



Appeal Decision

Hearing held on 24 June 2025

Site visits made on 23 and 24 June 2025

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2025

Appeal Ref: APP/X1925/C/25/3362386

Land at 1A High Street, Graveley, Hitchen, Hertfordshire SG4 7LE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
 - The appeal is made by Mr Anthony McMahon of McMahon Commercial Properties Limited against an enforcement notice issued by North Hertfordshire District Council on 13 February 2025.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use to a mixed use of the land for Metal Recycling, Open Commercial Storage and for the Sale and Display of Motor Vehicles and associated operational development.
 - The requirements of the notice are: (i) Cease the use of the land for Metal Recycling, Open Commercial Storage and for the Sale and Display of Motor Vehicles. (ii) Remove from the land all vehicles, equipment, containers, fencing, structures and associated paraphernalia used in connection with the unauthorised use of the land for Metal Recycling, as described in step (i) above. (iii) Remove from the land all skips, equipment, containers and associated paraphernalia used in connection with the unauthorised use of the land as Open Commercial Storage, as described in step (i) above. (iv) Remove from the land all Vehicles and associated hard surfacing, gates, equipment, lighting, advertisements and structures associated with the unauthorised use of the land for the Sale of Motor Vehicles, as described in step (i) above. (v) Re-instate the land to its condition before the breach of planning control occurred, following compliance with points (i) to (iv) above.
 - The period for compliance with the requirements is three calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f), and (g) of the Act. 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.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Reasons

2. For the appeal to succeed under ground (b) the appellant needs to show that the alleged breach of planning control has not occurred, as a matter of fact. Section 174(2)(b) of the Act is worded in the past tense, so the question is whether the alleged breach had occurred by the date the notice was issued, not whether it was in existence on the date the notice was issued.
3. The site is a hard-surfaced area encircled by tall, metal palisade fencing, with a gated vehicular access from the road. It is not disputed that the boundary fencing, access and most of the hard surfacing have been in place for many years and are exempt from planning control under the provisions of section 171B of the Act.
4. It is disputed whether the site is or has been a single planning unit in a mixed use as alleged by the notice, or whether it comprises or comprised two or more planning units in different uses.

5. It was confirmed in *Burdle*¹ that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. Three broad categories of distinction were outlined in *Burdle*:
- i) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - ii) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental or ancillary to another; and
 - iii) The unit of occupation comprises two or more physically separate and distinct areas which are occupied for substantially different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
6. With regard to the above, the Council claims the site falls within the second category, whereas the appellant claims the third category is relevant.
7. The site is clearly partitioned into three areas by fencing which has been erected since the appellant purchased the site in 2021. The first area ('Area 1') comprises over half of the site and was occupied by Community Metal Recycling until that company vacated the site after the notice was issued. It is also occupied by two stacked storage containers used by the appellant for site security and management purposes. The site entrance opens directly into Area 1, with a shared vehicle access and turning area leading to two other areas within the site. Community Metal Recycling sorted, re-packaged, and distributed scrap metal in/from Area 1.
8. The south-eastern corner of the site ('Area 2') is enclosed by palisade fencing matching that used around the perimeter of the site, secured with lockable gates of similar height, and is occupied exclusively by Jiven Motors. Jiven Motors stored, cleaned and sold cars from Area 2, but following intervention from the appellant they ceased selling cars from Area 2 at some point prior to the notice being issued. They continue to store and clean cars within Area 2, for sale elsewhere.
9. The south-western corner of the site ('Area 3') is occupied exclusively by Stevenage Skip Hire and is separated from Area 1 by Herras fencing which adjoins a pair of low, lockable gates abutting the palisade fencing which encloses Area 2. Although Herras fencing is generally used as a temporary barrier, I saw during my site visit that it was held securely by feet/blocks which had been concreted in place, together with metal braces between each panel. It is not therefore possible to access Area 3 other than through its lockable gates. Stevenage Skip Hire stores skips and parks skip lorries in Area 3.
10. Within each area there are what appear to be structures capable of acting as site offices. The fencing and gates prevent movement between Areas 1 and 2 and Areas 1 and 3, other than through lockable gates. It is not possible to move directly between Areas 2 and 3.
11. At the Hearing, the Council referred to the Herras fencing as being "flexible fencing", as it can be removed and because it was claimed that vehicles had been seen passing between Areas 1 and 3, other than through the gates, in May 2024.

¹ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

This was disputed by the appellant. In any case, I saw the Herras fencing comprised a solid and permanent structure forming a fixed barrier between Areas 1 and 3, which can be seen in aerial photographs dated 15 August 2023, 11 May 2024, and 8 March 2025².

12. Community Metal Recycling, Jiven Motors, and Stevenage Skip Hire are separate companies, which have carried out very different activities at the site. Although the appellant owns the whole of the site, those companies are said to have had separate lease agreements with the appellant. I have not been provided with complete signed copies of such agreements, but I see no reasons to doubt this.
13. The evidence shows that Areas 1, 2, and 3 are physically separate and distinct areas, which have been occupied by different companies for substantially different and unrelated activities. They were easily identifiable as such during my visit, and the photographs referred to above endorse this view. I therefore find that since at least August 2023, there have been at least three physically and functionally separate planning units occupied by different companies and used for substantially different and unrelated purposes. The fact that part of Area 1 is used to provide access to Areas 2 and 3 does not prevent them from being separate planning units. The alleged breach has not therefore taken place since August 2023.
14. Turning to whether the alleged breach had taken place at any point prior to August 2023, it is not disputed that the site had been used previously as a haulage yard, and separately as a waste processing yard for a period, as described in an earlier enforcement notice³. It also appears from Google Streetview and aerial photographs, dated July 2016 and 26 March 2017 respectively⁴, that part of the site has been used for the storage and/or display for sale of cars. However, metal recycling, open commercial storage and the sale and display of motor vehicles have not taken place at the site at the same time prior to the separate planning units of Areas 1, 2, and 3 being created. Considering the different nature of such uses, their likely operational differences, and the distinct areas visible in the photographs provided, alongside all other available evidence, there has been no such mixed use at the site.
15. Therefore, with regard to the relevant case law, the alleged breach has not taken place, as a matter of fact. I have wide powers under section 176(1) of the Act to correct any defect, error or misdescription in the notice, if doing so will not cause injustice. Correcting the description of the alleged breach to refer to at least three separate planning units and their primary uses would cause injustice to the appellant, as they have based their ground (a) case on the alleged mixed use of a single planning unit and have not pursued appeals under grounds (c) and (d), where the lawful use of the site is in dispute. Furthermore, while Community Metal Recycling, Jiven Motors, Winters Skips, and 'The Occupier(s)' of the site were served with copies of the notice and have not lodged appeals, they may have considered doing so had the description of the breach referred to their uses and areas separately.
16. The Council was hampered in its investigation of the use of the site through a Planning Contravention Notice not being returned and comprehensive site inspections allegedly being prevented. There are separate provisions in the Act for

² Pages 1 and 2 of Appendix 11 to the appellant's Statement of Case

³ Issued by Hertfordshire County Council on 11 January 2007

⁴ Page 6 of Appendix 11 to the appellant's Statement of Case

the Council to deal with such matters. Moreover, section 171B(4)(b) of the Act allows further enforcement action to be taken in respect of a corrected description of the alleged breach, if the Council considers that expedient.

17. I have been referred to the decision of another Inspector⁵ concerning another site. In that case an enforcement notice referred to a material change of use of a large area to a residential caravan site, where approximately 100 caravan plots comprised separate planning units. In that decision the Inspector commented that he concurred with another Inspector's decision relating to the same site that 'there was no need to determine the planning unit issue, as it is only relevant to the assessment of whether a change of use is material'. This needs to be read in the context of those other decisions, where the dispute was whether the material change of use to a residential caravan site had taken place to a single or multiple planning units. That is very different to the present case, where it is disputed whether the mixed use stated in the notice has ever existed on any part of the site. The findings of that other Inspector do not therefore lead me to any different conclusions in this appeal.

18. The appeal under ground (b) succeeds.

Conclusion

19. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed. In these circumstances, the appeal on grounds (a), (f), and (g) and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

L Douglas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Fred Quartermain	Thrings
James Dawe	SM Planning
Chris Elliott	Rappor
Colin McMahon	The appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

Shaun Greaves	Development and Conservation Manager
Christella Menson	Planning Enforcement Team Leader
Alex Howard	Senior Planning Officer

⁵ Lead appeal ref: APP/L1765/C/22/3296767