



Appeal Decision

Site visit made on 26 August 2025

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 SEPTEMBER 2025

Appeal Ref: APP/A1720/C/23/3328843

Land at Titchfield Road, Titchfield, Fareham PO14 3EW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Stuart Banks (AR Banks Ltd) against an enforcement notice issued by Fareham Borough Council.
- The notice was issued on 4 August 2023.
- The breach of planning control as alleged in the notice is without planning permission,
- a) The material change of use of the land to use as a road haulage depot including the storage and parking of vehicles and plant and the stationing of a structure for use as an office in connection with the use; and
- b) The erection of high-level metal fencing and gates and a timber boundary fence; and
- c) The retention of hardstanding in breach of condition A.2(b) of Part 4, schedule 2 of the town and country planning (General Permitted development) (England) Order 2015 following the cessation of the temporary use of the Land as a highway works compound.
- The requirements of the notice are to:
 - (i) Cease the use of the Land as a road haulage depot;
 - (ii) Remove from the Land all structures, works, vehicles, plant and machinery associated with the unauthorised road haulage depot use (including the structure used as an office);
 - (iii) Remove from the Land the timber boundary fence;
 - (iv) Remove from the Land the metal fencing and gates;
 - (v) Remove the hardstanding from the Land and reinstate the Land to its condition prior to the Land being used as a highway works compound; and
 - (vi) Remove all resulting materials from the Land
- The period for compliance with the requirements is: three months after the Notice takes effect.
- The appeal is made on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction and variations.

Matters Concerning the Enforcement Notice

1. It is incumbent upon me to put the Enforcement Notice (Notice) in order. I have had regard to my powers under section 176(1)(a) of the Town and Country Planning Act 1990 (1990 Act) to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the test is whether the correction or variation would not cause any injustice to the appellant or the Council.
2. Paragraph 1 of the Notice states that the breach of planning control falls within paragraph 171A(1)(a) and (b) of the 1990 Act; namely, that development in the form of operational development and a material change of use has been carried out without the required planning permission, and it is a breach of condition. However, the allegation only refers to a material change of use of the land to a road haulage depot and operational development in the form of enclosures and a hardstanding. It is expressed that the hardstanding is a breach of a condition of Part 4, Schedule 2,

Class A of the (General Permitted development) (England) Order 2015 (the Order). However, this is not a breach of condition, but simply a development that does not comply with the conditions and limitations of the deemed consent granted by the Order. In this regard, the hardstanding is not a breach of condition but development that has been carried out without the required planning permission under section 171A(1)(a) of the 1990 Act.

3. In view of the above, the words 'and (b) (in respect of the breach of condition)' can be deleted from paragraph 1 of the Notice. Furthermore, the allegation in paragraph 3 of the Notice contains unnecessary words, which can be deleted. Although it is appreciated that the limitation of the Order may be the reason why the development requires permission, it is not necessary to set this out in the allegation. Furthermore, the phrasing of the 'retention of a hardstanding' is not appropriate without reference to the Order. As such, the words in part c) of the allegation shall be deleted and substituted with the words 'the laying of a hardstanding.'
4. For clarity, the allegation shall be corrected to 'without planning permission, (a) The material change of use of the Land to use as a road haulage depot including the storage and parking of vehicles and plant and the stationing of a structure for use as an office in connection with the use; and (b) The erection of high-level metal fencing and gates and a timber boundary fence; and (c) the laying of a hardstanding.' This variation to paragraph 1 and the correction to the allegation can be made without changing the nature of the allegation or resulting in injustice to either the appellant or the Council.
5. The appellant asserts that the Notice lacks detailed evidence regarding the condition of the land prior to the formation of the compound, as well as the specific requirements expected from him. I appreciate that the appellant has expressed some uncertainty about the previous condition. However, if the Council set out steps to return the land to a certain condition, these steps could go beyond what is necessary to remedy the breach and return the land to its former condition. The appellant would be best placed to know the previous condition of the Land and has even provided an indication of what he believes the condition of the Land was before the breach took place. In my judgment, the requirement to restore the land to its previous condition is sufficiently clear and aligns with the wording of the provisions outlined in Section 173(4) of the 1990 Act.

Preliminary Matters

6. The address on the Notice does not include a postcode; however, the appellant confirmed the postcode on the Appeal Form. This postcode matches the address of the land in question, so I have included it in the banner heading above for clarity
7. Although the appeal was submitted on grounds (f) and (g) only, the appellant asserts that the allegation stated in the Notice is incorrect. While this was not explicitly mentioned on the Appeal Form, the appellant noted in his final comments that the land is used both for the alleged purpose and for car boot sales. In my judgement, this claim implies a hidden ground (b) appeal, which contends that the alleged breach of planning control has not occurred as a matter of fact.
8. I wrote to both parties to clarify that, based on the appellant's submissions and information from the Council's Statement, it appears there is a hidden ground (b) appeal. I invited the Council to provide its views on this hidden ground (b), whether the allegation should be corrected to reflect a mixed use, and if correcting the

allegation would result in any injustice to either party. The Council responded with its observations, and the appellant was given an opportunity to submit final comments on this issue. Therefore, considering the hidden ground (b) in my assessment of the appeal will not cause any injustice to either party.

The Appeal on Hidden Ground (b)

9. An appeal on ground (b) asserts that the matters alleged in the Notice, which the Council deems to constitute a breach of planning control, have not occurred. To succeed on this ground, the appellant bears the burden of proof, needing to provide sufficiently precise and unambiguous evidence to demonstrate that, on the balance of probability, the development alleged has not taken place.
10. The appellants maintain that the use of the land is not solely linked to a road haulage depot; rather, it has also been used for car boot sales over an extended period. Consequently, they contend that the use of the land constitutes a mixed use, comprising both car boot sales and the road haulage depot, rather than simply the road haulage depot as alleged.
11. Conversely, the Council asserts that a mixed use does not exist on the site. While they acknowledge that car boot sales were conducted across the entire property for a significant duration, they contend that this was before the establishment of the enclosed highway works compound. Following the formation of the compound and its subsequent utilisation as a road haulage depot, the Council argues that car boot sales have ceased within that area and are continuing instead on a separate portion of the remaining field.
12. In instances where there is a dispute regarding whether a material change of use has occurred, it becomes imperative to delineate the correct planning unit and its primary uses. The concept of the planning unit has evolved as a means to identify the most appropriate physical area for assessing material change, thereby ensuring consistency in the application of the criteria surrounding a material change of use.
13. *Burdle*¹ serves as the leading case in determining planning units, establishing that a planning unit is typically the unit of occupation, except where a smaller area can clearly be identified that is physically separate and distinct, and occupied for different and unrelated purposes. *Burdle* delineates three broad categories for planning units: (a) a single unit of occupation with one primary use, encompassing ancillary and incidental activities; (b) a single unit of occupation supporting two separate primary uses that are not incidental to one another (i.e., a mixed use); and (c) a unit of occupation with two or more physically separate areas occupied for different and unrelated purposes, whereby each area in scenario (c) constitutes a distinct planning unit.
14. In this case, the land edged in red on the attached plan and the wider field parcel are owned and occupied by the appellants. The area subject to the Notice has been physically segregated from the field by a high metal fence, with a hardstanding laid within the enclosed perimeter. During my site visit, this area was being used for the storage of vehicles, plant, and machinery. The remaining field parcel was undeveloped, enclosed with a timber fence, and no activities were taking place.

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

15. In accordance with Burdle, and based on the evidence presented, it is apparent that the appellants control the entire land parcel, which includes both the enclosed hardstanding used as a road haulage depot and the wider, undeveloped field. Notably, the area subject to the Notice is distinctively separated from the field by a metal fence and is utilised for road haulage activities. The character and appearance of this area are also fundamentally different from the broader field, emphasising the independent uses each area serves.
16. The appellant has claimed that car boot sales temporarily occupied the enclosed area following the departure of the Highways Authority from the compound. However, aside from this assertion, there is a distinct lack of substantive evidence demonstrating the occurrence of car boot sales within the area subject to the Notice. Furthermore, aside from the shared access onto Titchfield Road, there is no indication that the hardstanding and fenced area bears any functional relationship to the car boot sales activities. Furthermore, it is not clear from the submissions whether these car boot sales transpired concurrently with or before the initiation of road haulage activities within the enclosed area.
17. Taking into consideration the physical layout of the land, as well as the evidence at hand, it is evident that the area in question is physically separate and distinct and occupied for different and unrelated purposes from the wider field. Thus, the area subject to the Notice constitutes a separate planning unit from the wider field parcel. It is primarily employed as a road haulage depot, with limited evidence to support the existence of a mixed use comprising both car boot sales and the road haulage depot at the time the Notice was issued.
18. Consequently, the appeal on the hidden ground (b) fails.

The Appeal on Ground (f)

19. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the Notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
20. The ground (f) appeal is pleaded in relation to steps (iii) and (iv) of the requirements, which require the appellant to remove the metal and timber gates and fencing. The appellant contends that the requirement to remove the metal and timber enclosures in their entirety is excessive and that they could instead be reduced in height to 2m, to reflect the permitted development provisions in Schedule 2, Part 2, Class A of the Order. It is contended that such rights could be claimed in the future, enabling the appellant to erect 2m high timber and metal enclosures following compliance with the Notice.
21. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is section 173(4)(a) of the 1990 Act, which is to remedy the breach of planning control that has occurred. The second, section 173(4)(b) of the 1990 Act, is to remedy any injury to amenity which has been caused by the breach. In this case, the Notice requires the cessation of the use and the removal of the fences and hardstanding from the Land. This is consistent with the purpose of remedying the breach of planning control in accordance with section 173(4)(a) of the 1990 Act.

22. I have had regard to the fact that the appellant has indicated that the removal of the metal and timber fences, and re-erecting them at 2m, is possible once compliance has been achieved. However, I do not have sufficient detail of this alternative scheme to determine whether the alternative scheme of enclosures would be permitted, and a genuine fallback position.
23. Nonetheless, based on the evidence before me, the metal fence and gates are not only a breach of planning control due to their height, but also because they facilitate the unauthorised use as a road haulage depot. It has been established that where a Notice attacks a material change of use, it may also require the removal of works which are integral to, and solely for the purpose of, facilitating the unauthorised use so that the land is restored to its previous condition. In this regard, lowering the height of the fence to 2m would not remedy the breach of planning control, and the requirement to remove it entirely is not excessive.
24. The permitted development rights set out in Schedule 2, Part 2, Class A of the Order permit fences, walls and enclosures to 1m in height without planning permission when adjacent to a vehicle highway. I appreciate that the timber fence to the front is setback and not directly abutting the vehicle highway, but it is adjacent to it. As such, varying the requirement to lower the height to 2m does not remedy the breach of planning control, which is the purpose of the Notice, nor does it represent a genuine fallback position.
25. As such, the requirements to entirely remove the metal and timber enclosures from the site are not excessive to remedy the breach of planning control and comply with 173(4)(a) of the 1990 Act.
26. Accordingly, the appeal on ground (f) fails.

The Appeal on Ground (g)

27. An appeal on this ground is that the period specified in the Notice falls short of what should reasonably be allowed. The Notice specifies a compliance period of three months starting from the date the Notice takes effect.
28. The appellant requests an additional 9 months to the compliance period, bringing the total to 12 months. It is stated that 1 year is requested as an extended time to comply with the requirements of the Notice. The appellant contends that the 3 months given are not sufficient to find another site, as well as to remove the hardstanding and fencing. It is contended that there are no other lawful sites to move the haulage business to within the locality, and if a new site is not found, it will mean the closure of the business and the loss of at least 12 jobs.
29. The Council states that the change of use of the land and associated development is unacceptable. The appellant's request to further extend the period for compliance for 12 months will perpetuate the harmful impact upon this countryside location as set out in the Enforcement Notice.
30. Having regard to the potential disruption to the business, potential loss of jobs and the time it may take to relocate and remove the unauthorised works, I consider that a period of time in excess of three months can be justified. However, extending the period of compliance to 12 months would be excessive given that no ground (a) appeal has been made in this case and how it would prolong the identified harm.

31. On this basis, I consider that a period of 8 months for the appellant to comply with the corrected Notice would strike an appropriate balance between the need to minimise the identified harms and the need to minimise disruption to the business and the employees. To this limited extent, the appeal on ground (g) succeeds. I shall vary the terms of the Notice accordingly.

Conclusion

32. For the reasons given above, I conclude that the appeal on the hidden ground (b) should not succeed. The requirements of the Notice are not excessive to remedy the breach of planning control, but the period for compliance with the Notice falls short of what is reasonable. The appeal on ground (f), therefore, fails but ground (g) succeeds to a limited extent. I shall correct and vary the Notice before upholding it.

Formal Decision

33. It is directed that the Notice is corrected and varied by:

In paragraph 1 delete the words ‘and (b) (in respect of the breach of condition)’

In paragraph 3, the deletion of the allegation and substitution with the words ‘without planning permission, (a) The material change of use of the Land to use as a road haulage depot including the storage and parking of vehicles and plant and the stationing of a structure for use as an office in connection with the use; and (b) The erection of high-level metal fencing and gates and a timber boundary fence; and (c) the laying of a hardstanding.’

In paragraph 6, specifying the time for compliance, the deletion of the word ‘three’ and its substitution with the word ‘eight’.

34. Subject to the correction and variations, the appeal is dismissed, and the enforcement notice is upheld.

M. P. Howell

INSPECTOR