



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: 21 June 2024

Appeal Ref: APP/Z1510/X/23/3331926

Land North of Halstead Road, Sible Hedingham, Essex CO9 3AN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Antony & Jennifer Powell against the decision of Braintree District Council.
 - The application ref 23/00293/ELD, dated 3 February 2023, was refused by notice dated 24 April 2023.
 - The application was made under section 192(1) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is a steel container on land for storage of agricultural and event equipment.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application, as made, was for a lawful development certificate (LDC) for a proposed use or development. Such would be considered under Section 192 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal form also indicates that the application was made under Section 192.
3. However, the application related to an existing container and the appellants' case appears to be made on the basis that no enforcement action can be taken against it. The Council considered the application on the basis that it was an LDC for an existing use or development under Section 191 of the 1990 Act.
4. The appellants have confirmed that the application did relate to an existing container. Consequently, it would be appropriate for the appeal to proceed under Section 191. That said, while I have considered the appeal under Section 191, as will become apparent from my analysis, my decision on the appeal would have been no different if I were to have proceeded under Section 192.
5. The appellants have further clarified that their intent was to seek retrospective permission to store equipment on the site. An LDC, if granted, does not give permission in the way that a successful application for planning permission might.
6. Instead, an LDC confirms whether the use or development applied for was or would have been lawful on the date of the application. As such, the reasons for the development, or planning merits that may weigh for or against the proposal are not considered. Moreover, the application relates solely to a container and activities outside it or elsewhere on the land, such as the parking of a trailer

and siting of picnic benches are of little relevance to my consideration of the appeal. As the relevant date for confirmation of lawfulness is the date of the application, this appeal must be considered as per the situation as it was on the date of the application, not subsequent changes in circumstance, activity or intention.

Reasons

7. Section 191(2)(a) of the 1990 Act sets out that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).
8. Section 171B(1) of the 1990 Act clarifies that in respect of a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
9. Section 171B(2) deals with such time limits where the breach of planning control consists of the change of use of a building to a single dwelling, which is not the case here, and Section 171B(3) sets out that in respect of any other breach of planning control, no enforcement action may be taken after the end of a period of ten years beginning with the date of the breach.
10. In an application or appeal for an LDC, the burden of proof is on the appellants and the standard of proof required is the balance of probabilities. If the evidence is sufficiently clear and precise and there is no evidence to contradict the appellants' version of events or make it less than probable, then their evidence should be accepted and an LDC should be issued.
11. The container was brought onto the land more than 4, but less than 10 years before the date of the application. The appellants' appeal statement suggests that it should be considered to be a building operation, but is ambiguous and imprecise saying both that it has been placed on, and affixed to, concrete support pads, without any elaboration of how. I have not been provided with any details of the concrete support pads or the fixings and I was unable to see any at my site visit. Instead, the container appeared to be resting on planks or beams, which would be consistent with photographs showing the container being craned into place.
12. As the onus of proof is on the appellants in this type of appeal and the evidence does not demonstrate that the container is, in any way, fixed to the ground, I find it more likely than not that the container is not a building operation. Accordingly, the time after which enforcement action could not be taken would be 10 years, which had not passed before the application was made to the Council.
13. Notwithstanding the above, it is still possible that the siting of the container could be lawful if it did not involve development. Such may be the case if the character of the stored items did not result in a material change of use of the land. While used occasionally for a music festival, I understand that the existing lawful use of the land is for agriculture. The appellants have explained how the container is now being used for storing equipment related to land

- maintenance. That appeared to be the case at my site visit and such items might reasonably be linked to agricultural activities.
14. However, even if that were the case, the evidence suggests that, at the time of the application the container was, and previously had been, also used for the storage of equipment linked to the festival. That is clearly reflected in the description of development on the application forms as being storage of 'agricultural and event equipment'.
 15. I have little information about the extent of storage of non-agricultural items, or what was stored, although staging and layout equipment is mentioned. On this basis, I find that event equipment would likely be of a different character to agricultural equipment and would have nothing to do with the lawful use of the land as agriculture. Therefore, on the evidence I have, it appears that the use the container was being put to would have resulted in a material change of use of the land upon which the container is sited. The making of a material change in the use of land is within the meaning of development under Section 55 of the 1990 Act, and there is nothing before me to suggest that such would not have required planning permission at the appeal site.
 16. Therefore, I find that, on the date of application to the Council, on the balance of probabilities, the siting of the container for the storage of agricultural and event equipment was not lawful under Section 191 of the 1990 Act.
 17. As I have noted, the application was originally made under Section 192. Such would have been a request for confirmation that the use would have been lawful if commenced or instituted on the date of the application. As I have already found, on the evidence I have, the use described on the application form would have resulted in a material change of use of the land. Whether within a container placed or fixed to the land, such would have required planning permission, and none exists. Accordingly, the proposal described would not have been lawful under Section 192 of the 1990 Act either.
 18. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of a steel container on land for storage of agricultural and event equipment was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

M Bale

INSPECTOR