

Appeal Decision

Unaccompanied site visit made on 4 January 2017

Hearing held on 5 January 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 January 2017

Appeal Ref: APP/N2739/C/16/3149640

Foxglove Nurseries, 21A West Bank, Carlton, Goole, DN14 9PZ

- 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 1990 Act").
- The appeal is made by Jonathan Pearson ("the Appellant") against an Enforcement Notice issued by Selby District Council ("the Council").
- The Enforcement Notice, numbered WK/201401943, was issued on 24 March 2016.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission, the change of use of the land and siting of a static caravan for residential use and the siting of associated items.
- The requirements of the Enforcement Notice are: Step 1 - Permanently cease the residential use of the static caravan. Step 2 - Permanently remove the static caravan from the Land, together with any brick bases / hardstanding and/or steps leading from the caravan. Step 3 - Permanently remove any chattels associated with the use from the Land including the shed and the septic tank. Step 4 - Remove all hardstanding from the site and cultivate the area where the hardstanding has been removed and reinstate the Land to its original condition.
- The period for compliance with the requirements is: Step 1 - 60 days. Steps 2 to 4 (inclusive) - 90 days.
- The appeal is proceeding on the grounds set out in Section 174(2) (a), (e), (f) & (g) of the 1990 Act.

Summary of Decision: The Enforcement Notice is corrected, the appeal is allowed, the Enforcement Notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Relevant Background Matters

1. The glasshouses at Foxglove Nurseries ("the Glasshouses") enclose about 11,000 square metres of space.
 2. The Appellant and his partner:
 - a) Run the horticultural business known as Foxglove Nurseries. The business commenced trading in late 2014.
 - b) Are in the course of buying Foxglove Nurseries from Keith Welburn. They are due to pay the final instalment of the purchase price in November 2017 and at that point Keith Welburn will transfer the ownership of the land and premises to them.
 - c) Employ additional workers to help out at Foxglove Nurseries as and when necessary.
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- d) Brought the Caravan, which is the subject of the Enforcement Notice, to Foxglove Nurseries in March 2014. The residential use of the Caravan commenced in the summer of 2014.
- 3. Prior to occupying the Caravan the Appellant and his partner spent a considerable amount of time at Foxglove Nurseries:
 - a) Clearing the site of rubbish.
 - b) Repairing broken glass within the Glasshouses.
 - c) Making the Caravan fit for human habitation.
- 4. The Appellant:
 - a) Has worked for Keith Welburn on a part-time basis since he was nine years old.
 - b) Studied horticulture when his schooling finished.

Matters that were agreed at the Hearing

- 5. The following matters were agreed at the Hearing:
 - a) That the planning unit comprising Foxglove Nurseries is that area of land shown edged red on the plan provided by the Appellant at Appendix 2 to his Statement of Case ("the Plan").
 - b) That if the plan attached to the Enforcement Notice was replaced by the Plan this would overcome the Appellant's Ground (e) appeal and would not cause any injustice to anybody.
 - c) That there is clear evidence of a firm intention by the Appellant and his partner to develop the horticultural business which is run from Foxglove Nurseries. This is evident by the amount of money which they have paid for the land and premises; the repair and improvement works which they have carried out at Foxglove Nurseries and the business which they have developed to date by the cultivation of crops and the subsequent sales of the produce.
 - d) That there are no existing dwellings at Foxglove Nurseries that the Appellant and his partner could occupy.
 - e) That there are no other planning issues, including harm to the character or appearance of the area, that make it inappropriate for the Caravan to remain at Foxglove Nurseries for a temporary period in the event that there is an essential need for the Appellant and his partner to reside at Foxglove Nurseries in order to continue the horticultural business.
 - f) That there is clear evidence that the business has been planned on a sound financial basis. The Appellant confirmed that he did not have a formal business plan but in the first full financial year that they had traded they:
 - i) Had sales of produce in excess of £56,000.
 - ii) Made a net profit of £24,490 which was available for the Appellant and his partner.

I was advised that the Appellant and his partner expected to have improved their financial position in their second full year of trading.

Policy

6. The Development Plan for the area includes Policies SP1, SP2A(c), SP13 and paragraph 4.31 of the Selby District Core Strategy Local Plan ("the Local Plan").
7. Foxglove Nurseries is located outside any settlement identified in the Local Plan and is, for the purpose of applying planning policy, within the countryside. The Council explained in their Statement of Case that Foxglove Nurseries and the surrounding area once formed part of a former Land Settlement Association initiative which commenced in the 1930s to provide agricultural smallholdings for unemployed workers and their families from industrial towns in the north-east of England. The history of the development of the area by the Land Settlement Association is set out in the Council's Statement of Case. I was informed that:
 - a) There are about 36 dwellings at West Bank and many of the occupiers of these dwellings run horticultural businesses from large glasshouses.
 - b) All but one of the glasshouses have resident occupiers living very close by.
8. The Local Plan explains that development in the countryside will generally be resisted. The Council will oppose new isolated homes in the countryside unless there are special circumstances such as an essential need for a rural worker to live permanently at or near their place of work. The Local Plan reflects paragraph 55 of the National Planning Policy Framework ("the NPPF").
9. I was also referred to various other paragraphs¹ in the NPPF. The NPPF explains that the planning system should:
 - a) Support sustainable economic development to deliver the businesses that the country needs.
 - b) Support economic growth in rural areas in order to create jobs and prosperity.
 - c) Support the sustainable growth of all types of enterprise in rural areas.
 - d) Promote the development of agricultural land based rural businesses.

Main Issue

10. The main issue in this case is whether there is an essential need for the Appellant and his partner to live permanently at Foxglove Nurseries?

Reasons

Ground (a) and the deemed planning application – that in respect of the breach of planning control, planning permission ought to be granted

¹ Paragraphs 17, 28 & 207.

Is there an essential need for the Appellant and his partner to live permanently at Foxglove Nurseries?

11. Set out below are the Appellant's main reasons why he considers that it is necessary for someone to live at Foxglove Nurseries.

- a) The vents ("the Vents") which control, amongst other things, the temperature within the Glasshouses are controlled manually. If the Vents are not closed and there is a heavy frost this could result in damage to the crops being grown within the Glasshouses.
- b) There is a system of plastic water pipes to ensure that water is provided to all parts of the Glasshouses. Such a system is clearly essential if crops are to be grown successfully in the Glasshouses. If the water pipes burst then crops can be ruined if the bursts are not attended to within a very short time. In addition, the cost of lost water could be a strain on the business's finances. The Appellant explained that the loss of crops resulting from an uncontrolled escape of water is not just of the crop that is currently in the ground at the time of the burst but can also result in the loss of crops over a longer period of time. For instance, the Appellant explained that an asparagus crown can produce a crop for 25 years but the crown does not come to full maturity until it is five years old. Therefore, the financial harm to the business resulting from the loss of asparagus crowns may take several years to recover. Similarly, a burst might result in the loss of a crop of new potatoes which could result in the business losing between £20,000 and £25,000 in turnover.
- c) I asked the Appellant how he would know if there was a burst if he was asleep in the Caravan when the burst occurred. He explained that the noise is so loud that it wakes everyone up. He confirmed that there had been two occasions when bursts had occurred during the night time and had been not been able to deal with these emergencies it would have been highly likely that the business would have failed.
- d) The Appellant also explained that it is necessary to live on site in the event that wind speeds increase unexpectedly as the Vents have to be closed as a matter of urgency. I was informed that if the Vents were not closed it would cause significant damage to the Glasshouses and the costs of repair would be significant. If the Appellant was living off site it would not be possible to close the Vents at the time he left the premises to go to his home (so as to avoid the scenario explained above) because closing the Vents could cause significant damage to crops growing within the Glasshouses.
- e) I was also informed that it is often necessary for the Appellant to spray the plants growing within the Glasshouses with pesticides late in the evening because if the spraying occurred earlier in the day this could cause damage to or loss of crops. Accordingly, running the horticultural business requires long working hours by the Appellant.
- f) I also understand that when frost is a possibility it is necessary to lay fleeces on the plants or over the ground so as to prevent frost damage to the crops. I am aware that this is a time consuming exercise because it has to be done manually and there is an extensive area of ground that needs to be protected.

- g) I am aware that this is a new business and that the Appellant is only able to put in the very long working hours necessary by living on the site.
- h) I also note that it may be possible to have automated vents and water systems but the business does not have the funding available to introduce these computerised automated systems at the present time.
- i) If the Appellant and his partner lived off site the Appellant's partner would have to stay with the children after school and during the evening so as to provide for their needs. By being able to live in the Caravan she can assist the Appellant with horticultural work in the Glasshouses during the evening and still be on hand to look after the children. The Appellant explained that the business could not afford to employ a person to cover the work which his partner currently does within the Glasshouses if she had to live away from the site and look after the children.
- j) Finally, there have been thefts from other nearby agricultural businesses and the Appellant has a considerable amount of machinery at Foxglove Nurseries which he needs in order to run his horticultural business. If the business incurred losses through thefts and such losses could not be covered by insurance then this would have a significant impact on the ability of the business to survive.

Conclusion on essential need

- 12. I have explained above why the Appellant considers that he and his partner need to live at Foxglove Nurseries. Whilst I am of the view that many of these matters do not require a person to live on the site I conclude that it is essential for someone to live permanently at Foxglove Nurseries to attend to those emergencies explained in paragraphs 11(b), 11(c), 11(d) above. Without being able to live at their place of work I consider that this promising horticultural business would suffer and would fail if they were not on site to deal with the emergency events explained above. Accordingly, I consider that the retention of the Caravan for a period of three years would be in accordance with the relevant policies of the Local Plan and the advice in the NPPF.
- 13. For the reasons given above I conclude that the appeal should succeed on Ground (a) and planning permission will be granted. The appeal on Grounds (f) and (g) do not therefore need to be considered.

Conditions

- 14. At the Hearing the parties discussed what conditions were reasonable and necessary to impose in this case. It was agreed that the Caravan should only be allowed for a temporary period of three years; that it should only be occupied by the Appellant, his partner and their children and that the Caravan should be removed from Foxglove Nurseries if the Appellant and his partner ceased to reside in it or when the three year period expired. Further, it was agreed that the Caravan should remain in its current position as this is the most appropriate place at Foxglove Nurseries to site the Caravan in terms of the functional layout of the land and buildings at the site and existing screening.

Formal Decision

15. It is directed that the Enforcement Notice be corrected by the substitution of the plan annexed to this Appeal Decision for the plan attached to the Enforcement Notice. Subject to this correction the appeal is allowed and the Enforcement Notice is quashed and planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act for the development already carried out, namely the use of the land at Foxglove Nurseries, 21A West Bank, Carlton, Goole, DN14 9PZ as shown on the plan annexed to this Appeal Decision for the siting of a static caravan used for residential purposes, subject to the following conditions:

- 1) The use hereby permitted shall be for a limited period being the period of three years from the date of this Appeal Decision. At the end of the three year period the static caravan hereby permitted shall be removed from the land at Foxglove Nurseries and the residential use hereby permitted shall be discontinued.
- 2) The static caravan hereby permitted shall only be occupied by Jonathan Pearson and/or Keri Gardner and any of their dependent children.
- 3) If within the temporary period referred to in Condition 1) above the static caravan ceases to be occupied by Jonathan Pearson or Keri Gardner the residential use hereby permitted shall cease and the static caravan brought on to the land at Foxglove Nurseries in connection with the residential use shall be removed.
- 4) The static caravan hereby approved shall remain in its current position.

Tim Belcher

Inspector

APPEARANCES

FOR THE APPELLANT

Richard Borrows MRTPI

Jonathan Pearson

Foxglove Nurseries

Keri Gardner

Foxglove Nurseries

FOR SELBY DISTRICT COUNCIL

Keith Thompson BA(Hons), MPlan, MRTPI Senior Planning Officer

Rachel Robinson MPlan Senior Enforcement Officer

DOCUMENTS

- Document 1 – Information relating to “The Balloon Tree”.
- Document 2 – Market Report – Spalding Auction.
- Document 3 – Horticulture Report.
- Document 4 – Foxglove Nurseries – Unaudited Financial Statements.
- Document 5 – Details of Properties to Rent: 33 Pinewood Drive; Church View; Millfield Drive & Lingcroft Close.

PHOTOGRAPHS

- 1 January 2014.
- 2 Season Veg Box & Meet The Producers Day.
- 3 September 2016 – New potatoes for Christmas Harvest & August 2016 – Mixed Peppers.
- 4 June 2016 & September 2016 – Mini-Munch Cucumbers.
- 5 May 2016 & September 2016 – Asparagus.
- 6 Tomato plants at the different stages.
- 7 June 2016 – Tomato Plants & August 2016.
- 8 March 2015 – Lettuce / New Potatoes & August 2016 – Mini corn and large sweet corn.

Plan

This is the plan referred to in my Appeal Decision dated 13 January 2017

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