Planning Inspectorate

Appeal Decision

Hearing held and site visit made on 29 September 2026

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

an Inspector appointed by the Secretary of State

Decision date: 04 November 2026

Appeal Ref: APP/A1720/C/25/3376076
Land at 1 and 1A Lower Quay Road, Fareham

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr John Christopher Burrows (Anima Veicoli Ltd t/a Magari Automotive) against an enforcement notice issued by Fareham Borough Council.
- The notice was issued on 31 October 2025.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to use for the sale and the preparation for sale of motor vehicles.
- The requirements of the notice are to: Cease the use of the Land for the sale and preparation for sale of motor vehicles.
- The period for compliance with the requirement is: 6 months after the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matters

1. At the Hearing, both parties submitted late evidence. The appellant provided five invoices relating to work that had been carried out between 2021 and 2025. The appellant explained that the invoices had only recently become accessible because of issues with a computer system. The Council also produced evidence in the form of business address details for Magari Automotive and AV Trade Cars as shown on Google Maps. It was indicated that this evidence was late as the Council wanted to present the most up to date information currently available online.

2. I gave each party time to consider the late evidence and provide their views on whether it should be accepted. Both parties were able to respond to the information at the Hearing following a short adjournment, and neither objected to it. I considered the evidence pertinent to the appeal, and I was satisfied I could accept it, particularly given its limited volume and the fact that the parties had been given time to respond and did not object. As such, having regard to this information when determining the appeal would not cause injustice to either party.

3. It is also worth mentioning that the Planning Inspectorate received email correspondence from the Council after the Hearing event. However, the late evidence and the attached document were not accepted. As the evidence being put forward concerned matters that were noted by the Council at the appeal site visit, I did not consider that they would assist in determining the appeal before me, which concerns circumstances existing before the Enforcement Notice (Notice) was issued.

4. Reference has been made to issues such as noise and disturbance to neighbours, traffic impacts, loss of residential amenity, parking and highway safety, and whether the effects of the development could be addressed through planning controls and conditions rather than cessation of the use. These matters have been highlighted by

both a letter of support and letters objecting to the alleged development. However, these issues would be material considerations in a ground (a) appeal, which has not been made in this case. These matters are not before me for consideration under grounds (b), (c) and (d).

The Appeal on Ground (b)

5. The appeal on ground (b) is that the matters alleged in the Notice, which appear to the Council to constitute a breach of planning control, have not occurred. In order to succeed on this ground, the appellant must demonstrate, on the balance of probabilities, that the matters stated in the Notice have not occurred.

6. The matters in dispute include whether Units 1 and 1A formed a single planning unit used for the sale and preparation for sale of motor vehicles. The appellant's case is that the area edged in red constitutes two planning units that are physically separate and occupied for different purposes. The planning unit is a concept which has evolved as a means of identifying the most appropriate physical area within which to determine whether a material change of use has occurred.

7. In respect of the determination of a planning unit, *Burdle*[1] is the lead case. *Burdle* held that the planning unit is normally the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct and occupied for different and unrelated purposes. Three broad categories are identified:

   (a) a single unit of occupation with a single primary use with ancillary and incidental activities;

   (b) a single unit of occupation with two separate primary uses that are not incidental to one another (mixed use); or

   (c) a unit of occupation where there are two or more physically separate areas which are occupied for different and unrelated purposes. Each area in scenario (c) forms a separate planning unit.

8. In order to determine whether the site edged red should be treated as a single planning unit or as separate planning units, I have had regard to several factors. These include the occupation and control arrangements of the two units; the physical layout of the site and the relationship between Unit 1 and Unit 1A; the use and activities taking place within them, and whether they have a functional relationship or operate independently. None of these factors is determinative on its own. The question is one of fact and degree, based on the evidence before me.

9. The appeal site comprises two adjoining groups of buildings known as Unit 1 and Unit 1A. Unit 1A comprises a large single-storey, gable-ended building located on the eastern side of the site. It is set back from the road behind a hardstanding area and extends for most of the depth of the plot towards the rear. Unit 1 comprises a group of three buildings. At the front of the site is a two-storey brick building with a pitched roof and a roller shutter opening at ground-floor level. Behind the two storey building sits a smaller single-storey building extending alongside the western elevation of Unit 1A, forming an enclosed courtyard between them. A further gable-fronted building lies to the rear at the back of the courtyard area.

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

10. The space inside Unit 1A consists of a large open area containing 20 to 30 cars. It includes a small office, toilet and kitchen to the left hand side. There is also an area indicated as a photo booth where images of the cars can be taken to be put online. Two fire-exit doors in the side elevation open into the adjoining courtyard of Unit 1 but are said to be only in use during emergencies. In Unit 1, the first floor of the two storey building is currently accessed via external steps to the rear and used for hot desking office space and storage. Behind the roller shutter is an underpass and at the time of my visit, a car was being valeted in this area. The adjoining building was empty but also had the appearance of an open workshop space. Car repairs were being carried out to a car in the rearmost building at the time of my visit.

11. An area of hardstanding extends across the frontage of both units. The area in front of Unit 1A is deeper and provides space for approximately four vehicles, whereas the hardstanding in front of Unit 1 is shallower. The front of Unit 1 can be accessed from the front door of Unit 1A via the shared hardstanding without leaving the land. Many of the cars owned by the businesses are stored at another location, but approximately 20 to 30 are stored in Unit 1A at any one time. Unit 1A is the customer facing element of the business, where customers visit, speak with the salesperson and view cars before purchase. The appellant indicated that Unit 1 operates as a workshop and, unlike Unit 1A, does not provide any customer interaction. Cars are parked in Unit 1 but only when they are being worked on.

12. The appellant set out at the Hearing that both units are occupied and operated by the appellant and his business partners, but under the administrative umbrella of three businesses named Magari Automotive, AV Trades, and AV Works. Unit 1A has a commercial lease whereas Unit 1 is occupied under a separate licence, which the appellant indicated was short term and may be terminated on six months' notice. The appellant relies on these separate arrangements as evidence that the units are independently occupied and do not form a single planning unit.

13. The appellant also indicates that the three businesses have separate functions. Magari Automotive deals with high end performance cars whereas AV Trades deals with lower-value cars. Magari Automotive and AV Trades sell cars from Unit 1A, where appointments can be booked to view the vehicles for sale. AV Trades deals with cars that are traded in for the Magari Automotive car sales, but not exclusively. AV Works operates from the workshop in Unit 1 where cars are repaired and detailed. A good proportion of its work comes from the car sales businesses in Unit 1A, but it also undertakes repairs for third parties independent of the car sales.

14. The appellant indicated at the Hearing that the maximum number of staff at any one time was eight, comprising one salesman, two directors, three to four detailers and one to two mechanics. The number of detailers and mechanics depended on the level of work in hand. However, in the completed Planning Contravention Notice (PCN), the appellant had indicated that he had 12 staff at that time. The appellant said this was possibly the case at the time the PCN was completed but could not explain the disparity. It is understood that the car salesman works in Unit 1A, the mechanics in Unit 1, and the detailers work in both units. The appellant's office as a director was situated on the first floor of the front building of Unit 1 until recently.

15. Whilst the appellant describes the activities as being undertaken by three separate businesses, those administrative and commercial arrangements do not, in themselves, establish the existence of separate planning units operating independently from one another. The evidence indicates that the three businesses

are under common ownership and management and operate from physically connected buildings. Although the buildings comprise separate structures, movement between Units 1 and 1A is straightforward via the shared hardstanding.

16. There is also a close functional relationship between the activities undertaken within Unit 1A and Unit 1 for the use of the site in the sale and preparation for sale of motor vehicles. Although Magari Automotive and AV Trades deal with different segments of the vehicle market, both businesses operate from Unit 1A and undertake the same broad function of marketing, preparing and selling motor vehicles. As such, the distinction between the car sales businesses appears to relate to the administrative organisation of the cars being sold rather than a material difference in the function of the use and activities on site.

17. The appellant acknowledged that a good proportion of the work in Unit 1 comprises the repair, valeting and detailing of vehicles associated with the car sales businesses operating from Unit 1A. However, he maintained that, as Unit 1 retained the layout and appearance of a workshop and undertook work for third parties, it was being occupied and used for functionally different reasons. I have had regard to this, but limited evidence has been provided to demonstrate the extent of that activity undertaken for third parties or how Unit 1 operates independently from the use of the site for the sale and preparation for sale of motor vehicles.

18. The invoices produced by the appellant between 2021 and 2025 were limited in number. Furthermore, he accepted that four of the invoices related to work undertaken on vehicles for other commercial garages in connection with car sales, while only one related to work for a customer said to be unconnected to the motor vehicle sales activities. Moreover, all the invoices were issued in the name of Magari Automotive rather than AV Works. The invoices therefore provide some evidence of work undertaken for third parties, but limited evidence of repair work unconnected with the motor vehicle sales.

19. Whilst I acknowledge that Unit 1 retains the appearance and layout of a workshop, and that repair activities are undertaken there, those characteristics do not, in themselves, demonstrate that it is occupied and used for a different and unrelated purpose. The evidence indicates that a good proportion of the workshop activities undertaken within Unit 1 comprise the repair, valeting and detailing of vehicles associated with the sale and preparation for sale of motor vehicles in Unit 1A. Taken together, with the limited evidence of unrelated third party work, the workshop activities do not establish that Unit 1 was occupied and used as a separate planning unit for a different and unrelated purpose.

20. Having regard to the burden of proof, I find that the appellant has not demonstrated, on the balance of probabilities, that Unit 1 operates as a separate planning unit from Unit 1A. Taking account of the occupation and control arrangements, together with the physical and, in particular, functional relationship between the activities undertaken within the two units, I find as a matter of fact and degree that they comprise a single planning unit in a primary use for the sale and preparation for sale of motor vehicles, with ancillary and incidental activities.

21. Accordingly, the appeal on ground (b) fails.

The Appeal on Ground (c)

22. To succeed on ground (c), the appellant must demonstrate that, on the balance of probabilities, the matters alleged in the Notice do not constitute a breach of planning control. The burden of proof is on the appellant.

23. In my findings on the ground (b) appeal, I conclude that, at the date the Notice was issued, Units 1 and 1A formed a single planning unit. I also conclude that the Notice correctly identifies the Land to which the alleged breach relates. In reaching those conclusions, I have rejected the appellant's contention that Units 1 and 1A comprise separate planning units. Accordingly, my consideration of the ground (c) appeal proceeds on the basis that the Notice correctly alleges a single primary use of the Land as a whole within a single planning unit. The question under this ground is therefore not whether the Land comprises one or two planning units, but whether the use alleged in the Notice constitutes a breach of planning control.

24. The planning history for the site has been drawn to my attention by both parties. It includes permission for the material change of use of Units 1 and 1A to a chandlery, Council reference P/03/1120/CU, as well as a motorcycle servicing, repairs and MOT testing use approved in 1987 in Unit 1, Council reference FBC.5836/4. The appellant has provided letters from the landowners which include supplementary information about the planning history, uses and activities of Unit 1 and Unit 1A.

25. The landlords' letter dated 23 July 2025 states that Unit 1 has been used as a motorcycle workshop since 1974. Although the 2003 permission related to both units, the permitted chandlery use was operated only in Unit 1A. Unit 1 was occupied by another tenant and remained in use for motorcycle servicing, repairs and MOT testing until the appellant took occupation of Unit 1 in 2019.

26. With respect to Unit 1A, the landlords indicate that boat builders and repairers used it until 1974, after which it was an engineering workshop until 2004. They state that they occupied the unit and sold engines, boats, and other heavy equipment until 2016, when the appellant began operating it for car sales. The landlords' account, submitted with the PCN, also included a copy of an earlier solicitor’s letter dated 2 March 2016. It advises that the use of Unit 1A as of March 2016 is that of a chandlery and that a ‘car sales site’ would not fall within that planning use.

27. In a subsequent letter dated 17 November 2025, the landlords provided additional details about the activities in both units. They explain that the occupier, who operated Unit 1, sold various cars and vans, in addition to motorcycles. They further clarify that while operating the chandlery at Unit 1A, they themselves began selling cars and vans from the site in September 2015, along with boats, engines, and other second-hand goods due to a downturn in business. I therefore accept that there is evidence of some motor vehicle sales taking place from both units.

28. Nevertheless, the evidence as a whole indicates that the previous situation comprised two separate planning units occupied for different and unrelated purposes. Unit 1 was principally used for motorcycle servicing, repairs and MOT testing, while Unit 1A was occupied and used as a retail chandlery. The evidence of motor vehicle sales does not alter that conclusion. The evidence is vague and imprecise as to the nature and extent of those activities and does not demonstrate that they displaced or materially altered the primary use of either unit. Nor does it demonstrate that two units had become occupied and functionally linked as a single planning unit for the sale and preparation for the sale of motor vehicles.

29. The appellant places considerable emphasis on the workshop facilities, layout and activities within Unit 1 being materially unchanged from its previous use for motorcycle servicing, repairs and MOT testing. However, having found that the Land comprises a single planning unit in a primary use for the sale and preparation for sale of motor vehicles, the activities within Unit 1 cannot be considered in isolation from those taking place within Unit 1A.

30. That previous position is materially different in character from the use alleged in the Notice. In contrast to the separate uses described above, the alleged use involves activities that include the sale, storage, detailing and repair of motor vehicles under a single integrated planning unit across both units. The fact that some vehicles were previously sold from the two separate planning units does not make those former uses equivalent, in planning terms, to the use now alleged.

31. I have also had regard to the appellant's submission that the Council's records do not establish a definitive lawful planning baseline for Unit 1A and that historic rating records treat the units separately. However, my conclusions are based on the planning permissions and the other evidence before me concerning the historic occupation, use and activities of the units. I have not therefore sought to establish a definitive baseline from the historical planning records alone.

32. As a matter of fact and degree, the change of use from two planning units occupied for different and unrelated purposes to a single planning unit used for the sale and preparation for sale of motor vehicles constitutes a material change of use. This involved not only a change in the nature and combination of the activities undertaken, but also in the way in which the two units were occupied and functioned together. The material change of use is not permitted, and I have no evidence of express planning permission being granted for such a use. Therefore, on the balance of probabilities, the use alleged is a breach of planning control.

33. Accordingly, the appeal on ground (c) fails.

The Appeal on Ground (d)

34. An appeal on this ground is that, at the date on which the Notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The principal issues are when the breach of planning control alleged in the Notice first began and whether it continued without material interruption for the requisite period.

35. Under section 171B(3) of the 1990 Act, no enforcement action may be taken after the end of ten years beginning with the date of the breach. Accordingly, for the use to have become immune from enforcement action before the Notice was issued on 31 October 2025, the appellant must demonstrate, on the balance of probabilities, that the material change of use began no later than 31 October 2015 and continued for the intervening ten-year period. The burden of proof is with the appellant.

36. As set out above, there is evidence that cars and vans were sold from Unit 1A from September 2015 and that vehicles were also sold from Unit 1. For the purposes of ground (c), I considered that evidence in determining the character of the former uses of the two planning units. The question under ground (d) is whether the evidence demonstrates, on the balance of probabilities, that the material change of use alleged in the Notice had occurred by 31 October 2015 and thereafter continued for the requisite period.

37. The appellant contends that the unauthorised use had already begun in Unit 1A in September 2015 under the previous occupiers and continued for 10 years before the Notice was issued. Furthermore, the occupation of Unit 1 by the appellant in 2019 did not amount to a further material change of use. Alternatively, the Council submits that any unauthorised use of Unit 1A began only when the appellant first occupied it in April 2016. However, even if the sale and preparation for the sale of motor vehicles commenced with the previous occupiers, the Council maintains that the occupation of Unit 1 in 2019 amounted to a material change of use.

38. The appellant relies on the November 2025 letter from the owners of the site, who were also the previous occupiers of Unit 1A to demonstrate that the alleged material change of use commenced in September 2015. As set out above, the letter explains that, following a decline in the chandlery business, its activities diversified to include the sale of various goods and, from September 2015, cars and vans. The vehicles said to have been sold from September 2015 included a Land Rover Discovery, Toyota Hilux, Mitsubishi Pajero 2800, Mercedes Sprinter van, Vauxhall Astra van, BMW 320d Estate, BMW 340cd, Rover 820, Rover 420, Suzuki Grand Vitara and Audi TT.

39. The November letter separately says that the occupier who operated the motorcycle garage at Unit 1 also sold various cars, vans and motorcycles, including higher-performance cars such as a Mitsubishi 3000 GT, a Subaru Impreza WRX STI and vehicles requiring repair, such as a Ford Transit and the VW camper van. It does not include a specific date or year on which these activities began in Unit 1.

40. The evidence produced by the appellant is imprecise as to the nature and extent of those vehicle sales activities. It does not identify when in September 2015 the activity commenced, its frequency or regularity, the extent to which vehicles were displayed and advertised or customers visited for that purpose, or whether the activity continued throughout the period before the appellant occupied Unit 1A in April 2016. Crucially, the limited evidence does not establish whether the vehicle sales became a primary use of either unit, formed one of several primary uses, or remained incidental to the established uses already occurring at the site.

41. Although it refers to some vehicle sales from Unit 1A from September 2015 and to vehicle sales by the occupier of Unit 1, the existence of those activities does not, in itself, establish that the material change of use identified under ground (c) had occurred. The evidence does not establish with sufficient certainty that, by 31 October 2015, the nature and extent of those activities had brought about the material change of use of the Land alleged in the Notice, or that such a use thereafter continued without material interruption before the Notice was issued.

42. Even if the alleged use began only when the appellant took occupation of Unit 1A in April 2016 and no further material change of use occurred when the business later expanded into Unit 1, that commencement date is less than ten years before the notice was issued. As such, it is unnecessary for me to consider whether the occupation of Unit 1 amounted to a further material change of use.

43. Consequently, the appellant has not discharged the required burden of proof and has not demonstrated, on the balance of probabilities, that the unauthorised use alleged in the Notice began more than ten years before the Notice was issued on 31 October 2025 and continued throughout the relevant period. The breach of planning control alleged is, therefore, not immune from enforcement action.

44. The appeal on ground (d) therefore fails.

Other Matters

45. There is information to indicate that, when Unit 1A was let to the appellant, the landlord's solicitor contacted the Council's planning department. The solicitor's letter indicates that the Council stated they would not take action provided that the stock was kept within the building and the activities did not disturb neighbours. However, the appellant has not produced any formal correspondence from the Council to that effect, and in any event, the Council would not be bound by such informal advice.

46. Furthermore, the appellant's core evidence bundle contains information obtained from the Council concerning its investigation. It is stated that the statutory deadlines for information requested under the Environmental Information Regulations 2004 (EIR) were missed without lawful extension, and enforcement action was taken before relevant information was disclosed. It is said that the appellant may have been disadvantaged by the delay and that formal action was initiated in response to the complaints rather than following an evidence-led assessment.

47. I have had regard to the appellant's concerns about how the Council dealt with the complaint, the enforcement investigation and the request for information under the EIR. However, how the enforcement investigation and the request for information was handled is outside my remit. Furthermore, there are separate procedures, such as reporting the matter to the Ombudsman or making an application for an award of costs, which can consider procedural matters relating to the appeal process. Those matters would not, however, affect my conclusions on the grounds of appeal.

48. Dismissing the appeal and upholding the Notice would require the use of the site to cease and would affect the appellant's businesses. However, the enforcement regime pursues the legitimate public interest of maintaining effective planning control. The interference is lawful and pursues a legitimate aim in the public interest, namely compliance with development plan policies which seek to resist development that impacts upon neighbours' living conditions and highway safety. In the absence of significant evidence to demonstrate the impact of the requirements of the Notice on the appellant's businesses, I am satisfied that the decision to dismiss the appeal and uphold the Notice is proportionate and necessary in the public interest.

Conclusion

49. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

50. The appeal is dismissed and the enforcement notice is upheld.

M. P. Howell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Christopher Burrows	Director of the appellant company, Anima Veicoli Ltd t/a Magari Automotive.

FOR THE LOCAL PLANNING AUTHORITY:

Richard Wright	Team Leader, Development Management, Fareham Borough Council
Kim Hayler	Senior Planner, Development Management, Fareham Borough Council

INTERESTED PARTIES:

Deborah Plumbley	Neighbour
John Ellis	Neighbour
Leslie Ellis	Neighbour

LIST OF LATE EVIDENCE

DOCUMENTS

- LE1- Five invoices for car repair work dated between 2021 and 2025.
- LE2- Business address details for Magari Automotive and AV Trade Cars, as shown on Google Maps.