



Appeal Decision

Inquiry Held on 28 October 2025

Site visit made on 28 October 2025

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 28 November 2025

Appeal Ref: APP/A1720/C/25/3368517

Land to the west of 237 Segensworth Road, Fareham PO15 5EW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Matthew James (Bartley Balmoral Limited) against an enforcement notice issued by Fareham Borough Council on 28 May 2025.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the Land to a mixed use for the siting and storage of shipping containers and portable buildings, the storage of personal items, gym equipment, furniture and garden equipment in shipping containers, the storage of caravans, motorhomes and other vehicles, the stationing of one mobile home for residential purposes, the stationing of one shipping container with timber lean-to extension for residential purposes and the storage and repair of motor vehicles inside the barn.
 - The requirements of the notice are to:
 - (i) Cease the mixed use of the Land;
 - (ii) Remove all mobile homes from the Land;
 - (iii) Remove all touring caravans, motorhomes and other vehicles from the Land; and
 - (iv) Remove all shipping containers and portable buildings from the Land.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (b) (c) (f) (g) of the Town and Country Planning Act 1990 as amended (the Act). Since the appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. It is directed that the enforcement notice be corrected and varied by:
 - In section 3, replacing "the storage of personal items, gym equipment, furniture and garden equipment in shipping containers" with "the keeping of horses";
 - In section 5(ii), replacing "Remove all mobile homes from the Land" with "Remove all mobile homes and caravans, except one, from the Land";
 - In section 5(iii), replacing "touring caravans" with "non horse-related shipping containers, portable buildings"; and
 - Deleting section 5(iv) and the word "and" from the end of section 5(iii).
2. Subject to these corrections and variations, made in part due to limited success on grounds (b) and (f), the appeal is otherwise dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. The Inquiry dealt with all the grounds of appeal apart from ground (a) which proceeded by way of written representations only. This approach had been agreed with the main parties at the Case Management Conference. This Decision deals with all the grounds of appeal.
4. It is uncontroversial between the parties that it is unnecessary for the notice allegation to include reference to both the storage of shipping containers and to the storage of specified items within those containers¹. To put the notice in order, I am accordingly using my powers under section 176 of the Act to delete reference to the latter – and without injustice to the parties – since it is agreed all around that what is stored in the containers does not matter.

Ground (b)

5. For success on this ground, I must be satisfied on the balance of probabilities that matters stated in the notice said to constitute a breach of planning control have not in fact occurred. The burden of proof sits with the appellant.

Keeping of horses

6. It is common ground that the use of the land for the keeping and grazing of horses remains. As seen on my site visit, and as I have seen in photographs taken on the Council's site visits, there is a paddock at the rear of the site with 2 associated storage containers apparently in use (and labelled as such) as a horse stable and for hay storage respectively. The Council's photographs show horses within the paddock and also a parked horse transit vehicle.
7. Accordingly, I am satisfied to the required standard of proof that the mixed use alleged in the notice has not in fact occurred since it should include the keeping of horses as a constituent element. Ground (b) therefore succeeds to that extent. I am using my powers to vary the notice, without injustice², as invited by both parties.

Motor vehicle repairs

8. The appellant does not dispute that motor vehicles are repaired inside the barn. Accordingly, as a matter of fact, that part of the notice allegation has occurred and a ground (b) appeal does not succeed in respect of it. The appellant's argument that such use is ancillary to what he says is the lawful use of the site (and therefore, itself, lawful) is dealt with, more properly, under ground (c).

Residential uses

9. The notice alleges that the unauthorised mixed use includes use of a mobile home and a shipping container (with timber lean-to extension) for residential purposes.
10. The appellant did not give live evidence at the Inquiry himself (which would have been assigned significant weight, particularly if given under oath), but did provide a signed Statement of Truth to which I give lesser but firm weight.

¹ Not technically a ground (b) matter as it is not disputed by the appellant that such items have as a matter of fact been stored in the containers.

² The variations I am also making on ground (f), discussed later in this Decision, ensure that the notice does not make any requirements which undermine the right to revert to the lawful use for the keeping of horses.

11. The Statement of Truth confirms that both the caravan (mobile home) and the container are used for residential purposes (albeit intermittently, and to provide site security). It follows, therefore, that Ground (b) fails on this issue. The matter of whether such residential occupation is ancillary to a lawful primary use of the land, as argued by the appellant, is a ground (c) matter dealt with below.

Ground (c)

12. For success on this ground, I must be satisfied on the balance of probabilities that matters stated in the notice do not constitute a breach of planning control.
13. In essence, the appellant's global argument is that there has been no unauthorised material change of use of the land – and therefore no breach of planning control – because primary use of the appeal site for storage³ (as long as it is not commercial⁴) has permission, and that other alleged uses within the notice allegation (the motor vehicle repairs and residential occupation) are lawful as ancillary uses (rather than primary ones) to the lawful storage use.

Storage

14. Application P/04/0613/FP⁵ (the 2005 permission, allowed on appeal together with an enforcement notice appeal) did not permit external storage and the barn (currently used for the storage and repair of motor vehicles unrelated to the keeping of horses) was conditioned so as only to be used to accommodate the appellant's own horses, equipment, straw and hay. A reasonable reader of the Appeal Decisions, applying common sense in the context of the planning permission(s) as a whole, would not consider the motor vehicles to represent 'equipment' as meant by the condition or construe the permission(s) to permit storage which was not ancillary to the stabling and keeping of horses.
15. Much rests on the interpretation of Application P/06/0357/FP⁶ (the 2006 permission), particularly as it was essentially accepted by both main parties by the end of the Inquiry that Application P/08/1075/VC⁷ (the 2008 permission) would not materially affect the outcome of the appeal should the former be read as permitting storage on the site as a primary use⁸. Whatever the status of the 2008 permission (whether it replaces or runs together with the 2006 permission), it authorised the same use of the land as the 2006 permission as well as the annual sale of Christmas trees in December.
16. In construing a planning permission which is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself, including the conditions on it and the express reasons for those conditions. This excludes reference to the planning application as well as to other extrinsic evidence, unless the planning permission incorporates the application by reference, when the application is then treated as having become part of the permission.

³ Together with horse keeping as a mixed use.

⁴ It is common ground that the site is not being operated as part of a business.

⁵ *Retention of Building Being Used For Stabling and Storage.*

⁶ *Change of Use of Site for the Keeping of Horses, (Change of Use of Yard for External Storage - Relief from Condition 2 of P/04/0613/FP), Retention of 3No. Mobile Stables, Retention of Caravan, Construction of Manege and Dog Kennel.*

⁷ *Partial relief from condition 3 of P/06/0357/FP (to enable sale of Christmas trees in December annually), change of use of site for the keeping of horses, retention of 3 mobile stables & caravan, construction of manege & dog kennel.*

⁸ Referred in the Council's closings as a 'red herring', and said by Mr Harwood OBE KC on behalf of the appellant during his closings that it was 'agreed that the Christmas tree permission doesn't change anything'.

17. For incorporation of the application, more is required than a mere reference to the application on the face of the permission. Some words sufficient to inform a reasonable reader that the application forms part of the permission are needed, such as "... in accordance with the plans and application ..." or "... on the terms of the application ...", and in either case those words appearing in the operative part of the permission dealing with the development and the terms in which permission is granted.
18. The 2006 permission incorporated the application by using the words "in accordance with your application and the plans and particulars submitted in connection therewith...". Therefore, regard may be had to the application form and – since the description of the proposed development requested in section A4 of that form was provided by a 'supporting statement' – regard may also be had to that statement, submitted by way of the accompanying letter dated 15 March 2006⁹. That letter is incorporated into, and part of, the permission.
19. When everything incorporated into the permission is read together, it is clear and unambiguous that it authorised the change of use of the wider site (beyond the restricted area of the 2005 permission) for the keeping of horses - and that the words in parenthesis within the operative part of the permission approved only the use of the yard for horse-related storage ancillary to that primary use. The 'change' referred to in within those brackets was clearly relief from condition 2 of the 2005 Permission since that condition prohibited external storage, outside of the barn (as ticked on the application form). The permission also authorised the retention of mobile stables and a caravan (used as a rest room for the workers at the stables¹⁰) and the construction of a manege – all features which support the interpretation of the application as one concerned with horse-related activities and related ancillary storage (rather than an unrestricted primary storage use). Notably and significantly, the supporting statement makes all this abundantly clear throughout:

*"The application is to **regularise horse related storage** and improvements to the land as part and parcel of the keeping of horses...*

*At present the use of the land is defined as agricultural which does not cover the keeping of horses. **The actual use of the land is for the keeping and grazing of horses for personal use...***

*The 2005 consent for the stable building (ref P/04/0613/P), while assisting with that part of the equestrian use, has caused problems due to condition two which prohibits open storage without consent. The keeping of horses creates a requirement for storage, for example horse manure and horsebox ... **The proposal is to remove the condition so that horse related storage would be permitted.** The lifting of the condition will only apply to the land edged black (i.e. the yard) see plan F/218/CC/B and **only in respect of horse related storage** in accordance with the terms of the consent...*

***The whole site is now used for the keeping of horses** for personal use and the owner is applying to regularise this formally in terms of a change of use of the land. Ancillary development is also required for the equestrian use of the site."*

[Words in bold are my emphasis]

⁹ Even if it hasn't been held on the planning register, and it matters not whether it has been stamped 'approved'.

¹⁰ Supporting statement.

20. Further, planning permissions should be read and interpreted together with their conditions. Condition 4 of the 2006 permission makes the permitted caravan's use solely for purposes ancillary to the use of the land as a whole and - significantly - refers to that use as "the grazing and stabling of the applicant's own horses".
21. A reasonable reader, applying common sense in the context of the planning permission as a whole, would not consider 'horses and equipment' as meant by Condition 3 of the 2006 permission to permit storage which was not ancillary to the stabling and keeping of horses.
22. For all these reasons, the 2006/2008 permissions did not permit storage upon the land as a primary use as part of a mixed use with horse-keeping.

Motor vehicle repairs

23. It follows from what I have said above that none of the 2005, 2006 or 2008 permissions permit the storage of motor vehicles where such storage is not ancillary to the stabling and keeping of horses. Consequently, using the barn for (storing and) repairing such motor vehicles is not lawful.

Residential uses

24. The appellant's Statement of Truth says that the container and caravan occupied intermittently for residential purposes provide security given high value items stored on the site, particularly the cars. As I have said, I give firm weight to that evidence (and what was said on the appellant's behalf at the Inquiry) and accept that the container and caravan do not form a main residence for any individual in serving the stated purpose.
25. However, I have found storage on the site to be unlawful (other than that ancillary to its lawful use for horse-keeping) and so a lawful functional connection does not exist as regards residential security provided in relation to, for instance, the cars stored within the barn¹¹. No substantive case has been made as to why residential security would be a normal, functionally-connected ancillary use to the use of the land for (non-commercial) horse-keeping.

Conclusion on ground (c)

26. The 2005, 2006 and 2008 permissions do not provide a lawful basis for the way the land is being used, being of a materially different character due to the unrestricted primary storage and the activities carried out in association with it.
27. While I note the comments made by the appellant about the *Finney*¹² case and the 2008 permission, it has legal effect and I must take the permission as it is – even if it is questionable whether it should have been granted under section 73 of the Act. As the parties have agreed, in any event, the appeal does not turn on that permission. Further, it is of no account that the 2013 enforcement report may have mis-transcribed the Inspector's Decision relating to appeal APP/A1720/C/13/2190236. The actual Decision was clear that the agreed lawful use of the land was that as derived from the 2006 permission, which indeed has been the focus of the appeal before me. Ground (c) fails.

¹¹ It is not clear what other high value items are meant by the appellant, if any, since it appears that many of the storage containers are empty or contain modest amounts of personal possessions and domestic paraphernalia.

¹² *Finney v Welsh Ministers & Carmarthenshire CC & Energiekontor (UK) Ltd* [2019] EWCA Civ 1868; [2020] JPL 524

Ground (a) and the deemed planning application

Main Issues

28. The main planning issues are the:

- principle of development taking into consideration Policies H1 (Housing Provision) and HA3 (Southampton Road Housing Allocation) of the Fareham Local Plan 2037 (LP); and
- effect of the development on the character and appearance of the area.

Reasons

Principle of development

29. Policy H1 of the LP sets out the housing requirement for the Borough for 2021-2037 and how the Council expects to meet that need. It says that the Council will make provision for at least 9,560 net new homes across the Borough during the Plan period of 2021-2037 with at least 9,140 dwellings (averaging 653 dwellings per annum) between 2023/24 and 2036/37. Housing will be provided by approximately 2,711 homes on sites allocated in policies HA1, HA3, HA4, HA7, HA9, HA10, HA12, HA13, HA15, HA17, HA19, HA22-HA24, HA26-HA56.
30. The appeal site lies within a wider allocated housing site under Policy HA3 (Southampton Road). That policy says that planning permission will be granted provided that detailed proposals accord with the policies in the LP and meet certain site specific requirements, including that the quantum of housing proposed should be broadly consistent with the indicative site capacity. There seems to be general agreement between the parties that a quantum broadly consistent with the indicative wider site capacity would be approximately 36 new homes on the appeal site, taking into account its size and if it were to developed at a density similar to the housing scheme constructed to the south.
31. No homes are provided by the appeal development. Although a container and a mobile home are intermittently residentially occupied for security purposes, I have seen no evidence that they form the main residences of those performing those security functions, and they do not provide what would reasonably be considered new dwellings/housing for the purposes of Policies H1 and HA3.
32. The appeal development is in conflict with Policies H1 and HA3 because it provides no housing on the allocated site and, if granted, would delay the land coming forward for the housing the Borough demonstrably needs. However, I note the point made by the appellant as to the mixed storage use being more suited to an urban area (rather than encroaching upon the countryside) and I also note that a significant quantum of the Southampton Road allocation has been independently delivered. Further, Policy H1 aspires to meet the identified housing requirement by providing new homes each year up to 2036/37. The nature of the appeal development with very limited (or no) operational development - and in the main consisting of portable structures, containers, caravans and vehicles - renders the site relatively available for housing development in the years to 2036/7, should that option be promoted in the forthcoming decade or so. For these reasons, I give minor weight to the conflict with Policies H1 and HA3 which together seek to ensure housing provision.

Character and appearance

33. While there is some screening of the site, and even taking into account the lawful baseline of development upon the land within a wider urban context of mixed character, the double-stacked shipping containers are strikingly prominent and unsightly in external views. These factors combine with the industrial character of the containers to cause harmful incongruity against the nearby adjacent residential housing development and care home, notwithstanding the presence of businesses and associated car parks further afield across Southampton Road and Segensworth Road.
34. Accordingly, the development causes significant harm to the character and appearance of the area. As such, it is in conflict with Policy D1 of the LP which seeks to ensure that development proposals and spaces will be of high quality and create well designed, beautiful places. I do not accept the appellant's suggestion that this policy has limited relevance on the assertion it does not include built form or public access. The change of use is a development, to which the policy applies.

Planning Conclusion

35. The appeal development does not accord with the development plan as a whole, and there are no other considerations which outweigh that finding. There are no planning conditions (either those suggested by the parties or otherwise) that I could reasonably impose which would make the development acceptable on the main issues. I shall refuse to grant planning permission, and ground (a) does not succeed.

Ground (f)

36. For success on this ground, I must be satisfied that the requirements of the notice are excessive in achieving its purpose.
37. It seems that the purpose of the notice is to remedy the breach of planning control by requiring the cessation of the unlawful mixed use and the restoration of the condition of the land before the breach took place.
38. I find the requirements excessive because the use of the land can revert to the previous lawful use, that being the keeping of horses as permitted under the 2005, 2006 and 2008 permissions (and December Christmas tree sales). It is lawful for a single caravan to be stationed on the land (as a rest room for stable workers), and for horse-related storage to occur.
39. Ground (f) therefore succeeds to this extent, and I am varying the notice requirements accordingly.

Ground (g)

40. For success on this ground, I must be satisfied that the 2 month compliance period of the notice falls short of reasonable.
41. As I highlighted under ground (a), the items to be removed from the site are largely portable and readily moveable in nature and can be reasonably moved from site within 2 months (there are also fewer to be removed due to success on ground (f)). I have seen insufficient evidence from the appellant to persuade me that an alternative storage location(s) cannot reasonably be arranged within the same period.

42. The appellant requires 5 years to gain planning consent for the residential development of the land. That is entirely unreasonable, particularly given the significant harm to local character and appearance I have identified. The notice steps can be reasonably completed within 2 months, for the reasons I have given, regardless of the appellant's future intentions for the land.
43. Accordingly, ground (g) does not succeed.

Conclusion

44. Subject to corrections and variations of the notice, made in part due to limited success on grounds (b) and (f), the appeal is otherwise dismissed and the notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Richard Harwood OBE KC (instructed by Laister Planning Limited)

He called Nick Laister

FOR THE LOCAL PLANNING AUTHORITY (LPA): Emma Dring (instructed by Southampton, Fareham & Havant Legal Partnership)

She called Stephen Jupp

INTERESTED PERSONS: None

DOCUMENT accepted after the opening of the Inquiry

- 1 Email chain 02/10/23 – 04/01/24 between Nick Laister and LPA