
Appeal Decision

Site visit made on 14 February 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 March 2017

Appeal Ref: APP/B5480/C/16/3150206

Unit 9, Stafford Industrial Park, Hillman Close, Hornchurch RM11 2SJ

- 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 Basinghall UK Limited against an enforcement notice issued by the London Borough of Havering.
 - The enforcement notice was issued on 15 April 2016.
 - The breach of planning control as alleged in the notice is operational development comprising metal storage container in car parking area at front of property.
 - The requirements of the notice are as follows:
 1. Remove the metal storage container from car parking area at front of the property.
 2. Ensure car parking area remains in use as approved, planning permission ref PO457.13.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on ground (c) only set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The Appeal succeeds to a limited degree in that the compliance period will be extended. Otherwise the appeal is dismissed. See formal decision below.

Matters of clarification and background information

2. The appeal site is part of the forecourt car parking area to Unit 9 at Stafford Industrial Estate. This estate lies to the north of Stafford Avenue, to the west of Ardleigh Close and to the east of Ashlyn Grove. These roads are residential in character as is most of the surrounding area. The London to Norwich railway line lies to the north of the site.

3. The container enforced against is of corrugated metal and has the appearance of a shipping container. It is 12.2m in length, around 2.2m in width and 2.6m in height, positioned perpendicular to the front elevation of the unit. It has been made level by placing it on to timber blocks and takes up an area the equivalent of 4 car parking spaces. A complaint had been made to the Council in November 2014.

4. The 12 Units at the estate were granted planning permission for change of use to allow B1(b), B1(c), B2 and B8 uses in July 2013 (P0507.13). The permission was subject to a condition which stated that no plant, materials or goods shall be stored in the open air and that the existing vehicle parking shall be retained for the life of the development. In April 2015 an application was made to vary the condition which in effect sought to retain the container. The application to vary the condition was refused in September 2015 and an appeal against refusal was dismissed on 12 July 2016.

5. The appeal was made on ground (c) only but, subsequent to the appeal being submitted, the Appellant requested that the merits of the case (basically a ground (a) appeal be considered and a request was also made to allow the container to remain in place. Initially this was until after January 2017 but in the final submissions the requested period was until 28 August 2019. In effect this seeks a temporary permission but I am only empowered to deal with the appeal on ground (c) and cannot consider the merits of the case. However, I have taken the latter submission as being an appeal under ground (g) and have dealt with it below.

The Appeal on ground (c)

6. To succeed on this ground it needs to be clearly shown that there has not been a contravention of planning control. This may be because there is already a permission in place; that permission is not required or that, whatever has been done, constitutes permitted development.

7. There is no permission in place and I now turn to whether or not permission is required. Having noted the size of the container and its position I consider that it can be classed as a building under section 336(1) of the 1990 Act. This sets out a wide definition for what constitutes a building and includes 'any erection or structure'. The courts have held that structures which might not ordinarily be described as 'buildings' can be included in the definition. These include marquees, polytunnels and other similar structures.

8. The container is not affixed to the ground and has been placed on wooden blocks. Nor is it connected to any services. However, it is of considerable weight and size and has been in position for some time. In relation to the use of the Unit it was clearly not intended to be temporary. In fact it has been confirmed that it would be required for as long as the Appellant continues to use the Unit for business purposes.

9. As indicated by the Council it would clearly have been necessary to have used special equipment to bring the container to site and to unload it. Further 'building' operations were then required to level the container and it is clearly held down by its own weight irrespective of what might be stored inside. As a matter of fact and degree I consider that the container can be classified as a 'building' and that building operations were required to place it in position. Overall, therefore I consider that these actions amount to operational development for which planning permission would have been required.

10. On the third point, and with regard to the argument that the container is permitted development under Class A Temporary Buildings Part 4 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 (GPDO), I do not agree with the case put forward on behalf of the Appellant. I do not accept the contention that this particular container, as a matter of fact and degree, satisfies the definition of Class A above.

11. This section of the GPDO relates to the temporary placing of such structures (moveable or otherwise) for the duration of operations being, or to be carried out, on the land. In this case the container is in effect being used as a permanent 'building' as an extension to the industrial Unit No 9 and not as a temporary store, for example, whilst the Unit is altered.

12. I conclude, therefore, that planning permission is required for the operational development as carried out; that there is no express permission in place and that the development is not permitted under any part of the GPDO. The appeal must fail, therefore, on ground (c).

The implied ground (g)

13. The compliance period is just 1 month. Initially it was requested that the container be allowed to remain in place until January 2017. Clearly this date has now passed and the final request was that the container be allowed to remain until August 2019. This would be for a period exceeding two years and is, in effect, a request for a temporary permission. I do not consider that this is appropriate and in any case the unauthorised use of the container has already been ongoing for a considerable time. Furthermore, to deal with this case as if it were for a temporary permission would cause injustice to the Council and would be an abuse of the enforcement system.

14. However, bearing in mind the business needs of the Appellant Company, and taking into account the need to organise where the contents of the container might be stored, I consider that it would be reasonable to extend the compliance period to 3 months. The appeal succeeds to this limited degree and I will vary the notice accordingly.

Other Matters

15. In reaching my conclusions I have taken into account all of the other matters raised on behalf of the Appellant and by the Council. These include the planning history of the site; the initial appeal statements; the references to cases in other parts of England and the Appellant's final submissions, received by the Planning Inspectorate on 3 September 2016. However none of these carries sufficient weight to alter my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision that the appeal should be dismissed.

Formal Decision

16. I direct that the notice be varied by deleting the figure '1' between the words 'within' and 'month' in part 5 of the notice (WHAT YOU ARE REQUIRED TO DO) and by substituting therefor the figure '3'.

17. The appeal is dismissed and the enforcement notice is upheld as varied.

Anthony J Wharton

Inspector