



Appeal Decisions

Site visit made on 30 July 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2024

Appeal A Ref: APP/Y3615/X/24/3340049

11 Chinthurst Park, Shalford, Guildford, Surrey GU4 8JH

- 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 (LDC).
 - The appeal is made by Mrs Josephine Naish against the decision of Guildford Borough Council.
 - The application ref 24/P/00046, dated 12 January 2024, was refused by notice dated 1 March 2024.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as "the siting of a caravan for use ancillary to the lawful existing residential use".
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Appeal B Ref: APP/Y3615/X/24/3343419

11 Chinthurst Park, Shalford, Guildford, Surrey GU4 8JH

- 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 (LDC).
 - The appeal is made by T & CPP Limited against the decision of Guildford Borough Council.
 - The application ref 24/P/00128, dated 23 January 2024, was refused by notice dated 27 March 2024.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as "the siting of a shipping container within the land edged red on the attached plan for use ancillary to the lawful residential use".
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Decisions

1. Appeal A is allowed and attached to this decision is a certificate of lawful use or development describing the proposed development which is found to be lawful.
2. Appeal B is dismissed.

Applications for costs

3. Applications for costs have been made by Mrs Josephine Naish in respect of Appeal A, and T & CPP Limited in respect of Appeal B, against Guildford Borough Council. These are the subject of separate decisions.

Procedural Matters

4. The descriptions of proposed developments set out in the banner header above have been taken from the respective application forms. However, for

conciseness I have deleted any superfluous wording used in the descriptions provided on the application forms.

Main Issue

5. The main issue in these appeals is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

Appeal A

6. 11 Chinthurst Park is a detached dwelling with garden areas to the front and rear. The appeal application relates to the siting of a caravan within the rear garden of No. 11 for use ancillary to the existing lawful residential use.
7. The Council's decision to refuse the LDC states the application was not supported by sufficient information to confirm whether the proposed caravan would be considered operational development under Section 55 of the Town and Country Planning Act 1990 ("the 1990 Act").
8. However, the siting of a caravan is generally held to constitute a use of the land and not operational development. In law, a "caravan" must comply with the definition set out in section 29 of the Caravan Sites and Control of Development Act 1960 ("the CSCDA") and section 13 of the Caravan Sites Act 1968 as amended ("the CSA").
9. The Officer's report refers to a previous appeal decision¹ in which the Inspector stated "*where a LDC relates to a caravan, the word should be construed in accordance with the statutory definition. The application need not be supported with detailed plans of the caravan, or indeed details of its siting, and the Council could have assumed it would meet the lawful definition.*" In my view, the same is applicable in this appeal.
10. Whilst there have been no detailed plans of the caravan or details of its siting provided, the application expressly refers to the siting of a "caravan". Accordingly, the appellant is relying on the statutory definition of a caravan and is not seeking clarification on whether a particular structure would be a caravan for the purposes of the above Acts. The siting of a caravan that meets the statutory definition as set out in the above Acts would not comprise operational development.
11. In respect of the caravan's use, there is no dispute between the parties concerning the residential use of the site. The appellant has stated in the application that the caravan's use will be ancillary to the existing residential use. Although it has not been specifically stated what that ancillary use will be, it nevertheless remains the case that the use must be functionally linked to the use of the main dwelling and would not constitute a material change of use of the land.
12. The red line boundary on the submitted location plan/block plan does not encompass the dwelling itself or its entire curtilage, and only includes the majority of the rear garden. The Officer's report also raises concerns that this may suggest that the use would be independent and not functionally integrated.

¹ APP/Y3615/X/22/3300740

13. However, it was clear from my site visit that No. 11 and its external garden space form a single planning unit. There is nothing within the application that states that the site will be physically sub-divided, for example by the erection of fencing, or that the use of the caravan will be functionally separate from the existing dwelling so to form a separate planning unit. I find that the red line boundary does no more than indicate where the caravan would be located on the site, and that the application seeks clarification as to whether the siting of a caravan for use ancillary to the existing residential use would be lawful.
14. As the notes attached to the LDC explains, the certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule. Any use 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.
15. Consequently, for the reasons given above, I find that the siting of a caravan for use ancillary to the existing lawful residential use would have been lawful at the time of the application.

Appeal B

16. The appeal application relates to the siting of a shipping container within the rear garden for use ancillary to the lawful residential use. It was refused for two reasons. Firstly, it was considered from the information provided that the shipping container would be too large to fit within the application site. The Council also found that, as a matter of fact and degree, the shipping container would amount to a building, and that the building would not be permitted development under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ("the GPDO") as insufficient information had been provided to conclude that its use would be incidental to the enjoyment of the dwellinghouse.
17. Dealing with the Council's first reason for refusal, the appellant has subsequently provided a location/block plan showing that the shipping container could fit within the rear garden. Notwithstanding the compass directions shown on the elevational drawing provided, I am satisfied from both the submitted location/block plan and my own observations that the shipping container would be sited within the curtilage of the dwelling.
18. In relation to the Council's second reason for refusal, section 55 (1) of the 1990 Act defines "development" as including the carrying out of building, engineering or other operations in, on, over or under land. In section 336 of the Act a "building" is defined as including any structure or erection, and any part of a building.
19. Case law² states that the appropriate criteria for determining whether a structure constitutes a building are size, permanence, and physical attachment. None of these factors are necessarily decisive and greater weight may be given to one factor over another in reaching a decision. It is ultimately a matter of planning judgement.
20. In terms of size, it seems to me that the proposed shipping container would have a relatively substantial volume. The information provided details that the

² *Cardiff Rating Authority v Guest Keens* [1949] 1 KB 385 & *Skerritts of Nottingham Ltd v SSTER* (No 2) [2000] 2 PLR 102.

container would have a height of 3.095m, with the Council stating that it would measure 2.96m in width and 12.7m in length. It is also clear from the submitted location/block plan that the container would be of significant size and would extend almost the full width of the rear garden. The shipping container would not be constructed on site and would instead be brought to the site in one piece. Nevertheless, it is highly probable that due to its size and weight, specialist heavy lifting equipment would be required to lower the container into position.

21. With regard to permanence, I acknowledge that shipping containers are designed to be transported from place to place. However, "permanence" does not necessarily connote that the state of affairs must continue forever or indefinitely. Whilst technically it may be true that the shipping container would be moveable, I am not persuaded that in practice that would be the case. Specialist heavy lifting equipment is likely to be required to move the container and given the shape and relatively modest size of the rear garden, the level of any "manoeuvrability" around the appeal site would be severely restricted. The appellant has not demonstrated or explained in the submitted evidence how the container would be moved either within or off the appeal site. I therefore find it highly probable that it would remain in one position on the site for a considerable period of time and display a strong characteristic of permanence.
22. The application does not include any information on the degree of attachment, but it is not uncommon for shipping containers to simply sit on the ground. Due to the significant size of the proposed shipping container, there is nothing that makes me consider the weight of such a sizeable structure would not be considerable and that it would not achieve the necessary affixation to the ground through its inherent weight.
23. Reference is also made in the appellant's appeal documents to the container meeting the definition of a caravan as set out under the CSCDA and CSA. However, the submitted floor plan shows there to be no individual rooms and no use or basic amenities are identified. Accordingly, there is no evidence to indicate that the container would be designed or adapted for human habitation as required to meet the definition of a "caravan".
24. As a matter of fact and degree, I find that the proposed shipping container would meet all of the tests for being a building. In addition, placing the container on the land would involve the use of heavy plant and machinery which would constitute an other operation. I therefore conclude that it would represent operational development.
25. I have had regard to an appeal decision³ where the Inspector concluded that the siting of containers did not amount to operational development, and the grant of a LDC⁴ by Waverley Borough Council which found that the siting of a container designed or adapted for human habitation would meet the definition of a caravan. However, the information provided in respect of both cases is limited, and in any event does not alter my findings in this case.
26. The shipping container would be located within the curtilage of the dwellinghouse, with Part 1, Class E of the GPDO permitting the provision of *"any building or enclosure..... required for a purpose incidental to the*

³ APP/V0728/W/23/3314720

⁴ WA/2024/01129

enjoyment of the dwellinghouse as such". This is subject to various conditions and limitations relating to its size and location being met.

27. This includes paragraph E.1(e) which states that development is not permitted if:

"the height of the building, enclosure or container would exceed:

- (i) 4 metres in the case of a building with a dual-pitched roof*
- (ii) 2.5 metres in the case of a building, enclosure, or container within 2 metres of the boundary of the curtilage of the dwellinghouse or*
- (iii) 3 metres in any other case."*

28. The submitted location/block plan indicates that the container could not be accommodated within the appeal site without it being within 2 metres of the boundary of the curtilage of the dwellinghouse. As its height would exceed that allowed under paragraph E.1(e)(ii), the container would not be permitted development.
29. Even if I am wrong on the above finding, as part of the appeal submissions the appellant provided an email from the architect which confirmed that the external height of the container was 3.095m. As the height of the container would exceed 3 metres, the proposed development fails to comply with the requirement set out at paragraph E.1(e)(iii) and would not be permitted development.
30. The submitted floor plan shows a single room with no use identified. In LDC cases the burden of proof rests with the appellant and the appropriate test is the balance of probabilities. Apart from a vague and general statement that the container would be used for some ancillary purpose, the evidence does not show how the container is required for an incidental purpose and so fails to meet the basic criteria in Class E in any case.
31. For the reasons outlined above, I have concluded that the proposed shipping container would constitute a building for planning purposes and its siting would amount to a building or other operation falling within the scope of s55(1). Express planning permission would be required because the siting does not meet the criteria in Class E of the GPDO. The appellant has also failed to show how the container is required for a purpose incidental to the enjoyment of the dwellinghouse.

Conclusions

32. In Appeal A, for the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the siting of a caravan for use ancillary to the lawful existing residential use was not well-founded and the appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.
33. In Appeal B, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development was well founded and that the appeal fails. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

David Jones

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 12 January 2024 the use 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed siting of a caravan within the curtilage of the dwelling and its use for a purpose ancillary to the residential use of the main dwellinghouse, would be part of the primary residential use within the same planning unit and would not constitute development requiring planning permission.

Signed

David Jones

Inspector

Date: 12 September 2024

Reference: APP/Y3615/X/24/3340049

First Schedule

The siting of a caravan for use ancillary to the lawful existing residential use

Second Schedule

Land at 11 Chinthurst Park, Shalford, Guildford, Surrey GU4 8JH

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been 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 use 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 12 September 2024

by David Jones BSc (Hons) MPlan MRTPI

Land at: 11 Chinthurst Park, Shalford, Guildford, Surrey GU4 8JH

Reference: APP/Y3615/X/24/3340049

Scale: Not to Scale

