



Appeal Decision

Site visit made on 23 July 2025

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2025

Appeal Ref: APP/Z4718/C/23/3334012

Land at Calmlands Road, Meltham, Huddersfield HD9 4JD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Richard Duncan against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 20 October 2023.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the material change of use of the site to general storage, and engineering operations to raise the land level, the laying of crushed stone to form a hard surface, the siting of shipping containers and creation of a building to facilitate the use of general storage.
 - The requirements of the notice are to:
 - a) Cease use of the site for general storage.
 - b) Demolish the makeshift building and remove all resultant material from the site.
 - c) Remove the shipping containers from the site.
 - d) Remove all plant, machinery, and other stored items from the site.
 - e) Return land to its previous condition prior to the unauthorised developments taking place.
 - The period for compliance with the requirements is 60 days.
 - The appeal is made on the grounds set out in section 174(2)(b) and (g) 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 and varied by:
 - 1) The deletion of the text from section three and its substitution with: “Without planning permission the material change of use of the land from agriculture to storage, together with engineering operations to raise the land level, the laying of crushed stone to form a hard surface, the siting of shipping containers and the erection of a building to facilitate the unauthorised material change of use”.
 - 2) The deletion of the word “general” from section 5a).
 - 3) The deletion of 60 days and the substitution with three (3) months as the time for compliance in section six.
2. Subject to the corrections and variation, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

3. As set out in more detail below, the appellant’s submissions in support of his appeal on ground (b) are more pertinent to an appeal on ground (c). Although this ground was not pleaded, the Council has had an opportunity to comment on the representations, I shall therefore consider the appeal as though this ground had been pleaded.

The appeal on ground (b) and the ‘hidden’ ground (c)

4. An appeal on ground (b) is that the matters alleged have not occurred as a matter of fact and (c) that those matters (if they occurred) do not constitute a breach of planning control. The burden of proof on both grounds is on the appellant and the relevant test is the balance of probabilities.
5. The appellant claims that there is no ‘general storage’ use because items are being stored for agricultural purposes. This claim properly falls to be considered under ground (c), which is whether the matters constitute a breach of planning control. Whilst they do not dispute that the operational development has occurred, they argued that it does not facilitate the alleged use for general storage.
6. It is not necessary, for an enforcement notice alleging a material change of use to recite the previous use. Whilst the items are largely and typically agricultural in nature, there is no dispute that the items are being stored on the land which has been developed to include a hard surface, shipping containers and a building, on and within which the items are stored as a matter of fact. It follows the appeal on ground (b) must fail.
7. Turning to ground (c), where there is a question about whether a material change of use has occurred, it is necessary to identify the ‘planning unit’, and the present and previous primary (as opposed to incidental) uses of that unit. The planning unit is usually the unit of occupation, that is, the unit occupied for one or more primary uses, unless a smaller area of land can be identified which is physically and functionally separate and distinct. For there to be a material change of use, there needs to be some significant difference in the character of the activities taking place within the planning unit from what has gone on previously.
8. There is no dispute that agriculture is the sole pre-existing and lawful primary use of the appeal site. The appellant rents other agricultural land nearby, but he has not explained how or even whether that is physically connected to the appeal site. Accordingly, for the purposes of this appeal, I am satisfied that the land subject of the notice comprises a single unit of occupation (the planning unit) with a single lawful use.
9. Storage may be a primary use of land, or incidental to another use. Where land is used primarily for agriculture, there will normally be incidental storage of machinery, plant, equipment and items such as animal feed or farm produce. However, for a use to be ‘incidental’, it must be reasonably related to the active and lawful primary use and take place within the same planning unit.
10. The machinery and other items stored on the appeal site are generally agricultural in nature, but it does not follow that they are reasonably required for the lawful agricultural use of the land. The number of items being stored, as listed by the appellant and visible at my visit, is high given the modest size of the site.
11. The appellant admits that he uses all of the machinery and items stored, in connection with his farming enterprise, on his rented land nearby and the appeal site, and does not dispute that he has placed storage containers on the land. Whilst he argued that the items are proportionate to the total land farmed, the appellant has not demonstrated that the storage use is proportionate or incidental to the lawful use of this planning unit.

12. I have no evidence of how the site appeared prior to the storage use commencing, however, when the appellant purchased the land, it was advertised as grazing land. Therefore, it seems, although there is reference to tipping, that the land would have been open pasture.
13. The use for storage, together with the formation of hard surfacing, the siting of containers and erection of a building to facilitate the use, has, on the balance of probabilities, resulted in a definable change in the character of the appeal site. Accordingly, as a matter of fact and degree, it is more likely than not that the change in the use of the land from agriculture to the storage use alleged is material. The appellant has not shown that the change in the character of the activities was not material or does not require planning permission.
14. I shall make minor corrections to the notice to clarify the allegation; doing so will cause no injustice as it will not change the notice in substance. For the reasons given, however, I conclude that the appellant has failed to demonstrate either that the matters alleged in the notice have not occurred or that those matters do not constitute a breach of planning control. On the balance of probabilities, planning permission is required but not granted for the alleged material change of use and operational development. The appeal fails on ground (b) and the hidden ground (c).

The appeal on ground (g)

15. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant suggested a period of 120 days based on the ground conditions which may make it difficult to load the containers onto lorries, and as he does not own any land elsewhere to re-locate the expensive machinery.
16. There is a track which leads directly to the area where the shipping containers and building are located, and the appellant rents land nearby. The period of 60 days given would be reasonable for compliance with steps a) to d). However, I am concerned that the period would fall short of what is reasonable for compliance with step e), given that works to return the land to its previous condition can be expected to include restoring the pre-existing land levels and removing the hard surface. For that reason, I shall extend the period for compliance to three months. The appeal on ground (g) succeeds to this extent.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation.

Felicity Thompson

INSPECTOR