

Appeal Decision

Site visit made on 12 May 2026

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 26th May 2026

APP/M4320/C/25/3374215

Land at Southport and Birkdale Sports Club, Trafalgar Road, Birkdale PR8 2HF

- The appeal is made by Totally D’Vine Catering Ltd under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 2 September 2025, reference: EN/2025/00476. The appeal was made on 6 October 2025.
- The breach of planning control alleged in the notice is, without planning permission, the material change of use of the Land to a mixed use as a sports club and the operation of a catering company including the siting of six storage containers.
- The requirements of the notice are to:
 1. Cease the operation of a catering company from the Land, only use the Land in connection with sports and recreation; and
 2. Remove all of the storage containers from the Land
- The period for compliance with the above requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 (as amended), (the Act).

Summary of decision:

The enforcement notice is varied and upheld. Planning permission is not granted on the application deemed to have been made for the use of the Land for a mixed use as a sports club and the operation of a catering company including the siting of six storage containers.

Appeal site and use by the Appellants, Totally D’Vine Catering Ltd

1. The enforcement notice acts against the use of land at the Southport and Birkdale Sports Club in Trafalgar Road, Birkdale by the Appellant catering company, Totally D’Vine Catering Ltd, and their siting on the land of 6 mostly large shipping containers for the storage of their catering equipment. The Sports Club site is a designated “Open Space”. The Sefton MBC Local Plan says Open Space is land which comprises public open space, (which is also accessible nature space), and other outdoor recreation facilities available to the public,
2. As described by the Appellants, the Sports Club comprises a club house, indoor sports facilities, outdoor sports facilities, ancillary buildings and structures with off-street car parking and servicing areas.
3. The Council said that use of the Sports Club land and buildings and the 6 storage containers in the Club’s service yard by Totally D’Vine Catering Ltd in association with their catering business purposes amounted to a material change of use to a mixed use of a sports club and the operation of a catering company.
4. The Appellants commercial catering company, Totally D’Vine Catering Ltd had been appointed by the Sports Club to provide catering services to the Club to support its

function. That was confirmed by a licence dated January 2016. Totally D'Vine Catering Ltd also provide catering services to other clients and events in the local area.

5. Totally D'Vine Catering Ltd's planning application DC/2025/00780, accompanied by a letter dated 13 May 2025 was for the "Erection of three freestanding storage containers within an existing service yard for uses ancillary to the function of the sports club". The containers would measure 6.05m long x 2.43m wide, 3.3m x 2.42m and 2.43m x 2.42m. They would be used in a manner ancillary to the function of the main kitchen within the clubhouse and ancillary to the overall function of the Club, by providing cold and general storage facilities for catering use in association only with the Club.
6. The above application DC/2025/00780 was refused planning permission by a notice issued by the Council on 23 July 2025. The reasons for refusal were:
 1. The proposal is contrary to the requirements of Local Plan policy NH5 "Protection of Open Space and Countryside Recreation Areas" and as such will not be appropriate development within this existing sports club lying within a designated area of Open Space.
 2. The proposal will give rise to unacceptable noise impacts to a neighbouring residential property, Number 37 Trafalgar Road, that is contrary to the aims and objectives of Local Plan policy EQ4 "Pollution and Hazards".
7. An earlier planning application, DC/2024/01340, was for the "Erection of a part two storey/part first floor extension creating a new main entrance with lift access, providing a cafe bar with external terrace, w/c facilities and meeting room, alterations to the elevations and associated works. The application was approved on 6 June 2025.
8. The Appellants' planning application, ref: DC/2025/01158 of July 2025 for the use of Unit 2, 26a Hart Street, Southport as a commercial catering kitchen, including the installation of a kitchen extraction unit was approved in November 2025. That permission would support the Appellants' wish to move 3 of the 6 storage containers from the Sports Club premises. In that instance, Totally D'Vine Catering Ltd would continue to use 3 remaining containers in the Club service yard, providing catering services to the Southport and Birkdale Sports Club in accordance with the agreed licence.
9. At the time of my visit, the Totally D'Vine Catering Ltd containers were located in the service yard close to the garden boundary to the house at No. 37 Trafalgar Road. They were in use by the Appellants for general storage of catering equipment, overflow kitchen facilities and cold storage, (fridge and freezer), purposes.

The appeal on ground (c)

10. An appeal on ground (c) asserts that those matters (if they occurred) do not constitute a breach of planning control.
11. The Appellants, Totally D'Vine Catering Ltd, said their presence on the appeal site was to provide catering services to the Sports Club. The 6 containers in the service yard were used to provide chilled and frozen food, ambient storage and overflow kitchen space to support the kitchen in the clubhouse in connection with the function of the Sports Club. Totally D'Vine Catering Ltd also used the service yard and Club car park for vehicles associated with its business.
12. The Appellants said the clubhouse kitchen, storage space and overflow kitchen space provided within the containers were also used from time to time for purposes

not related to the function of the Club. However, such activities were said to generally comprise basic food preparation tasks only, with the Appellants' staff working to prepare food for off-site catering at the same time as preparing food for on-site catering.

13. Where the Appellants catered for off-site events, clients typically had their own kitchen facilities where chefs would undertake the majority of the final food preparation and cooking, rather than within the clubhouse kitchen. The Appellants' use of the clubhouse kitchen, and the ancillary facilities provided within the containers to cater for off-site events was said to be very limited in scope and scale.
14. In my view, it is clear that Totally D'Vine Catering Ltd's food supply services are not limited to an ancillary use associated with the use of the appeal site as a sports club. Their catering business activities are widely available in the local area, offering catering services for such functions as weddings and social events with apparent success and acclaim. The business is based on the Sports Club land for catering and food provision not just related to the Sports Club needs.
15. Therefore the presence of the Totally D'Vine Catering Ltd storage containers on the Sports Club site supports the view that their use is not merely to help provide catering services to the Sports Club. Although a good deal of their catering supplies business could reasonably be described as ancillary to the Sports Club in Trafalgar Road, the availability and provision of their services is not reserved to the Sports Club. Nor is that provision on such a minor scale as to be inconsequential.
16. Totally D'Vine Catering Ltd's presence on the appeal Sports Club land is not similar to, for example, a works canteen within a factory yard, where such a facility would not be seen as a separate restaurant or café use, but a facility ancillary or incidental to an industrial use. Once an incidental use expands to become a primary use on its own, within a separate planning unit, or the planning unit takes on a new mixed use, it is likely there has been a material change of use. The case of *Wood v SSE & Uckfield RDC* [1973] 25 P&CR 303; [1973] JPL 429 is authority for that position. I consider that to be the situation here.
17. I conclude that the Appellants, Totally D'Vine Catering Ltd's occupation of part of the Sports Club site and the siting of the containers has amounted to a material change of use of the land to a mixed use as a sports club and food catering business use that required planning permission. The appeal on ground (c) fails.

The appeal on ground (d)

18. An appeal of ground (d) asserts that the mixed use of the land at the Southport and Birkdale Sports Club site as a sports club and the operation of a catering company including the siting of six storage containers has become immune from enforcement action by the passage of time. In this instance, the Appellants, Totally D'Vine Catering Ltd, would have to show that their food catering business use of the land, as part of an unlawful mixed use of the land as a sports club and food catering business had been in a continuous use as such for a period of at least 10 years back from the date of issue of the enforcement notice. As the enforcement notice allegation is also that the unauthorised use includes the siting of six associated storage containers, it would have to be shown they had been in position for 10 years. The test of the evidence is on the balance of probabilities.
19. Part of the Appellants' claim is that the Club site had been used by other catering companies for more than 10 years prior to the Appellants' use. In my view however, the tenancy agreements provided appear to show that those earlier catering

services were more likely ancillary to the Club, assisting with functions held on their premises. Even if those earlier catering services might have been occasionally available to other clients elsewhere, they would not appear to have been on the same scale as those provided by the Appellants. The evidence did not show such outside uses had been on the scale of the Totally D'Vine Catering Ltd use, so extensive as to require the stationing now of 6 large commercial containers.

20. It is quite reasonable to appeal on both grounds (c) and (d) in making an appeal against an enforcement notice. It can become difficult, though, to use contradictory facts in support of each ground of appeal. The essence of the ground (c) appeal here is that the Appellants' use of the Club land was merely ancillary to the sports club use, not also that of a separate catering business use as part of a mixed use of the land. The ground (d) appeal however, is that the change of use to the allegation mixed use occurred more than 10 years before the enforcement notice was issued.
21. It was not shown at what point the unlawful mixed use of the land as a sports club and food catering business started thus occasioning a change of use for which planning permission would have been required. The Appellants pointed to a copy of a licence dated 19 January 2016, confirming the start of their catering obligations to the Club. They asserted the Council were wrong to say that the alleged breach of planning control began within the last 10 years. However, the enforcement notice was issued on 2 September 2025, less than 10 years on from 19 January 2016. The Appellants accepted that the 6 storage containers were a more recent addition to support the growing needs of their catering business. As the Council pointed out, the containers siting suggests a significant intensification of the catering business, likely in itself to have been on a scale that would have caused a material change of use of the land. Also, little evidence was produced to demonstrate that the alleged unlawful use of the Club land in excess of a period of 10 years before the issue of the enforcement notice had been continuous throughout that period.
22. The appeal on ground (d) fails.

The appeal on ground (a)

23. The deemed application for planning permission that arises from the ground (a) appeal is use of the Southport and Birkdale Sports Club land for a mixed use as a sports club and the operation of a catering business use that includes the siting of 6 storage containers. I deal with that application before, if appropriate, considering the possible effect on the Appellants' business operations of the November 2025 approval of planning application ref: DC/2025/01158, (para 8 above).
24. Local Plan policy NH5 seeks the protection of designated open spaces and countryside recreation areas from development. Policy EQ2 says all new developments are to be of high quality and relate positively to their surroundings. Policy EQ4 is intended to safeguard public health and the environment by managing and minimising adverse impacts from environmental risks – including mitigating noise.
25. Reason for refusal of planning application DC/2025/00780, (for the siting of 3 storage containers), (para 6 above), said: *"The proposal is contrary to the requirements of Local Plan policy NH5 "Protection of Open Space and Countryside Recreation Areas" and as such will not be appropriate development within this existing sports club lying within a designated area of Open Space."*
26. Local Plan policy NH5 'Protection of open space and Countryside Recreation Areas' is intended to protect open space from development, except in the specified

circumstances. Development on open space is allowed only for environmental improvements which enhance the site's environmental quality or green infrastructure benefits; or where a recreational assessment has clearly shown the open space to be surplus to requirements, where the loss of open space would be replaced by equivalent or better provision, or where the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.

27. The Appellants acknowledged that the Sefton Local Plan allocates the appeal site as Open Space. However, they said the containers were located on hard surfaced land. Their presence did not result in the loss of (green) Open Space, nor did it cause harm to Open Space to any greater extent than the existing clubhouse and associated buildings. The containers did not occupy public open space. The appeal site comprised a private sports club. It was not open for public access.
28. I agree that parts of the Sports Club belie its Open Space designation. Seen from the entrance from Trafalgar Road, its look is urban, with the view from the Trafalgar Road entrance dominated by the car park and the somewhat unsightly Club buildings. The larger area, the finely maintained cricket ground, is however well suited to the open space description. The Local Plan does not require open spaces be open to the public. I consider it entirely appropriate to apply the NH5 policy protection to the Sports Club site.
29. The 6 appeal containers are uncompromisingly utilitarian and industrial in appearance. Together they take up a sizeable area of land, albeit hard surfaced, adding to the existing Club buildings cover area. Although tucked in alongside the south-western side of the clubhouse buildings, that to a degree reduces their intrusive and ill-fitting appearance, they are consequently sited tightly alongside the high fence boundary with the rear garden to the detached house at No. 37 Trafalgar Road. That makes the containers and their use a poor neighbour of residential property, leaving the house and its garden at No. 37 unhappily vulnerable to the noise likely to arise from use and access to the containers, contrary to Local Plan policies EQ2 - *new developments are to be of high quality and relate positively to their surroundings* and EQ4 - *to safeguard public health and the environment by managing and minimising adverse impacts from environmental risks – including mitigating noise*.
30. The Appellants said the Council grant of planning application, DC/2024/01340 in June 2025 for extensions and a cafe bar to support the function of the Club, was inconsistent. The construction of a new café bar would increase the demand for ambient and cold storage and an increase in the pressures on the function of the already inadequate kitchen facilities. That may be, but as the Council pointed out, the approved extensions were seen as necessary to support the continuing use and function of the Sports Club. They were thereby seen as policy compliant.
31. In my view, the deemed application for the continued use of the Southport and Birkdale Sports Club as a mixed use for a sports club and the operation of a catering company including the siting of 6 storage containers unacceptably conflicts with Policies NH5, EQ2 and EQ4 of the Sefton Local Plan.
32. Planning application DC/2025/00780' (paras. 5 and 6 above), was for the "Erection of three freestanding storage containers within an existing service yard for uses ancillary to the function of the sports club". The containers were to be used ancillary to the clubhouse main kitchen and to the overall function of the Club, by providing cold and general storage facilities for use in association only with the Club. The application was refused permission by a notice issued 23 July 2025.

That proposal was not a matter for me, but warrants a comment in the consideration of the ground (f) appeal below.

33. I have considered whether a conditional planning permission could be granted to retain the matters enforced against, including the suggestion that use of the containers between the hours of 08:00 and 00:00 would not unacceptably harm the amenity of neighbouring residents, but find they do not override the policy and amenity objections to retention of the catering business element of the unlawful mixed use enforced against and the siting of 6 storage containers to support that use.

34. The appeal on ground (a) fails.

The appeal on ground (f)

35. The starting point in a ground (f) appeal, is to identify the purposes of the enforcement notice. The purposes are, in effect, the outcome the Council seeks to achieve via the requirements of the notice. Even if the reasons expressly refer to the 'injury to amenity', the purpose of the enforcement notice may be to remedy the breach.
36. The Council's reason for issuing the enforcement notice was that: 'The introduction of a commercial use (catering company) at the site in combination with the storage containers results in the loss of public open space, whilst the containers are unsightly and industrial looking in their appearance which is not considered acceptable or appropriate in an open space adjacent to residential properties.'
37. The requirements of the notice were: To Cease the operation of a catering company from the Land, only use the Land in connection with sports and recreation; and to Remove all of the storage containers from the Land. The Appellants correctly pointed out there were 8 containers located within the land. Two old and apparently long-standing containers sited towards the northern edge of the land are not associated with the Appellants catering company, but used by the Club's ground keepers. The Appellants said the requirement that all the storage containers be removed from the land was unreasonable and excessive. They said the enforcement notice was defective.
38. I consider It would have been helpful for the enforcement notice to have been accompanied by a plan showing the position of the 6 catering containers the notice seeks to have removed. However, the Council and the Appellants were aware of the containers the enforcement notice seeks to have removed, that is, those associated with the catering element of the unlawful mixed use. The requirements must exclude the ground keepers' old containers sited close to the northern corner of the Sports Club land. I see no utility in quashing the enforcement notice for uncertainty, only for the whole enforcement procedure and appeal to be repeated. I will amend requirement 2 of the notice, the clarified requirement being less onerous.
39. In my view, the requirement to cease the commercial use of the land by the catering company as part of a mixed use of the appeal land and the removal of all of the catering storage containers is necessary to remedy to breach of planning control. In coming to that view, I have had regard to the granting of planning permission for the Unit 2, 26a Hart Street application, which the Appellants said would enable them to move the contents of 3 containers to that site and remove the 3 empty containers from the appeal site.

40. The Appellants said there would remain a need for the remaining 3 containers to stay on Club land to meet the catering demands of the Club and support the function of the small clubhouse kitchen. An assessment of such a need is not a matter before me, as the deemed application also includes consideration of the unlawful mixed use.

41. The appeal on ground (f) fails.

FORMAL DECISION

42. Planning permission in respect of the application deemed to have been made for the material change of use of the Land to a mixed use as a sports club and the operation of a catering company including the siting of six storage containers is refused.

43. The enforcement notice is varied by the deletion of line 5 of para. 5. on page 2 of the enforcement notice and the substitution therefor of the words: "2. Remove the six catering storage containers associated with the operation of a catering company from the Land.". Subject to that, the varied enforcement notice is upheld.

John Whalley

INSPECTOR