



Appeal Decision

Site visit made on 3 April 2025

by **Mark Harbottle BSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 April 2025

Appeal Ref: APP/F0935/C/24/3354161

Land at South East of Rattlingate Cottage, Kirkandrews on Eden, Carlisle CA5 6DW also known as Millbeck Stables, Grinsdale Bridge, Burgh by Sands, Carlisle CA5 6DP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") by Mr Daniel Graham against an enforcement notice issued by Cumberland Council.
- The notice was issued on 20 September 2024.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land from use for equestrian to a mixed use of residential and storage.
- The requirements of the notice are: (I) Stop using any part of the land as residential use; (II) Stop using any part of the land as storage use; (III) Remove from the land any caravans or buildings used for residential purposes; (IV) Remove from the land all materials, vehicles and equipment brought on to the land for the purpose of residential and storage use. You may keep on the land any equipment and/or vehicles which you use solely for the purposes of equestrian use on the land; and (V) Return the land to its authorised use as equestrian as permitted under application 16/0921.
- The period for compliance with the requirements is: 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f) and (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Application for Costs

1. An application made by Mr Daniel Graham against Cumberland Council is the subject of a separate Decision.

Preliminary Matter

2. The appeal on ground (d) includes a denial that the alleged residential element of the mixed use was a material change of use of the land. It is instead contended that it was the change of use of a building to use as a single dwellinghouse. This question of fact is more appropriately considered in the appeal on ground (b).

The Notice

3. An enforcement notice must tell the recipient fairly what they have done wrong and must do to remedy it.¹ Some matters raised in the appeal on ground (e) relate to the content of the notice rather than whether it was served correctly.
4. The appellant considers the notice to be imprecise because it alleges a storage use but does not state what is being stored on the land, or on which part. While I shall consider whether it had occurred in the appeal on ground (b), it is plain from

¹ *Miller Mead v MHLG* [1963] 1 All ER.

the wording of the notice that the alleged storage use is separate from, and not incidental to any other use of the land. In such circumstances it is not unreasonable to expect that a recipient of the notice would know what, if anything, was being stored, and where, when the notice was issued.

5. I shall address the appellant's concern that the notice does not state where on the land the residential use is taking place later, insofar as it will be necessary to do so. That will be dependent on whether it is first found that what was a caravan had become a building, and if so, whether a change of use of that building to use as a single dwellinghouse occurred. If both are found to have occurred, it will need to be determined, in the appeal on ground (d), whether the change of use was immune from enforcement action when the notice was issued.

The appeal on ground (e)

6. An appeal on this ground is that copies of the notice were not served as required by section 172 of the 1990 Act. The requirements for the service of a notice are set out in section 172(2) and (3). While the appellant is dissatisfied with some aspects of how the notice was served, no breach of those requirements has been identified, so the appeal on ground (e) must fail.

The appeal on ground (b)

The mixed use

7. The notice alleges a mixed use with residential and storage elements and does not mention the previous equestrian use, which the appellant contends has continued. There was no sign of an active equestrian use at the time of my visit, but a paddock and stables are available for it and there is nothing to indicate that it has been abandoned, so the notice appears incorrect in that regard. As the notice does not attack the equestrian use, the allegation can be corrected in this regard without causing injustice.
8. Photographs taken in March 2024 show 3 lorries on the land with a car on the back of one and vehicle parts on the back of another. The Council considers the photographs show a storage use but they were sent to it by a member of the public, so it cannot corroborate their content from its own observation. The appellant denies storage use has occurred. He identifies the car, which was subsequently taken to an auto salvage yard, as belonging to his partner's daughter and states that the vehicle parts on the second lorry were later used to repair the 1st lorry. He has produced a photograph of the repair underway but does not indicate when that was. He further states that the third lorry belonged to a friend with a construction business, Avon Construction, who had helped him recover the car.
9. Photographs the Council took in September 2024, when it served copies of the notice, show 2 lorries on the land. The appellant has explained that one is his, which is to be expected for a person operating a groundworks business, and that the other, carrying a large piece of what appears to be scrap metal, belongs to Avon Construction. It has not been explained why that lorry was on the land then.
10. The appellant acknowledges parking more than one business vehicle on the land in connection with his residential use or equestrian activity. While it may be common for a person to drive home in a work vehicle and leave it there overnight

or on a non-working day, that does not explain why 2 lorries (excluding the Avon Construction lorry) are on the land in an aerial photograph taken in March 2024.

11. The foregoing is evidence of storage of a car and vehicle parts in March 2024 and of a lorry not associated with any other use of the land carrying an unidentified item, probably scrap, in September 2024. None of those stored items appears to be incidental to the authorised equestrian use or the unauthorised residential use of the land. While the evidence only relates to 2 days some 6 months apart, I cannot conclude, on the information available, that there had not, as a matter of fact and degree, been a storage use of the land prior to the issue of the notice.
12. While a scrap yard and vehicle breaking have been mentioned, neither is alleged in the notice and I saw no clear evidence that either had operated on the land.
13. While the Council's photographic evidence shows bricks stacked on the ground in March 2024, none were to be seen at the time of my visit. I have no reason not to accept the appellant's explanation that they were probably used to build a structure that is not a subject of the notice.

The residential element

14. The appellant contends, contrary to what the notice alleges, that there had been a change of use of a building to use as a single dwellinghouse. Except where I refer to a party's stated position or an established fact, I shall use the neutral description of 'structure' or 'adapted structure' in the following assessment.
15. There is no dispute that the structure was a caravan when it was brought onto the site in July 2017. However, the appellant claims that he immediately adapted the structure by removing partition walls and that it became a building as a result.
16. Section 29(1) of the Caravan Sites and Control of Development Act 1960 ("the 1960 Act") defines a caravan as *any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted*. The definition also excludes railway rolling stock and tents and the structure is evidently neither.
17. Section 336(1) of the 1990 Act defines a building as including *any structure or erection* and case law² identifies 3 relevant factors in determining whether something is a building: size, permanence and physical attachment to the ground.
18. The appellant relies upon an email from Richard Quinn, of R & K Quinn Caravans, and a letter from Sam Robinson, of Robinson Drafting & Design, to demonstrate his case on these matters.
19. Mr Quinn advises, based on over 30 years' experience of sale and transportation of caravans, that the partition walls that were removed provided strength to the structure. Having inspected it, he considers the adapted structure should not be towed or transported on the highway as its momentum and flex during movement would cause major and irreversible structural damage. In his opinion, lifting the adapted structure is not feasible because, once off the ground, it would lack the necessary structural strength to be moved.

² *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1 KB 385 and *Skerritts of Nottingham Ltd v SSETR* (No.2) [2000] 2 PLR 102.

20. Mr Robinson is a civil engineer and has inspected the adapted structure. While he notes that the supporting chassis does not appear plumb, and there is evidence of significant deflection to the ends of the structure, he cannot say whether that is an issue with the chassis or the shell of the structure above it. However, he concludes that any attempt to lift or move the adapted structure would carry a severe risk of catastrophic collapse. Like Mr Quinn, he attributes this to the loss of structural integrity following the removal of the partition walls. He advises that the adapted structure should only be relocated by dismantling and re-assembly.
21. Mr Robinson also notes that the adapted structure's outer wall panels easily flex and deflect when pushed on by hand. While that was demonstrated during my site visit, the panel in question was inside a section of the adapted structure that appears to have never had partition walls. It therefore did not convince me of a direct connection between the 2 matters. Nevertheless, the Statutory Declaration of Lisa Shields confirms that the walls of the adapted structure move in the wind, indicating structural weakness.
22. Other than what I saw on site, I only have the appellant's evidence to go on. The Council cites case law and other appeal decisions but has not produced evidence specific to the adapted structure.
23. Being mindful of their experience and qualifications, Mr Quinn's and Mr Robinson's advice is sufficient to demonstrate that the structure could not be towed or transported on a motor vehicle or trailer in its current state. Ms Shields' description of the movement of its walls in the wind adds further weight to the argument.
24. However, neither Mr Quinn nor Mr Robinson appears to have considered whether the structural weakness they identified could be temporarily overcome by some form of bracing, sufficient for the structure to be moved. One way of doing that, far easier than dismantling and reassembling the entire structure, would be to install makeshift partitions where the original walls were. While it is not for me to determine whether that approach might succeed, the appellant's case is weakened by the failure to consider something so simple and obvious.
25. It has therefore not been demonstrated, on the balance of probabilities, that the structure could not be moved to another place by being towed, or by being transported on a motor vehicle or trailer, with reasonable precautionary measures. Accordingly, it has not been demonstrated, as a matter of fact and degree, that it was no longer a caravan, as defined by section 29(1) of the 1960 Act, when the notice was issued.
26. Turning to the first of the 3 factors relevant to determining whether something is a building, its size, it is fact that the structure was brought onto the land intact. While I saw that a small area of decking had been erected alongside, no information on whether this is fixed to the structure has been provided. The adaptation of the structure by the removal of partition walls did not alter its dimensions so it is not of a size that precludes it being moved or being something other than a building.
27. In terms of the second factor, permanence, while details have not been provided, it is reasonable to assume that any fixings attaching the decking to the structure could be undone and that the decking is therefore no impediment to movement.
28. The permanence of the adapted structure itself is, like the question of whether it is a caravan, bound up with whether it could be moved, and if so how. As before, Mr

Quinn's and Mr Robinson's advice indicates that the structure is not capable of being moved in its adapted form without the risk of collapse. However, neither appears to have considered whether that risk could be managed by appropriate use of bracing, which would seem to be a reasonable contingency when moving such a structure.

29. The third and final factor is the structure's physical attachment to the ground. The appellant acknowledges that there is no attachment by foundations but contends that it is achieved by virtue of the structure's immobile state and physical weight. However, while attachment to the ground may cause immobility, the reverse does not follow. In any event, I have already considered immobility in my assessment of permanence. As to the structure's weight, there is no evidence that this is significantly different from when it was brought onto the land as a caravan. While there are attachments for electricity and for water supply and discharge, these are normally found with static caravans and can easily be disconnected.
30. It has therefore not been demonstrated, on the balance of probabilities, that the structure had become a building, as defined by the 1990 Act, before the notice was issued. Thus, as a matter of fact and degree, the introduction of residential use was, as the notice alleges, through a material change of use of the land.
31. For these reasons, the appeal on ground (b) succeeds in respect of the description of the mixed use of the land and the notice will be corrected accordingly. However, and for the reasons given, the appeal on this ground must otherwise fail.

The appeal on ground (c)

32. An appeal on this ground is that the matters stated in the notice, if they occurred, do not constitute a breach of planning control. This could be because what is alleged is not development or does not require planning permission.
33. The appellant's submissions on this ground relate to his concern that the notice does not state what was being stored and to a scrap yard use that the notice does not allege. The Council's evidence shows vehicles, vehicle parts and scrap metal on lorries and building materials on the ground. The appellant does not identify those items as being associated with the alleged residential element of the mixed use or the authorised equestrian use. Nor does he identify any reason why it is not in breach of planning control.
34. Accordingly, the appeal on ground (c) must fail.

The appeal on ground (d)

35. The appellant's case on this ground is dependent on there having been a material change of use of a building to use as a single dwellinghouse. Where such a change of use took place before 25 April 2024, section 171B(2) of the 1990 Act then provided that no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
36. It follows from my finding that the structure had not become a building before the notice was issued in the appeal on ground (b) that the claimed change of use of a building to use as a single dwellinghouse cannot have occurred. Even if I were wrong, and the structure had become a building through adaptation, the appellant's evidence would demonstrate that the building was used as a single dwellinghouse from the outset. This is important because section 171B(2) does not

afford immunity from enforcement action to use as a single dwellinghouse but to *the change of use* of a building to use as a single dwellinghouse. As no change of use occurred, section 171B(2) could not confer immunity from enforcement action.

37. Whether enforcement action could be taken against the material change of use of the land to a mixed use including residential use as alleged must be decided having regard to section 171B(3) of the 1990 Act. This states that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. The appellant does not claim any residential use of the land prior to October 2016, so 10 years of a mixed use of the land including it could not have elapsed before the date the notice was issued.
38. For these reasons, the appeal on ground (d) must fail.

The appeal on ground (f)

39. Requirement (II) is to stop using any part of the land as storage use and the appellant is correct that the notice cannot require any storage that is incidental to the authorised equestrian use of the land to cease. Given that such storage is not a separate use, it seems unlikely that it was intended that the notice would attack it. Nevertheless, the requirement could be made clearer in this respect and the notice will be varied accordingly.
40. The appellant contends that the structure could be retained in connection with the authorised equestrian use without requiring planning permission, even though no evidence of an equestrian need for it has been produced. In any event, requirement (III) only applies to a caravan or buildings used for residential purposes, so it would not interfere with any such right.
41. The appellant is also concerned that requirement (III) is imprecise by reason of its reference to the removal of ‘any caravans or buildings used for residential purposes.’ It may be that the wording anticipated the issues considered in the appeal on ground (b), but as they are now settled, a variation to refer to ‘any caravan’ is now possible and would provide greater clarity. The variation is also desirable because I saw that 2 washing machines had been installed in a pre-existing stable building and it would be excessive to require the building to be removed if that were considered to be part of a residential use.
42. Requirement (IV) carries an exception allowing equipment and/or vehicles which are solely present in connection with the authorised equestrian use to be kept. However, the requirement also applies to ‘materials’ and it would be reasonable for any materials used in connection with the authorised equestrian use to remain. The requirement should be varied accordingly.
43. Although it is not part of the appellant’s case, requirement (V), to return the land to the authorised equestrian use, is excessive because an enforcement notice cannot compel any person to use land. The notice should therefore be varied by the removal of that requirement. While the appellant refers to a planning permission for the erection of a replacement hay store and tractor implement shed³ in the context of requirement (V), the requirement does not seek the removal of any building.
44. For these reasons, the appeal on ground (f) succeeds in respect of requirements (II), (III), (IV) and (V) and the notice will be varied accordingly.

³ 23/0572 granted 15 August 2024.

The appeal on ground (g)

45. The appellant considers 2 months to fall short of what should reasonably be allowed to cease the residential use of the land in view of the local housing market and his personal circumstances. He suggests that 6 months would be a reasonable period.
46. While no firm evidence has been provided in respect of the local housing market, I agree that the appellant's personal circumstances may hamper efforts to find suitable alternative accommodation in the local area. For this reason, the appeal on ground (g) succeeds and the notice will be varied accordingly.

Conclusion

47. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations.

Formal Decision

48. It is directed that the notice is corrected and varied by:
- The deletion of the words “a mixed use of residential and storage” and the substitution of the words “a mixed use of residential use, equestrian use and storage use” in section 3.
 - The addition of the words “other than storage incidental to the authorised equestrian use of the land” to requirement (II) in section 5.
 - The deletion of the words “or buildings” from requirement (III) in section 5.
 - The deletion of the words “equipment and/or vehicles” and the substitution of the words “materials, vehicles and equipment” in requirement (IV) in section 5.
 - The deletion of “V. Return the land to its authorised use as equestrian as permitted under application 16/0921” in section 5.
 - The deletion of “Two months” and the substitution of “6 months” in section 6.
49. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Mark Harbottle

INSPECTOR