



Appeal Decisions

Inquiry held on 5 June 2024

Site visit made on 6 June 2024

by Grahame Kean BA(Hons) Solicitor, MRTPI, MIPRoW

an Inspector appointed by the Secretary of State

Decision date: 2 July 2024

Appeal A Ref: APP/W1850/C/23/3336085

Appeal B Ref: APP/W1850/C/23/3336086

83-85 Tower Hill, Perton Lane, Checkley, HEREFORD, HR1 4NB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Richard White and Appeal B is made by Mr Charles White against an enforcement notice issued by Herefordshire Council.
 - The notice was issued on 4 December 2023.
 - The breach of planning control as alleged in the notice is: without planning permission the use of the land for the siting of a converted horsebox vehicle for residential use that falls under the definition of a caravan.
 - The requirements of the notice are:
 1. Cease the use of the converted horsebox vehicle for residential use.
 2. Remove the converted horsebox vehicle from the land.
 3. Remove the structures associated with the use of the converted horsebox vehicle.
 - The periods for compliance with the requirements are:
 1. 100 days from the date this notice takes effect.
 2. 120 days from the date this notice takes effect.
 3. 150 days from the date this notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (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 is deemed to have been made under section 177(5) of the Act. Appeal B is proceeding on the grounds set out in section 174(2)(b) and (c) of the Act.
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Summary of decisions

1. The appeals are dismissed and the enforcement notice is upheld with a correction and variations.

Preliminary matter: gypsy and traveller status

2. The Planning Policy for Traveller Sites, December 2023 (PPTS) states:

"For the purposes of this planning policy "gypsies and travellers" means: 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."

3. In determining whether persons are "gypsies and travellers" for the purposes of PPTS consideration should be given to:- a) whether they previously led a

- nomadic habit of life b) the reasons for ceasing their nomadic habit of life; and 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.
4. The questionnaire replies made by the Council stated that the appeals involved persons claiming gypsy/traveller status but the Council did not engage with the site occupiers in this connection. The appellants' statement merely asserts that "*these travellers comply with this definition*" with no supporting evidence.
 5. The appeal site is occupied by N, his wife P and their two children of school age. N told me that whilst his wife who was Czech, was historically of gypsy heritage, he did not identify as part of the gypsy and traveller community and he and his family did not wish to live on a traveller site. He described himself as a nomad, by which he said he meant "*no home address, not travelling around*". Previously he had lived in the same place in the Lake District area, renting a house under a tenancy agreement and before then for 6 years in the same place in Swindon. N said that he intended in the future to own land and farm it. Living off-grid was now the way he had now chosen to live his life.
 6. When in the Lake District area N said he was "*transitioning*" ie he had to have an address but was in the process of cutting himself off from official ties. Therefore his use of the phrase "*no home address*" which might appear to contradict "*not travelling around*" in fact is meant to convey this separation from officialdom, as exemplified when he told me the only official link to him, as far he was now concerned, was a bank account he owned but with no address linked to it. It is reasonable to assume that P who was not present at the hearing also embraces this lifestyle. No information was supplied on her behalf that substantiated gypsy or traveller status.
 7. From the available information I find that the occupants do not meet the criteria for gypsy and traveller status in relation to the PPTS definition, not least as there has been no previous nomadic habit of life demonstrated and no intention of living a nomadic (ie travelling around) habit of life in the future.

Ground (b) and the description of the breach of planning control

8. The appellants maintained their appeals on ground (b) which is that the matters alleged in the notice have not occurred. The land is subject to the stationing of a converted horsebox vehicle which it is accepted is used for residential purposes by N and his family.
9. Whilst the site owner Richard White (W), who was present at the inquiry, made it clear that he would deliberately avoid siting a traditional caravan on the appeal site for aesthetic reasons, from the evidence it is undeniable that the structure in situ falls within the statutory definition of a caravan which includes any motor vehicle adapted for the purposes of human habitation, capable of being moved from one place to another.
10. As I saw when inspecting the appeal site, the residential use extended beyond the confines of the vehicle itself with domestic paraphernalia spread around the land. The occupants' livestock meandered through the area, including around both derelict and disused cottages (83 and 85 Tower Hill) found on the appeal site, and on adjoining land. The layout was such that in my view what may be termed the beginnings of an agricultural smallholding use carried on by the occupants, was incidental or ancillary to the main residential use.

11. Aside from small makeshift pens and the like there was no definitive boundary that separated the residential use from its subservient activities or from any part of the appeal site. In opening (and under oath) W said that the horsebox vehicle had been moved from the original plot of No 85 to that of No 83 after six months, however I saw that there was no discernible boundary between the two. The family had clearly been given the run of the land, their occupation was in the nature of a bare licence and there was no formal agreement.
12. Given these circumstances, the use of the appeal site is properly described as a caravan site which is statutorily defined as land on which a caravan is stationed and land which is used in conjunction with such land.
13. Accordingly, the matters comprised in the allegation have occurred and the appeal on ground (b) must fail. I will correct the notice more accurately to reflect the position which I am satisfied would not cause injustice to the parties.

Ground (c)

14. W argues that the appeal site has a lawful use or possibly that he is entitled to the benefit of a planning permission for use for residential purposes, whether as a garden or otherwise. He relies on a lengthy planning history that includes the service of one or more purchase notices relating to the appeal site that was or were litigated upon. W fixes on statements to the effect that the land was declared to have a reasonably beneficial use for various activities that he considers might assist in establishing such residential use.
15. There is no dispute that the land may be used for agricultural purposes. This would appear to be its pre-existing lawful use. The residential use is a material change of use and s55(1) of the Act states that the making of any material change in the use of any buildings or other land is "development" for which planning permission is required.
16. No extant planning permission exists for a dwelling or residential use and W accepts that the Council is not prevented from taking enforcement action in respect of the statutory time limits. Furthermore, although permitted development rights generally apply for certain development including the siting of a caravan site, the current use of the appeal site as a residential caravan site is not permitted development, including under Part 5 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
17. Therefore the appeal on ground (c) cannot succeed.

Ground (a)

18. The main issues are:

- character and appearance of the area;
- highway safety;
- effect of the development on adjacent occupiers;
- whether the appeal site is a suitable location; and
- personal circumstances of the occupants and availability of alternative accommodation.

Character and appearance

19. The development plan comprises the Herefordshire Local Plan – Core Strategy 2011 -2031 (LP). LP Policy LD1 seeks development that among other things, conserves and enhances important landscapes and features (not necessarily formally designated areas), protects local character and ensures development integrates into its surroundings.
20. The appeal site is in a very secluded spot surrounded by woodland and dense vegetation, accessed by a narrow lane with high hedges along which, it is undisputed, W has private rights of access. The site does not enjoy any local or nationally designated landscape protection although it is just within the Wooded Limestone Ridges local character assessment (LCA) with which the development is expected to be compatible.
21. The landscape statement submitted on behalf of the adjoining landowner, the interested person (IP) is based on a desk top study only, including a 2014 report, recent photographs, and an appeal decision of 2016, Ref APP/W1850/W/15/3133972. The 2016 decision refused permission for resumption of a residential use that would have comprised a substantial and prominent extension to one of the derelict cottages. Indeed the Council relies too much in my view on its findings that this is a highly visible landscape. The aim of the LCA for this part of the Council's area, now updated in 2023, is to preserve landscape character and sense of place created by grassland ridges, woodlands, and small hedgerow-bound fields. However, views of the site from any one point are precluded by the dense vegetation and the adjacent quarry is well screened from the site.
22. That said, the residential use which has taken place, ie the subject of the deemed application, is an incongruous form of development in this rustic environment. The untidy, sprawling domestic features of the encampment are somewhat at odds with an appreciation of local landscape qualities.
23. Vehicular access is via the unbound private track which appears to run parallel to the line of a public bridleway (BR). The BR appears sunken in parts and impassible, requiring walkers to use the private track across the face of the appeal site. However the evidence is that the BR is very little used and views from it are restricted until the site entrance is reached.
24. The existence of the BR would not in my view in or of itself militate against assimilation of the development into the landscape. I should point out that the conflict with Policy LD1 is specific to a limited number of criteria there set out and not as suggested, related to the "*landscape or townscape character*", which appears to apply to the "*setting of settlements and designated areas*". No formal designation covers the site and, in my view, it is well away from the setting of the nearest settlement or built up area.
25. However, in terms of compliance with Policy LD1, there would still be a conflict in that the domestic structures do not integrate well into their rural surroundings and, to reflect the finding of the previous Inspector in 2016, are intrusive in this "*deeply rural context*". I am unpersuaded that any landscaping mitigation would be effective since, to quote again from the 2016 decision, this could detract from what is an "*attractive glade in the woodland*".

Highway safety

26. LP Policy SD1 seeks development with safe and accessible environments. The Council as local highway authority was not consulted on the deemed application so I do not have the benefit of the highway department's views on this appeal. However, the IP objected to the development on highway grounds, providing a transport technical note which considers access to the site by vehicles and other transport modes. The 175m long track leading to the site is unsurfaced although it is clearly wide enough to afford vehicular access albeit in one direction at a time and with care where for example, the route passes gated vehicle accesses. There is no separate footway and it is on a gradient.
27. NPPF/114b encourages applications where safe and suitable access to the site can be achieved for all users. However, NPPF/115 goes on to say that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The development generates low levels of movement in a very remote area where the occupants clearly do not regard the form and gradient of the track as unsuitable for their purposes. The vehicle access is sub-standard but other isolated rural properties commonly have similar constraints. It is clearly impracticable to provide full visibility splays and fulfil all design criteria set out in the previous local highway authority's design guide for new development. I view much of the technical note of the IP as a counsel of perfection in circumstances where with the appropriate caution safe access and egress for occupiers could be maintained.
28. That said, the sheer length and condition of the access track would make it difficult if not impossible for all types of emergency vehicles to access the appeal site. In my view this weighs adversely against a permanent residential use and would cause some conflict with Policy SD1 in preventing a safe access for all modes of transport.

Effect of the development on adjacent occupiers

29. As I have noted, the development is well screened from the IP's land. There is a background context of a very long standing property dispute between W and the IP which is not itself relevant to the appeal. The IP's planning consultant told me that the mineral resource of the quarry was an important part of the land bank of aggregates, extraction was under way and the interests of the quarry need to be protected.
30. I have carefully considered the IP's written representations, the findings in the 2016 appeal decision and the planning history. The key concern here is the fear that complaints from new residential occupants could result in sterilisation of the mineral resource. The occupants of the appeal site espouse a low-key sustainable lifestyle on the land. The circumstances of the use are significantly different from those contemplated by the previous Inspector when a permanent residential building was proposed where even then, he declined to accord specific weight to this factor. Whilst still a relevant factor in principle, there is no evidence that persuades me that the present occupiers or the uses carried out on the appeal site, would be materially affected by the quarry use, or that conversely the quarry's own operations would be unacceptably adversely affected by the nature and scale of the development.

Whether in a suitable location

31. The nearest shop is over 3 miles away from the appeal site and the nearest GP is some 6 miles away. The two children living on site are of school age but are home schooled, nevertheless for others who might occupy it going forward, the nearest school is 4 miles away. A bus stop exists at the junction with the A438 about a mile away, but there would be no footway including in places where lorries from the quarry would pass. However the use of a private vehicle is expected and commonplace in parts of the countryside where public or other transport modes are impracticable.
32. NPPF/84 advises against the development of isolated homes in the countryside. The only conceivable exception here would be if there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. This advice is consonant with the effect of LP Policy RA3 which among other things is to permit in rural locations outside defined settlements residential development that meets an agricultural need for a worker to live permanently at or near their place of work. This is provided that, in accordance with Policy RA4 there is a sustained essential functional need for the dwelling, it forms an essential part of a financially sustainable business, and that such need cannot be met in existing accommodation. The criteria in Policy RA4 also apply to a proposed dwelling accompanying or necessary to the establishment or growth of a rural enterprise.
33. N also works on the farm nearby owned by W. On the appeal site he and his wife are developing a smallholding where agricultural produce has been sold to others as well as being consumed by the family, although some livestock recently introduced on site are too young to be productive. N also has work on other neighbouring farms and does other occasional work such as laying conservatory bases. P is an accountant who can work remotely from the appeal site but is not required to work there. She also works on a nearby organic garden. Less reliance is now placed on her income from accountancy and the family is intent on making a living from the land, ie the appeal site and some adjoining land also owned by W.
34. The rearing of chicks and raising of livestock may need daily attendance but from the evidence I heard and read, it is not the case that the development meets an agricultural need for N or P to live at this particular site where there is any clear and sustained functional need for the caravan to be lived in.
35. Policy RA4 allows for a temporary permission to be granted where the economic sustainability of the rural enterprise is not proven or where an enterprise is not yet established, to enable the sustainability of the enterprise to be assessed. A temporary grant of permission on this appeal site would be considered in the overall planning balance but no business case of any kind that might show the need for an agricultural worker to live on site is made out.
36. As well as seeking safe and accessible environments, Policy SD1 seeks material changes of use that factor in various design and energy efficiency considerations, considering local context and site characteristics. There are positive aspects to the development in the use of solar panels, management of foul drainage by composting and recycling of rainwater. Water was to be supplied from a spring but is apparently part of the property dispute between the IP and W. In addition there is said to be a benefit in the occupants' presence to deter anti-social behaviour in or around the site which W has suffered previously. Although I was shown some damage said to be caused by

such activity, there is too little detail provided that substantiates a need for a 24 hour presence linked to an ongoing concern at the site.

37. Therefore, on the evidence before me, the appeal site should not be regarded as a sustainable location for a new residential home.

Personal circumstances of occupants and availability of alternative accommodation

38. No formal occupancy agreement has been completed and the arrangement appears to be open-ended. However, it appears that N was given to understand by W that the land had or would somehow have the benefit of a residential use for at least a six month period. This tallies with W's reply to the planning contravention notice served by the Council, suggesting that they expected to be there for 6 months. N answered an advertisement placed by W's daughter who appears to have a joint interest in the ownership of the site, for someone to live there. N and his family moved from a considerable distance away where they had resided permanently for a number of years.
39. Asked about alternative accommodation, N said he would have to do some research but said he was very lucky to have found this site which suited his and his family's purposes. The Council is a housing authority for the purposes of duties under the housing legislation towards those who present themselves as homeless. Although I have not found that the occupants have gypsy and traveller status, and therefore the question of an aversion to "bricks and mortar" housing does not arise in that particular cultural context, the occupants now eschew such accommodation having found a way of living that embraces a closer relationship with the land and with a low-key sustainable lifestyle.
40. That said, I have been given no compelling reason to doubt that a similar situation might be found in time to allow for a continuation of such lifestyle, whether for example on W's own farm as was suggested (but not responded to by W) or elsewhere. Nevertheless, their permanent residence in traditionally built housing was relatively recent and it is unlikely to be regarded as an unreasonable prospect to have to return to similar available accommodation if necessary. Where suitable land is not available to meet the family's requirements, it would be open to the appropriate local authority to provide other accommodation provided it satisfies the minimum criterion of suitability and depending on the circumstances at the time of applying.
41. All that said, it is clear that the family have no immediately available alternative accommodation and this is a factor that weighs in favour of the appeal.

Planning balance

42. The siting of a converted horsebox vehicle for residential purposes constitutes an unauthorised material change of use in an unsustainable location away from local services and facilities in the open countryside, contrary to LP Policies SS1 and SD1. The development remains at odds with the prevailing character and appearance of the surrounding environment, not enhancing or conserving the natural landscape, contrary to LP Policy LD1. These factors should be given moderate weight. There is also some conflict with LP Policy SD1 due to the site's location which impedes access for all types of emergency vehicles. This should also be given moderate weight.
43. There is no persuasive evidence of adverse effects on adjacent occupiers.

44. Although there are sustainable measures comprised in the use of the premises, they are sited in an area that is not overall in a sustainable location. Indeed the location of such a residential use amounts to development of an isolated home in the countryside which is contrary to the aims of the NPPF and no exception to that guidance applies here.
45. Moreover, the circumstances of occupation of the site do not provide adequate justification to apply LP Policy RA3 or Policy RA4 because there is no clear and sustained functional need to occupy the caravan on a permanent basis, at least based on the available information that has been put before me.
46. Irrespective of the circumstances in which the occupants came to live on the appeal site, it is appropriate to consider that they would have no immediately available alternative accommodation if the notice were upheld. I have found that there are no national or local policies pertaining to gypsy and travellers that apply. If the appeal is unsuccessful, they might have to find alternative accommodation or rely on the assistance of the appropriate housing authority to secure suitable alternative accommodation.
47. The option of returning to a traditionally built home would be inimical to their presently chosen lifestyle. However, taking this together with the possibility of other accommodation that might be available at nearby farms including that of the appellant W, as well as elsewhere on the rented open market then, on balance it seems to me more, rather than less likely that given an appropriate period to search, some suitable accommodation would be found, through their own efforts or the assistance of others including those with statutory housing responsibilities. All that said, the lack of immediately available alternative accommodation is a factor that weighs moderately in favour of the appeal.
48. I have considered throughout this decision that upholding the notice would affect the family's ability to live in their caravan on the appeal site, and thus interfere with the right to respect for their home and their ability to maintain their identity and to lead a private and family life. A refusal to grant permission for the family to continue to reside at the site engages Article 8 and concerning enjoyment of possessions, Article 1 of the First Protocol. Interference must be proportionate and necessary. Also, Article 3(1) of the United Nations Convention on the Rights of the Child also provides that the best interests of children must be a primary consideration in all actions of public authorities.
49. No particular health or education issues were raised on behalf of the children but in general terms I judge the best interests of the children to include being able to continue education and accessing health facilities without the difficulties of access presented by not having a settled base. The children are, however, home schooled and have no links to local schools. I was not told that the family were registered with a GP and it was said on their behalf that they would "self-medicate" in an emergency. Whilst to my mind this is an unrealistic statement in respect of any emergency treatment that may be required for the children, it was not contradicted by N and at any rate there is no ongoing need shown for treatment or registration with a particular local GP or local health facility.
50. The family moved to the site on 1 April 2023, some 14 months ago. From experience it can be quite unsettling for a child to be suddenly uprooted from a base that is becoming an established residence. In general it would be in their best interests to continue to live in a reasonably settled base, and N cannot be blamed for relying on assurances given by W as to how long he would be

permitted to stay, however the adverse impacts of continuing a residential use on the appeal site have to be balanced against these interests. Furthermore, the availability, or otherwise, of suitable alternative accommodation affects the degree of seriousness of any interference with Article 8 rights and should be considered as part of the proportionality assessment.

51. In this case, although the interests of the child are no less important than any other, interference with the home and family life of the site's occupants is necessary and proportionate having regard to legitimate land use planning objectives of protecting the environment, providing for safe modes of transport and the reasonable prospect of securing some form of alternative accommodation albeit not one that would necessarily meet their aspirations. Therefore to dismiss the appeals and uphold the enforcement notice would not result in a violation of the rights of the occupants under human rights legislation.
52. In the overall planning balance I find that the harm caused by the use of the appeal site for residential purposes in an unsustainable location, and which undermines its character and appearance and the surrounding environment, together with the lack of an easily negotiable access for all modes of transport, outweighs the benefits to the occupant family in remaining there on a permanent basis, allowing also for the very limited benefit of a new home.
53. I have considered whether a temporary permission should be granted, based on the personal circumstances of the family occupying the site. N does not state that they have a particular or immediate need of local services or facilities. Clearly there is no properly established enterprise and whilst a temporary grant may be considered to enable its sustainability to be assessed, I have found that in any case the location itself is unsustainable for a primary residential use. The harm caused by the development is not outweighed by the benefits that a temporary permission would bring.

Public sector equality duty

54. I have a duty to have regard to certain matters set out in the legislation on the public sector equality duty (PSED) even if not specifically raised by the parties. Although I determined that the site's occupants were not gypsies or travellers for the purposes of relevant national and local policies, I was struck by the importance to N of living a low key sustainable lifestyle that avoids the need to have recourse to all public utilities or officialdom of any kind and to be completely, without exception, self-sustainable as regards food, shelter, warmth and so on. This is an uncompromising viewpoint and I have asked myself whether there is evidence that it amounts to a "philosophical belief" that would include it among those philosophical or religious beliefs that are protected characteristics for PSED purposes.
55. The generally established criteria to amount to a philosophical or religious belief are: (i) the belief must be genuinely held; (ii) it must be a belief and not an opinion or viewpoint based on the present state of information available; (iii) it must be a belief as to a weighty and substantial aspect of human life and behaviour; (iv) it must attain a certain level of cogency, seriousness, cohesion and importance; and (v) it must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.

56. I recognise N's commitment to what previously may have been termed the back-to-the-land movement based around living self-sufficient lives close to nature. This countercultural movement of the 1960s and 1970s followed earlier anti-modern traditions that go back to the late nineteenth century. It can be expressed in various ways such as a form of anti-statist environmentalism, the enduring dream of self-sufficiency or the "agrarian ideal".
57. Although outside what many regard as mainstream culture, these lifestyles reflect weighty aspects of human life that are and have been taken seriously, are forcefully advocated for and no doubt respected in a democratic society. I must not make value judgments about the underlying substantive validity of the belief itself provided it is a philosophical belief rather than an opinion or viewpoint based on the present state of information available.
58. The distinction between belief and opinion can be fine and one might often struggle to separate the two. Living off-grid or a low-impact lifestyle comes in all shapes and sizes and with various nuances in beliefs and opinions. Far from wishing to live an isolated existence, a notable feature is the eagerness of the family to engage with the local community at the same time as conserving as much as possible of their resources in order to sustain themselves. They seek to bring to market the fruits of their labours but it is early days. It might be said that the development simply reflects the desire of family to live a simple life close to the land, which does not necessarily imply some deeper philosophical set of beliefs.
59. On the other hand and as I have noted there is a further aspect to N's commitment to his lifestyle, namely a fervent desire to separate himself and his family from all forms of officialdom. He spoke to this in such a way that he looks on it as a way of living that is a desiderata, in other words it encapsulates desired qualities of the soul and the heart, and more seriously held to than mere current "viewpoints".
60. Although I would be prepared to accept that N's commitment to a way of life that uncompromisingly avoids all official contact points to a philosophical belief, there is the question of seriousness which must relate to the belief itself, not the enthusiasm with which it is embraced. I am uncertain whether in relation to this part of N's belief, it reaches the necessary level of cogency, seriousness, cohesion and importance. It has been said in connection with the criteria that no apolitical adjudicative body should favour one political and economic system over another, but determination of the appeals must be within the framework of current policy and legislation. Respect for a lifestyle that contradicts the assumptions behind that framework might be given but in my view difficulties arise with, for example, the need for human habitats to be close to facilities and services normally required for a beneficial and dignified existence.
61. The dilemma here is exemplified in the belief in self-medication in an emergency. If current policy excludes development poorly located for access by emergency services, yet there is no avowed need for such services, the exclusion rule may be seen as unduly paternalistic. Another factor at play concerns the criterion that the belief be not incompatible with human dignity or conflict with the fundamental rights of others. As a matter of social utility, it may be appropriate to protect beliefs that are plain daft but sincerely held yet it may be asked, why should the emergency services worker be placed at risk when choosing to do their duty and indeed exercise their beliefs, as a first

responder. The retort “we didn’t ask you to help” seems to go against the grain of what is compatible with human dignity in these circumstances.

62. There is also an assumption implicit in the term “emergency worker” that they come from the public services. Nowadays more than ever the emanation of the state takes several forms, not all easily recognisable as such and many have a hybrid quality that often makes it difficult to see where the public (official) sector ends and the private sector begins. From this perspective it is also unclear where the “cut-off” point lies in relation to N’s commitment to avoiding all contact with such bodies and this goes to the “cogency” of the belief.
63. In summary, there are two themes to N’s belief, one is agrarian self-sufficiency, part of a recognised tradition that, in its present form has gained ground among many people concerned for the consequences of our environment. The second goes beyond this and into the realm of deliberate isolation from all forms of official contact, ie not only unwanted interference but also unwanted assistance with one’s daily life.
64. The legislative and policy framework to which I am required to adhere, no matter what I may think of the sincerity of N’s beliefs, compels me to exclude, for the purposes of PSED beliefs that are incompatible with human dignity and conflict with the fundamental rights of others. I would not be prepared to sanction as a legitimate belief, a lifestyle that imposes self-medication in all eventualities, and I do not have to spell out possible examples where children who may be in dire need are excluded from treatment by otherwise available expert medical help. In my view that would be an affront to human dignity and for that reason if no other, N’s beliefs do not pass all the necessary criteria for recognition as a protected characteristic. Even if the beliefs were a protected characteristic, it has not been shown that the occupants’ accommodation needs and lifestyle beliefs can only be met on this site.

Requirements of the notice

65. The notice does not and cannot require cessation of any agricultural use that may be carried on. Section 55(2)(e) of the 1990 Act states that agricultural or forestry use of land does not require planning permission. Moreover, the definition of agriculture in s336(1) of the Act is wider than in connection with permitted development rights which would require such a use to operate as a trade or business.
66. Several structures on the appeal site are used for agricultural purposes or that have an agricultural use that could be carried on if the notice were upheld and complied with. It would therefore be an excessive step in my view to require their removal. The poultry and their coops for example have a productive and agricultural function on the land capable of continuing beyond a connection to residential use. Furthermore, the horsebox vehicle might clearly continue to be used for purposes incidental to the agricultural use, as a shelter to be used during the day or for connected storage purposes, provided that the fittings exclusively for residential purposes are removed. I will therefore exercise powers in the 1990 Act to vary the requirements accordingly.

Period for compliance

67. Although there is no appeal on ground (g) I also have powers to consider whether the compliance periods are reasonable and proportionate. The Council

is content to leave this matter to me. In the circumstances a ten month period for compliance would be reasonable and proportionate for cessation of the residential use, removal of the domestic associated works, and to find suitable alternative accommodation.

Other matters

Appropriate assessment

68. The development does not propose a connection to the wastewater infrastructure network. The appeal site may affect the Special Area of Conservation (SAC), ie the River Lugg sub-catchment area. The reasons for issuing the enforcement notice made no reference to the effect on the SAC, or to the relevant local plan policy. However at the inquiry the Council sought to have considered LP Policy SD4 which requires it to be shown that there would be no likely significant effect on the water quality of a SAC river. I was told I have a duty as the competent authority to undertake an appropriate assessment to ensure that development is permitted only if it would have no adverse effect on the integrity of European sites such as the SAC in question. However, there is no need for me to undertake such an assessment because the development is unacceptable for other reasons.
69. I note in passing that there seems to be no stated objective that appropriate assessment is expected at the earliest possible stage, rather the HRA regime is focussed on ensuring the avoidance of harm to the integrity of protected sites. Although on a strict reading of the Habitats Regulations the assessment provisions do not apply to the discharge of conditions, on their true interpretation it is established that they could require an appropriate assessment to be undertaken at the stage when the discharge of conditions was being considered. The development here is very small scale and also given the sustainable way in which waste effluents are intended to be managed, and the lack of evidence advanced by the Council when it raised this matter at a very late stage, a suitably worded condition could have ensured there would be no agreement to continuation of the "project" until it is established that the integrity of the European site would not be adversely affected.
70. That said, whilst a pre-commencement condition would normally be effective to disentitle a meaningful start until the condition had been properly discharged, the need for a "retrospective" type condition in light of the ongoing use might imply that any eventual grant of permission would nevertheless and at once constitute the implementing decision for the purposes of the HRA regime, due to the temporal gap that would then exist between the date of the permission and the discharge of the condition, during which time the "project" is effectively consented. However I need not consider this matter in detail for present purposes.

Previous application for lawful development certificate

71. W has stated that an appeal against a previous refusal of a lawful development certificate for residential use of the site would be forthcoming but this also is not before me. The Council was remiss in alleging, wrongly, that there was a time limit for such an appeal expiring in 2018. I must deal with the matters before me which include available information from the planning history and previous appeal decisions that strongly indicate the loss of residential use

rights pertaining to the appeal site, certainly in respect of the previous use of the now derelict cottages, whose plots are comprised within the appeal site.

Application to upgrade bridleway

72. W has applied to upgrade the status of the bridleway to a byway open to all traffic (BOAT) which if successful would open the way to vehicles down to the main road at Dormington. The process does not depend on the planning merits of the upgrade in status of the highway and no quick outcome is expected. In any event other outcomes might result such as a restricted byway (ie restricting access to motorised vehicles) and in any event the bridleway status may remain unchanged. Whilst an upgrade to a BOAT might well evince a change of one sort or another to the currently prevailing local character, it is not a matter to which I can give any weight in the present circumstances.

Conclusion

73. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Formal Decisions

74. It is directed that the enforcement notice be corrected as follows:

- The description of the alleged breach of planning control is replaced with:
"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."

75. It is further directed that the notice be varied as follows:

- Requirement 2 ("Remove the converted horsebox vehicle from the land") is deleted.
- Requirement 3 ("*Remove the structures associated with the use of the converted horsebox vehicle*") is amended to read: "*2. Remove the structures associated with the residential use of the converted horsebox vehicle including facilities within the vehicle other than those reasonably required in connection with an agricultural use of the Land*";
- The period for compliance related to Requirement 1 is amended to read "*1. 10 months from the date this notice takes effect.*"; and
- The period for compliance related to the re-numbered Requirement 2 is amended to read "*2. 10 months from the date this notice takes effect*".

76. Subject to this correction and variations the appeals are dismissed and 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.

Grahame Kean

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Richrd White	Appellant, owner of appeal site
N	Occupant of appeal site

FOR THE LOCAL PLANNING AUTHORITY

Howard Leithead	Barrister, No 5 Chambers
Sam Chesterton	Planning Enforcement Officer
Mark Tansley MRTPI	Development Manager

INTERESTED PERSONS

Mr Matthew Wedderburn MRTPI	Senior Associate, Knights Professional Services Limited
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ADDITIONAL DOCUMENTS

AD1	LP Policy SD4 and plan of River Lugg SAC
AD2	Land Registry office copy entries for Title Nos HE52354, HE52355 and index map search result