

Appeals pursuant to sections 174 and 195 of the

Town and Country Planning Act 1990

in relation to

Land At 83-85 Tower Hill, Perton Lane, Checkley, Herefordshire

Council Refs: 233788 & 233789

PINS Ref: W1850/C/23/3336085 & 3336086

**CLOSING SUBMISSIONS ON BEHALF OF
THE COUNCIL**

INTRODUCTION

1. These appeals arise out of an unusual set of circumstances: a longstanding and unsuccessful campaign by a farmer to secure residential use for a remote and inaccessible parcel of land, a smouldering disagreement between neighbouring landowners, and a family's desire to build a better and more sustainable life for itself far from the madding crowd.
2. The Council did not choose to get caught up in this. When a breach of planning control was reported to it, its officers investigated and their investigations led the Council to issue an enforcement notice.
3. Nothing that the Council read or heard during the appeals has persuaded it that it was wrong to do so.

Description of the alleged breach

4. The Council indicated at the outset of the inquiry that it would not object to the Inspector amending the description of the alleged breach to:

“without planning permission the material change of use of the land to a caravan site by the stationing of a converted horsebox vehicle for residential purposes”.

5. Section 1(4) of the Caravan Sites and Control of Development Act 1960 (“the CSCDA 1960”) (and s.29(1) by reference to s.1(4) define a caravan site) as:

“(4) ... land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed.”

6. As the site is in use as a caravan site, the Council agrees that it is appropriate to reflect this in the description of the apparent breach.
7. While the Appellants object to this, the Council cannot see any prejudice to either party.
8. Mr White does not seem to wish his land to be used as a caravan site, but this is what he has done.¹

GROUND

Ground b)

9. The Appellants argue that the matters alleged in the notice have not occurred. There is no doubt that they have.

¹ References to Mr White in these Submissions are to Mr Richard White. Mr Charles White did not provide any evidence or attend the inquiry.

Council's investigation

10. Mr Chesterton gave evidence of the Council's investigation of the alleged breach:
- a. in April 2023, a member of the public informed the Council that a caravan or similar structure had been moved onto the site;
 - b. on 25 April 2023, Mr Chesterton and Ms Rebecca Jenman, principal planning officer of the Council, visited the site and observed the converted horsebox vehicle being used for residential purposes;
 - c. on 6 June 2023, Mr White attended an interview with Mr Chesterton at the Council's offices (following completion of a planning contravention notice), where he argued the stationing of the caravan on the site was lawful;
 - d. on 20 September 2023, Mr Chesterton conducted a site visit where he observed that the converted horsebox vehicle was still stationed on the site and was informed that it was still being used for residential purposes.

Definition of a caravan

Section 29(1) the CSCDA 1960 defines caravan as:

“(1) In this Part of this Act, unless the context otherwise requires—

“caravan” means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include—

- (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or
- (b) any tent”.

11. The converted horsebox vehicle on the site comes within this definition and will therefore be referred to as “the caravan” in these submissions.
12. It is a self-propelled motor vehicle which is capable of moving from one place to another. It has been converted for use as a dwelling and is powered by solar panels and gas cylinders. When the vehicle was moved onto the site it had a valid MOT which was valid until March 2024.

Use of the land

13. The lawful use of the land is agricultural use. While the occupants of the caravan of the land are involved in agricultural activity, this is on a small scale and it cannot be said that the present use is agricultural with an incidental residential use.
14. Further there is no need for an agricultural worker to live on the site with his family and no business case has been presented to support such a need.

Conclusion on ground b)

15. There is no doubt that the matters alleged in the enforcement notice occurred.
16. The caravan is used for residential purposes and it is not in a use incidental to the lawful agricultural use of the site. There would, in any event, be no need for such an incidental use on this particular site and no business case has been presented.
17. Consequently, ground b) should fail.

Ground c)

18. The Appellant argues alternatively that the matters that constitute the notice (if they occurred) do not constitute a breach of planning control. This is again not correct.
19. There is no dispute that:

- a. No relevant planning application has been submitted, or permission granted;
 - b. The time limits for which enforcement action may be taken under s.171B of the Town and Country Planning Act 1990 do not apply;
 - c. The use of the site as a caravan site does not come within permitted development rights, including under Part 5 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
20. Mr White referred repeatedly to legal proceedings decades ago. Nothing he said in relation to these assisted his case.
21. Consequently, ground c) should fail.

Ground a)

Development plan

22. The following policies are relevant:
- a. SD1 – Sustainable design and energy efficiency;
 - b. LD1 – Landscape and Townscape;
 - c. RA3 – Herefordshire Countryside;
 - d. H4 – Traveller sites;
 - e. SD4 – Wastewater treatment and river water quality;
 - f. TS1 – Residential Traveller Pitches and Sites (included in the Travellers’ Sites Development Plan Document (“the Travellers’ Sites DPD”));
23. The draft Dormington and Mordiford Group Neighbourhood Development Plan was submitted on 30 January 2024 and carries no weight.

Policy SD1

24. Policy SD1, which is concerned with sustainable design and energy efficiency, states that development proposals should create safe, sustainable, well integrated environments for all members of the community.
25. The policy further states that, in conjunction with this, all development proposals should incorporate 8 specified requirements.
26. The development does not create a safe, sustainable, well integrated environment for the community. There is further a clear breach of bullet point 9:

“create safe and accessible environments, and that minimise opportunities for crime and anti-social behaviour by incorporating Secured by Design principles, and consider the incorporation of fire safety measures”
27. The development of the site is therefore in conflict with Policy SD1.

Policy LD1

28. Policy LD1, which is concerned with landscape and township, sets out a number of criteria with which development proposals should comply. Again, no attempt has been made by the Appellants to engage with the policy.
29. It is clear that the development of the site does not comply with the policy. The first criterion requires proposals to demonstrate that the character of the landscape and townscape has positively influenced the design, scale, nature, and site selection. That has not occurred.
30. There has further been a failure to incorporate new landscape schemes and their management to ensure development integrates appropriately into its surroundings as required by the third criterion.

31. In an appeal decision dated 24 May 2016, an inspector considered the proposed development of one of the derelict buildings on the site² The appeal was dismissed. In considering Policy LD1, the inspector said (at DL 20):

“20. On the first main issue, I consider that the proposal would result in substantial harm to the character and appearance of both the structure and the area. The proposed development would not lead to an enhancement to the immediate setting. It would conflict with the SPG for the Principal Wooded Hills character area, which states that this is a highly visible landscape and that visual integrity is of paramount importance in the rural landscape. To the extent that the proposal has not demonstrated that the character of the landscape has positively influenced site selection, the proposal would be at odds with the provisions of CS Policy LD1.”

32. The development of a caravan site has had an even greater negative impact on the landscape character.
33. It was suggested by the Appellants that the development would have no greater impact than if the converted horsebox vehicle were used on the site for agricultural reasons. However, the photographs appended to Mr Chesterton's Proof show an array of domestic paraphernalia.
34. This has a completely different visual impact. One expects to see agricultural items in the open countryside, not garden furniture and laundry drying on a line.
35. While Mr White suggested that that the items would be kept to a minimum, this could not be enforced. It is difficult to see how the Council could prevent [REDACTED] [REDACTED] from sitting and barbecuing outside, or growing plants, or their children playing. And that assumes it would be [REDACTED] and their [REDACTED] living there and not others.

² Appeal Ref: APP/W1850/W/15/3133972 at Tansley Proof, App. 6.

36. The whole character of the residential use is entirely different to an agricultural use and it is seen daily by people walking along the bridleway.
37. Thus, the development is in breach of Policy LD1.

Policy RA3

38. Policy RA3 allows for residential development in rural locations outside of settlements only where it satisfies one of more of seven specified criteria.
39. Mr White suggested that the site is used to house an agricultural worker, but there is no evidence that the development meets an agricultural need so as to satisfy criterion one. In any event, it would need to comply with Policy RA4 and there is no suggestion that the development would meet the separate criteria of that policy.
40. Indeed, the development does not satisfy any criteria. As to the seventh criteria, this requires that the site: “is a site providing for the needs of gypsies or other travellers in accordance with Policy H4.”

Policy H4

Whether the site is a Traveller site

41. As policy H4 is concerned with traveller sites it is necessary to consider whether the site is a traveller site. The supportive text to the Core Strategy, at §5.2.21 states that, for the purposes of the policy “travellers” means “gypsies and travellers and “travelling show people” as defined in Planning Policy for Traveller Sites, CLG 2015 (“the PPTS”). The PPTS was updated in 2023.
42. As the Inspector noted during the inquiry, Annex 1 of the PPTS defines “gypsies and travellers” at §1 as:

“1... Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members

of an organised group of travelling showpeople or circus people travelling together as such.”

43. Paragraph 2 gives further guidance for determining whether persons are “gypsies and travellers” for the purposes of the PPTS:

“2. In determining whether persons are “gypsies and travellers” for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters:

- a) whether they previously led a nomadic habit of life
- b) the reasons for ceasing their nomadic habit of life
- c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.”

44. In the light of [REDACTED] evidence to the inquiry, Mr Tansley said that he did not believe that [REDACTED] and his family came within the PPTS definition.³

45. [REDACTED] said that, while his wife’s family was historically of gypsy heritage, he did not identify as a gypsy or a traveller and that his family did not wish to live on a gypsy and traveller site. He described himself as a nomad and said that his focus was on living a low impact lifestyle. This is different to the PPTS definition which places a focus on travelling.

46. [REDACTED] has done little travelling. He spent six years in Swindon and then three years in the Lake District. His move to Herefordshire was prompted by a desire to live in a more clement climate

47. [REDACTED] further said that he hoped to live where he is for a “long time...a few years”.⁴

³ Tansley, XIC.

⁴ Simpson, XIC.

48. As to the future, [REDACTED] said that he hoped to purchase land and to become a farmer.
49. There is nothing therefore in his past, present, or future which suggests a commitment to travelling. Instead, he aspires to sustainable living in a remote location.
50. Consequently, the Council no longer considers that Policy H4 is applicable. Notwithstanding this, the requirements of the policy are considered in case the Inspector forms a different view.

Requirements of Policy H4

51. Policy H4 states that the accommodation needs of travellers will be provided for through the preparation of a Travellers' Sites DPD. It further states that, in the absence of an adopted DPD, or where proposals are brought forward on non-allocated land, proposals will be supported where seven criteria are met. There is a caveat in respect of the first criterion, though, which is concerned with accessibility (see below). The policy states that in rural areas, where there is a need for an affordable traveller site, but criterion 1 cannot be fulfilled, then permission may be granted provided such sites can be retained for that purpose in perpetuity.
52. The Travellers' Sites DPD was adopted in October 2019, but the site is not allocated.⁵ It is therefore necessary to consider the criteria. In doing so, it can be seen that the development is contrary to no fewer than ⁵four of them.
53. **First**, by criterion 1 development proposals will be supported where sites afford reasonable access to services and facilities. This is not satisfied as:
- a. The nearest school at Lugwardine is 4 miles away;
 - b. The nearest shop, at Bartrestree 3.7 miles away;

⁵ Tansley Proof, App. 5.

- c. The nearest GP surgery is at Hampton Dene, which is 6.4 miles away.
 - d. While there is a bus stop at the junction with the A438, this is a mile from the site and travelling there would, for the most part, involve climbing a narrow road with no footway up a steep hill which is used by lorries driving to and from the quarry there.
54. **Secondly**, by the second criterion, development proposals will be supported where appropriate screening and landscaping is included within the proposal to protect local amenity and the environment.
55. However, the development cannot be adequately assimilated into the landscape, not least due the presence of bridleway DR10A running through the centre of the site.
56. **Thirdly**, by the fourth criterion, development proposals will be supported where they enable mixed business and residential accommodation, providing for the live-work lifestyle of travellers. However, the location of the site means that business opportunities that are not directly linked to the use of the land itself would be unsustainable.
57. **Fourthly**, by the fifth criterion, development proposals will be supported where they avoid undue pressure on local infrastructure and services. However, the location of the site means that the provision of services would be both difficult and costly.
58. **Finally**, by the seventh criterion, development proposals will be supported where they are capable of accommodating on-site facilities that meet best practice for modern traveller site requirements, including play areas, storage, provision for recycling and waste management. However, the site does not benefit from running water, foul drainage, or mains electricity supply.
59. Thus, if Policy H4 is applicable it is breached in any event.

Policy TS1

60. Just as Policy H4 is no longer considered to be applicable, neither is Policy TS1. However, it is again considered in case the inspector forms a different view.
61. The supportive text to Policy TS1 explains (at §5.1) that it applies to all applications for traveller sites and is to be applied in conjunction with Core Strategy policies, with policy H4 being of particular relevance. It further states that the policy:

“seeks to ensure the delivery of high quality sites that will contribute to a good quality of life for the residents and will also help to mitigate any potential impacts of the development of new pitches.”

62. Policy TS1 itself states that proposals for residential traveller pitches and sites will be supported where they conform to Policy H4 to achieve specified objectives.
63. The proposed development does not conform with any of the requirements of the policy.
64. Consequently, if Policy TS1 is applicable, the development is contrary to it.

Policy SD4

65. This requires that development should not undermine the achievement of water quality targets for rivers within the county, in particular through the treatment of wastewater.
66. It states, *inter alia*, that where development might lead to nutrient levels exceeding the limits for the target conservation objectives within an SAC river that planning permission will only be granted where it can be demonstrated that there will be no adverse effect on the integrity of the SAC in view of the site's conservation objectives.
67. A map showing the River Wye SAC Catchment is at ID1. The site is within the River Lugg SAC sub-catchment area, which is shaded red.

68. Further, as this is a development which could affect the nutrient levels exceeding the limits for an SAC designated river (the River Lugg), the Inspector is required to carry out an assessment under the Conservation of Habitats and Species Regulations 2017 as the appropriate authority.
69. The Council would normally carry out an assessment as appropriate authority, but did not do so in this case as no planning application was submitted. It is therefore for the Inspector to decide whether he is satisfied both that the policy has been breached and to carry out an appropriate assessment.

Conclusion on the development plan

70. The Appellants have therefore not only failed to engage with the development plan, the development of the site as a caravan site is plainly contrary to it.

Other material considerations

Human rights

71. The Appellants raise the issue of the human rights of the occupiers. The Council has considered these, specifically their human rights under Art. 8 and Art. 1, Prot. 1.
72. While these rights are engaged, they are qualified rights and the balance needs to be struck between the rights and the public interest.
73. It was established during the inquiry that this is not an appeal where the children would be affected by having to leave their school just before important examinations as [REDACTED] educate their children at home and intend to continue to do so. They could do so elsewhere.
74. In this case, the wider negative impacts of this development outweigh any infringements to the human rights of the [REDACTED]

Need

Supply of traveller sites

75. The Government's Planning Policy for Traveller Sites sets out (at section 4) matters that should be taken into account when determining planning applications for traveller sites. These factors are reflected in Policy H4 and the Travellers' Sites DPD. It further states (at §27) that:

“27. If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission...”

76. At present, the Council is in the process of reviewing its 5 year supply of deliverable sites and therefore is not able to demonstrate an up-to-date supply. Mr Tansley explained that he understood that the supply is currently approximately two years.

77. As to the pitch provision referred to in the Travellers' Sites DPD, the current position is:

- a. Romany Way Grafton 1 – completed;
- b. Extension to Orchard Caravan Park, Lower Bullingham 2 – not yet commenced;
- c. Openfields Bromyard 2 – completed;
- d. Extension to Pembridge 4 – not yet commenced;
- e. Extension to Oakfield Nash End Lane 4 – under construction;
- f. Leominster temporary stopping place – not yet commenced.

78. However, if the inspector agrees with the Council that [REDACTED] and his family are not travellers for the purposes of the PPTS and therefore the development plan, this lack of sites should be given no weight in the planning balance.
79. Further, even if the inspector accepts that the [REDACTED] and his family are travellers within the definition, [REDACTED] made it clear that he has no interest in living on a traveller site in any event. Consequently, the shortfall should, in that eventuality, be given little weight.

Other options available to [REDACTED]

80. If [REDACTED] and his family were required to move away from the site, he would have options. Just as he found his present location through an advert on a popular Facebook group, he could apply to similar adverts. There could further be options available to him on a farm that would be only too grateful for an agricultural hand who was able to provide his own accommodation. And he could return temporarily to a similar situation to that which he was in before, of renting a property while living in its grounds.
81. Indeed, while it is harder to quantify the opportunities available to him, he is less restricted than those seeking a pitch on a limited supply of gypsy and traveller sites.

Option to have a temporary and/or a personal permission

82. If the inspector decides to grant planning permission, it would be better that that permission is for a temporary period and is restricted to the benefit of the current residents on the site. Notwithstanding this, neither of these would justify granting planning permission.

Temporary permission

83. This is the latest attempt by Mr White to secure a residential use for the site. Even a temporary permission would establish such a use and further applications would inevitably follow.

Personal permission

84. The Government's planning practice guidance advises (at §20 of the Conditions section) that personal permissions should only be granted in exceptional circumstances:

"Is it appropriate to use conditions to limit the benefits of the planning permission to a particular person or group of people?"

Planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need..."

85. There is no exceptional circumstance that would justify granting a personal permission. While sustainable living is admirable and is the focus of national planning policy, the planning system does not encourage isolated living in inaccessible locations.
86. It is easy to have sympathy for [REDACTED] and his family. They were offered the chance to live in one of the most picturesque parts of the country rent free and face the prospect of this being taken away from them.
87. Nevertheless, the Secretary of State did not put them in this position. It may be that Mr White – who owns some 110 acres of farmland and does not need his tenants to pay rent – will choose to assist in some way.
88. It is not for the Secretary of State to do so and there are policy reasons why he should not.

Conclusion on ground a)

89. The development is contrary to the numerous development plan policies as a whole and there are no material considerations that indicate that planning permission should be granted.

Ground f)

90. The Inspector suggested that he could use his powers to permit the retention of the converted horsebox vehicle, for agricultural purposes and asked the parties to consider this.
91. The Council does not support this suggestion. There is little agricultural activity on the site and no plans have been presented. Further, the horsebox would need to be reconverted and this would only deprive the Simpson family of a home.

CONCLUSION

92. The planning history of the site sets out numerous attempts to obtain residential use on the site. Each has been refused by the Council and many applications have further been dismissed on appeal. There is nothing in this application that suggests there should be a different outcome.
93. For the reasons above and in the Council's evidence, the Inspector is respectfully invited to dismiss the appeals and to refuse planning permission.

Howard Leithead

5 June 2024

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