

# Enforcement Appeal Decision

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<b>Appeal Reference:</b>	2021/E0055
<b>Appeal by:</b>	Mr P McGarvey
<b>Appeal against:</b>	An Enforcement Notice dated 29 <sup>th</sup> November 2021
<b>Alleged Breach of Planning Control:</b>	The unauthorised material change of use of land from agricultural use to a vehicle sales use, the unauthorised siting of a mobile building used as an office in association with the unauthorised vehicle sales use.
<b>Location:</b>	Lands approximately 65m east of 30 Strews Road, Cookstown
<b>Planning Authority:</b>	Mid Ulster District Council
<b>Authority's Reference:</b>	LA09/2020/0099/CA & EN/2021/0285
<b>Procedure:</b>	Written representations and Commissioner's site visit on the 21 <sup>st</sup> May 2024
<b>Decision by:</b>	Commissioner K S Donaghey, dated 27 <sup>th</sup> June 2024

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## Grounds of Appeal

1. The appeal was brought on Grounds (a), (c), (d) and (g) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011. There is a deemed planning application by virtue of Section 145(5).

### **Ground (c) – that the matters alleged in the notice (if they have occurred) do not represent a breach of planning control**

2. The onus is on an appellant who pleads ground (c) to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The appellant argues that the matters alleged in the Enforcement Notice (the notice) do not represent a breach of planning control as car sales has been ongoing at the site for a period in excess of five years prior to the date of the Notice. This is an argument which is relevant to ground (d) of appeal and will be assessed as such.
3. No persuasive evidence has been provided to demonstrate that the matters alleged within the notice do not represent a breach of planning control. The use is not permitted development, nor has it been previously approved. It is development and therefore constitutes a breach of planning control. Therefore, the appeal under ground (c) must fail.

**Ground (d) - that the date when the notice was issued, no enforcement action could be taken.**

4. Under ground (d) of appeal the onus is on the appellant to demonstrate, on the balance of probabilities, that on the date when the notice was issued, no enforcement action could be taken in respect of the breaches of planning control as outlined on the Notice. Section 132 of the Act sets out time limits within which enforcement action can be taken in respect of breaches of planning control. In the case of a material change of use as alleged in this case, no enforcement action may be taken after the end of the period of five years beginning with the date of the breach. The notice was issued on the 30<sup>th</sup> November 2021. The critical date before which a material change of use should have taken place for the development to be immune from enforcement action is 30<sup>th</sup> November 2016.
5. The appellant has provided a significant volume of documentary evidence in order to demonstrate that a change of use to vehicle sales use has taken place at the site. This includes: -
  - An email dated 31<sup>st</sup> March 2014 demonstrating that the appellant set up an account with Copart UK to purchase car parts;
  - Photographs dated 8<sup>th</sup> December 2017 and 15<sup>th</sup> February 2018 showing two vehicles in the vicinity of the site;
  - Photograph, dated by the appellant as 10<sup>th</sup> March 2013, showing three vehicles in the vicinity of the site, one with trade plates displayed;
  - An invoice from Wilsons Auctions dated 27<sup>th</sup> January 2015 demonstrating that the appellant had purchased a 2007 Audi A6 (grey);
  - A copy of motor insurance dated 17<sup>th</sup> April 2015, which the appellant advised is for his parts collection van;
  - A copy of vehicle insurance for the same van as above dated 1<sup>st</sup> May 2015 – 1<sup>st</sup> May 2016.
  - Certificates of motor insurance from NFU Mutual showing insurance cover effective from 1<sup>st</sup> August 2016 – 1<sup>st</sup> August 2017;
  - Emails from Copart UK dated 11<sup>th</sup> May 2015 and 17<sup>th</sup> July 2015 indicating that the appellant was successful in an online auction;
  - An email from Copart UK dated 30<sup>th</sup> June 2015 indicating that the appellant's online auction account was now active.
  - An email from Copart UK, dated 27<sup>th</sup> July 2015, indicating that the appellant was successful in purchasing a 2004 Vauxhall Corsa (Silver) and a 2005 Renault Scenic (Blue)
  - An emailed invoice from Nitro Branding, dated 10<sup>th</sup> August 2015, showing the purchase of 100 vehicle service reminder stickers;
  - An online advertisement dated 16<sup>th</sup> August 2015 showing a 2007 Audi A6 (grey) for sale, parked at the end of the appellant's lane. This advertisement was placed by Pmgautorepairs@gmail.com;
  - An invoice from T&G Automotive dated 25<sup>th</sup> August 2015 for car parts. The delivery address is shown as 30a Strews Road, Cookstown;
  - Motor Trade Insurance Schedule's showing the site and buildings being continuously insured as a mechanic and car sales from 1<sup>st</sup> August 2015 to 22<sup>nd</sup> May 2021;
  - An online advertisement dated 30<sup>th</sup> August 2015 showing a Vauxhall Corsa (Grey) for sale, this vehicle is photographed parked at the end of the

appellant's lane. This advertisement was placed by [Pmgautorepairs@gmail.com](mailto:Pmgautorepairs@gmail.com);

- Email from an insurance company, dated 6<sup>th</sup> August 2015, noting the cancellation of an insurance policy;
  - Three invoices for vehicles repairs carried out by PC Autos, 30a Strews Road, Cookstown. Dated 17<sup>th</sup> August 2015, 2<sup>nd</sup> January 2015 and 13<sup>th</sup> June 2017;
  - An AA vehicle check document, carried out on a BMW X5 (black), dated the 15<sup>th</sup> September 2014;
  - An email from Usedcarsni.com showing that an advertisement was placed with this company on 24<sup>th</sup> September 2015;
  - Invoices for car parts from Caldwell Motor Factors, dated 2<sup>nd</sup> August 2016, 29<sup>th</sup> September 2016, 8<sup>th</sup> December 2016, 21<sup>st</sup> April 2017 and 29<sup>th</sup> March 2018;
  - Various letters from Companies House showing the incorporation of PC Autos Cookstown as a limited company dated February 2020;
  - An invoice from Wilson Auctions to PC Autos 30a Strews Road for the purchase of a Vauxhall Meriva 1.7 CDTi, dated 18<sup>th</sup> May 2017;
  - Various invoices from City Auction Group for the purchase of vehicles from 2018 onwards;
  - A refund notice from the Driver and Vehicle Licensing Agency to Catriona McGarvey at 30 Strews Road, Cookstown;
  - A self-assessment tax calculation statement for the appellant for the 2017-18 tax year;
  - A letter from the Driver and Vehicle licensing Agency showing the renewal of trade plates for the appellant, dated 11<sup>th</sup> August 2017;
  - An invoice from Donnelly Bros. Garage for vehicle repairs for the appellant, dated 17<sup>th</sup> October 2017;
  - Invoice to PC Autos, from Barclaycard payment solutions for a card machine , dated 28<sup>th</sup> February 2018;
  - Statements of commission earnings from Close Brothers Motor Finance dated 1<sup>st</sup> March 2018, 3<sup>rd</sup> April 2018, 2<sup>nd</sup> December 2019, 2<sup>nd</sup> March 2020, these statements detail the specific details of vehicles sold;
  - A letter from Fuel Card Management Services to the appellant dated 25<sup>th</sup> June 2018 stating that two fuel cards have been issued to the appellant;
  - Various other letters from HM Revenue and Customs dated June 2018 onwards;
  - Financial information such as credit provision, relating to purchasing vehicles from August 2018 onwards;
  - Various letters from HM Revenue and Customs referring to VAT registration, dated July 2018 onwards, and
  - Invoices from accounting companies for the compilation of VAT Returns dated April 2018 onwards.
6. The appellant has provided a significant volume of information in relation to the repair and servicing of vehicles. The notice does not refer to vehicle repair, it refers only to vehicle sales. Prior to the critical date of the 30<sup>th</sup> November 2016 the appellant has provided documentary evidence of purchasing three vehicles. There is also evidence of him placing three advertisements in various online forums for the sale of vehicles. There is also reference to online checks being carried out to a further vehicle but there is no record of its purchase or sale. The evidence submitted from Close Brothers indicates a modest level of sales from PC Autos from March 2018 – March 2020, after the critical date.

7. The Council have provided orthographical images dated 8<sup>th</sup> March 2010, 2<sup>nd</sup> May 2011, 26<sup>th</sup> March 2012, 25<sup>th</sup> July 2014, 31<sup>st</sup> May 2016, 18<sup>th</sup> July 2017, 29<sup>th</sup> June 2018 and 29<sup>th</sup> May 2020. Whilst there is a reasonable build up of vehicles upon the site from around 2012 onwards, the area to which the notice relates does not show any evidence of having vehicles displayed upon it until July 2017. Two vehicles are positioned on this part of the site in 2017, none in 2018 and around 18 in 2020. Whilst these images are snapshot of the time within which they were taken, they point towards a general intensification of the storage of vehicles on the portion of the site to which the notice relates between 2018 and 2020. The orthographical images do not discern if the vehicles present on site are for sale or if they constitute part of the appellant's vehicle repair business which is not subject to the Notice.
8. The documents which relate to the formation of a limited company and the procuring of all the elements required in this line of business, such as trade plates, fuel cards and credit agreements, all point towards the establishment of a vehicle sales business at this site. However, the majority of this evidence is dated after the critical date and mostly from 2018 onwards. The commercial insurance statements which relate to buildings insurance as a mechanic and car sales is dated from August 2015 and demonstrates that the buildings were insured for commercial use. These statements do not demonstrate if car sales were actually present at the site.
9. All in all, the evidence of actual sales of vehicles at this site prior to 30<sup>th</sup> November 2016 is limited. It is evident that the appellant procured three vehicles during this time. Whilst advertisements have been provided showing these vehicles for sale, no further information about their sale was provided. Even if this was provided, the purchase and sale of three vehicles does not persuade me that this is a level of activity which would constitute a material change of use. The evidence presented does not demonstrate, on the balance of probabilities, that there was a material change of the notice site from agriculture to vehicle sales on or before the 30<sup>th</sup> November 2016. The appeal under ground (d) must fail.

**Ground (a) and the deemed planning application – that planning permission should be granted for the alleged development.**

10. The deemed planning application relates to the matters stated in the notice as constituting the breach of planning control, namely use of the land for the sale of motor vehicles. The main issue in respect of the deemed planning application is whether the sale of motor vehicles is acceptable in principle at this location.
11. Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires the Commission in dealing with an appeal, to have regard to the local development plan, so far as material to the application and to any other material considerations. Section 6 (4) states that where regard is to be had to the development plan, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.
12. The Cookstown Area Plan 2010 (CAP) operates as the LDP for the area in which the appeal site is located. In the CAP, the appeal site is outside any defined settlement limit and is within the countryside. The plan contains no policies relevant to the appeal development and directs to regional policy where material.

There are no other provisions in the plan that are material to the determination of the appeal.

13. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out regional policies for retail uses and explains the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for their council area. It also retains certain existing Planning Policy Statements (PPS) including PPS 21 – Sustainable Development in the Countryside. Policy CTY1 of PPS 21 sets out a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. Sale of motor vehicles would not fall within any of the development types specified. Other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement, or it is otherwise allocated for development in a development plan.
14. Although sale of motor vehicles is a sui generis use under The Planning (Use Classes) Order (Northern Ireland) 2015 (UCO), it is by nature a form of retailing. Paragraph 6.279 of the SPPS deals with retailing in the countryside. It states that retailing will be directed to town centres and the development of inappropriate retail facilities in the countryside must be resisted. It goes on to state that as a general exception to this policy approach, some retail facilities may be considered appropriate outside settlement limits including farm shops, craft shops and shops serving tourist or recreational facilities. This list is not exhaustive and the use of the word ‘including’ infers that other typologies of retail facilities may be acceptable. The policy goes on to indicate that those retail facilities considered appropriate should be located within existing buildings. The use of the word ‘should’ implies that this requirement is recommended and not mandatory. The policy states that all proposals must ensure that there will be no unacceptable adverse impact on the vitality and viability of an existing centre within the catchment.
15. The SPPS places emphasis on the need to direct retailing to town centres and paragraph 6.270 states that it seeks to promote established town centres as the appropriate first choice location for retailing and other complementary functions. Paragraph 6.280 states that a sequential test should be applied to planning applications for main town centres uses whilst paragraph 6.281 details that such uses will be considered in the following order of preference – primary retail core, town centres, edge of centres and out of centre locations. Whilst vehicle sales may not be suited to the town centre as argued by the appellant, this does not preclude consideration of the other options within the sequential test. No sequential test has been conducted by the appellant. The appellant did advise that there will be no impact on the viability or vitality of the existing town centre however this has not been substantiated by any quantitative analysis.
16. The appeal development is not located inside existing buildings which is the policy preference. Furthermore, the sequential test is not met and the argument on need has not been grappled with by the appellant. Given the small scale of the development, which is around 400m<sup>2</sup>, it is unlikely that the appeal development will have a significant impact upon the viability and vitality of existing centres within the catchment area. In the context of the SPPS, I am not convinced that the appeal development represents an appropriate use in the countryside in accordance with the policy. It therefore does not meet the requirements of the SPPS.

17. Paragraph 6.70 of the SPPS states that all development in the countryside must integrate into its setting and respect rural character. Policy CTY1 of PPS21 states that all proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings. The Council have identified critical views of the development from the extent of Strews Road which fronts the site. The appellant argues that due to the height of the roadside vegetation, the development at the site is not visible from the public road in either direction.
18. On approach to the site from the west the roadside vegetation obscures any views of the site until the site frontage of the appeal site itself. This is the same for approaches from the east. The site is set back almost 40 metres from the road and separated by a large green space. When one arrives at the frontage of the appeal site it is viewed against the backdrop of existing farm buildings. The small portacabin type structure is barely perceptible when viewed against the backdrop of much larger buildings which comprise the remainder of the site. The vehicles and buildings at the appeal site are not unduly prominent, nor are they particularly out of character when viewed in the context of the wider complex of agricultural buildings. The views identified by the Council are short range and transient. The appeal site is set against a wider backdrop of large farm buildings and therefore the appeal development integrates into its surroundings and respects the character of the surrounding area. The Council's objections regarding integration and rural character have not been sustained.
19. Policy CTY 1 of PPS 21 states that there are a range of other types of non-residential development that may be acceptable in the countryside and these will be considered in accordance with existing published planning policies. Having regard to the published retailing policy set out in the SPPS and its sequentially preferred sites approach, it has not been demonstrated that there are no available sites to accommodate the appeal proposal in nearby urban centres in the catchment. Nor have I been given any persuasive reason why the proposal is essential in its present location. There is therefore no overriding reason why the development is essential in this countryside location and could not be located within a settlement, the development is contrary to Policy CTY 1 of PPS 21, the Council's concerns in respect of this matter are sustained.
20. The Council's objections to the principle of the car sales use of the appeal site in respect of Policy CTY 1 of PPS 21 have been sustained in that it has not been demonstrated that there any overriding reasons why the development is essential in this countryside location and could not be located within a settlement. Furthermore, I have found that the proposal does not satisfy the requirements of the SPPS. Consequently, the appeal under ground (a) must fail.

**Ground (g) – that the period for compliance specified in the Enforcement Notice falls short of what would reasonably be allowed.**

21. The main issue to consider in respect of ground (g) is if the period for compliance with the notice falls short of what should reasonably be allowed. The Council has allowed the period of 90 days for the cessation of vehicle sales at the site and the removal of the mobile building. No cogent argument was provided by the appellant to demonstrate why this period for compliance outlined by the Council is inherently unreasonable. The appeal under ground (g) fails.

## **Decision**

The decision is as follows:-

- The appeal on Ground (c) fails.
- The appeal on Ground (d) fails.
- The appeal on Ground (a) fails.
- The appeal on Ground (g) fails.
- The Notice is upheld.

**COMMISSIONER KENNETH DONAGHEY**

**List of Documents**

Planning Authority:- "PA1" Written statement of case and appendices  
"PA2" Written rebuttal statement

Appellant:- "AP1" Written statement of case and appendices  
"AP2" Written rebuttal statement