



Appeal Decision

Hearing held on 31 March 2026

Site visit made on 31 March 2026

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2026

Appeal Ref: APP/T2215/C/25/3376226

Land at Unit E, Malt House Farm, Green Street, Green Road, Darenth DA2 8DX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Gibbs and Ball Ltd against an enforcement notice issued by Dartford Borough Council.
 - The notice was issued on 27 October 2025.
 - The breach of planning control as alleged in the notice is: i. Without planning permission, the construction of a building called 'Unit E', the excavation and levelling of land, the laying of hardstanding to form the yard and parking area and the erection of palisade fencing. ii. Without planning permission, the material change of use of the land to use as a granite workshop and storage and distribution of granite products.
 - The requirements of the notice are: i. Cease the use of the land as a granite workshop and storage and distribution of granite products. ii. Demolish and remove from the land: Building known as Unit E; Hardstanding; Palisade fencing. iii. Permanently remove from the land all materials, equipment and plant associated with or facilitating the use of the land, to include but not limited to skips, vehicles, spoil, waste, rubble and corrugated steel. iv. Re-instate the levels of the land to its pre-existing condition.
 - The period for compliance with the requirement is: 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld subject to a variation.

Applications for Costs

2. An application for costs was made by Dartford Borough Council against Gibbs and Ball Ltd. This application will be the subject of a separate Decision.

Preliminary Matters

3. A Case Management Conference (CMC) was held virtually on 29 January 2026. This was purely procedural, and the merits of the appeal were not discussed.
4. The appeal was scheduled to be heard by means of Inquiry. However, the appellant withdrew their ground (d) appeal and during the CMC the parties agreed that a Hearing would then be appropriate. I also agreed to this course of action and set a bespoke timetable as injustice would not arise.

The ground (c) appeal

5. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute

development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.

6. The appellant contends the excavation and levelling of the land were not works that amounted to development.
7. However, the evidence from the appellant in the form of cross-sectional drawings demonstrates on the balance of probabilities that there has been a reduction in ground levels of approximately 1.5m. Whilst reference to caselaw¹ is made, this has not been provided and neither was a detailed comparable evidential explanation as to how such a significant reduction in ground level was held to not amount to development for the purposes of Section 55 of the Act. The Council has however provided a brief overview of the caselaw in that it was held the term engineering operation should be given its ordinary meaning in the English language. This was accepted by the appellant during the Hearing.
8. The Council has then estimated that approximately 693 cubic metres of material would have been excavated. The appellant provides a figure of 254 cubic metres having been removed from the site. Either way, this is not limited in extent or consistent with ordinary land management as it facilitated the erection of the building and hardstanding. Accordingly, whether taken in isolation or in the context of the wider site, as a matter of fact and degree, these amount to engineering works and which are clearly not relatively minor or de minimis in planning terms. It was also confirmed by the appellant during the Hearing that the works required the use of heavy machinery, whether or not then undertaken by an engineer. The works have therefore resulted in a material alteration to the character and appearance of the land.
9. There is then very little evidence to demonstrate on the balance of probabilities that the excavation and levelling of the land amounts to a form of permitted development.
10. As a matter of fact and degree, the appellant has therefore failed to demonstrate on the balance of probabilities that the excavation and levelling of the land did not amount to a breach of planning control.
11. The appeal on ground (c) therefore fails.

The ground (f) appeal

12. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. This was accepted by the parties during the Hearing. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose alternative steps.
13. The appellant has invited me to vary the requirements of the notice to enable various permitted development rights. This is not because it is contended the developments enforced against could be altered to accord with permitted development rights, but because there is a preference to then erect a new building and hardstanding as permitted development as part of a single building operation in conjunction with complying with the notice.

¹ Fayrewood Fish Farms Ltd v Secretary of State for the Environment [1984] J.P.L. 267

14. Such a proposal is however not part of the matters enforced against and very clearly represents a different scheme, as was accepted by the appellant during the Hearing. It is therefore not for the enforcement notice to require or enable what could or could not be subsequently done. There is also limited evidence to demonstrate on the balance of probabilities that the proposed scheme would amount to a form of permitted development, or a certificate of lawfulness. The Council also disputes that the proposed works would be permitted development.
15. In any event, the so-called enabling of permitted development rights for a different scheme would not represent a realistic fallback position that is an obvious alternative in respect of the developments enforced against or render the requirements of the notice excessive to remedy the breaches of planning control. It is thus a separate matter, even if it may have been desirable for the appellant to undertake all works as a single building operation. Introducing such requirements could also be regarded as making the notice more onerous.
16. A different scheme (i.e. building something else new) therefore does little to demonstrate on the balance of probabilities that the requirements of the notice are excessive to remedy the breaches of planning control enforced against by the notice. The appeal decisions then brought to my attention were not actually placed before me, and during the Hearing the appellant did not demonstrate their relevance to their own proposal.
17. It is also contended there was already a lawful storage use of the land, and this use could be resumed. Whether or not that is correct, the notice is directed at a mixed use, not simply a storage use, and only requires cessation of the mixed use that has been enforced against. The notice therefore goes no further than remedying the breach of planning control.
18. Whether or not the requirements exceed what is necessary to remedy harm to the Green Belt is then not relevant to a ground (f) assessment, as this would concern the planning merits of retaining the developments, which are not before me.
19. The appeal on ground (f) therefore fails.

The ground (g) appeal

20. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short.
21. A period of 24 months is requested to enable works to be scheduled around other businesses at the wider site and for the business at the site to find a suitable alternative location.
22. There is however only limited evidence to demonstrate why such a considerable period of time would be required to procure a suitable granite workshop, storage and distribution site. It is also not a pre-requisite that a new site should first be found to then facilitate compliance with the notice. I do however accept that there is likely to be a shortage of suitable sites and that the large equipment used in the building may take some time to move logistically.
23. Whilst there are contractual commitments, the current lease ends in January 2027 and I was advised during the Hearing that the appellant might be able to offer an alternative site to the tenant, although this was not currently the case.

24. As a consequence, I am minded to agree with the local resident that a period of 12 months would strike the appropriate balance. This would not unduly perpetuate the breach of planning control, whereas a much longer period would be tantamount to a temporary planning permission.
25. The appeal on ground (g) therefore succeeds to this extent.

Overall Conclusion

26. For the reasons given above I conclude that the appeal should not succeed. I shall therefore uphold the enforcement notice subject to a variation.

Formal Decision

27. It is directed that the enforcement notice be varied by:
- substituting ‘12 months’ as the period for compliance in section 5. v of the notice
28. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Nial Casselden	Planning Agent
Ms Rhian Chitty	Planning Agent
Mr Richard Evans	On behalf of the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Izindi Visagie	Ivy Legal instructed by Dartford Borough Council
Mr Neill Whittaker	Ivy Legal instructed by Dartford Borough Council

INTERESTED PARTIES:

Mr Steven Waghorn	Local resident
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