

Enforcement Appeal Decision

Appeal Reference:	2023/A0039
Appeal by:	Mark McBride & Lisa Armstrong
Appeal against:	An enforcement notice dated 2 nd January 2024
Alleged Breach of Planning Control:	Unauthorised use of the units edged in red on the attached map for the purposes of storage (Class B4 of The Planning (Use Classes) Order (NI) 2015) being development carried out without the benefit of planning permission required
Location:	Premises at 252a & 252b Seven Mile Straight, Crumlin
Planning Authority:	Antrim and Newtownabbey Borough Council
Authority's Reference:	EN/2020/0264/1
Procedure:	Hearing on 7 th August 2024
Decision by:	Commissioner Cathy McKeary, dated 24 th September 2024

Grounds of Appeal

1. The appeal was brought on Ground (d), as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011 (the Act).

Preliminary Matter

2. In the statement of case and at the hearing, it became apparent that in addition to one of the appellants, the remainder of the five containers at 252a Seven Mile Straight, which are subject to the enforcement notice (EN), are currently rented out to other tenants. None of these parties were cited as occupants within the Planning Contravention Notice (PCN) completed by the appellants in May 2022 which stated that one of the appellants was the sole user of the building. These five previously unidentified occupants were not served with a copy of the EN. While the Council posted a copy of the EN on the buildings on 2nd January 2024, due to the occupants visiting the building infrequently, it could not be determined whether or not they would have seen the notice posted on site, which is no longer in situ. Accordingly, the Commission wrote to these five occupants providing a copy of the EN and seeking their comments. Three of the five parties responded but did not comment in relation to any of the grounds of appeal. I am satisfied that all parties have now had the opportunity to comment, that S138(2) of the Act is satisfied and no prejudice has arisen.

Legal Ground (d)

3. This ground of appeal states that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. S132 (3) of the Act states that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of five years beginning with the date of the breach. The enforcement notice was issued on 2nd January 2024 therefore for the change of use to be immune, the appellant must demonstrate that on the balance of probabilities the change of use for all the buildings in question occurred and was continuous from on or before 2nd January 2019.
4. The EN in question relates to discrete portions of two buildings known as nos. 252a and 252b Seven Mile Straight, Crumlin. It refers to the southern portion of no. 252a (Building 1), and two out of three of the bays of the building known as no. 252b. The most western bay (Building 2) and centre bay (Building 3) of no. 252b are the subject of the EN, but the third bay (Building 4) is not. Each building has a locked doorway but can be accessed by the owner and the occupier. Within Buildings 1 and 3 there are storage containers which are let individually and can only be accessed by the occupying tenants, who supply their own locks. According to the appellants there is a communal area around the containers within Building 3. The appellants also informed me that the wider site is not permanently manned, and the tenants can access the site as and when they need, with some visiting very infrequently due to the nature of their storage.
5. The northern section of no. 252a attached to Building 1 (not the subject of the EN) obtained a Certificate of Lawfulness Use of Existing Use or Development (CLEUD) for storage, baling and separation of waste in 2014. It is also the subject of a current application under reference LA03/2024/0293/F to change the use from storage, baling and separation of waste to storage. Building 3 was the subject of a previous appeal (2022/E0005) which refused to certify the existing lawfulness of the building as a storage facility and ancillary office. Building 4 is the subject of another separate enforcement notice and is not considered under this appeal.
6. The Council considers that a contradictory affidavit, from a third party objector in appeal 2022/E0005, remains relevant and should be given weight. The appellants stated that this information was supplied due to an ongoing dispute where the objector was ultimately judged by the court to “lack candour” and “was at times inconsistent” whereas the appellant was found to be a “truthful witness”. However, while it is referenced within appeal 2022/E0005, it was not supplied to me within the evidence and therefore does not assist the Council’s case.

Building 1

7. Building 1 is the southern section of no. 252a. The appellants advised that is currently primarily used by CD Fairfield Ltd. who store mainly archive files and papers and some furniture in their containers.
8. The appellants state that this building has been occupied by CD Fairfield Ltd since 2018. This is supported by a letter from the company dated 12th March 2024 stating that they have been using the facilities at no. 252a (Building 1) since May 2018 and continue to do so. The appellants also provided bank statements to the Council showing payments made between 2018 and 2023 from CD Fairfield Ltd to

one of the appellants whose address on the statements is either listed as the appeal site or their home address. The payments were made within the bank statement periods of September 2018, May 2019, July 2019, April 2020, May 2020, April 2021, June 2021, March 2022 and October 2023. The payments made are for a fixed sum or sometimes double the amount of that sum.

9. The bank statements show that CD Fairfield Ltd has made payments to one of the appellants, but nothing within them explains the reason for the payments. No evidence has been provided to demonstrate that the payments made relate to the building at the appeal site or to that building's use for storage. The bank statements are sporadic and only cover a small number of months in any given year and do not cover the five year period until the notice was issued in January 2024. Even if the payments relate to the storage use there is no explanation as to why different amounts are paid in different months or why the payments are not continuous for a use which, according to the appellants, has been operating continuously in this building since 2018. Furthermore, the date of payment within each month varies and there is no obvious pattern which would suggest regular payments relating to an ongoing business arrangement. Overall, the bank statements are not supportive of a continuous use of the building for this storage use over the relevant period.
10. Of the previously unknown tenants of this building, three (including CD Fairfield Ltd) responded when offered the opportunity to comment on the EN. Of the other two, Mr Steele stated that he had been a tenant of an unspecified building at the appeal site for 2.5 years but did not detail the nature of his business or tenure. Mr Hill stated that he currently uses some storage space in one of the buildings in the appellants' yard and has done for a number of years, but did not specify which building or for how long he has used it. The lack of detail in these submissions as to both the extent and duration of their use of buildings at the appeal site is such that they do not greatly assist the appellants.
11. I do not agree with the Council that to give weight to one piece of evidence in terms of occupancy of the building, that the other must be disregarded. While the evidence appears to be conflicting, the appellants explained that they did not understand the need to lay out in detail within the PCN the firms that used the buildings. One of the appellants stated that he sometimes used this building to store vehicle parts for his business MCB transport, hence why he listed himself as the occupant of Building 1 in the PCN. This is consistent with the explanation that multiple tenants can occupy a single building concurrently or at differing times. Notwithstanding this, when the appellants understood the need to list the multiple tenants within Building 3 and did so, it is unclear why they did not provide the same level of detail for the southern portion of Building 1, particularly those tenants with whom they have had a longstanding relationship.
12. Furthermore, the introduction of additional tenants using Building 1 means that it is not clear how much of the building was used by CD Fairfield Ltd for storage, over what periods and whether that in itself constitutes a material change of use which could be immune. Considering the lack of detail provided about the activities within the building over the period in question, along with the lack of explanation and sporadic nature of the CD Fairfield Ltd payments, I am not persuaded on the balance of probabilities that Building 1 is immune from enforcement action.

Building 2

13. The appellants advised that Building 2 is undivided inside, has no containers within it and is currently occupied by Hill Utilities, who have occupied it since the start of 2018 for storage of cars and vans. They also advised that before that it was occupied by another unspecified tenant for 8-10 years. The only evidence referencing this building is a letter from an elected representative regarding the wider site, and a single sentence in a letter from the previous agent stating that the building had been used since 2010. It does not provide details of the occupant, nor the nature of the storage or tenancy. Neither letter is of particular assistance. One appellant stated that they were not aware that they needed to provide evidence for this building as well as the others, all of which are the subject of the EN. Building 2 is clearly shown within the red line on the map accompanying the EN, the appended explanatory notes lay out the grounds of appeal. The other appellant stated that they have bank statements for this building but did not supply them as they believed that they would not be accepted. This is surprising as other bank statements were submitted to the Council by the appellants, which were forwarded to the Commission, specifically in relation to Building 1. The appellants secured professional representation to make their submissions and had the opportunity to provide evidence in relation to this building through the appeal process. No prejudice has arisen. Overall, due to the lack of information provided relating to this building, I am not persuaded on the balance of probabilities that it is immune from enforcement action.

Building 3

14. Again, Building 3 was the subject of a previous CLEUD under appeal 2022/E0005 and relates to 4 bays and a communal area within the building. According to the evidence three of the bays have a storage container within each of them, each occupied by three different tenants. The fourth bay is used by one of the appellants.
15. Two of the tenants, Mr Patterson and Mr Clerkin, provided affidavits dated July 2024 stating that they have used their bays within the building since January 2016 and March 2016 respectively. The affidavits refer to no. 252b and are accompanied by a map identifying their specific bay within the building. Both affidavits also acknowledge the presence of a third tenant, Mr Nesbit, but do not provide any details of the length and dates of his tenancy.
16. Mr Nesbitt previously provided an affidavit for the purposes of appeal 2022/E0005 which stated that he had rented a shed and traded from 252b between the years of 2004 and 2007. The affidavit also states that Mr Nesbitt continued to use storage at 252a for his business as and when required since 2007 until the present time (September 2021). The appellants advised that they had been unable to obtain a new affidavit from Mr Nesbitt as he was on holiday, but stated that Mr Nesbitt had used the building in question (252b) since 2007. The appellants also thought that Mr Nesbitt occupied 252a, rather than 252b in 2004. This is contrary to the affidavit which had been manually corrected to refer to 252b rather than 252a after previous issues with the site address had been clarified.
17. The fourth bay is occupied by the appellant. No affidavit was provided to support this however it was referenced within the PCN and the appellant stated at the hearing that he had used it for around six years for storage of yard supplies, and tools etc.

18. The Patterson and Clerkin affidavits, along with the appellants' evidence at the hearing provide clarity regarding the multiple occupants within the building. However, the evidence taken as a whole lacks sufficient detail in relation to the nature and tenure of the uses which are purported to have been ongoing for a long number of years. The information surrounding Mr Nesbit is conflicting and undoubtably confused by the address issue. Notwithstanding this, it appears that between 2007 and 2021 Mr Nesbitt has not used any building on the appeal site continuously. Furthermore, there is no evidence of any use by Mr Nesbit between 2021 and the issuing of the enforcement notice in January 2024 both of which do not assist the appellants' case.
19. Overall, the information provided by the appellants in relation to Building 3 is very limited and sometimes conflicting. It lacks any of the detail that one would expect when demonstrating a longstanding business relationship, such as contracts, receipts or bank statements. Whilst I do not discount the testimony contained within the affidavits, they are not, even taken together with the other submitted evidence as a whole, persuasive that, on the balance of probabilities, a storage use has occurred in Building 3 which is immune from enforcement action.
20. As I have found that none of the buildings in question are immune from enforcement action for the reasons given above, the appeal on Ground (d) fails.

Decision

The decision is as follows:-

- The appeal on Ground (d) fails; and
- The notice is upheld.

COMMISSIONER CATHY MCKEARY

List of Appearances

Planning Authority:- Stephen McQuillan, Antrim & Newtownabbey Borough Council

Appellants:- Mark McBride
Lisa Armstrong
Azman Khariuddin, Big Design
David McGorman, Big Design

List of Documents

Planning Authority:- Statement of case by Antrim & Newtownabbey Borough Council

Appellants:- Statement of case by Big Design on behalf of Mark McBride and Lisa Armstrong