

ENFORCEMENT REPORT – FOR DECISION

Recommendation by the Head of Planning

ENFORCEMENT ACTION: Remove from the Land the metal container in the approximate position shown with the blue coloured cross on the attached plan.

Reference and Site:

16/50256 – Land between Lightlands Lane and Strande View Walk and Strande Lane, Cookham.

Contravention:

Without planning permission the carrying out of building operations, namely the siting of a metal container on the land.

Person(s) responsible:

Mr Samuel James Driver

Relevant Planning and Enforcement History:

Reference	Description	Decision
16/01289	Certificate of lawfulness to determine whether a moveable poultry shed is lawful.	Refused 14.06.16.
15/02564	Construction of a log cabin for occupation by an agricultural worker in connection with the operation and management of an egg laying poultry farm to be established on the holding for a temporary period of 3 years.	Refused 18.02.16.
15/02565	Erection of one purpose built poultry shed elevated on a raised platform for the keeping of up to 1750 egg laying chickens including a separate integral egg packing room at one end of the building.	Refused 18.02.16.
15/02567	The erection of one purpose built poultry shed elevated on a raised platform for the keeping of up to 1350 egg laying chickens.	Refused 18.02.16.
15/02749	The erection of a general purpose portal framed agricultural storage building for the keeping of hay and straw and a bulk feed storage hopper.	Refused 18.02.16.
16/50203	Without planning permission the erection of a building	Enforcement Notice issued (subject to appeal ongoing)

Site and Surroundings:

The site is largely an open field located to the east of Lightlands Lane. Open land lies to the north and north-west, while Strande View is to the south-west and Strande Lane to the south. The site is currently occupied by three timber chicken sheds, a timber shed on wheels, a building to house chickens, along with timber posts and wire fencing enclosing the public right of way that crosses the site close to the eastern boundary.

The site is enclosed by established hedgerows and trees. A line of protected oak trees crosses the field from east to west about 30 metres north of the southern boundary. The site is located in the Green Belt and in an area where there is a high probability of flooding (Flood Zone3).

History:

1. Following a complaint to the Council regarding the siting of a metal container on the land in July this year enforcement officers attended the site and discussed the matter with Mr Driver. It was suggested to the officers that the container was to be used in connection with the agricultural unit.
2. Officers formed the opinion that the development was permitted development under Part 4 Class A of the Town and Country Planning (General Permitted Development) Order 2015.
3. Following the erection of a metal framed building on the land it was the Council's opinion that planning permission was required and not liable to be granted and therefore enforcement action was taken to demolish this. The erection of the building is a material consideration in determining the metal container being permitted development or not.
4. On 27 September 2016 the enforcement team wrote to Mr Driver inviting him to remove the metal container within 14 days.
5. A compliance visit confirms the container remains in situ.

Note: Part 4, Class A of the Town and Country Planning (General Permitted Development) Order 2015 states:

The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.

Development not permitted

***A.1 Development is not permitted by Class A if—
(a) the operations referred to are mining operations, or
(b) planning permission is required for those operations but is not granted or deemed to be granted.***

It is the opinion of the enforcement team that at the time the container was sited on the land it was considered to be compliant with Part 4, Class A of the Order. **However, following the erection of the building (subject to the ongoing appeal) the container is now in breach of A.1 (b).** It is officer opinion that the container, for the purposes of the Part 4, Class A, is a building and is being used in connection with the operations, including but not limited to, egg processing from chickens being housed in a building that requires planning permission.

Comments:

The reasons for taking formal enforcement action and addressing each potential ground of appeal are set out below.

Ground (a) – that planning permission should be granted.

Main issues and policies relevant to the planning merits.

The main strategic planning considerations applying to the site and the associated policies are:

	Policy
Local Plan	F1 & GB1

Development within the Green Belt

The site is located within the designated Green Belt where only specific types of development are considered to be appropriate. The container is being used in connection with the agricultural use of the land; the erection of buildings for agricultural purposes is appropriate in principle and therefore the proposal is considered to comply with Section 9 of the NPPF and Policy GB1 of the Local Plan.

Development within the area liable to flood

The site is located in the functional flood plain, Flood Zone 3b, where water has to flow or be stored in times of flood. Only water-compatible uses and essential infrastructure (listed in Table 2 of the Technical Guidance to the NPPF), that has to be there, should be permitted in this zone. As the building is neither water-compatible nor classed as essential infrastructure it should not be permitted on this site.

Ground (b) – that the breach of control alleged has not occurred.

An Enforcement Officer has visited the site and noted the metal container is on the land as a matter of fact.

Ground (c) – that there has not been a breach of planning control.

To determine if development has occurred officers refer to Section 55 of the Act, which defines development as follows:

***“(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
(1A) For the purposes of this Act “building operations” includes—
(a) demolition of buildings;
(b) rebuilding;
(c) structural alterations of or additions to buildings; and
(d) other operations normally undertaken by a person carrying on business as a builder.”***

In order to qualify as 'building operations' for the purposes of the Act, operations must relate to a building. The term 'building' in section 336(1) of the 1990 Act has a wide meaning, including any structure or erection. The case law is clear in concluding that the definition of 'building' should be interpreted to include structures which would not ordinarily be described as buildings.

The metal container is of a size which is significant in planning terms. It may be capable of movement but it would have a permanent character. The fact that the metal container may be capable of being moved is not determinative in establishing permanence. The length of time that the metal container would remain *in situ* is sufficient to be of consequence in the planning context, and that degree of permanence is a clear indicator that, for the purposes of the 1990 Act, the metal container can be described as a building for development control purposes.

Officers refer to an Appeal Decision by Diane Lewis BA (Hons) MCD MA LLM MRTPI an Inspector appointed by the Secretary of State for Communities and Local Government, Colin Bruton against an Enforcement Notice issued by Sevenoaks District Council. APP/G2245/C/08/2072696. The appeal decision establishes that a shipping container, as a matter of fact and degree, is a structure and therefore a building within the meaning of section 336(1). Accordingly, its installation is a building operation that is defined by Section 55 of the Act.

Ground (d) – that at the time the Enforcement Notice was issued it was too late to take enforcement action against the matters stated in the Notice.

The metal container was first placed on the land in July 2016.

Ground (f) “that the steps required by the notice are excessive and that lesser steps could remedy any injury to amenity that has been caused”.

The requirements of the Notice are the minimum the Council can stipulate to ensure the breach of planning control, and resulting injury to the flood zone, is remedied. Any lesser steps would continue to cause harm.

Ground (g) – that the time given to comply with the Notice is too short.

7 days is a reasonable period of time for the requirements of the Notice to be complied with. The development is a metal container and can be loaded on to a lorry, therefore no specialist contractor or plant is required to carry out the requirements of the Notice.

Recommendation:

ENFORCEMENT ACTION:

- a. Remove from the Land the metal container in the approximate position shown with the blue coloured cross on the attached plan.

The period of compliance shall be 7 days from when the Notice becomes effective.

The reason for serving the Notice is as follows:

The metal container has been erected on land that lies within the functional flood plain (Flood Zone 3b), and is a type of development not permitted in this flood zone. The building would impede the

flow of flood water, reduce the capacity of the flood plain to store flood water and increase the number of people or properties at risk from flooding. It is therefore contrary to saved policy F1 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (incorporating alterations adopted June 2003) and to advice contained in National Planning Policy Guidance on flooding and paragraphs 100 to 103 of the National Planning Policy Framework, March 2012.

Report prepared by planning enforcement and action recommended by:

Jenifer Jackson,
The Council's authorised officer on behalf of Royal Borough of Windsor & Maidenhead.
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Date: 11 October 2016