



Appeal Decision

Site visit made on 6 August 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date 6 September 2024

Appeal Ref: APP/R3650/X/24/3343201

The Lodge, Uplands Park, Park Lane, Godalming, Surrey GU8 5LA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by T and CPP Ltd against the decision of Waverley Borough Council.
 - The application ref WA/2024/00286, dated 22 January 2024, was refused by notice dated 8 April 2024.
 - The application was made under section 192 of the Act.
 - The use for which a certificate of lawful use or development is sought is the proposed siting of shipping container within the land edged red on the accompanying plan for use ancillary to the lawful residential use of the land.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for an award of costs has been made by T and CPP Ltd against Waverley Borough Council. That is the subject of a separate decision.

Preliminary Matters

3. Different descriptions of the proposal have been provided in the application and appeal forms, and the Council's decision notice. I have taken the description for the banner heading above from the appeal form as this confirms what an LDC is sought for, and it is consistent with the other descriptions.
4. There is no plan attached to the Council's decision notice, but I am satisfied that the appeal is against the Council's decision to refuse to grant an LDC, rather than the claimed failure to give notice of a decision.
5. Although the appellant was unable to provide access to the site at my pre-arranged visit, I was invited to enter another site where it is claimed the Council has granted an LDC for an identical shipping container. I declined, as I do not consider such an inspection relevant to my decision, which is based on the merits of this specific proposal.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded, with particular regard to whether the proposal would comprise development requiring planning permission. The onus is on the appellant to demonstrate, on the balance of probabilities, that the proposal would be lawful.

Reasons

7. Section 57 of the Act sets out that planning permission is required for the carrying out of any development of land. Section 55 provides the relevant meaning of 'development', which includes the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. The term 'building' has a wide definition, as set out at section 336 of the Act, which includes any structure or erection.
8. It is not specified where on the extensive area of land¹ the shipping container would be sited, but the parties agree that the land has a lawful use for residential purposes. The question therefore is whether the stationing of a shipping container on the land would comprise building operations falling within the meaning of development at section 55 of the Act. Caselaw has identified 3 primary factors as being decisive as to what is a building: size, permanence, and physical attachment.
9. An unnumbered and undated plan titled 'Container Plans and Elevations' submitted as part of the application shows a modified shipping container, which is described as measuring 12.7 metres (m) in length, 3m in width and 3.1m in height. I shall refer to this as 'Container A'. The floor and elevation plans show Container A would have a pair of typical shipping container doors on one short end, and a window at the other short end. Two other openings on one of the long sides are shown, without their design or purpose being clear.
10. Another set of plans² provided as part of the appellant's statement of case refer explicitly to the site and show a different modified shipping container. I shall refer to this as 'Container B'. These plans are annotated to show Container B would measure 9.12m in length, 2.44m in width, and 2.59m in height. The statement of case claims Container B is 'the shipping container in this case' and 'caravan compliant'. The floor plan indicates Container B would have a main area with 2 sofas, a sink, 4 hobs, a double bed, and a separate room with a shower, sink and toilet. Detailed elevation plans show Container B would have 2 windows on one of the long sides and a door and a window on the other long side, while one of the short ends would have typical shipping container doors.
11. A legal opinion³ is claimed to relate to an identical container for another site in similar circumstances to this site. The legal opinion refers to a specific shipping container rather than any shipping container in general, which is described as having the same dimensions referred to above for Container A. The legal opinion clarifies it is written in the context of another appeal at another site. It therefore carries little weight in the context of this appeal.
12. For the above reasons, the design, dimensions and overall size of the proposed shipping container are not entirely clear. Container A is referred to in the application and the initial appeal submissions, and Container B is referred to in the statement of case. However, the descriptions provided in the application and appeal forms do not specify the type, design, or dimensions of the shipping container. For these reasons, I take Containers A and B as examples of the

¹ Edged in red on the plan titled 'Location Plan/Block Plan' with a scale of 1:1250, dated 16 February 2023

² Drawing No. 24/3821, dated May 2024

³ Opinion of Counsel, Michael Rhimes, dated 4 February 2024 in relation to appeal ref: APP/R3650/X/23/3333287

type of shipping containers the appellant claims could be lawfully sited on the land.

13. The plans show large structures which would fall within the size limits for a twin-unit caravan, albeit there is a lack of detail to show how a shipping container would comprise a caravan⁴. It would be normal for a shipping container to be constructed off-site and delivered ready-made to a site. It is less clear whether the modifications shown on the plans would be carried out before the shipping container is moved onto the land, or whether the creation of additional openings and the internal fitting out shown on the plans would be carried out in association with the siting of a modified shipping container on the land. The different specifications of Containers A and B highlight the lack of precision in the description of the proposal.
14. The appellant states that the shipping container would be moved onto the site in one piece and could subsequently be moved around the site in one piece if so desired, but there is a distinct lack of information to show how this would be achieved. Ordinarily, a shipping container may be easily moved by mechanical means onto and around large, flat, open sites. However, there is no information before me which shows this applies to shipping containers in general, Containers A or B, or the whole of this particular site. There are no details of the processes, how many people, what machinery, or what associated enabling works/alterations to the land (if any), may be needed to site a shipping container anywhere on the land.
15. It is therefore unclear how a shipping container may be sited anywhere on the land, not least because parts of it are occupied by existing buildings and trees. There appear to be minor variances in levels across the eastern part of the site, and there may be other landforms present. It is easy to see how siting a shipping container on the driveway, which is flat and hard surfaced, would be a straightforward process. It is far more difficult to understand how a shipping container would be sited on areas occupied by buildings, substantial planting, and any uneven or soft ground without hindering its subsequent moveability. For these reasons, I consider it extremely unlikely that a shipping container could be sited in many places on the land without difficulty, or significant building or engineering operations. The same applies to possibly moving a shipping container around many parts of the land.
16. In addition, the plans and description show the shipping container's final form and function could be for purposes ancillary to a residential use of the land. With this in mind, it would be likely to have a significant degree of permanence, rather than a passing or temporary effect on the character of the land. The limited evidence provided suggests it would have the appearance and visual presence of a building, and it would be noticeable as such. This would remain the case even if it were to be subsequently moved around the site in a straightforward manner.
17. I can assume with reasonable certainty that the shipping container would rest in position by its own weight, which would be significant in the cases of Containers A and B, and sufficient to prevent them from being moved without mechanical assistance. The internal layout of Container B indicates it would be connected to electrical and water services in some way, but again there are no

⁴ As defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968

details to provide clarity as to how attachment to these services would be facilitated.

18. Drawing all of these matters together, there is no dispute that positioning a shipping container on the land for purposes ancillary to its residential use may not constitute a material change of use of the land. However, referring back to the 3 primary factors decisive of what is a building: I do not know the maximum size of the shipping container proposed, but I can assume it could be at least as large as Container A; I do not know its degree of permanence as there is a lack of information to explain how it could be moved anywhere onto the land and subsequently moved; and I do not know the shipping container's extent of physical attachment to the ground. Against this, and as a matter of fact and degree, the evidence suggests that the shipping container may be modified, would likely present itself as a building, and would involve significant building and/or engineering operations to be sited in a number of positions on the land.
19. The appellant's evidence is not therefore sufficiently precise and unambiguous to show that it is more likely than not that the siting of a shipping container within the land edged in red on the accompanying plan for use ancillary to the residential use of the land would be lawful, with regard to sections 191(2) and 192(2) of the Act.
20. I have come to that conclusion having considered the legal opinion referred to above and the conclusions of another Inspector⁵ who found that the placing of 98 shipping containers within an industrial estate would not involve building operations. The circumstances in those cases are significantly different to those before me, and I have considered the proposal on its own facts.
21. In the same way, the LDC decisions⁶ I have been referred to which concern unspecified containers on other land, have a lack of information. It is claimed those LDC decisions concern the same shipping container, but I have explained why there is significant ambiguity in that argument given the 2 types of container considered above.
22. Finally, a newspaper clipping⁷ suggests in vague and general terms that a moveable shipping container used as a home office in a garden does not usually need planning permission. Be that as it may, each case must be considered on its own set of circumstances.

Conclusion

23. For the reasons given above I conclude, as a matter of fact and degree, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed siting of shipping container within the land edged red on the accompanying plan for use ancillary to the lawful residential use of the land was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

L Douglas

INSPECTOR

⁵ Appeal ref: APP/V0728/W/23/3314720

⁶ The Council's refs: WA/2024/00634, WA/2024/01129; North Warwickshire Borough Council ref: PAP/2024/0107

⁷ The Sunday Times, 10 March 2024