



Appeal Decision

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 08 April 2025

Appeal Ref: APP/W1850/X/24/3357500

Log Cabin at Redwood Orchard, 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 refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by T and CPP Limited against the decision of Herefordshire Council.
 - The application ref 242329, dated 9 September 2024, was refused by a notice dated 23 October 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 “proposed stationing of a caravan compliant shipping container shown on the accompanying plan can be lawfully sited with the land edged red on the accompanying plan for use ancillary to agriculture under the certificate granted on appeal ref: APP/W1850/X/22/3295616 (P214586)”.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by T and CPP Limited against Herefordshire Council. This application is the subject of a separate decision.

Preliminary Matters

3. Considering the matters at appeal it was agreed with the parties that it was not necessary to visit the appeal site. I have therefore made my decision based on the representations and supporting information submitted by the main parties as a matter of course as part of the application and appeal process.

Main Issue

4. Section 192(2) of the Town and Country Planning Act, 1990, as amended (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or began at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the proposed development are not relevant in this appeal and the burden of proof is on the applicant to make out their case on the ‘balance of probabilities’. The main issue is whether the Council’s decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.

Reasons

5. The proposed development is described as “the stationing of a caravan compliant shipping container for use ancillary to agriculture.” The application is accompanied by drawings of the shipping container which show that it would be 9.12m long, 2.44m wide and 2.59 metres in height. Floor plans of the proposed container show that it would comprise a living and kitchen area with a double bed and a separate shower room with WC. A plan showing the extent of landownership, stables and existing cabin is also included, although the intended location of the proposed container is not indicated on it.
6. There is no dispute that the land is in use for agriculture and a lawful development certificate granted on 25 October 2022 certified that on the 16 December 2021, the siting of a caravan for use ancillary to the agricultural use of Land at Redwood Orchard, St. Michaels, Tenbury Wells would have been lawful within the meaning of section 191 of the Act¹. Having regard to that decision, it is the appellant’s case that the siting of the shipping container the subject of this appeal, which they consider falling within the lawful definition of a caravan (s29(1) Caravan Sites and Control of Development Act 1960) (CSCDA60) would be lawful for use ancillary to agriculture.
7. Section 55(1) of the Town and Country Planning Act 1990 (as amended) states that “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 land. Section 55 (e) of the Act sets out that the use of any land for the purposes of agriculture shall not be taken for the purposes of the Act to involve development on the land.
8. The term ‘caravan’ is defined in CSCDA60 as meaning ‘any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include, (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent’. In law, a caravan is only a caravan if it meets the description laid down in section 29 of the CSCDA60 and Caravan Sites Act 1968 (CSA68) as amended.
9. The appellant is seeking consent for the “proposed stationing of a caravan compliant shipping container.” Floor plans and elevation details of the ‘structure’ to be sited on the land have been supplied. I have used the word structure as that is a neutral word for a building or caravan. However, the description of the proposal is ambiguous, as the structure cannot be a shipping container and a caravan. It is either a caravan as defined by section 29 of the CSCDA60 or it is a building. The siting of a caravan is generally held to constitute a use of the land and not operational development. A caravan, which is a caravan in law, and which is used for the purposes of agriculture, would not be development for the purpose of the Act, since there would be no operational development and no material change of use.
10. In this case, having regard to the details of the proposal supplied, it is necessary to determine whether the proposal is a ‘caravan’ in law, or if it is a building. It is established case law that there are three main factors which need to be

¹ APP/W1850/X/22/3295616

considered in deciding whether something is a building - size, permanence and physical attachment.

11. The ordinary definition of a container is a hollow object, such as a box or a bottle, that can be used for holding something, especially to carry or store it. A shipping container is generally a very large metal box used for transporting goods. In terms of size, the submitted details show what appears to be a large shipping container. However, it also appears to have been modified by the introduction of windows, doors and internally fitted out with habitable accommodation. It is not clear whether those modifications would be carried out before the container is transported to the appeal site, or whether the works of modification would be undertaken whilst in situ. Furthermore, there are no details of why a shipping container would be modified for human habitation when its purpose is to be used as ancillary to agriculture.
12. Nevertheless, it is reasonable to assume that the shipping container could be brought onto the site on the back of a large lorry as a single unit and lifted by crane onto the land. There is a track leading onto the land which comprises two small fields, and thus it is assumed that the container would be placed close to the track where it could be craned into position. It is claimed that the container is moveable, however, no information has been provided as to how it would be moved once initially brought to site by lorry and lifted into position. The details supplied do not show the container to be on skids nor to have been adapted to be towed. Moreover, considering the relatively small size of the site, even if the container could be physically moved there is no indication as to why it would be. Given that it has been adapted for human habitation it is also unclear as to how it would be used ancillary to agricultural use. It is unlikely to be used to store agricultural machinery or for sheltering livestock when it has been fitted out with primary living accommodation. There is no evidence before me to suggest that the container is only required for a temporary period and from the evidence available it is reasonable to conclude that it is unlikely that the container would be moved around the site. It would therefore have a significant degree of permanence.
13. In terms of the final factor, I appreciate that the container may not be 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. In the absence of skids or a mechanism for towing, considering the size of the container, it could only be moved by specialist mechanical means, e.g. a crane. It would therefore have a significant degree of physical attachment to the ground.
14. For the reasons set out above, the evidence is not sufficiently precise and unambiguous for me to conclude that the proposed shipping container is a caravan. Whilst the container could be adapted for human habitation and brought to 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.
15. I therefore find on the balance of probabilities, that the proposed stationing on site of a "caravan compliant shipping container" shown on the accompanying plan and sited within the land edged red on that plan for use ancillary to agriculture would not be lawful.

Other Matters

16. The appellant has referred me to an Opinion of Counsel in relation to an application for an LDC at 38-41 Windmill Street, for what he considers to be a comparable proposal. However, that opinion is based on the assumption that the proposal is a caravan. In this case I have found that the evidence before me is not sufficiently precise and unambiguous for me to conclude that the proposal is a caravan and not a building. I therefore give this consideration little weight.
17. I have had regard to the decisions of Waverley Council in relation to LDC applications for 'caravan compliant containers' (WA/2024/01480 & WA/2024/01785). However, in those cases it is not clear that the officer considered whether what was proposed was actually a building and considered the three tests in terms of size, physical attachment and permanence. In any event, in an application for an LDC what is considered is fact sensitive and a matter of fact and degree dependent on the specific circumstances.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development was well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act, as amended.

Elizabeth Pleasant

INSPECTOR