



Appeal Decisions

Hearing and site visit held on 6 February 2024

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2024

Appeal A Ref: APP/J0405/C/22/3310023

Appeal B Ref: APP/J0405/C/22/3310024

Appeal C Ref: APP/J0405/C/22/3310025

Land at Preston Road, Tingewick, Buckinghamshire

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the Act) (as amended). Appeal A is made by Miss Marianne Page, Appeal B is made by Mr J Webb, and Appeal C is made by Mr L Page, against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 30 September 2022.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of land to a mixed use comprising residential and workshop (sui generis) use.
- The requirements of the notice are to:
 1. Cease the residential use of the land
 2. Cease the workshop use of the Land including but not limited to the carving of wood
 3. Permanently remove all vehicles and structures from the Land
 4. Permanently remove all residential paraphernalia from the Land
 5. Permanently remove all debris resulting from compliance with steps 1, 2, 3 and 4 from the land.
- The period for compliance with the requirements is 3 years (36 months).
- The appeals are proceeding on the grounds set out in section 174(2)(a), (d) and (e) 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 of Decisions: The appeals are allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal D Ref: APP/J0405/X/22/3310010

Dwelling on land north of Preston Road, Gawcott MK18 4DW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Miss Marianne Page against the decision of Buckinghamshire Council.
- The application ref 21/02311/ACL, dated 31 May 2021, was refused by notice dated 6 September 2022.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the erection and occupation of single storey building as dwelling house.

Summary of Decision: The appeal is dismissed.

Right of appeal

1. The Council, in its statement of case, question whether the site occupiers and appellants in Appeals A, B and C, benefit from the right of appeal, as set out in Section 174 of the Act. It is contended that they neither have an interest in the land, nor are relevant occupiers.
2. Section 174(1) states:

(1) A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.
3. While Section 174(6) clarifies:

*(6) In this section "relevant occupier" means a person who—
(a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence; and
(b) continues so to occupy the land when the appeal is brought*
4. It was established in *Flynn & Sheridan v SSCLG & Basildon BC [2014] EWHC 390 (Admin)*, that having an interest in the land means having a legal or equitable interest in the land. The occupiers of the site do not own the land, with the owner being unidentified and the land unregistered. Accordingly, the occupiers cannot be described as having an interest in the land, for the purposes of Section 174.
5. Turning to the matter of relevant occupiers, I note that the occupants have inhabited the site since October 2013. While the mere fact that a person is physically in occupation, or is in such occupation and has been served, does not entitle that person to a right of appeal, in this case the occupiers have occupied the land for a significant period. During this time, no owner of the land has come forward to challenge or disagree with their occupation and they have not been asked to leave. Moreover, when applying for planning permission previously, occupation of the site has been advertised in the local press in an attempt to locate any owner and providing an opportunity for such an owner to come forward. No party in ownership was identified as a result of this, and no party came forward.
6. A licence to occupy can be granted expressly or impliedly. It is accepted that there is no expressly granted licence to occupy the site. However, considering the length of time that the occupants have been in occupation, the previous process of advertising their occupation to notify any owners, and the lack of any owner coming forward to oppose the occupation of the site, this is sufficient to comprise an implied licence to occupy, in my view.
7. As such, I find that the appellants in the cases of Appeals A, B and C, qualify as relevant occupiers for the purposes of Section 174 of the Act, and benefit from the right of appeal against the enforcement notice.

Preliminary Matters

8. Following agreement from the main parties at the hearing, the appeal under ground (a), that planning permission should be granted for the development, was dealt with through a written exchange of documents following the hearing.

9. There is a ground (d) appeal against the enforcement notice and an appeal against the refusal to issue a Certificate of Lawful Development (LDC). Both concern the unit of accommodation that exists within the site. At the hearing, following the discussion in respect of the ground (d) appeal I asked the parties if there was anything further in respect of the LDC appeal. Both parties were content that the discussion addressed all matters for both appeals. Consequently, I have considered these matters together in my decision below.

The Notice

10. Requirements 1 and 2 of the enforcement notice refer to the need to cease two separate uses on the appeal site, the residential use of the land and the workshop use. However, the notice alleges only a single mixed use comprising of residential and workshop uses. As such, these separate uses are not taking place. I shall amend the notice to combine these into a single requirement to cease the single mixed use. To do so would, in my view, cause no injustice to any party.

Appeals A, B and C - Ground (e)

11. This ground is that the notice was not properly served on everyone with an interest in the land. In this regard, the appellant highlights that copies of the notice were attached to a gate at the site and, while the appellants were able to retrieve these copies, it is possible that the owner of the site would not have received a copy.
12. However, I am conscious that the current owner of the site is unknown, and the site is unregistered. This is evident because when making previous applications on the site, the appellants have taken steps to advertise such applications in the local press, in the absence of an identified owner, and completed the appropriate ownership certificate at that time. I have not been informed that any such owner has come forward following such publication.
13. The Council served notice by way of attaching all the notices to the gate at the site. The three appellants all received copies and have duly made appeals. Further copies were addressed to "Any Owner" and "Any Occupier" and left at the site. All the notices were taken from the gate by the appellants.
14. Notwithstanding, I consider that it was reasonable for the Council to serve notice in the way that it did. The service has enabled three appellants, who occupy the site, to make appeals. Moreover, there is not in my view any reasonable likelihood of any owner having come forward to retrieve a copy of the notice from the gate. Thus, there has not been any defect in the service of the notice that results in prejudice.
15. Accordingly, the appeals on ground (e) fail.

Appeals A, B and C - Ground (d), and Appeal D - the application for a Lawful Development Certificate

16. Ground (d) is that, at the time the enforcement notice was issued, it was too late to take enforcement action. The dispute centres on one of the units of accommodation that is located within the appeal site; a horsebox that was brought to site and used as residential accommodation.

17. The application sought a Lawful Development Certificate for the erection and occupation of a single storey building as a dwellinghouse.
18. The appellant contends that the unit of accommodation present is a dwelling, comprising operational development and thus would be immune after 4 years, while the Council contend that the unit comprises a use of land, and thus would be immune after 10 years. The enforcement notice was served on 30 September 2022.
19. The appellant moved onto the site in October 2013 and initially occupied a caravan and a horsebox. Between this time and December 2014, the appellant asserts that building works took place which resulted in the establishment of a dwelling at the site. It is contended that this resulted from the works to the horsebox.
20. Three primary factors were identified in *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385, which were then endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102, as being decisive when considering what was a building. These were the size of the structure, its degree of permanence and any physical attachment to the ground. None of these factors alone is decisive and the issue is to be considered in the round.
21. It is common ground that when it was brought to site, the horsebox was just that and nothing else. Indeed, it was driven onto the site. The appellants began living in the horsebox as soon as it was brought to site, and the appellant stated at the hearing that at that point it became a caravan, and hence comprised a use of land. It was stated that within a week conversion works began, and additions were added. It is these works which, in the appellants view, resulted in the structure then becoming a building.
22. The works that have taken place predominantly involve the addition of a timber-clad structure, which was formerly a box trailer, with a corrugated roof to the side of the horsebox to provide additional accommodation. This addition appeared at the time of my visit to be supported on the ground by stumps of wood or stones. It was clarified at the hearing that there is no foundation in place and no method of affixation to the ground, it being confirmed that the structure is "fixed" to the ground by its own weight. The addition is fixed to the side of the horsebox by bolts, with some sealant also visible. Furthermore, there are no utility connections to the structure. As such, the horsebox and its addition do not have the characteristics of permanence achieved through a fixation to the ground.
23. In terms of moveability, the appellant contends that the structure cannot be moved at all. Evidence before me details that the box trailer had one side cut out and a wheel removed. This was before being attached to the horsebox, over its side door, with foam, sealants, and fixings (the previously referred to bolts).
24. I accept that the horsebox is no longer able to be moved from, or around the site, under its own power, as well as that one of the wheels has been removed from the trailer. However, this to my mind does not infer that the structure is of such permanence as to comprise a building operation. Accepting that the two elements are attached to each other, the method of attachment is such

that it would be a simple and uncomplicated process to detach them from each other, as it was to attach them in the first place. Moreover, there would be no foundations or footings that need to be removed.

25. The appellant contends that the former trailer is now dependant on the attachment to the horsebox, however this is not supported by any objective evidence. I have nothing before me that convinces me that the former trailer cannot be detached and moved by taking simple precautions to maintain its stability, without it disintegrating. Similarly, given the appearance and completeness of the horsebox, I find nothing that convinces me that this cannot also be moved from the site as a whole, whether by being towed or lifted. To my mind, there would be nothing more involved with removing the elements than would be expected when removing a static caravan.
26. While the size of the structure is not insignificant, I do not consider that this alone is indicative of it comprising a building operation. Therefore, in this case, having regard to the three tests that I set out above, I find that the structure does not comprise a building operation and consequently the 4-year period for immunity does not apply. Moreover, it was the clear intention to use the horsebox as accommodation when this was brought to the site and therefore there has been no change of use to a dwellinghouse while the structure has been in situ.
27. The appellant made the contention at the hearing that if the structure were a building, subject to a 4-year immunity period, that the use of the land would also then become immune after 4 years. However, this is not the case. While operational development may become immune after 4 years, a use of land does not. However, in this particular case, it is of no relevance as I have found that the breach in its entirety is a use of land, as is alleged in the notice, and not operational development. The certificate of lawful development also made reference to the occupation of a building; which is a use. Given that this had not subsisted for a period in excess of 10 years prior to the application being made, this too would also not warrant the issue of a certificate.
28. Accordingly, in my view, the structure that exists does not comprise a dwelling, which would constitute operational development, but is a use of land for the stationing of a mobile structure for residential use. Therefore the 10-year period for immunity would be applicable. Given that the appellants accept that they moved onto the site in October 2013, and as the notice was served less than 10 years later, i.e., September 2022, the development is not immune and thus it is not too late to take enforcement action.
29. Accordingly, the appeals under ground (d) must fail, and the appeal against the refusal to issue a certificate of lawful development is dismissed.

Appeals A, B and C - Ground (a), the deemed planning application

Main issues

30. The main issues are:

- Status of the occupants,
- Whether the principle of development is acceptable at this location,

- Whether the location is accessible to nearby settlements and facilities, and
- The effect of the development on the character and appearance of the area.

Reasons

Status

31. The Council set out in its statement of case that it acknowledges that the appellants are New Age Travellers, who accord with the definition of gypsy travellers as set out in the Planning policy for traveller sites (the PPTS). Nothing I have seen during the appeal or at the hearing would lead me to find otherwise. As such, the appellants benefit from status as travellers.

Principle

32. Policies S1 and S2 of the Vale of Aylesbury Local Plan (VALP) 2013-2033, Adopted Plan September 2021 (the Local Plan) set out to ensure that sustainable development is delivered within the area, by requiring that development accords with the policies of the development plan and setting out a strategy for growth and its distribution, which generally directs development towards sustainable locations. Policy S2 also establishes that in rural areas, housing development will be strictly limited, where it accords with other policies in the Local Plan.
33. Policy S6 of the Local Plan sets out the identified need for gypsy, traveller and travelling showpeople, as well as allocations purported to address this need. However, this policy provides little in terms of consideration of the detailed planning merits of proposals. Moreover, this policy states that regard is had to the Council's Gypsy and Traveller and Travelling Showpeople Accommodation Needs Assessment (2017) (the GTTSAA). It was accepted by the Council at the hearing, that the GTTSAA does not include the need that is represented by the appellant's family, being New Age Travellers, and not ethnically gypsy travellers. I therefore find that this policy has little bearing on the consideration of this case.
34. Policy D11 is a criteria-based policy that permits proposals for accommodation for gypsies, travellers and travelling showpeople, where there is an identified need, and subject to a number of criteria. As mentioned above, at the hearing the Council accepted that the accommodation needs of the appellant's family had not been accounted for in the current GTTSAA, but now that it was aware of this, it would be addressed in a forthcoming assessment. No information was provided as to when an updated assessment would be produced. Moreover, there is no apparent alternative provision available for New Age Travellers. In this light, it is clear to me that the appellants have a clear need for accommodation, which is not currently met.
35. When asked if the Council was aware of any available, alternative sites, I was told that it does not monitor site availability, as this is only done through the production of the GTTSAA which is now 7 years old, and that it had no knowledge of any alternative provision. While it was indicated that there was "informally" knowledge of vacant pitches on existing gypsy traveller sites, it was also clear that these were private sites accommodating ethnic gypsy travellers, not New Age travellers. The Council accept that the occupiers would not be able to be placed on an existing permanent or transit site. I therefore

have nothing before me to show that it would be feasible for the appellants to be able to secure pitches on these sites.

36. Thus, in my view, there exists an identified need for accommodation to be provided for the appellants as New Age Travellers, and as such, the principle of traveller accommodation is acceptable at this location, subject to the detailed considerations set out in policy D11, which I go on to consider below.
37. The appeal site comprises a mixed use of residential and workshop, which includes the appellants' woodcarving business. As a result, the Council consider that policy D6 of the Local Plan is also relevant, although this was not identified in the enforcement notice. This policy relates to the provision of employment land and the Council contends that it is unacceptable due to the countryside location of the appeal site. However, I note that the policy is permissive of live-work developments, which do not diminish normal residential amenity, at locations that are suitable for open market residential development.
38. I consider that the principle of a live-work development is also acceptable at this location, particularly given that the reasoned justification for this policy refers to a flexible approach being required to allow employment development where a specific requirement needs to be met. Additionally, the Council accept that the location is very close to sustainable wood supplies. In light of the type of accommodation provided, together with the common occurrence of travellers working from their residences and the lack of any other residential development within any close proximity, I find that the proposal would not conflict with policy D6.
39. The Council, within the delegated report on the previously refused application for planning permission on which it relies, refers to strategies which direct new residential development to sustainable locations. However, I have found compliance with the policy above which deals with this specific type of development and thus these other policies do not persuade me that permission should not be forthcoming.

Accessibility

40. The Council states that the location of the development is unsuitable due to the "unsustainable location in the open countryside." However, this is not the test that is contained within the criteria of policy D11, in regard to the accessibility of services.
41. Criterion a. of the policy states that:
- "It has reasonable access to existing local services and facilities (including shops, schools, healthcare and public transport). Sites should either be within or close to existing sustainable settlements or with good access to classified roads and/or public transport"*
42. The Council state that the appeal site is directly alongside an un-classified road, which is surprising from my own observations of the road whilst driving along it. Nonetheless, I also note that the A421 road is located a short distance to the north of the site. As such, there is good access to classified roads, as required by the policy, which does not require sites to be located on or along classified roads. Accordingly, when assessed against the requirements of the

development plan policy, the site has reasonable access to services and facilities, in accordance with the relevant criterion of policy D11.

Character and appearance

43. The appeal site comprises an area of land to the north side of Preston Road, enclosed along this road by a post and rail fence, as well as fencing panels and some vegetation. There are two points of access to the site from the road. The area surrounding the site is distinctly rural in nature, with sporadic development visible from the road.
44. The site is located within the Preston Bissett Plateau Edge Landscape Character Area, as set out within the Aylesbury Vale Landscape Character Assessment (the LCA), which defines the landscape character as:
"High ground which predominantly slopes from north to south with the strongest slopes in the south. The land use is variable with several large woodlands, but predominantly mixed farming. Generally an open landscape but close to settlement nestled in streamlines the character becomes more intimate and enclosed. The historic settlements are a feature of the area as are several large limestone houses. There are significant views out from the south over the Twyford Vale LCA 5.4. A quiet agricultural area with a strong sense of history associated with interesting settlements and historic houses with small areas of parkland."
45. Within the site are various structures, caravans, and vehicles, some of which are visible from the road when travelling along it. Nonetheless, when travelling along this road, I also observed that there were built features visible within nearby sites and as such, the presence of structures is not wholly alien to the general vicinity. Moreover, while the LCA identifies that the landscape is generally open, at this location, there is a more enclosed and constrained character, with strong and substantial boundary features lining many of the nearby roads. As such, there is little in the way of views of the site from anywhere other than immediately adjacent to it.
46. In its current form, while I do not consider there would be a deleterious effect on that of the wider LCA, I find that the development is a harmful and intrusive feature within the immediate vicinity and thus harmful to the character and appearance of the area. However, in my view, it would be possible to mitigate this effect.
47. At the time of my site visit, any vegetation that was present along the boundary with the road was minimal and contributed little in attempting to assimilate the development into the surrounding landscape. While the Council contend that soft landscaping could appear contrived and out of place given the character of the area, I consider that an appropriate landscaping scheme could be implemented that would ensure that visually the development of the site would more suitably integrate with its surroundings. This is particularly so given the strong and substantial vegetation that is present along the roadside within the vicinity of the site.
48. In addition to this, I accept that the current layout of the site, with the multitude of structures and vehicles present, has a somewhat cluttered and unkempt appearance which further highlights it as incongruous at this rural location. However, this also could be addressed through the submission of

details of all structures and features being submitted for approval. This would ensure that there was no unacceptable proliferation of structures within the site that may have a detrimental impact.

49. I have had regard to the policies that the Council has referred me to in respect of landscape character and design, as well as to its comments that the development fails to respect the traditional character of residential development in the area and should use locally traditional materials. However, in my view, this is an overly restrictive requirement, particularly in light of the specific characteristics of traveller sites and that the development of gypsy traveller sites in the countryside is acceptable in principle under policy DE11, also with paragraph 25 of the PPTS advising that traveller sites in the countryside should be strictly limited, but not preventing them entirely. Thus, it must be accepted as being inevitable that there will be some visual effects resulting from this. The assessment of the effect of the development on character and appearance must be approached within this context.
50. With this in mind, I find that subject to appropriate planning conditions the development of the site for traveller accommodation would not have a significantly adverse effect on the character or appearance of the area, and thus accords with policy DE11 in this respect.

Other matters

51. There was discussion at the hearing in respect of whether the site comprised previously developed land. As I have found above that, on its merits, the development is acceptable, this is not a matter that I need to explore further.
52. I am conscious that the enforcement notice allowed a 3-year compliance period for development on the site to be removed. However, I have found that planning permission should be granted for the development and should not be subject to a temporary period. As such, the compliance period provided has little bearing on my decision.

Conclusion

53. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice.

Conditions

54. As I have had specific regard to the personal circumstances of the site occupiers, in terms of the lack of available sites and a need for accommodation for New Age travellers, I find that a condition specifying a personal permission is necessary. I have amended the suggested condition to include all occupants of the site, which includes both of Miss Paige's sons. As the permission being granted is personal to the occupants, it is not necessary to limit occupation to travellers more generally.
55. In the interests of the character and appearance of the area, as well as biodiversity, I have included a condition requiring the submission of landscaping and external lighting details, as well as biodiversity net gain and details of the location of structures within the site. It is also necessary to ensure that landscaping is maintained, and I have included a condition in this respect also. In the interests of highway safety and the convenience of road

users, a condition is included requiring details of the means of access, as well as parking and turning, to be submitted for approval.

56. In the interests of protecting the appearance of the area, I have included a condition preventing any additional large vehicles from being positioned within the site. For the same reason, a condition preventing the erection of boundary features, other than those approved as part of the landscaping details, is required.
57. The Council also suggested a condition requiring development to accord with a previously submitted layout drawing. However, it was agreed at the hearing that this condition was not necessary.

FORMAL DECISIONS

Appeals A, B and C

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

- Deleting requirements (1) and (2) of the Notice and replacing with "(1) Cease the mixed use of the land, comprising residential and workshop (sui generis) use, including but not limited to the carving of wood.",
- Renumbering requirement (3) as requirement (2),
- Renumbering requirement (4) as requirement (3), and
- Renumbering requirement (5) as requirement (4).

59. Subject to the corrections, Appeals A, B and C are allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the change of use of land to a mixed use comprising residential and workshop (sui generis) use at Land At Preston Road, Tingewick, Buckinghamshire, as shown on the plan attached to the notice, and subject to the following conditions:

- 1) The use hereby permitted shall only be carried out by the following named individuals: Miss M Page, Mr J Webb, Mr L Page and Mr S Page and their resident dependants. In the event the named individuals cease to occupy the site, the use shall cease and the site shall be cleared of all structures, vehicles and vehicle bodies, other movable structures, equipment and other domestic and workshop paraphernalia stationed on the land associated with the use within 6 months of the date on which the occupation is ceased.
- 2) The use hereby permitted shall cease and all caravans, structures, equipment, and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within 3 months of the date of this decision a scheme for
 - a) Landscaping of the site, to include both soft and hard landscaping details,

- b) Achieving measurable biodiversity net gain and mitigation, to include monitoring and management, together with details of the baseline,
- c) External lighting, and
- d) The positioning of all structures within the site,
- e) Parking and turning of vehicles within the site,
- f) A detailed specification for the vehicular means of access to the site,

(hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

- ii. If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Any shrub, tree or hedge forming part of the approved soft landscaping scheme which within a period of 5 years of planting die, become diseased or are removed for any other reason shall be replaced in the next planting season following their death, disease or removal with another shrub, tree or hedge of the same species type, maturity and size.
- 4) No additional vehicles over 3.5 tonnes shall be stationed, parked, or stored on this site (other than the three already existing on site).
- 5) Notwithstanding the provisions of Class A of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any Order revoking or re-enacting that Order with or without modification, no fences, gates, walls or other means of enclosure, other than those approved as part of the landscaping details pursuant to condition 2 above, shall be erected within or around the site.

Appeal D

60. Appeal D is dismissed.

Martin Allen INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Angela Banks	Town Planner
Marianne Page	Appellant
Jimmy Webb	Appellant
Mandy Cloake	Local resident, employer of Marianne Page

FOR THE LOCAL PLANNING AUTHORITY:

Michael Rhimes	of Counsel
Olivia Steepleford	Team Leader – Planning Enforcement
Claire Merritt	Principal Planning Compliance and Enforcement Officer
Emma Mumby	Senior Planning Officer
Kirsty Elliott	Senior Planning Officer
Emily Brown	Senior Planning Policy Officer
Louise Anderson	Principal Planning Policy Officer