



Appeal Decision

Site visit made on 26 November 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2025

Appeal Ref: APP/W1850/X/24/3348937

**Redwood Orchard, Redwood Lane, St. Michaels, Tenbury Wells,
Herefordshire WR15 8TL**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) 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 Limited against Herefordshire Council.
- The application ref 241337 is dated 20 May 2024.
- The application was made under section 192 of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the stationing on site of a shipping container for use ancillary to the lawful agricultural use of the land.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs has been made by T&CPP Limited against Herefordshire Council. That is the subject of a separate decision.

Main Issue

3. The appeal is made against the Council's failure to give notice within the prescribed period of a decision on the application for an LDC. The Council confirm that had they retained jurisdiction to determine the LDC application, they would have refused to grant a certificate. The main issue is therefore whether the Council's decision to refuse to grant an LDC would have been well-founded had they determined the application.

Reasons

4. The onus is on the appellant to demonstrate, on the balance of probabilities, that the proposal would be lawful.
5. Planning permission is required for the carrying out of any development of land¹. "Development," means 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 land².
6. The LDC application does not include a drawing indicating the proposed siting of the container. The appellant contends that the lawful use of the whole site

¹ S57 of the Town and Country Planning Act 1990

² S55 of the Town and Country Planning Act 1990

is agricultural and therefore wherever the shipping container is sited it would not require planning permission, provided it is used ancillary to the agricultural use. They argue that as the container could be moved around the site, it is unnecessary to state where it would initially be sited.

7. There are three primary factors which need to be considered in deciding whether something is a building – size, permanence and physical attachment. None of these factors alone are decisive.
8. With regard to size, the proposed elevation and plan indicate a typical rectangular shipping container. There is no dispute that the proposal would be a typical shipping container. Therefore, it is reasonable to conclude that it could be brought onto the site on the back of a large lorry as a single unit.
9. In terms of permanence, the appellant states the container would be 'movable' and could subsequently be moved around the site. However, there is no evidence of how the container would be moved once it is initially brought on to the site.
10. The appeal site comprises two small fields, a track providing access to them and a strip of trees/shrubland along the south west boundary linking in with the central landscaped part of the site where a log cabin is located. There is also a small stable building and lorry body in the north west corner of the south eastern field. All of this is within the red edged area.
11. Access along the track by a large lorry carrying the container would likely be relatively straightforward, enabling a crane to lift the container on to the parts of the site located adjacent to the track. However, it is unclear how it would be craned into position on the parts of the site further away from the track, even more so on the areas of land where there are existing trees/shrubland and structures. Moreover, the site is not excessively large and therefore even if the container could be physically moved there is no indication as to why it would be. No evidence has been provided to indicate exactly how it would be used ancillary to the agricultural use, eg, storing animal feed, machinery or sheltering livestock. Therefore, it is reasonable to conclude that it would not likely be moved around the site. In addition, there is no indication that the container is only required temporarily. Consequently, based on the evidence before me, the container would have a significant degree of permanence.
12. The final factor is physical attachment. The appellant confirms the container would not be affixed to the ground. Nevertheless, it could be considered fixed to the ground simply by its own weight. There is no evidence that it would be on wheels or skids. As such, given the size of the container, the only way it could feasibly be moved around the site is by specialist mechanical means, most likely a crane. Accordingly, I consider that it would have a significant degree of physical attachment to the ground.
13. Overall, the use of the container for purposes ancillary to the agricultural use of the land would not constitute a material change in the use of the land. However, having regard to the above three factors, although the container could likely be brought onto the site as a single unit, it has not been sufficiently demonstrated that its degree of permanence and physical attachment would not amount to it being a building, which would require planning permission.

14. I find therefore, the evidence is not sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the stationing on site of a shipping container for use ancillary to the agricultural use of the land would be lawful.

Other Matters

15. The appellant refers me to a comment made in a newspaper article written by Jeremy Clarkson. However, reference to containers 'usually don't need planning permission' merely highlights that it is a matter of fact and degree.
16. The appellant has also referred me to a previous appeal decision³ in relation to the siting of 98 containers. However, the details of the evidence available to the Inspector in that decision are not before me and therefore I cannot be certain there are any direct comparisons that weigh in the proposal's favour. In addition, in that decision the Inspector notes 'the appeal site is already fully hard surfaced', suggesting the containers could easily be moved if needed. That differs significantly from the proposal before me.
17. The appellant states 'several applications have been approved on this appeal site for the caravans to be sited and used ancillary to agriculture'. Notwithstanding that the details of these approved applications are not before me, the proposal is for a container, not a caravan, and therefore there may have been significantly different considerations in the Council's determination of the applications to the appeal proposal before me.
18. I have also had regard to the LDC applications approved by other local planning authorities. In the Waverley Borough Council case (WA/2024/00634), there were large agricultural vehicles present on site that could be utilised for moving the container and ample areas of land with easy access. In relation to the North Warwickshire Borough Council case (PAP/2024/0107), the Officer's report does not appear to consider the three primary factors of size, permanence and physical attachment. Therefore, I do not consider that either of these decisions weigh in favour of the proposal. In any event, the various LDC applications and appeal decisions⁴ referred to me by the parties highlight that such cases are very much a matter of fact and degree dependent on the specific circumstance of the case.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development would have been well-founded had they determined the application 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.

A Walker

INSPECTOR

³ Appeal reference: APP/V0728/W/23/3314720

⁴ Appeal references: APP/W3005/X/22/3302578 and APP/R3650/X/24/3343201