
Appeal Decisions

Hearing Held on 4 February 2025

Site visit made on 4 February 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 12 March 2025

Appeal A Ref: APP/W1850/C/24/3350934

Land at Madley Caravan Site, Stoney Street, Madley, Herefordshire HR2 9NQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Shaun Gorman of Deerhurst Park Ltd against an enforcement notice issued by Herefordshire Council.
 - The enforcement notice, numbered EN/2024/003646/ZZ, was issued on 1 August 2024.
 - The breach of planning control as alleged in the notice is without planning permission unauthorised material change of use of land to a caravan site.
 - The requirements of the notice are:
 - (1) Permanently cease the residential occupation of the 20 caravans on the Land, and
 - (2) Permanently remove the caravans from the Land and other domestic paraphernalia and make good.
 - The period for compliance with the requirements is:
 - (1) Compliance with (1) above within 28 days
 - (2) Compliance with (2) above within 42 days
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal B Ref: APP/W1850/C/24/3350935

Land at Madley Caravan Site, Stoney Street, Madley, Herefordshire HR2 9NQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Shaun Gorman of Deerhurst Park Ltd against an enforcement notice issued by Herefordshire Council.
 - The enforcement notice, numbered EN/2024/003682/ZZ, was issued on 1 August 2024.
 - The breach of planning control as alleged in the notice is without planning permission unauthorised material change of use of land to a caravan site.
 - The requirements of the notice are:
 - (1) Permanently cease the residential occupation of the caravan on the land.
 - The period for compliance with the requirements is 28 days
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal C Ref: APP/W1850/W/24/3356469

Madley Caravan Site, Stoney Street, Madley, Herefordshire HR2 9NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Shaun Gorman of Deerhurst Park Ltd against Herefordshire Council.
- The application Ref: 242363 is dated 12 September 2024.
- The application sought planning permission for an Emergency stopping place for gypsies with residents warden's pitch and space for up to 20 caravans without complying with a condition attached to planning permission Ref 93/1349, dated 17 March 1994.
- The condition in dispute is No 2 which states that: This permission enures for the benefit of Hereford and Worcester County Council only.
- The reason given for the condition is: To comply with Regulation 9 of the Town and Country Planning General Regulations 1992.

Summary Decisions

Appeal A: The appeal is allowed and the enforcement notice is quashed.

Appeal B: The appeal is allowed and the enforcement notice is quashed.

Appeal C: The appeal is allowed and planning permission is granted under section 73 of the 1990 Act in the terms set out in the Formal Decision Below.

Application for costs

1. At the Hearing an application for costs was made by Mr Shaun Gorman of Deerhurst Park Ltd against Herefordshire Council. This application is the subject of a separate Decision.

Procedural matters

2. The appellant contends that both enforcement notices are nullities. The question of nullity does not fall neatly into any of the grounds set out in section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act). I have therefore considered the question of nullity as a discrete topic at the outset.
3. Appeal C was submitted on 29 November 2024. The appeal was started by the Planning Inspectorate on 10 December 2024. The 'start letter' sent by the Planning Inspectorate on that date indicated that the appeal was valid but, if later it was found that this was not the case, the appellant would be advised of that in writing. In the event, the appeal was valid on receipt by the Planning Inspectorate: i.e on 29 November 2024.
4. The Council purported to determine the application to which this appeal related on 3 December 2024 and issued a decision Notice to that effect. As it turned out, this was a few days after the appeal was submitted. Because the appeal was valid on submission, jurisdiction to determine the application/appeal had by that date transferred to the Planning Inspectorate. The Decision Notice issued by the Council therefore has no effect, although I note that the Council does not contest Appeal C.

Appeal A and Appeal B: Nullity

5. The modern approach to the question of nullity is to be found in the judgment of the High Court in *Oates v SoCLG and Canterbury*¹, which drew extensively upon the preceding case law on the subject. A number of principles emerge from this judgment, including that the test in relation to nullity is best understood not as one of 'hopeless ambiguity' but rather as a failure to tell the recipient with 'reasonable certainty' what the breach of planning control is and what must be done to remedy it. Overall, the judgment in *Oates* indicates that the question of nullity should not be approached in a way which is unduly technical or formalistic.
6. The scope of the appellant's case in relation to nullity narrowed considerably just prior to the Hearing with the receipt of a copy of the Council's Scheme of Delegation. The only matter before me was then whether the Council Officers had authority to issue two notices rather than just a single notice.
7. In summary, paragraph 71 of the Council's Scheme of Delegation authorises identified postholders *to act as necessary* in accordance with the officers' legislative authorisation to ensure compliance with the legislation identified in that paragraph (emphasis added). The latter includes issuing enforcement notices under the 1990 Act.
8. In this case, for reasons that were clearly explained Council Officers elected to issue two notices rather than rely on a single notice. The two notices each alleged exactly the same breach of planning control: specifically, without planning permission unauthorised material change of use of land to a caravan site. The requirements were different in each notice to reflect whether the notice was served on the owner of the land or an occupier of one of the caravans on the site, albeit in each case the Council overlooked others having an interest in the land.
9. I am not persuaded that the appellant's argument in this respect actually goes to whether either notice is a nullity on its face. Nevertheless, insofar as relevant to the circumstances of this case, the judgment in *Oates* indicates that the question of nullity should not be approached in a way which is unduly technical or formalistic. In my view, it would be overly technical and formulistic to require Council Officers already having authority under the Council's Scheme of Delegation to issue one notice to specifically seek approval from the Council itself to issue two separate notices against the same alleged breach of planning control.
10. Having regard to the judgement in *Oates*, it also seems to me that for these purposes the Council's Scheme of Delegation is perfectly capable of being interpreted as meaning that the 'single' can also be taken to mean the 'plural'. Accordingly, I conclude that neither notice is a nullity.

Appeal A and Appeal B: the appeals on ground (e)

11. The ground of appeal is that copies of the enforcement were not served as required by section 172 of the 1990 Act. In summary, Section 172 of the 1990 Act requires that the enforcement notice shall be served on the owner and on the occupier of the land to which it relates, and on any other person having an interest in the land.

¹ *Oates v SoCLG and Canterbury* [2017] EWHC 2716

12. The requirements for the service of a notice are set out at section 329 of the 1990 Act. Insofar as relevant to this appeal, section 329 provides that:

- (1) *Any notice or other document required or authorised to be served or given under this Act may be served or given either*
 - (a) *by delivering it to the person on whom it is to be served or to whom it is to be given*
 - (b) *by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address*
 - (c) *by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address*
 - (d) *in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office*

and

- (2) *Where the notice or document is required or authorised to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of premises, the notice or document shall be taken to be duly served if*

(a) it is addressed to him either by name or by the description of "the owner" or, as the case may be, "the occupier" of the premises (describing them) and is delivered or sent in the manner specified in subsection (1)(a), (b) or (c)

(b) it is so addressed and is marked in such a manner as may be prescribed for securing that it is plainly identifiable as a communication of importance and— (i) it is sent to the premises in a prepaid registered letter or by the recorded delivery service and is not returned to the authority sending it, or (ii) it is delivered to some person on those premises, or is affixed conspicuously to some object on those premises.

13. The issues relating to the service of the two enforcement notices subject to these appeals are different. It is therefore helpful to consider Appeal A and Appeal B separately in the first instance, before drawing them together in a conclusion.

Appeal A

14. The Council have confirmed that copies of the enforcement notice were served via 1st class post on 1 August 2024 to both Mr Shaun Gorman and Mr James Gorman at their registered address. In that respect, a copy of the notice was properly served on the owners of the land.

15. However, section 172 of the 1990 Act also requires that the enforcement notice shall be served on the occupier of the land to which it relates, and on any other person having an interest in the land. The Council did not do this, and for that reason the notice cannot be said to have been properly served as required by section 172 of the 1990 Act.
16. On 1 October 2024, the Council wrote to the owners and the site occupants, enclosing a copy of the Notice that had not been served on them prior to the deadline for making an appeal. The letter stated that the notice thereby attached was identical to the Enforcement Notice served on 1 August 2024, aside from some minor changes to ensure that the notices imposed appropriate and achievable requirements/obligations upon the various parties based on their particular interest(s) in the site. However, this letter was clearly sent a long time after the statutory deadline to submit an appeal against the notice had expired. By that time, the damage had already been done and was not recoverable.

Appeal B

17. Because of the way in which the Council approached the issuing of the two enforcement notices, the owners of the land to which the notice relates were not initially served with a copy of the notice. However, the owners fairly acknowledge that they came to learn of the notice in sufficient time to lodge an appeal against it and for that reason have not been prejudiced.
18. The letter notifying the occupier(s) of the caravans on the site that an Enforcement Notice has been issued, and enclosing a copy of that notice, was dated 1 August 2024. These letters were hand delivered that same day by Mr David Wilkinson and Mr Sam Chesterton, both Planning Enforcement Officers employed by the Council. This is clearly recorded in a file note made by Mr Wilkinson and was described to me at the Hearing.
19. The letter was addressed to:

The Occupier of the caravan

Land at Madley Caravan Site

Stoney Street Industrial Estate

Madley

Herefordshire

HR2 9NQ
20. It must be remembered that the plots on the appeal site are not individually numbered and that the caravans are not numbered either (to confuse matters even further, some of the caravans on the site retain the name/number that related to a previous site on which they were stationed). In the absence of the caravans/plots on the appeal site being numbered, the words 'The occupier of the caravan' in the address can reasonably be taken to mean the occupier of the caravan to which the envelope was affixed. In these circumstances, I am satisfied that the letter was addressed to the occupiers in accordance with the requirements at section 329(2)(a) of the 1990 Act.

21. The letters/copy of the enforcement notice were hand delivered/served in envelopes. At the Hearing, Mr Wilkinson and Mr Chesterton explained that letters were handed in person to about one third of the occupiers of the caravans. In all other cases, the envelopes containing a copy of the enforcement notice were affixed to what Mr Wilkinson and Mr Chesterton judged to be the main door of the caravan. I am satisfied that this qualifies as being 'affixed conspicuously to some object on those premises' for the purposes of section 329(2)(b) of the 1990 Act.
22. The difficulty is that the envelopes containing the enforcement notice do not appear to have been marked with words to indicate that what was inside the envelopes was 'a communication of importance'. At the Hearing, Mr Wilkinson indicated that some of the envelopes may have featured wording to that effect but to his great credit candidly admitted that he could not be sure that was the case with every envelope. It is unfortunate that photographs were not taken of the envelopes actually affixed to the doors of the caravans: this would have provided indisputable evidence whether or not the envelopes were marked as required by section 329(2)(b) of the 1990 Act.
23. This is the crucial point. For understandable reasons, section 329(2)(b) of the 1990 Act requires that envelopes are marked as 'a communication of importance' to alert the occupier to the seriousness of the communication. I do not propose to enter the debate that took place at the Hearing as to whether the occupiers would be liable to prosecution for non-compliance with the enforcement notice. That is not a point before me.
24. However, what is squarely before me is that the occupiers of the caravans would have not been aware of the potentially serious consequences of the communication within the plain envelope affixed to the door of their caravan: i.e they could have lost their homes. There was nothing on the outside of that envelope to alert the occupier to the seriousness of the communication within. Consequently, the envelope could easily have been ignored or overlooked by those occupiers.
25. More specifically, by not being alerted to the seriousness of the communication within the envelope affixed to the door of their caravan, the occupiers of the caravans were denied the opportunity to appeal against the enforcement notice. I fully recognise that, with the exception of ground (d), the notice has been appealed on all the grounds of appeal set out in section 174(2) of the 1990 Act. But at the time the enforcement notices were served the occupiers of the caravans to which an envelope was affixed could not possibly have known that. Furthermore, I cannot discount the possibility that the occupiers of those caravans could have raised matters not covered in the grounds of appeal made by the appellants: in particular, I am mindful of personal circumstances in relation to an appeal on ground (a).
26. I am also mindful that the Council did not display copies of the enforcement notice at conspicuous points around the site: for example, at the entrance to the site and/or the car parking area close to the entrance. Had the Council done that, the occupiers of the caravans might have learned of the enforcement notice and its potential implications from reading the enforcement notice so displayed. Overall, I am not satisfied that the Council did everything that could have been done to serve the notice on every occupier and/or make the occupiers of the site aware of the enforcement notice.

The appeals on ground (e): conclusion

27. Section 176(5) of the 1990 Act provides that, where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been *substantially* prejudiced by the failure to serve them (emphasis added). This is a very high hurdle to clear.
28. In this case, in the event that the notice was upheld, those occupiers who were not properly served with a copy of the enforcement notices (Appeal A and Appeal B) may have become homeless without any opportunity to make their views/circumstances known. Accordingly, there is no doubt in my mind that those occupiers have been substantially prejudiced.
29. Accordingly, this is not a case when I can exercise the power to disregard the non-service of the enforcement notices in accordance with section 176(5) of the 1990 Act as amended. The appeals on ground (e) succeed and the enforcement notices will be quashed.
30. In these circumstances, the appeals on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended now do not fall to be considered.

Appeal C

31. I concur with the parties that Condition 2 imposed on planning permission Ref 93/1349 (the 1994 Permission) is no longer necessary, given that the Town and Country Planning General Regulations 1992 were amended by the Town and Country Planning General (Amendment) (England) Regulations 2018 to omit Regulations 9, 9A, and 9AA. This came into force on 23 February 2018. I am also mindful that the 1994 permission was granted prior to the Criminal Justice and Public Order Act 1994, which received Royal assent on 3 November 1994 and repealed the duty on local authorities to provide sites for gypsies and travellers.
32. It is settled case law that the effect of granting planning permission under section 73 of the 1990 Act is to create a completely new permission that stands alongside the original. It is therefore incumbent upon me to consider what conditions, if any, should be imposed on the new permission.
33. The 1994 Permission granted planning permission for an 'Emergency stopping place for gypsies with residents warden's pitch and space for up to 20 caravans'. The terms of the 1994 permission are therefore quite specific, insofar as it is limited to (a) an emergency stopping place: (b) for occupation by gypsies but with residents warden's pitch and (c) space for up to 20 caravans. On my reading, this number includes the caravan on the residents warden's pitch. It is helpful to consider these components in turn with a view to considering whether or not conditions should be imposed to control them.
34. There is no definition of an 'emergency stopping place' in legislation or relevant planning policy. In ordinary language, the term connotes occupation only for a temporary period whilst the emergency persists and/or other arrangements are made but with no degree of permanence. I fully recognise that emergencies in

this context can and do vary greatly in terms of their nature and duration, and will be different for the individual(s) concerned. However, the common denominator is that occupation will not be permanent.

35. The Council have referred me to an appeal decision in relation to a site known as The Old Coal Yard at Enderby in Leicestershire (APP/T2405/C/19/3233663). In that case, the description of development in the extant planning permission was for a residential gypsy caravan site. The issue before the Inspector was, in part, whether this imposed a continuing limitation on the use of the land so as to prohibit occupation by non-gypsies and travellers.
36. The appellant in that case relied on the High Court judgement in *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107 to underpin his contention that the description of development allowed on appeal in 2009 as a "residential gypsy caravan site" cannot act to limit the use beyond simply a 'caravan site'. In *I'm Your Man Ltd*, the Court held that there is no express or implied power for a local planning authority or the Secretary of State to impose limitations on a planning permission granted pursuant to an application. Such limitations are not capable of enforcement under the 1990 Act. The planning permission granted in that case was a permanent permission. The Court held that, on the facts of the case, there was no sufficient difference in character of use between a seven-year use and a permanent use to amount to a material change of use.
37. In The Old Coal Yard appeal, the Inspector noted that in *Norfolk Caravan Park Ltd v SSHCLG & Broadland DC* [2021] EWHC 2114 (Admin), in referring to a planning permission for a development described as a 'holiday caravan park', the High Court held that the word 'holiday' clearly qualified the term 'caravan park' and was as much a component of the use permitted as was the word 'caravan'. As such, the court held that the permitted 'holiday' use could not be widened to include a broader general residential use. The Inspector also noted that this judgment referred to and followed the earlier Court of Appeal judgment in *Wall & Ors v Winchester CC* [2015] EWCA Civ 563.
38. In *Wall & Ors*, the Court of Appeal held that a grant of planning permission for use of land as 'a travelling showpeoples' site' was a distinct and narrower use than a use simply as a residential caravan site. The Court held that the limitation of the use to a site for travelling showpeople was just as much a functional limitation on the permission as were, for example, the limitations to 'agricultural cottage' or 'site for caravans occupied by gypsies' or 'depot for cattle transport lorries'. As such, the Court of Appeal found that the use for which planning permission is granted must be ascertained from the ordinary meaning of the words in the planning permission itself. In this regard the court found that the principle established in *I'm Your Man* was not applicable because the relevant restriction in *I'm Your Man* related to the manner in which the use could be exercised, rather than the extent of the use itself.
39. Having regard to these judgments, the Inspector in The Old Coal Yard appeal concluded that the description of development in the extant planning permission in that case likewise defined the permitted use. Hence, the Inspector concluded that the description of development imposes a continuing limitation on the use of the appeal site such that occupation of caravans on the site was limited to gypsies, and by condition 2 of that permission limited to Gypsies & Travellers as defined in withdrawn Circular 1/2006.

40. Applying these judgements to the facts of this particular case, I consider that the term 'emergency stopping place' defines the manner in which the use could be exercised rather than the extent of the use. The use of the appeal site as an emergency stopping place connotes a particular pattern of use, in which occupiers would be present on the site only for a temporary period. This could be for only for a few days or possibly several months but, either way, it would only be for a temporary period. In any event, with up to 20 caravans on the site, the expectation would be for a regular churn of occupiers of the site and the occupation of the individual plots on a temporary basis rather than the establishment of permanent homes.
41. By contrast, occupation of the caravans on a permanent basis would have a very different character. The regular churn of occupiers would not occur. Individual caravans would remain on the site on a permanent basis. Homes would become established, with various accoutrements and planting being added to the caravans and plots, giving a more permanent feel to the site. Plots and caravans would be well maintained, more so than if plots and/or caravans were occupied for only short periods of time. Consequently, the definable character of the use would change and, on the balance of probability, a material change of use would occur.
42. I am therefore satisfied that the description of development is sufficient in this respect to limit the use to the terms granted by the planning permission. In this respect, I am satisfied that the meaning of the term 'emergency stopping place' is clear as a matter of ordinary language so as not to permit the permanent occupation of the caravans on the site.
43. I draw a direct parallel with the interpretation given by the High Court to the word 'holiday' in *Norfolk Caravan Park Ltd* in clearly qualifying the term 'caravan park'. In this case, the words 'emergency stopping place' similarly define and limit the use permitted by the 1994 Permission, being the same description of development for which planning permission is now sought. For that reason, I am satisfied that a condition to that effect is not necessary.
44. I am equally satisfied that the meaning of the term 'for occupation by gypsies but with residents warden's pitch' is clear as a matter of ordinary language. In that context, I take the definition of 'gypsies' to mean that defined at Annex 1 of Planning Policy for Traveller Sites (PPTS).
45. Occupation of the appeal by the settled community would result in a different character and pattern of occupation to that of occupation by gypsies and travellers. The number of people on the site at any one time is likely to be different, particularly at nighttime. The extent to which work and business activities are undertaken on the site itself is likely to be different than if occupied by gypsies and travellers. The number and pattern of vehicular movements is likely to be different too. Occupation by gypsies and travellers is likely to involve the stationing of second (touring) caravans on the site to facilitate travelling for work, which would typically not be the case with occupiers from the settled community.
46. Overall, I consider that occupation of the static caravans on the site by the settled community is likely to be significantly and materially different to occupation by gypsies and travellers. On the balance of probability, this in itself would constitute a material change of use requiring planning permission.

47. Furthermore, in *Richmond upon Thames LBC v SSETR & Richmond upon Thames Churches Housing Trust* [2001] JPL 84, and in *R(oao) Royal Borough of Kensington and Chelsea v SSCLG and David Reis and Gianna Tong* [2016] EWHC 1785, the Courts held that the extent to which a use fulfils a legitimate or recognised planning purpose is relevant in deciding whether there has been a material change of use. It was also held in *Kensington* that whether the loss of an existing use would have significant planning consequences, even where there would be no amenity or environmental impact, was relevant to assessing whether a change from that use would represent a material change of use.
48. In this context, it is significant and material that the provision of sites specifically for Gypsies and Travellers is a recognised planning purpose, achieved through the operation of the Council's development plan policies. Making and maintaining such provision to meet the need for Gypsies and Travellers pitches in the area is a significantly important objective of those policies. As such, failure to meet those needs, including through the loss of emergency stopping spaces as would be the case here, would result in significant planning consequences for the Gypsy and Traveller community.
49. The application site is located outside of the settlement boundary for Madley as defined in the Madley Neighbourhood Development Plan. As such, the appeal site is considered to lie in open countryside, within which Policy RA3 of the Herefordshire Local Plan Core Strategy (Core Strategy) applies. This policy limits development in the countryside to that which meets one of the seven listed exceptions, the last of which is that it is a site providing for the needs of gypsies or other travellers in accordance with Policy H4 of the Core Strategy. It follows that residential accommodation for the wider settled community in this location would not normally be permitted by policies in the development plan. Hence, occupation of this site other than by gypsies and travellers would undermine the objectives and purposes of Policy RA3 of the Council's Core Strategy.
50. I am mindful that the appeal site was included in the additional sites consultation that was carried out as part of the examination of the Travellers Sites Development Plan Document. The site was not taken forward due to issues arising from its proximity to an industrial estate in relation to the impact of noise on the future residents of the site and the potential conflict with commercial vehicles entering and leaving the site. However, these matters have now been resolved and/or could be controlled by the imposition of conditions.
51. Consequently, there is an imperative in planning policy terms that this site is only occupied by gypsies and travellers meeting the definition in Annex 1 of the PPTS. It follows that as per the judgements in *Richmond* and *Kensington* a material change of use would occur should the site be occupied other than by gypsies and travellers meeting the definition in Annex 1 of the PPTS.
52. Nevertheless, in this case it seems to me that this is a matter that relates both to the manner in which the use is exercised and to the extent of the use itself. There is evidence before me to show that not all of the caravans are occupied by gypsies and travellers meeting the definition in Annex 1 of the PPTS. For example, I have been provided with photographs of advertisements placed on Facebook for caravans on this site that require proof of ID and stating that the potential occupier must be in employment. However, in none of those of

advertisements is the potential occupier asked if they are from the gypsy and traveller community. The advertisements are entirely silent on that point.

53. Occupation of the caravans on the appeal site other than by gypsies and travellers meeting the definition in Annex 1 of the PPTS would not be in accordance with Policy RA3 of the Core Strategy. That would still be the case even if the number/percentage of occupiers who did not meet that definition did not result in a material change of use requiring planning permission. I note that the Inspector in The Old Coal Yard appeal reached his conclusion notwithstanding that a planning condition restricted occupation of the site to gypsies and travellers.
54. I therefore consider that a condition limiting occupation of the caravans to gypsies and travellers meeting the definition in Annex 1 of the PPTS is necessary to make the development acceptable in planning terms, is reasonable and is relevant to planning. The imposition of a condition to that effect is also entirely consistent with the description of development for which permission is sought, and as such is directly related to the permission to be granted. I am also satisfied that such a condition is precise and enforceable, given that the Council could ascertain the status of the occupiers of the caravans on the site at any time through a Planning Contravention Notice and/or by interviewing them.
55. The same also applies to the residents warden's pitch contained in the description for development for the 1994 Permission. It is unlikely, on the balance of probabilities, that occupation of that one pitch by persons other than the residents warden would result in a definable change in the character of the use, so as to amount to a material change of use. On the other hand, it is not open to me to simply remove reference to the residents warden's pitch from the description of development, because doing so would fundamentally alter the terms of the permission.
56. I understand that the site as currently operated employs a site manager but not a residents warden residing permanently on the site. Nonetheless, a condition requiring the provision and retention of a residents warden's pitch is necessary to accord with the terms of the permission that is sought.
57. The situation is different again in relation to the limitation on the space for up to 20 caravans. This limitation goes to the extent of the use rather than the manner in which the use could be exercised. The principle in *I'm Your Man Ltd* therefore applies in this situation.
58. At the Hearing, the appellant explained that a site licence is required for the stationing of caravans on this site and would be applied for when planning permission is obtained. Separation distances between caravans are imposed as part of that site licence which, the appellant explains, would in any event limit the number of caravans that may be stationed on the site. However, I have not been provided with an up-to-date site layout. The only plan that I have seen is dated August 1994 (Drawing No: 93/154/3) and shows only 17 plots on the site, including one for the residents warden (Plot 1 on that drawing). That plan does not reflect the actual layout of the site at this time.
59. Absent a site layout plan that could be used as a vehicle to condition the number of caravans stationed on the land, the number of caravans could subsequently be increased to some extent without a change in the definable

character of the use taking place and thereby without resulting in a material change of use requiring planning permission. It is therefore necessary to limit the number of caravans that may be stationed on the land to 20 in order to accord with the description of development for which planning permission is sought and to be consistent with other conditions relating to the provision of infrastructure on the site. I am also mindful that the description of development includes a residents warden's pitch. The condition would therefore also need to include that in order to reflect the terms of the permission.

60. In addition to the above, conditions are also required to secure adequate foul and surface water drainage, and to secure the retention of the existing visibility splay at the entrance to the site. The 1994 Permission has already been implemented. Accordingly, a condition relating to the commencement of development is not necessary. I understand that an amenity block was constructed but is no longer present, such that a condition requiring details of that building are no longer required. No conditions are required in relation to fencing or to the provision of noise mitigation measures: should noise emanating from the adjoining warehouse site become an issue in the future, if necessary, the matter can be addressed at that time.

Appeal C: Conclusion

61. I conclude that planning permission ought to be granted for the use of the land for an emergency stopping place for gypsies with residents warden's pitch and space for up to 20 caravans, subject to the conditions set out in the Schedule below.

Formal Decisions

Appeal A: APP/W1850/C/24/3350934

62. The appeal is allowed and the enforcement notice is quashed

Appeal B: APP/W1850/C/24/3350935

63. The appeal is allowed and the enforcement notice is quashed

Appeal C: APP/W1850/W/24/3356469

64. The appeal is allowed and planning permission is granted for the use of Madley Caravan Site, Stoney Street, Madley, Herefordshire HR2 9NQ for an emergency stopping place for gypsies with residents warden's pitch and space for up to 20 caravans, subject to the conditions set out in the Schedule below.

Paul Freer
INSPECTOR

APPEARANCES

On behalf of the appellant

Mr Matthew Green

Green Planning Studio Ltd

Mr Michael Rudd

Of Counsel

On behalf of the Local Planning Authority

Ms Constanze Bell

Of Counsel

Ms Kelly Gibbons

Development Management
Service Manager

Mr Scott Low

Planning Enforcement Officer

Mr David Wilkinson

Planning Enforcement Officer

Mr Sam Chesterton

Planning Enforcement Officer

Documents submitted at the Hearing

- 1/ Signed and dated Statement of Common Ground
- 2/ Opening submissions on behalf of the appellant
- 3/ Opening submissions on behalf of the Local Planning Authority
- 4/ Copy of the latter dated 1 August 2024 sent to occupiers of caravans on the appeal site
- 5/ Copy of Drawing No: No. 93/154/3, dated August 1994, submitted as part of planning application Council Ref: 602351

Documents submitted after the Hearing

- 1/ Costs application on behalf of the appellant
- 2/ Response of the local planning authority to the costs application made by the appellant
- 3/ Final comments on the costs application on behalf of the appellant

SCHEDULE OF CONDITIONS

- 1/ With the exception of one pitch occupied by the residents warden, the caravans on the site shall only be occupied by gypsies and travellers as defined at Annex 1 of Planning Policy for Traveller Sites (or as subsequently amended), specifically:

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, and all other persons with a cultural tradition of nomadism or of living in a caravan, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

- 2/ A maximum of 20 caravans (including motorhomes) shall be stationed on the site at any one time, of which one caravan/pitch shall only be occupied by, or reserved for occupation by, a residents warden.
- 3/ The use hereby permitted shall cease and all caravans, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
- i) Within 3 (three) months of the date of this decision a scheme for the provision of foul and surface water drainage shall have been submitted for the written approval of the local planning authority. The scheme shall include a timetable for its implementation.
 - ii) If within 11 (eleven) 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 maintained/retained/remain in use.

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.

- 4/ The visibility splay at the junction with the access with Stone Street shall be retained in accordance with details shown on Drawing No. 93/154/3, dated August 1994.