



Appeal Decisions

Site visit made on 28 June 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 17th July 2023

Appeal A Ref: APP/V2255/C/22/3313067

Land at Murston Playing Fields, Church Road, Murston, Sittingbourne, Kent

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Dirty Harry's against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 11 November 2022.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of Land for the stationing of shipping containers enclosed by palisade fencing in connection with the use.
- The requirements of the notice are
 1. Cease the use of the Land for the stationing of shipping containers.
 2. Permanently remove from the Land all shipping containers (currently 13)
 3. Dismantle and remove all of the palisade fencing from the Land.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeal B Ref: APP/V2255/W/22/3312318

Car Park adjacent to Church Road, Sittingbourne, Kent

- 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 Dirty Harry's against the decision of Swale Borough Council.
- The application Ref 22/501313/FULL, dated 25 March 2022, was refused by notice dated 6 June 2022.
- The development is described as 'Retrospective application for siting of 13 no. shipping containers enclosed by palisade fencing in association with Use Class B8'.

Decisions

Appeal A

1. It is directed that the enforcement notice is varied by
 - i) Deleting the allegation in full and replacing it with "Without planning permission the material change of use of Land for the stationing of shipping containers used for storage (Use Class B8) enclosed by palisade fencing in connection with the use."
 - ii) Deleting requirement 1 from the notice and replacing it with "Cease the use of the land for the stationing of shipping containers used for storage (Use Class B8)."
 - iii) Deleting "4 months" as the period for compliance and replacing it with "6 months."

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2. Subject to these variations, the appeal is dismissed, 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

3. The appeal is dismissed.

The Notice

4. The allegation for Appeal A refers to the stationing of shipping containers but it needs to specify what use of land the containers are sited for. There is no dispute that the containers are being used for storage and that use was taking place when the enforcement notice was served. The use was included in the planning application that was refused and is the subject of Appeal B. The appellants' evidence has addressed the use of the containers in both appeals.
5. I will therefore amend the allegation to "Without planning permission the material change of use of Land for the stationing of shipping containers used for storage (Use Class B8) enclosed by palisade fencing in connection with the use." I will amend the corresponding requirement to "Cease the use of the land for the stationing of shipping containers used for storage (Use Class B8)". No injustice is caused to any party as a result of these amendments.

Appeal A ground (a) and Appeal B

Main Issue

6. The main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

7. Church Road itself is physically divided by large bollard type structures and the two sections of the road are of a different character. To the north of the bollards, there is an industrial park with substantial buildings. To the other side of the bollards, Hugh Price Close marks the beginning of largely residential development with areas of green space and mature trees and planting to the roadside.
8. The appeal site is located on the corner of Church Road and Hugh Price Close and has boundaries to the rear and at one side with the playing fields. The main access to the appeal site is through gates at the front on Church Road. There is a path on Hugh Price Close to the other side boundary which provides access to the playing fields. The location of the appeal site in relation to the bollards means that vehicular access to it is along the residential part of Church Road which extends beyond Hugh Price Close.
9. The development consists of an area of hardstanding with thirteen green shipping containers with a boundary treatment of green palisade fencing of around 2.1 metres in height with gates. Five containers front onto Church Road close to the boundary with the pavement, four are on the rear boundary with the playing fields and four are on the boundary with the path on Hugh Price Close. The containers are in use as storage of cleaning products and vending machines used in the appellants' businesses.

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10. There is shrubbery and planting to the far side of the path on Hugh Price Close which provides screening on approaching the site. However, there is very limited screening of the development as a whole with prominent views of the development from the path itself, the front of Church Road and from the playing fields.
11. The containers have a utilitarian character and appearance which combined with the palisade fencing is incongruous and out of keeping with the open character of the playing fields and the verdant appearance of Hugh Price Close. The appeal site is on the corner of the playing fields and has no visual association with the industrial park on the opposite side of the road which is beyond the bollards.
12. The appellant has proposed conditions. However, a condition limiting the number and height of the containers does not address existing harm. The appellant has suggested a condition requiring additional boundary landscape planting to the north, east and southern boundaries. However, no details are provided in terms of exactly where any planting would be located, what type and height of planting is proposed and if the planting is in addition to or instead of the existing fencing as there is limited space within the appeal site and at the site boundaries. On the evidence before me, having particular regard to the scale and height of the containers, I am not satisfied that a landscaping condition can mitigate the visual harm arising from the development.
13. The appellant cites compliance with Policy CP1 (Building a strong competitive economy) of the Bearing Fruits 2031 The Swale Local Plan (the Local Plan) as a material consideration. The policy supports economic development in appropriate existing or allocated employment locations subject to exceptions which fit within identified criteria and which do not compromise the Local Plan Strategy. The appellant considers the appeal site to be a logical small extension to the existing industrial park which is located on the opposite side of the road. There are no physical links or shared characteristics between the appeal site and the industrial park which consists of permanent substantial buildings to support the view that the appeal site is a logical extension to it.
14. Nevertheless, an extension to an existing employment site is only acceptable as an exception in policy terms if no site can be found in more suitable locations which are either designated or in existing employment use in accordance with paragraph 5 of Policy CP1. There is no evidence before me to show that is the case and the development is therefore not compliant with Policy CP1.
15. Paragraphs 81 and 83 of the National Planning Policy Framework collectively refer to giving significant weight to the need to support economic growth and local business needs and making provision for storage operations in suitably accessible locations. However, the appellant has not provided information to show why a single storage facility for a collection of businesses that are located elsewhere has to be at the appeal site as opposed to any other suitably accessible locations.
16. Planning permission has been previously granted for a single storage container at Woodcombe Sports and Social Club which is on the opposite side of Church Road to the appeal site. However, the presence of a storage container for sports equipment for use at the nearby playing fields is not comparable in terms of scale and appearance or location to the development.

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17. For the reasons given, the development does therefore harm the character and appearance of the surrounding area. It is in conflict with Policy CP4 of the Local Plan which requires development to be of high quality design that is appropriate to its surroundings. It is also contrary to Policy DM14 of the Local Plan, which refers amongst other things, to development that is well sited and of a scale, design and appearance and detail that is sympathetic and appropriate to the location. Policy CP1 of the Local Plan is less relevant to the main issue than the other policies referred to by the Council.

Conclusion

18. I have found that the development does harm the character and appearance of the surrounding area. I have to determine the request for planning permission in accordance with the development plan as a whole and none of the considerations raised outweigh the harm that I have found. I therefore conclude that planning permission should not be granted and the appeal on ground (a) fails.

Appeal under ground (g)

19. An appeal under ground (g) is that the time allowed for compliance with the notice is too short. The period for compliance is 4 months. The appellant is asking for 9 months and refers to a shortage of suitable sites to either lease or buy followed by a period of around 3 to 4 months to complete legal transactions when a suitable site is found. In assessing whether or not the timescale is reasonable, the time scale is assessed from the issue of the decision letter not from when the appeal was lodged as the appellant is entitled to assume success on other grounds.

20. The appellant's timescales refer only to finding a permanent site for all of the containers rather than looking at alternative options and I do consider 9 months to be excessive. However, 6 months would strike an appropriate balance between the public interest in achieving compliance and the circumstances of the appellant. The appeal under ground (g) therefore succeeds to that extent. I will amend the notice accordingly.

Overall Conclusion

21. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. Appeal B is dismissed.

E Griffin

INSPECTOR