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## Appeal Decisions

Site visit made on 4 May 2022

**by Simon Hand MA**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 May 2022**

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### **Appeal A Ref: APP/J0405/C/22/3291112**

**Land at Crinan Barn, Westfield Road, Long Crendon, Buckinghamshire, HP18 9EN**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr S Barr against an enforcement notice issued by Buckinghamshire Council - North Area (Aylesbury).
  - The notice, numbered 19/00437/ENF, was issued on 22 December 2021.
  - The breach of planning control as alleged in the notice is without planning permission the erection of a building for residential purposes and the material change of use of the land to residential use.
  - The requirements of the notice are: 1. Cease the use of the Land for residential purposes. 2. Permanently remove the building, shown in the approximate position with a black X on the attached plan, from the Land. 3. Remove all the resultant debris and material that arises from complying with step 2, from the Land. 4. Reinstate the Land to its condition prior to the unauthorised development taking place which consisted of grassland.
  - The period for compliance with the requirements is: 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (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.
  - A similar appeal (3291113) has been made by Mrs Charlotte Barr
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### **Decisions 3291112 and 3291113**

1. The appeals are 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.

### **Preliminary Matters**

2. The site lies in the countryside along Westfield Road to the west of Long Crendon. The access from Westfield Road opens into what seems was once a farmyard but now has been divided into two sections. The western section houses a long low agricultural style building and what was possibly once a barn that has now been converted into a dwelling. The eastern section contains a couple of small barn type buildings and another larger barn that was converted using class Q permitted development rights, granted in 2016. This is Crinan Barn. A shipping container was brought onto the land to act as a site office but the works of conversion took some time and while they were stalled the container was used as an Airbnb.
3. Planning permission was granted for some minor external works to the barn in 2020 and a further application was made in 2021 for the demolition of a stable

block and the extension of the garden. This was granted so the whole area around Crinan Barn, including where the container is located, is now lawfully in residential use.

4. The appellant argues that the container is a movable structure that sits within the newly expanded curtilage of Crinan Barn and is used ancillary to the main dwelling and so does not require planning permission. This is actually a ground (c) argument and I intend to treat it as such. Failing that the appellant argues that planning permission ought to be granted for the container. But this argument relies solely on the fallback, that once it is removed it can simply be replaced using permitted development rights as long as the use is ancillary to the main dwelling. No argument is made that if I find the container is a building then it should be granted planning permission as it somehow is in accord with the policies of the development plan.

### **The Appeal on Ground (c)**

5. It is accepted the container stands on land that is now lawfully residential. However, that does not necessarily make it part of the curtilage of Crinan Barn. Curtilage and use are two different concepts and I shall need to take a separate view as to whether the container stands within the curtilage or not. If it does not then it cannot be permitted development.
6. However, the question of curtilage is intrinsically bound up with the use of the structure and whether it is mobile or not. There is no doubt that it was originally a shipping container and was craned onto the site. That is generally true of most shipping containers, but many often then end up as permanent structures. The appellant considers the container is in effect a caravan. It is within the size limits of a caravan, as defined by the Caravans Act and can be moved in one unit on the back of a lorry. This much is undeniable. The real question is however whether it has actually become a building. *Skerritts*<sup>1</sup> is the leading judgement on such matters and endorsed the threefold test derived from the 1949 Cardiff Rating Authority judgement. For a structure to be considered to be a caravan, it must first pass the test as to whether it is a building or not, as many structures are clearly not caravans, but remain portable structures that do not require planning permission. The tests are: was it constructed on site (as a building would be) or brought in one piece; was it physically attached to the ground; and would it engender a change in the character of the land of some permanence?
7. In my view the first 2 tests are passed but not the third. The two nearby dwellings appear to be constructed in a very modern fashion, with a lot of angular mat black metal, wood cladding and glass. The container has been altered externally to look similar to the two dwellings. It is mat black with a large picture window cut into one end with views over the surrounding farmland. It is surrounded by a concrete path with gravel flower beds, and several silver birch have been planted in a bed at one end. At the picture window end is a patio with garden furniture. The whole sits in a small area fenced off from Crinan Barn. It has the appearance of a small, modernist dwelling, very similar to the other dwellings. It seems to sit within its own curtilage and has all the features of a permanent structure.

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<sup>1</sup> *Skerritts of Nottingham Ltd v SSETR & Harrow LBC (No2)* [2000] EWCA Civ 5569

8. Whatever use it is being put to, it is not, in my view, a portable structure but is a building. It cannot therefore be a caravan. The appellant says it was used occasionally as an Airbnb, but its primary use is as an office. This is not the impression given by the way it is set up, it looks like a holiday home. I note the Council have provided evidence from the Airbnb website of many reviews from satisfied customers, by June 2021 there were 110 reviews and I noticed the site is still being advertised on Airbnb recently. There is no evidence of its use ancillary to the dwelling, all the evidence points to it being consistently used for short stay holidays. This is reinforced by the fact that stands within its own small courtyard and garden area. In my view a separate curtilage has been created around the container and it is being used as a dwelling for holiday lets. It therefore requires planning permission and the appeal on ground (c) fails.

### **The Appeal on Ground (a)**

9. No argument has been put forward concerning council policy. The Vale of Aylesbury Local Plan strictly controls housing development in rural areas and there is no suggestion this would fall within the ambit of the rural exception sites policy outlined in policy H2. The development is also visually prominent and so is contrary to policy NE4. No argument has been made that the development is in accord with the Long Crendon Neighbourhood Plan.
10. The introduction of a dwelling in this location, even if it was restricted to holiday uses, would be contrary to local plan policies, and so should not be allowed.
11. I do not consider there is a realistic fallback position. The appellant could replace the container with a different one and use it ancillary to the main dwelling, but there is no evidence that such a use is necessary or would be likely to emerge. If it was ever used as an office for the building works, that use has long ceased, and there is no evidence of it being used for anything other than holiday accommodation. There has to be a reasonable prospect of the fallback position being implemented and I do not believe that there is.
12. The appeal on ground (a) fails.

### **The Appeal on Ground (g)**

13. The notice requires the use to cease, the container to be removed and the land to be restored to grassland. The notice does not bite on the fencing nor the garden and patio areas around the container. There is no reason why these requirements should take more than 3 months. It should be simple to remove the container and then rotavate the underlying soil and plant grass. There is no requirement to sell the container or to landscape the area. That may be the appellant's eventual intention, but that is not a requirement of the notice. There is no reason to extend the compliance period.

*Simon Hand*

INSPECTOR