



Appeal Decision

Site visit made on 31 October 2023

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 September 2025

Appeal Ref: APP/K0940/C/23/3325595

Land at Esso Garage, Scotland Road, A6, Penrith CA11 7NR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr J J Stamper (Davidsons Garage (Penrith) Limited) against an enforcement notice issued by Westmorland and Furness Council.
- The notice was issued on 14 June 2023.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of land from an automated car wash ancillary to the filling station to an independent hand car wash and valeting business not associated with the garage.
- The requirements of the notice are:
 1. On a permanent basis, cease the operation of the hand car wash;
 2. Remove permanently from the site the glazed structure at the rear of the hand car wash (shown in annex 3 photo 2), and all structures and equipment associated with the hand car wash.
- The period for compliance with the requirements is:
28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 (as amended). 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.

Formal Decision: The appeal is allowed and the enforcement notice is quashed.

Formal Decision

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

Preliminary Matters

2. The planning applications referred to below were originally determined by Eden District Council. In April 2023 Eden District Council was abolished and its functions were transferred to Westmorland and Furness Council. The Local Government (Boundary Changes) Regulations 2018, allow for any extant development plans to have effect as if adopted by the successor Council until such time as the successor Council adopts a plan covering the whole of its area. For the purposes of this appeal, the development plan comprises the Eden Local Plan 2014-2032¹ (ELP).
3. A new version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. With the exception of paragraph numbering, the parts of the Framework most relevant to the appeal on ground (a) have not materially changed from the previous iteration of the Framework. As a consequence, it has not been necessary for me to seek the further comments of the main parties in this respect. I have determined the appeal accordingly.

Background

4. The petrol filling station at the appeal site is described as a long established garage site on the A6, the main (historic) road leading northwards from Penrith to Carlisle and onwards towards Scotland. The appeal site's planning history, as set out in the

¹ Adopted October 2018

Council's officer reports in relation to recent applications for planning permission², show a number of applications for planning permission that indicate the presence of a car washing facility in some form at the appeal site for a number of years³. It is common ground between the main parties therefore that a car wash has operated at the appeal site for a considerable length of time.

5. More recently, applications for planning permission were made to the predecessor Council in 2019 and 2022 for schemes for the refurbishment of car wash facilities⁴ and for *'the construction of a waiting room and car valeting bay, to facilitate the existing operation of a hand car wash'*⁵. Although the latter application related to operational development and the notice before me to an alleged material change of use, the application was refused planning permission in March 2023 for reasons similar to those upon which the service of the notice is based. That decision was appealed, and the appeal subsequently dismissed in December 2024⁶.
6. The appeal site occupies a large corner site around the junction and intersection of Scotland Road (A6), Drovers Lane, Robinson Street and Lark Lane. The petrol filling station (PFS) canopy and pumps dominates the site and immediate surroundings, with a part two-storey / part single storey kiosk and shop building attached to the canopy structure. To one side of the PFS pump area and shop building lies a separate building which previously accommodated an automated car wash, in front of which is a machine to dispense water and air.
7. The site has long road frontages to Scotland Road and Lark Lane, from which there are a total of three access points to / from the appeal site. Wide accesses from Scotland Road and Lark Lane provide direct access to, and egress from, an extensive forecourt area. A second, narrower, exit point from the site to Lark Lane is located further to the south along Lark Lane behind the forecourt shop building and adjacent to a residential property.
8. Other than the fuel pump 'islands' and a raised kerb wall that bounds the back edge of the Scotland Road pavement, the forecourt is not physically sub-divided. Painted markings are in place towards one side of the forecourt, denoting the entrance route to the car wash building. There are similar markings on the surface of the rear yard area that exits on to Lark Lane, where numbered valeting bays have also been painted on to the yard surface. A sign on the main kiosk building's flank elevation indicates customer parking, whilst further parking spaces are against the site's eastern boundary.

The appeal on ground (c)

9. In an appeal on ground (c) the onus is on the appellant to show that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. The concept of a material change of use is not defined in statute or statutory instrument; it is a question of fact and degree in each case. For there to be a material change of use there needs to be some significant difference in the character of activities from what has gone previously and may therefore be

² LPA Ref Nos: 22/0679 and 19/0281

³ LPA Ref Nos: 88/1516 – *'Jet wash and screening'*, 91/0348 – *'Proposed shop extension and washing building'* and 95/0137 – *'Proposed re-siting of car wash approved 20/6/91 ref 91/0348...'*

⁴ LPA Ref No: 19/0281

⁵ LPA Ref No: 22/0679

⁶ APP/H0928/W/23/3327011 – 3 December 2024

because what is alleged is not development as defined by section 55(1) of the Act because, for example, the change of use was not material.

10. The first step is to define the relevant planning unit(s). Based on the principles established in *Burdle*⁷, the planning unit is an accepted tool for determining the most appropriate area against which to assess the materiality of change. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and / or occupied for different and unrelated purposes. A mixed or composite use is where the occupier carries on a variety of activities and it is not possible to say one is incidental to the other.
11. The previous use to which the building to the side and rear of the PFS kiosk and shop building was put to was as an automated car wash where vehicles entered the building one at a time and progressed through on a conveyor system where the vehicle was washed. The automated car wash was accessed from Scotland Road across the PFS forecourt where the forecourt is extensive and the access wide.
12. The access arrangements to the hand car wash are essentially unchanged, albeit that painted markings have been applied to the forecourt area to direct traffic towards and into the building. There remains no physical separation on the ground between the access to the forecourt, and subsequently to the PFS pump island, an air and water dispenser for motorists, or to parking areas for those just visiting the retail facility within the shop kiosk building.
13. Nor is there any physical differentiation in the access and approach to the handwash facility between the appeal scheme and the previous automated operation. The circulation within and through the appeal site has not changed. Both the previous automated wash and the hand wash operate a one-way vehicle flow through the site, with entry from Scotland Road and egress on to Lark Lane. Indeed, elements of the wash operation also appear to occur within the building within which the automated car-wash equipment was located
14. The Council allege that the operation of the hand car wash is an independent operation separate to that of the PFS, and that it amounts to an intensification of the previous use. It is commonly accepted that a range of ancillary activities may be found at a PFS. These may include retail facilities in the form of a kiosk shop, the provision of air and water and the operation of a car wash. These are all, to varying degrees, functionally linked to the operation of the PFS and providing services to the motorist. However, if an incidental use alters or expands to a point where it has ceased to be functionally related to the extant primary use, and become a primary use in its own right, either within a new planning unit or so as to put the original planning unit into a new mixed use, then it is likely that a material change of use will have occurred.
15. I am not persuaded that the appellant has created a new or separate planning unit, given the lack of physical separation between the car wash and valeting business and the wider petrol filling station forecourt area and shared access and circulation. Indeed, many of the activities of the car wash element of the current operations take place within the building that previously housed the automated car wash machinery and, it seems to me, the access and egress arrangements appear to have been unchanged. Nor am I persuaded that the nature of the carwash and the

⁷ *Burdle & Williams v Secretary of State for the Environment & New Forest Rural District Council* [1972] WLR 1207

ability to clean a vehicle's interior is such that it has ceased to be functionally related to the extant primary use of the planning unit, that of the PFS and its ancillary activities, notwithstanding the descriptions of the management of the operation. It remains a car-wash facility in the location where previously a car-wash facility operated. That the carwash facility is operated 'by hand' rather than automated is not definitive in this respect, whilst the tenure of the operation does not in my judgement alter its planning status, or that of the planning unit and there has not been a material change of use that would constitute a breach of planning control. The appeal on ground (c) therefore succeeds.

The appeals on grounds (a) and (f)

16. As the appeal on ground (c) succeeds for the reasons I have set out above, it is not necessary for me to consider the planning merits of the appellant's case in respect of the ground (a) and ground (f) appeals. However, I am mindful of the conclusions reached in respect of the section 78 appeal for the development set out in that proposal and the operational development described therein. My conclusions in respect of the ground (c) appeal, the notice and the material change of use alleged therein do not alter the outcome of that appeal or its decision in relation to the operational development with which it was concerned.

Conclusion

17. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.
18. In these circumstances, the appeal on grounds (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended), and ground (f) do not fall to be considered.

G Robbie

INSPECTOR