



Appeal Decisions

Site visit made on 18 February 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal A: APP/K2420/C/19/3222721

Land East of The Enterprise Centre, Dawsons Lane, Barwell, Leicestershire LE9 8BE

- 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 Andrew Charles against an enforcement notice issued by Hinckley & Bosworth Borough Council.
 - The enforcement notice was issued on 25 January 2019.
 - The breach of planning control as alleged in the notice is 'Without planning permission the siting of two storage containers at Land East of the Enterprise Centre, Dawsons Lane, Barwell, Leicestershire whose approximate location is shown hatched blue on the attached Enforcement Notice Plan.'
 - The requirement of the notice is to permanently remove the two storage containers from the Land.
 - The period for compliance with the requirements is 30 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/K2420/W/19/3222720

Land East of The Enterprise Centre, Dawsons Lane, Barwell, Leicestershire LE9 8BE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Andrew Charles against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref: 18/01051/FUL, dated 11 October 2018, was refused by notice dated 17 December 2018.
 - The development proposed is 'Planning for 2 x shipping containers in a paddock for safe and secure storage of tools and machinery used for the maintenance of the paddock and dry storage of animal feed.'
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Decisions

Appeal A

1. It is directed that the enforcement notice be varied by deleting '30' from paragraph 6 and inserting '90'. Subject to this variation the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. In the light of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (the Regulations) the parties were asked to consider the implications of these regulations in relation to the compliance period. The period for compliance is 30 days. The appellant responded and considers that while in normal circumstances 30 days would be sufficient to remove the containers, in the current circumstances this timeframe would be wholly inadequate. He considered as a minimum a more appropriate timeframe would be 90 days and he hoped that the Council would utilise their discretionary powers to agree a further extension if one was required.

Appeal A on ground (c)

4. This ground of appeal is that those matters, if they occurred, did not constitute a breach of planning control.

Operational development

5. A building is defined in section 336 of the Act as including any structure or erection and any part of a building, but not plant or machinery comprised within a building. In *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385, which was endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102 three primary factors were identified as decisive on what was a building:

- a) That it was of a size to be constructed on site, as opposed to being brought onto the site;
- b) Permanence; and
- c) Physical attachment.

No one factor is decisive.

6. The planning application form for Appeal B stated that the work was completed for the development on 1 June 2018. The containers are 2.55m by 6.4m with a height of 2.55m¹. They are of metal construction with double doors on the west facing elevation and are green in colour. The containers are stated to be used to store associated items and equipment used on the site including small machinery for the upkeep of the land (mowers etc) for purposes ancillary to the recreational equestrian use of the land. The containers were brought on to the site and are anchored by their own weight.
7. I note the appellant states that while there are no plans to move the containers around the site this does not mean the containers are unable to be moved. The appellant considers that the Council is confusing the lack of intention to move the containers with the lack of ability to move the containers.
8. The containers were clearly brought to the site and positioned on the land and thus were moved to the site. There has been no evidence provided to demonstrate whether or not specialist moving equipment would be required to move the containers around the site. They are not on skids and there is nothing to demonstrate that they can be dragged. In my experience, containers such as these do require specialist equipment to move them.

¹ Dimensions stated in Figure 3 of appellant's statement and drwg no DESIGN 1A-04.10.18.

9. There is no substantiated evidence that the containers have been moved since they were brought to the appeal site and thus, they have been permanently in their current location with no indication that they are likely to be moved within the appeal site. As such, I consider they are permanent units of a size and weight that results in each being fixed to the ground through their own weight. Taking these matters into consideration I am satisfied that the containers, as a matter of fact and degree, should be regarded as buildings within the definition provided in section 336 of the Act, to which the four-year rule should apply.
10. In the light of the evidence before me I find that due to the degree of permanence taken together with the size of the container, as a matter of fact and degree, demonstrates that the containers are operational development which required planning permission.

Conclusion on ground (c)

11. I have concluded that the shipping containers are operational development for which planning permission was required. No planning permission was obtained and thus the containers are unauthorised. The appeal on ground (c) fails.

Appeal A on ground (a) and Appeal B

12. The main issues in both appeals are the effect of the development on the character and appearance of the area with particular regard to its location within the designated Green Wedge.
13. The appeal site contains a complex of wooden stables, and access and grazing land associated with an equestrian use. Land levels drop from the north to the south. There is an existing hedge on the northern boundary, although I noted that the containers could be viewed through gaps and areas of sparse hedge when walking along Dawsons Lane. Due to the topography and the open nature of the fields the site is visible from adjacent land. To the west is the boundary to the car park/hard surfaced area which serves the Enterprise Centre industrial estate.
14. The appeal site is stated to be part of the Green Wedge between Hinckley, Barwell and Earl Shilton which protects the separation of these three settlements, to protect their individual identities and provide easy access from the urban areas into green spaces contributing towards the quality of life for residents in those urban area. Within the Green Wedge recreation and other listed uses are acceptable provided operational development associated with such a use does not damage the function of Green Wedge. Any land use or development within the Green Wedge should retain its visual appearance.
15. While there are various buildings within the wider setting relating to allotment uses, agriculture and other uses of the countryside area within the Green Wedge, it is not clear when these were constructed. Many appeared to be older structures. The site is also located adjacent to the settlement boundary and the appeal site marks a clear break from a more built up area to the open countryside. Although stables exist on the appeal site, they are located closer to the boundary with the industrial area. The containers extend the built development on the appeal site into what was a more open part of the site.
16. The containers are functional and utilitarian in appearance. Intermittent views of the containers are available from Dawson's Lane through gaps or sparse hedge cover. They are also visible from the surrounding land, and due to the

- topography, with the containers on the higher land, they appear prominent within the landscape.
17. Within Appeal B the submitted plans show an area of gravel being laid from the existing stable complex across to the area where the containers are sited. This is a significant area and it would introduce a large area of gravel surface, which would detract from what is generally a little developed area of land. The use of gravel for what is an extensive area across the gap between the stable complex and the containers on the higher part of the site would be prominent and detract from the existing character and appearance of the land and detract from the countryside setting. I am not satisfied, on the evidence available, that this extensive area is necessary to maintain access in wet weather.
 18. The containers are sited away from the existing structures on the site and extend into an area that would otherwise have been open and unbuilt on. They fail to assimilate with the existing stable buildings or the locality in which they are sited. The containers in both appeals, and the gravel area in Appeal B, fail or would fail to compliment or enhance the areas intrinsic value, beauty, open character and landscape character. The development also fails, or would fail, to complement or enhance the character of the area or retain its visual appearance.
 19. The appellant has indicated that if required conditions for additional planting or cladding of the containers in timber would be acceptable to him. Such conditions would not overcome the harm to the countryside appearance I have identified.
 20. In conclusion, I find that the containers in both appeals and the gravel area within Appeal B would harm the character and appearance of the area. This is contrary to Policies DM1, DM4 and DM10 of the adopted Local Plan 2006 – 2026 Site Allocations and Development Management Policies Development Plan Document (LP) and Policy 6 of the adopted Local Development Framework Core Strategy (December 2009) (CS) which seek to protect the countryside for its intrinsic value, beauty, open character and landscape character and seeks development which complements or enhances the character of the surrounding area or retain the visual appearance of the area.
 21. For the reasons stated above the Appeal A on ground (a) and Appeal B fail.

Conclusions

Appeal A

22. For the reasons given above I conclude that the appeal should not succeed. However, in light of the implications of the Regulations currently in force I consider that it would be necessary and reasonable to extend the compliance period to 90 days. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Appeal B

23. For the reasons given above I conclude that the appeal should be dismissed.

Hilda Higenbottam

Inspector