



Appeal Decisions

Site visit made on 20 August 2025

by **Grahame J Kean BA (Hons), Solicitor (HRA), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 August 2025

Appeal A Ref: APP/P2935/C/23/3334465

Appeal B Ref: APP/P2935/C/23/3334466

Land North of All Saints Church, Ryal, NE20 0RN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Mr James Edger and Appeal B is made by Mrs Rachel Edger against an enforcement notice issued by Northumberland County Council.
 - The notice was issued on 16 November 2023.
 - The breach of planning control as alleged in the notice is: the material change of use of the Land from agricultural use to a storage, distribution (B8) and Manufacturing (B2) yard.
 - The requirements of the notice are:
 - (i) Stop using all or any part of the Land as a storage, distribution (B8) and Manufacturing [sic] (B2) yard
 - (ii) Remove from the Land all containers, caravans, piles of timber, piles of bricks and any other building materials.
 - The periods for compliance with the requirements are:
 - (i) [4 weeks] from the date this notice takes effect.
 - (ii) [12 weeks] from the date this notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (d), (e) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected as follows:
 - substitute the alleged breach of planning control with the following wording:

“without planning permission the material change of use of the Land from agricultural use to a mixed use for agricultural use and use for the conversion and refurbishment of containers and for storage and a distribution centre.”
 - in the requirements, replace “as a storage, distribution (B8) and Manufacturing (B2) yard” with “for the conversion and refurbishment of containers and for storage and a distribution centre.”
 - remove the square brackets in the periods for compliance.

Subject to the corrections, the appeals are dismissed and the enforcement notice is upheld.

The notice

2. The target of the enforcement notice is clearly a smaller part of the entire field that is encompassed by the red line in the plan attached to the notice. Despite repeated use of the term “demarcated” by the appellants with respect to the aerial images supplied, there is no clear physical dividing line between the alleged unauthorised uses and the agricultural use of the land where a large area remains as an open field. Therefore, a

mixed composite use of the site may be said to obtain. Furthermore, a notice that alleges a material change of use to a mixed use should not refer to use classes but describe the mixed use that was taking place, with its component uses, when the notice was issued. As I have a duty to get the notice in order I will correct the allegation accordingly.

Reasons

Ground (e)

3. The appellants are owners of the appeal site. It is claimed that the enforcement notice was not served properly because an incorrect spelling (Edgar) of the surname Edger was used in the notice that was issued and then served on each appellant.

4. The Council unfortunately did use an incorrect spelling of the appellants' surname. This ground of appeal concerns whether or not copies of the notice were served as required by section 172 of the 1990 Act. In summary s172 requires that notice is served on owner/occupiers of the land and others with an interest in the land. Service must be not more than 28 days after issue and not less than 28 days before the date it is said to take effect. Save for the spelling error, these requirements have been met.

5. Insofar as it might be argued that service was not effected on the owners because Mr and Mrs Edgar were not the owners, s176 (5) states that if someone is not served with the notice as required, that fact may be disregarded if neither the appellant nor that person is substantially prejudiced by the failure. Clearly no prejudice to the appellants has resulted here. This ground of appeal fails.

Ground (b)

6. An appeal on this ground succeeds if the breach of control alleged in the enforcement notice has not occurred as a matter of fact.

7. The case for the appellants is that there is no "manufacturing" on the site, therefore the B2 use class (as alleged in the notice as issued) is not occurring.

8. It is quite clear from the information submitted in this appeal, which includes detailed representations from nearby residents, aerial images, a timeline and correspondence presented by the appellant and sworn statements, what was actually occurring on the site when the notice was issued. It was a business consisting of the importation onto the site of various containers which were worked on to produce what are known as HACW cabins, ie units placed alongside car wash facilities in various location across the country. The containers and units are stored before distribution to those locations. The relevant company is HACW Ltd. (Handy Andy Car Wash) with which the appellant James Edger is involved, together with a previous owner of the land Mr Terry Fullwood.

9. Photographs of the site taken in May 2023 appear to show various items stored on the land including steel containers in varying states of repair, caravans, bricks, assorted pieces of timber and window panes. Photographs taken by an interested person also indicate that materials have been incinerated on site. The appellants' timeline of events includes the statement that, on 3 April 2019 "*First cabin being converted for Henry Street car wash. 3 or 4 cabins on land. Evidence that there is more than one cabin on site in pictures*". Correspondence dated 10 December 2023 from the appellant's agent stated that '*any work seen on the cabins is repairs or refurbishment.*' Representations

from many local residents attest to the processes that have been ongoing, including hammering, machine grinding, sawing, welding, paint spraying etc. on metal.

10. Whether or not manufacturing has been involved, rather than repurposing the imported containers is arguable but, as a process that is likely to result in among other matters, noise, smells, smoke and soot, ash, dust and so forth, being deleterious to living conditions of nearby residents, it would still have fallen within the B2 use class, whilst storage and transfer out of the site would still have amounted to a B8 storage and distribution use. No injustice is caused to the appellants by amending the allegation more accurately to define what is occurring on the site, of which they are well aware.

11. I find that the notice as corrected accurately describes the breach of planning control that has occurred. The appeals on ground (b) fail.

Ground (d)

12. An appeal on ground (d) is 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 applicant's evidence alone does not have to be corroborated but should be sufficiently precise and unambiguous. The onus of proof is on the appellant and the standard is the balance of probability.

13. For it to be too late to take enforcement action against the material change of use of the land to a mixed use, in effect the new unauthorised uses must have continued in breach of planning control for at least ten years prior to the enforcement notice being issued, ie from 16 November 2013 to date of issue.

14. The key points arising out of the evidence I have read are that it appears not only that the site was completely cleared in September 2018, but that prior to the appellant Mr Edger's acquiring the site and gaining vacant possession, the previous occupant, M had been using it in connection with his business as an agricultural contractor, not merely for storage as the appellants have characterised the use.

15. OL bought the site in 2004. His sworn evidence to support the appellants is that from around October 2010 M began storing items on the land without his permission. OL added that from then until April 2014, M:

“used the land as a storage area. Generally, scrap vehicles, agricultural equipment were stored on the land as well as empty metal barrels and mounds of hardcore, sub-soil, old straw bales and tyres. I am also aware that [M] at times seemed to be conducting a business from the land. He had a large diesel saw on a bench and seemed to cut logs on the land.”

16. In April or May of 2014, OL sold the site to James Edger, the appellant. It appears there was a dispute over the appeal site which M continued to occupy, believing (rightly or wrongly) that it had been transferred to him along with adjoining land. One resident considered that M's use of the site until February 2017 was the business of farming, agricultural contracting, and subsidiary contracting, and that he did not use the items shown on the photographs for storage as a main purpose. Another characterised the use from 2017-2023 as a change to light commercial manufacturing of transport containers, referring to lorries picking up and dropping off stock, which he saw as a move away from “*agricultural storage and [l]inked activity*” by M.

17. These accounts are corroborated by the resident of an adjacent farm, R who made very detailed and, in my view, entirely credible representations. He had known M since he grew up and maintained contact with him casually and on business. He stated that:

“Ever since 1992 he has farmed the transferred land; and he has ever since also carried on the business of agricultural contracting from the transferred land and (until ejected by Terry and James) [Terry Fulwood and James Edger] from the Compound [the appeal site]”.

18. R stated that M established a loyal clientele for the agricultural contracting part of his business which included himself and his brother. He added:

“I have looked through the photographs submitted by the Applicant and I have identified the objects appearing in them as best I can. They were almost all used by the Applicant for his business of farming and agricultural and other contracting. Some have been discarded and not been sold, as above stated. But none of them have been dumped on the land as waste; they have just been left unused when no longer wanted. The disused items are in the minority by a large margin in any event.”

19. R also detailed M’s use of the site from 2012 at the latest to carry out forestry work in partnership with a local forestry driver whereby M used his tractor and trailer to collect wood to *“pile up in the north east part of the field for reducing to a covering for racehorse gallops using his Jansen Wood Chipper.”*

20. Furthermore, R makes a detailed description of each of the agricultural vehicles and equipment which he was able to identify by name and function in the submitted photographs, many of which he was aware of as being in use at the time.

21. M was eventually evicted from the site by Mr Edger in February 2017. R stated that M was made to remove all property to his own land east of the appeal site but delayed clearance of his unwanted property so, in September 2018, Terry Fulwood and James Edger had the remaining contents removed and the whole site *“flattened at their own expense”*. R summarised their subsequent use of the site as having *“since November 2018 undoubtedly been the business of conversion and/or refurbishment of shipping containers; along with burning waste.”*

22. The appellants’ timeline indicates that it was on 23 September 2018 that *“We cleared land and levelled land, clearing all rubbish and scrap at our cost.”* Their appeal statement says of the 2018 aerial image, *“The land remain [sic] demarcated for storage and here is being cleared by the next landowner for continued storage use for purposes of HACW cabins.”* In fact, the image shows the land completely cleared and once again an open field. Sometime after this it appears that the business of converting or re-purposing containers to car wash cabins proceeded at pace, with several units being stored and worked on the land, a use that has continued to date. The October 2019 image shows storage of a small number of HACW cabins, as does the 2021 image. Several containers were noted on site in 2023 and latterly when I inspected it.

23. It is probable from the foregoing that the appeal site was used for several years when in a previous ownership for agricultural and forestry contracting purposes which is a sui generis use distinct from and not ancillary to an agricultural use.

24. The appellants say that the land has been in use for storage for over 10 years. They cite case law (*Ocado*¹) to illustrate that the 10-year period of use does not have to be immediately before enforcement action is taken and could be established before then.

25. *Ocado* illustrates that time does not run for the purposes of s171B during periods when the local planning authority would be unable to take enforcement action because the breach of planning control has ceased. Once the relevant time limit in s171B expires the question of whether the authority would be able to take enforcement action is completely irrelevant. Secondly, a lawful planning right accrued on the expiry of a time limit in s171B is not lost merely because that right is not then exercised for a period of time. This applies to (among other things) a use right derived from a material change of use. The right must remain in existence at the date when the lawfulness of what it authorises is in issue. An accrued planning right must not have been lost in the meantime because of a supervening event, such as abandonment.

26. Several different periods of storage use are alleged in the appeal statement to be established, eg “*21 years of continuous use for storage with the land in various ownerships including some remediation of the land in intervening periods*” or “*the previous and current owners have used the land for storage for at least 14 years or longer*” or in Mr Edger’s sworn statement that M’s storage took place over 7 years from 2010 to 2017. As to when it is claimed a storage use first began, the agent claims “*there is evidence of this use of the land occurring from 2002 onwards for 10 years.*”

27. 2002 is when the first aerial image was taken. The appeal statement asserts that it shows “*the land is not being used as agricultural and is being prepared for an alternative, in this case, storage use.*” In fact, it shows nothing of the kind. Whilst much of the land appears to be dug up there is no discernible storage, and no indication one way or the other that storage is about to become its use. Accordingly, the assertion in the appeal statement that there is evidence of storage use in 2002 is misleading. There is no other evidence that persuades me on balance that it is likely that an earlier, primary storage, use subsisted on site for ten years from 2002.

28. In the next image, dated 2007, there are a few undefined items in the north part of the site but the land previously appearing to be dug up has grown over or been restored to vegetation consistent with its use for agricultural purposes. The subsequent images of 2009, 2011 and 2013 continue to show items at the northern end of the site, but their nature or use is not easily identifiable. The next image is dated 2018 and is consistent with the appellants having cleared the site altogether.

29. The appellants’ timeline states “*2004 - 2010 No site visits. Do not know when [M] started using the land.*” Indeed, there is no entry for 2002 but R has clarified M’s use of the site for agricultural and other contracting during this time, as described above. R also states that M supplemented his agricultural contracting business inasmuch as “*in about 2002 he obtained a contract...to clear topsoil from...a housing development... and dumped it on the Southern part of the Compound. The mounds grew grass over them, which can be seen in the Aerial photographs.*” This is consistent with the appearance of the land in the 2002 aerial image but as an isolated activity it did not displace the agricultural contracting business. I cannot conclude with certainty when the appeal site underwent a material change of use to agricultural contracting but from all the information submitted, it was likely to be at least by 2010 and very possibly earlier.

¹ R. (on the application of Ocado Retail Ltd) v Islington LBC [2021] EWHC 1509 (Admin)

30. Therefore, putting the case for the appellants at its highest, even if the use of the land as depicted in 2002 could be construed as evidence of storage (ie the dumping of topsoil not in any event adverted to by the appellants as it happens but by R as described above), any primary use for storage purposes could not have subsisted for ten years from that date given the supervening agricultural contracting use by M.

31. I have considered the possibility (although not canvassed by any party) that M's use of part of the appeal site before he was made to give it up, was in effect a use ancillary to a separate planning unit being the adjacent land to the east, indisputably owned by M. If that were so it would still not assist the appellants' case, it would just make it more difficult to establish continuity of use on the land as the unit would necessarily change or change back to the whole appeal site as the overall unit of occupation when Mr Edger obtained vacant possession.

32. Continuing with the most generous interpretation of the appellants' timeline, when M was evicted from the site in February 2017 Mr Edger secured the fencing between the appeal site and M's own land. Thenceforth it might be argued that a storage use of the appeal site became a primary use in its own right as items left by M were unwanted, following which cabins were "stored" there. However, in April 2019 the timeline entry clearly reads "*first cabin was being converted for Henry Street car wash*".

33. Furthermore, when Mr Edger finally did secure the appeal site he cleared it completely as can be seen from the aerial photograph and as attested to by him and R. This was a precursor to establishing an entirely new use on the site which was the target of the present enforcement action. It is therefore misleading to state, as the appellants' agent does, that the use of the land by M "*was continued by James Edger for the purposes of storing HACW Cabins on site until transfer to other sites*".

34. Also, Mr Edger has given sworn evidence that "*metal storage units have been placed onto the site where work is required to be carried upon them*" (my emphasis). It is therefore also misleading that the case has continued to be made on behalf of the appellants that the only use of land involved is a storage use.

35. The storage element of the mixed use appears to be largely ancillary to the processing and distribution of the imported containers. There are clearly other items deposited on the land since it was completely cleared as described above, which are included as a target of the enforcement action, eg the dilapidated caravans. However, use of the land for storage of these items has not gained immunity from enforcement because the storage use has not been shown to have been established for the required 10-year period prior to clearance of the site.

36. As such, *Ocado* is not on point. The short period during which the land was cleared might have been sufficient to defeat any presumption of abandonment of a lawfully acquired storage use, but will be sufficient to defeat enforcement action that might otherwise have been directed towards it at the time. In other words, time started to run again from when the land was repopulated with structures and equipment and used in what really amounted to a new chapter in the planning history of the site, ie the business of importing sundry containers, and the fashioning and distribution of "Handy Andy" car wash "cabins". These are all uses against which it was not too late to take enforcement action.

37. The appeals on ground (d) fail.

Conclusion

38. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections.

Grahame Kean

INSPECTOR