



Appeal Decision

Site visit made on 3 September 2026

by Grahame J. Kean B.A. (Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2026

Appeal Ref: APP/J4423/C/25/3374622

Land at rear of 551-561 Attercliffe Road, Kimberley Street, Sheffield S9 3RA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mafya Properties Ltd against an enforcement notice issued by Sheffield City Council.
 - The notice was issued on 17 September 2025.
 - The breach of planning control as alleged in the notice is: without planning permission, the erection of a single-storey cabin for use as a café/takeaway together with a surrounding timber fence (shown within the attached photo).
 - The requirements of the notice are:
 - (i) Remove the portacabin from the Land,
 - (ii) Cease the use of the Land as a cafe/takeaway,
 - (iii) Remove the timber fencing from the Land and
 - (iv) Remove from the Land any waste material associated with the compliance with para 5 (i), (ii) and (iii).
 - The period for compliance with the requirements is: 6 weeks from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (e), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The enforcement notice is corrected by: a) deleting requirement (ii) and renumbering the other requirements accordingly; and b) in the renumbered requirement (iii) (removal of waste), replace “(i), (ii) and (iii)” with “(i) and (ii)”.
2. Subject to the corrections the appeal is dismissed, and the enforcement notice is upheld.

The notice

3. There is a contradiction between the wording of the allegation and the requirements of the notice. Despite the requirement to “cease the use” of the Land as a café/takeaway, there is no allegation that there is, in the first place, a material change in the use of the “Land”, ie the appeal site in which the structure sits but of which it does not occupy by any means the total area thereof.
4. This appeal is an indirect consequence of a refused planning application (Ref 23/01523/FUL) to retain the single storey cabin, the subject of the enforcement notice now appealed against, “for use as a café takeaway”. Although the application was described as “proposed erection” of single storey cabin, it clarified that the building work or change of use had in fact started on 1 February 2023. This date corresponds with the officer report that stated that the building (“burger shack”) was built in January 2023. The report also stated that it had been set on fire a few months previously and that the building had “*not been brought into use*”.

5. The appellant's case in this appeal discloses an argument, among other things, that there is no material change of use of the land because there is no actual use and that the cabin is a moveable structure temporarily stored on the land, implying, although it is not stated in terms, that the structure is not operational development. These matters will be dealt with in ground (c) below but there is an issue to grapple with concerning the wording of the allegation. The Council's case made outside the four corners of the notice suggest that there is also a material change of use. Without demur the appellant rises to meet that case by challenging the commentary on the case law cited by the Council (Impey)¹ about the extent to which actual use is a relevant factor in assessing the materiality of the change.
6. Accordingly, it might not have caused an injustice to either party to clarify the allegation by substituting for "for use as", the words "and a material change of use of the Land to use as", exercising powers of correction in s176 of the 1990 Act.
7. But that would not be the correct solution. Within the notice itself, there is no clear allegation of a material change of use, merely the use of the words "for use" as a café/takeaway. These words demonstrate the purpose to which the structure is intended to be put, and as far as concerns the alleged erection of the cabin as operational development, they would not be strictly necessary, but as they are present in the allegation they do form part of the factual matters alleged.
8. Of course, the notice does allege the erection of a structure with a particular character and purpose ("for use as"). This is a factual matter as opposed to an evaluation of whether a material change of use has occurred and capable of determination under the appeal made on ground (b). Looked at in this way, the parties' focus on Impey is not as relevant as for example the well-known passage in Lord Hobhouse' judgment in the case of Sage²:

"[14]... The character and purpose of a structure falls to be assessed by examining its physical and design features. The relevance of the assessment is to determine whether or not the building operation is one requiring planning permission. The actual use made of the building does not alter the answer to be given."
9. There being no clear allegation of any material change of use of the Land, the requirement to cease its use as a café/takeaway is a non sequitur, inappropriate and should be removed from the notice. It is for the Council to decide what future action to take if any, regarding the use of the Land. As I am satisfied that no injustice to either party would result, I will exercise powers of correction in s176 of the 1990 Act to remove this step from the requirements of the notice.

Ground (e)

10. An appeal on this ground is that the notice was not properly served on everyone with an interest in the land.
11. The appellant is the freehold owner of the land, having purchased it in 2025. He maintains that the notice was served on the wrong parties without providing details. He claims the Council failed to verify ownership before service and as a result there was a failure to comply with s172(2) of the 1990 Act.

¹ Impey v Secretary of State for the Environment (1984) 47 P & CR 157

² Sage v Secretary of State for the Environment, Transport and the Regions and another [2003] UKHL 22; [2003] 1 W.L.R. 983

12. Section 176(5) of the Act 1990 states that any question of failed service may be discounted if neither the appellant nor the party not served has been substantially prejudiced. There are no individuals who have come forward or who have been identified by the appellant as persons who have suffered prejudice as a result of the alleged failure in service. Clearly the appellant was able to appeal the notice and has not claimed he was prejudiced as a result of any such failure.
13. In any event, the information in the Council's statement does clarify that, whilst the notice may also have been served on a former director of the appellant company, it was nevertheless properly served on the company secretary as well as the appellant by name. I conclude that the notice was properly served on all persons with an interest in the land. This ground of appeal fails.

Ground (b)

14. This ground of appeal is that the breach of control alleged in the enforcement notice, as corrected, has not occurred as a matter of fact.
15. The cabin and its surrounding fence and gate are inside a private yard to the rear of 551–561 Attercliffe Road, partially seen from the adjacent car park. However, it is undisputed that the cabin contains equipment that was previously installed by a former owner, although not yet brought into use and no electricity, water, or drainage supply is connected to it. The cabin remains locked and unused, with no trading, no customer visits, and no signage. Accordingly, it is argued, there is no active use of the land as a café/takeaway. I accept that.
16. The target of the notice as corrected is operational development in the form of the “erection of a single storey cabin” for use as a café/takeaway. The Council has set out clearly in the notice its reasons for issue. They are that the site is in a local shopping centre where its location for use as a café/takeaway adjacent to the public car park is likely to exacerbate crime and anti-social behaviour in the car park that is already subject to such behaviour. Its use would, it is said, undermine the quality of life and community cohesion of people living and working in the area, contrary to the development plan and national planning policies cited.
17. The appellant has not appealed on ground (a) and is therefore precluded from making a case on the planning merits of the structure as it has sought to do.
18. As far as concerns the factual allegation I am satisfied that the cabin structure has been erected as alleged together with the surrounding timber fence. The cabin is clearly erected for the purposes of operating it as a café/takeaway and despite it not being currently connected to utilities, it is fitted out for such use. Furthermore, whilst connection to utilities could be made without undue difficulty, it is in any event a commonplace for units to provide such facilities making use of alternative power and water supplies without connecting to the main grid and water mains.
19. I conclude on this ground that what has been alleged in the notice has occurred as a matter of fact since, irrespective of its actual use, a cabin structure has been erected which has a character and purpose resembling that of a café/takeaway. Consequently, this ground of appeal fails.

Ground (c)

20. Ground (c) is that the matters alleged to have taken place, if they did take place, do not amount to a breach of planning control, for example because planning

permission has been granted or no permission is required. The appellant contends that firstly, the structure does not amount to operational development and secondly, there has been no material change of use on the appeal site.

Whether operational development

21. When a building is defined to include any structure or erection and any part of a building so defined, the 1990 Act is referring to any structure or erection which changes the physical character of the land. Three factors are generally relevant to this issue: the size of the structure, its permanence and the degree of physical attachment to the ground. I would add that no one factor is conclusive and each case is decided as a matter of fact and degree, on the balance of probability.
22. I note that when the form for application Ref 23/01523/FUL was completed, as it was by a professionally qualified agent, it was stated that the proposal was for the “erection of” a portacabin, not “siting” or similar and the application was for a full permanent permission, not temporary.
23. The structure has had a presence on the land since January or February 2023, ie some three and a half years and as such has a considerable degree of permanence. It is erected on land to the rear of Nos. 551 to 561 Attercliffe Road on an area of hardstanding/yard that appears to form part of the rear curtilages of the Attercliffe Road properties. The building is single storey and is a substantial size, having a footprint of c6.2m by c2.55m and a height of some 2.8m. Although its substructure may be that of a portacabin it has a horizontal serving window opening within its front elevation that is secured by a roller security shutter. Along its side elevation is a side door. The external cladding to all four elevations and the adaptations add to its appearance as a solid structure changing the character or state of the land comprising the appeal site in which it is situated. As a result, I find that operational development is involved.

Whether material change of use

24. The appellant’s case is that even if the cabin has equipment inside, its presence on the land does not constitute a material change of use requiring planning permission. In light of my clarifying that no material change of use is alleged in the first place, this is not a relevant matter to consider. It is the cabin building that is in breach of planning control as alleged and for that reason ground (c) must fail.
25. For the sake of completeness, and because both parties have cited case law in the form of the Impey³ case I record my views thereon. The Council said that in Impey actual use was held not to be a necessary pre-requisite to a material change of use, and such changes of use can take place before actual use commences.
26. The appellant distinguishes Impey from the present case as no café or takeaway operation has occurred and the cabin is not functionally capable of operating due to the absence of electricity, water, and drainage. I have already noted that whilst the cabin may not be currently connected to mains utilities it is undisputed that it has been fitted out for its intended use and either it could be so connected or operate with alternative sources of power and water supply/management.
27. In brief, Impey held that a change of use might commence prior to actual use; both the physical state of the premises and the actual, intended or attempted use of

³ Impey v Secretary of State for the Environment (1984) 47 P & CR 157

them were important; but neither consideration was decisive. The Council did not provide a copy of the judgment but reading it, I note that it was a decision of the Divisional Court where the leading judgment was given by Donaldson LJ.

28. Firstly, I note that the court referred to the decision of Upjohn L.J. in the case of Howell⁴ where it was said:

“... I agree that development by works and development by user are different matters and must be considered separately, but when one is considering whether there has been a material change in the use of buildings or land one must first consider the site as a whole and then, as a matter of common sense, compare the user before the critical date and after the critical date. When doing that, any changes in the physical state of the land must be taken into account as an element, for, if this is ignored, the user before and the user after cannot be properly assessed and compared. In some cases, and I think in this case, the change in the physical state of the land must be an important element; in other cases it may be entirely unimportant; but it seems to me you cannot, as an element, disregard the physical state of the land before and after.

29. Donaldson LJ then applied that holding to the case before him, which was one of a material change of use of a building from the breeding of dogs to residential use, and said:

“I would say that the physical state of these premises is very important, but it is not decisive. Actual use or intended use or attempted use is important but not decisive. These matters have to be looked at in the round...”

The question arises as to how much earlier there can be a change of use. Before the operations have been begun to convert to residential accommodation plainly there has been no change of use, assuming that the premises are not in the ordinary sense of the word being used for residential purposes. It may well be that during the course of the operations the premises will be wholly unusable for residential purposes. It may be that the test is whether they are usable, but it is a question of fact and degree.”

30. Impey was a case decided in the mid-eighties and since then it has been judicially commented upon. In the Supreme Court case of Welwyn Hatfield⁵ it was noted that Impey had been doubted as good authority, in light of the decision in the case of Backer⁶. Backer was said to be authority for the proposition that building operations cannot by themselves give rise to a material change of use: some actual use is required. However, in the leading judgment, Lord Mance said:

“As a matter of law, I consider that the approach taken by Donaldson LJ was correct and is to be preferred to the doubt expressed in Backer.”

31. I also take note of the warning given in Welwyn Hatfield against focusing on day-to-day use when deciding whether there had been a material change of use of land as at a certain date, for the purpose of determining whether an enforcement notice had been issued within time. Welwyn Garden was an unusual set of facts and concerned immunity periods.

⁴ Howell v. Sunbury-on-Thames Urban District Council (1964) 15 P. & C.R. 26 .

⁵ Secretary of State for Communities and Local Government and another (Respondents) v Welwyn Hatfield Borough Council (Appellant) [2011] UKSC 15

⁶ Backer v Secretary of State for the Environment (1984) 47 P & CR 149

32. Thus, Impey in my view does remain clear authority for the proposition that a physical conversion of the site is a factor to take into account in assessing whether and when a material change of use has occurred.
33. Impey was also discussed in the later case of Hedges⁷ where the claim was that the inspector wrongly required evidence of actual use of land as a campsite to give rise to a material change of use, whereas case law discouraged a focus on actual use, requiring evidence to be considered as a whole. The “useability” of the site was advanced for the short period in question, as the mobile facilities were clearly on the land. There was no evidence of actual use on the days in question. Overall, the inspector found the evidence insufficient to establish a material change of use. However, it was held that regard was rightly had to factors other than actual use.
34. In Hedges it was also said of the warning in Welwyn Hatfield against focusing on day-to-day use, that this was apposite where the use of a building as a dwelling was under consideration but less so where land was used for camping or caravanning. HH Judge Jarman QC said:
- “The present case is somewhat different, in that the material change of use must be considered in a context where a temporary change of use is permitted on a certain number of days and the structures concerned, whether it be tents or caravans or ancillary mobile facilities, have more transient characteristics.”*
35. This passage highlights a difference that the appellant seeks to make in the present appeal; namely that the structure is a mobile structure, but on this issue, as a matter of fact and degree and exercising my planning judgement I have found otherwise.
36. It would also be relevant that the structure is a permanent structure clearly erected with the intention of offering café/takeaway services to the public in that location, as evidenced in the original application to retain it on the land, rather than as a temporary mobile structure that happens to be merely stored on the land.
37. Nor is this a case of conversion of a building; it was erected specifically for the purpose of using it as a café/takeaway in the very position in which it has remained for the past three years and more. Persons would use its facilities via the adjacent car park or by foot from neighbouring commercial land uses to the rear. Its useability would have been a significant factor as to any material change of use.
38. Considering the above, although no current business operation is evidenced, there is a strong possibility that there would have been some change in the character of the land with the erection of the building, fitted out as it is with café/takeaway facilities, and which takes up a substantial area of the appeal site. However, that issue is not before me.
39. Considering the above matters, this ground of appeal does not succeed.

Ground (f)

40. An appeal on ground (f) is that the requirements of the notice are excessive and lesser steps would overcome the objections. By s173(4) of the Act, the purpose of the notice is to: (a) remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach.

⁷ Hedges v Secretary of State for Housing, Communities and Local Government and another [2021] EWHC 2392 (Admin)

41. Reading the enforcement notice as a whole it appears that its purpose is to remedy the breach of planning control by requiring removal of the cabin building and surrounding fencing from the land. In other words, the notice requires nothing less than a full remedy of the alleged breach.
42. The appellant argues that the requirement to remove the cabin is disproportionate, it is said the cabin is not causing any harm and could lawfully remain on site for storage purposes. Further, it is contended that the requirement to remove the timber fencing would serve no planning purpose as it secures the land, preventing trespass or fly-tipping. It is also said to be permitted development (Part 2, Class A of Town and Country Planning (General Permitted Development) (England) Order 2015) since it is below 2m high and not adjacent to a highway.
43. No appeal has been made on ground (a), therefore it is not for me to assess the planning merits of the unauthorised development, including for a storage use. In addition, since the development has been found to be unauthorised, it cannot benefit from permitted development rights as suggested. The requirements are not therefore excessive since there are no lesser obvious steps that could be taken that would achieve the purpose of the notice.
44. Accordingly, the appeal on this ground fails.

Ground (g)

45. An appeal on this ground is that the time given to comply with the notice is too short. A compliance period of six months is requested to be substituted, which it is said would allow time to make arrangements without undue hardship or waste.
46. The appellant maintains that there is no immediate harm occurring but as I have noted, the planning merits are not relevant. No evidence is provided to support the assertion that specialist removal arrangements are needed; in my view the compliance period of six weeks is sufficient a period within which to remove the portacabin and fencing from the site.
47. This ground of appeal fails.

Conclusion

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

Grahame J. Kean

INSPECTOR