



Appeal Decision

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2024

Appeal Ref: APP/Y3615/X/24/3342491

Hillpath, 19 Pilgrims Way, Guildford, Surrey GU4 8AD

- 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 T&CPP LTD against Guildford Borough Council.
 - The application (Ref. 24/P/00127) is dated 23 January 2024.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as: The proposed siting of a shipping container within the land edged red on the plan for use ancillary to the lawful residential use of the dwellinghouse.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by T&CPP LTD against Guildford Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. As is set out in the procedural guide ('Certificate of lawful use or development appeals: procedural guide', updated 5 August 2024), site visits are not usually necessary in LDC appeals. I have been able to reach a decision on this appeal based on the information provided. So I consider that this appeal can be determined without a site visit. Both the appellant and the Council were given an opportunity to comment on this approach. The appellant agreed that a site visit would not be necessary and no objection to this approach was received from the Council.
4. The Council did not validate the application because additional information it requested was not provided. The appellant responded by issuing a notice to the Council under Article 12 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the Order). But there is no evidence that Article 12 of the Order is relevant to an LDC application, given the content of Article 39 of the Order, which specifically relates to LDC applications.
5. Nevertheless, I am satisfied that the LDC application in this case was valid from when the fee for the application was paid because there is nothing to indicate that the additional information requested by the Council was justified, in light of what had already been provided and what is set out in Article 39 of the

Order. I have no reason to think otherwise, particularly in absence of any submissions from the Council in this regard. The effect of this finding is that the appeal is one against the non-determination of the application by the Council.

Main Issue

6. The main issue is, if the Council had refused the application, whether the refusal would have been well-founded.

Reasons

7. Section 192(1) of the 1990 Act provides for the making of an application to ascertain whether (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land would be lawful. In an LDC appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
8. As is set out in Planning Practice Guidance (PPG), the applicant is responsible for providing sufficient information to support an application. In the case of applications for proposed development, the PPG states that an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved, (see 'Lawful development certificates', paragraph: 006 Reference ID: 17c-006-20140306).
9. In an LDC application the question is whether the proposed use or operation would be lawful if 'instituted or begun' on the date of the application. Evidence should not be rejected simply because it is uncorroborated. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
10. In summary, planning permission is required for the carrying out of any development of land and section 55(1) of the 1990 Act defines 'development' as 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.
11. From the information provided, the appeal site contains a detached dwellinghouse. I have no reason to believe this is not the lawful use of the land. The proposal is to site a shipping container on the land "*for use ancillary to the lawful residential use of the dwellinghouse*". But this is not a description of a use and the application does not say what the proposed shipping container would be used for.
12. In this respect, the application is lacking in clarity and is not precise or unambiguous. So I do not have the evidence to enable me to conclude that there would be no material change in the use of the land and crucially, for the purposes of section 192(3)(b) of the 1990 Act, I do not have a description of the use to include in a certificate.
13. I must also consider whether the proposal constitutes operational development for the purposes of section 55 and specifically, whether the proposal constitutes a building operation or other operation.

14. Section 336(1) of the 1990 Act defines a building broadly, as including any structure or erection and any part of a building, but not plant or machinery comprised within a building.
15. Case law has established 3 primary factors as decisive of what constitutes a building: 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.
16. In respect of size, the shipping container has been described by way of a single scaled drawing and an explanation, consistent with that drawing, that the container's dimensions would be 3 metres wide, 12.7 metres long and 3.1 metres high. This is not insubstantial but is less than some other structures (eg some caravans) which may not constitute a building.
17. From the information provided, I have no reason to believe that the shipping container would not be delivered to the site ready-made, rather than being of such a size that it would need to be assembled on site. In light of the above points, I do not find size to be a determining factor in this case.
18. In respect of permanence, the appellant has indicated that the shipping container could be moved around within the site if so desired. But I have not been provided with any clarity on whether it is intended to be moved in practice or for how long it would remain in the same position on the land. So I do not have the evidence to enable me to conclude that the shipping container would not be a permanent stationary feature on the land. In this regard, the appellant's case is insufficiently precise and insufficiently unambiguous.
19. My attention has been drawn to what is referred to in the appellant's submissions as the 'method of erection'. But it seems to me that this is a function of permanence and/or size, rather than being a discrete factor in itself, in determining whether a structure is a building or not.
20. In respect of physical attachment, there is no evidence the shipping container would be fixed to the ground, or require any permanent base, or result in any physical alteration to the land or that it would be attached to any services (although this may be dependent on what it is to be used for, which as previously stated, is ambiguous).
21. But bearing in mind that no one of the 3 relevant factors is decisive and that greater weight may be given to one factor over another, in this case, as a matter of my planning judgement, I give greater weight to permanence than to size or physical attachment.
22. On a fact and degree basis and given the limited information provided, on the balance of probability and as a matter of my planning judgement, the shipping container would constitute a building for the purposes of section 55 and so it would therefore require planning permission. Nothing has been provided to lead me to a different conclusion.
23. The appellant argues that the siting of a shipping container would not constitute development for which planning permission is required. But in light of the size and likely weight of the shipping container, on the balance of probability, it is not something which could be brought to the site and placed on the land by occupants of the dwelling. It would likely require specialist expertise and/or equipment, such as plant and machinery to lift and place the

- shipping container on the ground, which suggests some kind of knowledge and skill.
24. But the appellant has not provided any specific detail or information to show what would be involved in the shipping container being placed on the land. It has not been explained how the shipping container would be delivered or lifted, or by whom. The application is imprecise and ambiguous in this regard and so I am not satisfied that the proposal does not constitute a building or other operation for the purposes of section 55(1).
25. In light of my conclusion on whether the proposal is a building, I have considered whether the proposal may benefit from permitted development rights under The Town and Country Planning (General Permitted Development) (England) Order 2015. But no case has been made that the proposal constitutes permitted development. Nor have I been provided with the information to conclude that the proposal would satisfy the relevant conditions and/or limitations of any of the classes of development set out in the above Order, such as precisely where it would be sited and precisely what the purpose it is required for would be.
26. My attention has been drawn to other cases. But these make no difference to my conclusion in this case for the following reasons. The cases referred to at MKM Building Supplies, Lower Punchbowl Farm and Fox and Dogs Public House were for a different use to that which is before me.
27. The reason for lawfulness for the case referred to at Wrotham Hill Cottage indicates that case concerned a self-contained container designed or adapted for human habitation (ie a caravan). In the application which is before me, there is no suggestion that the shipping container is actually a caravan, bearing in mind that a shipping container and a caravan are not necessarily the same thing and a caravan is plainly not what is shown on the single drawing provided. The same applies to the Guildford Borough Council decision dated 20 August 2024, which is also for this same appeal site.
28. In any event, I do not know all the facts in all the other cases referred to and each application for a certificate of lawfulness turns on its own facts. So I am not bound by the judgement of others on other cases where different facts apply.
29. I have been provided with an Opinion of Counsel, by Michael Rhimes. But this is for a different appeal and relates to the facts in that case. However, this opinion reflects that whether a shipping container is or is not development for which planning permission is required is ultimately a matter of planning judgement and that other decisions necessarily turn on different facts and are therefore of limited assistance.
30. I have had regard to a newspaper article provided from the Sunday Times, dated 10 March 2024, which reports that because a shipping container is moveable you usually do not need planning permission. But the operative word here is 'usually', which is precisely the point as it depends on the facts in each case, including whether such a container would be moved or not.

Conclusion

31. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of: 'The proposed siting of a shipping container within the land edged red on the plan for use ancillary to the lawful residential use of the dwellinghouse', 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 as amended.

L Perkins

INSPECTOR