



Appeal Decision

Site visit made on 23 September 2025

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 11th November 2025

Appeal Ref: APP/R3650/X/24/3351094

**Land Opposite Junction of Glen Lea and Nutcombe Lane, Nutcombe Lane,
Surrey GU26 6BP**

- 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 Mrs Angela Jenkins against the decision of Waverley Borough Council.
 - The application ref WA/2024/01413, dated 7 July 2024, was refused by notice dated 30 August 2024.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The development 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 attached plan for use ancillary to the lawful use of agriculture and equestrian use'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against the Council. That application is the subject of a separate decision.

Preliminary Matters

3. The description of the proposal in my banner heading above is taken from the appeal form since this was not stated on the application form.
4. The appellant submitted late evidence in the form of Counsel's opinion¹ which was accepted. The Council was offered an opportunity for comment but no comment was made on the content of the late evidence. Copies of case law judgments referenced in written evidence but not provided were requested and copies sent to the other party and an opportunity for comment was given.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant a lawful development certificate (LDC) was well-founded. This will turn on whether the appeal development was lawful as at the date of the LDC application. Planning merits are not relevant and the onus is on the appellant to make their case on the balance of probability.
6. On the basis that s195(2) of the Town and Country Planning Act 1990 (1990 Act) refers to whether or not the Council's refusal is well-founded, rather than the

¹ Dated 28 March 2025

reasons for the decision, it is appropriate that I consider new evidence submitted with the appeal.

Reasons

7. The appeal site is an area of land with a lawful agriculture and equestrian use which has a gated access off Nutcombe Lane. The land slopes down from the eastern and western site boundaries into a roughly central valley.
8. In 2022 a LDC for the siting of a caravan for use ancillary to the mixed agriculture and equestrian use² was granted for this site. In 2024 a LDC application in respect of the siting of a shipping container for use ancillary to agriculture and equestrian use was refused³ and dismissed at appeal⁴ on the basis that the proposal represented operational development⁵. During the course of the 2024 Appeal, the Council granted a LDC⁶ confirming that a 'caravan compliant container' would be covered by the 2022 LDC.
9. The proposed shipping container in this case would be the same as that which was the subject of the 2024 Appeal Decision measuring approximately 12.75m in length 3m in width and 3.1m in height and not being designed or adapted for human habitation.

Legislation and case law

10. Section 191(2) of the 1990 Act states that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission, because the time for enforcement action has expired, or for any other reason); and (b) they do not constitute a contravention of the requirements of an enforcement notice. The dispute here is whether or not the proposal represents development requiring planning permission.
11. Section 55(1) of the 1990 Act sets out the meaning of 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'*. There is no suggestion that the proposed development represents a material change of use. The question is whether or not it constitutes operational development. If the proposal would result in the erection of a building, this is indicative of operational development.
12. The term 'building' is defined within section 336(1) of the 1990 Act to *include 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building'*. The Courts have held that in assessing whether or not an object is a building, regard must be had to size, permanence and physical attachment with none of these factors being decisive.

Analysis

13. In terms of size, the container is not so large as to mean that it could only feasibly be constructed on site but it is nonetheless of substantial size.

² WA/2022/02043 (2022 LDC)

³ WA/2024/00398 (2024 Refusal)

⁴ APP/R3650/X/24/3343155 (2024 Appeal Decision)

⁵ While the appellant refers to a High Court challenge in respect of this appeal decision, there is no indication that this has been pursued or that this decision has been quashed

⁶ Ref: WA/2024/01480 (2024 LDC)

14. As to permanence, this is construed in terms of significance in the planning context i.e. that an item is in situ for long enough to be of significance. The Courts have held that an object need not be permanent in the sense of having an everlasting presence but rather that there are degrees of permanence; a greater degree of permanence points toward an object being more likely to be deemed a building.
15. While I appreciate that shipping containers are designed so as to be filled and moved and emptied with relative ease when using specialist equipment, I have no detailed evidence here indicating that the shipping container is likely to be moved. Indeed, the topography of the site means that there are limited locations within the site where the container could be sited without preparation of the land. The sloping site equally also would make the process of moving the shipping container around on the site more difficult. Water-logged land also would mean that the container would be likely to embed into the land, further complicating any process of moving it. It therefore seems that once in position, the shipping container would be likely to remain in situ for a considerable length of time.
16. In terms of physical attachment, while the appellant emphasises that the container could be moved in one piece, it would be held in place by its own very significant weight such that it would very likely require specialist equipment to move it. The degree of affixation would thus also point towards the container representing a building. Given the nature of the appeal site, it is also possible that the weight of the container would cause it to sink into the ground, increasing the degree of affixation.
17. Drawing all of these matters together, I find as a matter of fact and degree on the available evidence that the assessment of the shipping container as against the factors of size, permanence and attachment points toward this constituting a building.

'Caravan compliant' container

18. As detailed above, the 2022 LDC certified as lawful the siting of a caravan on the site ancillary to the lawful use. The 2024 LDC certified that siting of a shipping container of the same dimensions as that proposed here but which was adapted for human habitation would be covered by the 2022 LDC by virtue of it meeting with the statutory definition for a caravan⁷.
19. The appellant contends that the proposed shipping container in this appeal would be 'caravan compliant' but for the fact it is not proposed to be adapted for human habitation and that it could be so adapted without planning permission. Plainly though, unless the proposal here were for a container which was designed/adapted for human habitation, it would not be covered by the 2022 LDC or indeed by the 2024 LDC.
20. Counsel's opinion submitted by the appellant references the importance of taking account of the planning history of a site and cites case law in support of this⁸. It is thus contended that the Inspector in the 2024 Appeal Decision ignored the 'approval' for a caravan compliant container (in the 2024 LDC) with 'no justifiable reason' for doing so.

⁷ Contained in Section 29(1) of the Caravan Sites and Control of Development Act 1960 and Section 13(1) of the Caravan Sites Act 1968

⁸ Albeit that reference is made to determinations made where regard is to be had to the development plan and relevant material considerations as opposed to determinations in respect of lawfulness

21. Firstly, the Inspector in the 2024 Appeal Decision did not ignore the existence of the 2024 LDC. Rather, the Inspector indicated that the proposal which was the subject of the 2024 LDC was not the proposal before the Council in the 2024 Appeal and that the 2024 LDC did not affect her findings. Secondly, while the history of a site can often be of relevance in the context of a LDC determination, an Inspector is not bound by previous LDC determinations of the LPA.
22. While I can appreciate that the appellant might feel that there has been inconsistency in the Council's decision-making, it was not unreasonable for the previous Inspector to take the approach that the 2024 LDC did not affect her findings (since she had found that the proposal which was before her did represent operational development and plainly the 2024 LDC did not cover that proposal).

Other decisions

23. An appeal decision⁹ is cited by the appellant where a large number of shipping containers at a self-storage facility were found to not represent operational development. However, the assessment is a matter of judgment in each case and there are obvious factual differences in the referenced appeal decision as compared to this case including that the self-storage facility was a hard surfaced area and the evidence before the Inspector indicated that the containers in that location could be removed swiftly and easily.
24. The appellant draws my attention also to decisions made by the Council and by other local planning authorities where the siting of shipping containers have been found to not represent operational development. I am not bound by these decisions and they are necessarily very fact-specific and so it is possible to distinguish these even where the container in question is 'identical' to that proposed here. For example, in the Lower Punchbowl Farm¹⁰ Officer Report, reference is made to the likelihood of the shipping container being moved around the site fairly frequently due to the proposed use being in connection with haymaking and to the presence of an access track on site to facilitate movement.
25. I find then as a matter of fact and degree that the proposed development represents operational development in respect of which planning permission has not been granted and so it would not be lawful.

Conclusion

26. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for 'The proposed siting of a shipping container within the land edged red on the attached plan for use ancillary to the lawful use of agriculture and equestrian use' is 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).

V Bond

INSPECTOR

⁹ APP/V0728/W/23/3314720

¹⁰ Ref: WA/2024/00634