



Appeal Decisions

Inquiry Held on 25, 26, 27 and 28 January 2022

Site visit made on 1 February 2022

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 31 March 2022

Appeal A: APP/J1535/C/21/3276736

Appeal B: APP/J1535/C/21/3276732

Appeal C: APP/J1535/C/21/3276733

Appeal D: APP/J1535/C/21/3276734

Messengers Nursery, Nursery Road, Nazeing, Waltham Abbey EN9 2JF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr J Evans, Appeal B is made by Terry Evans Appeal C is made by James Smith, Appeal D is made by Lloyd Evans, against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice was issued on 20 April 2021.
 - The breach of planning control as alleged in the notice is 'Without planning permission: Change of use of the Land for a mixed purpose of storage of shelving and racking, retail sales of shelving and racking, stationing of portable buildings and containers Storage and parking of non-agricultural commercial vehicles, storage of non-agricultural commercial vehicles, storage of non-agricultural equipment and storage of vehicles. Erection of buildings for non-agricultural purposes.
 - The requirements of the notice are:
 1. Cease the use of the land for storage and selling of shelving and racking.
 2. Remove all non-agricultural buildings from the Land shown hatched on the attached plan
 3. Remove the containers/portable buildings from the land shown hatched on the attached plan
 4. Remove all vehicles stored on the land shown hatched on the attached plan
 5. Remove all commercial vehicles and non-agricultural equipment form the land shown hatched on the attached plan.
 - The period for compliance with the requirements is 3 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal B, C and D are proceeding on the grounds set out in section 174(2) (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Appeal E: APP/J1535/X/21/3272066

Orchard Leigh House, Nursery Road, Nazeing, Waltham Abbey EN9 2JF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr J Evans against the decision of Epping Forest District Council.
- The application Ref; EPF/2606/20CLD, dated 11 November 2020, was refused by notice dated 6 January 2021.
- The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.

- The use for which a certificate of lawful use or development is sought is residential use of dwelling.
-

Appeal F: APP/J1535/X/21/3272068

Messengers Nursery, Nursery Road, Nazeing, Waltham Abbey EN9 2JF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr J Evans against the decision of Epping Forest District Council.
 - The application Ref: EPF/2607/20CLD, dated 11 November 2020, was refused by notice dated 19 January 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is B8 Storage and Distribution.
-

Decisions

Appeals A, B, C and D

1. The enforcement notice is quashed.

Appeal E

2. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the matter constituting a failure to comply with a condition/limitation which is considered to be lawful.

Appeal F

3. The appeal is dismissed.

Preliminary Matters

4. In Appeals A, B, C and D the appeals on ground (f) were withdrawn in writing during the Inquiry.
5. The Council acknowledged in closings that having heard the oral evidence on the balance of probabilities, the evidence in Appeal E would be sufficient to allow the appeal.
6. All the oral evidence was under affirmation.

The Appeals

7. Appeals A, B, C and D relate to an EN alleging both a mixed use and operational development. The original EN plan identifies all the land which was once a commercial nursery. The requirements of the EN only relate to the hatched area on the plan. During the course of the Inquiry an alternative plan was submitted by the Council which excluded an area to the west of the land parcel but retained the residential dwelling Orchard Leigh House and its garden within the identified area. The hatched area was extended along the access track which serves the yard area.

8. The Council also suggested an alternative allegation to be considered. This is
- ‘Without planning permission: Change of use of the Land for a mixed purpose of storage of shelving and racking, retail sales of shelving and racking, stationing of portable buildings and containers, storage and parking of non-agricultural commercial vehicles, storage of non-agricultural commercial vehicles, storage of non-agricultural equipment and storage of vehicles. Stationing of a mobile home for ancillary residential use. Erection of buildings for non-agricultural purposes.
9. The Council also confirmed there was no suggested change to the requirements of the EN.
10. Appeal E seeks a lawful development certificate for the occupation of Orchard Leigh House as an unrestricted dwelling. Planning permission was granted under reference EPF/345/83 for a dwelling, now known as Orchard Leigh House. Condition 3 of that planning permission stated:
- ‘The occupation of the dwelling hereby permitted shall be limited to persons wholly or mainly employed, or last employed, locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act, 1971, or in forestry, or a dependant of such a person residing with him (but including a widow or widower of such a person.).’
- A legal agreement was also completed which included a covenant that the dwelling permitted shall be occupied by a person employed or last employed in agriculture or their dependants. The appellant considers this matter is outside the scope of Appeal E and can be dealt with by a deed of variation.
11. In my view, the description of development in the application the subject of Appeal E is not clear. I will deal with the appeal on the basis that it seeks confirmation that the occupation of the dwelling known as Orchard Leigh House in breach of condition 3 of planning permission EPF/345/83 is lawful.
12. In relation to Appeal F the appellant submitted alternative descriptions of the development the subject of Appeal F during the course of the Inquiry. The last alternative description proposed by the appellant was:
- ‘Retention of residential mobile home (hatched black on Plan CC001) and Class B8 storage use on the area edged red (excluding the blue edged land) on Plan CC001 for: vehicles and parts; bicycles; plant; machinery; building materials; racking and shelving; tyres and wheels; shipping containers; wood/timber; metal; furniture; decorating materials; perfume; tools and equipment; fuel; scaffolding; trailers; unoccupied mobile homes.’
- Plan CC001 accompanied the revised description and was marked up with a red outline, an area cross hatched in black and an area outlined in blue.

Planning Units

13. In order to ascertain whether there has been a material change of use it is necessary to ascertain the correct planning unit of a site and the present and previous primary uses of that unit.

14. The leading case in determining a planning unit is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. This case also confirmed that an Inspector may correct or vary an Enforcement Notice (EN) under s176 of the Act to ensure it was directed to the correct planning unit. In *Burdle* it was held that the planning unit is usually the unit of occupation unless a smaller area can be identified which is physically separate and distinct and occupied for different unrelated purposes. The physical and functional separation is key. Three broad categories of distinction were identified in the judgement as:
- a) A single planning unit where the unit of occupation has one primary use, and any other activities are incidental or ancillary;
 - b) A single planning unit that is in a mixed use because the land is put to two or more activities, and it is not possible to say that one is incidental to another; and
 - c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit
15. In 1981 the brother of the appellant in Appeal A purchased the nursery site. Planning permission was granted for a residential dwelling in 1983 with an agricultural occupancy condition imposed on the permission along with a legal agreement which included a similar occupancy requirement within it.
16. In 1987 an EN was served alleging '*A material change of use of the land from use as a nursery and a dwellinghouse to a mixed use comprising (1) a nursery and a dwellinghouse. (2) the storage of commercial motor vehicles including a skip carrying vehicle and skips for purposes other than the agricultural use of the land (3) the storage and sorting of imported spoil and waste materials.*' The land identified in the 1987 EN was all the land within the ownership of the then owner.
17. In my view, the planning unit at the time of the 1987 EN was a single planning unit comprising the residential unit known as Orchard Leigh House, the yard, and the land to the west. The yard and the land to the west were used to cycle over, as a recreational area for the children to play and to ride motorcycles over. All of the unit of occupation seems to have been used as an extension of the garden area of the residential unit as well as a large area, beyond the garden area and in front of land to the west which had what looked like grass on it, being used for the storage of commercial motor vehicles including a skip carrying vehicle and skips for purposes other than the agricultural use of the land and the storage and sorting of imported spoil and waste materials. The EN clearly alleged a mixed use of one planning unit. In my view, the uses amounted to a composite mixed use and there was a single planning unit at the time of the 1987 EN. The lawful use of the planning unit was as a nursery and dwellinghouse and is referenced in the 1987 EN allegation.

18. In late 2002/early 2003¹ the appellant of Appeal A is stated to have moved into Orchard Leigh House with his wife and children. Although the deeds of Orchard Leigh House do not record it, the property was sold by the original owner to his brother. The original owner is stated to have placed a mobile home within the middle of the land, within the yard area, and lived there. The appellants stated, and the Council accepted, that the mobile home is connected to electricity, water, and foul drainage (septic tank) and the accommodation comprises bedroom, living room, kitchenette (with small cooker, sink and fridge) and small shower room with toilet. The appellant also stated that there is a small area outside the mobile home used as a garden.
19. I heard oral evidence from the appellants' witnesses to the Inquiry that the occupier of the mobile home attends Orchard Leigh House for meals daily. They consider the residential occupation of the mobile home is ancillary to Orchard Leigh House, due to the family connection between the occupiers and the regular meals taken at Orchard Leigh House by the occupier of the mobile home. The Council, on the brief evidence provided, considered it could be an ancillary use to Orchard Leigh House. However, in my view, the mobile home use is physically and functionally separate and is more linked to the yard area in terms of location and the fact the occupier of the mobile home managed and ran the yard area and most of the storage up until Nelsons arrival in around 2017. The yard was under the control of the occupier of the mobile home. The occupier of the mobile home still has items and vehicles stored on parts of the yard area.
20. The appellants' agent stated in oral evidence that he thought the mobile home residential occupation was ancillary to the yard storage.
21. I do not doubt that the occupier of the mobile home has regular meals at Orchard Leigh House, but the limited evidence does not demonstrate it is either part of the planning unit in which Orchard Leigh House is situated or that it is truly an ancillary unit of occupation. In fact, the mobile home provides all necessary facilities for day to day living and the occupier chooses to have regular meals with the occupants of Orchard Leigh House. The oral evidence did not demonstrate, in a precise and unambiguous way, how the occupier lives day to day in the mobile home. While services are provided to the mobile home it is not clear whether those services are independent, linked to the yard or linked to Orchard Leigh House. In my view, on the evidence currently available, the mobile home occupation is not a residential use ancillary to either Orchard Leigh House or the storage and retail use alleged, but a primary use in its own right within the yard area.
22. A palisade fence was erected to secure the yard area and retrospective planning permission was granted retrospective permission at appeal in 2008. At some time between the 1987 EN and the fence being erected which was granted at appeal, the swimming pool and tennis court for the residential dwelling Orchard Leigh House, were built and the garden area to that dwelling, including these features, was fully fenced in. Exactly when all these changes occurred is not precisely identified. However, I note that the tennis court, application reference EPF/0865/11, was confirmed to be lawful and within the domestic curtilage of Orchard Leigh House.

¹ The dates of when the occupants and ownership of Orchard Leigh House changed was given in oral evidence as December 2002 and early 2003. This differs from the somewhat from the submitted written evidence.

23. An area of land to the west of the residential boundary of Orchard Leigh House and the remains of glass houses/site of the mobile home in residential use remained for much of the time shown in the aerial photographs as laid to grass, but by 2017/18 various items can be seen sited on this area on its northern edge adjacent to the access track serving the yard.
24. Around 2017² a commercial company, Nelsons, moved onto part of the yard site. A building was erected in the northwest corner of the yard sometime after. It was constructed using four (two double stacked) container units as part of its construction, supporting the front part of the roof structure. In addition, a tall racking construction about 4.5m in height, with six cantilevered shelves fixed to the ground by twelve bolts, was also erected. Storage on other racking, and on the ground, occupied most of the yard area at the time of the site visit, with access for vehicles between the storage. Building materials to the rear of the site were stored to around 3m/3.5m in height. There were further double stacked container units to the northern boundary of the yard. Various lorry bodies, portable buildings, unused mobile homes, single containers and other vehicles and storage were located around the yard and adjacent to the access road. Portable buildings, lorries, lorry bodies etc were used to store items wherever they were placed. Some vehicles I understand were still functional such as the tanker lorry.
25. In my view, following the erection of the fencing to the west, the addition of the swimming pool and tennis court and the fencing of the enlarged residential garden at Orchard Leigh House, three distinct units of occupation were created. Although the land to the north of Orchard Leigh House boundary and the glass houses / mobile home appears to be just laid to grass and not in use for much of the aerial photographs until around 2017/18. It is not clear to me exactly when three planning units became established as they are now today.
26. The first unit of occupation is the land to the west of the palisade fencing which has agricultural use rights, but the use is dormant at present. At the site visit I noted that there is currently no access via the gate from the yard because there is storage by Nelsons blocking the gate. The second unit of occupation comprises the access to the yard area and all the land between the palisade fence and the fencing around Orchard Leigh House. The third unit of occupation comprises Orchard Leigh house, including the separate front access, parking manoeuvring area, and the rear garden including the swimming pool and the tennis court.
27. At the time the planning units were separated into three distinct units of occupation a new chapter in the planning history was begun for each of the planning units. I cannot be clear on the evidence before me exactly when that happened, but it appears to be some time after the fence was erected to the land to the west which was granted at appeal in 2008. It may, however, have been earlier or later.
28. I therefore find that there are three planning units, which I shall refer to as the land to the west, the yard and the dwellinghouse, Orchard Leigh House.

² In oral evidence it was stated by Mr Terry Evans that Nelsons moved onto the yard in 2017. However, there were also references to Nelsons moving onto the yard in 2016.

Appeals A, B, C and D - The Enforcement Notice –

29. In the light of my conclusions in relation to the planning units and how they have changed over time I consider that there are some issues with the EN.
30. The EN seeks to attack the use and operational development on the yard area planning unit, comprising the access track and the land between the boundaries of Orchard Leigh House and the agricultural land demarcated by the fence the subject of the appeal in 2007. Within this planning unit there is sited a mobile home for residential use by the brother of the appellant in Appeal A.
31. The Council put forward an alternative allegation identifying the mobile home as ancillary to Orchard Leigh House. However, I have concluded that the yard including the mobile home for residential use is within one planning unit and Orchard Leigh House is in a separate planning unit on the evidence currently presented.
32. The mobile home for residential use cannot be ancillary to a use in a separate planning unit. The mobile home is also physically separate to the residential unit Orchard Leigh House. The mobile home has all the facilities for day to day living within it. It has drainage, water and electricity connected and it is sited well away from the boundary and separate from the residential garden and surrounds of Orchard Leigh House. The only link to Orchard Leigh House specified in oral evidence is that the occupier takes meals at that property. The occupier of the mobile home park his vehicles within the yard and uses the vehicle access to the yard, which is independent from the vehicle access to Orchard Leigh House. He also continues to use the yard area for storage etc that is not used by Nelsons operation. The current evidence tends to demonstrate an independent mobile home for residential use.
33. In addition to the building to the west of the yard area and the portable buildings which are accepted by the appellant to exist and, in my view, are clearly attacked as operational development by the phrase 'Erection of buildings for non-agricultural purposes' within the allegation at no time did the appellant or the Council address the storage structure of approximately 4.5m in height, with shelves, and bolted into the ground which was in situ at the time of my site visit and I understand at the time the EN was served. In my view, this indicates that the appellants were not clear this structure was specifically being attacked by the EN or that it was not considered to be a building.
34. The storage structure is not specifically identified as operational development attacked by the EN. I have considered whether this structure is a building for the purposes of the Act. Three primary factors are considered decisive in determining whether something is a building. Firstly, its size, secondly its permanence and finally its physical attachment. Due to the size of the storage structure, the lack of evidence to demonstrate it has been moved or that it is capable of being moved and its physical attachment to the ground, I consider the storage unit is a building and is operational development. Whilst it could be said it is caught by the general allegation erection of buildings for non-agricultural purposes, the only building referred to by the appellants specifically in their evidence is the building to the northwestern corner of the yard planning unit. The appellants have confirmed that they accept that this storage structure is a operational development.

35. The allegation in the EN therefore, does not identify all of the uses within the composite use or the operational development which has taken place on the planning unit of the yard. In particular it does not identify the mobile home sited for residential use occupied by the brother of Appeal A. The allegation also does not make it clear that it seeks to attack the storage structure.
36. The EN refers to the breach of planning control having occurred within the last 10 years. The EN alleges both operational development and a material change of use. The time limit in section 171B for taking enforcement action for the operational development is four years.
37. The storage along the access track that serves the yard planning unit is excluded from the hatched area of land and thus the requirements do not require the storage to cease in this area. Although this was raised with the Council, they stated that they accepted that as drafted the EN would allow storage to continue outside of the hatched areas.
38. The EN seeks to attack the use on part of the yard planning unit. Within that planning unit there is clearly storage taking place and the siting of a mobile home for residential use. In addition, the evidence from the Council and third parties indicates some retail activity. Whilst this is disputed by the appellants the evidence is less than clear. The operators of Nelsons part of the use did not give direct evidence at the Inquiry in relation to whether stock is sold from and collected at the appeal site.
39. It is for the appellants to demonstrate on the balance of probabilities that no retail sales are taking place from the area attacked by the EN or that if retail sales are taking place, they are not a primary use. In the light of the Council's and third parties' evidence I am not satisfied that retail sales are not part of the composite use taking place on the yard planning unit.
40. However, neither the original allegation nor the Council's suggested amended description, in the light of my findings on planning units, identify the composite use of the yard planning unit. Furthermore, when read with the requirements as they are drafted the allegation fails to identify all the buildings that are present on the yard planning unit, and as such is imprecise and does not allow the appellants sufficient clarity about what is being enforced against. In particular it was no part of the parties' cases that the storage structure was either not being enforced against or was acceptable to remain.
41. I have considered whether to correct the allegation to include both the stationing of the mobile home for residential use and the erection of the storage structure would cause prejudice or injustice to the parties. The appellants made it clear if the mobile home for residential use had been included in the allegation more evidence on the lawfulness of the mobile home would have been provided. While the Council did not propose an additional requirement in relation to this mobile home that was on the basis of the mobile home for residential use being ancillary to Orchard Leigh House.
42. In my view, to correct the EN allegation to include the stationing of the mobile home for residential purposes would be likely to cause prejudice and injustice for both parties. In particular the appellants have not had the opportunity to provide detailed evidence to demonstrate when it was brought onto the site

and how it is occupied. The oral evidence at the Inquiry was enough to establish the mobile home was lived in but went no further than that.

43. In addition, I have concerns about the storage structure and the imprecision of the allegation that fails to identify the buildings caught by the phrase 'non-agricultural buildings' in both the allegation and the requirements.
44. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the land where the breach of planning control is alleged to have taken place. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeals under the various grounds as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Appeal E

45. The main issue in this appeal is whether, on the balance of probabilities, the dwelling now known as Orchard Leigh House, has been occupied for a period of at least ten years in breach of condition 3 of planning permission EPF/345/83 and that the use is lawful. I therefore consider that the description of what is being sought as lawful should be *Occupation of the dwelling granted planning permission under reference EPF/345/83 contrary to Condition 3 (agricultural occupancy)*.
46. The appellant relies upon written evidence in the form of affidavits from Mr John Evans, Mr Lloyd Evans, Mr Terry Evans, Mr James Smith and Mr Mark Wilson. Oral evidence under affirmation at the Inquiry was provided by Mr Lloyd Evans, Mr Terry Evans and Mr Ross Evans. While it is clear that Mr John Evans lived in the property since it was first built until he sold it to his brother Mr Terry Evans the substantive part of the oral and written evidence for this appeal relates to the period in which Mr Terry Evans and his family occupied the residential dwelling. The oral evidence at the Inquiry was that he moved into Orchard Leigh House late 2002/beginning of 2003.
47. The Council now accept that following the oral evidence at the Inquiry that, on the balance of probabilities the house known as Orchard Leigh House has been occupied in breach of condition 3 for over ten years.
48. I note that there is a legal agreement with a covenant relating to the occupation of the dwelling granted in 1983. I also note that section 191 of the Act states that any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any requirements of an enforcement notice or breach of condition then in force. In my view, the legal agreement is not a limitation subject to which planning permission was granted and there is no enforcement notice or breach of condition notice in force in relation to condition 3.

49. The written and oral evidence demonstrates in a precise and unambiguous way that the house known as Orchard Leigh House has been occupied by persons for over ten years in breach of condition 3. As such the condition has not been complied with since approximately the end of 2002. This is an uninterrupted period of more than ten years prior to the date of the application because the dwelling was occupied by persons not working in agriculture. The occupation of the dwelling by any person continuing the same breach of condition 3 is thereby immune from enforcement action under section 171 (3) of the Act. As such, the appeal succeeds.
50. For the reasons given above I conclude on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the occupation of the dwelling granted under planning permission EPF/345/83 contrary to condition 3 of that permission was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Appeal F

51. The main issue in this appeal is whether, on the balance of probabilities, the use of the land edged red (excluding the blue edged land) on Plan CC001 has been used for Class B8 of the Use Classes Order 1987 (as amended), excluding the land edged blue, for the storage of vehicles and parts; bicycles; plant; machinery; building materials; racking and shelving; tyres and wheels; shipping containers; wood/timber; metal; furniture; decorating materials; perfume; tools and equipment; fuel; scaffolding; trailers; unoccupied mobile homes; and the stationing of a mobile home for residential use on the land cross hatched black on Plan CC001³.
52. The appellant is in effect seeking a lawful development certificate for a mixed storage and stationing of a mobile home for residential use on the yard planning unit. The purpose of the exclusion of the blue area is because it is an area occupied by nursery glass houses and an area of land directly to the west of the boundary with Orchard Leigh House which was shown as grass for much of the period of aerial photographs submitted.
53. To my mind the application for a lawful development certificate cannot be dealt with without understanding the use taking place in the whole of the planning unit. If it is to be successful the use of the planning unit should be able to be demonstrated for a period of ten years and that the use was carried out continuously such that, at any time in the relevant period, the local planning authority could have taken enforcement action against the unauthorised use.
54. While I have found that there are three planning units that have evolved on the original Messenger Nursery holding since the 1980's the evidence relating to exactly when the units of occupation became distinct is less than clear, albeit I believe it was more likely than not around the time the fence to the western planning unit fence was erected, but the yard planning unit may have evolved further after that time.

³ The appellant's amended description refers to hatched black. However, the area is actually cross hatched black.

55. However, what is not clear is whether the area of land coloured blue was part and parcel of the yard planning unit use from the creation of that planning unit or whether there were in fact two chapters to the history of the yard planning unit. One before the use of the land coloured blue was incorporated within the wider yard use and one after. The evidence is less than clear on this point.
56. There is also the matter of the 1987 EN. Its requirements have not expired. Section 181 of the Act states an EN shall have effect against subsequent development. Compliance with an EN in respect of b) discontinuance of any use of land or c) any other requirements of the notice shall not discharge the notice. The requirements of the 1987 EN were:
- (1) Discontinue the use of the land for the purpose of storing commercial motor vehicles and skips other than those used solely for agricultural purposes in connection with the working of the land.
 - (2) Discontinue the use of the land for the purposes of storing and sorting imported spoil and waste materials.
 - (3) Remove from the land all commercial vehicles and skips other than those used solely for agricultural purposes in connection with the working of the land.
 - (4) Remove from the land all imported soil and waste.
57. I note that the statement of common ground refers to the 1987 EN as being extant. I am satisfied that the 1987 EN is still in force and the requirements relating to commercial motor vehicles and commercial vehicles are relevant to this appeal.
58. No commercial vehicles were referred to by the appellant as being used solely for agricultural purposes on the appeal site as no agricultural activity was taking place. Therefore, in my view, in so far as there are commercial vehicles on the yard planning unit these are in breach of the 1987 EN. As examples the written statement of Luke Draper refers to storage of a van at the appeal site; the written statement of Mr Spinks refers to storage of a trailer; the affidavit of Lloyd Evans refers to a tanker lorry; the affidavit of Mr J Evans refers to Knight Groundworks storing their construction equipment including rollers, JCB's and excavators. In addition, any commercial vehicles on the yard planning unit, which must include those belonging to Nelsons by virtue of requirement 3 of the 1987 EN would be on the land in contravention of the 1987 EN. As such, part of the mixed use sought as lawful by the appellant is in contravention of requirements of the 1987 EN and therefore cannot be lawful.
59. The supporting information to the application the subject of the appeal refers to parking for plant and private motor vehicles. Parking is, to my mind different from storage. Parking is an activity whereas storage of cars is where something is left or stored. This brings some ambiguity into the evidence provided on this matter. Moreover, if parking were ancillary to the storage use, which may be the case in relation to Nelsons commercial vehicles those vehicles are in breach of requirement 3 of the 1987 EN.
60. The documentary evidence prior to Nelsons occupation of part of the yard are until 2014. Nelsons occupation started around 2017. There is a 2-3 year gap in the documentary evidence. The Council's evidence indicates that there was

some noticeable change in how the yard planning unit was operated when Nelsons occupied the site as local residents/third parties brought it to the attention of the Council. Whether or not that was a material change the evidence is inconclusive, albeit there was a noticeable change.

61. Aerial photographs show changes in the areas and level of coverage of the yard planning unit. The level and type of use of the yard planning unit has not been demonstrated for the whole of the ten year period and the changes in what was stored, the height of storage across the yard planning unit and the intensity of the use and how that has changed has not been set out in a clear and unambiguous way.
62. In relation to the mobile home for residential use the appellant seeks in the appellants revised description of development an independent residential use i.e. residential occupation of the mobile home stationed on the yard planning unit. The evidence in relation to the mobile home was all delivered as oral evidence. The detail of how the mobile home is occupied is disputed in that the Council consider it is ancillary to Orchard Leigh House. I am satisfied that the stationing of the mobile home for residential use is within a separate planning unit to Orchard Leigh House and therefore cannot be ancillary to that residential use. However, there is no clarity as to the status of the mobile home and how it is occupied/used, due to the limited evidence provided. The evidence in relation to the residential use of the mobile home is in my view imprecise.
63. The Council have alleged that a primary retail use pertaining to Nelsons activities has taken place on the yard planning unit. The evidence provided by the appellant is less than persuasive. It is clear Nelsons stores shelving and racking at the yard planning unit. Part of their business is also to buy and sell shelving and racking.
64. A third party refers to being approached for directions to the site that sells steel racking and indicated it was the internet advertising of the retailer using the site. Various web sites are provided by another third party referring to retail sales at the site. Another email refers to the sale of all types of building materials on a retail basis and referenced a Facebook page and Gumtree to support the sales allegation.
65. The appellant's evidence is not clear an unambiguous in relation to whether or not any person or company operating at the site sells to visitors to the site shelving, racking, or building materials. It is not clear whether or not customers can come and view the shelving and racking prior to purchase and whether or not customers pay for the goods online. There was no direct oral evidence from the operators Nelsons about how the retail element of their business operates. In my view, the ambiguity and lack of precision in relation to sales carried out by Nelsons or the building materials is such that I cannot reasonably conclude whether or not it is a primary or ancillary use if it does indeed take place.
66. The Design and Access Statement relating to the fencing application the subject of the appeal decision in 2008 refers to the area as being in horticultural use. Depending on the exact ten year period being claimed by the appellant for the storage use, which is less than clear, means that it may or may not be relevant.

67. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the land edged red (excluding the blue edged land) on Plan CC001 for Class B8 of the Use Classes Order 1987 (as amended), for the storage of vehicles and parts; bicycles; plant; machinery; building materials; racking and shelving; tyres and wheels; shipping containers; wood/timber; metal; furniture; decorating materials; perfume; tools and equipment; fuel; scaffolding; trailers; unoccupied mobile homes; and the stationing of a mobile home for residential use on the land cross hatched black on Plan CC001 was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Ms Foster	Of Counsel instructed by Mr Collins
She called	
Mr A F R Collins MRICS	Managing Director, Collins and Coward Ltd on
MRTPI MCIT MILT MEWI	behalf of the appellants
Mr Ross Evans	
Mr Terry Evans	Appellant
Mr Lloyd Evans	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ranatunga	Of Counsel instructed by Nathalia Boateng, Legal
	Services Manager, Epping Forest District Council
He called	
Mr Alastair Prince MA	Planning Officer, Epping Forest District Council

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Revised enforcement notice plan submitted by the Council
- 2 Revised enforcement notice plan (amended) submitted by the Council
- 3 Third party comments submitted by the Council
- 4 D&A statement and written representations for fencing appeal submitted by the Council
- 5 Case law referred to in Council's opening submitted by the Council
- 6 Company House information for Nelsons submitted by the Council
- 7 Email confirming withdrawal of ground of appeals submitted by appellants.
- 8 Nelsons Company webpage submitted by the Council
- 9 Revised allegation for EN submitted by the Council
- 10 Revised description for Appeal F development submitted by the appellant
- 11 Policies DBE9, RP5a, DM22 and NC1 submitted by the Council
- 12 Revised description and Plan for Appeal F development submitted by the appellant
- 13 Draft conditions submitted by the Council
- 14 Draft conditions submitted by the Council
- 15 Description of mobile home submitted by the appellants

DOCUMENTS SUBMITTED AFTER ADJOURNEMENT ON 28 JANUARY 2022

- 1 Map showing public footpaths and public rights of way submitted by the Council.
- 2 Emails between the parties concerning site visit arrangements submitted by the Council.
- 3 Letter date 2 February 2022 from Collins and Coward Ltd submitted by appellants

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 11 November 2020 the matter described in the First Schedule hereto, constituting a failure to comply with a condition or limitation subject to which planning permission has been granted, in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(3) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Planning permission reference EPF/345/83 was granted on 14 July 1983 for a detached house and double garage. Condition 3 of that permission required that:

‘The occupation of the dwelling hereby permitted shall be limited to persons wholly or mainly employed, or last employed, locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act, 1971, or in forestry, or a dependant of such a person residing with him (but including a widow or widower of such a person.).’

The condition has not been complied with since approximately the end of 2002, being an uninterrupted period of over ten years prior to the date of the application, because the dwelling was occupied by persons not working or last employed in agriculture or a dependent of such a person. The occupation of the dwelling by any person continuing the same breach of condition 3 is thereby immune from enforcement action under s171(3) of the Town and Country Planning Act 1990 as amended.

Signed

Hilda Higenbottam

Inspector

Date: 31 March 2022

Reference: APP/J1535/X/21/3272066

First Schedule

Occupation of the dwelling granted planning permission under reference EPF/345/83 contrary to Condition 3 (agricultural occupancy).

Second Schedule

Land at Orchard Leigh House, Nursery Road, Nazeing, Essex EN9 2JF

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 or 187A of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 31 March 2022

by Mrs H M Higenbottam BA(Hons) MRTPI

Land at: Orchard Leigh House, Nursery Road, Nazeing, Essex EN9 2JF

Reference: APP/J1535/X/21/3272066

Scale: NTS

