



Appeal Decision

Site visit made on 27 January 2026

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th January 2026

Appeal Ref: APP/A4710/C/25/3361796

Land north east of Lower Hartley Farm, Jumps Lane, Todmorden, OL14 8DG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Alan Owen against an enforcement notice issued by Calderdale Metropolitan Borough Council.
 - The notice was issued on 6 February 2025.
 - The breaches of planning control as alleged in the notice are: Without planning permission –
 1. the use of the Land to store a container for domestic use
 2. the use of the Land for the siting of two caravans for residential purposes
 3. the erection of a structure on the Land covered by green tarpaulin
 4. the erection of a lean-to structure on the Land
 5. the erection of a free-standing structure on the Land
 6. use of the Land for the siting and storage of motor vehicles, tractors, building materials, a horse box trailer, trailers, horse drawn carriage, and machinery.
 - The requirements of the notice are to: (i) Remove the container referred to in Paragraph 3, Breach 1 of this Notice from the Land. (ii) Remove the caravans referred to in Paragraph 3, Breach 2 of this Notice from the Land. (iii) Remove the structure covered by green tarpaulin referred to in Paragraph 3, Breach 3 of this Notice from the Land. (iv) Remove the lean-to building described in Paragraph 3, Breach 4 of this Notice from the Land. (v) Remove the free-standing structure referred to in Paragraph 3, Breach 5 of this Notice from the Land. (vi) Remove from the Land all materials arising from compliance with requirement (i) to (v) above and restore the Land to its condition before the breaches took place. (vii) Remove from the Land the motor vehicles, tractors, building materials, horse box, trailer, trailers, horse drawn carriage, and machinery stored on the Land and restore the Land to its condition before the breach took place. (viii) Remove from the Land all debris and materials resulting from compliance with requirement (vii) and restore the Land to its condition before the breach took place.
 - The period for compliance with the requirements is: four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The enforcement notice is quashed.

The Notice and the Ground (b) appeal

2. An appeal on ground (b) is that what is alleged in the enforcement notice (the Notice) has not occurred.
3. The construction of the Notice alleges various individual uses of the Land and the erection of several structures as operational development. The Notice is accompanied by a plan 'EN1' and attached appendices. Appendices 1 and 2 identify individual elements and their locations as referenced in the full wording of the alleged breaches.

4. In consideration of an alleged material change of use of land, Bridge J in *Burdle*¹ 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;
 - 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. The Land consists of a number of adjoining enclosed agricultural fields said by the appellant to be part of the same holding. At the time of my site visit, sheep and horses were observed to be grazing parts of the Land. Even if those animals belonged to others, as alleged by the Council, as the grazing/keeping of animals they fall within the definition of 'agriculture' as set out in s336 of the Act.
7. Although the referenced uses are alleged to have taken place on different parts of the site, there is little evidence to suggest that they took place in physically and functionally separate areas. Accordingly, it follows that the entirety of the Land identified on plan EN1 should be subject to consideration as a single mixed use planning unit.
8. Furthermore, it is established in caselaw that in those circumstances it is not open to the Council to decouple the uses taking place within the unit². Absent of any reference to the agricultural use as part of the alleged mixed use, the Notice fails to encompass the extent of uses within the identified planning unit and the appellant's ground (b) appeal succeeds to that extent.
9. Section 176 of the Act requires me to consider the status of 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. Along with the allegations of use of the Land for storage, and for the siting of caravans and a container for residential purposes, reference to agricultural use could be included as part of a mixed use. However, such an alteration to the allegation would require a corresponding correction to the requirements of the Notice.
10. While cessation of the [corrected] alleged mixed agricultural, storage and residential uses of the Land would not prevent the appellant from a return to any last lawful use by reason of s 57(4), a requirement to cease the mixed use of the Land would extend the requirements of the Notice and thereby cause injustice to the appellant.
11. This is because there are no clear requirements in Section 5 of the Notice to cease elements of the alleged uses at all. The Notice currently only requires removal of

¹ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

² *R (oao East Sussex CC) v SSCLG & Robins & Robins* [2009] EWHC 3841 (Admin)

the physical manifestations which facilitated those uses when the Notice was served. A notice alleging an unauthorised material change of use should require that use to cease unless under-enforcement is planned and s173(11) is anticipated to engage. There is little before me to suggest any under-enforcement was intended by the Council.

12. Furthermore, the absence of reference to agricultural use as part of the allegation will have potentially prejudiced the appellant's ability to mount a comprehensive case on other grounds. As the necessary correction of the allegation and requirements would lead to injustice, the Notice cannot be saved.
13. In addition to the above, although the Notice provides sufficient clarity to enable a person served with it to know what the matters it concerns are, the references to some approximate locations and images of the relevant structures are somewhat unclear. While it is not always necessary to identify the exact location of the individual breaches on the planning unit, a recipient of the Notice should not need to rely on their own knowledge of what is taking place on the Land at the time.
14. The plan at Appendix 1 has been overly reduced. Its annotation is illegible. Indeed, the use of small text against coloured backgrounds also used in the Appendix 1 and 2 imagery reduces the degree of contrast on the paper and makes interpretation of those parts of the Notice difficult, if not impossible. While those shortcomings would not cause it to be a nullity, they add weight to my concerns on the clarity of the Notice.

Conclusion

15. For the reasons given above, I conclude that the appeal on ground (b) succeeds to the extent that reference to the agricultural use of the Land, as part of a mixed use, has been omitted from what is alleged in the Notice. Therefore, the Notice does not specify with sufficient clarity the alleged breach of planning control. Furthermore, it is not open to me to correct the error in accordance with my powers under s176(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.
16. In these circumstances, the appeals on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act (as amended) do not fall to be considered.
17. For the avoidance of doubt, it would be 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.

R Hitchcock

INSPECTOR