



Appeal Decision

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 24 August 2023

Appeal Ref: APP/N2739/X/22/3304569

Land Off Heck Lane, Great Heck, Goole, North Yorkshire DN14 0BL

- 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 Mr Stephen Dagg against the decision of Selby District Council.
 - The application ref 2021/1326/CPE, dated 25 October 2021, was refused by notice dated 14 July 2022.
 - The application was made under section 191(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 'within the red line area shown on the submitted plans, the siting of 2 container buildings for general storage use only and the siting of 2 container buildings, joined together by a link container building, which are used to provide, welfare accommodation and private recreational leisure and camping facilities. Also the construction of an access track and area of hard standing around the barn.'
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Decision

1. The appeal is allowed in respect of Containers 1 and 2 and attached to this decision is an LDC describing the development which is found to be lawful.
2. In respect of Containers 3 and 4, the appeal is dismissed.

Application for costs

3. An application for costs was made by Mr Stephen Dagg against Selby District Council. This application is the subject of a separate decision.

Preliminary Matters

4. On 1 April 2023, Selby District Council merged with a number of other councils to form the new unitary authority of North Yorkshire Council. This appeal decision however refers to the name of the Council shown on the decision notice which is the subject of the appeal, which is Selby District Council.
5. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits are not relevant in deciding an LDC application or appeal. As the determination of this appeal turns on matters of law, it was not necessary for me to carry out a site inspection.
6. The relevant test of the evidence is 'the balance of probability', and the burden of proof rests on the appellant. It is consistent with the Planning Practice Guidance that an appellant's case should be accepted if there is no evidence to contradict or otherwise make his or her version of events less than probable, provided that an appellant's evidence is sufficiently precise and unambiguous.

Main Issue

7. The appeal is confined to reviewing the Council's decision, to establish whether the refusal to grant an LDC was well-founded; that is, the decision itself, and not necessarily the reasons for it.

Reasons

8. The application is for development described as *'within the red line area shown on the submitted plans, the siting of 2 container buildings for general storage use only and the siting of 2 container buildings, joined together by a link container building, which are used to provide, welfare accommodation and private recreational leisure and camping facilities. Also the construction of an access track and area of hard standing around the barn.'* The construction of the access track and the area of hardstanding were found to be lawful by the Council, so I have not considered these elements any further.
9. The development in question comprises two sets of two containers which are located to the south of the field. The land to which the appeal relates is only that which is physically occupied by the containers within the red line boundary.
10. With reference to the Council's second reason for refusal, Containers 1 and 2 were found unlawful because it had not been demonstrated that they had been used for agricultural activities for a period of ten years. The third reason for refusal states that Containers 3 and 4 were found to be unlawful on the grounds that they were not complete within the relevant time period, and also because there was insufficient evidence to demonstrate a use of welfare accommodation, private recreational leisure and camping facilities.
11. Therefore, although the type of development specified in the application form was operational development, the Council have also considered the use of the land. The appellant too has provided evidence in respect of the use. I shall therefore follow the same approach in my reasoning.

Time limits

12. The time limits for lawfulness are set out in part 171B of the Planning Compensation Act 1991. It states that, where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
13. In the case of a material change of use of land, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. The ten year rule also applies where a dwellinghouse is erected unlawfully and used as a dwellinghouse from the outset, even if the building, as an operational development, became immune from enforcement action after four years.

Operational development

14. The first step is to consider whether or not the containers are buildings amounting to operational development. Section 55(1) of the 1990 Act says that 'development' includes the carrying out of building, engineering, or other

operations. Such operational development comprises activities which result in some physical alteration to the land with some degree of permanence. A building is defined by section 336 of the 1990 Act as including any structure or erection. The courts have held that three primary factors to establish what constitutes a building are (a) size, (b) permanence and (c), physical attachment. No one factor is decisive.

15. Containers 1 and 2 are each around 9m long by 2.7m wide, with a combined footprint of around 48.6sqm. Containers 3 and 4 comprise two longer containers linked in the middle by a shorter container, forming an H shape. The longer containers are approximately 13.2m long by 2.6m wide, and the shorter is about 2.5m in length, so they have a combined footprint of approximately 75.14sqm. The structures are all large enough to be entered into in the manner that one would a building.
16. Due to their size and scale, the containers have a physical presence which alters the characteristics of the field. In contrast to the previously open land, they add development of a significantly different visual character to the agricultural nature of their surroundings.
17. The appellant confirms that the containers were delivered individually to the site on trucks and were lifted into place with a crane. They sit on sleepers and are held down by their own weight. They are substantial metal structures that are undoubtedly very heavy even when empty. Their size and weight indicate that they could only be moved to another location with specialist lifting equipment. The appellant confirms that the containers are intended to remain in place permanently.
18. Drawing these factors together, I am satisfied, on balance of probability, that both sets of two containers are buildings for the purposes of the 1990 Act.

The four year limit for operational development

19. In 2017, a planning application, ref: 2017/0331/FUL, was submitted and refused for the retrospective erection of four steel containers for storage and accommodation and change of use of land from agricultural to residential curtilage. There is no dispute between the parties that the containers were already in place by then, first appearing on site in Google Earth images from 2016.
20. With specific reference to Containers 3 and 4, the Council's stance was that they were not complete within the relevant period. This is on the basis of photographs showing that the structure was not watertight as sunlight could be seen through gaps. Furthermore, the Council argue that it is unclear from the evidence if the containers were joined together, or when they were adapted to reach a state of substantial completion.
21. The appellant explains that the H shaped arrangement has been the same since 2016, and that the containers are held together by their own weight. He states that a water-tight seal was not needed for the intended use of the structure, or to render it substantially complete in planning terms. There is no statutory definition of the term 'substantially completed'. However, it is consistent with case law in *Sage v SSETR and Maidstone Borough* [2003] UKHL 22 that a holistic approach should be taken when considering this matter.

22. It was held that 'regard should be had to the totality of the operations which the person originally contemplated and intended to carry out.' Accordingly, in that case, it was concluded that 'if it is shown that he [the developer] has stopped short of what he contemplated and intended when he began the development, the building as it stands can properly be treated as an uncompleted building against which the four year period has not yet begun to run.'
23. It is apparent from the appellant's evidence that Containers 3 and 4 were completed to his satisfaction for the purpose he intended, and indeed he has commenced that use. Not all buildings are, or need to be watertight, as this largely depends on their use. In the absence of compelling evidence to the contrary, I am satisfied that Containers 3 and 4 may be regarded as having been substantially completed for the purposes of the appeal by 2016.
24. The Council does not raise any issues regarding the substantial completion or otherwise of Containers 1 and 2. Therefore, on the available evidence, if the containers were considered solely to be operational development within the lawful use of the land, they would have acquired immunity from enforcement as they have been in place for more than four years.

Use of the containers

25. Consequently, in order for the appeal to succeed, the appellant needs to show that the containers are in a use ancillary to agriculture, and that no development by way of a material change of use has occurred. As the containers have not been in place for ten years or more, they cannot have acquired lawfulness for any material change of use through the passage of time.
26. The Planning Practice Guidance explains that there is no statutory definition of the term 'material change of use'. However, it is linked to the significance of a change and the resulting impact on the use of land or buildings. Whether a material change of use has taken place is a matter of fact and degree and this should be determined on the individual merits of a case. It is consistent with relevant case law to consider whether the nature and scale of a new use results in such a change to the definable character of the use that there has been a material change of use.
27. Agriculture is defined in section 336 of the Town and Country Planning Act 1990 as including: 'horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and 'agricultural' shall be construed accordingly'.
28. The Council argue that they have found little evidence of agricultural activity at the appeal site. On 11 January 2022, the visiting officer saw no agricultural activity or livestock on the land, which was grassed and overgrown. However, this circumstance in itself does not extinguish the lawful agricultural use of the land.

29. The appellant explains that he bought the site so that he and his wife could grow their own vegetables, keep livestock, and teach their grandchildren about food production and keeping and caring for livestock. To that end, in addition to the provision of the containers, four raised beds were created, and post and wire fencing was installed.
30. The appellant describes a private recreational use of the land which includes hobby farming. Although he has not yet brought any livestock to the land, this is his future intention, providing the containers can remain for incidental storage and welfare purposes. He envisages erecting further fencing to enclose and separate the animals, laying further small areas of aggregate and potentially constructing small animal shelters or pens.
31. So far, the appellant has only used the land for cutting hay, which has been stored in the barn, keeping the fruit trees that are present at the field, and growing vegetables in the raised beds. He argues that all of these activities fall within the definition of agriculture, as well as the storage and associated welfare facilities.
32. In the case of Containers 1 and 2, the development applied for is siting for general storage use only. The roofing between them is to provide additional sheltered storage space. The appellant says that the containers are used for storing equipment used to maintain the adjacent land. He confirms that he is not renting out the storage containers or using them for storing equipment used for any off-site business or use.
33. A Council officer visited the site on 11 January 2022 and noted that one of the containers she looked inside contained aggregate, fencing, paint and a mower. These are things, the appellant argues, that might reasonably be expected to be required in connection with the maintenance of a parcel of agricultural land.
34. On the detail available, it seems to me that the use of Containers 1 and 2 to store agricultural materials and equipment does not notably change the character of activities on the appeal site. There is little to suggest, for example, that the use of this part of the site has been intensified to any significant degree, or substantially changed in any other way. I am therefore satisfied that, in the case of Containers 1 and 2, no development amounting to a material change of use has taken place that would constitute a breach of planning control.
35. For Containers 3 and 4, the development applied for is their siting to provide welfare accommodation, and private recreational leisure and camping facilities. They are for Mr and Mrs Dagg and their family members to use in association with their activities on the agricultural land. Section 10 of the 2017 application form shows that the accommodation containers are to provide 'kitchenette/living room, bedroom x 2 and bathroom for when we stay on land.' The email of 12 July 2021 from the Council to the appellant's agent confirms the presence of 'some facilities internally to enable residential use'.
36. Whilst I accept that the containers have been used in connection with agriculture, it does not automatically follow that that use is ancillary or incidental to it. On the contrary, from the limited evidence available, Containers 3 and 4 amount to a form of dwelling, even if they are only occupied on a short term or holiday basis. The nature of the land use has changed to the point where the field now appears to serve the purposes of the

inhabitants of Containers 3 and 4 by providing them with recreational and leisure opportunities while they are present. The fact that the containers occupy a relatively small plot of land in proportion to the wider site is not determinative.

37. In terms of duration, Section 3 of the 2017 form refers to accommodation at the land for a few days at a time and camping in the summer. I note from the email of 12 July 2021 that the appellant confirmed he had been using the facilities 'on weekends and during school holidays for overnight accommodation.' In his statement of case, he says that the containers have been used for 'occasional' overnight stays totalling less than 28 days a year, arguing that this level of use is de minimis for planning purposes.
38. However, if he is able to state with certainty that Containers 3 and 4 have been occupied for less than 28 days a year since approximately 2016, this would indicate that he has been able to keep a running total of the exact dates when the land was occupied. No such evidence has been provided to the appeal, and so I cannot be certain that the residential use of the land has been de minimis.
39. Taking the evidence relating to Containers 3 and 4 as a whole, I find that a material change of use to a mixed use comprising residential and agricultural use has taken place. I am satisfied that this material change in the use of the land amounts to development in the terms of s55 of the Act, such that it required a grant of planning permission.

Conclusion

40. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Containers 1 and 2 was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.
41. In respect of Containers 3 and 4, I conclude that the Council's refusal to grant a certificate of lawful use or development was 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.

Elaine Gray

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 25 October 2021 the use and operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and annotated in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Signed

Elaine Gray

Inspector

Date: 24 August 2023

Reference: APP/N2739/X/22/3304569

First Schedule

Containers 1 and 2 for general agricultural storage

Second Schedule

Land Off Heck Lane, Great Heck, Goole, North Yorkshire DN14 0BL

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 24 August 2023

by Elaine Gray MA, MSc, IHBC

Land at: Land Off Heck Lane, Great Heck, Goole DN14 0BL

Reference: APP/N2739/X/22/3304569

Scale: Not to Scale





Costs Decision

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 24 August 2023

Costs application in relation to Appeal Ref: APP/N2739/X/22/3304569
Land Off Heck Lane, Great Heck, Goole, North Yorkshire DN14 0BL

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Paragraph 49 of the PPG makes it clear that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, and also with respect to the substance of the matter under appeal.
3. The appellant voices concerns relating to the Council's handling of the LDC application that is the subject of the appeal, the time taken to reach a decision, and the nature of the advice they gave him. However, whilst I recognise the appellant's frustration, these matters do not relate directly to the appeal procedure. It is open to the appellant to raise these matters with the Council through the proper procedures if they so wish.
4. The appellant goes on to say that the Council refused the LDC application based on evidence from their enforcement file comprising a letter from MM Planning, dated 21 November 2018. In email correspondence, the Council say that this letter provides contradictory information over the use of the appeal site. The appellant states that he was not allowed the opportunity to see and respond to this letter.
5. In response to the appellant's request for the letter, the Council stated that the letter had to be kept confidential at that time, although they did anticipate that it would need to be made available at appeal. If an authority deems a document to be confidential, as is frequent in enforcement cases, then it is not unreasonable to decline to divulge such a document.
6. As the letter was written on the appellant's behalf by his own planning consultant at the time, it might be assumed that the appellant was aware of its contents. In any event, from my own reading of the letter, it does not appear that the Council's decision turned solely on the information within this document.
7. The appellant says that the Council have disregarded definitions set out in legislation and well-established case law. However, as he does not set out the

specific examples he is concerned about, it is difficult to comment on these in the context of this decision. He argues that the Council have disregarded examples of similar appeals. Whilst similar appeals are material considerations, but they are not determinative, as every case is to be determined on its own merits.

8. Finally, the appellant states that the Council did not produce any evidence to substantiate the reasons for the refusal of the LDC application. The Council have declined to submit a statement of case for the appeal, and they are not required to do so. However, they have provided a copy of the planning officer's report which sets out their analysis of the application.
9. As may be seen from the appeal decision, I have reached a different conclusion to the Council on a number of issues. These are matters of professional opinion in light of the available evidence, and professional opinion is often found to differ. The Council have explained their position and presented the analysis they undertook in the officer's report. The fact that they have reached a different conclusion to the appellant does not in itself amount to unreasonable behaviour.
10. Ultimately, however, the purpose of the appeal is to review the Council's decision to establish whether the refusal to grant an LDC was well-founded. The decision itself is subject to review, and not necessarily the reasons for it. The appeal was therefore necessary in order to examine the matters at hand.
11. As noted above, parties in planning appeals normally meet their own expenses. The appellant states that he has had to incur additional expenses in relation to the appointment of a planning consultant to provide guidance and handle the appeal process. The appointment of a consultant may be desirable, but it is not an obligatory part of the appeal process.

Conclusion

12. Therefore, drawing these threads together, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Elaine Gray

INSPECTOR