



Appeal Decision

Inquiry held on 23 - 25 January 2024

Site visit made on 25 January 2024

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 March 2024

Appeal Ref: APP/J1535/C/23/3329327

Land at Messengers Nursery, Nursery Road, Nazeing 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.
- The appeal is made by Mr J Evans against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice was issued on 15 August 2023.
- The breach of planning control as alleged in the notice is: Without planning permission:- Change of use of the yard area to a mixed use comprising storage and distribution of shelving and racking, stationing of portable buildings and containers, storage and parking of non-agricultural commercial vehicles, storage of non-agricultural equipment and vehicles, and erection of a storage building for non-agricultural purposes to facilitate use.
- The requirements of the notice are:
 - i. With the exception of the area shown outlined in green on the attached plan, cease the use of the land for the storage, distribution and parking of items not connected to its lawful use for agriculture.
 - ii. Remove from the land the storage structure to the northwest corner of the area shown outlined in blue at the approximate location on the attached plan.
 - iii. Remove from the area shown outlined in blue at the approximate location on attached plan all portable buildings, containers, shelving, racking, commercial vehicles, caravans (excluding the unit shown outlined in orange), and any other item not used in connection its lawful use for agriculture.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. All evidence at the Inquiry was given under affirmation.
2. An appeal on ground (f) was withdrawn before the Inquiry.
3. Since the enforcement notice was issued, the National Planning Policy Framework (the Framework) was updated. But there are no changes of any consequence for the issues in this appeal.

Reasons

The Notice

4. The main parties have agreed that the specification of the land in paragraph 2 of the notice can be corrected to explain that the breach is occurring only in the area outlined in blue on the plan attached to the notice, known as the yard.
5. Prior to the Inquiry, an agreed amended plan for the enforcement notice was provided. This corrects a boundary error around a single storey corrugated metal building adjacent to the northeast corner of a tennis court. The appellant states that this building is clearly within the yard. As such it is part of the appeal site and should be included within the site boundary.
6. The amended plan also more clearly identifies the storage building referred to in the notice and the main parties have agreed that requirement (ii) in paragraph 5 of the notice could be redrafted to be more precise in respect of this building. I have no reason to disagree.
7. At the Inquiry, the main parties agreed that the use alleged is not a "mixed use" and so this term should be deleted from the allegation in paragraph 3 of the notice. As such, there is agreement that the use alleged is storage and distribution. It was also agreed that it is of no consequence what is stored on the site, such that the phrase "of shelving and racking" in the allegation should be changed to "including of shelving and racking."
8. The main parties have agreed that no injustice would occur as a result of any of the above corrections and I have no reason to believe any injustice would occur either and so I shall correct the notice in all these respects, drawing on my powers under section 176(1) of the 1990 Act. I shall also correct a typographical error in respect of the postcode for the site.
9. Requirement (iii) in paragraph 5 of the notice specifically excludes a caravan outlined in orange on the plan. There is a dispute between the main parties over whether the effect of this would be to grant planning permission for this unit, due to section 173(11) of the 1990 Act. But the allegation in paragraph 3 of the notice makes no reference to this caravan or its use and so the notice cannot grant planning permission for it.
10. Based on the grounds of appeal pleaded, the main issues are:
 - whether it was too late for the Council to take enforcement action due to the time limits set out in section 171B of the 1990 Act, ie the ground (d) appeal;
 - if the above ground of appeal is not successful, whether planning permission ought to be granted for the breach of planning control alleged, ie the ground (a) appeal; and
 - whether the period for compliance with the notice falls short of what should reasonably be allowed, ie the ground (g) appeal.

Ground (d)

11. An appeal on ground (d) is that it was too late for the Council to take enforcement action due to the time limits set out in section 171B of the 1990 Act.

12. In a ground (d) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities and the decision must be made on the evidence provided. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
13. For the use alleged in the notice, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. No precise date of the breach has been provided in this case. So I must compare the use as it existed when enforcement action was taken with the use as it existed 10 years before.
14. During the course of the appeal, the appellant has accepted that the 'second bite' provisions of section 171B(4)(b) of the 1990 Act apply. These operate to stop the clock in enforcement proceedings and they apply in this case because the Council issued a previous enforcement notice on 20 April 2021.
15. Having read the appeal decision associated with the previous enforcement notice¹, I am satisfied that the previous notice concerned essentially the same breach and the same site that is before me now.
16. So based on the evidence before me, I must consider whether the appeal site changed to the use alleged and continued to be so used for 10 years before the date of issue of the previous notice, such that the Council could have taken enforcement action against the breach alleged at any time during that 10 year period.
17. There is no dispute that the planning unit in this case is the yard. This is outlined in blue on the (corrected) plan attached to the notice and was established by the fence around it, said to be erected in 2007. There is also no dispute that the use has at the very least been ongoing since Nelsons came on to the site in 2017. As such, the period in contention between the main parties is broadly 2011 to 2017.
18. Terry Evans's evidence is that the yard has been in continuous use for storage since acquired back in the 1980s. But he has also described the yard as a place you could get parts and, under cross-examination, where vehicles were broken for their parts to be used and sold. Under cross-examination, Ross Evans described the yard as used for "anything and everything", including storage.
19. The immediate neighbour, Tanya Bicker, described the site prior to the arrival of Nelsons in 2017 as a "junk yard". This is consistent with Karen Evan's description of the site, reported by Terry Evans. The above descriptions are not consistent with a primary use for storage and distribution. Instead, they indicate that a scrapyard and/or vehicle repairs use existed or that these may have formed part of a mixed use during the immunity period. This would fall outside of the storage and distribution use alleged in the notice.
20. By definition, storage is keeping something for a particular purpose. But evidence relied on by the appellant in this case reflects items/material abandoned or discarded in the yard. This does not constitute 'storage'. Examples include "no longer wanted household furniture that would sit there for years" before being burnt on bonfire night, referred to by Ross Evans; decking and granite boulders that were never picked up, referred to by Terry

¹ Ref APP/J1535/C/21/3276736 dated 31 March 2022

- Evans; perfume and DVDs for Mr Smith's old business that folded before 2011; parts stripped of vehicles including tyres, said to be 30 or 40 years old. These reflect a scrapyards use during the immunity period, not storage and distribution.
21. Under cross-examination, Ms Munday accepted that there was 'use' of the site pre-Nelsons and that it had increased when Nelsons came on to the site. When asked what had increased, she said the number of containers had increased and the amount of external storage. But this does not mean that a primary use of the site as storage and distribution began 10 years before enforcement action was taken. Moreover, placing storage containers on a site does not mean that the entire planning unit then has a storage and distribution use. This is relevant in respect of the storage containers said to be purchased by Mr Smith around 2009 to 2010 for a self-storage company.
 22. Terry Evans's assertions that the yard has always been used for storage and that there was never a horticultural use are undermined by the planning application he made for the fence around the site. On the balance of probability, if there was always a storage use and the planning application for the fence was made to protect goods then the application would have said so.
 23. Moreover, following a site visit on 27 August 2008, the Inspector who allowed the appeal for the fence stated in the associated appeal decision² that 'there is no dispute that the appeal site is used for horticultural purposes'. Whether there was a horticultural use at that time or not, it is clear that a storage and distribution use is not reflected in this contemporaneous documentation, to which I ascribe significant weight.
 24. I appreciate that the erection of the fence to enclose the yard may have been a substantial investment by the appellant's family. But it does not necessarily mean that the use of the site for storage and distribution had begun by that time.
 25. The appellant has provided a series of aerial images of the site over the years, which are said to show a storage use, both open air and in containers. The most important of these images is that dated 19 March 2011, ie that prior to the relevant date of 20 April 2011. But I have found it impossible to make out individual storage containers or items of open storage from this poor-quality image or to identify a particular container from the schedule produced by the appellant (Appendix D).
 26. What the 2011 image shows is ambiguous. So I do not accept that storage containers are 'clearly' present on the site from 2009, as is suggested by the appellant, who accepts that visibility is 'more limited' on the 2011 image. Moreover, Item 23 is annotated twice on the 'Document 1' version of this image, so I am not satisfied that it is precise.
 27. Appendix D reflects a stocktake of storage items and containers on the site. But in light of my concerns above about the 2011 image, the most this stocktake really shows is that there are items in a container now and that that container may have been on the yard in 2013. This does not necessarily mean that those same items were stored there in 2013 or before.

² Ref APP/J1535/A/08/2071779 dated 3 September 2008

28. The appellant has provided what are said to be extensive invoices showing the delivery of goods to be stored on the yard, including 78 invoices submitted with the statement of case. But to my mind these reflect occasional purchases, in low quantities. This is not consistent with a continued use for storage and distribution. By way of example, there are just 3 invoices for 2014, all of which relate to vehicle parts.
29. This is consistent with vehicle repairs, alluded to by Terry Evans in his evidence, rather than storage. Vehicles which have been worked on for parts and then left on the yard, cannot be said to be stored there. If this was more of an occasional hobby, as has also been indicated, then it cannot support a material change of use to storage anyway.
30. Ross Evans's evidence is that the 78 invoices are a representative sample for each year from 2009 to 2021, to show a continuous storage operation on the site, and that there are many more. Under cross-examination he accepted that the Council had questioned at the last Inquiry relating to the previous appeal³ why more than a sample had not been produced. But it has not been explained why these have not been provided now, as evidence to support the appellant's case.
31. All of the invoices associated with Lewis Evans and nearly all of the above 78 invoices display a delivery address of Orchard Leigh House. This is not the relevant planning unit (or address) which is the subject of this appeal. It is a different planning unit entirely, based on the previous appeal decision, noted above, which I have no reason to disagree with in this regard. None of the perfume invoices provided by Mr Smith show that they were for stock to be delivered to the appeal site and one displays a delivery address in Stockport.
32. Some 22 statements have been provided from individuals said to have used the site for storage or said to have delivered containers/goods to the yard. I have carefully reviewed all of these statements and I do not consider they help the appellant's case. This is because, either the storage these statements refer to does not run up until when Nelsons arrived on the site in 2017, reflecting a gap in the evidence, or they are written by friends or family of the appellant, ie people who want to help him, not independent witnesses.
33. Moreover, none of the authors of these statements have appeared at the Inquiry for their statements to have been tested by questioning. What is more, all of the statements are unsworn, meaning no sanctions would apply to their authors for anything said in them which may not be true. As such, the weight I afford to them is very limited.
34. Taking all of the above into account, on the balance of probabilities, the appellant's evidence is not sufficiently precise and unambiguous. So the appellant has not succeeded in demonstrating that prior to enforcement action being taken there had been 10 years' continuous use of the land for storage and distribution. Therefore, it was not too late for the Council to take enforcement action in respect of the use, due to the time limits set out in section 171B of the 1990 Act. As such, the appeal on ground (d) fails in this regard.

³ Ref APP/J1535/C/21/3276736 dated 31 March 2022

35. In respect of the storage building referred to in the notice, the appellant has applied a 4 year immunity period, pursuant to section 171B(1) of the 1990 Act, and states that this has been on site since early 2018. However, having accepted that the 'second bite' provisions of section 171B(4)(b) apply, the appellant must accept that the Council was not prevented from taking enforcement action against this building on 15 August 2023. This is because during the period of 4 years ending with that action being taken, the Council had taken or purported to have taken enforcement action in respect of that breach. So the storage building has not been substantially complete long enough for it to be immune from enforcement action. As such, the appeal on ground (d) fails in this regard too.

Ground (a)

36. In considering whether planning permission ought to be granted for the appeal development, the main issues are:
- whether the appeal development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
 - the effect of the appeal development on the living conditions of neighbouring occupiers, with particular regard to noise; and
 - if the development is inappropriate development in the Green Belt, whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the appeal development.

Whether inappropriate development

37. 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.
38. In respect of this main issue, the notice refers to Policies SP5, DM3 and DM4 of the Epping Forest District Local Plan 2011-2033 (2023). It has not been explained how Policy DM3 is relevant to this main issue so I consider it weighs neither in favour of nor against the appeal development in this case.
39. Policy SP5 states that the openness of the Green Belt will be protected from inappropriate development in accordance with national planning policy and Policy DM4. Consistent with the Framework, Policy DM4 states that the construction of new buildings is inappropriate development in the Green Belt.
40. Exceptions to this are specified in Policy DM4 and the Framework. But none of the exceptions in either are relevant to the storage building referred to in the notice. So having regard to the relevant development plan policies and the Framework, I conclude the storage building is inappropriate development in the Green Belt.
41. Policy DM4 is silent on changes of use. However, paragraph 155(e) of the Framework is clear that material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds) are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. So Policy DM4

is not consistent with the Framework in this regard. Consequently I ascribe Policy DM4 limited weight in my decision in respect of the change of use.

42. The appellant has explicitly relied on paragraph 155(e) of the Framework and states that the phrase "such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds" is not an exhaustive list. Whilst I accept that paragraph 155(e) is not a closed list, a list which starts with the words "such as" is a list which takes its flavour or extent from the examples given. If it was an open-ended category then examples would not need to be given.
43. The storage and distribution use alleged in the notice is not the kind of use envisaged by paragraph 155(e) of the Framework. From my observations at my site visit, it is in no way similar to the example changes of use cited in paragraph 155(e), which are uses which are relatively open in nature and so the change of use in this case is inappropriate development in the Green Belt.
44. Even if I am wrong in this regard, the change of use does not preserve the openness of the Green Belt and it conflicts with the purposes of including land within it.
45. The visual effect of the change of use on openness is readily apparent from the public footpath and cycle route to the west, the land to the south and neighbouring homes, including Century House and Orchard Leigh House, particularly their upper floors, which have clear views over the appeal site. The same effect is true of the storage building.
46. Spatially, I have seen that the use encroaches into the countryside, as does the storage building. Shelving, racking and storage containers are piled high on the site, above its fence. Even where this is not so, the visual and spatial effects of the use are in part a consequence of the palisade design of the appeal site's fence. It is see-through, a point clearly made in Terry Evans's Design and Access Statement for the fence and reflected in its Planning Statement where it states: "it allows for vision through the fence".
47. Pursuant to my powers under section 177(1)(a) of the 1990 Act and in response to the appellant's specific request, I have considered the appeal development excluding the storage building. I have also considered the appeal development excluding that building and with a reduced site area, as illustrated on drawing GA 02 revision 1 in Appendix 2 of Mr Coward's Proof of Evidence.
48. But neither of these options make any difference to the appeal development's status as inappropriate development in the Green Belt for the purposes of the Framework or the development plan. Whilst both options would reduce the effect on openness to some extent, the effect overall would still be harmful, particularly given the height to which items on the site are stored.
49. A planning condition to prevent the stacking of containers on the site, suggested at the Inquiry, would assist in this regard. But this would not address the height of other materials/items stored. No precise condition to this effect has been drafted and put before me to consider and I have taken into account concerns, expressed at the Inquiry, about trying to control storage by reference to a specific height. From the information available to me, I am not satisfied a condition to this effect would be reasonably enforceable and so it would not satisfy the test of reasonableness for conditions.

50. Taking all of the above into account, having regard to the relevant development plan policies and the Framework, I conclude that the appeal development is inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Living Conditions

51. The enforcement notice identifies that the use involves deliveries by articulated lorries as well as smaller commercial vans and vehicles, who have to wait at the gates to gain access to the yard and that this gives rise to noise impacts. In this regard, under affirmation at the Inquiry, occupants of the adjacent residential property, The Meadows, explained the effect of the use on their living conditions.
52. Their witness testimony, to which I ascribe significant weight in this case, referred to vehicles arriving at unsociable hours (the timing of CCTV images provided reflect this), vehicle horns being sounded to gain access to the appeal site and vehicles sitting idle with their engines running, waiting on private land to be let through the gates which are manually operated. In acknowledgement of this problem, signage has apparently been displayed on the front gates, to direct drivers to switch off their engines and not sound their horns. This has not been disputed by the appellant.
53. The notice also identifies noise created from 'the storing and distribution of stacking the shelving' and the Council's witness has referred to 'potential' for noise from activities on the yard. But the Council's case has not been further substantiated in this regard and the notice acknowledges that complaints have only been made about noise at the entrance gates when vehicles are waiting to enter the site.
54. The appellant has provided a Noise Impact Assessment (NIA), dated October 2021. But this long pre-dates the enforcement notice before me, it does not fully reflect the experience of the neighbours and it is based on 3 heavy goods vehicle (HGV) movements per week in and out of the site, averaged over a year.
55. At the Inquiry, Mr Smith referred to 2 big lorries a week and between 10-15 vans a day, ie 4 HGV movements a week and 30 van movements a day. As such, I am not satisfied the NIA is up-to-date or that it is truly reflective of the use enforced against by the notice before me. This is particularly the case given that the NIA states that the site operates between 08:00 and 17:00 Monday to Friday without weekend working, whereas interested party submissions clearly indicate the hours exceed this and Mr Smith admits that the hours of operation include 08:00 to 12:00 on a Saturday.
56. I am satisfied that a planning condition specifying hours of operation for the site may prevent vehicles arriving at unsociable hours. I am also satisfied a condition may be used to control reversing alarms on vehicles used by occupiers on the site (but not its visitors). But I am not satisfied that a condition may be used to move the site entrance gates away from The Meadows or that a condition may require the gates to remain open during operating hours, both proposals to prevent issues associated with idling vehicles.

57. Any planning permission I may grant would run with the land. Other occupiers of the land may justifiably want the gates closed during operational hours for reasons of safety and/or security. So such a condition would not be reasonable for the purposes of paragraph 56 of the Framework. Moreover, it would substantially nullify the benefit of the gates and fence and so it would mean occupiers would have to find some other way to keep the site secure, making such a condition unduly restrictive.
58. A scheme to relocate the gates (ie rebuild them further into the appeal site, away from The Meadows) would be an act of development in itself for the purposes of section 55 of the 1990 Act. So I cannot grant planning permission for this via a planning condition on the deemed planning application. Nothing has been provided to lead me to a different conclusion in this regard.
59. Pursuant to section 177 of the 1990 Act, my powers under ground (a) include granting planning permission for the allegation stated in the notice (as corrected) or part of it. The gates do not form part of that allegation and so I cannot grant planning permission for them through this appeal. Moreover, there is no evidence that moving the gates would constitute 'permitted development' either, noting their height, which I observed on site clearly exceeds the 2 metres that may be allowed under permitted development rights. There is no evidence any other form of planning permission exists for the gates to be relocated either.
60. The appellant has provided a scheme for a revised location of the entrance gates via drawing GA 02 revision 1 in Appendix 2 of Mr Coward's Proof of Evidence. But there is no mechanism for any revised plans to be incorporated into any deemed planning permission and it is not possible for me to impose a condition precedent, as it would be with a prospective planning application.
61. I accept that road traffic noise at the entrance to the appeal site is significant and that an extraction fan (that I heard at my site visit) on an adjacent commercial building is noisy. But, as the NIA acknowledges, an idling HGV engine has the potential to cause a significant adverse impact on occupants of The Meadows.
62. The same is true for vehicle horns being sounded to gain access to the site. There is no mechanism before me to prevent this particularly annoying, intermittent and impulsive noise. So I am not satisfied that the aforementioned road traffic noise or extract vent are sufficient justification for the above effect associated with the use on occupants of The Meadows. Moreover, there is no evidence before me that the vehicle movements generated by the use alleged are a betterment compared with those associated with the site's earlier use for horticulture.
63. I conclude that the appeal development harms the living conditions of neighbouring occupiers, with particular regard to noise. In this regard, the appeal development does not comply with Policy DM9 or Policy DM21 of the Local Plan or section 12 of the Framework.

Other Considerations

64. My attention has been drawn to jobs, private sector investment, spending potential in the district and reuse of an existing site. These are referred to by the appellant as economic benefits of the appeal development. In this regard, I

- have been referred to Policy E1 of the Local Plan and paragraph 85 of the Framework. In light of this, I give the economic benefits significant weight.
65. According to Mr Smith, it would be physically impossible to move his business on to one of his other sites and he has tried to find suitable alternative yard areas for years. Be this as it may, there is no evidence provided to demonstrate what alternative sites have been considered for the use and so I give this consideration limited weight.
66. I have been referred to planning permissions granted on other sites in the area. These include a site on the opposite side of the road from the appeal site, at Sedge Green Nursery⁴ and a site to the north of the appeal site, at Sedge Gate Nursery⁵. But I have not been provided with full details of why either of these permissions were granted. So I cannot be certain that the circumstances in those cases were the same as those in the case before me. I therefore give these permissions limited weight.
67. I have taken into account the permission granted on land immediately to the north of the appeal site, at Leaside Nursery⁶. In that case, the Council took the view that that site, in the state that it was in at the time, satisfied none of the five purposes of including that land in the Green Belt. Be this as it may, it does not mean that I must view the appeal site before me in the same way. This is because, as explained above, from all of the information available to me, including my site observations, I have reached the conclusion that the appeal development encroaches into the countryside and so I give the Leaside Nursery permission limited weight.
68. I have taken into account that if I dismiss the appeal and uphold the notice, the fence and hard-surfacing would remain, as would a number of other fixed items on the site. But I give this consideration limited weight as the removal of all the items which are attacked by the requirements of the notice would result in the site becoming significantly more open.
69. I appreciate that the appeal site sits within a context where there is neighbouring industrial development and HGV movements. But these aspects of the area's character are not good enough reasons to allow the appeal development as they are arguments that could too easily be repeated. So I give these considerations limited weight.
70. I have taken into account the fallback positions referred to by the appellant in their submissions. The first of these is identified as the resurrection of a horticultural use. But if this were possible, pursuant to section 57(4) of the 1990 Act, glasshouse horticulture is an appropriate use in the Green Belt according to the Local Plan, a point made by Ms Munday at the Inquiry. So I do not consider this fallback, if it exists, would be less desirable than the appeal development and I therefore give this consideration limited weight.
71. The second fallback is described by the appellant as a new planning application for B8 storage and distribution buildings. In this regard the appellant relies on paragraph 154(e) of the Framework. This states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt and that exceptions to this are limited infilling in villages. But taking

⁴ Ref EPF/1704/18 dated 27 October 2021

⁵ Ref EPF/2587/22 dated 6 July 2023

⁶ Ref EPF/2319/14 dated 24 June 2015

account of Map 5.20 of the Local Plan (Document 13), the appeal site is not in a village. So such a proposal, for which no planning permission exists anyway, would not benefit from paragraph 154(e) of the Framework. As such, I am not satisfied this fallback may take place and so I give this limited weight as a consideration in this case.

72. As is set out in the Framework, the Government attaches great importance to Green Belts and substantial weight should be given to any harm to the Green Belt when considering any planning application.
73. I find that the other considerations in this case do not clearly outweigh the harm that I have identified, even taking into account the exclusion of the storage building from the appeal development and the reduced site area, suggested by the appellant. Consequently, the very special circumstances necessary to justify the development do not exist. I conclude that the appeal development does not comply with Policy SP5 or Policy DM4 of the Local Plan or the Green Belt policies of the Framework.

Conclusion on Ground (a)

74. The appeal development is inappropriate development in the Green Belt, leads to a loss of openness, conflicts with the purpose of the land being included in the Green Belt and harms the living conditions of neighbouring occupiers, with particular regard to noise. The harm is not outweighed by other considerations so as to amount to very special circumstances necessary to justify the development.
75. For all of the reasons given above and taking into account all other matters raised, I conclude that the ground (a) appeal should be dismissed and planning permission refused.

Ground (g)

76. An appeal on ground (g) is that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed.
77. The appellant seeks a minimum of 12 months to comply with the notice, on the basis that it will take far longer than 3 months to clear the site. In this regard, the Council is content to leave this matter to my judgement.
78. Having seen what is currently on the site and balancing that against the Green Belt harm, I consider that the period for compliance should be extended to 6 months. This will also allow Mr Smith more time to look for alternative sites for his business.
79. The appeal on ground (g) succeeds to this limited extent and I shall extend the period for compliance accordingly.

Conclusion

80. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

81. It is directed that the enforcement notice is corrected and varied by:

- the deletion of the land to which the notice relates in paragraph 2 of the notice and its substitution with: "Land (excluding the land shown outlined in orange) at Messengers Nursery, Nursery Road, Nazeing EN9 2JF, shown edged red on the attached plan. The breach is occurring only in the area outlined in blue, known as the 'yard'."
- the deletion of the breach of planning control in paragraph 3 of the notice and its substitution with: "Change of use of the yard area to a use comprising storage and distribution including of shelving and racking, stationing of portable buildings and containers, storage and parking of non-agricultural commercial vehicles, storage of non-agricultural equipment and vehicles, and erection of a storage building for non-agricultural purposes to facilitate the use."
- the deletion of requirement (ii) in paragraph 5 of the notice and its substitution with: "Remove from the land the storage building to the northwest corner of the yard shown hatched in blue at the approximate location on the attached plan."
- the deletion of 3 months as the period for compliance with the notice and its substitution with 6 months.
- the deletion of the plan attached to the notice and its substitution with the plan attached to this decision.

82. Subject to these corrections and variation, 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.

L Perkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Anjoli Foster	Barrister, Landmark Chambers
She called	
Ian Coward	Director, Collins & Coward
Ross Evans	Nephew of the appellant
Terry Evans	Brother of the appellant
James Smith	Nelsons, occupant of the appeal site

FOR THE LOCAL PLANNING AUTHORITY:

Asitha Ranatunga	Barrister, Cornerstone Barristers
He called	
Clare Munday	Senior Planning Enforcement Officer, Epping Forest District Council

INTERESTED PERSONS:

Tanya Bicker	Local resident
Linda Miles	Local resident

DOCUMENTS

- 1 Proof of Evidence substituted Appendix F, aerial image with numbered items, dated 19 March 2011
- 2 Proof of Evidence Appendix D plan GA 01 revision 1, with numbered items
- 3 James Smith Companies House appointments data
- 4 Google Streetview image of a site in Nazeing
- 5 Nelson's self-store information
- 6 Opening Submissions of the Appellant
- 7 Council's Opening Remarks
- 8 Statement of Tanya Bicker
- 9 Email of Michael Mooney, Planning Enforcement Officer, to Tanya Bicker, dated 8 November 2023
- 10 Environmental Health Report dated 31 October 2022
- 11 Aerial image dated 19 March 2011
- 12 Aerial image dated 26 July 2014
- 13 Map 5.20 from Epping Forest District Council Local Plan 2011-2033, Site Allocations and Designations in Nazeing
- 14 Council's Closing Submissions
- 15 Closing Submissions of the Appellant



Plan

This is the plan referred to in my decision dated:

by L Perkins BSc (Hons) DipTP MRTPI

Land at: Messengers Nursery, Nursery Road, Nazeing EN9 2JF

Reference: APP/J1535/C/23/3329327

Scale: Not to scale

