



Appeal Decision

Hearing held on 15 April 2025

Site visit made on 15 April 2025

by R Merrett BSc(Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2025

Appeal Ref: APP/H1840/C/24/3358097

Land south of Wickhamford Lane, Wickhamford, Evesham

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Cornelius Smith against an enforcement notice issued by Wychavon District Council.
- The notice was issued on 27 November 2024.
- The breach of planning control as alleged in the notice is The unauthorised material change of use of the land from agricultural to residential and the unauthorised operational development consisting of the erection of a dwelling and laying of hardstanding.
- The requirements of the notice are I. Cease the unauthorised residential use of the land known as Land south of Wickhamford Lane, Wickhamford, land outlined in red on the attached plan; II Remove the building and the concrete pad foundation approximately hatched in blue on the attached plan from the land known as Land south of Wickhamford Lane, Wickhamford, land outlined in red on the attached plan; III Permanently remove the hardstanding approximately outlined in blue on the attached plan from the land edged red on the attached plan.
- The period for compliance with the requirements is 9 calendar months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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 Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Procedural Matters

Building or Caravan

1. It is undisputed that the appellant has ethnic Gypsy status. Whilst for cultural reasons it is usual for Gypsies and Travellers to live in caravans, it is not certain without further analysis whether the accommodation developed on the site amounts to that, or whether it should be regarded as a building.
2. The accommodation has the appearance of a timber chalet / cabin with an apex roof. Whilst the Council are clear that it amounts to a building, the appellant regards the cabin as a caravan, rather than a building, emphasising a cultural aversion to living in a 'bricks and mortar' properties. In any event, he says irrespective of the technical definition of the development, the most important consideration is his Gypsy and Traveller status.
3. The Government's Planning policy for traveller sites (PPTS) does not say that Travellers must occupy a caravan and it has been held by the Court of Appeal that they do not need to. However, Gypsies and Travellers have long lived in caravans to facilitate their nomadic lifestyle and tradition, and so the PPTS is concerned with the development of caravan sites. In most cases, success at appeal would mean a grant of permission with the word 'caravan' or 'caravans' somewhere in the

description of development, and a condition imposed to restrict the numbers and/or types of 'caravan' on the land.

4. By contrast, where an appeal is made for a house for a Traveller family, the structure would still have the potential in future to be occupied by a member of the settled community. In my view it should, under such circumstances, be considered in accordance with the development plan and the National Planning Policy Framework (the Framework) as an appeal for general housing. The PPTS would not therefore be relevant.
5. Whether the cabin is a building or a caravan is therefore pivotal to how this case should be assessed, and I shall therefore proceed to resolve the question.
6. The meaning of development is set out in s55(1) of the 1990 Act and includes the carrying out of building, engineering, mining or other operations in, on, over or under land. The Act states that for the purposes of this Act "building operations" includes (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder. A building is defined in s.336 of the Act as including any structure or erection.
7. It is settled case law that the appropriate criteria for determining whether something constitutes a building are size, permanence and physical attachment¹. It is necessary to apply all three tests and to make a fact and degree assessment, with no one test necessarily being determinative.
8. From measurements taken during the site visit, the cabin is some 11.2 metres in length by 5.8 metres in width, excluding the roof overhang. The internal accommodation comprises separate rooms which include a living room, bedroom and small kitchen. The cabin was constructed on site, and I consider it to be of sufficient size that it could constitute a building.
9. In terms of permanence, it is undisputed that the cabin has been in place since it was constructed in 2023, without having been moved since then. I am not aware of any intention to relocate the cabin, and I am satisfied it has sufficient permanence to have a permanent character and to be regarded as a building.
10. In terms of physical attachment, it is undisputed that the cabin, which has a timber base frame, rests on and is supported by a levelled concrete slab. It is not physically attached in any way to the slab. However, there is nothing that persuades me that the considerable inherent weight of the cabin would not be sufficient to enable it to stand securely on the ground.
11. I therefore consider that the relevant tests for building status are passed.
12. A caravan is defined at s29(1) of the Caravan Sites and Control of Development Act 1960 (CSCDA) as any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted. It excludes (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent.

¹ *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102

13. S13(1) of the Caravan Sites Act 1968 (CSA) defines twin-unit caravans thus: “A structure designed or adapted for human habitation which— (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.
14. S13(2) of the CSA confirms that, for the purposes of the CSCDA, the expression ‘caravan’ shall not include a structure designed or adapted for human habitation, where its dimensions, when assembled, exceed any of the following limits: 20 metres in length; 6.8 metres in width; a maximum internal floor to ceiling height in relation to the living accommodation of 3.05 metres.
15. In summary, and on its face, the aforementioned legislation introduces a ‘mobility test’ and a ‘size test’ that would apply to any case where there is a claim for caravan status. The CSA refers to a further ‘construction test’ which applies specifically to twin-unit caravans.
16. In terms of construction and mobility, the appellant confirmed the cabin is comprised of multiple component parts that had been delivered to the site in flat pack form, then assembled bit by bit on site. Accordingly, he accepted that in order to transport the structure it would probably be necessary to take it apart bit by bit. Also, the appellant’s agent did not dispute the Council’s view that to be capable of being moved in one piece would likely require significant modifications to the structure in order to incorporate a purposely designed sub-frame. I have no reason to take a contrary view. Accordingly, the cabin does not pass the aforementioned mobility and construction tests.
17. From measurements taken on site there is no dispute that the maximum internal floor to ceiling height in relation to the living accommodation would be some 3.22 metres. Thus, the structure would also fail the aforementioned size test constraints.
18. Drawing the above considerations together, as a matter of fact and degree, the cabin does not meet any of the statutory tests for being a caravan. As such it is not a caravan.
19. As a matter of fact and degree, I consider, having applied all three relevant tests, that the structure comprises a building, and conclude that it amounts to operational development (a building operation) having taken place. Having reached this conclusion, the development should therefore be assessed against the development plan and the Framework as an additional housing unit. Accordingly, and despite the appellant’s ethnic status, it would not be appropriate to assess the site as a Gypsy and Traveller site in relation to the criteria set out within Policy SWDP 17 of the South Worcestershire Development Plan 2016 (DP), any equivalent emerging development plan policy or the PPTS.

Planning Obligation

20. The appellant has submitted a planning obligation, in draft form, for consideration. This would commit the appellant to making a financial contribution towards the provision of affordable housing within the District. This matter is considered below.

The appeal on ground (a)

Main Issues

21. The appeal on ground (a) is that planning permission should be granted. The main issues are i) the effect of the development on the character and appearance of the landscape; ii) whether the development is in a sustainable location; iii) the personal circumstances of the appellant and iv) the question of need for a planning obligation to secure a financial contribution to the provision of affordable housing.

Reasons

Character and Appearance

22. The appeal site constitutes a broadly rectangular parcel of land, formerly an orchard, which has been partially cleared to make way for the development. It is accessed via a privately owned track, to the east of the built-up area of Evesham. The surrounding landscape is characterised by gently undulating fields with strongly vegetated boundaries. There are various sporadic developments, generally focussed along highway corridors, and whilst I would not describe the dwelling as highly isolated, it stands alone, not part of a streetscape.
23. Whether because of natural screening, distance, or a combination of these factors, visibility of the dwelling, which is reached via a long driveway, is essentially limited to within, and around the entrance to, the site. Neither the dwelling nor hardstanding are therefore prominent, if visible at all, in relation to public viewpoints.
24. The building elevations are constructed from timber panels, and it has a shallow apex roof, constructed from profiled sheets. Because of its simple, single storey form, the structure has the appearance of a cabin or workshop. However, it seems to me that the limited scale of the unit, visible against mature planting, and the use of timber cladding on the external elevations, help to assimilate the development into its surroundings, serving to mitigate visual impact and respecting the rural character of the surrounding open countryside. It seems to me that further planting would serve to strengthen the effectiveness of screening around the site entrance.
25. Drawing the above considerations together I conclude the development does not result in harm to the character and appearance of the area. Accordingly, I do not find conflict with Policies SWDP 21 and 25 of the DP, which seek developments of high quality, that integrate with, and respect the distinctiveness of, the surrounding landscape character.

Sustainable Location

26. The appeal site lies outside the development boundary for Evesham, by some 800 metres. It is undisputed the site is therefore situated within the open countryside,

in accordance with the definition of such, as set out with Policy SWDP 2 of the DP, which refers to land beyond any development boundary.

27. Policy SWDP 2 seeks to strictly control development in the open countryside, with limited exceptions, as set out within specific development plan policies. Exceptions include that stated at Policy SWDP 19, which makes provision for rural worker dwellings where certain provisos are met. These include that the need to live there can be demonstrated, whilst restricting the scale of development. The appellant does not seek to argue the proposed development would be compliant with this policy.
28. The Framework states that planning decisions should avoid the development of isolated homes in the countryside, subject to exceptions. Whilst the appeal site is not part of a settlement and the cabin could be interpreted as physically isolated to a degree, as alluded to above, it is within an area of other sporadic developments. This serves to temper the adverse weight I give to this factor.
29. Policy SWDP 4 seeks to manage travel demand through developments offering genuinely sustainable travel choices. The appeal site is situated on Wickhamford Lane, which is a narrow and uneven, poorly surfaced private track, accessed from the A44 road. There is an absence of street lighting, although once at the A44, there is a roadside footpath which provides a link with Evesham. It is not contentious that Evesham would reasonably be expected to provide various day to day services and facilities such as shopping, education and medical care. Nevertheless, I am not persuaded the site location would allow for a safe or attractive walking route during darkness or bad weather.
30. With regard to connectivity, it would be realistic to conclude that for convenience and distance reasons, and safety during hours of darkness, there would need to be significant reliance on private vehicles in order to gain access to everyday services and facilities. I am not therefore persuaded that the appeal site could reasonably be described as being in a sustainable location and I conclude the development would be in conflict with the Council's aforementioned development strategy and travel management policies.
31. However, the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In this context, having regard to the relative proximity of Evesham and the limited scale of development involved, I consider that the length, duration and number of journeys necessary to access essential services and facilities, even if taken by car, would not in this case be excessive for a rural location. These factors therefore serve to reduce the adverse weight that I give to this matter to a moderate level. In reaching this conclusion I have also taken into account the relative physical isolation of the site.
32. Nevertheless, in my judgment, the development strategy and use of sustainable transport are key elements of the development plan, and accordingly I find that the proposal would be in conflict with the development plan when read as a whole.

Personal Circumstances

33. The appellant sets out that he purchased the appeal site in January 2020, and only ceased travelling at that point. It appears to begin with, and prior to developing the

site, the appellant resided in a dilapidated shed, situated close to the site entrance. I was able to view this structure during my visit.

34. The reason for developing the land was the appellant's desire for a more settled life, to help facilitate the care of his grandmother, who lives nearby in the village of Badsey; also to be closer to his 13 year-old daughter who lives and attends school in Evesham, whilst providing a secure and comfortable environment to facilitate her visits there.
35. The appellant referred at the Hearing to a cultural aversion to living in traditional bricks and mortar accommodation, which would not be conducive to his mental health. There is no reason for me to dispute this, which would not be an unusual stance for members of the Traveller community. In the event of the appeal not succeeding he considered it likely he would return to living in the aforementioned dilapidated shed. However, given the notice requires the residential use of the land to cease, this would not be a certain outcome.
36. I consider the grant of planning permission would help to enable care of and contact with members of the appellant's family. Furthermore, the appellant's contentment with living in a cabin would facilitate this need, whilst also serving to reduce pressure on Gypsy and Traveller site provision, in relation to which there is an undisputed shortfall within the District.
37. The appellant's personal circumstances therefore attract positive weight in support of the development, albeit that this is tempered by the expectation that the need for close care and support of family members would naturally diminish over time.

Planning Obligation

38. The Framework sets out that the provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer)².
39. In this regard the Council sets out that the majority of the rural parts of Wychavon, including the appeal site, fall within a designated rural area. Therefore, in accordance with Policy SWDP 15 of the DP, on sites of less than 5 dwellings a financial contribution towards local affordable housing provision should be made, based on the cost of providing the equivalent in value to 20% of the units as affordable housing on site. The contribution will be payable on the commencement of development.
40. The Council therefore seeks an affordable housing contribution of £12,797. The appellant is agreeable to making this contribution and accordingly has submitted a draft planning obligation which commits to expediting the payment.
41. Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 states that a planning obligation may only constitute a reason for granting planning permission for the development where it meets three tests. The tests, which are restated in paragraph 58 of the Framework are as follows:
 - a) necessary to make the development acceptable in planning terms;

² Paragraph 65.

- b) directly related to the development; and
 - c) fairly and reasonably related in scale and kind to the development.
42. I am satisfied that the provisions of the planning obligation would be necessary to make the development acceptable in planning terms, would be directly related to the development and would be fairly and reasonably related in scale and kind to the development. The statutory tests in Regulation 122 of the CIL Regulations are, therefore, met and the draft planning obligation is a material consideration in this case.
43. I am mindful that the planning obligation still needs to be completed, in order to reflect the current position and circumstances; also to establish the appropriate trigger point for payment, as the contribution cannot be geared to the commencement of development, given this has already occurred. However, I am satisfied the drafting of the document is sufficiently advanced to demonstrate a genuine commitment from the appellant to making the necessary contribution.
44. The parties have been consulted regarding the imposition of a planning condition to require the completion of the planning obligation. I note the Council, despite expressing reservations about the use of a condition, suggest the completion of the obligation should be relatively straight forward. I also note that the appellant would be content with paying the necessary contribution within five working days of the planning obligation being completed.
45. Accordingly, in the event that permission is granted a planning condition will be imposed requiring the planning obligation to be completed within three months of the date of the permission, which itself will require the associated financial contribution to be paid within an agreed timescale. Failure to meet the three-month deadline would result in planning permission being lost.

Other Matters

46. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However, each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission in this case.
47. I have not been provided with any evidence to persuade me there are inadequate arrangements for the collection of domestic waste and recycling generated at the site, or that emergency vehicles would be unable to access the site should this ever be a requirement.

Other Material Considerations

48. It is undisputed that the Council is unable to demonstrate a five-year supply of deliverable housing sites. The Council refers within its statement, as confirmed at the Hearing, to having a 1.1 year supply.
49. Whilst the Council expects the shortfall in housing site provision to be addressed, once its emerging local plan is adopted, paragraph 11(d) of the Framework is nevertheless engaged. This means that decision makers should apply a presumption in favour of sustainable development, such that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the

Framework taken as a whole. The Framework sets out that achieving sustainable development means the planning system has overarching economic, social and environmental objectives.

50. From an economic perspective, in broad terms the development would probably bring a very modest benefit to the local economy, resulting from additional spending by the new occupiers. However, given the single unit involved I attach only very limited positive weight in this regard.
51. The proposal would allow for additional landscaping and biodiversity improvement. However, when set against the tree felling that has already been necessary to facilitate the development itself, I consider these measures would serve to mitigate rather than act as an environmental benefit.
52. In social terms, an additional residential unit would be provided, which carries some positive weight in the context of an acknowledged significant shortfall of housing land supply in the District. As set out above, the development also constitutes a positive response to the appellant's personal circumstances, and would also allow for a financial contribution to be made, to help support affordable housing provision generally within the District. Overall, the social benefits of the development attract moderate positive weight, having regard to the limited scale of development and size of contribution involved.
53. As set out previously in my decision the proposed development would not be in a sustainable location and would be in conflict with the development plan when read as a whole. However, for the reasons given I have attached moderate adverse weight to this harm. In terms of paragraph 11(d) of the Framework any adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Accordingly, it would constitute the sustainable development in relation to which the Framework presumes in favour.

Planning Balance and Conclusion

54. Therefore, despite the proposal conflicting with the development plan, material considerations, having regard to the Framework, indicate that a decision should be taken otherwise than in accordance with the plan.
55. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The enforcement notice will be quashed.

Conditions

56. I have considered the conditions suggested by the Council and discussed with the parties at the Hearing. Conditions requiring details of boundary treatments and removing permitted development rights in relation to extensions and alterations to the dwelling are required in the interests of the character and appearance of the area. Details of surface water and foul drainage and renewable or low carbon energy measures are required in the interests of environmental protection.
57. Details of cycle parking measures in order to promote the use of sustainable transport; facilities for bat roosting and bird nesting to enhance biodiversity; and landscaping measures and external lighting on the site to protect residential

amenity, character and appearance and biodiversity interests are all required. A condition confirming the relevant plan is required to help promote certainty.

58. A condition is needed requiring the submission of a completed version of the planning obligation, in order to secure an appropriate financial contribution towards the provision of affordable housing.
59. The purpose of this condition is to require the appellant to comply with a strict timetable for completing the planning obligation, in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition to resist the development going ahead.
60. The condition therefore provides for the loss of the effective benefit of the grant of planning permission, where the requirements are not met during the time set by the condition. Should the requirements of the condition not be met in line with the strict timetable, the residential use of the land would have to be discontinued and the dwelling and hardstanding removed.
61. A condition requiring provision to be made for car parking is not required, given that adequate space for this already exists.

Formal Decision

62. The appeal is 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 material change of use of the land from agricultural to residential and the unauthorised operational development consisting of the erection of a dwelling and laying of hardstanding at Land south of Wickhamford Lane, Wickhamford, Evesham as shown on the plan attached to the notice and subject to the conditions below.

R. Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Within three months of the date of this decision, full details including a timetable for implementation, of all foul and surface water drainage systems to serve the development shall be submitted to the local planning authority for approval in writing. The approved drainage works shall be implemented in accordance with the approved details and retained thereafter.
- 2) Within three months of the date of this decision, details for sheltered and secure cycle parking on the site, to comply with the Council's adopted highway design guide, including a timetable for implementation shall be submitted to the local planning authority for approval in writing. The approved cycle parking shall be implemented in accordance with the approved details and retained thereafter.
- 3) Within three months of the date of this decision, details for soft landscaping including a timetable for implementation shall be submitted to the local planning authority for approval in writing. The landscaping scheme shall include details of existing trees and hedges to be retained, proposed species, plant sizes, numbers and densities and details of a schedule of maintenance for a period of 5 years. The approved landscaping works shall be implemented in accordance with the approved details.
- 4) Any trees or plants which within a period of 5 years from the completion of the planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 5) Within three months of the date of this decision, details including a plan indicating the positions, design, materials and type of boundary treatment to be erected including a timetable for implementation, shall be submitted to the local planning authority for approval in writing. The approved boundary treatment shall be implemented in accordance with the approved details and retained thereafter.
- 6) Within three months of the date of this decision, details including a timetable for implementation of a bat roosting feature and bird nesting box, shall be submitted to the local planning authority for approval in writing. The approved features shall be provided in accordance with the approved details and retained thereafter.
- 7) Within three months of the date of this decision, details of any external lighting to be provided in association with the development shall be submitted to the local planning authority for approval in writing. The details shall include times when the external lighting will not be switched on. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) there shall be no other external lighting provided on the application site.
- 8) Within three months of the date of this decision, details including a timetable for their implementation, of renewable or low carbon energy generating facilities to be incorporated as part of the development shall be submitted to the local

planning authority for approval in writing. The details shall demonstrate that at least 10% of the predicted energy requirements of the development will be met through the use of renewable / low carbon energy generating facilities. The approved facilities shall be completed in accordance with the approved details and retained in working order thereafter.

- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no additions, extensions, external alterations or buildings or enclosures required for a purpose incidental to the enjoyment of the dwelling house shall be constructed / carried out on the site.
- 10) Unless where permitted by other conditions, the development hereby approved shall only be carried out in accordance with the following drawing: "Ordnance Survey Plan Showing Site At The Time Of Enforcement Notice (n.t.s.)".
- 11) The residential use of the land, hereby permitted, shall cease and the dwelling, concrete pad foundation and hardstanding, hereby permitted, shall be removed, within **six months** of the date of failure to meet the requirement set out in i) below:
 - i) Within **three months** of the date of this decision, a planning obligation shall be completed which requires the appellant to make a financial contribution of £12,797 towards the provision of affordable housing in the District.

END OF SCHEDULE OF CONDITIONS

APPEARANCES

FOR THE APPELLANT:

Alan McColm	Planning Agent
Cornelius Smith	Appellant
Gemma Beck	Appellant's Partner

FOR THE LOCAL PLANNING AUTHORITY:

Gavin Greenhow	Planning Officer
Samuel Mather	Planning Enforcement Officer
Denise Duggan	Policy Officer

Documents submitted at the Hearing:

1. Council's list of suggested conditions.
2. Extract from glossary to GTAA.

Documents submitted following the Hearing:

1. Draft Planning Obligation including consultation responses.