



## Appeal Decisions

Site visit made on 9 September 2025

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12<sup>th</sup> September 2025

**Appeal A Ref: APP/V4250/C/23/3330682**

**Appeal B Ref: APP/V4250/C/23/3330683**

**Appeal C Ref: APP/V4250/C/23/3330684**

**Appeal D Ref: APP/V4250/C/23/3330685**

**Land to the rear of 32-54 (even) Railway Street, Hindley, WIGAN, WN2 2QL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mr Craig Blackburn against an enforcement notice issued by Wigan Metropolitan Borough Council. Appeals B, C and D are made by Ms Stacey Barlow, Ms Darcie Blackburn and Ms Codie-Leigh Strong, respectively.
- The notice was issued on 12 June 2023.
- The breach of planning control as alleged in the notice is 'Without planning permission the material change of use of part of the Land which was previously used as an alleyway to the rear of residential properties to use for storage, Use Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended) by way of the siting of a container used to store motorcycles and associated paraphernalia, on part of the Land.'
- The requirements of the notice are to: Remove the storage container and associated paraphernalia from the Land and restore the Land to its previous use.
- The period for compliance with the requirements is: 56 days.
- The appeals were made on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended).

### Decisions

1. The enforcement notice is quashed.

### The Notice

2. Section 176 of the Act requires me to consider the status of the enforcement notice (the Notice) and whether any defect, error or misdescription could be corrected, or its terms varied, without injustice to the appellant or the local planning authority. If the Notice cannot be corrected, I must quash the Notice.
3. The Land subject of the Notice includes a vehicular access road from Railway Street and the entirety of an alleyway running behind nos.32-54 Railway Street. The Notice refers to use of 'part of the land' for the siting of a storage container but does not identify the relevant part.
4. In consideration of an alleged material change of use of land, Bridge J in *Burdle*<sup>1</sup> highlighted 3 broad categories of distinction in considering the relevant planning unit (PU). These are:
  - 1) a single PU where the unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary;

<sup>1</sup> *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

- 2) a single PU 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 to another; and
- 3) the unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes.
5. Bridge J went on to state that 'It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally'.
6. At the time of my site visit the Land was in mixed use as a rear alleyway used for vehicle access and parking and bin, trailer and caravan storage amongst other things. The container was no longer present. Having regard to the principles in *Burdle*, any enforcement notice directed at the entirety of the Land should refer to all of the component uses of the mixed-use taking place there.
7. It is not open to me to correct the Notice by extending the allegation as, given the likely broadening of interested parties, the limited number of parties served with a copy of the Notice, and that the appellants and others may seek to exercise a right of appeal on the same or different grounds, such a correction to the Notice would inevitably lead to injustice.
8. Alternatively, following *Burdle*, if a physically and functionally separate area can be identified then it is open to me to reduce the area subject to the requirements of the Notice. However, such a revision would need to be sufficiently accurate to identify the exact location of the container present when the Notice was served without incorporating land within the other uses I have identified. Nor could it preclude land which the appellants' case might rely upon.
9. In this instance, the appellants' submissions largely concern ground (d) claims – that the container had been in position for sufficient time such that it was too late for the Council to take enforcement action. However, the evidence indicates that the size of the container may have changed during the period in the run-up to the service of the Notice. Although Appellant A applied for a certificate of lawfulness (Ref. A/22/94035/LUCE) for the continued siting of a storage container on identified land rear of 42 Railway Street, which included a plan showing its (then) location, I cannot be sure that this covers the relevant area or accounts for any associated operational land such as a parking/unloading area, for example. Furthermore, an amendment of the Notice plan could potentially exclude land which might be relevant to the appellants' hidden ground (d) cases.
10. Moreover, such a change to the area subject of the Notice may prejudice the Council and frustrate enforcement efforts if its aim was to prevent the re-siting of a container elsewhere on the wider area of land identified in the Notice.
11. For those reasons, a reduction in the land area could also lead to injustice for the main parties and it is not therefore open to me to correct it.
12. When seeking to remedy an alleged breach of planning control consisting of a material change of use of land, the requirements of an enforcement notice can only require that use to cease. A notice cannot seek the reinstatement of a former use. While it is open to me to correct that requirement by deletion of the offending part, the outcome of the appeal does not turn on that matter.

## Conclusion

13. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or identify with sufficient precision where it is alleged to have occurred. It is not open to me to correct that error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
14. It is open to the Council to serve a further notice which clearly sets out the nature of the breach and the requirements, should it consider it expedient to do so, subject to the provisions of s171B(4) of the Act.
15. In the circumstances, the appeals on the grounds (b) and (c) set out in s174(2) of the Act do not fall to be considered.

*R Hitchcock*

INSPECTOR