Neutral Citation Number: [2020] EWHC 112 (Admin)

Case No: CO/2382/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 January 2020

Before :

MRS JUSTICE LANG DBE

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Between :

HUGHIE SYKES	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	
(2) RUNNYMEDE BOROUGH COUNCIL	**Defendants**

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- -

Marc Willers QC (instructed by **Deighton Pierce Glynn**) for the **Claimant**
Caroline Bolton (instructed by **Legal Services**) for the **Second Defendant**
The **First Defendant** did not attend and was not represented

Hearing dates: 17 & 18 December 2019

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Approved Judgment

Mrs Justice Lang:

1. The Claimant applies under section 288 of the Town and Country Planning Act 1990 ("the TCPA 1990") to quash the decision of the First Defendant, dated 9 May 2019, by which his Inspector dismissed an appeal under section 78 TCPA 1990 against the refusal by Runnymede Borough Council ("the Council") of an application for planning permission for a change of use of land, to use as a residential caravan site, at Adas Farm, Hardwick Lane, Lyne, Chertsey, Surrey KT16 0BH ("the Site").

2. The Site, which is about 1.5 ha (3.7 acres) in size, is in the Green Belt, in a semi-rural area with low density housing. It is also within 5 km of the Thames Basin Heaths Special Protection Area.

3. The Claimant is a Romani Gypsy. He is part of a group of Gypsy and Traveller households (hereinafter referred to as "the Group") who wish to live together on the Site in their caravans. The Group comprises families who are related to one another, and longstanding friends, who are members of the Light and Life Evangelical Church. There are 23 households, comprising about 86 adults and children. They have purchased individual plots of land from the Site's owner, who is related to some members of the Group.

4. The application for planning permission and the subsequent appeal was made by another member of the Group, Mr Nino Lee (referred to as "the Appellant" in this judgment). The application for planning permission was retrospective because, over the Bank Holiday weekend at the beginning of May 2017, members of the Group went ahead and developed the Site for their use, and entered into occupation of it, in breach of planning controls. The Site, which was previously predominantly wooded, with a grassed clearing, was stripped of most of its trees and other vegetation, and largely covered with hardstanding.

5. Following a High Court injunction granted on 5 May 2017, the Group vacated the Site, but the unauthorised development has remained ever since. The Council issued an enforcement notice on 30 June 2017 requiring restoration, but that was also appealed by Mr Lee. The Inspector allowed the enforcement appeal solely in respect of the length of time provided for compliance, substituting a period of 6 months.

6. The Claimant accepted that the First Defendant's decision to refuse permanent planning permission could not be challenged, for the reasons he gave. His claim under section 288 TCPA 1990 was solely in respect of the refusal of temporary planning permission.

7. The Council contested the claim on all grounds. However, the First Defendant conceded the Claimant's ground 4(a), namely, that the Inspector failed to provide adequate reasons to address the question whether suitable permanent sites might become available in neighbouring areas by the end of a period of temporary planning permission. On that basis the First Defendant accepted that the decision should be quashed and remitted for redetermination.

8. Permission was given on the papers by Sir Wyn Williams, sitting as a Judge of the High Court, on 19 August 2019. In response to the Claimant's skeleton argument, the First Defendant filed written representations in relation to ground 1 (discrimination against

ethnic Gypsies and Travellers). At the hearing, the Claimant did not pursue grounds 1 and 2 of his pleaded grounds.

The application for planning permission

9. By an application dated 1 May 2017, which was amended on 10 July 2017, the Appellant applied for permission for 13 pitches, to be laid out either side of a central spine access road. The 13 pitches would accommodate up to 23 households.

10. The Council refused planning permission on 28 March 2018, for a number of reasons. Those which are material to this challenge relate to the protection of the Green Belt. The Council concluded that the change of use of the land for a residential caravan site and associated hardstanding and buildings constituted "inappropriate development" which was by definition harmful, and had a harmful impact on the openness of the Green Belt. It resulted in encroachment of built form into the Green Belt which conflicted with the purposes of inclusion of the land within the Green Belt. There were no very special circumstances that outweighed the harm to the Green Belt and other harm. The proposal failed to comply with Saved Policy GB1 of the Local Plan and guidance in the National Planning Policy Framework.

11. The Inspector's conclusions were set out in his Decision Letter ("DL") as follows:

> "*Planning balance*
>
> 39. By definition, inappropriate development is harmful to the Green Belt, and further harm arises through the loss of openness and encroachment on the countryside, the more so given the considerable size of the development. Each of these must be accorded substantial weight, and I have also found that the intentional nature of the unauthorised development should be accorded significant weight.
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> 40. The sum of this harm must be balanced against the factors in favour of the proposal. At present, the borough has a significant level of unmet need for traveller sites, as is the case regionally and nationally, and this carries significant weight. The Council has a poor record of bringing forward sites through the development plan process, there is not a 5-year supply of sites and I am far less confident than the Council that its current approach to future provision is likely to see the shortfall overcome within the next 5 years. These are also matters to which I attribute significant weight.
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> 41. The lack of an alternative site is a matter that would normally also add significant weight in favour of an appeal, but the circumstances of the prospective occupiers are not all the same, so I have had to consider whether less weight should be accorded to this matter in this case. To be a realistic alternative, accommodation has to be suitable, available, affordable and acceptable. In this case many of the households who occupied

the site and who remain prospective occupiers have got alternative lawful sites to live on. They consider them to be unsuitable or unacceptable for reasons of overcrowding, fear of crime or insecurity of tenure, but neither the overcrowding point nor that of fear of crime stood up well to scrutiny, and on the sites where security of tenure was an issue the households concerned had long connections with those sites and appeared able to return to them when required. For those who would not reveal where they were living, I could not conclude with any certainty that they did not have access to alternative accommodation, although I have no reason to doubt their oral evidence that wherever they are currently staying is unauthorised.

42. Notwithstanding, however, that some prospective occupants have access to alternative accommodation, there are qualitative aspects to traveller site provision that are often overlooked in quantitatively oriented accommodation assessments. I have formed the view that the impetus for moving onto the site was a combination, in roughly equal parts, of a genuine need for an affordable pitch by, primarily, close relatives of the then landowner, and the aspiration, on the part of those who already had alternative pitches, to live on a better site with like-minded people. In this context the personal need for a site is clearly more pressing for some of the prospective occupiers than others, but the group as a whole still have what I see as a legitimate aspiration of being able to live in the safe, secure and mutually supportive community that they had planned for the appeal development, and for which no alternative site has been identified. In these circumstances I consider that this matter can be accorded significant weight, particularly as the opportunity for the households to live together for mutual support is characteristic of the traveller way of life. The proposal would therefore be consistent with the Government's aim of facilitating the traditional and nomadic way of life of travellers.

43. Similarly, the personal circumstances of the prospective occupants, so far as they are material planning considerations, vary significantly, but I consider that they are worthy of very significant weight. I heard compelling evidence that the particular environment of the appeal development would be of considerable assistance in the management of the severe conditions affecting some of the children, and having a settled base would ensure that the many children who would live at the site had the stable access to education and health services that was, in most cases, denied their parents. The families of the children with the most pressing needs have been able to access appropriate specialist services in the area despite not living at the appeal site, but these might be at risk if they are unable to find suitable stable accommodation in the wider area at least. It would

undoubtedly be in the best interests of those children who do not currently benefit from a stable base to have one from which to access education and health services. This also adds significant weight in favour of the appeal.

44. In balancing these opposing considerations and their respective weight, however, I consider that the Green Belt harm supplemented by the weight arising from the intentional unauthorised nature of the development is not clearly outweighed by the weight of the other considerations. It follows that the very special circumstances necessary to justify a grant of planning permission for the development in the Green Belt do not exist. The development therefore conflicts with LP Policy GB1 and the development plan read as a whole, and with national planning policy.

45. I have also considered whether a temporary permission would be justified, given that the Green Belt harm would be reduced. The principal justification for a temporary permission in a case such as this is that at the end of it there would be a realistic likelihood of the occupants being able to move to suitable alternative accommodation. Taking the group as a whole, and the Council's current position on future provision, I consider it very unlikely that such a site would become available by the end of the four year period suggested by the appellant, and I consider it quite unlikely that all or even most of the 23 individual households would, individually, have suitable accommodation to move to after that period. Further, given the substantial nature of the development, which has now been in place for over 2 years, I consider that reduction in Green Belt harm due to time-limiting would still not reduce the overall harm to a level where it would be clearly outweighed by the considerations in favour of the appeal.

46. It has been submitted that planning permission, or even temporary planning permission, could be granted for some plots only, on the basis of according different weights to the prospective occupiers' circumstances and carrying out the balancing exercise on a per plot basis. I do not believe that that would be an appropriate approach in a case such as this where the application is for the development as a whole, much of the infrastructure would still be required and it concerns land that was previously entirely undeveloped, but I consider in any case that such an approach would not alter the respective weights so much as to indicate a different outcome.

47. That being so, it follows that very special circumstances do not exist to justify planning permission for the development, or any part of it, on either a temporary or permanent basis. I have reached this conclusion having borne in mind my public sector equality duty throughout.

> *Human rights*
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> 48. Dismissal of the appeal would not make any of the prospective occupiers immediately homeless, but it would deprive the prospective occupants of the possibility of establishing a home on the appeal site, and of living in the family or community environment that they aspire to. Bearing in mind also that it is likely that many of the prospective occupiers do not have a lawful home at present, I accept that dismissal would represent an interference with their rights under Article 8 of the … European Convention on Human Rights.
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> 49. However, the protection of Green Belts is an important aim of local and national planning policies. The protection of the Green Belt is therefore a legitimate objective in the public interest, and has a clear basis in the relevant planning legislation. In these circumstances, some interference with Article 8 rights is permissible, and I consider that the protection of the public interest cannot be achieved by means which are less interfering with the prospective occupiers' rights. They are proportionate and necessary and hence would not result in a violation of rights under Article 8.
>
> **Overall conclusion**
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> 50. For the reasons set out above, I conclude that the appeal development, which was intentional unauthorised development, would cause unacceptable harm to the Green Belt. That harm is not outweighed by any of the other considerations, including the need for more gypsy and traveller sites in the area, or the prospective occupiers' personal circumstances, on either a temporary or permanent basis. I have taken account of all the other matters raised, but none changes these conclusions. The appeal is therefore dismissed…."

Statutory and policy framework

12. The Claimant relied upon the "seven familiar principles" set out by Lindblom J. in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin), at [19].

(i) Applications under section 288 TCPA 1990

13. Under section 288 TCPA 1990, a person aggrieved may apply to quash a decision on the grounds that (a) it is not within the powers of the Act; or (b) any of the relevant requirements have not been complied with, and in consequence, the interests of the applicant have been substantially prejudiced.

14. The general principles of judicial review are applicable to a challenge under section 288 TCPA 1990. Thus, the Claimant must establish that the Secretary of State misdirected himself in law or acted irrationally or failed to have regard to relevant considerations or that there was some procedural impropriety.

15. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. As Sullivan J. said in *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, at [6]:

> "An application under section 288 is not an opportunity for a review of the planning merits….."

16. In *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865, Lord Carnwath giving the judgment of the Supreme Court warned, at paragraph 23, against over-legalisation of the planning process. At [24] to [26], he gave guidance that the courts should recognise the expertise of the specialist planning inspectors and work from the presumption that they will have understood the policy framework correctly. Inspectors are akin to expert tribunals who have been accorded primary responsibility for resolving planning disputes and the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence. Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies. But issues of interpretation, appropriate for judicial analysis, should not be elided with issues of judgment in the application of that policy.

17. A decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case: see Lord Bridge in *South Lakeland v Secretary of State for the Environment* [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, at 271; *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28; and *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83.

18. Two citations from the authorities listed above are of particular relevance to the disputed issues in this case.

    a) *South Somerset District Council*, per Hoffmann LJ at 84:

    > "...as Forbes J. said in *City of Westminster v Haymarket Publishing Ltd*:
    >
    > > "It is no part of the court's duty to subject the decision maker to the kind of scrutiny appropriate to the determination of the meaning of a contract or a statute. Because the letter is addressed to parties who are well aware of all the issues involved and of the arguments deployed at the inquiry it is not necessary to rehearse every argument relating to each matter in every paragraph."

> The inspector is not writing an examination paper on current and draft development plans. The letter must be read in good faith and references to policies must be taken in the context of the general thrust of the inspector's reasoning ... Sometimes his statement of the policy may be elliptical but this does not necessarily show misunderstanding. One must look at what the inspector thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood a relevant policy or proposed alteration to policy."

b) *Clarke Homes*, per Sir Thomas Bingham MR at 271-2:

> "I hope I am not over-simplifying unduly by suggesting that the central issue in this case is whether the decision of the Secretary of State leaves room for genuine as opposed to forensic doubt as to what he has decided and why. This is an issue to be resolved as the parties agree on a straightforward down-to-earth reading of his decision letter without excessive legalism or exegetical sophistication."

19. An inspector is under a statutory duty to give reasons for his decision, pursuant to rule 19 of the Town and Country Planning Appeals (Determination by Inspectors)(Inquiries Procedure)(England) Rules 2000.

20. In *South Buckinghamshire District Council v Porter* (No 2) [2004] 1 WLR 1953, Lord Brown reviewed the authorities and gave the following guidance on the nature and extent of the inspector's duty to give reasons:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the

> court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

21. In *Save Britain's Heritage v Number 1 Poultry Limited* [1991] 1 WLR 153, Lord Bridge confirmed the requirement of substantial prejudice, at 167D-E:

> "The single indivisible question, in my opinion, which the court must ask itself whenever a planning decision is challenged on the ground of a failure to give reasons is whether the interests of the applicant have been substantially prejudiced by the deficiency of the reasons given."

22. The Supreme Court, in *R (CPRE Kent) v Dover District Council* [2017] UKSC 79, [2018] 1 WLR 108 affirmed Lord Brown's formulation in the *South Bucks* case; per Lord Carnwath at [35] to [42]. In rejecting the submission that the deficiency in reasons did not justify the quashing of the grant of planning permission, Lord Carnwath held, at [68] that the inadequate reasoning of the Planning Committee:

> "raises a "substantial doubt" (in Lord Brown's words) as to whether they had properly understood the key issues or reached "a rational conclusion on them on relevant grounds". This is a case where the defect in reasons goes to the heart of the justification for the permission and undermines its validity. The only appropriate remedy is to quash the permission."

(ii) Decision-making

23. Section 70(2) TCPA 1990 provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") provides:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

24. In *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447, Lord Clyde explained the effect of this provision, beginning at 1458B:

> "Section 18A [the parallel provision in Scotland] has introduced a priority to be given to the development plan in the determination of planning matters……
>
> By virtue of section 18A the development plan is no longer simply one of the material considerations. Its provisions, provided that they are relevant to the particular application, are to govern the decision unless there are material considerations which indicate that in the particular case the provisions of the plan should not be followed…..If it is helpful to talk of presumptions in this field, it can be said that there is now a

> presumption that the development plan is to govern the decision on an application for planning permission….. Thus the priority given to the development plan is not a mere mechanical preference for it. There remains a valuable element of flexibility. If there are material considerations indicating that it should not be followed then a decision contrary to its provisions can properly be given.
>
> Moreover the section has not touched the well-established distinction in principle between those matters which are properly within the jurisdiction of the decision-maker and those matters in which the court can properly intervene. It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker. It is for him to assess the relative weight to be given to all the material considerations. It is for him to decide what weight is to be given to the development plan, recognising the priority to be given to it. As Glidewell J observed in *Loup v Secretary of State for the Environment* (1995) 71 P & C.R. 175, 186:
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> > "What section 54A does not do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations."
>
> Those matters are left to the decision-maker to determine in the light of the whole material before him both in the factual circumstances and in any guidance in policy which is relevant to the particular issues."

25. This statement of the law was approved by the Supreme Court in *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, [2012] PTSR 983, per Lord Reed at [17].

26. In *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 WLR 759, Lord Hoffmann explained, at 780F-H:

> "The law has always made a clear distinction between the question of whether something is a material consideration and the weight which it should be given. The former is a question of law and the latter is a question of planning judgment, which is entirely a matter for the planning authority. Provided that the planning authority has regard to all material considerations, it is at liberty (provided that it does not lapse into Wednesbury irrationality) to give them whatever weight the planning authority thinks fit or no weight at all. The fact that the law regards something as a material consideration therefore involves

> no view about the part, if any, which it should play in the decision-making process.
>
> The distinction between whether something is a material consideration and the weight which it should be given is only one aspect of a fundamental principle of British planning law, namely that the courts are concerned only with the legality of the decision-making process and not with the merits of the decision. If there is one principle of planning law more firmly settled than any other, it is that matters of planning judgment are within the exclusive province of the planning authority or the Secretary of State."

27. In *Bolton MBC v Secretary of State for the Environment* [1991] 61 P & CR 343, Glidewell LJ, at 352, analysed the duty to take into account relevant considerations as follows:

> "1. The expressions used in the authorities that the decision maker has failed to take into account a matter which is relevant, which is the formulation for instance in Forbes J.'s judgment in *Seddon Properties,* or that he has failed to take into consideration matters which he ought to take into account, which was the way that Lord Greene put it in *Wednesbury* and Lord Denning in *Ashbridge Investments,* have the same meaning.
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> 2. The decision maker ought to take into account a matter which might cause him to reach a different conclusion to that which he would reach if he did not take it into account. Such a matter is relevant to his decision making process. By the verb "might," I mean where there is a real possibility that he would reach a different conclusion if he did take that consideration into account.
>
> 3. If a matter is trivial or of small importance in relation to the particular decision, then it follows that if it were taken into account there would be a real possibility that it would make no difference to the decision and thus it is not a matter which the decision maker ought to take into account.
>
> 4. As Hodgson J. said, there is clearly a distinction between matters which a decision maker is obliged by statute to take into account and those where the obligation to take into account is to be implied from the nature of the decision and of the matter in question. I refer back to the *Creed N.Z.* case.
>
> 5. If the validity of the decision is challenged on the ground that the decision maker failed to take into account a matter in the second category, it is for the judge to decide whether it was a matter which the decision maker should have taken into account.

> 6. If the judge concludes that the matter was "fundamental to the decision," or that it is clear that there is a real possibility that the consideration of the matter would have made a difference to the decision, he is thus enabled to hold that the decision was not validly made. But if the judge is uncertain whether the matter would have had this effect or was of such importance in the decision-making process, then he does not have before him the material necessary for him to conclude that the decision was invalid.
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> 7. (Though it does not arise in the circumstances of this case). Even if the judge has concluded that he could hold that the decision is invalid, in exceptional circumstances he is entitled nevertheless, in the exercise of his discretion, not to grant any relief."

28. The parties agreed that the court, in deciding whether or not to exercise its discretion to grant relief, should apply the test in *Simplex GE (Holdings) and Anor v Secretary of State for the Environment and Anor* [1989] 57 P & CR 306. In *Simplex*, the Court of Appeal quashed a decision of the Secretary of State, which contained an admitted error, because the court was not satisfied that, absent the error, the decision would necessarily have been the same (per Purchas LJ, at 327) and the decision might have been different (per Staughton LJ, at 329). The *Simplex* test has been regularly adopted in statutory reviews under section 288 TCPA 1990: see, for example, *Secretary of State for Communities and Local Government v South Gloucestershire Council* [2016] EWCA Civ 74, where Lindblom LJ described it as a "stringent test", at [25].

(iii) Human rights and the best interests of the child

29. Article 8 of the European Convention on Human Rights provides:

> "(1) Everyone has a right to respect for his private and family life, his home and his correspondence.
>
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

30. When considering whether any interference with the rights protected by Article 8 is 'necessary in a democratic society' decision makers should apply the approach to proportionality set out in the case of *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 38 by Lord Sumption, at [20]:

> "…an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental

> right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community."

31. Article 3(1) of the United Nations Convention on the Rights of the Child 1989 states that:

> "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

32. In *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74, the Supreme Court, per Lady Hale at [10], approved the following principles:

> "(1) The best interests of a child are an integral part of the proportionality assessment under article 8 of the Convention; (2) in making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration; (3) although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant; (4) while different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play; (5) it is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations; (6) to that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and (7) a child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent."

33. In the context of a planning appeal, the best interests of children affected must be treated as a primary consideration (albeit not the primary or the paramount consideration) when a decision maker considers whether the refusal of planning permission would amount to a disproportionate interference with their Article 8 rights: see the judgment of Hickinbottom J. in *Stevens v Secretary of State for Communities and Local Government and Guildford Borough Council* [2013] EWHC 792 (Admin), at [47] – [69].

(iv) National policy

National Planning Policy Framework

34. The National Planning Policy Framework ("the Framework") (February 2019 edition) is a material consideration to be taken into account when applying section 38(6) PCPA 2004 in planning decision-making. It is policy not statute, but a decision maker who decides to depart from it must give cogent reasons for doing so.

35. Section 13 of the Framework, headed "Protecting Green Belt land" provides materially as follows:

> "133. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
>
> …
>
> 143. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
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> 144. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
>
> 145. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are: …" *(the exceptions are not applicable in this case)*

Planning Policy for Traveller Sites

36. The First Defendant's Planning Policy for Traveller Sites (2015 edition) ("PPTS") is to be read in conjunction with the Framework and enjoys a similar status as a material consideration in planning decision-making.

37. The Glossary defines "gypsies and travellers" as:

> "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, but excluding members of an

> organised group of travelling showpeople or circus people travelling together as such."

38. The First Defendant's "overarching aim is to ensure fair and equal treatment of travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community" (paragraph 3). To help achieve this, the First Defendant's aims include, at paragraph 4, the assessment of need by local planning authorities and provision to meet the assessed need.

39. Paragraph 9 provides that local authorities should set pitch targets which address the likely accommodation needs of Travellers in their area. Paragraph 10(a) provides that local planning authorities should identify in their Local Plans, "a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets". Footnote 4 provides:

> "To be considered deliverable, sites should be available now, offer a suitable location for development, and be achievable with a realistic prospect that development will be delivered on the site within 5 years. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that the schemes will not be implemented within 5 years…."

40. PPTS expressly protects the Green Belt, in the following ways.

41. The policy objectives set out in paragraph 4 provide at sub - paragraph (d):

> "plan-making and decision-taking should protect Green Belt from inappropriate development"

42. Under the heading "Policy E: Traveller sites in Green Belt", paragraphs 16 and 17 provide:

> "16. Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.
>
> 17. Green Belt boundaries should be altered only in exceptional circumstances. If a local planning authority wishes to make an exceptional, limited alteration to the Green Belt boundary (which might be to accommodate a site inset within the Green Belt) to meet a specific, identified need for a traveller site, it should only do so through the plan-making process and not in response to a planning application. If land is removed from the Green Belt in this way, it should be specifically allocated in the development plan as a traveller site only."

43. Under the heading "Policy H: Determining planning applications for traveller sites", paragraph 24 provides:

> "Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:
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> a) the existing level of local provision and need for sites
>
> b) the availability (or lack) of alternative accommodation
>
> c) other personal circumstances of the applicant
>
> d) ….
>
> e) that they should determine applications for sites from any travellers and not just those with local connections
>
> However, as paragraph 16 makes clear, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances."

44. Paragraph 27 provides:

> "If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. The exception is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and/or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads)."

45. The previous edition of the PPTS in 2012, included a policy in similar terms to that in paragraph 27, but without the exceptions for Green Belt land and other protected land.

Planning Practice Guidance ("PPG")

46. Paragraph 27 cross-refers to the guidance on the grant of temporary planning permissions in the PPG. In the section headed "Use of Planning Conditions", paragraph 14 states:

> "**When can conditions be used to grant planning permission for a use for a temporary period only?**
>
> Under section 72 of the Town and Country Planning Act 1990 the local planning authority may grant planning permission for a specified temporary period only.

> Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period.
>
> …
>
> It will rarely be justifiable to grant a second temporary permission (except in cases where changing circumstances provide a clear rationale, such as temporary classrooms and other school facilities). Further permissions can normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of permission will then be granted permanently.
>
> …"

Written Ministerial Statement 17 December 2015

47. A written ministerial statement was made on 17 December 2015, concerning Green Belt protection and intentional unauthorised development. The Minister of State for Housing and Planning said:

> "This Statement confirms changes to national planning policy to make intentional unauthorised development a material consideration, and also to provide stronger protection for the Green Belt, as set out in the manifesto.
>
> The Government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission. In such cases, there is no opportunity to appropriately limit or mitigate the harm that has already taken place. Such cases can involve local planning authorities having to take expensive and time consuming enforcement action.
>
> For these reasons, we introduced a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. This policy applies to all new planning applications and appeals received since 31 August 2015.
>
> The Government is particularly concerned about harm that is caused by intentional unauthorised development in the Green Belt.
>
> For this reason the Planning Inspectorate will monitor all appeal decisions involving unauthorised development in the Green Belt

> to enable the Government to assess the implementation of this policy.
>
> …..
>
> The National Planning Policy Framework makes clear that most development in the Green Belt is inappropriate and should be approved only in very special circumstances. Consistent with this, this Statement confirms the government's policy that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances."

Grounds of challenge

48. The Claimant challenged the decision on the following grounds.

Ground 3

49. The decision of the Inspector to refuse temporary planning permission was unlawful in that he failed to take account of a material consideration, namely, the likelihood that members of the Group would be able to find suitable alternative accommodation elsewhere within the County of Surrey, outside the Borough of Runnymede, at the end of the temporary period.

Ground 4

50. The decision of the Inspector to refuse temporary planning permission was unlawful because he failed to provide adequate and intelligible reasons for his decision. The Claimant relied upon the three failures, which I set out below, and contended that each one was sufficient to render the decision unlawful.

a) A change in planning circumstances in the County of Surrey

The Inspector failed properly or at all to explain why he had limited his consideration of the likelihood of a change in planning circumstances to the prospect that there would be a suitable site or sites to accommodate some or all of the Group in the Borough of Runnymede, and why he had not also considered the prospect that such a site or sites would be available elsewhere within the County of Surrey.

b) A change in planning circumstances beyond the 4 year period

In Mr Willers QC's written Closing Submissions, at paragraph 132, the Inspector was invited to consider granting a temporary planning permission of "at least 4 years". The Inspector, at DL45, limited his consideration to "the end of the four year period" and failed to give reasons for not considering a period beyond 4 years.

c) The availability of accommodation at the end of a temporary period

The Inspector failed properly or at all to provide adequate and intelligible reasons for his conclusion in DL45 that it was "quite unlikely that all or even most of the 23 individual households would, individually, have suitable accommodation to move to after that period."

Ground 5

51. The decision of the First Defendant's Inspector to refuse temporary planning permission was unlawful in circumstances where he failed properly to consider granting planning permission for the residential use of fewer than 13 pitches.

Ground 6

52. The decision of the First Defendant's Inspector was unlawful because he failed to explain properly or at all why he considered that the grant of planning permission for the residential use of fewer than 13 pitches "would not alter the respective weights so much as to indicate a different outcome" (DL46).

Conclusions

Grounds 3 and 4(a): accommodation elsewhere in Surrey

53. It is convenient to consider Grounds 3 and 4(a) together. The Claimant submitted that the Inspector failed to take account of a material consideration, namely, the likelihood that members of the Group would be able to find suitable accommodation elsewhere within the County of Surrey, outside the Borough of Runnymede, at the end of the temporary period, thus satisfying the requirement in paragraph 14 of the PPG. It was also submitted that he failed to give any or any adequate reasons for only considering the availability of sites in the Borough, and not elsewhere in Surrey.

54. In *Linfoot v Secretary of State for Communities and Local Government and Chorley Borough Council* [2012] EWHC 3514 (Admin), HH Judge Sycamore, sitting as a Judge of the High Court, quashed an inspector's decision refusing temporary planning permission for a Traveller Site on the basis that the inspector failed to take into account the possibility of sites arising in the wider area beyond the Borough of Chorley. The Judge concluded, at [30], that given the inspector's findings of a significant need for sites at regional and county level, it was reasonable to expect that sites would become available in the wider area.

55. However, in *Beaver v Secretary of State for Communities and Local Government and South Cambridgeshire District Council* [2015] EWHC 1774 (Admin), Ouseley J. declined to follow *Linfoot*. At [20], he noted that in *Linfoot*, Chorley Borough Council had sufficient sites to meet the needs of Gypsies in its area, and so there was no likelihood that a future needs assessment would show that Chorley needed to provide more sites. The shortage of sites was only at regional and county level. In contrast, in *Beaver*, the shortfall arose in the area of the District Council where the application for

planning permission was made, and so that was the relevant area. Ouseley J. said, at [23]:

> "Although Mr Masters also cited Linfoot to support a contention that the Inspector here ought also to have considered the wider area of South Cambridgeshire at least and East Anglia more generally, it is unnecessary to go into that issue since the shortfall in this case arose in the area of the District Council in question, and whether or not it arose in other areas also is not relevant to the argument here about the right approach to the likelihood of changes in planning circumstances. If the argument that South Cambridgeshire District Council should be assumed to be preparing to change its policies to meet the shortfall is good, then what might happen elsewhere is irrelevant. It is not as though it was being argued either that South Cambridgeshire District Council had to meet a shortfall arising elsewhere or that elsewhere was going to change so as to meet a shortfall in South Cambridgeshire."

56. Ouseley J. went on to consider the meaning of the guidance in paragraph 14 of the Planning Practice Guidance which provides that a grant of temporary permission may be appropriate "where it is expected that the planning circumstances will change in a particular way at the end of the period". At [25], he rejected the claimant's submission that such an expectation will arise wherever there is a shortfall in supply as it must be assumed that a local planning authority will take steps to overcome the shortfall, otherwise it could rely upon its own failings as a reason for refusal of temporary planning permission. Ouseley J. noted that the Guidance did not include any reference to this, and he considered that such an important point could not be inferred (at [26]).

57. Ouseley J. preferred the interpretation of the guidance presented on behalf of the Secretary of State, and said at [27] – [29]:

> "27. Instead, the guidance requires a judgment as to what, in reality, is likely to change in the future. The planning circumstances which would need to change relate to the actual provision of permanent sites. There was no evidence that that was likely to happen here in the sort of period for which a temporary planning permission would be granted. A grant of a temporary planning permission based on a false assumption, however much the local planning authority may deserve such an assumption in one sense, would conflict with important parts of the guidance in two respects: (1) that second temporary planning permissions should not be granted, yet there would have been no change in planning circumstances on expiry of the first from those in which the first temporary permission was granted, and (2) a temporary permission should not be a route to a permanent permission except where it is a trial run. The policy, therefore, does not permit or expect unrealistic let alone false assumptions to be made, simply because the local planning authority should have been taking measures already or be planning to take them now. On the correct interpretation and approach, the Inspector's

> analysis contains no error of law. This is not a question of letting a local planning authority get away with its failings. An unmet current need, as here, is an important consideration for the grant of a permanent permission. If the local authority is failing to do what it should be doing and is not proposing to remedy its failings at an adequate pace so that no relevant change in planning circumstances is likely, the risk that it faces is that sites it regards as less suitable than others which might be brought forward will receive permission because no alternative is in sight. Were a temporary permission granted without a change in planning circumstances being likely, on its expiry either a second temporary permission would probably be refused or the permission would become permanent. The former would leave the position un-advanced but only without a further temporary permission; the latter would be contrary to the purpose of a temporary permission in the first place.
>
> 28. The nettle should be grasped, therefore, in making a decision on the permanent planning permission and should not be put off by the grant of a temporary permission. But it should be emphasised that an Inspector, as here, or a local authority, is still entitled to reach the planning judgment that the harm done by any particular site is too severe for a permanent planning permission to be granted, despite the unmet need and the absence of proposals to make the position good."
>
> 29. I do not read paragraph 33 of the decision in Langton as adopting a different approach. As a general observation, what I have cited is sound, but I do not read it as a comment on the issue here since the arguments do not appear to have been raised or discussed. Linfoot contains no discussion either of the issues here, even if they were raised. I am not sure either that Linfoot as concerned with the broader point rather than the circumstances specific to the decision letter at issue."

58. I agree with Ouseley J's analysis. I do not consider that, where there is a shortfall, it can be assumed that the local planning authority will overcome the shortfall by the end of a period of temporary permission. The likelihood of suitable accommodation becoming available at the end of the temporary permission period has to be decided on the actual evidence in any particular case. Moreover, temporary permission should not be granted as a way of ducking a difficult decision on the grant of permanent permission – as Ouseley J. said, the decision-maker should "grasp the nettle". In appropriate cases, the decision-maker is entitled to reach the planning judgment that the harm done by any particular site is too severe for permanent planning permission to be granted, despite the unmet need and the absence of proposals to make the position good. I consider that this principle applies with particular force to land in the Green Belt, in the light of national policy which protects the Green Belt (I note that the site in *Beaver* was not in the Green Belt).

59. On the facts, this case was comparable to *Beaver*, not *Linfoot*, since the Appellant alleged that there was unmet need in the Borough of Runnymede. The focus of the appeal was on the position in the Borough, not in other areas of Surrey. In particular:

i) The Appellant's Statement of Case in the appeal did not seek temporary permission and only referred to the supply of sites within the Borough of Runnymede, not elsewhere in Surrey.

ii) The Council's Statement of Case referred to temporary permission (for the sake of completeness), and submitted that the harm that would arise from a temporary permission would not be outweighed by other considerations (paragraph 5.16). The Council did not refer to sites outside the Borough.

iii) The Pre-Inquiry Meeting Agenda referred to the grant of permission on either a permanent or temporary basis, in the context of assessing whether there were very special circumstances which could justify the harm to the Green Belt. The list of "other considerations" included "the need for, and provision of, Gypsy Traveller sites (nationally, regionally and locally)". However, during the hearing the need for and provision of regional sites was only considered in general terms, as a factor to be weighed in the planning balance.

iv) Mr Brown, the Appellant's planning consultant, submitted a lengthy proof of evidence dealing with the supply of sites in the Borough, but it did not refer to the likelihood of sites outside the Borough becoming available. Mr Brown did not refer to this issue in his oral evidence either.

v) Both parties referred to the Runnymede Borough Council Gypsy and Traveller Accommodation Assessment ("GTAA"), dated January 2018, which was prepared by Opinion Research Services. Although it included a section on needs and supply in neighbouring authorities, this was not presented to the Inspector as part of the Appellant's case in support of a grant of temporary permission. Furthermore, I accept Ms Bolton's submission that the brief overview of provision in neighbouring areas in the GTAA did not indicate that accommodation suitable for some or all of the Group was likely to become available at the end of a temporary permission period.

vi) The only other evidence in relation to sites in neighbouring authorities was a letter from Surrey County Council confirming that there were no available spaces on its sites and that there was a lengthy waiting list for spaces. This evidence was adduced by the Appellant in support of the submission that there were no alternative sites available for the Group, not as part of any consideration of the likelihood of sites becoming available in the County by the end of a temporary planning permission.

60. Despite the fact that the issue of suitable accommodation becoming available outside the Borough at the end of a temporary permission area had not been previously identified as part of the Appellant's case, Mr Willers QC relied upon this issue in his written Closing Submissions, where he said:

> "132. In the alternative, it is submitted that temporary planning permission ought to be granted for at least 4 years in order to

> enable this Council (and the neighbouring local authorities) to comply with the requirements of PPTS – by demonstrating that they have an up-to-date supply of deliverable sites.
>
> 133. Such DPDs will be likely to assist the site residents to identify and then obtain planning permission for the use of another parcel or parcels of land in Surrey. In the meantime, they would have the benefit of a settled and secure base …."

61. Mr Willers QC's Closing Submission followed the Council's Closing Submissions which are silent on this point. I accept that Ms Bolton did not consider that the likelihood of sites coming forward outside the Borough was in issue in the appeal, and that was why she did not refer to this point.

62. Turning now to the Inspector's decision, after a detailed examination of the evidence, the Inspector found, at DL29, that the Council "cannot at present identify a supply of specific deliverable sites sufficient to provide 5 years worth of sites against their locally set targets". The lack of a 5 year supply of sites was not required to be treated as a significant material consideration when considering the grant of temporary planning permission, as paragraph 27 PPTS (2015 edition) no longer applies to Green Belt land. However, in response to the Appellant's submissions on this issue, the Inspector in this appeal did attribute significant weight to the unmet need in the Borough, and he also took it into account. In my view, he was entitled to do so. Paragraph 27 PPTS does not prevent a decision-maker from treating the lack of a 5 year supply of sites in the Green Belt as a significant material consideration; it just does not mandate the decision-maker to do so.

63. The Inspector also took into account, in general terms only, the undisputed regional and national unmet need (DL31, DL40). On my reading of the decision, these references to the regional position were part of the Inspector's assessment of factors to be taken into account in the planning balance, not part of an assessment of the likelihood of accommodation becoming available at the end of a temporary period of planning permission.

64. When the Inspector considered a grant of temporary planning permission at DL45, he concluded, on the evidence, that there was not a "realistic likelihood" of suitable accommodation becoming available in the Borough either for the Group as a whole, or for individual households, at the end of a 4 year period of temporary permission. He did not refer to the possibility that suitable accommodation might become available elsewhere in Surrey.

65. In my judgment, it is probable that the Inspector did not refer to the alternative option of accommodation elsewhere in Surrey in 4 years time, because the appeal had not been presented to him on that basis, until the very end. In these circumstances, the Inspector was entitled to refuse to allow Mr Willers QC to raise the issue for the first time in Closing Submissions, and he was entitled to decline to decide the issue in the absence of the required evidence, as described by Ouseley J. in *Beaver*. But the Inspector did not expressly do so, either at the hearing or in his decision. On the balance of probabilities, I am not satisfied that he simply overlooked the point altogether, as it was clearly expressed in Mr Willers QC's submissions, and generally the Inspector's decision was carefully and conscientiously drafted. Therefore, the Claimant has not

made out Ground 3. However, I do consider that the Inspector ought to have explained, either at the hearing or in his decision, why Mr Willers QC could not properly raise this issue at such a late stage, without adducing evidence in support. To that extent, the Inspector's reasons were defective, as alleged in Ground 4(a).

66. Under both Ground 3 and 4(a), Ms Bolton submitted that it was clear from DL 45 that the Inspector concluded that, even if there was a prospect of alternative sites coming forward by the time a temporary planning permission had expired, any reduction to Green Belt harm due to time-limiting the planning permission would still not reduce the overall harm to a level where it would be clearly outweighed by the considerations in favour of the appeal. Accordingly, applying the case of *Bolton MBC*, and *Simplex*, the decision would be the same in any event and accordingly, the relief sought by the Claimant ought to be refused.

67. I accept Ms Bolton's submission. In my view, Mr Willers QC's submission that the word "Further", at the beginning of the final sentence of DL45, could not be taken to mean "In any event", and was an example of the type of forensic, over-critical analysis which the courts have deplored on many occasions: see paragraphs 17 and 18 of my judgment. On my reading, in the final sentence of DL45, the Inspector was clearly identifying an additional reason for refusing to grant temporary planning permission which was not dependant upon the availability of suitable alternative accommodation at the end of the temporary permission period. My interpretation is confirmed when read together with the Inspector's conclusions, at DL44, DL47 and DL50, where he stated that the appeal development would cause unacceptable harm to the Green Belt; that harm was not outweighed by the other considerations in favour of the appeal; and so it followed that very special circumstances did not exist to justify planning permission for the development, or any part of it, on either a temporary or permanent basis.

68. In reaching my conclusions on Grounds 3 and 4(a), I have taken into account the fact that the First Defendant conceded Ground 4(a) but not Ground 3. It would have been helpful if the First Defendant had explained the basis of the concession to the Court in his Acknowledgment of Service or by letter, but Mr Willers QC showed me the reasons given in a draft consent order which the First Defendant sent to the Claimant. In light of Mr Willers QC's Closing Submissions, the First Defendant accepted that the Inspector "failed to provide lawfully adequate reasons addressing the availability of suitable sites in neighbouring areas" and therefore the decision should be quashed. The First Defendant did not file Detailed Grounds or a skeleton argument, nor attend the hearing, and he did not have the benefit of considering the detailed submissions made by the Claimant and the Council, in particular, in regard to the way in which the appeal was presented, without any evidence in relation to the position in neighbouring authorities and without any reference to this issue until Mr Willers QC made his Closing Submissions. In the light of the fuller submissions made to me, and the care with which I have considered Ground 3 and 4(a), I consider that I am justified in taking a different approach to the First Defendant on Ground 4(a), as set out above.

69. For these reasons, Grounds 3 and 4(a) do not succeed.

Ground 4(b): accommodation beyond the 4 year period

70. In Mr Willers QC's written Closing Submissions, at paragraphs 132 and 134, he stated:

> "132. In the alternative, it is submitted that temporary planning permission ought to be granted *for at least 4 years* in order to enable this Council (and the neighbouring local authorities) to comply with the requirements of PPTS – by demonstrating that they have an up-to-date 5 years supply of deliverable sites." *(emphasis added)*
>
> "134. Given the Council's evidence regarding the steps it is taking to address the need for additional site provision there must be a realistic expectation that the planning circumstances *will change within 4 years* and it follows that there would be a good reason to grant temporary planning permission in this case for such a period in order to allow those changes to take place and to allow for any slippage in the timetable and the development of new sites." *(emphasis added)*

71. When the Inspector addressed this submission, at DL45, he said:

> "Taking the group as a whole, and the Council's current position on future provision, I consider it very unlikely that such a site would become available *by the end of the four year period suggested by the appellant*, and I consider it quite unlikely that all or even most of the 23 individual households would, individually, have suitable accommodation to move to after that period." *(emphasis added)*

72. Under Ground 4(b), Mr Willers QC submitted that he did not invite the Inspector to limit his consideration to a 4 year period, and the Inspector failed to explain his reasons for limiting his consideration to 4 years, instead of "at least 4 years". However, at paragraph 134, Mr Willers QC did refer to a change in the planning circumstances "within 4 years", which may explain why the Inspector did not accurately record his additional submission of "at least 4 years" at paragraph 132.

73. At the hearing, I asked Mr Willers QC to explain the basis for his submission that temporary planning permission should be granted for at least 4 years. He referred me to the Council's proposal to allocate sites through the Local Plan process which would provide 32 to 42 permanent pitches by 2023/24. The appeal hearing was in May 2019, and so provision in 2023/24 would be in 4/5 years time. Thus, in reality, his invitation to the Inspector to consider a period of "at least 4 years" was an invitation to consider a period of 4 to 5 years. There was no evidential basis for a submission based upon a longer period of time.

74. The Inspector addressed the Council's proposal at DL29. He clearly found that the Council's proposal of providing 32-42 pitches by 2023/24 was not deliverable.

75. Moreover, earlier in his decision, he found that the GTAA's estimate of a need for 96 pitches between 2017/18 and 2021/22 was an underestimate. He estimated that the

identified need over the plan period was between 118 and 150 pitches, and the immediate identified need was between 53 and 85 pitches. The Inspector also found that the Council's reliance upon the provision of 48 pitches, in the period to 2023/24, at Little Almners Caravan Site ("LA") and Walnut Tree Farm ("WTF") was unrealistic, and their contribution to the target, if any, was likely to be much lower. Hence his conclusion that the Council could not identify 5 years' worth of sites against their targets. It follows that, even if (contrary to the Inspector's finding), the Council was able to deliver 32-42 pitches by 2023/24, those pitches would be over-subscribed, and occupied by those already on the waiting list for a pitch.

76. In those circumstances, the Inspector's conclusion that it was very unlikely that a site would become available by the end of a temporary permission period of 4 years would have been the same even if the Inspector had chosen the longer period of 5 years. I consider that this would have been obvious to the parties at the Inquiry hearing, in particular, to the Appellant's representative, Mr Willers QC. It is also clear from the Inspector's decision that he gave detailed consideration to the availability of accommodation over a 5 year period, at DL16 to DL29. Therefore, in my judgment, the Inspector's failure to address a 5 year period at DL45 did not substantially prejudice the Claimant. As Lord Bridge said in *Save Britain's Heritage*, at 167D-E:

> "The single indivisible question…. is whether the interests of the applicant have been substantially prejudiced by the deficiency of the reasons given."

77. In the alternative, Ms Bolton submitted that even if there was a breach of the duty to give adequate reasons (which she denied), it was clear from DL45 that the Inspector concluded that, even if there was a prospect of alternative sites coming forward by the time a temporary planning permission had expired, any reduction to Green Belt harm due to time-limiting the planning permission would still not reduce the overall harm to a level where it would be clearly outweighed by the considerations in favour of the appeal. Accordingly, applying the case of *Bolton MBC*, and *Simplex*, the decision would be the same in any event and accordingly, the relief sought by the Claimant ought to be refused. For the reasons set out in paragraph 67 above, I accept Ms Bolton's alternative submission.

Ground 4(c) – accommodation at the end of a temporary period

78. Under Ground 4(c), the Claimant submitted that there was no proper basis upon which the Inspector could conclude, on the evidence before him, that the Council would not allocate at least 32-42 pitches by 2023/24. It followed that he did not give adequate and intelligible reasons for his conclusion in DL45 where he stated:

> "I consider it quite unlikely that all or even most of the 23 individual households would, individually, have suitable accommodation to move to after that period."

79. In my judgment, the Inspector's reasons for this conclusion were both adequate and intelligible. It is clear from DL16 to DL31 that the Inspector did not accept the Council's position with regard to the sites and number of pitches that it would deliver, and he found that the level of need had been under-estimated.

80. The GTAA required 96 pitches for Gypsies and Travellers that met the planning definition within the next 5 years, "of which an immediate need of 32 pitches arose from unauthorised pitches and 23 pitches which arose from concealed or doubled up households or adults and 4 from those currently living in houses." That accounted for 59 of the pitches to be delivered within that time frame for those Gypsies and Travellers that met the planning definition.

81. However, the Inspector found that the GTAA assessment under-estimated need by excluding those households who had not been interviewed, on the basis that their PPTS status as Gypsies/Travellers had not been determined. He found that this group formed a significant proportion of the Gypsies/Travellers in the Borough (DL23). He also found that by the conclusion of the Inquiry, the number of those considered to meet the PPTS definition had fallen by 5 due to the granting of certificates of lawfulness

82. Therefore, the Inspector concluded, at DL24, "that left a GTAA identified need over the plan period of 118 in the unlikely event that none of those not interviewed turned out to meet the PPTS definition, or 150 if all did. The equivalent immediate or unmet need is for 53 or 85 pitches respectively. No doubt the true figure falls somewhere in between, but that nonetheless represents a consider [*sic, perhaps considerable?*] level of need."

83. The Inspector also found that the Council had erroneously relied upon the provision of 48 pitches on the sites at LA and WTF as a major component of supply in the period to 2023/24: see DL22, DL23, DL27, DL28. He was not satisfied that they would become available; and certainly not within the suggested timeframe (DL28).

84. The Council was only proposing to provide 32-42 permanent pitches by 2023/24 (which would not cover the immediate need of 53 to 85 pitches already identified), but at present these 32-42 pitches were not considered by the Inspector to be deliverable, as defined by footnote 4 to paragraph 10 of PPTS (set out at paragraph 35 above). The Inspector said, at DL29:

> "The Council also proposes to allocate sites through the Local Plan process which, on the most recent projection, would provide 32-42 permanent pitches by 2023/24. However, at this stage of the process it would not be prudent to consider the pitches as deliverable for the purposes of footnote 4 of PPTS. I note the Council's assertion that it expects, through its allocations and actions at LA/WTF, to exceed the level of identified need by 2023/24. That seems unlikely, but I consider in any case, on the evidence before me, that the Council cannot at present identify a supply of specific deliverable sites sufficient to provide 5 years worth of sites against their locally set targets."

85. In my judgment, these reasons were both adequate and intelligible. The Appellant and his legal advisers cannot have been in any genuine, as opposed to forensic, doubt as to the reasons why the Inspector came to the conclusion that suitable accommodation would not be available at the end of the proposed temporary period, particularly since the Inspector accepted many of the criticisms which the Appellant's planning consultant and counsel made of the figures put forward by the Council. Even if, contrary to my

primary finding, the reasons were inadequate in some respect, I consider that the Claimant failed to establish substantial prejudice.

86. In the alternative, Ms Bolton reiterated her submission that, even if there was a breach of the duty to give adequate reasons, it was clear from DL45 that the Inspector concluded that, even if there was a prospect of alternative sites coming forward by the time a temporary planning permission had expired, any reduction to Green Belt harm due to time-limiting the planning permission would still not reduce the overall harm to a level where it would be clearly outweighed by the considerations in favour of the appeal. Accordingly, applying the case of *Bolton MBC*, and *Simplex*, the decision would be the same in any event and accordingly, the relief sought by the Claimant ought to be refused. For the reasons set out in paragraph 67 above, I accept Ms Bolton's alternative submission.

Conclusion

87. For the reasons I have set out above, Ground 4 does not succeed.

Grounds 5 and 6: planning permission for fewer than 13 pitches

88. It is convenient to consider these grounds together since they relate to the same issue. The Claimant submitted that the Inspector's decision to refuse temporary planning permission was unlawful:

    i) in circumstances where he failed properly to consider granting planning permission for the residential use of fewer than 13 pitches **(Ground 5)**;

    ii) because he failed to explain properly or at all why he concluded, in DL46, that the grant of planning permission for the residential use of fewer than 13 pitches "would not alter the respective weights so much as to indicate a different outcome" **(Ground 6)**.

89. The Claimant submitted in the section 288 claim that the grant of planning permission for a reduced number of pitches would reduce the harm caused to the Green Belt, because the extent of the development would be reduced, and so too would the impact of the development on openness, and encroachment on the countryside. The Claimant further submitted that the Inspector was required to consider the position of each member/household in the Group separately, when undertaking a proportionality assessment under Article 8 ECHR.

90. I accept the Council's submission that the Appellant's application for planning permission, and his appeal, was for 13 pitches with associated facilities to accommodate 23 households. If the Appellant wished to apply for an alternative proposal for a reduced number of pitches and households on appeal, he should have submitted details of the alternative proposal, with plans, indicating the number of households; the number of pitches and their location; and the access roads and infrastructure required.

91. The Appellant, who had the benefit of a planning consultant, solicitor and Queens Counsel, all of whom had experience of planning applications, including on behalf of Gypsy and Traveller communities, did not at any stage submit any details of an

alternative proposal. A reduced number of pitches and households was not mentioned in the Appellant's Statement of Case; at the Pre-Inquiry Meeting, or in Mr Brown's lengthy witness statement. At the Inquiry hearing, the Council witnesses and the objectors gave oral evidence but were not cross-examined about the possibility of an alternative proposal.

92. It was only during Mr Brown's oral evidence that this issue was raised. Mr Brown said that the appeal did not have to be considered on an "all or nothing" basis and invited the Inspector to consider granting planning permission for a smaller number of pitches and plots than had been applied for, if the Inspector was persuaded that that the personal circumstances of some of the families tipped the balance in favour of allowing the appeal. Mr Brown did not give any evidence as to the outline or detail of an alternative scheme for a lesser number of pitches and plots; no changes to the site layout were proposed and no draft planning conditions were provided.

93. In those circumstances, where the Claimant did not at any stage present a proposal for a reduced number of pitches/households, I consider that the Inspector was entitled to deal with this issue in general terms, as he did at DL46, where he said:

> "46. It has been submitted that planning permission, or even temporary planning permission, could be granted for some plots only, on the basis of according different weights to the prospective occupiers' circumstances and carrying out the balancing exercise on a per plot basis. I do not believe that that would be an appropriate approach in a case such as this where the application is for the development as a whole, much of the infrastructure would still be required and it concerns land that was previously entirely undeveloped, but I consider in any case that such an approach would not alter the respective weights so much as to indicate a different outcome."

94. Since this was previously an entirely undeveloped site, comprising woodland and green space, the Inspector was entitled to make the planning judgment that even a reduced scheme would still require significant infrastructure (access road, hard standing for pitches, structures etc), and would cause unacceptable harm to the Green Belt, which would not be outweighed by any of the other considerations, including *inter alia* the personal circumstances of members of the Group. The Claimant's challenge to this conclusion was, in truth, a disagreement with the Inspector's conclusions on the planning merits, which is not a permissible ground of challenge in an application under section 288 TCPA 1990: *Tesco Stores v Secretary of State for the Environment* [1995] 1 WLR 759, per Hoffmann LJ at 780F-H.

95. In my judgment, it is apparent that the Inspector gave careful and conscientious consideration to the personal circumstances of the members of the Group, both on an individual basis and collectively – see DL32 to 25 and DL41 to 43. He was not required to set these out in any greater detail in his decision.

96. In my view, it is only fair to read the Inspector's assessment of the planning balance at the end of DL46 in the context of the decision as a whole. After setting out the personal circumstances at some length, the Inspector weighed the various factors in the balance, at DL44, concluding that the "Green Belt harm supplemented by the weight arising

from the intentional unauthorised nature of the development is not clearly outweighed by the weight of the other considerations". At DL45, he considered whether a grant of temporary permission would be justified, but he concluded that "the reduction in Green Belt harm due to time-limiting would still not reduce the overall harm to a level where it would be clearly outweighed by the considerations in favour of the appeal".

97. At DL46, he considered whether permanent or temporary planning permission could be granted for a reduced number of pitches, and concluded that such an approach "would not alter the respective weights so much as to indicate a different outcome". I have no doubt that the Inspector was there referring back to the balancing exercise at DL44. It is obvious, in my view, that he was conducting a similar balancing exercise as at DL44, substituting a notional reduced number of pitches and plots, which he found would still require significant infrastructure on a previously undeveloped site. The Inspector could not assess or comment on a specific proposal because none was presented by the Claimant.

98. The Inspector confirmed his conclusion in the very next paragraph - DL47 - where he said:

> "That being so, it follows that very special circumstances do not exist to justify planning permission for the development, or any part of it, on either a temporary or permanent basis."

The phrase "That being so" makes it clear that the Inspector is referring back to his assessment of the planning balance at DL39 to DL46.

99. At DL48 and 49, the Inspector gave due consideration to interference with Article 8 ECHR, concluding that the protection of the Green Belt was a legitimate objective in the public interest, and it could not be achieved by means which were less interfering with any Article 8 rights of the members of the Group. Thus, he concluded that the interference with any Article 8 rights of the members of the Group was proportionate and necessary.

100. The Inspector then set out his overall conclusion, at DL50, that "the appeal development, which was intentional unauthorised development, would cause unacceptable harm to the Green Belt. That harm is not outweighed by any of the other considerations, including ….. the prospective occupiers' personal circumstances, on either a temporary or permanent basis".

101. In my judgment, the meaning of the final sentence of DL46, read in its proper context, as I have set out above, was both intelligible and adequately explained, in the terms I have set out at paragraph 97 above. I do not consider that the Claimant or his legal representatives were left in any genuine, as opposed to forensic, doubt as to what the Inspector had decided, and why.

102. For these reasons, Grounds 5 and 6 do not succeed.

Conclusion

103. The application is dismissed for the reasons set out above.