
Appeal Decisions

Hearing held on 11 January 2017

Site visit made on 11 January 2017

by Nigel Burrows BA MRTPI

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

Decision date: 20 February 2017

Appeal refs: APP/J1535/C/16/3153168 & 3153169 (Notice 1) **Land at Lowershott Nursery, Sedge Green, Roydon, Essex, CM19 5JS**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Carlo Ferraro & Mrs Angelica Ferraro against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice, ref: ENF/0415/15, was issued on 17th May 2016.
 - The breach of planning control as alleged in the notice is the erection of a building shown numbered 1 on the attached plan for use as a dwelling.
 - The requirements of the notice are 1. Cease the use of the building for residential purposes. 2. Demolish the building 3. Remove the patio area 4. Remove the fence 5. Remove all resultant debris from the Land.
 - The period for compliance with the requirements is six months.
 - The appeal by Mr Ferraro (3153168) is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
 - The appeal by Mrs Ferraro (3153169) is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
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Appeal refs: APP/J1535/C/16/3153175 & 3153176 (Notice 2) **Land at Lowershott Nursery, Sedge Green, Roydon, Essex, CM19 5JS**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Carlo Ferraro & Mrs Angelica Ferraro against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice, ref: ENF/0415/15, was issued on 17th May 2016.
 - The breach of planning control as alleged in the notice is the stationing of a portable building shown numbered 3 on the attached plan for use as a dwelling.
 - The requirements of the notice are 1. Cease the use of the building for residential purpose [*sic*] 2. Remove the building and fencing from the Land 3. Remove all resultant debris from the Land.
 - The period for compliance with the requirements is six months.
 - The appeal by Mr Ferraro (3153175) is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
 - The appeal by Mrs Ferraro (3153176) is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
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Appeal refs: APP/J1535/C/16/3153179 & 3153180 (Notice 3) **Land at Lowershott Nursery, Sedge Green, Roydon, Essex, CM19 5JS**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Carlo Ferraro & Mrs Angelica Ferraro against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice, ref: ENF/0415/15, was issued on 17th May 2016.
 - The breach of planning control as alleged in the notice is the stationing of a caravan shown numbered 14 on the attached plan for residential use.
 - The requirements of the notice are 1. Cease the use of the caravan for residential purposes
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- 2. Remove the caravan from the Land
 - 3. Remove the skirting and steps from the caravan
 - 4. Remove all resultant debris from the Land.
 - The period for compliance with the requirements is six months.
 - The appeal by Mr Ferraro (3153179) is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
 - The appeal by Mrs Ferraro (3153180) is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
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Appeal refs: APP/J1535/C/16/3153182 & 3153183 (Notice 4)
Land at Lowershott Nursery, Sedge Green, Roydon, Essex, CM19 5JS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Carlo Ferraro & Mrs Angelica Ferraro against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice, ref: ENF/0415/15, was issued on 17th May 2016.
 - The breach of planning control as alleged in the notice is the stationing of a caravan shown numbered 15 on the attached plan for residential use.
 - The requirements of the notice are 1. Cease the use of the caravan for residential purposes
 - 2. Remove the caravan from the land
 - 3. Remove the skirting and steps from the caravan
 - 4. Remove all resultant debris from the Land.
 - The period for compliance with the requirements is six months.
 - The appeal by Mr Ferraro (3153182) is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
 - The appeal by Mrs Ferraro (3153183) is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
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Appeal refs: APP/J1535/C/16/3153188 & 3153189 (Notice 5)
Land at Lowershott Nursery, Sedge Green, Roydon, Essex, CM19 5JS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Carlo Ferraro & Mrs Angelica Ferraro against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice, ref: ENF/0415/15, was issued on 17th May 2016.
 - The breach of planning control as alleged in the notice is the stationing of a caravan shown numbered 17 on the attached plan for residential use.
 - The requirements of the notice are 1. Cease the use of the caravan for residential purposes
 - 2. Remove the caravan from the Land
 - 3. Remove the skirting and steps from the caravan
 - 4. Remove all resultant debris from the Land.
 - The period for compliance with the requirements is six months.
 - The appeal by Mr Ferraro (3153188) is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
 - The appeal by Mrs Ferraro (3153189) is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
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Appeal refs: APP/J1535/C/16/3153191 & 3153192 (Notice 6)
Land at Lowershott Nursery, Sedge Green, Roydon, Essex, CM19 5JS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Carlo Ferraro & Mrs Angelica Ferraro against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice, ref: ENF/0415/15, was issued on 17th May 2016.
 - The breach of planning control as alleged in the notice is the stationing of a caravan shown numbered 18 on the attached plan for residential use.
 - The requirements of the notice are 1. Cease the use of the caravan for residential purposes
 - 2. Remove the caravan from the Land
 - 3. Remove the skirting and steps from the caravan
 - 4. Remove all resultant debris from the Land.
 - The period for compliance with the requirements is six months.
 - The appeal by Mr Ferraro (3153191) is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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- The appeal by Mrs Ferraro (3153192) is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decisions: The appeals are dismissed and the enforcement notices are upheld with variations

Procedural Matters

1. The submissions for the Council identify the enforcement notices subject of the appeals as Notices 1 to 6. I shall address them in the same way, as set out in the headings above.
2. Notice 1 relates to operational development carried out on land which the Council has identified as plot 1. Notices 2 to 6 are directed to the stationing of a portable building and caravans for residential occupation upon plots 3,14,15,17 and 18. The submissions for the appellants allege the siting of the caravan on plot 18 is incorrectly shown on the plan attached to the enforcement notice. However, the appellants do not appear to be in any doubt about which caravan is attacked by the notice. Any discrepancy in the plan does not go to the heart of the notice. On balance, a correction to this plan would be unnecessary.

Background

3. Lowershott Nursery is a horticultural enterprise situated upon the east side of Sedge Green, just to the north of Lower Nazeing in Essex. Lowershott Nursery was apparently subdivided during 1971. The appellants retained control of the rear portion of the Nursery, which extends to about 2ha. The buildings and caravans attacked by the enforcement notices are interspersed with other residential units positioned adjacent to an access/service route through the site. The other units are apparently considered to be lawful, or are the subject of applications for lawful development certificates.
4. The hearing was told that a total of 13 workers occupy the residential accommodation attacked by the notices. Apparently, 9 of these workers are employed locally in horticulture and 4 are employed in a nearby packaging warehouse within Sedge Green.
5. Lowershott Nursery lies within an area which, for planning purposes, is known as the 'Sedge Green/Hoe Lane Glasshouse Area and which forms part of the Lea Valley glasshouse industry. It is bounded to the north and south by extensive nurseries and to the east by open fields. There are a number of nurseries in the wider locality and, as noted above, a packaging/distribution warehouse. The site and surrounding area are within the Green Belt.

The ground (a) appeals by Mr Ferraro

Main Issues

6. There are three main issues in these appeals. The first is whether the provision of the residential buildings and caravans constitutes inappropriate development in the Green Belt. The second is the effect of this development on the openness and visual amenity of the Green Belt. The third is whether any harm to the Green Belt by reason of inappropriateness, or any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Planning Policy

7. The development plan includes the Epping Forest District Local Plan (1998) and Local Plan Alterations (2006). The Council has cited various 'saved' Local Plan (LP) policies. These include GB2A which places restraint on development in the Green Belt unless it is for certain purposes: criterion (i) of the policy includes where it is for the purposes of horticulture. Policy GB5 also places restraint on the provision of non-permanent dwellings in the Green Belt except as replacements on caravan parks. Policy GB7A indicates that permission will be refused for development conspicuous from within or

beyond the Green Belt which would have an excessive adverse impact on its openness, rural character or visual amenity. Policy GB17A indicates permission for horticultural workers dwellings may be permitted if the Council is satisfied certain criteria are met.

8. The Local Plan is a document to which paragraph 215, Annex 1 of the National Planning Policy Framework applies (the NPPF - published in March 2012). This requires that following a 12-month period from the publication of the NPPF due weight should be given to existing policies according to their degree of consistency with the Framework.
9. Paragraph 14 of the NPPF sets out the presumption in favour of sustainable development. Paragraph 28 seeks to promote a strong rural economy, including the development and diversification of agricultural and other land-based rural businesses. Paragraph 79 indicates the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Paragraph 89 indicates planning authorities should regard the construction of new buildings as inappropriate in the Green Belt; exceptions to this include buildings for agriculture and forestry. Paragraph 90 identifies certain forms of development that are not inappropriate in the Green Belt provided they preserve openness and do not conflict with the purposes of including land within the Green Belt.
10. Notwithstanding the age of the policies on which the Council relies, for the most part, there does not appear to be any significant degree of inconsistency between these policies and the NPPF. They can be given substantial weight in relation to these appeals. A possible exception seems to be policy GB17A. The appellant argues that this only deals with agricultural, horticultural and forestry workers (the NPPF refers to 'rural workers'). Significantly, some of the detailed policy criteria also go further than the NPPF. In this respect, I agree with the appellant that policy GB17A should be given limited weight.

Issue 1: The Green Belt

11. It is common ground between the main parties that the erection of the building attacked by Notice 1 does not fall within any category of development which might be considered appropriate in the Green Belt for the purposes of paragraph 89 of the NPPF. The parties also agree that the development subject of Notices 2 - 6 does not fall within any category of development that could be considered as 'not inappropriate' in the Green Belt for the purposes of paragraph 90 of the NPPF. I see no reason to reach a different conclusion.
12. I share the views of the parties that the buildings and caravans attacked by the notices constitute inappropriate development within the Green Belt. Paragraph 87 of the NPPF also indicates that inappropriate development is, by definition, harmful to the Green Belt.

Issue 2: Openness and Visual Amenity

13. The introduction of additional residential buildings and caravans upon the land at Lowershott Nursery has contributed to a further erosion of the openness of the Green Belt. In this respect they conflict with the fundamental aim of Green Belt policy which is to maintain openness in perpetuity. I appreciate the Nursery is effectively flanked on three sides by horticultural enterprises with extensive glasshouses and other structures. However, the aim of Green Belt policy is to maintain openness, whether publicly visible or not.
14. Turning to the implications for the visual amenity of the area, as noted above, the buildings and caravans are interspersed with other residential units that adjoin the access/service route through the site. The units do not appear to encroach beyond the boundaries of the nursery. They are seen in the context of the clutter of buildings and caravans around the extensive glasshouses which cover the majority of the Nursery. As such, they do not intrude upon the rural landscape or visual amenity of the Green Belt.

15. Nonetheless, as they further erode openness, they conflict with the objectives of the NPPF. The development also conflicts with the relevant 'saved' policies cited by the Council including GB2A, insofar as it seeks to preserve the openness of the Green Belt.

Issue 3: Other Considerations

16. The appellant's stance is there are other considerations that outweigh any harm to the Green Belt arising from the development. In summary, these concern the labour requirements for the Lea Valley horticultural industry, the need for horticultural workers to live locally, the lack of alternative accommodation and the Council's acceptance that it does not have a 5-year supply of housing land within the District.
17. The appellant emphasises the site lies at the heart of a concentration of horticultural nurseries which contain about 45ha of glasshouses and employ about 225 full-time workers. It is estimated that about 95% of these are foreign workers. A number of local packhouses employ more workers. The submissions for the appellant also indicate that planning permission has been granted for at least another 20ha of glasshouses, which will be built over the next few years. It is estimated that as a result there will be a requirement for about another 100 full-time workers. The appellant says that only one enterprise has made provision for additional workers housing, i.e. the 12 units permitted by the Council at 'Tomworld' in connection with a planned expansion of that nursery.
18. The appellant claims there will be a net local demand to house about 88 workers over the next few years. As noted earlier, 9 of the workers occupying the unauthorised dwellings at Lowershott Nursery are employed at local horticultural enterprises, whilst 4 are employed at a nearby packaging warehouse. In effect, the site appears to be used to provide a form of 'dormitory' accommodation for horticultural/non-horticultural workers employed locally.
19. The labour estimates put forward by the appellant appear to be partly based upon a report published in 2012 by the Laurence Gould Partnership (and others) '*The Lea Valley Glasshouse Industry: Planning for the Future*'. The submissions for the appellant appear to infer this is supplementary planning guidance. It does not have this status. However, it is clearly a material planning consideration. The hearing was told that it will inform the Council's future planning policies for the Lea Valley horticultural industry. Be that as it may, the evidence base for this report appears somewhat dated, not least because of the economic and political developments since its publication. The appellant's submissions also acknowledge there are no published accurate figures for the number of existing employees at local nurseries.¹ This tends to undermine the credibility of the labour requirement put forward by the appellant which, at best, is no more than an estimate.
20. In any event, there is no compelling evidence to demonstrate that there is an essential need to house these workers at Lowershott Nursery for the proper functioning of the enterprise. Similarly, in the wider context, there is no firm evidence to demonstrate that there is an essential need for these workers to live near their place of employment - even if that happens to be at other local nurseries.² It is the requirements of the horticultural enterprise itself, rather than those of the employee, which are relevant in determining whether or not such residential accommodation is justified. Whilst it might be convenient to accommodate horticultural and non-horticultural workers on this site for the benefit of the Lea Valley horticultural industry, there is no compelling evidence to show that it is essential.
21. Turning to the argument about a lack of alternative accommodation, the appellant indicates the length of the growing season has increased due to technological advances.³ The period of horticultural employment for full-time workers is no longer 'seasonal' and

¹ Paragraph 7.5 of the statement of case for the appellant

² For example there are no technical appraisals, ADAS reports, or documentary evidence such as viability and financial information or business plans

³ This appears to be contradicted by the Gould Report which states on page 63: "In the Lea Valley the growing season is typically 22 weeks compared to 37-52 weeks at Thanet Earth." However, this was refuted at the hearing.

- therefore permitted development rights to provide caravans for such workers cannot be used. The packhouses also rely on workers all-year round. Furthermore, it is claimed that horticultural workers cannot afford to buy or rent properties within the area. However, 'affordability' in this context would normally mean to the horticultural enterprise and not to the individual occupiers of the dwellings. Even if this was not the case, the appellant's claim does not appear to take into account the likelihood of workers sharing housing costs.
22. The appellant argues there are no other dwellings suitable or available in the locality. Internet details of properties available in Nazeing are provided in support of this argument. However, there is no evidence to show what steps were taken to find other accommodation prior to the provision of the dwellings subject of the notices. There is no clear evidence to show the extent of enquiries made to local agents concerning the availability of properties to purchase or rent. I am not satisfied the appellant has rigorously investigated the possibility of finding suitable alternative accommodation.
23. In terms of housing supply, there appears to be no dispute that the Council is unable to show that a deliverable 5-year supply of housing land is available within the District, as required by the NPPF. In this respect, the Council's policies relating to housing provision cannot be considered up-to-date (in accordance with paragraph 49 of the NPPF). The appellant's stance appears to be that the development should be considered against the NPPF, including paragraph 14 which sets out the presumption in favour of sustainable development.
24. It is therefore necessary for me to assess the sustainability credentials of the development, with particular reference to the economic, social and environmental dimensions of sustainable development as set out within paragraph 7 of the NPPF.
25. With respect to economic considerations, the development provides accommodation for local horticultural/non-horticultural workers, the majority of whom appear to be foreign. The provision of relatively cheap living accommodation on the site might also be a factor in providing local employment opportunities for the workers involved. However, whilst foreign labour evidently underpins the Lea Valley horticultural industry, the overall economic benefits associated with the workers occupying the units attacked by the notices are unclear. There is no evidence to suggest they would be significant.
26. In terms of social considerations, whilst the accommodation is ostensibly for horticultural workers, it would contribute to the provision of housing within the District. However, the Council has reservations about the standard of residential amenity provided and, in particular, the suitability of caravans for all-year round occupation. I share these reservations. Whilst the appellant draws support from the approval of 12 dwelling units at 'Tomworld', the Council indicates the units are purpose-designed to a higher standard with limitations on their occupancy. In other respects, there is no evidence to suggest the scale of the unauthorised development on the Nursery means that workers would place unacceptable demands on the local infrastructure or services, or that it would lead to an undesirable increase in the population or imbalance in the community. Arguably, it might even contribute to the support of a stronger, vibrant, and healthy community.
27. Turning to environmental considerations, paragraph 7 of the NPPF makes it clear that sustainable development should contribute to the protection and enhancement of the environment. Paragraph 9 of the NPPF also confirms that pursuing sustainable development involves seeking positive improvements in the quality of the environment, as well as in people's quality of life. I am not persuaded that the development meets these particular objectives, despite the appellant's offer to remove caravan 12 or building 16 shown on the plans. It also amounts to inappropriate development in the Green Belt (which by definition is harmful) and contributes to the erosion of openness.

Conclusions on the ground (a) appeals

28. The shortfall in housing land supply within the District is a material consideration which carries substantial weight, sufficient to override the constraints of established

settlement policy in accordance with paragraph 49 of the NPPF. Having said that, I find the economic benefits associated with the workers occupying the units to be unclear. In any event, the outcome would not be a positive improvement in the quality of the environment as advocated by the NPPF. This finding carries very substantial weight.

29. Weighing all the relevant considerations in the planning balance, I conclude that the adverse environmental impact of the scheme significantly and demonstrably outweighs the considerations advanced in favour of the development. Overall, I find it constitutes an unsustainable form of development. It is pertinent to note the Courts have held the presumption within paragraph 14 of the NPPF applies only to sustainable development.
30. As matters stand, I also find that none of the considerations put forward by the appellants, individually or collectively, clearly outweigh the harm caused by the inappropriateness of this development in the Green Belt and loss of openness. I conclude there are no very special circumstances that would justify permitting this development.
31. It is not obvious to me that the objections to the development attacked by the notices could be overcome by any reasonable or appropriate planning conditions. For the reasons given above, I conclude the appeals lodged on ground (a) should not succeed.

The ground (g) appeals

32. The appellants are entitled to assume that their appeals would be successful; however, should these fail they are entitled to a reasonable period for compliance after the notices take effect. Whilst it would be possible to physically remove the dwellings within 6 months as required by the notices, in my view it would be reasonable to increase the compliance period in order to minimise the potential hardship and disruption to the occupiers of the accommodation (especially as the majority appear to be foreign workers) and give them more time to look for accommodation elsewhere.
33. The Council informed the hearing that, on reflection, a period of 9 months would be more appropriate in each case. I agree that this period would be a more proportionate and reasonable response to the breaches of planning control that have occurred. It would minimise the potential hardship and disruption to the occupiers, without unnecessarily prolonging the breaches of control. I intend to vary the compliance periods accordingly.

Overall Conclusions

34. For the reasons given above, I conclude that each of the enforcement notices should be upheld, albeit with variations to their respective periods for compliance. I have taken into account all the other matters raised by the parties, including the letters in support of the development from local businesses. However, I find they do not alter or outweigh the main considerations that have led to my decisions on these appeals.

Formal Decisions:

APP/J1535/C/16/3153168 & 3153169, APP/J1535/C/16/3153175 & 3153176, APP/J1535/C/16/3153179 & 3153180, APP/J1535/C/16/3153182 & 3153183, APP/J1535/C/16/3153188 & 3153189, APP/J1535/C/16/3153191 & 3153192

35. The enforcement notices are varied by the deletion of '*Six months*' in paragraph 6 and the substitution of '*9 months*' as the period for compliance with each of the notices.
36. Subject to the above variations the appeals are dismissed, the enforcement notices are upheld, and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Nigel Burrows INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mr Stephen Hayhurst

Chartered Town Planner

Mr Carlo Ferraro

Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jerry Godden

Epping Forest District Council

Mrs Clare Munday

As above

INTERESTED PERSONS:

Mr Lee Stiles

Lea Valley Growers Association

DOCUMENTS SUBMITTED AT THE HEARING:

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| Document | 1 | 'Saved' Local Plan policy DBE4, supplied by the Council |
| Document | 2 | Copies of local bus timetables, supplied by Mr Hayhurst |