



Appeal Decision

Site visit made on 31 October 2023

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 January 2024

Appeal Ref: APP/J1535/C/22/3299631

**Land at Leaside Industrial Park, Sedge Green, Nazeing, Waltham Abbey
EN9 2BF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Pasquale Milazzo against an enforcement notice issued by Epping Forest District Council.
- The notice was issued on 27 April 2022.
- The breach of planning control as alleged in the notice is: without planning permission: the use of the Land for the stationing of caravans/mobile homes for residential purposes.
- The requirements of the notice are:
 1. Cease the use of the Land for the stationing of caravans/mobile homes.
 2. Remove the caravans/mobile homes shown hatched on the attached plan from the Land.
 3. Remove all resulting debris from the site.
- The period for compliance with the requirements is: 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission (DPA) is deemed to have been made under section 177(5) of the Act.

Summary of decision: the appeal is dismissed, and the enforcement notice is upheld with a correction and variations as set out in my formal decision below.

Preliminary and Procedural Matters

1. The enforcement notice (the Notice) follows an earlier one issued 16 Dec 2021, but subsequently withdrawn by the Council.
2. The Council has confirmed that copies of the Notices were served on occupiers of the caravans.
3. Epping Forest District Local Plan 2011-2033 (2023) (EFDLP) was adopted in March 2023. The appellant and the Council have been given opportunity to comment on this change.
4. In December 2023 the National Planning Policy Framework (the Framework) was updated. No changes were made to the matters raised by the appellant and the Council, and it has therefore not been necessary to seek the views of the parties.

The Notice

5. I am required to ensure the Notice is in order, considering Section 173 of the Town & Country Planning Act 1990, which relates to the content and effect of an enforcement notice.

6. The alleged breach of planning control, described in Section 3 of the Notice, relates to the use of the land for the stationing of caravans/mobile homes for residential purposes. However, it is a material change of use of land which constitutes development under section 55 of the Act, and not merely any change. In this case it is clear that the change is a material one, from an industrial use to a residential one, and neither party have suggested otherwise. There would therefore be no injustice to the appellant or the Council were I to correct the Notice to insert the words "material change" into the allegation before the word "use".
7. Section 4 advises the purpose of the Notice is to remedy the breach of planning control. However, Section 5(i) of the Notice requires cessation of the land for the stationing of caravans/mobile homes, and require their removal, without reference to the residential use.
8. It is clear that the appellant has made his appeal on the basis of the use of the caravans for residential use, and has had the opportunity to make his case in full; in doing so he has made representations as to the effects of cessation of the residential use. There would therefore be no injustice to the appellant or the Council were I to vary the Notice to require the cessation of the residential use in requirement 5(1.).
9. Section 5(2.) includes a typographical error, in that it requires "removal of the caravans/mobile homes show (sic) hatched on the plan attached". There is also no hatched area shown on the plan.
10. With its appeal statement the Council provided a revised plan, with hatching, to replace that attached to the Notice. But that plan relates to a larger site area, including land not currently subject to the Notice. The appellant has therefore had the opportunity to comment on the area to be hatched through the appeal process, and has done so, but increasing the site area subject to the notice would cause injustice to the appellant. However, there would be no injustice to the appellant or the Council were the typographical error corrected, or the hatched area added to the plan accompanying the Notice.
11. Accordingly, in my formal decision, I have corrected Section 3 of the Notice by inserting the words "material change", varied Section 5(1.) to make reference to cessation of the residential use, corrected the typographical error in Section 5(2.), and attached a revised plan showing the hatched area.
12. The appellant has also made reference to matters concerning the Council's letter which accompanied the Notice. However, the letter is not part of the Notice, and I am satisfied that the appellant has had a fair opportunity to make his case fully through the appeal process.

The appeal on ground (c)

13. Appeals on ground (c) are made on the basis that the matters alleged (if they occurred) do not constitute a breach of planning control.
14. In 2011 a Certificate of Lawfulness¹ (LDC) was issued by Epping Forest District Council for land south of the appeal site, on the Leaside Nursery, as it was at the time. It acknowledged that use of a nursery office for occasional overnight accommodation, in association with horticultural use of the land, would have

¹ LPA reference: EPF/0172/11

been lawful at the time that application was made. In 2012 a further LDC² was issued for that land confirming that it would have been lawful to station three caravans for residential use by seasonal agricultural workers, at the time the application was made.

15. The appellant also owned the former Sedge Gate Nursery, and in 2015 gained planning permission³ for the erection of industrial uses across both nursery sites. That development was carried out, and is now the Leaside Industrial Park.
16. The land subject to the Notice is a part of the former Sedge Gate Nursery, and was therefore not part of the land subject to the LDCs. With the development of the Industrial Park the land is no longer used for agricultural purposes. It is part of a planning unit in industrial use. Any previous lawful use rights for residential deriving from the 2011 and 2012 LDCs have therefore been lost by the subsequent material change of use of the Land to industrial use.
17. Therefore, even if in 2012 residential use for horticultural workers in caravans could occur on the former Leaside Nursery, residential use of the Land at the time the Notice was issued required planning permission. As no planning permission has been granted for residential use, the development alleged constitutes a breach of planning control.
18. The appeal on Ground (c) therefore fails.

The appeal on ground (a) and the DPA

Main Issues

19. The main issues are:

- whether the proposed development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
- the effect of the proposed development on the openness of the Green Belt;
- the effect of the proposed development on the character and appearance of the area;
- The suitability of the development in terms of flood risk;
- the effect of the proposed development on the living conditions of residents on the land, with particular regard to the industrial nature of the location;
- the effect of the proposed development on biodiversity;
- the personal circumstances of the existing residents; and
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

² LPA reference: EPF/0265/12

³ LPA reference: EPF/2319/14

Whether inappropriate development in the Green Belt

20. The land is an area of the Leaside Industrial Park located within the Green Belt.
21. EFDLP Policy DM4 broadly conforms to the thrust of national Green Belt policy set out in the Framework.
22. Paragraph 147 of the Framework advises that inappropriate development is, by definition, harmful to the Green Belt, and should not be approved except in very special circumstances.
23. Paragraph 150 states that material changes in the use of land are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
24. Neither the Council nor the appellant have made the case for conflict with the Green Belt purposes, and I also have no evidence that the development would do so.
25. Whether the development is inappropriate development in the Green Belt, is therefore dependent on whether it preserves its openness.

Openness

26. Paragraph 137 of the Framework states that the essential characteristics of Green Belts are their openness and their permanence.
27. Although the Land is located within an Industrial Park, and adjacent to a caravan park, close-boarded timber fencing with concrete posts, the upper parts of the caravans, and a large satellite dish are visible from the access road through the industrial park. I have not been provided with information relating to the condition of the Land prior to the development. However, with the evidence before me, including my site visit, and despite its industrial location, these elements reduce the visual openness of the Green Belt in this location.
28. At the time of my visit the residential use of the land comprised two static caravans, a shed, other structures and storage facilities, outdoor furniture, washing lines, satellite dish, other domestic paraphernalia and boundary fencing. Spatially, considered as a whole, they reduce the openness of the Green Belt.
29. The appellant advises that re-location of the caravans to the present site has had a neutral effect on the openness of the Green Belt. But, other than the suggestion that residential caravans could have been sited on the former Leaside Nursery prior to the development of the Industrial park, I have no information before me relating to any previous use in another location, or the planning status of that use.
30. The development therefore does not preserve the openness of the Green Belt. As a consequence, the proposal is inappropriate development in the Green Belt, which is, by definition, harmful to the Green Belt. Substantial weight should be given to any harm to the Green Belt.
31. Unless very special circumstances are found to justify the development, it therefore conflicts with EFDLP Policy DM4 and Chapter 13 of the Framework, which together seek to protect Green Belt land.

Character and appearance

32. Although the appeal site is located on an industrial park, it also lies within the Lee Valley Regional Park (LVRP). The LVRP was created by Act of parliament in 1966 as a “green lung” for London, Essex and Hertfordshire to provide facilities for sport, recreation, leisure, entertainment and nature conservation.
33. EFDLP Policy DM2 expects developments to assist in the character, appearance and landscape setting of the LVRP.
34. The location of the land within the industrial park limits the contribution it makes to the landscape setting of the LVRP, in either its developed or undeveloped form. Although I have identified harm to the visual openness of the green belt, the development has little effect on the character or appearance of the area, which is industrial.
35. In conclusion, the development is not harmful to the character and appearance of the area and accords with the relevant parts of EFDLP Policy DM2, which are described above.

Flood risk

36. The appellant advises there have been no issues with flooding in the area. He also provides an extract from a flood risk assessment submitted with a planning application which suggests there is a low or very low risk of surface water flooding of the Land.
37. However, the Land is located within Flood Zone 2 on account of fluvial flood risk (that arising from rivers or the sea).
38. EFDLP Policy DM15 relates to managing and reducing flood risk. It requires that development proposals within Flood Zone 2 demonstrate that the requirements of the Sequential Test, and if necessary the Exception Test, are met. Where required by national policy and guidance, it also requires a site-specific flood risk assessment (FRA).
39. National policy is found in Chapter 14 of the Framework. In particular, paragraph 159 requires development to be directed away from areas at highest risk, permitting development only where necessary, and where it can be made safe for its lifetime without increasing flood risk elsewhere. Paragraph 162 seeks to steer new development to areas with the lowest flood risk. Paragraph 168, and footnotes 55, require the provision of a site-specific flood risk assessment for all development in Flood Zones 2 and 3.
40. National guidance is found in the Planning Practice Guidance (PPG), Chapter 7 “Flood Risk and Coastal Change”. Paragraph: 023 Reference ID: 7-023-20220825 states that the sequential approach is designed to ensure that areas at little or no risk of flooding are developed in preference to areas at higher risk. Which means avoiding, so far as possible, development in current and future medium and high flood risk areas. Paragraph: 024 Reference ID: 7-024-20220825 states that the Sequential Test ensures that a sequential, risk-based approach is followed to steer new development to areas with the lowest risk of flooding.
41. The appellant refers to a flood risk assessment prepared for an earlier development involving residential caravans on the land. Even so, it does not

adequately address the Sequential Test, as there is no consideration of the availability of alternative sites for the use in areas at lower risk of flooding. The Sequential Test is therefore not met.

42. In addition, although the majority of the site is gravel surfaced, there is no consideration given to the potential effects of close boarded fencing on flood risk elsewhere.
43. In conclusion, the land is not suitable for the development in terms of flood risk, and conflicts with EFDLP Policy DM15, which is described above. It also conflicts with policies of the Framework and the Planning Practice Guidance, which are described above and which seek to direct new development to areas with the lowest risk of flooding.

Living conditions

44. The Council's concerns in relation to living conditions of occupiers relates to its location on an industrial park and safety considerations arising from the absence of footpaths and lighting.
45. Occupants have access to gated and fenced private enclosed space and, I am advised, mains water and sewerage treatment facilities. However, I have seen no evidence that the development provides improved facilities for the horticultural workers resident there.
46. The roughly triangular-shaped land abuts a substantial industrial building, a large metal tank, and an established traveller caravan site. The appellant advises only light industrial activities are carried out at the industrial park, and no chemicals or hazardous substances are kept on site. Nevertheless, I have not been advised of the industrial use of the adjacent building, or the purpose or contents of the tank, and the industrial character of the area is not one normally considered suitable for residential use. Neither is the absence of suitable and safe access for pedestrians through the industrial park, or the absence of lighting appropriate for residential use, particularly for children.
47. I note the proximity of the caravan site adjoining the land, but have not been provided with details of that development or its planning status. I also note it is not accessed through the industrial park, and is therefore not directly comparable to the appeal site.
48. The Council's Commercial and Regulatory Services Residential Team have also advised that the caravans currently on the land are not suitable for permanent year-round occupation, although they could be improved or replaced to achieve higher energy efficiency/insulation standards, such as BS3632⁴. However, in this respect, although I am considering the use of the land, not the design of individual caravans, it would be possible to impose a planning condition allowing only caravans meeting BS3632 standards to be occupied residentially.
49. In conclusion, the development is therefore harmful to the living conditions of residents on the land, with particular regard to the industrial nature of the location. It conflicts with the relevant aspects of EFDLP Policy DM9 which requires high quality design which promotes healthy communities and individuals, reduces social exclusion, and the provision of high-quality safe pedestrian and cycle routes.

⁴ British Standard 3632

Biodiversity

50. The Council alleges potential adverse impacts on the Epping Forest Special Area of Conservation (EFSAC) in terms of atmospheric pollution as a result of increased traffic using roads through the EFSAC.
51. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require me to determine whether the development is likely to have a significant effect on the EFSAC, alone or in-combination with other plans or projects, applying a precautionary approach. Where it would be affected, consent can only be granted if there are no alternative solutions, there are imperative reasons of overriding public interest, and suitable compensatory measures are provided.
52. The Council carried out an Appropriate Assessment in support of the new local plan in 2019. It identifies two potential pathways of impact whereby development is likely to have significant effects on the EFSAC. Being outside the identified 6.2km Zone of Influence, the Council has not alleged recreational impacts arising from the development.
53. In relation to Air Quality the Conservation Objectives for Epping Forest SAC include those to maintain or restore the structure and function (including typical species) of qualifying natural habitats, and their supporting processes.
54. Qualifying features include Northern Atlantic wet heaths with Erica Tetralix and European dry heaths and its supporting processes, Atlantic Acidophilous Beech forests with its structure and function and supporting processes, and Stag Beetle.
55. EFDLP Policy DM2 states that where it is not possible to conclude there would be no adverse effect on the integrity of the EFSAC or Lee Valley Special Protection Area, either alone or in combination with other plans or projects, new development will not be permitted. It also advises that contributions towards off-site measures to mitigate the likely air pollution impacts arising from development will be sought where necessary to make the development acceptable and comply with the government's requirements for planning obligations.
56. The development increases the number of residents in the area, and has the potential to result in a net increase in the traffic using roads through the EFSAC. It therefore has the potential to result in a likely significant effect on the integrity of the EFSAC as a result of atmospheric pollution.
57. In the absence of evidence from the appellant demonstrating that the development will not have an adverse impact, and of a planning obligation to mitigate any such impacts, the development would therefore conflict with development plan policies and the requirements of the Habitats Regulations.
58. In conclusion, the development is harmful to biodiversity. It conflicts with the relevant aspects of EFDLP Policies DM2 and DM22, which are described above and, which seek to ensure the district is protected from the impacts of air pollution.

Personal circumstances

59. The permission sought by the appellant is a general one for agricultural nursery workers, not one personal to the current occupiers. At the same time, the appellant has provided copies of two unsigned tenancy agreements for "dwelling known as 1A (mobile)" and "dwelling known as 1B (mobile)", Leaside Industrial Park. Each were drafted to run for a period of 12 months from 19 April 2022, with an option to renew for a further period of 6 months.
60. Article 8(1) of the Human Rights Act 1998 and Article 1 of the First Protocol provide rights for respect to private and family life, home and property. Were I to dismiss the appeal and uphold the notice the rights of the current residents would be breached. However, they are qualified rights and, in that event they must be balanced against the legitimate interests of others and the wider public interest. In doing so, the best interests of the child must be a primary consideration.
61. The current occupants of the caravans have not made representations for consideration at the appeal, but the appellant has provided some information relating to the potential implications for them should the use be required to cease. One caravan accommodates parents and a young family, which includes a one-year-old baby; the other accommodates parents and a young adult.
62. Three of the occupiers pick salad produce at a local nursery, earning the minimum wage, and the baby's mother is unable to work due to her caring responsibilities. The appellant advises the families pay a rent more than 50% below the market value, cannot afford market rentals locally, and would struggle to find alternative accommodation. Leaving their current homes could result in difficulties maintaining their family life and jobs, and keeping the family unit together.
63. Neither family have a vehicle, and work starts in the early hours of the morning. Bus journeys would require some walking on the road, without continuous footways and, in the winter months, travel to work would involve walking or cycling in the dark.
64. In relation to the main issues I found harm associated with the openness of the green belt, living conditions for residents, flood risk, and biodiversity. Notwithstanding the appellant's view that the appeal site represents a better standard of accommodation than they would find elsewhere, the poor living conditions and flood risk must also be considered in considering the interests of all occupants, including the child. The relative weight to be given to these and other considerations are examined below in establishing whether there are very special circumstances.
65. At the same time, although no appeal has been made on ground (g), it is clear that, should I dismiss the appeal and uphold the notice, the time period for compliance of 2 months would be insufficient to allow occupiers to make alternative arrangements. A longer period 6 months would be more proportionate in the circumstances.

Other considerations

Need for horticultural nursery workers

66. Two of the current occupants of the land are workers at South View Nursery, five-minutes from the appeal site, and its owner claims the agricultural sector has suffered severe labour shortages.
67. Nazeing Parish Council has expressed conditional support for use of two mobile homes on the land for horticultural workers. The appellant also advises he charges a token rental, below market rates, although that has not been evidenced in the information before me. In addition, the Council recommends a planning condition limiting the occupation of the site to agricultural workers, in the event that I allow the appeal.
68. General reference is made to support for growth in the food production and glasshouse industry in EFDLP Policy SP1, which sets the spatial development strategy. However, despite the apparent local support for horticultural workers to service local nurseries, I have not seen any significant or compelling evidence demonstrating the nature or extent of need for residential accommodation for horticultural nursery workers; or for a particular unmet need in this location. Neither is there demonstration of a need for below-market rents to accommodate those workers, or a mechanism before me for securing it in relation to this development. There is therefore not compelling evidence that the development support a particular need for horticultural nursery workers in the locality, now or in the longer term.

Whether there are very special circumstances

69. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (VSCs). VSCs will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
70. The development is inappropriate development in the Green Belt, and harms openness, and I must therefore attribute substantial weight against the development. I also attach significant additional weight against the development arising from the harm I identify in relation to flood risk, living conditions, biodiversity, and the consequential conflict with development plan policies and policies of the Framework.
71. In favour of the development, I attribute significant weight to the personal circumstances of the current occupiers and, with the information before me, limited further weight to the contribution the development makes to the need for agricultural nursery workers.
72. The harm to the Green Belt is therefore not clearly outweighed by the other considerations, and the very special circumstances required to justify a grant of planning permission have not been demonstrated.
73. Refusal of the DPA and upholding the Notice would interfere with the rights of the current occupiers to peaceful enjoyment of their possessions, and to a private and family life and home, under Article 1 of the First Protocol and Article 8 of the Human Rights Act 1998. However, interference with them in this instance would be in accordance with the law and in pursuance of the protection of the Green Belt and contrary to the development plan, which are

well-established and legitimate aims. Subject to a variation of the time for compliance with the requirements of the Notice to 6 months, it is therefore proportionate and necessary to refuse to grant the deemed planning permission. The protection of the public interest cannot be achieved by means that are less interfering with their rights.

74. For the reasons above, I conclude the development would conflict with the development plan as a whole and the approach in the Framework. There are no other material considerations that require a decision to be made other than in accordance with the development plan, and the appeal should therefore be dismissed.

Decision

75. It is directed that the enforcement notice is corrected by:

- Inserting the words “material change of” into the allegation before the word “use”.

76. And varied by:

- The deletion of Section 5(1.), and its replacement with, “Cease the use of the Land for the stationing of caravans/mobile homes for residential use.”;
- The deletion of the word, “show” in Section 5(2.), and its replacement with the word “shown”;
- The deletion of the plan attached to the Notice, and its replacement with the plan below; and
- The deletion of “2 months” in Section 6, and its replacement with “6 months”.

77. Subject to the correction and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Peter White

INSPECTOR



Plan

This is the plan referred to in my decision.

Peter White BA(Hons) MA DipTP MRTPI

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Scale: NTS

