



Appeal Decision

Site visit made on 26 November 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09th December 2024

Appeal Ref: APP/G3110/C/23/3333879

The Land on the south side Of Don Stuart Place, Oxford OX4 2DH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Connor Keen against an enforcement notice issued by Oxford City Council.
 - The notice was issued on 30 October 2023.
 - The breach of planning control as alleged in the notice is Without planning permission the material change of use of the Land from use as amenity green space to use for the stationing of a metal storage container.
 - The requirement of the notice is to remove the metal storage container from the Land.
 - The period for compliance with the requirement is 1 month from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in sections 174(2)(b) and (c) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of the text 'from use as amenity green space' at paragraph 3 of the enforcement notice. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. The appellant has had the opportunity to comment on the alleged breach of planning control stated in the notice through the appeal process. While the allegation may be phrased differently to that previously used by the Council, this does not prejudice the appellant's case or cause any unfairness.

Ground (b)

3. To succeed under this ground of appeal the appellant needs to show that the alleged breach of planning control has not occurred, as a matter of fact.
4. It is claimed that the site has never comprised 'amenity green space', and that it has been used as a 'safety way' and a storage/parking/access area previously. These claims are disputed, but it is not necessary for the notice to specify the former use of the site. To avoid ambiguity, I can vary the notice without causing injustice to any parties by deleting reference to what the former use may have been.
5. There is no evidence before me to suggest the storage container may comprise 'a building'. Based on everything I have read and seen I am satisfied that the storage container is a moveable structure stationed on the land as a use of that land. The alleged breach of planning control has therefore occurred.

6. The appeal under ground (b) must fail.

Ground (c)

7. To succeed under this ground of appeal the appellant needs to show, on the balance of probabilities, that the stationing of the storage container on the land does not constitute a breach of planning control.
8. Section 57 of the Act sets out that planning permission is required for the carrying out of development. Section 55 provides the relevant meaning of 'development', which includes the making of any material change in the use of land.
9. There are conflicting claims relating to the former use of the land, including those from nearby neighbours overlooking the site. It is not the case that part of the site has a lawful use as a 'safety way', authorised by an historic planning permission. This is because it is clear any such use associated with a storage compound has long since ceased, following the development of Don Stuart Place for housing.
10. The site may have previously been used as an informal parking area, but it has not been shown, as a matter of fact and degree, that this was a consistent use for any significant period. It is evident that the land has changed from an undeveloped parcel with no clear or formal purpose, to being almost entirely occupied by the storage container. Moreover, the storage container is an obvious feature in the residential setting on account of its large size and industrial appearance. There has been a significant change in the character of how the land is used, even if its aesthetic appearance has been improved.
11. Reference has been made to a former *sui generis* use of the land, which is a Latin phrase describing a use of land which is 'of its own kind', and not falling within a specific use class¹. It is not the case that changes between different *sui generis* uses do not necessarily require planning permission.
12. Aside from whether the former use of the land did not fall within a specific use class, there has been a marked change in how the land is used. The change is material in planning terms, considering the difference in character between the former and current uses. A material change of use requiring planning permission has therefore taken place.
13. Planning permission is granted for the provision on land of moveable structures required temporarily in connection with and for the duration of operations being carried out on that land or on land adjoining that land². The appellant lives at a property which adjoins the site and there is a gate in the fence between the two parcels of land. However, I have seen no reliable evidence, including what I saw during my visit, of any such operations being carried out to the extent that the storage container would be reasonably required in connection with them.
14. The modest size of the site means that the laying of any loose stone, hardsurfacing, kerbs, or the carrying out of any other landscaping works at the site would not reasonably require materials or tools to be stored in the

¹ As defined in The Town and County Planning (Use Classes) Order 1987 (as amended)

² Under the provisions of Article 3(1) and Class A of Part 4, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

container. Indeed, the sizes of the respective footprints of the site and the storage container prevent landscaping works from being carried out to the majority of the site.

15. The appellant has instructed a groundworker/landscape gardener to carry out unspecified works to the site and the adjoining garden, which were due to commence in Summer 2023. Those works were paused once the notice was issued, and it is stated the storage container is essential for the safe and dry storage of tools, plant, machinery and materials. However, the evidence does not suggest it was necessary, in connection with any such works, for the storage container to be stationed on the land when it was first placed there.
16. The storage container is currently used to house small amounts of items and materials which may be associated with operations carried out on the site or adjoining land. There are no explanations before me as to what those items and materials may have comprised or what they were/are required for specifically.
17. Considering all the evidence provided, as a matter of fact and degree, it has not been shown that the storage container was or is required temporarily in connection with and for the duration of operations being carried out at the site or on adjoining land. It has not therefore been demonstrated, on the balance of probabilities, that the development benefits from any form of planning permission.
18. Although there may well be many examples of storage containers elsewhere within Oxford without the benefit of express planning permission, this does not mean that those storage containers are not in breach of planning control. Examples of other storage containers across the city do not therefore lead me to any different conclusions on the legal matters relevant to this appeal.
19. The appeal under ground (c) must fail.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

L Douglas

INSPECTOR