



## Appeal Decision

Inquiry held on 2 and 3 July 2025

Site visit made on 3 July 2025

**by R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 29<sup>th</sup> September 2025**

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### **Appeal Ref: APP/X0415/X/25/3360669**

#### **Land adjacent to Jewson's, Chesham Road, Hyde End, Buckinghamshire**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use (LDC).
  - The appeal is made by Wards of London Properties Limited against the decision of Buckinghamshire Council - East Area (Chiltern).
  - The application ref PL/23/3296/SA, dated 17 October 2023, was refused by notice dated 16 August 2024.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
  - The use for which a certificate of lawful use is sought is the use of the site as a builders merchant (sui generis).
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### **Decision**

1. The appeal is dismissed.

### **Application for Costs**

2. An application for costs was made by Wards of London Ltd against Buckinghamshire Council. That application is the subject of a separate Decision.

### **Background**

3. The appeal site is located to the northern side of the B485 and in use for storage. A builders' merchant yard owned and operated by Jewson lies immediately to the west, and the site formed part of that property until it was sold to a Mr and Mrs Finch in February 2006. I shall refer to the pre-2006 Jewson's land as the 'original site'. It was used for milling timber via a sawmill before being bought by Harcros Timber & Building Supplies Ltd (Harcros) around 1989 and then Jewson in 1997.
4. Section 192 of Town and Country Planning Act 1990 (the 1990 Act) provides for the grant of a lawful development certificate (LDC) for a proposed development that would have been lawful had it been instituted or begun at the time of the application. The onus is on the appellant to make that case on the balance of probabilities. Under s191(2)(a) of the 1990 Act, uses and operations are lawful at any time if no enforcement action may be taken in respect of them, perhaps because they do not require planning permission.
5. As discussed below, an enforcement notice (EN1) was issued on 21 July 2007 which alleged that there had been a 'change of use of [land adjacent to Jewson's] from the lawful use as part of a builders' merchants (a sui generis use) to use for the storage of vehicles, plant and equipment, together with ancillary repairs and maintenance thereof'. The notice required the cessation of the use of land for the

storage and repair of vehicles, plant and equipment, and the removal of those items. The notice related to what I shall refer to as the '2007 site', which was slightly larger than but included the whole of the current appeal site.

6. Section 57(4) of the 1990 Act provides that, where an enforcement notice has been issued in respect of any development of land, planning permission is not required for use of the land for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.

## **Main Issue**

7. The main issue is whether there was a lawful right of reversion under s57(4) to the proposed builder's merchant use on the date of the LDC application, 17 October 2023, such that planning permission was not required for a material change of use.

## **Reasons**

### *The Lawful Use of the Appeal Site on 27 August 2008*

8. Mr and Mrs Finch made appeals against both EN1 and a decision by the Council to refuse to grant an LDC for the existing use of the 2007 site for open storage. The appeals<sup>1</sup> were jointly decided on 27 August 2008 following an inquiry. I shall refer to the 2008 appeal/decision letter/Inspector.
9. The 2008 Inspector found that, by 1991, the 'original site' was in use as a 'builders' merchants'. I pause here to note that this use is often described as 'sui generis', i.e. outside of any use class set out in the Schedules to the Town and Country Planning (Use Classes) Order 1987 (the UCO), because it is a 'composite use' or a 'mixed use'. In other words, builders' merchants tend to be characterised by a combination of uses or activities.
10. The 2008 Inspector found that, by around 2001, no enforcement action could be taken against the builders' merchant use taking place on the original site given the time limits set out under s171B(3) of the 1990 Act, and so the use was lawful [for the purposes of s191(2)]. He also specified that the lawful builders' merchant use, in this case, comprised a mix of the following component uses, none of which were incidental to another:
  - the storage of materials and equipment used in the construction industry,
  - the sale or supply of timber and building materials, to both the building trade and the public,
  - the milling, sawing and machining of timber to specialist sizes via the historic sawmill which remained on the land.
11. The 2008 Inspector noted that the 2007 site was separated from the remaining Jewson's premises by a palisade fence, and served by a separate access, which I understand had the benefit of planning permission. The Inspector found that the storage use subject to EN1 and then LDC appeal was functionally and physically separate and distinct from the lawful builder's merchant use. He found that there had been a material change of use of the land which required but did not have

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<sup>1</sup> APP/X0415/C/07/2059918 & 2059929 and APP/X0415/X/07/2062615

planning permission. He concluded that there had been a breach of planning control, and it was not too late for the LPA to enforce against that.

12. The Council has raised questions in these proceedings as to whether the builders' merchant use of the original site had actually persisted for sufficient time to become lawful by 2001. They point to evidence from the appellant that Harcros used the land for internal and external storage only – and not the mix of uses described by the 2008 Inspector – before Jewson's acquired the land in 1997. However, the then Jewson's manager (Mr Holman) gave evidence under oath to the 2008 Inquiry that Harcros, under their then trading name of Sabah Timber Limited, both stored and supplied timber and building materials. The manager also affirmed that the sawmill "was functioning between 1997 and 2005 and the facility still remains now".
13. The Council also suggests that builder's merchant may have ceased to be the lawful use by 2008 on the basis that an intervening material change of use took place, through the cessation of the sawmill activity around 2005, before the storage use alleged by EN1 began. However, the 2008 Inspector concluded that the sawmill element remained present as part of the composite builder's merchant's use, even if it was possibly only a 'relatively minor part of the business as a whole'.
14. Ultimately, I find these lines of argument from the Council to be fruitless. Even if the 2008 appeal could be relitigated now, the Council's re-examination of what is now old evidence do not persuade me to go behind or depart from the previous Inspector's clear findings which were not subject to any successful high court challenge. The lawful use of the appeal site, as part of the 2007 site, was use as a builder's merchant at the time that Mr and Mrs Finch carried out a material change of use to storage. The next question is whether EN1, as upheld by the 2008 Inspector, afforded a right of reversion to that lawful use.

#### *Section 57(4) of the 1990 Act*

15. The effect of s57(4) is that the issuing of an enforcement notice serves to secure the landowner's lawful use rights; otherwise, planning permission would be required for a material change of use back from an unlawful use to the previously lawful use.
16. Section 57(4) refer to uses that are lawful 'in accordance with the provisions of this Part of this Act', meaning Part III of the 1990 Act, which governs 'control over development'. The time limits for immunity from enforcement action set out under s171B, and the LDC provisions in ss191-196 are contained in Part VII of the 1990 Act, which relates to Enforcement. However, since s191(2) defines lawfulness 'for the purposes of this Act' as a whole, it follows that a use which is lawful under s191(2) will be lawful for the purposes of s57(4). In other words, that the builders' merchant use only became lawful due to the passage of time, as recorded by the 2008 Inspector, does not prevent s57(4) from applying here.
17. The Council referred me to the cases of *Panton*<sup>2</sup> and *Ocado*<sup>3</sup> which highlight that the formation of a new planning unit can be one mechanism by which lawful use rights may be lost. The 2008 appeal decision shows that, while the latter did not automatically follow from the former, the creation of a new planning unit occurred alongside the material change of use to storage on the 2007 site. The lawful builders' merchant use could have thus been lost except for one thing – the issuing

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<sup>2</sup> *Panton & Farmer v SSETR & Vale Horse DC* [1999] JPL 461

<sup>3</sup> *R (Ocado Retail Limited) v London Borough of Islington* [2021] EWHC 1509 (Admin)

of EN1. *Panton* and *Ocado* do not answer the question as to whether there is a right of reversion here because that was not a question in those cases and s57(4) makes no mention of planning units.

18. Lawful use rights can also be lost by the carrying out of acts that are inconsistent with the preservation of a lawful use. However, the installation of the palisade fence and the alterations to the access around 2006-7 were works probably carried out to facilitate the change of use to storage which was subject to EN1. It seems to me that the Council is again seeking to find a reason as to why events pre-2008 could mean the use of the land as a builders' merchant was not lawful, even though the 2008 Inspector clearly found that it was. The Council took no enforcement action against the fence or access specifically.
19. As confirmed in *Titchfield*<sup>4</sup>, 'the land referred to in the first phrase of section 57(4) is the land to which the enforcement notice relates'. The subdivision of the original site to form the 2007 site did not preclude s57(4) because that was part of the material change of use to storage which was subject to EN1. The 2008 Inspector said that storage "use in question is functionally and physically separate and distinct from the previous use as a builder's merchants..." He did not describe the lawful use of the 2007 site as limited to being **part** of a builders' merchant.
20. The 2008 Inspector made no finding in law as to whether there EN1 would secure a right of reversion via s57(4) to use of the 2007 site as a builders' merchant. In considering the merits of the storage use, the Inspector accepted that reversion 'could' be a 'fallback' position but found 'no evidence' that this was likely or 'even a possibility'. That latter phrase gives room for argument about whether s57(4) could be engaged, but the Inspector ultimately did not 'attach much weight' to the fallback position for a likelihood reason: 'the land appears to have been deemed surplus to Jewson's requirements some 3 years ago'.
21. Given that reasoning, as well as the Inspector's finding that the builders' merchant use had become lawful by reason of immunity before the 2005 material change of use to storage was made, I find on the balance of probabilities that, when EN1 came into effect, the owners of the 2007 site then had a right of reversion under s57(4) to the lawful use as described in the 2008 appeal decision. However, it does not necessarily follow that such a right persists today.

#### *Was the s57(4) right of reversion lost after 2008?*

22. I return to the authorities relating to loss of lawful use rights. Notwithstanding the minor differences between the 2007 and appeal site boundaries, I am satisfied that no new planning unit was created through further subdivision post-2008. However, as noted above, lawful use rights may be lost through an otherwise created new chapter in the planning history, through another material change of use or the carrying out of acts inconsistent with the continuation of the lawful use, for example.
23. At the Inquiry, I heard there is some dispute as to the extent of change which might instigate such a new chapter. The leading judgment on this question is set out in the Court of Appeal judgment in *Jennings*<sup>5</sup>, which is helpfully summarised alongside other relevant caselaw in *Titchfield*. In *Jennings*, Lord Denning MR suggested that the theory that a new building or change of use must create a new

<sup>4</sup>*Titchfield Festival Theatre Limited v SSCLG* [2025] EWHC 883 (Admin)

<sup>5</sup> *Jennings Motors Ltd v SSE & New Forest DC* [1982] 2 WLR 131; [1982] JPL 181

planning unit should be discarded in favour of considering whether a new chapter in the planning history of the land is opened:

“This may take place where there is a radical change in the nature of the buildings on the site or the uses to which they are put – so radical that it can be looked upon as a fresh start altogether in the character of the site. If there is such a change and the occupier applies for permission and gets it subject to condition – and acts upon that permission – he cannot afterwards revert to any previous existing use rights.”

24. Oliver LJ (with whom Watkins LJ agreed) felt it “would be a pity to discard” the planning unit theory altogether but nonetheless agreed that the “essence of the matter” was whether there has been, as a matter of fact and degree, a total change in the physical nature of the premises or “in...the planning status that is inconsistent with the preservation of a prior existing use”. As observed in *Titchfield*, a change in the planning status does not have to involve a radical or indeed any change in the *physical* nature of the site.
25. It is the appellant’s case that the right of reversion to the lawful use established by s57(4) persists because there has been no subsequent material change of use since the change of use to storage subject to EN1. It is necessary for me to consider whether anything and everything that occurred since the 2008 appeal decision amounted to an act or acts inconsistent with the preservation of the lawful use and thereby caused a change in the planning status of the land.
26. The parties agree that, following the 2008 appeal decision, EN1 was complied with as the storage use was ceased. However, the builders’ merchant use was not resumed and the site lay vacant for several years. An application for an LDC (CH/2012/1452/EU) for ‘an existing use...as a builders merchant’ was refused by the Council based on the builders’ merchant use having actually been abandoned. Although the Council does not claim ‘abandonment’ now, their decision on the 2012 LDC was not challenged and there is no evidence that the builders’ merchant use was then ‘existing’ in the sense of it taking place.
27. In March 2014, the appeal site (if not the 2007 site) was sold to the London Reclaimed Brick Company Ltd (LRBC) who put (part of) the land back into use for storage. On 26 November 2014, the Council refused planning permission (ref: CH/2014/1783/FA) for the ‘erection of a single storey office building’ and, while that decision turned on the merits of the development, the officer report noted that:  
  
‘The application form indicates that the proposed office building would be for use in connection with an existing building [sic] merchants on the site and during the officer visit it was noted that **building materials were being stored on the site**. The site adjoins the existing Jewson builders’ merchants site. However, the application site is separate to the Jewsons site and [given the refusal of the 2012 LDC application and lack of any other application since] the site therefore currently has a nil use and any use of the site as a builders’ merchants **would be** in breach of planning control’ (my emphasis).
28. That storage use was subject to a complaint to the Council in November 2014. In February 2017, LRBC applied for an LDC (ref. CH/2017/0746/EU) in respect of the [then] existing use of the appeal (or 2007) site for the ‘storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials such a use being a builders’ merchant (sui generis)’. The application was refused, albeit not until December 2018, on the basis that the existing use was ‘materially



different from the lawful use as identified in' the 2008 appeal decision letter. No appeal was made in respect of that decision.

29. LRBC also made two planning applications in 2017 (refs. CH/2017/0747/FA and CH/2017/1233/FA) for use of the appeal site 'for open commercial storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials' and 'the temporary siting of a portacabin used in connection with Builder's Merchant use for 3 years'. Appeals against the Council's decisions to refuse both applications were decided together in October 2019<sup>6</sup>.
30. The '2019 Inspector' recorded that 'a vast amount of bricks and slabs...were palletised, stacked and arranged in rows throughout the site and clearly visible through site entrance'. With reference to the 2008 appeal decision, he rejected the claim that the 'open commercial storage' use was 'not materially different' to a builders' merchant use. As to whether that remained 'a legitimate fallback position', the 2019 Inspector noted that 'even if [a builders' merchant] use has not been abandoned...it is clearly not a use that the [then appellant] seeks to employ'. He highlighted that 'it is the open commercial storage of materials at the site...that the [LRBC] seeks and...has existed since' acquiring the site in March 2014.
31. The Council then issued and served another enforcement notice, EN2, on 18 June 2020. It alleged that there had been a material change of use of the appeal site 'for the open commercial storage of bricks and other building supplies, vehicles, plant, machinery, moveable structures and other equipment and materials (Use Class B8)'. It required that cessation of the use and removal of items within six months.
32. Under s181(1) of the 1990 Act, compliance with an enforcement notice shall not discharge the notice. EN1 remained in force and effective against any subsequent change of use of the land to storage. Notwithstanding that EN1 and EN2 described the storage of different items, the use subject to both notices was the same. The 2007 site subject to EN1 encompassed the whole site subject to EN2 and I repeat that there was no further subdivision. To the extent that it attacked the same use as EN1, I agree with the appellant that EN2 was probably unnecessary.
33. However, it does not follow that the resumption of an open commercial storage use in 2014 was immaterial. The site had been put to a nil use for around five years before that. The appellant suggests that the stopping and starting of a use is not a material change, but that is only the case where a use is lawful. It was held in *Thurrock*<sup>7</sup> – *Panton* applied – that a use cannot be 'dormant' unless it has acquired lawfulness<sup>8</sup>. Whether EN2 was strictly necessary for the Council to secure the cessation of storage post-2014 is irrelevant to whether or not there had been a material change of use as EN2 described.
34. Section 55(1) defines 'development' as the **making** of a material change of use. None of the authorities cited by the appellant support his proposition that, if there is an unauthorised material change of use, and then the unlawful use is ceased, and the land lies unused for several years, the making of a subsequent change back to the same unlawful use must somehow be treated as the same event as the original

<sup>6</sup> APP/X0415/W/19/3232485 and APP/X0415/W/19/3232566

<sup>7</sup> *SSE v Holding and Thurrock BC* [2002] EWCA Civ 226

<sup>8</sup> Thus, an unlawful use must take place continuously throughout the ten year 'immunity' period such that the Council could have taken enforcement action at any time.

development. I also note that EN2 was not appealed and so s285(1) of the 1990 Act is engaged, meaning that the validity of EN2, and whether the then alleged change of use was material, cannot be questioned through these proceedings.

35. I further reject the appellant's contention that 'the [2005] change of use from a builders' merchants to a storage use was a material change but it was not radical and...did not amount to a change in character of such a nature as to be inconsistent with the established use'. Irrespective of whether there is any subdivision or new planning unit created, any material change of use is liable, as a point of principle, to amount to a new chapter in the planning history. That should be uncontroversial because:
  - planning permission is required for a material change of use and if that is granted, as Lord Denning observed, previous lawful use rights are lost
  - if an enforcement notice is issued in respect of any development of land, such as the material change of use alleged by EN1, the previous lawful use rights are **not** lost because they are expressly protected in this situation by s57(4).
36. The appellant submitted that the commercial storage of bricks, as described in the 2019 appeal decision as well as in EN2, is not 'inconsistent' with the builders' merchant use. However, as noted above, the use found to be lawful by the 2008 Inspector was a mixed or composite use that comprised three primary activities: sales to trade and the public, plus the milling, sawing and machining of timber, as well as storage. The first two components of that mixed use had not taken place, on the balance of probabilities, for some 18 years by the date of the LDC application.
37. Where the lawful use is a mixed use, individual component uses may be added, ceased, expanded or contracted without there necessarily being a material change of use<sup>9</sup>. I repeat that the evidence does not persuade me to relitigate the 2008 (or indeed 2019) appeal decision or enable me to question the validity of EN2. However 'consistent' the appellant may consider brick storage and builders' merchant uses, the appeal site has been subject on the balance of probabilities to two material changes of use to storage, firstly in 2005 and secondly in 2014.
38. That finding should not cause the appellant any problems, because s57(4) does not depend on consistency between the relevant lawful and unlawful uses<sup>10</sup>. However, the appellant is in difficulty because any lawful use right, including that afforded under s57(4), is liable to be lost by any further material change of use. The authorities do not show that a 'radical' change must be something greater than development that requires planning permission or what such a something might be.
39. The appellant has not shown that there was no material change of use of the land to commercial storage use in 2014, although EN2 is irrefutable evidence pointing in that direction. On the balance of probabilities, the 2014 material change of use amounted to a change in the nature of the uses of the site which was sufficiently radical to create a fresh start in the character of the site and to result in the loss of the lawful use rights that had arisen from EN1 and s57(4).

<sup>9</sup> *Beach v SSTR* [2001] EWHC 381 (Admin)

<sup>10</sup> If anything, the opposite is true because s57(4) depends on the issue of an enforcement notice in respect of "development" which, in respect of uses, is limited to the making of a material change of use.

40. The appellant makes a case that s57(4) was engaged by EN2, such that the land 'could lawfully have been used' for a builders' merchant use following the material change of use which occurred after EN1 came into effect. However, at that point, contrary to the appellant's assertion, the last actual use prior to the service of EN2 was the first storage use. The Council is likely correct to say, as they did in their report on the LDC application, that s57(4) does not enable the resumption of the last lawful use, merely the last use, providing that was lawful.
41. In *Young*<sup>11</sup>, a change of use took place from a lawful general industrial to a light industrial use, and that had the benefit of planning permission granted by the then in force general development order. A subsequent change of use took place back to the previous general industrial use but that was not "permitted development" (PD) and express planning permission was not sought. Accordingly, the general industrial use was no longer lawful, meaning that the final change to another light industrial use – which was subject to an enforcement notice – was not now PD but in breach of planning control.
42. It was held by Lord Justice Watkins for the Court of Appeal that the then equivalent provisions to s57(4)<sup>12</sup> "were capable to taking the [then appellant] back only as far as the immediately preceding use" – here being general industrial use – "a reverter to which could only occur if that were a lawful use which, as is commonly accepted, it was not." While the words "immediately preceding use" were not contained within and could not be imported into the section of the Act, Watkins LJ found it:

"...inconceivable that the subject of an enforcement notice was intended to be allowed to search the history of the use of the relevant land and, upon discovery of a one time suitable lawful use, no matter how long ago that had been supplanted by another use and how many different uses had been made of the land since then, claim the benefit of that use without planning permission."
43. *Young* applies because, as set out above, there was probably a second material change of use. It does not matter that the second change was to the same use which was subject to EN1. It also does not matter that the site was vacant for several years, which was not the case in *Young*. The crucial point for my decision is that, when the second material change of use took place and EN2 was issued, the immediately preceding (storage) use had been unlawful. There had been right to revert to the builders' merchants use following the issue of EN1 via s57(4), but that was not taken up, and it was probably lost when the second material change of use took place. EN2 did not give a right of reversion to the builder's merchant use because that was not then the last use.
44. That is not the end of the story because, while it is undisputed that EN2 was complied with, insofar as the open commercial storage use was ceased, the appellant suggests that he 'left items owned by him personally' on the land. That private or domestic storage activity did not cease, I understand, until the use was changed back again to open commercial storage. I do not know if that last change occurred before or after the date of the LDC application, so I will not rely on it for my decision. However, the appellant has not shown that his prior use of the site for

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<sup>11</sup> *Young v Secretary of State for the Environment* [1983] J.P.L. 677.

<sup>12</sup> S23(9) of the Town and Country Planning Act 1971 provided that "Where an enforcement notice has been served in respect of any development of land, planning permission is not required for the use of that land for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out".



personal storage use was not in itself an act inconsistent with the preservation of the lawful use.

45. I conclude at this stage that the appellant has failed to appreciate the significance of what took place between EN1 coming into effect and the date of the LDC application. He has not shown that the change of use to storage in 2014 was not a second material change and did not give rise to a new chapter in the planning history on the balance of probabilities. The same can be said in respect of the personal storage use introduced on the site after EN2 came into effect.
46. The 'resumption' of storage uses amounted, on the balance of probabilities, to changes of so radical a nature as to constitute breaks in the planning history. That the various planning applications made in the past ten years were also concerned on their face or in reality with storage adds weight to that finding. The right of reversion to a builders' merchant use through the provisions of s57(4), which could have been acted upon following compliance with EN1 in 2008, was probably lost when subsequent changes of use of the land to storage took place.

### *The Proposed Use*

47. Where an LDC is issued, the use or operation found to be lawful – whether existing or proposed – should be described precisely. This is because the description of the existing or proposed use given on a certificate is the benchmark against which the materiality of any subsequent change of use would be assessed. The description should be more than a title or label so there are no later difficulties in interpretation.
48. That being the case, I am concerned that the proposed use was described simply as 'builders' merchants'. The appellant has given scant other details as to what that use would involve. He has not shown that, on the balance of probabilities, the use would be materially similar to the mixed or composite use found to be lawful in the 2008 decision, comprising the storage of materials and equipment; the sale or supply of timber and buildings materials to tradespeople and the public; and the milling, sawing and machining of timber.
49. I would not dismiss the appeal simply because of the description of the proposed use, because it could be changed with the appellant's agreement. However, given the appellant's claim that there is a 'high degree of consistency and continuity' between open storage and builders' merchant uses, it is worth stating that, under s191(1)(b) of the 1990 Act, a use is not lawful if it would constitute a contravention of any of the requirements of any enforcement notice in force. A grant of an LDC in the simple terms sought would not have protected the appellant from enforcement action had the land then remained or been put back into use for open commercial storage in contravention of the requirements of EN1 or EN2.

### **Conclusion**

50. I have had regard to the other authorities cited by the parties, but none change my decision<sup>13</sup>. I should also say that I have no remit to adjudge the materiality of the last change of use of the land to open commercial storage, or whether the Council could enforce against that via EN1 or EN2.

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<sup>13</sup> Including *Newbury DC v SSE* [1980] JPL 325, *Leighton and Newman Car Sales Ltd v SSE* (1976) 32 P. & C.R. 1, *Stone v SSCLG* [2014] EWHC 1456 (Admin); *Newland v SSCLG & Waverley BC* [2008] EWHC 3132 (Admin).

51. I have found that when the material change of use subject to EN1 occurred, the lawful use of the site was probably as a builders' merchant, as EN1 itself suggested and the 2008 Inspector described. His decision to uphold EN1 probably served to engage s57(4) and give rise to a right of reversion to the lawful builders' merchant use. However, following compliance with EN1 and around five years of nil use, there was a second change of use to open commercial storage.
52. The appellant has not explained how his contention that the 'stopping and starting [of a use] is not a material change' can apply where the use is unlawful. It is now too late in any event to question the validity of EN2, which alleged that there had been a material change of use to open commercial storage but was not appealed. The appellant has not demonstrated that the material change of use to an open commercial storage use in 2014, five+ years after EN1 came into effect, did not amount to 'a change of so radical a nature as to constitute a break in the planning history' of the appeal site.
53. The appellant has also failed to show that EN2 engaged s57(4) and a right of reversion to the builders' merchants uses existed. On the balance of probabilities, the right was lost because the immediately preceding use had been unlawful, *Young* applied. In that light, the appellant has also not shown that the use of the land for domestic storage in or after 2020 was not another act inconsistent with the preservation of the previous lawful use.
54. On the balance of probabilities, the changes of use that took place after 2008 were sufficiently radical, as a matter of fact and degree, as to be looked upon as creating a fresh start in the character of the site. They resulted in the loss of the lawful use rights that had existed via EN1 and s57(4). It follows that enforcement action could have been taken against the proposed use of the land as a builders' merchant, had that been instituted or begun on the date of the LDC application, because planning permission would probably have been required for a change to that use.
55. I conclude that the Council's refusal to grant a certificate of lawful use in respect of the proposed use of the site as a builders' merchant was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

*R Hitchcock*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Matthew Henderson                      Counsel, Landmark Chambers,  
instructed by Adam Gostling of hgh Consulting

he called:

Adam Gostling                      Executive Director at hgh Consulting

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Mark O'Brien-O'Reilly              Counsel, Francis Taylor Building,  
instructed by Katherine Stubbs, Senior Solicitor,  
Buckinghamshire Council

he called:

Mike Shires                      Strategic Technical Lead, Buckinghamshire Council

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Appellant's Opening Statement
2. Council's Opening Statement
3. Photograph set, dated 28 February 2002, by Susan E Barnard entitled SN3795 Jewson's Hyde Heath (25 images - accompanying Officer notes from site meeting 28.2.2002)
4. Appellant's Costs Application
5. Council's Costs Rebuttal.