



Appeal Decision

Site visit made on 14 May 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2020

Appeal Ref: APP/Y3940/C/19/3243646

Atworth House, 194a Bath Road, Atworth, Melksham, Wiltshire SN12 8HF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Gary Gale-Sides against an enforcement notice issued by Wiltshire Council.
 - The enforcement notice was issued on 13 November 2019.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the unauthorised siting of a shipping container as shown in the photograph attached to the notice.
 - The requirement of the notice is:
Permanently remove the shipping container from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b),(c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Reasons

Appeal on ground (b) – that the matters stated in the notice have not occurred

1. A shipping container is shown on the photograph attached to the enforcement notice as being within the appeal site. There is no dispute that it was in place long before the issue of the notice. As a matter of fact, the matter stated in the notice had occurred prior to the date of issue of the notice. The appeal on ground (b) fails.

Appeal on ground (c) – that the matters stated in the notice do not constitute a breach of planning control

2. The enforcement notice alleges the carrying out of operational development. The appellant argues that the siting of the container constitutes a use of land, one that is incidental to the use of the dwellinghouse as such, and that by virtue of s.55(2)(d) of the Act, does not constitute development.
3. The court in *Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen and Baldwin's Iron and Steel Co.Ltd* [1949] 1 KB 385 found that three factors - size, permanence and degree of physical attachment - were relevant in deciding what was a building or structure. That was a case concerned with rating legislation, but its appropriateness to planning legislation was confirmed in *Barvis Ltd v Secretary of State for the Environment* [1971] 22 P&CR 710. A more recent case, *Skerrits of Nottingham Ltd v Secretary of State*

for the Environment, Transport and the Regions and Harrow LBC (No.2) [2000] 2 PLR 102 upheld the approach set out in *Cardiff Rating Authority and Barvis*.

4. Dealing firstly with size, the container is a 20DV model, measuring about 6m in length, 2.4m in width and 2.6m high. It is the size of a small garage, and larger than many sheds, both of which are readily recognised as "buildings". Whilst it is not a structure that was constructed on site, the appellant's photograph shows that it required a large, lorry-mounted crane to place it in position, but I note that it took 10 minutes to position (according to the appellant) or 30 minutes (according to a neighbour). It is of a solid, steel construction, and is highly durable. I therefore consider that it is of a size which could be defined as "a building".
5. In terms of permanence, in the main function for which they are made, as shipping containers, they are clearly designed to be moved from place to place, on the back of a lorry, or on a ship, and in such use, they are usually impermanent structures. However, the circumstances of this case are that, according to the undisputed evidence of a neighbour, the container arrived on 24 July 2018. There is no suggestion that it has been moved since that time. When the notice was issued, it had been present for well in excess of a year. The appellant referred me to the case of *Valley Action Group Ltd, R (on the application of) v Bath and North East Somerset Council & Anor* [2012] EWHC 2161 (Admin) which applied the ruling in *Hall Hunter v First Secretary of State* [2007] 2 P. & C.R. 5. This latter case determined that permanence has to be construed in terms of significance in the planning context, and in the facts of that case, polytunnels remaining in one location for three months were sufficient to be of significance.
6. In this case, the container is permanently in position and there is no limit to the length of time it might remain there. The container lies within the grounds of a family home, amidst other residential properties, where commercial-looking structures are not a commonplace part of the street scene, and where most structures are permanent. The ability to move the container elsewhere does not remove the significance of its presence in the planning context, and thus I find that it possesses a substantial degree of permanence.
7. In terms of its affixation, the container rests on stone slabs sited under each of the four corners of the base of the container. I could not tell whether the slabs have been concreted in place, but even so, an element of precision was required in ensuring that the container rests on a level base. Regardless of whether the slabs are concreted, the container is a substantial structure, which the appellant says weighs 2185 kg when empty. In my view, such a heavy structure is affixed to the ground by means of its own weight. It could not be readily moved other than by the use of powerful mechanical assistance. I therefore find that it has a degree of affixation sufficient to amount to a building operation.
8. The appellant has compared the container to other structures such as large 4x4 cars and camper-vans. Whilst I acknowledge that there are some similarities in terms of size and weight, there are considerable differences in the essential character of such vehicles, in that they are self-propelled, with a minor degree of affixation to the land and are usually moved on a frequent basis.
9. Taking all the circumstances into account, I find that the container, by virtue of a combination of size, permanence and degree of affixation, is, as a matter of

fact and degree, a building operation within the meaning of section 55 of the Act.

10. There are no permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which would permit such development in this position within the appellant's property, and no express planning permission has been granted for it. I find that the matter stated in the notice constitutes a breach of planning control. Accordingly, the appeal on ground (c) fails.

Appeal on ground (f) – that the requirements of the notice are excessive

11. The notice aims to remedy the breach of planning control. The removal of the container does no more than what is required to remedy the breach. Whilst permitted development rights under the GPDO may, in certain circumstances, allow the container to be sited elsewhere within the curtilage, that would be a separate act of development. The notice does not remove or in any way affect the ability to implement permitted development rights. However, the existence of such rights does not render the requirement of this notice as excessive in the circumstances. Accordingly, the appeal on ground (f) fails.

Conclusion

12. For the reasons given above, the enforcement notice is upheld and the appeal is dismissed.

JP Roberts

INSPECTOR