



Appeal Decisions

Inquiry held on 29 October 2024 and 1 November 2024

Site visit made on 28 October 2024

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 18 November 2024

Appeal A Ref: APP/U2750/C/24/3337921

Appeal B Ref: APP/U2750/C/24/3337922

Appeal C Ref: APP/U2750/C/24/3337923

Appeal D Ref: APP/U2750/C/24/3337924

Appeal E Ref: APP/U2750/C/24/3337925

Land at Old School House, Hillam Road, Gateforth, SELBY, YO8 9LQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mrs India Barlow (Appeal A), Mr Dale Barlow (Appeal B), Mrs Lynn Sherratt (Appeal C), Mr Larry Sherratt (Appeal D) and by Mr Kevin Shields (Appeal E) against an enforcement notice issued by North Yorkshire Council.
- The notice was issued on 22 December 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised siting of containers for residential use as an independent dwelling, change of use of paddock land to residential garden and siting of associated residential paraphernalia.
- The requirements of the notice are to:
 - Step 1 Cease the residential use of the containers.
 - Step 2 Remove the containers from the Land along with the associated residential paraphernalia such as but not exclusively shed, decking and other items.
 - Step 3 Remove from the Land all hardcore and other hard surfacing beneath or around the containers and reinstate these areas to topsoil and with the sowing of grass seed or laying of turf.
- The periods for compliance with the requirements are:
 - Step 1 8 months.
 - Step 2 10 months.
 - Step 3 12 months.
- The appeals are proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeals are dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Decisions

Appeals A, B, C, D and E

1. It is directed that the enforcement notice is varied by the:

- deletion of the words "change of use of paddock land to residential garden and siting of associated residential paraphernalia" in paragraph 3;

- deletion of the words “along with associated residential paraphernalia such as but not exclusively shed, decking and other items” in Step 2 of paragraph 5;
 - deletion of all the words in Step 3 of paragraph 5 and substitution with “Restore the Land to its previous condition”.
 - deletion of all the Steps in paragraph 6 and their substitution with:
“Step 1 12 months from the date when the notice takes effect; and
Steps 2 & 3 15 months from the date when the notice takes effect.”
as the time for compliance.
2. Subject to these variations, the appeals are dismissed and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by Mrs India Barlow, Mr Dale Barlow, Mrs Lynn Sherratt, Mr Larry Sherratt and Mr Kevin Shields against North Yorkshire Council. This application is the subject of a separate decision.

Background

4. Old School House is a detached three bedroom dwelling which fronts onto Hillam Road and shares a vehicular access drive with the neighbouring property, Melton Cottage. The dwelling has an enclosed rear garden which contains an annex (formerly a garage) which until 2022 provided living accommodation to support an elderly relative. Old School House is currently occupied by Mr and Mrs Sherratt.
5. In 2013, Mr and Mrs Sherratt, together with their neighbour Mr Shields, purchased a large paddock/parcel of agricultural land situated to the rear of neighbouring properties on Hillam Lane and to the west of Old School House. Mrs Sherratt told the Inquiry she acquired this land with the intention of providing both additional garden area and a paddock for horses. Furthermore, this land enabled them to secure better access and parking arrangements for Old School House. In 2013 the new parking/turning area for Old School House was laid out, a new access track around the paddock to Mr Shields’ portion of the land constructed, the paddock fenced and a rectangular portion of grassland (hatched blue on Exhibit 1¹) and adjacent to the boundary hedge of Old School House’s rear garden, was fenced off for use ancillary to the residential use of Old School House.
6. Mrs Sherratt’s evidence shows that between 2013 -2018 the Sherratt’s used the fenced grassland area in association with the residential use of their house². Images attached to Mrs Sherratt’s affidavit show that some trees were planted on this land, a vegetable patch cultivated for some of those years, and the land utilised on occasion for family/friends gathering, including camping, sitting out and play with children and grandchildren. This evidence

¹ Exhibit 1, Affidavit of Lynn Sherratt

² Affidavit and Exhibits of Lynn Sherratt

is not disputed by the Council, albeit the Council do not accept that use to be lawful.

7. In 2018, a touring caravan was brought onto this area of grassland for occupation by Lynn and Larry Sherratt's son and now daughter-in law, Dale and India Barlow. However, due to the limited space provided by the caravan and cold conditions, Dale and India subsequently moved into Old School House.
8. In January 2020, Dale and India invested in a container. The mature hedge which formed the western boundary of Old School House's rear garden had been removed, and the container was placed in that location facing out towards and taking access from the adjoining grassland. The couple converted the container into living accommodation for them, including a fitted kitchen, shower room/WC, bedroom and sitting area. A close boarded fence and gates were erected to provide privacy and security for the container and its amenity area. Decking was constructed adjacent to the container with outdoor seating, a hot tub and a storage shed was erected on the grass in front of the container.
9. In April 2023, a second container was brought onto the Land and adapted to provide extended living accommodation for Dale, India and their new baby. The extended single unit of accommodation now provides three bedrooms, including the nursery and one bedroom used for storage, a shower room/WC, kitchen/dining and lounge area, utility/cloakroom with washing machine.

Enforcement Notice

10. The appellants submit that the enforcement notice is a nullity, and if it is not a nullity, then it is invalid. They contend that the description of the alleged breach does not accurately describe the breach of planning control, because in evidence the Council accept that there has been a change of use from paddock land to residential garden, and that change of use occurred in 2013. Thus, in their view the siting of residential paraphernalia on residential garden land cannot be a breach of planning control. Furthermore, the requirements of the Notice do not require the alleged use of the Land as residential garden to cease, which the Council accept was an 'oversight'. This oversight cannot be corrected without injustice to the appellants, and the remaining requirements are therefore ambiguous.
11. S173(1)(a) of the Town and Country Planning Act, 1990, as amended (the Act) requires an enforcement notice to state the matters which appear to the local planning authority (LPA) to constitute the breach of planning control. S173(2) of the Act states that a notice will comply with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are. An enforcement notice may therefore be null because the allegation is too unclear. Furthermore, if an enforcement notice fails to include any steps, it will fail to comply with S173(3) and be null. The appropriate test is whether the Notice is hopelessly ambiguous and uncertain, either as regards to the description of the alleged breach, or the necessary remedial steps³.

³ *Miller-Mead v MHLG* [1963] 2 WLR 225

12. The Notice relates to the Land where the two containers are sited and their adjoining amenity area where the decking, shed and hot tub are sited. The breach of planning control alleged is: *"Without planning permission, the unauthorised siting of containers for residential use as an independent dwelling, change of use of paddock land to residential garden and siting of associated residential paraphernalia."*
13. In the reasons for issuing the Notice (section 4) the LPA contend that the containers have been sited and used as an independent dwelling within the last four years (operational development), and the change of use of the paddock land to residential garden has taken place within the last 10 years (material change of use). The requirements of the Notice (section 5) include three steps: *"(1) Cease the residential use of the containers; (2) Remove the containers from the Land along with associated residential paraphernalia such as but not exclusively shed, decking and other items; (3) Remove from the Land all hardcore and any other hard surfacing beneath or around the containers and reinstate these areas to topsoil and with the sowing of grass seed or laying of turf."* The Notice does not require the change of use to residential garden to cease.
14. The Notice clearly describes what the LPA consider to be a breach of planning control, i.e. the siting of containers for use as an independent dwelling and the change of use of paddock land to residential garden. The reasons for issuing the Notice (section 4) clarify that the alleged unauthorised development includes, operational development (siting of containers for residential use) and a change of use in respect of the change of use from paddock land to residential garden. Elizabeth Maw in giving evidence accepted that a change of use from paddock land to residential garden took place from 2013. However, she did not accept that that use was lawful.
15. The Notice includes requirements/steps to be taken to partly remedy the alleged breach of planning control. Although there is no requirement to cease the use as residential garden, that would not make the notice null. The LPA are entitled to under enforce, and they confirmed both in response to my Inspector Note⁴ and at the Case Management Conference, that they were fully aware of the implications of S173 (11) of the Act. Whilst under enforcing may have implications for the other remedial steps, there is an appeal on ground (f). The ground (f) appeal is the most appropriate place to consider whether the steps in the Notice are excessive to achieve its purpose.
16. For the reasons given above the Notice is not a nullity. However, I do have a duty to get the enforcement notice in order. S176(1) of the Act provides that any defect, error or misdescription in the enforcement notice may be corrected or the terms of the enforcement notice varied if that correction or variation will not cause injustice to the appellant or the local planning authority.
17. The allegation in section 3 of the Notice is framed as two separate breaches. Operational development in respect of the siting of the containers for use as an independent dwelling, and a change of use of the Land from paddock land to residential garden. However, residential garden is not a primary use of the Land, it is an ancillary use, i.e. the garden use is ancillary to a primary

⁴ Inspector Note, 19 July 2024

residential use. You cannot have a material change of use of land to an ancillary use. However, the enforcement notice primarily seeks to attack the siting of the containers for use as a dwelling. Furthermore, it does not require the use of the residential garden to cease.

18. The LPA has confirmed that having regard to the requirements in the Notice, there would be no injustice to them if the notice was varied and the allegation of change of use of paddock land to residential garden and the siting of associated residential paraphernalia were to be deleted from it.
19. It is the appellants' case that the siting of the containers is not operational development but a use of the Land. They contend that since the Land was purchased as additional garden for Old School House in December 2013, the Land and Old School House has formed a single planning unit. They submit that the containers use as living accommodation by Dale and India is part and parcel of the residential use of Old School House and that no material change of use of the Land has taken place.
20. I have had regard to the appellants submissions' that the LPA did not carry out adequate site investigations prior to the service of the enforcement notice, nor had proper regard as to whether it was expedient to serve a notice. The appellants believe there to be injustice in that regard. However, it has been held in the courts⁵ that any challenge as to whether it is 'expedient' for the LPA to issue an enforcement notice must be pursued by way of judicial review, and I have no jurisdiction to determine whether the LPA complied with S172 of the Act. The matter of the adequacy of prior site investigations by the LPA would be a consideration in an application for costs.
21. Varying the Notice to remove the allegation of a change of use of paddock land to residential garden and the siting of associated residential paraphernalia would make the enforcement Notice less onerous. There cannot therefore be any injustice to the appellants in that regard. Furthermore, the appellants' case is that the containers are not operational development, nor in residential use as an independent dwelling such that a new planning unit has not been formed. Those matters remain to be considered in the appeal on grounds (b) and (c).
22. I shall therefore vary the allegation in paragraph 3 of the Notice to: "*Without planning permission, the unauthorised siting of containers for residential use as an independent dwelling.*" I have dealt with the appeal on that basis.

Appeals A-E on ground (b)

23. The main issue is whether as a matter of fact operational development comprising the siting of containers for residential use as an independent dwelling has taken place on the Land. The burden of proof falls on the appellants to make out their case and the test is the balance of probabilities.
24. There is no dispute between the parties that the containers have been sited on the Land. It is the appellants case that those containers are not fixed to the ground and are not buildings but moveable structures. The containers rest on

⁵ *Britannia Assets v SSCLG & Medway Council* [2011] EWHC 1908 (Admin)

sleepers and concrete blocks, and each of the containers was brought onto the Land in one piece by a telehandler.

25. Section 55(1) of the Act states that "*development*" for the purposes of the Act, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of any buildings or other land.
26. Section 55(1A) advises that for the purposes of the Act "building operation" includes, amongst other things, *(d) other operations normally undertaken by a person carrying on business as a builder*. In this regard, it is also necessary to consider whether the containers are buildings. Section 336 of the Act says:

"building includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.

27. The containers are clearly 'structures'. However, the definition of a building has been considered further in the courts and the main parties agree that it has been established that there are three main factors which need to be considered in deciding whether something is a building – size, permanence and physical attachment.
28. Each container is approximately 13m in length, 3m wide and 2.5m in height⁶. In a planning context the containers have an impact that is significantly noticeable in terms of their size and physical presence, considering their location on the edge of a rural settlement in the countryside. In terms of '*permanence*', the containers are lived in by Dale and India Barlow and their daughter. The appellants' case is that this is only a temporary arrangement, until this family can afford to buy, rent or construct a new home. However, the timescales for those alternative arrangements are unknown, and the couple have already been living in the containers for over four years. The containers are connected to mains electricity, water and to a septic tank. Consequently, the current position and prospects are that the containers have a degree of permanence. In terms of '*fixation*', I appreciate that the containers may not have been bolted or physically attached to the ground. However, the courts have held that such a unit can, simply by its own weight be fixed to the ground.
29. Regarding the three tests, I consider because of their size, physical presence and degree of permanence, in this particular location, the containers may be considered to be a building.
30. Furthermore, once the containers were brought onto the Land they were converted and adapted to provide living accommodation. Those works included an internal fit out with a kitchen and shower room/WC, and connections to a supply of water, electricity and also to a septic tank. Moreover, the containers have been modified both internally and externally to provide a single unit of accommodation. Sections of the original container walls have been removed and openings adapted. The two containers have also been sealed together externally by flashings to provide a single weatherproof unit. Those works of conversion and adaptation have taken place over several years. Although I understand those works were undertaken by Dale Barlow, we were told at the

⁶ Proof of Evidence, Elizabeth Maw (paragraph 3.20)

Inquiry that he is a qualified joiner. There is no doubt that the works that have taken place to convert and adapt the containers can be regarded as 'operations normally undertaken by a person carrying on business as a builder'. Building operations have taken place on site.

31. Having regard to the evidence before me, including observations on my site visit, the containers are a building and a building operation has occurred within the meaning of development under S55(1) of the Act.
32. The containers are wind and watertight. They are connected to electricity, have a cold-water supply and foul water/waste is discharged to a septic tank. The accommodation is heated by a wood burning stove, supplemented by electric fan heaters and it has a fitted kitchen, with oven and gas hob (supplied by calor gas) and a utility room with a washing machine. A separate washroom is fitted with an electric shower, WC and sink. There are three bedrooms, including the nursery, wardrobe space and an open plan sitting and dining area.
33. From what I have seen I consider, as a matter of fact and degree, the containers afford the facilities required for day-to-day private domestic existence. They have been adapted for residential purposes and contain the normal facilities for cooking, eating, washing and sleeping associated with use as an independent dwellinghouse.
34. For the reasons given above, I conclude that building operations comprising the siting of a container for use for residential purposes as an independent dwelling has occurred as a matter of fact. The appeals on ground (b) fail.

Appeals on ground (c)

35. The ground of appeal is that the matters alleged in the Notice do not constitute a breach of planning control. On this legal ground of appeal, the onus of proof is on the appellants to make out their case and the test is on the balance of probabilities.
36. Taking into account my findings on ground (b), the containers are a building and a building operation has occurred with the siting of the containers for residential use. Development has taken place for which no planning permission was granted by the local planning authority. This building operation is not permitted development under any provision of the Town and Country Planning (General Permitted Development Order) (England), 2015. A breach of planning control has occurred and the appeals on ground (c) must therefore fail.

Appeals on ground (d)

37. The appellants' evidence on ground (d) turns on a finding that the containers are not buildings. There is no dispute that the containers were first brought onto the Land in January 2020. Therefore, considering my findings on ground (b), that operational development has taken place, the containers were not immune from enforcement action when the Notice was issued on 22 December 2023. The appeals on ground (d) fails.

Appeals on ground (f)

38. The issue is whether the requirements are excessive to achieve the purpose of the notice.
39. Section 173 of the Act indicates that there are two purposes which the requirements of the Notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose of the Notice is to remedy the breach of planning control.
40. The appellants express concern that as originally drafted the requirements of the Notice were ambiguous and excessive. In particular, because the Notice alleged a change of use from paddock land to residential garden but did not require the use of the residential garden to cease. They contend it would be excessive to require residential paraphernalia to be removed from the Land given that its use as a residential garden is not required to cease.
41. However, I have varied the Notice to delete the allegation of change of use to residential garden and siting of associated residential paraphernalia. The Notice now simply alleges the unauthorised siting of containers for residential use as an independent dwelling. To remedy the breach, as varied, the requirements set out in section 5 of the Notice are also varied and now require: *"residential use of the containers to cease; to remove the containers from the Land; and to restore the Land to its previous condition"*.
42. I have had regard to the appellants' concerns. However, "the Land" is clearly defined in section 2 of the Notice. In addition, it is not excessive to require the Land to be restored to its previous condition. The appellants brought the containers onto the Land and they should therefore have the best knowledge of what its previous condition was.
43. The appeals on ground (f) succeed to the limited extent that the requirements have been varied to remedy the amended breach of planning control.

Appeals on ground (g)

44. The issue is whether the compliance periods are reasonable. The appellants consider the time periods are too short to allow them to find affordable accommodation close to Dale and India's daughter's nursery and parents. Efforts so far, including being on the social housing list and self-build register for 2-3 years, demonstrate the difficulties and challenges faced. The occupiers of the containers also find themselves in difficult financial circumstances. The appellants suggest that a period of 18months to cease the use of the containers and 24months to remove them and restore the Land would be more reasonable.
45. The LPA accept that considering the appellants circumstances, a period of 12months to cease the residential use of the containers, remove them from the Land and restore the Land to its previous condition would be more reasonable.
46. I appreciate the difficult personal circumstances of the occupiers of the Land, however there is no guarantee that those will have been resolved within 18months. Furthermore, the enforcement notice was issued to address the

harm to local character and possible issues of flood risk. That said, I agree with the Council that a period of 12months is a more reasonable timeframe within which to cease the residential use of the containers. I am also mindful that an additional period may be required to remove the occupiers' personal belongings, any fittings from the containers and to remove them from the Land. The conclusion I have come to is that a period of 12months strikes the right balance for the use of the containers to cease and 15months for them to be removed and the Land restored to its previous condition. To that limited extent the appeals succeed on ground (g).

Human Rights

47. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law the most fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would interfere with the occupiers' rights under Article 8 and the appellants' rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified in the Notice and considering the variations to the Notice, including an increase in time for compliance, the action is in accordance with the law and pursues legitimate aims of protecting the environment and is necessary and proportionate to the situation.

Conclusion

48. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the notice with variations.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Daniel Marston Solicitor

He called:

Mrs India Barlow Appellant

Mrs Lynn Sherratt Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Elana Kaymer Counsel, Kings Chambers, Manchester

She called

Elizabeth Maw Senior Planning Officer, Contracted to North Yorkshire Council, Urban Studies (Hons), Diploma in Town Planning, MRTPI.

Rachel Robinson Enforcement Team Leader, North Yorkshire Council,
Geography (Hons), Masters in Town and Regional
Planning.