



Appeal Decision

Inquiry held on 17 March 2026

Site visit made on 16 March 2026

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th April 2026

Appeal Ref: APP/V2255/C/25/3375967

Land North of Perry Leigh, Grove Road, Selling, Kent ME13 9RN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
- The appeal is made by Mr Brian Macey against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 15 October 2025.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of Land from a mixed use comprising (1) part for the making and recycling of pallets and (2) part for the keeping and grazing of horses; and part for the siting of 3 containers used for purposes ancillary to the keeping and grazing of horses and the making and recycling of pallets; to a mixed use comprising (1) part for the making and recycling of pallets and (2) part for the keeping and grazing of horses and (3) part for the siting of more than 3 storage containers (currently 17) used for the storage of machinery and materials associated with the keeping and grazing of horses and the making and recycling of pallets.
- The requirements of the notice are: (i) Cease using the Land for the siting of storage containers. (ii) Remove all storage containers from the Land other than those three shown in their approximate position marked by black crosses on the attached plan.
- The period for compliance with the requirements is twelve months after the notice comes into effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), and (f) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Background

1. The appellant runs a business involved in the making and recycling of pallets at the site. He is the sole employee of that business, and he carries out all activities associated with that business, except for the collection of finished pallets from the site by employees of a pallet firm. The appellant also rents out part of the site, including a stable building, to people who keep and graze 2 horses on the land. Seventeen storage containers¹ are sited on the land to store tools, machinery, hay, and other items associated with the making and recycling of pallets, the keeping and grazing of horses, and the maintenance of the land.
2. Initially because of the Covid-19 pandemic, and then due to the appellant's health since, some of the storage containers have not been regularly accessed for long periods. Parts of the site have therefore become overgrown to such an extent that some of the storage containers are currently inaccessible. The appellant is also unable to open some of the containers on account of keys being lost or locks/doors having been damaged by people trying to break in.

¹ Referred to throughout by the numbers provided in Appendix 4 to the Proof of Evidence of Brian Macey dated February 2024

3. A certificate of lawfulness for an existing use (LDC) was granted by the Council in respect of a small part of the site for *'use of land for storage of pallets'* in 2017² on the basis that such use had been continuing for at least ten years prior to the date of the application for an LDC.
4. In a previous appeal decision³, an earlier enforcement notice (the 2021 EN) related to only part of the site and referred to the alleged breach of planning control as *'the material change of use of the Land from the keeping and grazing of horses to a mixed use of the Land for the keeping and grazing of horses and the stationing of storage containers'*. That notice was quashed because, amongst other things, the description of the alleged breach was imprecise, and it could not be corrected without causing injustice. The notice the subject of this appeal intends to address the shortcomings of the 2021 EN, and the Council's case relies in part on section 171B(4) of the Act, which sets out the 'second bite' provisions. The Council's failure to ensure the notice explicitly refers to section 171B(4) does not render it invalid, but this would be relevant to an appeal on ground (d).
5. The previous appeal decision clarifies at paragraph 7 that the 2021 EN *'intended to attack an alleged storage use that had expanded from an incidental scale to become a primary use in its own right; a use that is facilitated by the containers.'* The Council's Statement of Case confirms the same about the notice the subject of this appeal, which refers to the change of use from a mixed use comprising part for the making and recycling of pallets (the Pallets element), part for the keeping and grazing of horses (the Horses element), and part for the siting of 3 storage containers used for purposes ancillary to the Pallets element and the Horses element, to a mixed use comprising the Pallets element, the Horses element, and part for the siting of more than 3 storage containers (currently 17) used for the storage of machinery and materials associated with the Pallets element and the Horses element (the Containers element). There is no dispute that the site is a single planning unit with a lawful mixed use for purposes including, as a minimum, the Pallets element and the Horses element. I see no reason to disagree with these basic agreed facts.
6. I wrote to the main parties in advance of a Case Management Conference prior to the Inquiry and asked whether the description of the alleged breach should refer to an alleged intensification of a lawful mixed use if all the storage containers were used in association with the Pallets element and the Horses element. On that basis, I put forward a possible alternative description of the alleged breach which referred specifically to intensification, for the parties to consider. The Council has endorsed this approach and claims the notice can be altered in this manner without causing injustice, whilst also maintaining that the existing description of the alleged breach is not in need of correction. I shall therefore consider the appeal based on the description of the alleged breach stated in the notice.
7. All evidence in respect of grounds (b), (c), and (d) was heard by sworn affirmation.

The appeal on ground (b)

8. For the appeal under ground (b) to succeed, the appellant needs to show that the alleged breach of planning control has not occurred.

² The Council's ref: 16/502524/LDCEX

³ Appeal ref: APP/V2255/C/21/3287862, in respect of an enforcement notice dated 25 October 2021

9. Essentially, the allegation is that 14 storage containers have been sited on the land (in addition to 3 pre-existing storage containers which the Council accepts as ancillary to the lawful use of the land), which has brought about a material change in the use of the site. There is no dispute that the siting of the storage containers comprises a use of the land, rather than operational development, and I see no reason to find otherwise. Whether the siting of those storage containers has resulted in a material change of use requiring planning permission is more relevant to the appeal on ground (c), rather than ground (b).
10. The LDC confirms the storage of pallets is lawful on a relatively small part of the site, without reference to any other uses of the land. This does not mean that the same use was not, or is not, lawful over larger parts of the site. Indeed, aerial photographs and Mr Macey's evidence strongly suggest that pallets and other items associated with the Pallets element have been stored outside over large parts of the site for a considerable period, and since at least 2007.
11. In the context of the wider site and its undisputed lawful use for mixed purposes including at least the Pallets element and the Horses element, the storage use referred to by the LDC does not form another primary element of the lawful mixed use of the site. This is because the outside storage of pallets across the whole site is seen and experienced as part of the function of the Pallets element, even though the making and recycling of pallets is not referred to within the LDC. It is therefore not essential for the description of the alleged breach to refer to the storage of pallets, although I take the appellant's point that the storage use certified as lawful on part of the site informs the character of the lawful mixed use of the wider site, which is relevant to the appeal on ground (c). It is also not essential for the notice to refer to the LDC, as compliance with the notice would not affect the lawful use of the area of land referred to by the LDC.
12. Aside from any other potential defects, errors or misdescriptions in the notice which may or may not be corrected without causing injustice, it is clear that the notice attacks the siting of the additional 14 storage containers on the land. As such, the matters alleged in the notice have occurred and the key issue is whether this has resulted in a breach of planning control.
13. The appeal on ground (b) therefore fails.

The appeal on ground (c)

14. For the appeal under ground (c) to succeed, the appellant needs to show that the alleged breach does not constitute a breach of planning control, on the balance of probabilities.
15. Section 57 of the Act states that planning permission is required for the carrying out of any development of land. The relevant meaning of 'development' is provided at section 55 of the Act, which includes the making of any material change in the use of any buildings or other land. A change in the use of any land is therefore only capable of constituting development requiring planning permission if the change is material.
16. It is the Council's case that the Containers element is not ancillary or incidental to the lawful mixed use of the land for the Pallets element and the Horses element and that the introduction of the Containers element has had an effect on the character of the use of the site significant enough for the Containers element to

comprise a new primary use. This, it is claimed, has brought about a material change in the use of the land.

17. There is no dispute that the contents of the storage containers comprise items associated with the Pallets element, the Horses element, and the maintenance of the land. Such items include timber, tractors, tools, fuel, trailers, racking, hay, straw, and tractor/trailer parts. These items are not being stored for any other purposes or uses within or outside the site. Moreover, the aerial photographs suggest a reduction in items stored in the open on the land prior to the 14 additional storage containers being sited there, consistent with the appellant's claims that many of those items have simply been moved inside the storage containers.
18. Many pallets are kept in the open, while there are 2 boxes for horses within the stable building, which is also largely used for the storage of timber associated with the pallets business. In addition, the items within the storage containers are all reasonably necessary to carry out the lawful use of the land. Mr Macey has explained that timber stored in the open is prone to rotting and that thefts and damage caused to items stored in the open brought about the need to securely store them inside, which influenced the positioning of the last 12 storage containers moved onto the land.
19. Although they take up a large volume, the storage of these items within the storage containers is reasonably necessary and proportionate to the Pallets element, the Horses element, and the maintenance of the land. They are therefore ancillary to the lawful use of the land because they have a functional relationship with the lawful use and their extent and scale are commensurate with that lawful use, considering the particular circumstances of the site (including its size, layout and location) and the way it is lawfully used (including the unique way the appellant operates the pallet business).
20. Mr Gregory, on behalf of the Council, has suggested that the siting of the 14 additional storage containers represents a 566% increase in storage needs. However, there is little to show the storage needs of the lawful use may have increased, when aerial photographs indicate items were previously stored to a similar or larger extent in the open. In that sense, there has been a change in the way items are stored, as they are now stored internally rather than externally, but this has not changed the nature of the items being stored. The storage remains ancillary to the lawful use, albeit by an enclosed and more secure method.
21. Having regard to the above, and everything else I have read, seen and heard, the siting of up to 17 storage containers to securely store items associated with the lawful use of the site, internally, is functionally related to that lawful use. Accordingly, no material change of use has taken place through the introduction of any additional primary use to the site.
22. Despite the comments at paragraph 7 of the previous Inspector's decision, the description of the alleged breach in the notice, and the position set out in the Council's Statement of Case, Mr Gregory's opinion is that a material change of use by way of intensification has taken place. Under the provisions of section 176(1) of the Act, I can correct the description of the alleged breach to ensure it refers to a material change of use by way of intensification, if no injustice would be caused.
23. Intensification of a lawful use may bring about a material change of use requiring planning permission if it causes the character of the use to change in a

fundamental way, such that materially different planning circumstances apply. There needs to be a material change in the definable character of the use of the land.

24. It is claimed by the Council that the scale of the operation now taking place at the site is of a different nature on account of a 566% increase in storage needs and through items now being stored internally, rather than in the open. Under cross-examination, Mr Gregory confirmed that other than reference to the increase in the number of storage containers from 3 to 17, the Council held no evidence of any changes to how the Pallets element operates. Two horses were now being kept on the land, but there is no dispute that the Horses element comprises part of the lawful use of the land and there was no other evidence of changes in this regard.
25. Mr Macey commenced the pallets business on the land in 1991. In 2002, after he left other permanent employment, he started to spend most days at the site fixing pallets and looking after the land. Other than the increase in the number of storage containers sited on the land, there is little difference between the appearance of the site in the aerial photographs dated 2007 through to 2017, save for a reduction in the number of items apparently stored in the open.
26. However, Mr Gregory has claimed that if an additional 14 storage containers are now required, something must have changed such that the use of the land was no longer “low-key”, that the pallets business must be doing well, that comings and goings must have increased, that the appellant must be at the site more often, and that more work must be undertaken at the site. No evidence has been provided to support these claims, which are contrary to the sworn oral evidence of Mr Macey, tested in cross-examination. On this basis, alongside the aerial photographs which appear to show snapshots of similar levels of activity since 2007, I see no reason to doubt the evidence of Mr Macey in this regard. Moreover, the increase in the number of storage containers on the land, on its own, does not necessarily signify a change in operation of the pallets business from a hobby to ‘more of a business’. I therefore assign significant weight to the evidence of Mr Macey, which explains that there has been no change in how the Pallets element operates, other than through items now being stored inside the additional storage containers.
27. The changes in the character of the use referred to by the Council relate to the visual effect of the 14 additional storage containers sited on the land, and the change in the appearance of the site/use. Mr Hester, on behalf of the appellant, accepts that there has been a change in its appearance, but he maintains that the character of the lawful mixed use has not changed.
28. I have seen that the storage containers numbered 3 and 6 to 17 are highly visible in views from a residential property and public right of way (PROW) to the west, while views of storage containers from a PROW to the east are more limited by the changes in land levels and thick intervening vegetation. I have also seen how pallets are stored and stacked to varying heights in the open, exceeding the height of the storage containers in some instances. Stacks of pallets are more visible than storage containers from the PROW to the east on account of their height.
29. Views of the site have changed in this sensitive landscape⁴, as unattractive blue and green storage containers, which are synonymous with industrial uses, are now visible from outside the site, including from PROWs which could be regularly used

⁴ Part of the Kent Downs National Landscape

by many different people. This is not the type of location where one expects to see this number of storage containers lined up alongside a modest countryside stable building, but it is also not the type of location where one would expect to see the number of items associated with the Pallets element which have also been present on the site. Tall stacks of pallets, for instance, are now an odd and uncharacteristic established feature of the site, which the storage containers are seen and experienced alongside.

30. Mr Macey has been carrying on the making and recycling of pallets, including their storage, on the land alongside the keeping and grazing of horses for a significant period such that those activities have become lawful. The established character of the lawful use of the site is therefore unattractive and atypical for its location even in the absence of the 14 additional storage containers, where many pallets can be seen stacked to great heights, and various tools, materials, and machinery have previously been kept outside. Mr Macey's sworn evidence and the aerial photographs show, on the balance of probabilities, that there has not been any increase in activity levels or any other operational intensification beyond the change in storage method.
31. In this context, and as a matter of fact and degree, the scale of the storage containers is commensurate with the lawful use of the land as they are not excessive for the keeping of those items dry and secure in this particular case, where the appellant has operated the pallets business largely by himself on a large, rural site for a significant period. There has been no significant change in the scale of items stored or the uses taking place, and the storage containers are proportionate to the lawful mixed use of the land in light of the specific circumstances of how the land has been used over a long period. The storage containers have a functional relationship with the lawful use of the land and there has been little change in the character of the use of the site, compared to how the site has been lawfully used. Therefore, on the balance of probabilities, the siting of up to 17 storage containers has not led to a material change in the definable character of the use of the land.
32. There has been some level of intensification in the lawful mixed use of the site, and this has changed its appearance and had an adverse effect on the character and appearance of the area. However, on the balance of probabilities, the level of intensification has been low, and the change in appearance has not been significant enough to fundamentally change the character of the use which has been ongoing for a number of years prior to formal enforcement action being taken. For the above reasons, I do not find the change from the storage of items associated with the lawful use in the open to the storage of those items within up to 17 storage containers to be a fundamental change, such that materially different planning circumstances apply. On the particular circumstances in this case, the siting of up to 17 storage containers on the land has not therefore brought about a material change of use by way of intensification.
33. Drawing things together, the allegation stated in the notice does not constitute a breach of planning control, because the siting of more than 3 storage containers (currently 17) on the land to store items associated with the lawful use of the land in this particular case is functionally related to the lawful use of the land. The Containers element does not form an additional primary use of the land alongside the Pallets element and the Horses element. This does not mean the notice must

be quashed on that basis, as I may correct the description of the alleged breach, if doing so would not cause injustice.

34. However, even if I was able to correct the notice without causing injustice to ensure it refers to a material change of use by way of intensification, the appeal on ground (c) would still succeed, as I have found that the level of intensification which has taken place is low and insufficient to constitute a material change in the use of the land. It is not therefore necessary for me to correct the notice, as it will be quashed in either case.

35. The appeal on ground (c) therefore succeeds.

Conclusion

36. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeal on grounds (d), (a), and (f), and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

Formal Decision

37. The appeal is allowed and the enforcement notice is quashed.

L Douglas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Robin Green	Counsel, instructed by Vic Hester of VLH Associates
He called	
Brian Macey	Appellant
Vic Hester	Planning Consultant, VLH Associates

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson	Counsel, instructed by the Head of Law, Swale Borough Council
He called	
Paul Gregory	Team Leader, Swale Borough Council

INTERESTED PARTIES:

Damaris Gardiner	Local resident
Jonnie Reeves	Councillor, Selling Parish Council

DOCUMENTS PROVIDED AT THE INQUIRY

Statement and photographs by Damaris Gardiner on behalf of Mr and Mrs R M Gardiner and Mr and Mrs J Gavin