of time that the container might stay on the site. It is linked to and storing timber for the heating boiler, which is providing heating for other permanent buildings. There is, therefore, no obvious reason that the container would not be positioned for at least the lifespan of the boiler. On this basis, it has not been shown to be temporary such that it might not properly be considered as operational development requiring planning permission.
16. It may well be that the appellant has developed an ingenious system and never intended to carry out development without planning permission. However, on the balance of probabilities, I find that the matters alleged in the Notice do constitute a breach of planning control. Accordingly, the appeal on ground (c) also fails.

Formal decision

17. It is directed that the enforcement notice is corrected by:

In section 3 – the matters which appear to constitute the breach of planning control:

- Delete the words “the unauthorised development consisting of”.
- Delete the word “new” before the words “heating boiler facility”.
- Delete the text “. (As shown” and replace with the text “, (shown”

In section 5 – what you are required to do:

- Delete the word “unauthorised”.
- Insert the words “in the approximate area” before the words “marked in yellow on the attached plan”.

18. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

M Bale

INSPECTOR