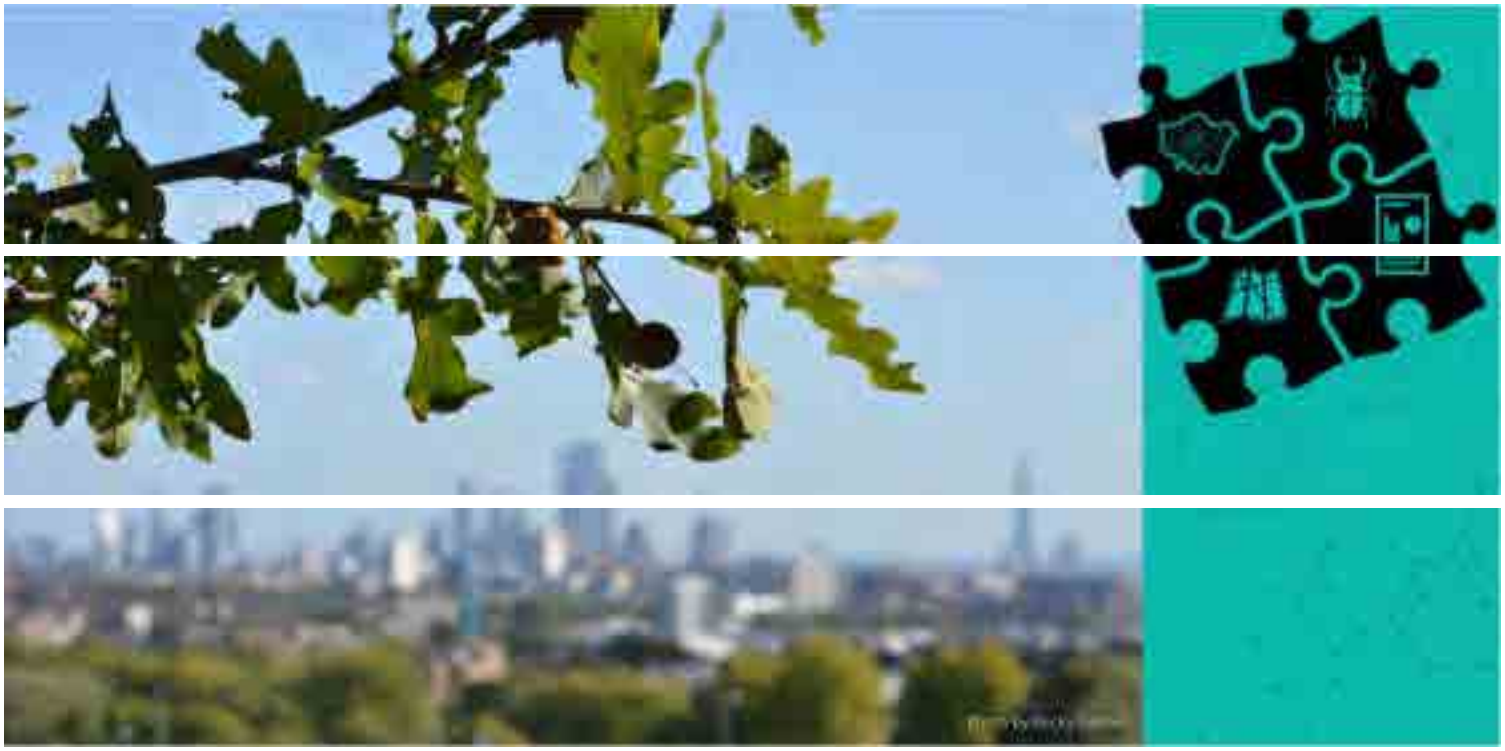
10.1.4. Green Space Information for Greater London Local (50m) Wildlife Report (2023)

An Ecological Data Search for

Mays Lane

On behalf of
Georgia Theodorou



Report reference 2236

Prepared on 10 Oct 2023
by Victoria Kleanthous

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1.0 Introduction

An ecological data search for Mays Lane and surrounding land to a 50m radius on behalf of Georgia Theodorou.

The following report was compiled by Greenspace Information for Greater London CIC (GiGL) on behalf of Georgia Theodorou, to provide ecological information for the above site. This report may include information on statutory sites, non-statutory sites, species
records, habitat or open space information held by GiGL, as requested for the above search area. The boundaries of this search area are defined in the maps that are provided separately and lie within the London Borough(s) of Barnet.

For a compilation of planning documents for each Local Planning Authority in London, please visit our website.

Important information about this report

The data provided within this report is for the **internal** use of NA (which includes the client where applicable) to inform understanding of the site of interest for **1 year** in accordance with the terms and conditions agreed to on request of the search.

The data provided must not be distributed or published for an external or public audience, for example within the appendix of a report. Local Planning Authorities may request a copy of the data from GiGL either via their Service Level Agreement (most boroughs are GiGL partners) or as a data search.

The report is compiled using data held by GiGL at the time of the request. GiGL takes the accuracy of our data holdings very seriously and the GiGL Advisory Panel is set up to help with this important task to ensure what we provide to you is the best data possible for your needs.

GiGL is constantly striving to improve the coverage and currency of its data holdings. We would be interested in hearing from you if you are able to submit species or habitat data arising from field surveys.

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Statutory Sites

2.0 Statutory Sites and Local Nature Reserves

A desk-based search shows that there are no sites with European or National statutory designation within the search area and no LNRs.

Statutory site designations:
| Special Area of Conservation (SAC)
| Special Protection Area (SPA)
| Ramsar sites

| Site of Special Scientific Interest (SSSI)
| National Nature Reserve (NNR)
| Local Nature Reserve (LNR)

For further explanations of the designations please see the <Supporting Information= annex. Please note that statutory citations are legal documents, the content of which is fixed and true at the time of designation. Species referred to in the citations may not be present on site today. Citations may have been written based on data not held by GiGL.

There are no statutory sites within the search area.

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Statutory Sites

There are no statutory sites within the search area.

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3.0 Non-Statutory Sites

A desk-based search shows that there are no SINCs, no proposed SINCs and no RIGS/LIGS within the search area.

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Non-Statutory Sites

3.1 Sites of Importance for Nature Conservation Introduction

Sites of Importance for Nature Conservation (SINCs) are recognised by the Greater London Authority and London borough councils as important wildlife sites.

There are three tiers of sites:

| Sites of Metropolitan Importance
| Sites of Borough Importance (borough I and borough II)
| Sites of Local Importance

The *London Plan* identifies the need to protect biodiversity and to provide opportunities for access to nature. The London Environment Strategy sets out the methodology and process for identifying such land for protection in Local Development Frameworks. A London Wildlife Sites Board (LWSB) has been established to provide support and guidance on the selections of SINCs.

The boundaries and site grades reflect the most recent consideration of each site, details of which are available from London borough councils. Note that boundaries and grades may change as new information becomes available. For further explanations of the designations please see the <Supporting Information= annex.

Areas of Deficiency (AoD) in Access to Nature are defined as built-up areas more than one kilometre actual walking distance from an accessible Metropolitan or borough site. AoD areas can be seen on the SINC map.

There are no SINCs within the search area.

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Non-Statutory Sites

There are no SINCs within the search area.

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3.2 Proposed Sites of Importance for Nature Conservation

Introduction

Sites of Importance for Nature Conservation (SINCs) are recognised by the Greater London Authority and London borough councils as important wildlife sites. Proposed Sites of Importance for Nature Conservation (pSINCs) are sites that have entered Regulation 18 (public consultation), but have not yet been adopted in a Local Plan.

The absence of pSINCs in this report does not mean that there are no proposed sites within the search area. The GiGL pSINC dataset is not comprehensive across London, as some London boroughs will not have proposals at this time, while others may have proposals that are not yet available.

There are three tiers of sites:
- Sites of Metropolitan Importance
- Sites of Borough Importance (borough I and borough II)
- Sites of Local Importance

The London Plan identifies the need to protect biodiversity and to provide opportunities for access to nature. The London Environment Strategy sets out the methodology and process for identifying such land for protection in Local Development Frameworks. A London Wildlife Sites Board (LWSB) has been established to provide support and guidance on the selection of SINCs.

The boundaries and site grades reflect the most recent consultation of each proposed site, details of which are available from London borough councils. Note that boundaries and grades may change as new information becomes available. For further explanations of the designations please see the <Supporting Information= annex.

There are no pSINCs within the search area.

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Non-Statutory Sites

There are no pSINCs within the search area.

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3.3 Important Geological/Geomorphological Sites Introduction

The designation in planning documents of regionally important geological sites (RIGS) and locally important geological sites (LIGS) is one way of recognising and protecting important geodiversity and landscape features

for future generations to enjoy. Geodiversity is defined as:

8*the variety of rocks, fossils, minerals, landforms, soils and natural processes, such as weathering, erosion and sedimentation, that underlie and determine the character of our natural landscape and environment9* (London Plan).

RIGS are currently the most important designated places for geology and geomorphology outside statutorily protected land such as SSSIs. They are equivalent to Sites of Metropolitan Importance for nature conservation. In London, RIG Sites have been selected by South London RIGS, North West London RIGS and GeoEssex (voluntary organisations) but have yet to be formally designated in Greater London.

The London boroughs may also designate certain areas as being of local interest for their geodiversity - LIGS. The boundaries and site grades reflect the most recent consideration of each site. Details may change as new information becomes available.

More information can be found in the London Plan Supplementary Planning Guidance *London9s Foundations* (March 2012), Revised Site Assessments for London9s Foundations (2021) and the *London Geodiversity Action Plan*, all available from www.londongeopartnership.org.uk.

RIGS/LIGS are designated in four stages:
- **Potential RIGS/LIGS** are those recommended by the London Geodiversity Partnership and identified in *London9s foundations*
- **Recommended RIGS** are those recommended by the London Geodiversity Partnership, identified in *London9s foundations* and have been through a consultation process with the London boroughs and relevant landowners
- **Proposed RIGS/LIGS** are those included in draft Borough Development Plan Documents
- **Adopted RIGS/LIGS** are those identified in adopted Borough Development Plan Documents

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Non-Statutory Sites

There are no RIGS or LIGS within the search area.

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4.0 Species

Species from these categories can be seen on the following pages:

| Internationally or nationally protected species *
| London Priority Species
| Red Data List species
| Species of Conservation Concern in London
| London Invasive Species Initiative (LISI) species

Note that GiGL does not currently hold comprehensive species data for all areas. Even where data is held, a lack of records for a species in a defined geographical area does not necessarily mean that the species does not occur there 3 the area may simply not have been surveyed.

Distances and direction to each species record are calculated from the centre-point of a search area. Note that because the resolution of grid references varies between surveys the records with a low grid reference resolution are presented in the Vague Records table.

The species, listed by taxon name, were recorded from a broad range of surveys - from public and species specific surveys to formal surveys carried out during the GLA9s rolling survey programme.

Please note: Records of bat sightings are presented in the report if found in the search area. If you require further information about bat sightings you can contact the London Bat Group directly: enquires@londonbats.org.uk or records@londonbats.org.uk.

If you would like further information regarding rare, notable and protected species please contact a relevant person listed in the Further Contacts section of this report.

* Protected species are those listed on EC Habitats Directive 3 Annexes II and IV, EC Birds Directive 3 Annex I, Conservation (Natural Habitats) Regulations 1994 3 Schedules 2 & 5, NERC 2006 Section 41, Wildlife and Countryside Act 1981 (as amended) 3 Schedules 1, 5 & 8, Protection of Badgers Act 1992

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4.1 Protected Species and Species of Conservation Concern

Records in this section come from a variety of planning and conservation designations and are presented here to provide a broad range of information about the search area. GiGL9s Recorder Advisory Group have advised on the inclusion of each category and further information about the designations (legal and notable) can be found in the <Supporting Information= annex.

All records in this section were recorded to at least 100 m^2 accuracy (a six grid reference figure or higher). The total number of occurrences states the number of recorded instances for a species in the search area e.g. one recorded instance of fly orchid (*Ophrys insectifera*) could have a count of 10 individual plants. The maximum occurrence column records either that the species was present <P= or gives a numerical value of the highest count of species recorded in the search area where this is known.

Table 1 Red Data List designation abbreviations used in the species table. Further information on the designations can be found in the annex.

Designation short name Designation full name Designation short name Designation full name

RL_DataDeficient IUCN (2001) - Data Deficient RL_LowerRisk IUCN (2001) - Lower risk - near threatened
RL_CriticalEndangered IUCN (2001) - Critically endangered RL_Extinct IUCN (2001) - Extinct
RL_Endangered IUCN (2001) - Endangered RL_ExtinctWild IUCN (2001) - Extinct in the wild
RL_Vulnerable IUCN (2001) - Vulnerable RL_RegionExtinct IUCN (2001) - Regionally Extinct

Taxon Name	Common Name	Designation	Total number of occurrences	No. of breeding occurrences
Invertebrates - Butterflies				
Lycaena phlaeas	Small Copper	London Priority Species	2	
Ochlodes sylvanus	Large Skipper	London Priority Species	1	
Birds				
Delichon urbicum	House Martin	London Priority Species Bird-Red	1	
Passer domesticus	House Sparrow	NERC Act Section 41 London Priority Species Local Spp of Cons Conc Bird-Red	5	
Prunella modularis	Dunnock	London Priority Species	1	
Strix aluco	Tawny Owl	London Priority Species	1	
Mammals - Terrestrial (excl. bats)				
Arvicola amphibius	European Water Vole	W&CA Sch5 Sec 9.4a W&CA Sch5 Sec 9.4b W&CA Sch5 Sec 9.4c NERC Act Section 41 London Priority Species Local Spp of Cons Conc RL_Endangered	2	
Mammals - Terrestrial (bats)				

Myotis	Myotis Bat species	Hab&Spp Dir Anx 2np Hab&Spp Dir Anx 4 Cons Regs 2010 Sch2 W&CA Sch5 Sec 9.4b W&CA Sch5 Sec 9.4c NERC Act Section 41 Local Spp of Cons Conc RL_CriticalEndangered RL_DataDeficient	1	

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Species

Taxon Name	Common Name	Designation	Total number of occurrences	No. of breeding occurrences
Nyctalus noctula	Noctule Bat	Hab&Spp Dir Anx 4 Cons Regs 2010 Sch2 W&CA Sch5 Sec 9.4b W&CA Sch5 Sec 9.4c NERC Act Section 41 London Priority Species Local Spp of Cons Conc	6	
Pipistrellus pipistrellus	Pipistrelle	Hab&Spp Dir Anx 4 Cons Regs 2010 Sch2 W&CA Sch5 Sec 9.4b W&CA Sch5 Sec 9.4c London Priority Species Local Spp of Cons Conc	12	
Pipistrellus pygmaeus	Soprano Pipistrelle	Hab&Spp Dir Anx 4 Cons Regs 2010 Sch2 W&CA Sch5 Sec 9.4b W&CA Sch5 Sec 9.4c NERC Act Section 41 London Priority Species Local Spp of Cons Conc	5	

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Species

Protected species and Species of Conservation Concern 3 Coarse Resolution Records

The species records in this table represent records of 1km^2, 2km^2 or 10km^2 accuracy.

Taxon Name	Common Name	Designation	Total number	Record accuracy

			of occurrences	
Fungi				
Hericium coralloides	Coral Tooth	NERC Act Section 41 London Priority Species Local Spp of Cons Conc	2	10km
Higher Plants - Ferns				
Adiantum capillus-veneris	Maidenhair Fern	Nationally Scarce	1	10km
Pilularia globulifera	Pillwort	NERC Act Section 41 London Priority Species Local Spp of Cons Conc RL_LowerRisk Nationally Scarce	2	10km
Higher Plants - Flowering Plants				
Baldellia ranunculoides	Lesser Water-plantain	Local Spp of Cons Conc RL_LowerRisk	1	10km
Bromus secalinus	Rye Brome	Local Spp of Cons Conc RL_LowerRisk Nationally Scarce	2	10km
Bupleurum rotundifolium	Thorow-wax	NERC Act Section 41 London Priority Species Local Spp of Cons Conc RL_CriticalEndangered Nationally Rare	2	10km
Camelina sativa	Gold-of-pleasure	Local Spp of Cons Conc Nationally Scarce	3	10km
Centaurea cyanus	Cornflower	NERC Act Section 41 London Priority Species Local Spp of Cons Conc	1	10km
Cerastium pumilum	Dwarf Mouse-ear	Local Spp of Cons Conc RL_LowerRisk Nationally Scarce	1	10km
Chamaemelum nobile	Chamomile	NERC Act Section 41 London Priority Species Local Spp of Cons Conc RL_Vulnerable	6	10km
Chenopodium bonus-henricus	Good-King-Henry	Local Spp of Cons Conc RL_Vulnerable	2	10km

Chenopodium glaucum	Oak-leaved Goosefoot	Local Spp of Cons Conc RL_Vulnerable Nationally Scarce	2	10km
Chenopodium murale	Nettle-leaved Goosefoot	Local Spp of Cons Conc RL_Endangered	2	10km
Damasonium alisma	Starfruit	W&CA Sch8 NERC Act Section 41 London Priority Species Local Spp of Cons Conc RL_CriticalEndangered Nationally Rare	1	10km

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Species

Taxon Name	Common Name	Designation	Total number of occurrences	Record accuracy
Euphorbia exigua	Dwarf Spurge	Local Spp of Cons Conc RL_Vulnerable	2	10km
Fritillaria meleagris	Fritillary	Nationally Scarce	6	10km
Galeopsis angustifolia	Red Hemp-nettle	NERC Act Section 41 London Priority Species Local Spp of Cons Conc RL_CriticalEndangered Nationally Scarce	1	10km
Genista anglica	Petty Whin	Local Spp of Cons Conc RL_LowerRisk	1	10km
Glebionis segetum	Corn Marigold	Local Spp of Cons Conc RL_Vulnerable	2	10km
Hottonia palustris	Water-violet	RL_Vulnerable	1	10km
Hydrocharis morsus-ranae	Frogbit	Local Spp of Cons Conc RL_Vulnerable	1	10km
Lepidium latifolium	Dittander	Local Spp of Cons Conc Nationally Scarce	1	10km
Lithospermum arvense	Field Gromwell	Local Spp of Cons Conc RL_Endangered	1	10km
Meconopsis cambrica	Welsh Poppy	Nationally Scarce	2	10km
Medicago minima	Bur Medick	Local Spp of Cons Conc RL_Vulnerable Nationally Scarce	4	10km

Platanthera bifolia	Lesser Butterfly-orchid	NERC Act Section 41 London Priority Species Local Spp of Cons Conc RL_Vulnerable	1	10km
Ranunculus arvensis	Corn Buttercup	NERC Act Section 41 London Priority Species Local Spp of Cons Conc RL_CriticalEndangered	1	10km
Ruscus aculeatus	Butcher's-broom	Hab&Spp Dir Anx 5	4	10km
Scleranthus annuus	Annual Knawel	NERC Act Section 41 London Priority Species Local Spp of Cons Conc RL_Endangered	3	10km
Silene gallica	Small-flowered Catchfly	NERC Act Section 41 London Priority Species Local Spp of Cons Conc RL_Endangered Nationally Scarce	1	10km
Trifolium fragiferum	Strawberry Clover	RL_Vulnerable	4	10km
Invertebrates - Dragonflies & Damselflies				
Sympetrum striolatum	Common Darter	RL_DataDeficient	3	10km
Invertebrates - Beetles				
Carabus monilis Necklace Ground Beetle NERC Act Section 41 RL_Endangered				

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Species

Taxon Name	Common Name	Designation	Total number of occurrences	Record accuracy
Invertebrates - Butterflies				

Coenonympha pamphilus pamphilus	Small Heath	NERC Act Section 41 London Priority Species Local Spp of Cons Conc RL_LowerRisk	1	10km
Lasiommata megera	Wall	NERC Act Section 41 London Priority Species Local Spp of Cons Conc RL_LowerRisk	1	1km
Lycaena phlaeas eleus	A Butterfly	London Priority Species	1	1km
Ochlodes sylvanus	Large Skipper	London Priority Species	1	1km
Thymelicus lineola	Essex Skipper	London Priority Species	1	1km
Thymelicus sylvestris	Small Skipper	London Priority Species	1	1km
Invertebrates - Moths				
Acronicta psi	Grey Dagger	NERC Act Section 41	2	1km, 10km
Acronicta rumicis	Knot Grass	NERC Act Section 41	1	10km
Agrochola lychnidis	Beaded Chestnut	NERC Act Section 41	1	10km
Amphipyra tragopoginis	Mouse Moth	NERC Act Section 41	1	10km
Anchoscelis helvola	Flounced Chestnut	NERC Act Section 41	1	10km
Arctia caja	Garden Tiger	NERC Act Section 41 London Priority Species Local Spp of Cons Conc	1	10km
Hepialus humuli	Ghost Moth	NERC Act Section 41 London Priority Species Local Spp of Cons Conc	1	10km
Lycia hirtaria	Brindled Beauty	NERC Act Section 41	3	10km
Macaria wauaria	V-moth	NERC Act Section 41 London Priority Species Local Spp of Cons Conc	1	10km
Malacosoma neustria	Lackey	NERC Act Section 41	1	10km
Melanchra persicariae	Dot Moth	NERC Act Section 41	2	10km
Pelurga comitata	Dark Spinach	NERC Act Section 41	1	10km
Spilosoma lubricipeda	White Ermine	NERC Act Section 41	3	10km
Spilosoma lutea	Buff Ermine	NERC Act Section 41	2	10km
Tyria jacobaeae	Cinnabar	NERC Act Section 41	1	10km
Watsonalla binaria	Oak Hook-tip	NERC Act Section 41	1	10km

Birds				
Milvus milvus	Red Kite	Birds Dir Anx 1 W&CA Sch1 Part 1	1	10km
Turdus viscivorus	Mistle Thrush	London Priority Species Local Spp of Cons Conc Bird-Red	1	1km

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Species

4.2 Confidential Records

Records included in this section do not include any geographic content as it has been requested (by the data owners/originators) that the location remains confidential. The following information is provided to create a 8species alert9 record highlighting the presence of a species in the search area.

In order to establish the presence of confidential records on the site in question, a second data search request must be submitted with a detailed site boundary. For further explanations of GiGL9s Access to Data Policy and the confidential records please see the <Supporting Information= annex.

For more details about any bat roost records in the table please contact the London Bat Group enquiries@londonbats.org.uk

No confidential species records found

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4.3 LISI Species

The London Invasive Species Initiative (LISI) encourages better co-ordination and partnership working to prevent, reduce and eliminate the impacts caused by invasive non-native species across the city.

The list presents a number of species present in London and causing impacts for which action, monitoring or research is needed. It also lists species not currently in London but of concern due to high risk of negative impact should they arrive, including those for which national alerts are in place through the GB Non-Native Species Secretariat. LISI species are categorised following their likely risk to the

environment. For further explanations please see the Supporting Information annex.

LISI Category Explanation

LISI 1 Species not currently present in London but present nearby or of concern because of the high risk of negative impacts should they arrive. Should any species listed in this category appear in London, this should be reported to GIGL or LISI to ensure that action is taken rapidly.

LISI 2 Species of high impact or concern present at specific sites that require attention (control, management, eradication etc). Such species are priority species for action in London and LISI encourages this wherever possible.

LISI 3 Species of high impact or concern which are widespread in London and require concerted, coordinated and extensive action to control/eradicate. These species are species currently causing large scale impacts across London and LISI supports area or catchment wide partnership working to ensure this.

LISI 4 Species which are widespread for which eradication is not feasible but where avoiding spread to other sites may be required. Appropriate biosecurity is required for sites where these species are found. **LISI 5** Species for which insufficient data or evidence was available from those present to be able to prioritise.

LISI 6 Species that were not currently considered to pose a threat or have the potential to cause problems in London.

For further advice on dealing with invasive species in London, or to report management work undertaken at a site please contact GiGL at enquiries@gigl.org.uk or visit https://www.gigl.org.uk/our-data holdings/species-data/london-invasive-species/.

No LISI species records found

LISI species 3 Coarse Resolution Records

The species records in this table represent records of 1km^2, 2km^2 or 10km^2 accuracy.

Taxon Name	Common Name	Designation	Total number of occurrences	Record
Higher Plants - Flowering Plants				
Crassula helmsii	New Zealand Pigmyweed	LISI category 3	2	10
Galinsoga quadriradiata	Shaggy Soldier	LISI category 3	1	10
Impatiens glandulifera	Himalayan Balsam	LISI category 3	1	10
Reptiles				
Emys orbicularis	European Pond Terrapin	LISI category 5	1	10

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4.4 Species Records Acknowledgements

GiGL would like to acknowledge the following data owners/originators that have provided the species records that are included in this report.

Barnet, London Borough of

Butterfly Conservation Herts & Middx
iNaturalist
Individual recorder

iRecord
LNHS, London Natural History Society
LWT, London Wildlife Trust
MKA Ecology Ltd

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5.0 Notable Thames Structures

Please note there are no notable Inner Thames structures, e.g. derelict dolphin jetties, T jetties or abandoned barges or wall structures, which should be taken into account during local bird assessment.

Structures with significant bird use along the eastern tidal Thames are identified by the Inner Thames High Tide Group and were digitised by GiGL on behalf of the Group, and collaborating partners London Wildlife Trust and the Environment Agency, in 2012. As this is sensitive information we cannot provide more details but associated bird records are maintained within the GiGL species database and are summarised above in records or confidential records tables.

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6.0 Habitats

Habitats present within the search area from these sources can be seen on the following pages:

| Survey data
| BAP Condition Assessment and Habitat Suitability

It can be cross-referenced with the Survey Parcels Map.

Note that GiGL does not currently hold habitat data for all areas. Even where data is held, a lack of records in a defined geographical area does not necessarily mean that the habitat does not occur there 3 the area may simply not have been surveyed.

This section identifies and maps components of the local ecological networks and potential areas identified for habitat restoration or creation.

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Habitats

6.1 Survey Data

This table holds the most recent habitat survey information for a given site. It includes data collected via different survey methodologies.
The GLA conducted a series of rolling habitat surveys between the mid-1980s and 2009. It used the habitat typologies developed specifically for Greater London for further details of categories please refer to the Supporting Information section of the Annex. Other habitat classification methodologies recorded in the database are National Vegetation Classification, Phase 1 Habitat Assessment, and Biodiversity Action Plan Broad Habitat classification.

Site Name	Polygon ID	Grid Ref	Site Area (ha)	Survey Date	Habitat Type

Arkley South Fields, Horse Pastures	GiGL_HAB_14138	TQ2244595438	33.50	18/08/1992	Neutral grassland (semi-improved) Neutral grassland (herb-rich) Improved or re-seeded agricultural grassland Native hedge Native broadleaved woodla Standing water (includes ca Running water (rivers and streams)
Arkley South Fields, Chesterfield Cottage Green Lane	GiGL_HAB_14141	TQ2306295192	0.57	18/08/1992	Native broadleaved woodla
Arkley South Fields, South Rough Field	GiGL_HAB_14144	TQ2315595182	1.71	18/08/1992	Neutral grassland (semi-improved) Scrub Native hedge
Mays Lane Pasture	GiGL_HAB_14679	TQ2324194992	8.94	18/08/1992	Neutral grassland (semi-improved) Native he

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6.2 BAP Condition Assessment & Habitat Suitability

The London Biodiversity Partnership (LBP) habitat suitability dataset was created to promote the preservation, restoration and re-creation of priority habitats. This is a modelled dataset which, if used to create one or more of the nine selected BAP priority habitats, should give the best benefit to biodiversity in London.

Launched in 2010, this dataset is based on methods developed with the London Biodiversity Partnership9s Habitat Action Plan (HAP) groups. GiGL mapped Biodiversity Action Plan (BAP) habitat distribution using information from GLA habitat surveys, and assessed their condition using species records and other datasets. Further to this work, GiGL created a predictive model of areas suitable for either maintaining existing BAP habitat, expanding areas of BAP habitat or creating new BAP habitats. Again, the methodology was designed in partnership with the HAP groups, and includes factors such as soil type.

This dataset was a one-off project and is not updated.

Site Name	Polygon ID	Grid Ref	Site Area (ha)	Created Da
Arkley South Fields, Horse Pastures	GiGL_HAB_14138	TQ2244595438	33.50	1992
Arkley South Fields, Chesterfield Cottage Green Lane	GiGL_HAB_14141	TQ2306295192	0.57	1992
Arkley South Fields, South Rough Field	GiGL_HAB_14144	TQ2315595182	1.71	1992
Mays Lane Pasture	GiGL_HAB_14679	TQ2324194992	8.94	1992

7.0 Open Spaces

Open space information within the search area can be seen on the following pages. **The table can be**

cross-referenced with the Open Space Map.

This open space dataset is a combination of information collected during GLA surveys, information provided to GiGL by the London boroughs and data sourced through other means, e.g. volunteer surveys.

Note that GiGL does not currently hold open space data for all areas. Even where data is held, a lack of records in a defined geographical area does not necessarily mean that the open space features do not occur there the area may simply not have been surveyed.

GiGL manage a dataset of spaces designated as public open space categorised according to a site hierarchy documented in The London Plan (Table 8.1). Information on public open spaces sites are displayed within the open space table.

GiGL uses to following open space definition: undeveloped land which has an amenity value, or has potential for an amenity value. The value could be visual, derive from a site's historical or cultural interest or from the enjoyment of facilities which it provides. It includes both public and private spaces, but excludes private gardens.

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7.1 Open Space Data

The dataset documents the primary and secondary uses of open space (divided according to broad land use categories) along with other information such as public accessibility, facilities, and special designations which apply to the site. For further details of open space typology and designation categories please also refer to the Supporting Information section of the Annex.

Site Name	Site ID	Grid Ref	Site Area (ha)	Open Spa	
				Land use category	Primary us
Arkley South Fields	OS_Ba_0010	TQ2257595230	94.23	Outdoor Sports Facilities	Playing fiel
Mays Lane Pasture	OS_Ba_0205	TQ2323595000	8.94	Other Urban Fringe	Agriculture

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8.0 Contacts

8.1 Borough Contacts

Further details of sites and species within the search area may be gathered from the following borough contacts:

London Borough of Barnet

Planning Services, 2 Bristol Avenue, 7th
Floor Colindale, London, NW 9 4EW

Tel: 020 8359 3000
Planning Enquiries
planning.enquiry@barnet.gov.uk

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8.2 Further Contacts

The following contacts work closely with GiGL and are the best source for further advice or interpretation of the data provided by us. They are widely recognised in Greater London as the experts in their fields, and have provided the following information as the preferred method of contact.

Areas of expertise	**SINCs, open space and habitat survey data advice**
Organisation	**GiGL 3 Greenspace Information for Greater London;**
Website & email	www.gigl.org.uk enquiries@gigl.org.uk

Areas of expertise	**Black redstarts, birds, brown and green roofs**
Name & email	**Dusty Gedge:** dustygedge@yahoo.co.uk
Organisation & website	**LivingRoofs.org; www.livingroofs.org**

Areas of expertise	**Bats**
Organisation	**London Bat Group**
Website & email	www.londonbats.org.uk; enquiries@londonbats.org.uk

Areas of expertise	**Regional biodiversity action plans**
Organisation	**London Biodiversity Partnership**
Website	www.lbp.org.uk

Areas of expertise	**Area recorders for birds (Inner London, Kent, Surrey, Buckinghamshire, Middlesex, and Essex)**
Organisation	**London Natural History Society**
Website & email	www.lnhs.org.uk; birddata@lnhs.org.uk

Areas of expertise	**Plant galls**
Organisation	**London Natural History Society;**
Website & email	www.lnhs.org.uk; plantgalls@lnhs.org.uk

Areas of expertise	**Odonata - Dragonflies and damselflies**
Name & email	**Neil Anderson:** neil@anders42.freeserve.co.uk
Organisation & website	**London Natural History Society;** www.lnhs.org.uk

Areas of expertise	**Invertebrates**

Name & email	**Colin W Plant:** colinwplant@gmail.com
Organisation & website	**London Natural History Society;** www.lnhs.org.uk

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Areas of expertise	**Lichens and Fungi**
Organisation	**London Natural History Society**
Website & email	www.lnhs.org.uk; lichens@lnhs.org.uk; fungi@lnhs.org.uk

Areas of expertise	**Butterflies**
Name & email	**Leslie Williams:** leslie.williams1597@btinternet.com
Organisation & website	**London Natural History Society;** www.lnhs.org.uk

Areas of expertise	**Vascular plants**
Name & email	**Mark Spencer:** Lnhs_plant_recorder@hotmail.co.uk
Organisation & website	**London Natural History Society;** www.lnhs.org.uk

Areas of expertise	**General conservation advice**
Name & email	**Conservation Programmes Manager:** enquiries@wildlondon.org.uk
Organisation & website	**London Wildlife Trust;** www.wildlondon.org.uk

Areas of expertise	**Statutory site advice**
Name & email	**Conservation Officer:** london@naturalengland.org.uk
Organisation & website	**Natural England;** www.naturalengland.org.uk

Areas of expertise	**London Invasive Species Initiative**
Name & email	**Joanna Heisse:** Joanna.heisse@environment-agency.gov.uk
Organisation & website	**Environment Agency;** www.environment-agency.gov.uk

Areas of expertise	**Geological Designations**

Organisation	**London Geodiversity Partnership;**
Website & email	www.londongeopartnership.org.uk; info@londongeopartnership.org.uk

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Annex A - Supporting Information

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Statutory Site Designations

Local Nature Reserve (LNR)
Land owned, leased or managed by Local Authorities and designated under the National Parks and Access to the Countryside Act. A site of some nature conservation value managed for educational objectives 4 no need for SSSI status. In some cases it is managed by a non-statutory body (e.g. London Wildlife Trust). Local Authorities have the power to pass bylaws controlling (e.g.) access, special protection measures.

Site of Special Scientific Interest (SSSI)
Area notified under the Wildlife and Countryside Act, 1981, by Natural England, the Countryside Council for Wales or Scottish Heritage as being of special interest for nature conservation. Consultation and some form of agreement with the national statutory conservation agency is mandatory before any listed, potentially damaging development, change in land use, etc. can be carried out.

Biological SSSIs form a national network of wildlife sites in which each site is a distinct discrete link. Sites are selected in such a way that the protection of each site, and hence the network, aims to conserve the minimum area of wildlife habitat necessary to maintain the natural diversity and distribution of Britain9s native flora and fauna and the communities they comprise. Each site, therefore, is of national significance for its nature conservation value. The vast majority of SSSIs, and indeed most areas of semi-natural habitat, cannot be created within human time scales and

are therefore considered irreplaceable.

Geological SSSIs4more correctly termed Earth Science SSSIs4are the best sites chosen for their research value, the criterion being that they are of national or international importance. Earth Science conservation is concerned with the maintenance of our geological and geomorphological heritage.

National Nature Reserve (NNR)
Statutory reserve established for the nation under the Wildlife and Countryside Act, 1981. NNRs may be owned by a relevant national body (e.g. Natural England in England) or by established agreement; a few are owned and managed by non-statutory bodies. NNRs cover a selection of the most important sites for nature conservation in the UK.

Special Area of Conservation (SAC) and Special Protection Area (SPA) SACs and SPAs are areas designated under European law and are the most important sites for wildlife in the UK. SACs are designated under the European Habitats Directive (Council Directive 92/43/EEC) and SPAs under the European Birds Directive (Council Directive 79/409/EEC). Both the Habitats and Birds Directive provide for the creation of a network of protected wildlife areas across the EU, to be known as <Natura 2000=. The designations aim to conserve important or threatened species and habitats and provide them with increased protection and management.

Ramsar sites
Ramsar sites are wetlands of international importance designated under the Ramsar Convention. The initial emphasis was on selecting sites of importance to waterbirds within the UK, and consequently many Ramsar sites are also Special Protection Areas (SPAs) classified under the Birds Directive. Non-bird features are now increasingly taken into account, both in the selection of new sites and when reviewing existing sites.

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SINC Designations

Sites of Importance for Nature Conservation (SINCs) and Proposed Sites of Importance for Nature Conservation (pSINC)

1 The different kinds of sites and areas

1.1 There are three kinds of site, which are chosen on the basis of their importance to a particular defined geographic area. This use of search areas is an attempt, not only to protect the best sites in London, but also to provide each part of London with a nearby site, so that people are able to have access to enjoy nature.

Sites of Metropolitan Importance

1.2 Sites of Metropolitan Importance for Nature Conservation are those sites which contain the best examples of London's habitats, sites which contain particularly rare species, rare assemblages of species or important populations of species, or sites which are of particular significance within otherwise heavily built-up areas of London.

1.3 They are of the highest priority for protection. The identification and protection of Metropolitan Sites is necessary, not only to support a significant proportion of London's wildlife, but also to provide opportunities for people to have contact with the natural environment.

1.3.1 The best examples of London's habitats include the main variants of each major habitat type, for example hornbeam woodland, wet heathland, or chalk downland. Habitats typical of urban areas are also included, e.g. various types of abandoned land colonised by nature (8wasteland9 or 8unofficial countryside9). Those habitats which are particularly rare in London may have all or most of their examples selected as Metropolitan Sites.

1.3.2 Sites of Metropolitan Importance include not only the best examples of each habitat type, but also areas which are outstanding because of their assemblage of habitats, for example the Crane corridor, which contains the River Crane, reservoirs, pasture, woodland and heathland.

1.3.3 Rare species include those that are nationally scarce or rare (including Red Data Book species) and species which are rare in London.

1.3.4 A small number of sites are selected which are of particular significance within heavily built up areas of London. Although these are of lesser intrinsic quality than those sites selected as the best examples of habitats on a London-wide basis they are outstanding oases and provide the opportunity for enjoyment of nature in extensive built environments. Examples include St James's Park, Nunhead Cemetery, Camley Street Natural Park and Sydenham Hill Woods. In some cases (e.g. inner London parks) this is the primary reason for their selection. For sites of higher intrinsic interest it may only be a contributory factor. Only those sites that provide a significant contribution to the ecology of an area are identified.

1.4 Should one of these sites be lost or damaged, something would be lost which exists in a very few other places in London. Management of these sites should as a first priority seek to maintain and enhance their interest, but use by the public for education and passive recreation should be encouraged unless these are inconsistent with nature conservation.

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Sites of Borough Importance

1.5 These are sites which are important on a borough perspective in the same way as the Metropolitan sites are important to the whole of London. Although sites of similar quality may be found elsewhere in London, damage to these sites would mean a significant loss to the borough. As with Metropolitan sites, while protection is important, management of Borough sites should usually allow and encourage their enjoyment by people and their use for education.

1.6 In defining Sites of Borough Importance, the search is not confined rigidly to borough boundaries; these are used for convenience of defining areas substantially smaller than the whole of Greater London, and the needs of neighbouring boroughs should be taken into account. In the same way as for Sites of Metropolitan Importance, parts of some boroughs are more heavily built-up and some borough sites are chosen there as oases providing the opportunity for enjoyment of nature in extensive built environments.

1.7 Planning Policy Statement on Biodiversity and Geological Conservation (2005), in paragraph 5 (i), states that local development frameworks should indicate the location of designate sites for biodiversity and geodiversity, including locally designated sites..

1.8 Since essentially a comparison within a given borough is made when choosing Sites of Borough Importance, there is considerable variation in quality between those for different boroughs; for example, those designated in Barnet will frequently be of higher intrinsic quality than those in Hammersmith and Fulham, a borough comparatively deficient in wildlife habitat. Only those sites that provide a significant contribution to the ecology of an area are identified.

Sites of Local Importance

1.9 A Site of Local Importance is one which is, or may be, of particular value to people nearby (such as residents or schools). These sites may already be used for nature study or be run by management committees mainly composed of local people. Where a Site of Metropolitan or Borough Importance may be so enjoyed it acts as a Local site, but further sites are given this designation in recognition of their role. This local importance means that these sites are also deserving protection in planning.

1.10 Local sites are particularly important in areas otherwise deficient in nearby wildlife sites. To aid the choice of these further local sites, Areas of Deficiency (see below) are identified. Further Local sites are chosen as the best available to alleviate this deficiency; such sites need not lie in the Area of Deficiency, but should be as near to it as possible. Where no such sites are available, opportunities should be taken to provide them by habitat enhancement or creation, by negotiating access and management agreements, or by direct acquisition. Only those sites that provide a significant contribution to the ecology of an area are identified.

Areas of Deficiency in Access to Nature

Areas of Deficiency in Access to Nature are defined as built-up areas more than one kilometre actual walking distance from an accessible Metropolitan or Borough site. These aid the choice of Sites of Local Importance (see above).

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Geological Designations

Regionally Important Geological/geomorphological Sites (RIGS) and Locally Important Geological Sites (LIGS)

Government guidance uses the term *Local Sites* for non-statutory geological sites, as distinct from the Sites of Special Scientific Interest [SSSIs] which are protected by government statute. • In England they are often called *Local Geological Sites*.

- In Scotland they are often called *Local Geodiversity Sites*.
- In Wales they are called *Regionally Important Geodiversity Sites*.

NOTE: The term *Regionally Important Geological/geomorphological Sites (RIGS)*, which has been in usage now for many years and is still used to describe Local Geological/geodiversity Sites, should be regarded as synonymous to Local Geological Sites. In London, the term RIGS has been retained to cover those sites that are worthy of protection for their geodiversity importance at the London-wide level.

RIGS were established in 1990 by the Nature Conservancy Council (NCC) (predecessor of English Nature and Natural England). They have support from Natural England and other national agencies, and are increasingly recognised by local planning authorities. To date RIG Sites have been selected by voluntary groups, Local geoconservation groups (lately known as RIGS groups), which are generally formed by county or by unitary authority area in England. There are more than 50 local groups in the UK, though not all are active. There are 3 active groups in London, South London RIGS, North West London RIGS and GeoEssex, but to date no RIGS have been formally designated in Greater London.

RIGS are currently the most important designated places for geology and geomorphology outside statutorily protected land such as SSSIs. The designation of RIGS is one way of recognising and protecting important geodiversity and landscape features for future generations to enjoy. RIGS are equivalent to local Wildlife Sites and other non-statutory wildlife designations. They can be listed in local authorities' development plans and shown on "alert maps". RIGS can be protected through the planning system if a RIGS group recommends sites to the local planning authority.

Guidance on RIGS is available on the GeoconservationUK website (www.geoconservationuk.org.uk). They are important as an educational, historical and recreational resource. Sites are selected according to:

- the value for educational purposes in life-long learning
- the value for study both by professional and amateur earth scientists
- the historical value in terms of important advances in Earth science knowledge, events or human exploitation
- the aesthetic value in the landscape, particularly in relation to promoting public awareness and appreciation of geodiversity.

RIGS can be viewed as equivalent to Sites of Metropolitan Importance for Nature Conservation (SMIs), which include land of strategic importance for nature conservation and biodiversity across London. They are proposed by the Boroughs in Development plan documents and are confirmed if there is no objection from the Mayor to the proposal. These sites should be protected as set out in Policy G9 of the London Plan.

The London boroughs may also designate certain areas as being of local conservation (including geological) interest (LIGS). The criteria for inclusion, and the level of protection provided, should reflect the local level of importance in the hierarchy of sites.

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LIGS are equivalent to Sites of Borough or Local Importance for nature conservation, which are accorded a level of protection commensurate with their borough or local significance. Local site networks provide a comprehensive rather than a representative suite of sites. Defra have published detailed guidance on identification, selection and management of local sites (DEFRA, 2006).

LIGS are designated in the Development Plan Documents prepared under the Town and Country

Planning system by the London boroughs and are a material consideration when planning applications are being determined.

The London Plan Implementation Report London9s foundations (March 2009) describes the geodiversity audit of 36 sites (including the 7 London SSSIs designated for their geodiversity importance). In 2012, the updated London's foundations report recommended 14 new RIGS to be set up, adding to the 14 RIGS and 15 LIGS which were recommended in the 2009 publication. Since 2012 a further 3 RIGS and 11 LIGS have been identified. The London Geodiversity Partnership's website indicates that "in 2018 the sites being protected, cared for and interpreted by the London Geodiversity Partnership are 7 Sites of Special Scientific Interest (SSSI), 31 RIGS and 26 LIGS". Since publication of London9s foundations, the London Geodiversity Partnership has published the London Geodiversity Action Plan 2019-2024, which provides a framework for understanding, conserving and using London's geodiversity and includes a programme of inspection and audit of these sites and other potential sites.

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Species Protections

GiGL has used the conservations designations list created and maintained by the Joint Nature Conservation Committee (JNCC) and used the following designations in the data search report.

International and national legislation

International Legislation	
Birds Directive Annex 1	Birds which are the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution. As appropriate, Special Protection Areas to be established to assist conservation measures. Note that the contents of this annex have been updated in April 2003 following the Treaty of Accession.
Habitats Directive Annex 2 - priority species	Species which are endangered, the conservation of which the Community has a particular responsibility in view of the proportion of their natural range which falls within the territory of the Community. They require the designation of special areas of conservation.
Habitats Directive Annex 2 - non priority species	Animal and plant species of Community interest (i.e. endangered, vulnerable, rare or endemic in the European Community) whose conservation requires the designation of special areas of conservation. Note that the contents of this annex have been updated in April 2003 following the Treaty of Accession.
Habitats Directive Annex 4	Animal and plant species of Community interest (i.e. endangered, vulnerable, rare or endemic in the European Community) in need of strict protection. They are protected from killing, disturbance or the destruction of them or their habitat. Note that the contents of this annex have been updated in April 2003 following the Treaty of Accession.
National Legislation	
The Conservation (Natural Habitats, &c.) Regulations 2010 (Schedule 2)	Schedule 2- European protected species of animals.
The Conservation (Natural Habitats, &c.) Regulations 2010 (Schedule 5)	Schedule 5- European protected species of plants.
Natural Environment and Rural Communities Act 2006 - Species of Principal Importance in England	Species <of principal importance for the purpose of conserving biodiversity= covered under section 41 (England) of the NERC Act (2006) and therefore need to be taken into consideration by a public body when performing any of its functions with a view to conserving biodiversity.
Wildlife and Countryside Act 1981 (Schedule 1 Part 1)	Birds which are protected by special penalties at all times.
Wildlife and Countryside Act 1981 (Schedule 5 Section 9.1 (killing/injuring))	Animals which are protected from intentional killing or injuring.
Wildlife and Countryside Act 1981 (Schedule 5 Section 9.1 (taking))	Section 9.1 Animals which are protected from taking.
Wildlife and Countryside Act 1981 (Schedule 5 Section 9.4a)	Section 9.4 Animals which are protected from intentional damage or destruction to any structure or place used for shelter or protection.
Wildlife and Countryside Act	Section 9.4 Animals which are protected from intentional

1981 (Schedule 5 Section 9.4b)	disturbance while occupying a structure or place used for shelter or protection.
Wildlife and Countryside Act 1981 (Schedule 5)	Cetacean/basking shark that are not allowed to be intentionally or recklessly disturbed.

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Wildlife and Countryside Act 1981 (Schedule 8)	Plants which are protected from intentional picking, uprooting or destruction (Section 13 1a); selling, offering for sale, possessing or transporting for the purpose of sale (live or dead, part or derivative) (Section 13 2a); advertising (any of these) for buying or selling (Section 13 2b).
Protection of Badgers Act (1992)	The Protection of Badgers Act 1992 protects badgers from taking, injuring, killing, cruel treatment, selling, possessing, marking and having their setts interfered with, subject to exceptions.

Notable and other species designations

Red Data List	
Bird Population Status - red	Red list species are those that are Globally Threatened according to IUCN criteria; those whose population or range has declined rapidly in recent years; and those that have declined historically and not shown a substantial recent recovery.
IUCN (2001) - Critically endangered	A taxon is Critically Endangered when the best available evidence indicates that it meets any of the criteria A to E for Critically Endangered (see Section V), and it is therefore considered to be facing an extremely high risk of extinction in the wild.
IUCN (2001) - Data Deficient	A taxon is Data Deficient when there is inadequate information to make a direct, or indirect, assessment of its risk of extinction based on its distribution and/or population status. A taxon in this category may be well studied, and its biology well known, but appropriate data on abundance and/or distribution are lacking. Data Deficient is therefore not a category of threat. Listing of taxa in this category indicates that more information is required and acknowledges the possibility that future research will show that threatened classification is appropriate. It is important to make positive use of whatever data are available. In many cases great care should be exercised in choosing between DD and a threatened status. If the range of a taxon is suspected to be relatively circumscribed, and a considerable period of time has elapsed since the last record of the taxon, threatened status may well be justified.
IUCN (2001) - Endangered	A taxon is Endangered when the best available evidence indicates that it meets any of the criteria A to E for Endangered (see Section V), and it is therefore considered to be facing a very high risk of extinction in the wild.

IUCN (2001) - Extinct	A taxon is Extinct when there is no reasonable doubt that the last individual has died. A taxon is presumed Extinct when exhaustive surveys in known and/or expected habitat, at appropriate times (diurnal, seasonal, annual), throughout its historic range have failed to record an individual. Surveys should be over a time frame appropriate to the taxon's life cycle and life form.
IUCN (2001) - Extinct in the wild	A taxon is Extinct in the wild in Great Britain when it is known to survive only in cultivation, in captivity or as a naturalised population (or populations) well outside the past range. A taxon is presumed extinct in the wild when exhaustive surveys in known and/or expected habitat, at appropriate times (diurnal, seasonal, annual) throughout its range have failed to record an individual. Surveys should be over a time frame appropriate to the taxon's life cycle and life form.

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IUCN (2001) - Regionally Extinct	Category for a taxon when there is no reasonable doubt that the last individual potentially capable of reproduction within the region has died or has disappeared from the wild in the region, or when, if it is a former visiting taxon, the last individual has died or disappeared in the wild from the region. The setting of any time limit for listing under RE is left to the discretion of the regional Red List authority, but should not normally pre-date 1500 AD.
IUCN (2001) - Lower risk - near threatened	A taxon is Near Threatened when it has been evaluated against the criteria but does not qualify for Critically Endangered, Endangered or Vulnerable now, but is close to qualifying for or is likely to qualify for a threatened category in the near future.
IUCN (2001) - Vulnerable	A taxon is Vulnerable when the best available evidence indicates that it meets any of the criteria A to E for Vulnerable (see Section V), and it is therefore considered to be facing a high risk of extinction in the wild.
Other rare/scarce	
Nationally rare marine species	Species which occur in eight or fewer 10km X 10km grid squares containing sea (or water of marine saline influence) within the three mile territorial limit.
Nationally rare	Occurring in 15 or fewer hectads in Great Britain. Excludes rare species qualifying under the main IUCN criteria.
Nationally scarce marine species	Species which occur in nine to 55 10km X 10km grid squares containing sea (or water of marine saline influence) within the three mile territorial limit.
Nationally Notable A	Taxa which do not fall within RDB categories but which are none the-less uncommon in Great Britain and thought to occur in 30 or fewer 10km squares of the National Grid or, for less well-recorded groups, within seven or fewer vice-counties. Superseded by Nationally Scarce, and therefore no longer in use.

Nationally Notable B	Taxa which do not fall within RDB categories but which are none the-less uncommon in Great Britain and thought to occur in between 31 and 100 10km squares of the National Grid or, for less-well recorded groups between eight and twenty vice-counties. Superseded by Nationally Scarce, and therefore no longer in use.
Nationally scarce	Occurring in 16-100 hectads in Great Britain.
Nationally Notable	Species which are estimated to occur within the range of 16 to 100 10km squares. (subdivision into Notable A and Notable B is not always possible because there may be insufficient information available). Superseded by Nationally Scarce, and therefore no longer in use.
Local List	
London Species of Conservation Concern	Species of concern listed in the initial stage of updating the London Priority Species List (see below).
London Priority Species List	See below.

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Annex

Priority Species in London

The London Environment Strategy (https://www.london.gov.uk/what-we-do/environment/london environment-strategy) describes how the Mayor will work to make sure that London's biodiversity is enhanced and protected and more Londoners can experience nature. In 2018 the process of updating the London Species of Conservation Concern (LSOCC) list was initiated. From this initial longer list London9s Priority Species have been identified.

Criteria for selection of London Priority Species are as follows:

Species on the London Priority Species List (LPSL) meet one or more criteria to indicate their conservation status as a species which require conservation action:

- species with native or long-term naturalised populations in London that are listed on S41 of the NERC Act
- species that are on the UK red list or are UK scarce
- species that are not recognised as of conservation concern nationally but are characteristic of London and under threat locally, e.g. black poplar

For more information on how the LPSL and LSOCC were updated, please see the GiGLer article: https://www.gigl.org.uk/londons-priority-species/ or contact GiGL for more information. The full LPS List is available from the GLA website: https://www.london.gov.uk/what-we do/environment/environment-publications/london-priority-species/

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Confidential Records

GiGL holds some species records that are confidential. The fundamental principle is of making available all records, no matter how sensitive, with the appropriate interpretation. However, access to records will be restricted where general availability could pose a real threat to species or habitats, or would compromise the supply of data. Data supplied in the search reports will be included at the resolution defined either by GiGL Advisory Panel and / or by the data owner/originator.

The following is the list of species and groups that are treated as confidential.

Common Name	Scientific Name	Additional comments
Badger	*Meles meles*	All records
Adder	*Vipera berus*	All records
Garganey	*Anas querquedula*	Records from April - July only
Pochard	*Aythya ferina*	Records from April - July only
Quail	*Coturnix coturnix*	All records

Red-necked Grebe	*Podiceps grisegena*	Records from April - July only
Black-necked Grebe	*Podiceps nigricollis*	Records from April - July only
Little Egret	*Egretta garzetta*	Records from April - July only
Honey Buzzard	*Pernis apivorus*	Records from April - July only
Red Kite	*Milvus milvus*	Records from April - July only
Marsh Harrier	*Circus aeruginosus*	Records from April - July only
Goshawk	*Accipiter gentilis*	All records
Common Buzzard	*Buteo buteo*	Records from April - July only
Hobby	*Falco subbuteo*	All records
Peregrine Falcon	*Falco peregrinus*	All records
Avocet	*Recurvirostra avosetta*	Records from April - July only
Little Ringed Plover	*Charadrius dubius*	Records from April - July only
Ruff	*Philomachus pugnax*	Records from April - July only
Common Snipe	*Gallinago gallinago*	Records from April - July only
Turtle Dove	*Streptopelia turtur*	Records from April - July only
Barn Owl	*Tyto alba*	All records
Long-eared Owl	*Asio otus*	All records
Short-eared Owl	*Asio flammeus*	Records from April - July only
Nightjar	*Caprimulgus europaeus*	All records
Woodlark	*Lullula arborea*	All records
Tree Pipit	*Anthus trivalis*	Records from April - July only
Black Redstart	*Phoenicurus ochruros*	Records from April - July only
Cetti's Warbler	*Cettia cetti*	All records
Marsh Warbler	*Acrocephalus palustris*	All records
Dartford Warbler	*Sylvia undata*	All records
Firecrest	*Regulus ignicapilla*	Records from April - July only
Bearded Tit	*Panurus biarmicus*	All records
Willow Tit	*Poecile montanus*	All records
Marsh Tit	*Poecile palustris*	Records from April - July only
Golden Oriole	*Oriolus oriolus*	All records
Hawfinch	*Coccothraustes coccothraustes*	All records
Corn Bunting	*Miliaria calandra*	All records
Lesser-spotted Woodpecker	*Dendrocopus minor*	Records from April -July only

Lizard orchid	*Himantoglossum hircinum*	All records
Cannabis	*Cannabis sativa*	All records

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London Invasive Species Initiative overview

The London Invasive Species Initiative (LISI)

The London Invasive Species Initiative encourages better co-ordination and partnership working to prevent, reduce and eliminate the impacts caused by invasive non-native species across the city. It is a sub-group of the London Biodiversity Partnership and has a wide membership, spanning several sectors and organisations.

LISI sub-group

Invasive non-native species are widely recognised as a major threat to biodiversity, second only to habitat loss. They can also have serious economic impacts and impacts on social, health and amenity resources.

Following on from the creation of the GB Non-Native Species Co-ordinating Mechanism, DEFRA published the 8Invasive Non-native species framework strategy for GB9 in 2008. Parallel to this, a number of regional initiatives have been set up across the country which helps implement the various policy documents at a regional and sub-regional level. As such, a London Invasive Species Initiative has been formed to work within this context.

There are many species present in London, most of the non-native species do not pose a threat to biodiversity and add to the individuality and richness of London9s wildlife and heritage. However, there are some invasive non-native species which are a cause for concern, some of which are already threatening the value of London9s natural environment. Uniquely, the highly urbanised nature of London and the anticipated impacts of climate change are likely to exacerbate the effects of invasive non-native species. Finally, London is an international city and has a higher risk of new non-native species appearing and becoming invasive than some other areas.

The presence of a LISI species on or near a site has the following implications:
- The presence of an invasive species may threaten the ecological value of a site and cause additional socio-economic impacts.
- There is a statutory requirement under the Wildlife and Countryside Act 1981 to ensure that non-native species are not introduced or spread in the wild. Species listed in Schedule 9 of the act are known to be established in the wild and care should be taken to ensure that where present, these are not spread through site activities.
- In addition to establishing appropriate biosecurity measures, management may be required to eradicate, control or mitigate the species.

The LISI group was set up as a sub-group of the London Biodiversity Partnership in late 2009 and has since worked on prioritising species for London, providing advice, raising awareness and co ordinating action on the ground.

Group membership is open to all interested organisations with an interest in invasive non-native species, particularly those seeking to work in partnership to tackle the problems caused by them. The Environment Agency currently chairs the group.

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The group's objectives

The LISI objectives mirror the Convention for Biological Diversity9s <guiding principles of prevention, detection/surveillance and control/eradication of invasive species= and cover the following points:

- Collating and monitoring data on the distribution and spread of invasive species in London.
- Developing action plans to address the species of most urgent concern.
- Facilitating control and eradication projects for high priority species.
- Providing a link between research and practitioners (to help to support the evidence base for invasive species impacts and/or control measures).
- Act as an early warning system for new and emerging invasive species.
- Promoting awareness of the risks and impacts associated with invasive species.

LISI species of concern

A list of invasive non-native species of concern for London has been drawn up using several sources of information: Schedule 9 of the Wildlife and Countryside Act 1981, The UK Water Framework Directive Technical Advisory Group9s invasive species list and local knowledge. The resulting list presents a number of species either present in London and causing impacts for which action, monitoring or research is needed. The highest priority for London is also the prevention of new species arriving, particularly those for which national alerts are in place through the GB Non Native Species Secretariat.

Each species has been assigned a category for action as follows:

1. Species not currently present in London but present nearby or of concern because of the high risk of negative impacts should they arrive. Should any species listed in this category appear in London, this should be reported to GIGL or LISI to ensure that action is taken rapidly.
2. Species of high impact or concern present at specific sites that require attention (control, management, eradication etc). Such species are priority species for action in London and LISI encourages this wherever possible.
3. Species of high impact or concern which are widespread in London and require concerted, coordinated and extensive action to control/eradicate. These species are species currently causing large scale impacts across London and LISI supports area or catchment wide partnership working to ensure this.
4. Species which are widespread for which eradication is not feasible but where avoiding spread to other sites may be required. Appropriate biosecurity is required for sites where these species are found.
5. Species for which insufficient data or evidence was available from those present to be able to prioritise.
6. Species that were not currently considered to pose a threat or have the potential to cause problems in London.

Further information:
For further information relating to LISI please contact 3 enquiries@londonisi.org.uk

For further guidance on invasive non-native species, including management guidance and advice, please see the GB Non-Native Species Secretariat:
http://www.nonnativespecies.fera.defra.gov.uk/nonnativespecies/home/index.cfm

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Habitat Classifications

The habitat data includes the most recent habitat survey information for a given area. The data includes information collected using different habitat surveying methodologies.

London habitat surveys
The Greater London Authority conducted a series of rolling habitat surveys between the mid-1980s and 2009. It used the habitat typologies developed specifically for Greater London.

1 Survey information

1.1 In order to choose sites for protection it is necessary to have good survey information on the habitats and species of all candidate areas.

The London Wildlife Habitat Survey

1.2 Information on wildlife habitats can be collected in a standardised, comprehensive survey. We are fortunate in London in having such a survey, first carried out by the London Wildlife Trust for the Greater London Council in 1984/85, and updated and extended in various surveys since, including re-examination of sites to be described in the handbook series or in relation to proposed developments or management. In a number of London boroughs a systematic survey has been carried out using the London Ecology Unit's specification since 1985. The specification was updated in 2000, when the GLA was established, to collect additional data required for open space planning. The format of the survey is similar to those usually described as 8Phase I9 or 8Field by Field9, but is enhanced by the extensive use of standardised written notes. The Authority holds this survey information.

1.3 The initial survey documented areas with semi-natural habitats (more natural than well gardened allotments or heavily mown urban playing fields) and was also confined to large areas (above 0.5 ha for inner boroughs and 1 ha for outer boroughs). Much subsequent survey work has documented open spaces regardless of their natural quality and has used a much lower area threshold, to provide a more comprehensive coverage.

1.4 The wildlife habitat survey helps to ensure that candidate sites are not overlooked and that the same essential minimum of information is available for each. There is usually little other information available on the quality of the wildlife habitats, but any information provided is taken into account.

Information on species

1.5 Information on species, which has been obtained in a consistent and standardised manner as part of the systematic survey of habitats may be used by the Authority in reaching decisions on site quality. Other information on species, relating to individual sites, is frequently available but has rarely been collected in a systematic way so as to allow straightforward comparisons with other sites.

1.6 Information on species is often available from local naturalists, who are able to observe sites throughout seasons and years to provide an accurate and quite comprehensive listing of these and who may publish accounts of particular species or sites. Valuable though this information is, it often proves difficult to use it to compare candidate sites, as the recording effort put into each site may differ greatly and so may the completeness of the list. The length of the species list and the detection of rare species therefore depends upon the searching effort. For these reasons, such information on

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species is used only together with knowledge of how the information was obtained and of the way in which the ecology of individual species affects their apparent status.

1.7 The policy of the Authority is to take considerable care in interpreting site-based species data to ensure that fully professional standards are maintained.

Habitat Types

A list of habitats for open space survey in London

Code	Name	Definition
01/02/ 03	Woodland	Stands of trees forming at least 75% cover, including coppice and trees of shrub size, but excluding fen carr (19). Includes stands of willow except *Salix cinerea, caprea* and *viminalis*, but excludes hawthorn, hazel (except hazel coppice with standards), elder, juniper and the three willow species listed above, which are always scrub (06) regardless of height. Where the species composition does not fulfil any of 01, 02 or 03 below, code as a mixture. Always record % shrub layer under the qualifiers.
01	Native broadleaved woodland	Woodland (see above) with native broadleaved species (i.e. excluding sycamore and sweet chestnut) comprising at least 75% of the canopy.
02	Non-native broadleaved woodland	Woodland (see above) with non-native broadleaved species (including sycamore and sweet chestnut) comprising 75% of the canopy.
03	Coniferous woodland	Woodland (see above) with coniferous species (including yew) comprising 75% of the canopy.

37	Scattered trees	Trees forming less than 75% canopy cover over another habitat (excluding coppice with standards, which is coded as woodland). Record percentage tree cover here, and the rest of the area under the appropriate habitat.
05	Recently felled woodland	Does not include coppice, which is coded as woodland.
06	Scrub	Dominated (at least 75% cover) by shrubs (usually less than 5 metres tall), excluding fen carr (19), heathland (15), young woodland, coppice, hedges (25, 34) and planted shrubberies (38). Includes stands of hawthorn, hazel (except coppice with standards), elder and *Salix cinerea, caprea* and *viminalis* regardless of height.
38	Planted shrubbery	Dominated (at least 75% cover) by shrubs, usually non-native species, the majority of which have clearly been planted. Excludes hedges (25, 34).
25	Native hedge	Line of shrubs, with or without treeline, one or two mature shrubs wide (wider belts should be coded as scrub or woodland), with native species comprising at least 75% of the shrubs.
34	Non-native hedge	As above but with non-native species comprising at least 75% of the shrubs. If neither 25 nor 34 apply, code as a mixture.
31	Orchard	Planted fruit or nut trees forming at least 50% canopy cover.
36	Vegetated walls,	Includes ruins, fences and other artificial structures with an appreciable amount of vegetation (including mosses and lichens) but excluding

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Code	Name	Definition
	tombstones etc	artificial water margins, which should be coded as wet marginal vegetation (18) if vegetated.
26	Bare soil and rock	Includes active quarries, fresh road workings, spoil or tipping and earth banks of water habitats, where these are minimally vegetated. Excludes arable land (28).
27	Bare artificial habitat	Includes tarmac, concrete, railway ballast, gravel paths, buildings and artificial margins to aquatic habitats, where these are minimally vegetated.
08	Acid grassland	Un- or semi-improved grassland on acidic soils, with less than 25% cover of heather or dwarf gorse. Excludes reedswamp (17). Usually with one or more of *Deschampsia flexuosa, Molinia caerulea, Nardus stricta, Juncus squarrosus, Galium saxatile, Potentilla erecta* or *Rumex acetosella* in abundance.

09	Neutral grassland (semi improved)	Mesotrophic grassland usually with one or more of *Arrhenatherum elatius, Deschampsia cespitosa, Alopecurus pratensis, Cynosurus cristatus, Dactylis glomerata, Festuca arundinacea* or *F.pratensis*. Contains more than just *Lolium perenne, Trifolium repens, Rumex acetosa, Taraxacum, Bellis perennis* and *Ranunculus* species (see 07 and 11), but lacks the characteristic forbs of 35. Excludes reedswamp (17).
35	Neutral grassland (herb-rich)	Mesotrophic grassland with more forbs typical of old grassland than 09. Likely to contain one or more of *Primula veris, Lychnis flos-cuculi, Achillea ptarmica, Silaum silaus, Succisa pratensis, Stachys officinalis, Serratula tinctoria, Ophioglussum, Gensita tinctoria, Sanguisorba officinalis* or *Caltha palustris,* or an abundance of *Carex ovalis, Pimpinella saxifraga, Conopodium majus, Cardamine pratensis, Knautia* or *Filipendula ulmaria*.
10	Basic grassland	Un- or semi-improved grassland containing calcicoles. Usually with some of *Brachypodium pinnatum, Bromopsis erecta, Heliotrichon pratense, Thymus polytrichus, Sanguisorba minor, Centaurea scabiosa* or *Origanum vulgare* in some abundance.
11	Improved or re-seeded agricultural grassland	Species-poor mesotrophic grassland containing little but *Lolium perenne, Trifolium repens, Agrostis* species*, Bellis perennis, Taraxacum* and *Ranunculus* species. Distinguished from 07 by its agricultural use and hence usually less frequent mowing.
07	Amenity grassland	Usually frequently mown, species-poor mesotrophic grassland characteristic of parks and sports pitches, containing similar species to 11. Scattered trees and shrubberies in parks should be coded separately.
12	Ruderal or ephemeral	Communities composed of pioneer species such as occur in early succession of heavily modified substrates. Typical species include *Senecio squalidus, S.vulgaris, Sinapis arvensis, Poa annua, Hirschfeldia incana* and species of *Polygonum, Persicaria, Melilotus, Atriplex, Chenopodium, Medicago, Vulpia, Picris, Lactuca, Diplotaxis, Conyza* and *Reseda*.
13	Bracken	Stands where bracken is dominant. Also used with other habitat codes to indicate scattered bracken.

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Code	Name	Definition
14	Tall herbs	Stands of tall non-grass herbaceous species, often rhizomatous perennials, such as *Fallopia japonica, Conium maculatum, Chamerion angustifolium, Anthriscus sylvestris, Urtica dioica, Epilobium hirsutum, Solidago canadensis* and species of *Aster* and *Heracleum*. Excludes herbaceous fen vegetation 32).

33	Roughland	An intimate mix of semi-improved neutral grassland (09), tall herbs (14) and scrub (06). If these occur in large enough patches they should be coded separately. Usually the next successional stage after 12.
15	Heathland	Dwarf-shrub cover greater than 25% of species such as heathers and *Ulex minor*, with less than 50% cover of *Sphagnum*. May include a large amount of acid grassland (06) in a close mosaic, but code as a mixture if grassland areas are large.
39	Allotments (active)	Communal allotment gardens which are under cultivation. Code disused plots under other habitats as appropriate.
28	Arable	Cropland, horticultural land (excluding allotments), freshly ploughed land and livestock paddocks stocked so heavily as to have little vegetation.
16	Bog	Dominated by *Sphagnum* mosses (greater than 50% cover) with water table at or just below the surface.
17	Reedswamp	Stands of *Phragmites australis* with at least 75% cover of reeds. Includes dry and tidal stands.
40	Typha, etc swamp	Stands of *Glyceria maxima, Typha* species or *Phalaris arundinacea* where these species form at least 75% cover.
18	Wet marginal vegetation	Emergent vegetation with a permanently high water table in strips less than five metres wide on the margins of water bodies. Contains species such as *Iris pseudacorus, Apium nodiflorum, Acorus calamus* and species of *Rorippa, Alisma* and *Juncus*. May include *Phragmites, Typha* and *Glyceria maxima*, but where these form single-species stands code as 17 or 40 respectively. Usually too small to map but must always be coded if present.
19	Fen carr	Woodland or scrub over herbaceous vegetation with the water table above ground for most of the year.
20	Standing water (includes canals)	Lakes, reservoirs, pools, wet gravel pits, ponds, canals, docks and brackish lagoons beyond the limit of swamp or wet marginal vegetation. Always code vegetated margins separately and note trophic status and whether saline or tidal.

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Code	Name	Definition
21	Ditches (water filled)	Distinguished from 20 and 22 by their (often agricultural) drainage role. Always code vegetated margins separately and note trophic status and whether saline or tidal.
22	Running water	Rivers and streams. Always code vegetated margins separately and note trophic status and whether saline or tidal.
23	Intertidal mud, sand, shingle, etc	Intertidal areas without significant vegetation of higher plants. Try to record the extent at low tide.
24	Saltmarsh	Intertidal areas appreciably vegetated with higher plants, excluding reedswamp (17).
30	Habitat information not available	Areas which cannot be observed due to restricted access, etc.
29	Other	To be avoided if possible. Must be specified if used.
32	Species-rich herbaceous fen	Stands of herbaceous vegetation where the water table is above ground for most of the year, with less than 75% dominance of *Phragmites, Typha, Glyceria* and *Phalaris arundinacea*. Distinguished by width from 18. So rare in London that it is not on the survey form; write in under <Other= if required.

Other habitat classifications

For further information on the recognised habitat classification systems and survey methods that may be represented within the GiGL data, please visit the following links:

National Vegetation Classification (NVC) - http://jncc.defra.gov.uk/page-4259 The National Vegetation Classification (NVC) is one of the key common standards developed for the country nature conservation agencies. The original project aimed to produce a comprehensive classification and description of the plant communities of Britain, each systematically named and arranged and with standardised descriptions for each.

Phase I and Extended Phase I Habitat Assessment - http://jncc.defra.gov.uk/page-4258 The Phase 1 Habitat Classification and associated field survey technique provide a standardised system to record semi-natural vegetation and other wildlife habitats. Each habitat type/feature is identified by way of a brief description of its defining features.

Biodiversity Action Plan Broad Habitat classification - http://jncc.defra.gov.uk/page-4261 This classification was developed as part of the UK Biodiversity Action Plan. The Broad Habitats are the framework through which the Government is committed to meet its obligations for monitoring in the wider countryside.

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Open Space Designations

Open Space: Spaces that are predominantly undeveloped (other than buildings or structures that are ancillary to the space9s use), and spaces that are developed such as civic squares. These data include spaces with public or private ownership and spaces where public access is unrestricted, limited or restricted, but excludes private gardens.

English Heritage Registered Parks and Gardens: The English Heritage 8Register of Historic Parks and Gardens of species historic interest in England9, established 1983, currently identifies over 1,600 sites assessed to be of national importance. The emphasis of the Register is on 8designed9 landscapes, rather than on planting or botanical importance. The majority of sites are, or started life as, the grounds of private houses, but public parks and cemeteries form important categories. Sites are divided into three grade bands to give added guidance on their significance.

- Grade I sites are of exceptional interest
- Grade II* sites are particularly important, or more than special interest
- Grade II sites are of special interest, warranting every effort to preserve them.

More information at: www.english-heritage.org.uk

Green Flag Awards: The Green Flag Award Scheme recognises and rewards the best green spaces in the country. There are three different awards:

- Green Flag Award: The benchmark national standard for parks and green spaces in the UK.
- Green Flag Community Award: Recognises high quality spaces in England and Wales managed by voluntary and community groups.
- Green Heritage Sites: Awarded to parks and green spaces with local or national historic importance.

London Square: These are spaces protected by the London Squares Preservation Act (1931); a unique piece of legislation designed to prevent the loss of London9s squares to development. 461 squares are protected under this act.

Common: The Commons Registration Act 1965 initiated a formal inventory of commons and greens in England and Wales. It defines common land as 8land subject to rights of common (as defined in this Act) whether those rights are exercisable at all times or only during limited periods9 and 8waste land of a manor not subject to rights of common9 (Section 22).

The Commons Act 2006 provided another chance for common land to be registered. This new law aims to protect these areas, in a sustainable manner delivering benefits for farming, public access and biodiversity.

A database of registered common land in England, with associated data including location, area, extent of rights etc. was obtained from Defra (2012). The information for Greater London was assembled in 1985 as part of the biological survey of common land. The data are not kept up-to date with subsequent new registrations of common land, or amendments to existing registrations. Therefore these data are a snapshot of the registers of common land at the time of the survey. Although deregistration of land registered as common land occurs very infrequently, the entries in this database cannot be guaranteed, and reliance should be placed on an inspection of the relevant register held by the commons registration authority for confirmation.

Village Green: An area which has been allocated by an Act of Parliament for the exercise or recreation of the inhabitants of any locality, or on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes.

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Data are taken from information collected by the Greater London Council in 1965.

Metropolitan Open Land: Land designated to strategically protect important open spaces within the built environment. It provides a clear break in the urban fabric and contributes to the capital9s green character, often hosting outdoor facilities for Londoners away from their local area and boasting nationally or regionally significant landscape features of historic, recreational or biodiversity value.

Green Belt: Land which has been specifically designated as such, either by legislation or through the preparation of development plans, with the aim to protect the open character of the countryside next to urban areas.

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Public Open Spaces and Areas of Deficiency in Access to Public Open Space

Public Open Spaces are categorised according to a site hierarchy documented in The London Plan 2021 (Table 8.1). Network analysis is used to calculate Areas of Deficiency in access to Public Open Space according the guideline distances provided in the London Plan (shown in the table below).

Public Open Space Category	Description	Size guideline	Distances from homes

Regional Parks	These are large areas, corridors or networks of open space, the majority of which will be publicly-accessible and provide a range of facilities and features offering recreational, ecological, landscape, cultural or green infrastructure benefits. They offer a combination of facilities and features that are unique within London, are readily accessible by public transport and are managed to meet best practice quality standards.	400 hectares	3.2 to 8 km
Metropolitan Parks	These are large areas of open space that provide a similar range of benefits to Regional Parks and offer a combination of facilities at a sub- regional level, are readily accessible by public transport and are managed to meet best practice quality standards.	60 hectares	3.2 km
District Parks	These are large areas of open space that provide a landscape setting with a variety of natural features. They provide a wide range of activities, including outdoor sports facilities and playing fields, children9s play for different age groups and informal recreation pursuits.	20 hectares	1.2 km
Local Parks and Open Spaces	These provide for court games, children9s play, sitting out areas and nature conservation areas.	2 hectares	400 m
Small Open Spaces	These include public gardens, sitting out areas, children9s play spaces or other areas of a specialist nature, including nature conservation areas.	Under 2 hectares	Less than 400 m
Pocket Parks	These are small areas of open space that provide natural surfaces and shaded areas for informal play and passive recreation that sometimes have seating and play equipment.	Under 0.4 hectares	Less than 400 m
Linear Open Spaces	These are open spaces and towpaths alongside the Thames, canals and other waterways; paths; disused railways; nature conservation areas; and other routes that provide opportunities for informal recreation. They can often be characterised by elements that are not public open space but that contribute to the enjoyment of the space.	Variable	Wherever feasible

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Open Space Categories

The main site typologies are based on *Planning Policy Guidance 17: Planning for Open Space, Sport and Recreation* categories. Sub-categories are based on classifications used in the GLA open space surveys.

i. Parks and Gardens

Park refers to traditional public open spaces laid out formally for leisure and recreation. They usually include a mixture of lakes, ponds, lidos, woodland, flower beds, shrubs, ornamental trees, play spaces, formal and informal pitches, bowling greens, tennis courts, golf pitch & put, footpaths, bandstands, toilets, cafes and car parks - but not necessarily all of these. Parts of some parks might be managed as so-called natural areas. Examples of parks include the Royal Parks, municipal parks such as Battersea and Victoria, and wilder places such as Hampstead Heath which, although having distinctly informal qualities, are maintained predominantly for the same purpose, and include the usual swings and roundabouts and playing pitches. Many parks are enclosed by walls or railings, although some parks that began as common land may not be enclosed.

Formal garden refers to spaces with well-defined boundaries that display high standards of horticulture with intricate and detailed landscaping. It includes the London squares common to central London, which are typically square areas of grass with some shrub borders, bounded by railings, and surrounded by buildings. Examples include Belgrave Square and Soho Square.

ii. Natural and Semi Natural

Common refers to publicly accessible open space that has few if any 8facilities9. It will typically be mainly open rough grassland (not mown playing field or recreation ground type grass) and/or woodland, and may have a limited provision of facilities. Commons are much less formal than parks or parkland. Examples include Wimbledon Common and Clapham Common.

Country Parks refers to large areas set aside for informal countryside recreation near or within towns and cities. A list of sites that call themselves Country Parks is available on the Natural England website.

Private woodland refers to woodland which is not accessible for recreational use, nor managed for nature conservation.

Public woodland refers to woodland which is accessible for recreational use, but not managed for nature conservation.

Nature reserve is a category reserved for an open space that is managed primarily for nature conservation. Designated Local Nature Reserves are recorded under this category, but it does not necessarily include spaces with other formal nature conservation designations such as SINC or SSSI. These sites are often more appropriately categorised under park, common, or agriculture.

iii. Green Corridors

River should only be used for rivers and streams that do not form part of another land use, such as park, common or nature reserve.

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Canal refers to artificial waterways which are navigable. Docks are included in this category. **Railway cutting** and **railway embankment** are self-explanatory.

Disused railway trackbed is usually obvious, with some traces of its former use. Disused trackbeds that are specifically managed for nature conservation are recorded as Nature Reserves.

Road island/verge is self-explanatory. Road islands/verges that are specifically managed for nature conservation are recorded as Nature Reserves

Walking / cycling route is a designated footpath or cycleway through informal open space. Walking or cycling routes along canals or former railways are recorded as Disused railway trackbeds or Canals.

iv. Outdoor Sports Facilities

Recreation ground refers to an area of mown grass used primarily for informal, unorganised ball games and similar activities (including dog walking). Not to be confused with playing fields, below.

Playing field refers to a site comprising playing pitches, usually for football, but also for rugby and hockey and, in the summer, for cricket. They often have changing rooms and pavilions. Almost always, playing fields consist only of pitches; but they will sometimes have other bits of open land around the edges. Do not include sites that partly contain playing pitches but are more properly categorised as parks or commons. Pitches are often to be found in parks and commons, but the type here is concerned with sites that are exclusively or predominantly reserved for organised team sports. School playing fields are included, as are sites that appear disused.

Golf course is self-explanatory, but does not include golf courses that are part of parks, commons etc. or golf driving ranges, pitch & putt or crazy golf.

Other recreational refers to sites that are used exclusively or predominantly for other organised sports such as bowls and tennis, and golf driving ranges (but not golf courses, see above).

v. Amenity

Amenity green space refers to an expanse of grass used form informal recreation. There will be few, if any, facilities.

Village green is a formal designation (see above). It is usually an expanse of grass in the centre of old villages, often used in the summer for cricket.

Hospital refers to the grounds of any clinic or health centre.

Educational refers to school or college grounds and field study centres where school education is the primary function. Nature sites which cater for schools and for the general public are recorded under nature reserves, and school playing fields under playing fields.

Landscaping around premises includes communal amenity space around housing estates and community centres, and also landscaping around industrial premises.

Reservoir includes covered reservoirs unless these form part of a park.

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vi. Children and Teenagers

Play space refers to a site set aside mainly for children. It will contain the usual paraphernalia of swings, slides and roundabouts. Play spaces that form part of parks, commons and other open spaces are recorded under that site type.

Adventure playground refers to a defined play area for children in a supervised environment, with secure boundaries and entrances.

Youth area refers to a defined area for teenagers including skateboard parks, outdoor basketball hoops and other more informal areas such as 8hanging out9 areas and teenage shelters.

vii. Allotments, Community Gardens and City Farms

Allotments are self-explanatory, and includes spaces that appear or are disused.

Community garden refers to an area that is generally managed and maintained by the local population as a garden and/or for food growing space and normally restricted in their access. For example Phoenix Garden in Holborn.

City farm refers to areas that are generally managed and maintained as a small farm by the local population. They contain livestock and planting and normally restricted in their access. For example Freightliners Farm in Islington.

viii. Cemeteries and Churchyards

Churchyard/cemetery refers to burial grounds, graveyards, crematorium grounds and memorial gardens, and gardens or grounds of non-Christian places of worship.

ix. Other Urban Fringe

Equestrian centre refers to any land used for intensive horse keeping and riding, but not extensive horse grazing, which is be recorded as agriculture.

Agriculture refers to arable and grazing land, including horse grazing, and market gardening (such as vegetables grown under cloches, etc.).

Nursery/horticulture includes areas of permanent glasshouses, but does not include commercial retail nurseries (although these might legitimately form a part of a park or common, etc.).

x. Civic Spaces

Civic/market square refers to tarmac areas or paved open spaces, which may or may not include planting. They do not necessarily have seats and may just be a plaza area, with some planting (usually trees) and public art. They often provide a setting for civic buildings and opportunities for open air markets, demonstrations and civic events. Examples include the area

in front of the jubilee line station at Canary Wharf, and the plaza in front of Westminster Cathedral.

Other hard surfaced areas refers to other areas designed for pedestrians. These typically are used as 8sitting out9 areas, where workers can enjoy the sun and eat their sandwiches, and as such usually have seats or benches. For example, Emma Cons Gardens opposite the Old Vic Theatre. This category excludes pedestrianised streets, car parks, servicing areas to buildings, and housing amenity space such as communal courtyards.

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xi. Other

Sewage/water works refers to extensive sludge drying areas, filter beds,

etc. **Disused quarry/gravel pit** may be water-filled, but not necessarily.

Vacant land refers to land with no formal land use. This includes many <urban commons= which are used by people for informal recreation and which may be very valuable for nature conservation. If sites have formalised access and management for nature conservation, they are recorded as commons or nature reserves as appropriate.

Land reclamation refers to land recently decontaminated or reclaimed from disuse, which has not yet been redeveloped.

Others could be anything that does not fit any of the above categories, such as airfields

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10.2. Legal Cases

10.2.1. Amer & ORS v Mole Valley DC (2020)

The Planning Inspectorate

Appeal Decision

Inquiry opened on 14 January 2020

Accompanied site visit made on 14 January 2020

by Philip Major BA(Hons) DipTP MRTPI

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

Decision date: 3rd February 2020

Appeal Ref: APP/C3620/W/18/3205739
Land at River Lane, Leatherhead, Surrey KT22 0AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr R Amer and Others against Mole Valley District Council.
- The application Ref: MO/2017/1932 is dated 27 October 2017.
- The application sought planning permission for the use of land as a gypsy and traveller site with 4 pitches. without complying with conditions attached to planning permission Ref: MO/2016/0587/CC, dated 16 December 2016.
- The conditions in dispute are Nos 1 and 2 which state that:
  1. *The use hereby permitted shall be carried on only by the following: Mr Roy and Mrs Margaret Amer; Mrs Rose Doherty; Mr Charlie and Mrs Melissa Doherty; Mr and Mrs Simon and Sarah Doherty, and Mr Simon Doherty and Ms Susan King, and their resident dependants, and shall be for a limited period being the period of 3.5 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.*
     Reason: A strictly personal permission is granted in this case having regard to the special circumstances appertaining to this case, in accordance with Policy CS1 of the Mole Valley Core Strategy and the advice contained in the National Planning Policy Framework.
  2. *When the site ceases to be occupied by those maned in condition 1 above, or at the end of 3.5 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place.*
     Reason: Permission is given in this case, having regard to the circumstances appertaining to the site in question, but only on a strictly limited basis so that the position may be reviewed in the light of circumstances prevailing at the expiry of permission in accordance with Policy CS1 of the Mole Valley Core Strategy and advice contained in the National Planning Policy Framework.

Preliminary Matters

1. I have given a short description of development above which reflects the situation on the ground, albeit that one of the pitches has been described as containing 2 plots. All parties are well aware of the actuality of the development. The current time limited permission was granted in 2016 following an application to remove conditions attached to appeals decisions issued in 2013 (APP/C3620/C/12/2172090 being cited in the Council's decision notice).

2. The Council has not taken issue with the gypsy status of the site occupants. Although some doubt was expressed in relation to whether one person was resident at the site I do not find that the evidence is sufficient for me to decide, on the balance of probabilities, that the person concerned has ceased to be a site occupant. I accept gypsy status of all the current occupants.

3. The proposal was originally running alongside a separate application for the use of a smaller area of land for the stationing of 4 gypsy and traveller pitches. This was withdrawn during the course of the inquiry in light of the Council's nascent proposals for future accommodation provision, which I explain in more detail below.

4. Occupation of this site has been carried on for some 17 years and the land has a complex planning history since that time. A time limited permission was first granted on the land the subject of this appeal in 2007 for a period of 4 years, by which time it was expected that the Council would have progressed its development plan and provided for gypsy and traveller accommodation. That did not happen and a series of time limited planning permissions has followed, the current one being the fourth, granted by the Council in 2016.

5. It is agreed that the Council cannot demonstrate a 5 year supply of sites for gypsies and travellers. It is also agreed that the need for sites within the district is high[1]. I held a round table session to discuss need in the district at the start of the inquiry, and through that discussion the differences between the parties narrowed. It is clear that there is disagreement about the methodology each party has used to assess need, but the result is that both accept a level of need which is quite closely aligned.

6. The assessment of need is not, nor could it be, an exact science. The authors of the Gypsy and Traveller Accommodation Assessment (GTAA) of 2018 have clearly used best endeavours to establish the need for sites now and in the future. That the assessment results in a need lower than that assessed by the Appellants advisers is to be expected simply because each side has access to different information. The GTAA assessment is inevitably likely to find it more difficult to engage over a relatively short time with the traveller community compared with those working directly with that community over a number of years.

7. As a result, and as I have found elsewhere, the true picture is not certain, but is likely to be at a figure close to that assessed by the Appellants' advisers. In any event that is not a figure which differs so significantly from the GTAA that it would result in greater weight in the planning balance. In short, I am satisfied that there is an immediate unmet need for gypsy and traveller pitches which carries significant weight in this case.

8. The appeal site is located in the Green Belt, and it is common ground that the development is inappropriate development in the Green Belt. The National Planning Policy Framework (NPPF) points out that such harm should carry substantial weight in the planning balance. That is a matter which is not disputed.

[1] The description used by the Council's witness in relation to need.

Decision

9. The appeal is allowed and planning permission is granted for the use of land as a gypsy and traveller site with 4 pitches at land at River Lane, Leatherhead, Surrey in accordance with the application Ref: MO/2017/1932 dated 27 October 2017, without compliance with condition numbers 1 and 2 previously imposed on planning permission Ref: MO/2016/0587/CC dated 16 December 2016 and subject to the conditions set out in the schedule at the end of this decision.

Main Issues

10. The main issues in the appeal are:
    (a) The impact of the proposed development on the character and appearance of the area;
    (b) Whether there are any considerations which clearly outweigh the harm to the Green Belt, and any other harm, such that very special circumstances exist sufficient to justify the grant of planning permission without the need for the disputed conditions.

Policy Background

11. The development plan includes the Mole Valley Core Strategy, which was adopted in 2009. A number of policies have been agreed to be relevant to this appeal. Policies CS1 and CS2 are spatial policies which seek to direct development to particular locations. In relation to housing it is clear that they aim to provide development on previously developed land where possible, and within defined built up areas. The policies do not strictly follow the more balanced approach of the NPPF but can still be afforded significant weight to the extent that they are relevant in this case.

12. Policies CS13 and CS14 deal with landscape and townscape. They are more prescriptive in tone than the NPPF but nonetheless allow for a balanced assessment to be made. These policies can attract significant weight where relevant.

13. Policies ENV22 and ENV23 set out criteria which it is expected development proposals will respond to. These criteria are closely aligned with the aspirations of the NPPF, necessitate judgement being exercised, and can be afforded full weight even though their phraseology is slightly different to the NPPF.

14. Policy CS5 deals specifically with gypsies, travellers and travelling showpeople. Its main aspiration is to make provision in a later development plan document for these groups. The Council has failed to implement this policy in that regard. However the policy also includes criteria to be considered when planning applications are being considered. The Appellant accepts that the policy is broadly consistent with the NPPF and with a single exception, with Planning Policy For Traveller Sites (PPTS) published in 2015. This, together with Policies CS13 and ENV22, are the most important policies for determining this case.

15. It is notable that the Council is preparing to publish its proposed Local Plan (LP) for consultation very soon. It was approved for publication by the Council's Cabinet during the inquiry. Of particular note in the draft LP is Policy H9, which

seeks to address the need for gypsy and traveller pitches by allocating some sites alongside a criteria based approach. One of the sites proposed for allocation is the appeal site. The draft allocation has been made following a review of the Green Belt. The draft LP is at a very early stage and cannot be afforded any weight as yet. Nonetheless it is material in that it provides information on the evidence the Council has used to date to seek to address the need for gypsy and traveller pitches in the district.

Reasons

Character and Appearance

16. The Mole Valley Landscape Supplementary Planning Document (SPD) was produced in 2013. The appeal site lies within the Lower Mole Landscape Character Area (LCA). Key characteristics of this area include the broad meandering valley with a moderately open landscape, small woodland pockets, a strong hedgerow pattern and pockets of unkempt land around urban fringes. It is identified as an important landscape corridor between Leatherhead and Fetcham.

17. Within this overall context the appeal site is affected by a number of factors, and these factors have in part changed over recent years. First, there is nearby development which imparts a strong urban influence. Most notable is the Leatherhead Youth Football Club on the opposite side of River Lane. This includes hard surfaces, buildings and tall floodlighting, bringing a distinct perception of built development. The development of the football club is a significant change to the situation previously considered, certainly at the time of the appeal in 2006/7. The club is used during daylight and dark hours, and when the new floodlights are on (as seen by me during the inquiry period) the club site has no characteristics associated with a rural location. Secondly the nearby business park has a similar though slightly less pronounced urbanising impact. Thirdly the side is bounded to the south-east by a row of poplar trees underplanted by a tall coniferous hedge which form the common boundary with an extensive crematorium. This is not a typical characteristic of the LCA but is more attuned to an urban edge location.

18. Taking these matters together I agree with the Appellant that the site exhibits characteristics which can be generically described as being typical of an urban fringe location. Whatever the situation at the time the land was first developed (and I accept that it was different) there has been a marked change in the intervening period. The land is now less sensitive to development. Given that it is sandwiched between the football club and the crematorium its sensitivity to development is low.

19. The impact of the development on character is mitigated to some extent by the planting which has taken place, albeit that it includes a coniferous hedge to River Lane and internally to the site. But the key characteristics of the LCA identified in the SPD are not apparent around the appeal land. It does not form part of a moderately open landscape, nor does it include pockets of woodland. The only native hedgerow of note flanks River Lane, but some of this has been lost to football club development, and most of the rest has become degraded and outgrown. The land is relatively well self-contained and its role in separating Leatherhead and Fetcham has been diluted by the stronger influence of the football club. All of these matters mean that the impact of the proposal on the Lower Mole LCA are minor.

20. The site is visible through the native planting alongside Randalls Road, but this is likely to be perceived only in fleeting glimpses by passing motorists or other road users. If pedestrians use the road they are likely to be using it to gain access to other locations, and not as a leisure route. That said, the lower part of River Lane, where it approaches the river itself, is likely to be used for leisure purposes. In this location River Lane has a very different feel to the area between the football club and the appeal site. It is rural in ambience and has pleasant surroundings for a walk close to the river. In this locality the site is barely visible, being limited to minor glimpses of features on site. This means that recreational walkers, who have the highest sensitivity to development change, would be minimally affected by the development. When approaching the appeal site the development becomes more readily perceived, but the football club has a significantly greater visual impact.

21. Taking these matters together it is my judgement that the appeal development has a minor impact, bordering on negligible, on the character of the Lower Mole LCA, and a similarly minor impact on the visual amenities of the locality. The Council accept that criteria 1 a. to d. of Policy CS5 are met, and I agree with the Appellant that criterion e. is also met. Parts 2 and 3 of that policy are not applicable here and as a result I find that this proposal accords with the policy as a whole. The development would respect the surrounding landscape and the character and appearance of the area, which could be further ensured by condition. Hence there is also no conflict with Policies CS13 and ENV22.

Green Belt Balance

22. As noted, it is accepted that substantial weight attaches to the harm by inappropriateness. The development also impacts on the openness of the Green Belt. In this case I regard the loss of openness to be moderate in spatial terms, though the perception of loss of openness is greater. It is inevitable that 4 gypsy and traveller pitches with their attendant caravans and ancillary structures will impart that perception, notwithstanding any perimeter planting undertaken. Put simply the land has ceased to be open and is now occupied and clearly seen as such with its structures and hard surfaces.

23. The site also encroaches into the Green Belt, in conflict with one of the purposes of Green Belts set out in the NPPF. I do not have any evidence of the circumstances pertaining to the development of the adjacent football club, but it seems to me that that development has a far greater impact on encroachment than the appeal site. It is more extensive and visible, consequently leading to a greater impression of urban development.

24. It may be that the football club has been deemed to be a 'not inappropriate' development in the Green Belt, and I am not engaging in a comparative exercise. However, the mere presence of the extensive football club development reduces the perceived impact of the appeal development both in terms of loss of openness and encroachment. For these reasons, and contrary to findings in previous decisions, I find that the loss of openness and encroachment should attract no more than moderate weight.

25. I turn now to other considerations advanced in support of the development. It is accepted by the Council that the Appellants and other occupants of the site have nowhere else to go. It was acknowledged that if this appeal were to be dismissed then the Council would need to decide whether to seek to take enforcement action at the end of the current time limited permission (in June

2020). Furthermore it is accepted by the Council that there are no identified alternative sites which are suitable, available, affordable and acceptable. This is a significant material consideration in favour of the appeal.

26. It is abundantly clear to me that the Council has been afforded many years in which to seek to resolve the issue of gypsy and traveller site provision. It has signally failed to do so notwithstanding that planning permission has been granted on occasion. It has in particular failed to implement its own policy (CS5) by bringing forward a land allocations development plan document. The assurances give in previous public inquiries have not been acted upon in a manner which has provided the necessary site provision. Whilst I accept that the emerging LP is in the process of bringing forward proposals for consultation, the past performance of the Council amounts to a demonstrable failure of policy. This in itself is a significant consideration in favour of the proposal.

27. There are a number of children resident on the site, many of whom have been born and grown up there. It is patently their settled home. I heard evidence relating to the attendance of children at school and to the serious health difficulties which require specialised treatment for at least 2 children. The best interests of any child are of course a primary consideration in the appeal. It cannot be the case that removing a settled base from which the children concerned can access both education and healthcare can in any sense be in their best interests. This matter is of substantial weight.

28. Furthermore there are a number of adults on the site who benefit from a settled base from which to access medical facilities. This adds further weight to the balance in favour of the proposal.

29. PPTS points out that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt so as to establish very special circumstances. But there is nothing to suggest that such a situation could not arise. And in this case the best interests of children are highly material, along with other matters.

30. Refusal of the proposal would interfere with the Article 8 rights of the site occupants. In this case, because of its particular circumstances, interference would not be proportionate, with particular reference to the best interests of the children. Dismissal of the appeal would result in the site occupiers having no home after a period of many years residing in this location following a serious failure of policy by the Council. I agree with the Appellant that such a course would be wholly disproportionate in this case.

31. The balance here is abundantly clear. The harm to the Green Belt carries substantial weight, but the substantial weight to be given to the best interests of the children on site, together with the failure in policy over many years, and the lack of any alternative sites available to the Appellants, carry yet more weight. Other considerations clearly outweigh the harm by inappropriateness and the minor impact on the character and appearance of the area, and very special circumstances have been established. It follows that I have decided that planning permission should be granted.

32. I turn then, to whether the conditions in dispute should be removed, or whether a further time limited permission would be required.

33. Successive time limited planning permissions have been granted on this site. It is clear that that is not good practice. Planning Practice Guidance makes it clear that granting more than a single temporary permission is to be avoided unless there is a specific reason justifying such a course. At some point temporary planning permissions must come to an end and given the weight attached to the considerations which result in very special circumstances here I see no justification for imposing yet another time limit on site occupation. To do so would be unreasonable. Albeit that the planning balance would be different it is my judgement that circumstances here are clearly sufficient to justify a permanent planning permission.

34. I observe here as a non-determinative matter that it is clear that Council's officers and Cabinet, in resolving to recommend consultation on a draft LP which would take this site out of the Green Belt and allocate it for its present use (with a higher number of pitches) have taken a similar, parallel judgement.

35. For all the above reasons I am satisfied that the case has been satisfactorily made for the removal of the disputed conditions.

Other Matters

36. The Written Ministerial Statement of December 2015 relating to intentional unauthorised development was raised at the inquiry. That statement clearly indicates that the new policy to which it relates applies to planning applications and appeals received since 31 August 2015. Although this appeal falls after that time it is part of an ongoing series of cases and the original development took place about 17 years ago. It would seem unreasonable to seek to apply the policy on intentional unauthorised development in such a retrospective manner. In any event this is a matter which would not have changed my judgement on the outcome of the appeal.

37. Residents of River Lane have expressed concern about a number of matters. Whilst I understand their concerns they are largely related to non planning issues. In particular the matter of escaped horses from the adjacent paddocks is not something I can give weight to. The fact that there have been instances of incorrect addressing of mail, or even the use of addresses in a manner which might be thought to be fraudulent, are also not matters to which I can give weight in the planning balance. River Lane beyond the site and football club is lightly used by vehicles (it is a dead end) but I understand the concerns relating to the traffic at the Randalls Road junction. However this is not a matter of concern for the Council and from the information available to me it is clear that traffic is at its heaviest during the times of use of the football club. This is not a matter which weighs against the proposal.

38. I am also aware that there is a good deal of support from the local community for the residents on the site, as indeed was the case as far back as 2006/7. Site residents have made contacts and integrated with the community.

Conditions

39. A new planning permission is created on the granting of planning permission. A number of conditions were suggested in the event of the appeal being permitted on a permanent basis.

40. Although I have decided that this site is acceptable partly on the basis of the needs of the current site occupants it is apparent that the need in the district is

wider. In addition the Council officers, supported by Cabinet, have identified the site as being capable of accommodating a development of this type (albeit that there is no guarantee that it would be in the final version of the Local Plan). As a result, subject to restricting the site to gypsies and travellers, I see no necessity to limit occupation to named residents.

41. At the present time I agree that it would be necessary to specify the limit on the number of caravans on site. Any future permission granted as a result of changing circumstances could vary this number. As agreed at the inquiry it would be reasonable to change the balance of mobile homes to touring caravans, but not the overall number. This would protect the amenities of the locality.

42. In order to ensure that the appearance of the area is protected to the greatest degree a condition restricting development beyond that shown on the submitted drawing is necessary, as is a condition requiring the approval and implementation of a landscaping scheme, and a further condition restricting use of the paddock areas on site. For the same reason it is necessary to impose conditions restricting the use of the site for commercial purposes, and the stationing of commercial vehicles over a specified limit.

43. Finally a condition requiring mobile homes to be set at a minimum floor height is necessary to avoid any possibility of harm to living conditions of site occupants.

44. I do not find that it would be necessary to impose a condition relating to the erection of buildings on the site as these can be controlled by other regulations and there are no relevant permitted development rights applicable to traveller sites.

Overall Conclusion

45. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions but restating and substituting others.

Philip Major

INSPECTOR

SCHEDULE OF CONDITIONS

1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).

2) No more than 11 caravan(s), as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 6 shall be static caravans) shall be stationed on the site at any time.

3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no fences, gates, walls or other means of enclosure shall be constructed and no areas of hard surfacing installed, other than as hereby permitted and shown on drawing No 12_485B_002 (Existing Site).

4) Within 6 months of the date of this decision there shall be submitted to, for approval in writing by the local planning authority, a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the implementation of the scheme.

5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the approval of the landscaping scheme, and any trees or plants which within a period of 5 years from the completion of the scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

6) No commercial activities shall take place on the land, including the external storage of materials.

7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

8) The paddock areas shown on the approved plan shall only be used for the purposes of grazing.

9) The internal floor levels of each mobile home on the site shall be set at least 300mm above local ground level and shall thereafter be retained as such.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms E Lambert	Of Counsel
She called	
Mr S Jarman	Opinion Research Services Ltd, took part in the round table session on need
Ms E Temple	Director, ET Planning Ltd

FOR THE APPELLANT:

Mr A Masters	Of Counsel
He called	
Sarah Doherty	Site resident
Rose Doherty	Site resident
Roy Amer	Appellant and site resident
Susan King	Site resident
Mr M Green	Green Planning Studios Ltd gave evidence and took part in the round table session on need

INTERESTED PERSONS:

Mrs S Wood	Local resident
Mr R Wood	Local resident
Mrs J Moor	Local supporter
Fr J Chadwick	Margaret Clitherow Trust

DOCUMENTS HANDED IN DURING THE INQUIRY

1 Opening submissions on behalf of the Council
2 Extract of the Strategic Housing and Economic Land Availability Assessment for Mole Valley (January 2020)
3 Extract of the Green Belt Review for Mole Valley (January 2020)
4 Extract of the proposed Consultation Draft Local Plan for Mole Valley (Future Mole Valley 2018 – 2033)
5 Extract of the Mole Valley Local Plan Landscape Supplementary Planning Document (July 2013)
6 Copy of Planning permission reference MO/2019/0369/PLA
7 Suggested planning conditions
8 Signed and dated statement of common ground
9 Bundle of witness statements from site occupants
10 Table of site occupants
11 Letter of support from the Margaret Clitherow Trust
12 Closing submissions on behalf of the Council
13 Notes of closing submissions on behalf of the Appellants

10.2.2. Saunders v Broxbourne Borough Council (2024)

The Planning Inspectorate

Appeal Decisions

Inquiry Held on 16, 17, 18 & 19 April 2024, and 21 June 2024

Site visit made on 17 April 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 July 2024

Appeal A Ref: APP/W1905/C/23/3334117
Land south of Cock Lane, Hoddesdon, Hertfordshire, EN11

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Billy Joe Saunders against an enforcement notice issued by Broxbourne Borough Council.
- The enforcement notice, numbered ENF/23/0033, was issued on 31 October 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the Land to residential caravan site by the stationing caravans and mobile homes on the Land along with associated operational development.
- The requirements of the notice are:
  (i) Permanently cease the use of the Land as a residential caravan site
  (ii) Permanently remove all caravans and mobile homes from the Land
  (iii) Permanently remove all buildings and structures from the Land except the one that is diagonally hatched black on the attached plan
  (iv) Permanently remove all the tarmac from the Land from the Land, including the area shown shaded with a black pattern on the attached plan
  (v) Remove any resultant debris from the Land
  (vi) Restore the land shown shaded by a black pattern by seeding the land using native grass seed
- The periods for compliance with the requirements are:
  Step (i) – 3 months from the date this Notice takes effect
  Step (ii) – 4 months from the date this Notice takes effect
  Step (iii) – 5 months from the date this Notice takes effect
  Step (iv) – 5 months from the date this Notice takes effect
  Step (v) – 6 months from the date this Notice takes effect
  Step (vi) - 6 months from the date this Notice takes effect
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act fall to be considered.

Appeal B Ref: APP/W1905/W/23/3327012
Woodland Stables, Cock Lane, South Heath, Hertfordshire EN11 8LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Billy Joe Saunders against the decision of Broxbourne Borough Council.
- The application Ref 07/23/0119/F, dated 9 February 2023, was refused by notice dated 25 May 2023.
- The development proposed is described as the change of use of land to residential, for members of the Gypsy Traveller community. The proposed development to contain 7

static caravans, 6 touring caravans, parking for 12 cars, hardstanding, and associated development. This application is part retrospective.

Summary Decisions:

Appeal A is dismissed and the enforcement is upheld with corrections and variations

Appeal B is allowed subject to conditions

Procedural matters

1. The appellant contends that the enforcement notice is a nullity. This is not a matter that falls neatly into any of the grounds of appeal set out in section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act). I will therefore consider this as a separate matter below.

2. The appeal on ground (e) was withdrawn at the Inquiry and no further action is taken in relation to it.

3. In relation to Appeal B, I have taken the description of the development proposed in the header above from the application form. That description was subsequently altered during the determination of the application to:

   Retrospective planning permission for change of use of land to residential, for members of the Gypsy Traveller community for 7no. static caravans 6no. touring caravans, parking for 12 cars, hardstanding, and associated development.

4. That was the development for which the Council refused planning permission. The appellant now considers that this description is itself defective and suggests that the description of development should properly be described as:

   A material change of use of land to the stationing of caravans for residential purposes, and the laying of hardstanding ancillary to that use.

5. The Council does not resist that description. I am content that this further amended description accurately describes the development that is proposed and I shall consider Appeal B on that basis. In the event that Appeal B is allowed and planning permission granted, the quantum of development proposed and potentially other matters would need to be controlled through the imposition of conditions.

6. There is no dispute that the occupiers of the site meet the definition of gypsies and travellers as defined at Annex A of the Planning Policy for Traveller Sites (PPTS)[1].

7. No third-party representations were received in relation to either appeal. However, during my opening remarks at the Inquiry and before I was able to intervene, there was an unsolicited outburst from a member of the public in which some wholly inappropriate comments were made. I have had no regard to those comments.

[1] As updated on 19 December 2023

Nullity

8. The modern approach to the question of nullity is to be found in the judgment of the High Court in *Oates v SoCLG and Canterbury* [2017] EWHC 2716, which drew extensively upon the preceding case law on the subject. A number of principles emerge from this judgment, including that the test in relation to nullity is best understood not as one of 'hopeless ambiguity' but rather as a failure to tell the recipient with 'reasonable certainty' what the breach of planning control is and what must be done to remedy it. The judgment in *Oates* also indicates that a degree of uncertainty does not necessarily render it non-compliant with statute and that the notice should be read as a whole. It was held in *Oates* that it was open to an inspector to conclude that while one section of a notice was too uncertain and could not stand, taken as a whole the notice did comply with the statutory requirements. Overall, the judgment in *Oates* indicates that the question of nullity should not be approached in a way which is unduly technical or formalistic.

9. Section 173(2) of the 1990 Act states that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are. The requirement at paragraph 5(iii) of the notice is to permanently remove all buildings and structures from the Land except the one that is diagonally hatched black on the attached plan. None of the other structures and buildings are identified on the plan attached to the notice such that, in the appellant's view, it is not possible to understand from the notice which buildings are caught by the notice. The appellant considers this to be a clear failure to comply with s173(1) of the 1990 Act and that the notice is therefore a nullity.

10. The judgment in *Oates* indicates that, when considering the question of nullity, the notice is to be taken as a whole. Buildings and structures are both forms of operational development. In this case, the requirement at paragraph 5(iii) of the notice is to permanently remove *all* buildings and structures from the Land except the one that is diagonally hatched black on the plan attached to the notice (emphasis added). The plan attached to the notice clearly shows the area to which it relates edged in red.

11. Consequently, taking the notice as a whole and as a matter of ordinary language, the notice can only be read as to require the removal of *all* the buildings and structures from the land edged in red on the plan attached to the notice, with the exception of that which is shown diagonally hatched in black on that plan. That is clear from within the four corners of the document.

12. Whilst a plan attached to the notice showing the buildings and structures to be removed would have been helpful and no doubt would have assisted the appellant, it is not necessary to enable the recipient to understand what must be done to remedy the breach of planning control alleged in the notice. In that context, I note that Regulation 4(c) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the Regulations) only requires that an enforcement notice shall specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. The enforcement notice in this case is accompanied by a plan that clearly identifies the precise boundaries of the land to which the notice relates and therefore accords with the Regulations. There is no

requirement in the Regulations that an enforcement notice shall include a plan that identifies buildings or structures that the notice requires to be removed.

13. I consider that the enforcement notice, when read as a whole, is sufficient to tell the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. In any event, the judgment in *Oates* indicates that a degree of uncertainty does not necessarily render it non-compliant with statute. In that respect, if there is any uncertainty in the requirements of the notice when read as a whole, it is well within the degree of uncertainty accepted in *Oates* as still being compliant with statute.

14. The Council did subsequently muddy the waters by indicating that it did not intend the entrance gates to be removed as part of the requirements of the notice. There is no doubt that these gates are, at the very least, a structure and possibly also a building, insofar as more likely than not they amount to "building operations" as set out in the definition of development in section 55(1) of the 1990 Act. In response to questions put to her, Ms White conceded that the entrance gates "can be considered structures". She went on to explain that, had the Council wanted the entrance gates to be removed, they would have been included as a specific point for removal in the same way as the tarmac also referenced in the notice.

15. I have great difficulty in reconciling the Council's position in this respect. Given that the Council accepts that the entrance gates can be considered to be a structure, the obvious corollary is that the entrance gates must be caught by the requirement in the notice to remove *all* buildings and structures from the land. Furthermore, had the Council intended that the entrance gates not to be caught by the notice, it would have been a simple matter to specifically exclude them in the same way as the building shown diagonally hatched in black on the plan attached to the notice.

16. The subsequent revelation that the Council did not intend the entrance gates to be caught by the notice indicates a level of ambiguity and uncertainty in the Council's position. However, this only became apparent during the appeal process. The question of nullity relates to the recipient's understanding upon first receipt of the notice: on first opening the envelope, as it were. For the reasons set out above, the requirements of the notice would have been apparent to the recipient as a matter of ordinary language.

17. Having regard to the above, I conclude that the notice is not a nullity.

The Enforcement Notice

18. The breach of planning control alleged in the notice is, without planning permission, the change of use of the Land to residential caravan site by the stationing of caravans and mobile homes on the Land along with associated operational development. I note that there is a missing 'a' and a missing 'of' in that allegation, and I shall correct the notice in those respects.

19. A change of use is not, of itself, development for the purposes of Section 55(1) of the Town and Country Planning Act 1990 (the 1990 Act). That section defines the meaning of development as:

the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land (emphasis added).

I shall therefore correct the notice to refer to a material change of use of the land as defined in section 55(1) of that Act. I am satisfied that no injustice would be caused by so doing.

20. The requirements at paragraphs 5(i) to 5(iv) all include the word 'permanently.' Having regard to the provisions of Section 181(1) of the 1990 Act, which states that compliance with an enforcement notice shall not discharge that notice, the word 'permanently' is unnecessary. I shall therefore delete it from those requirements. I am satisfied that no injustice would be caused by so doing.

Appeal A: The appeal on ground (b)

21. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal is this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.

22. The breach of planning control alleges, in summary, the (material) change of use of the land to a residential caravan site. On 6 October 2008, planning permission (Council Ref:7/0596/08/F/HOD) was granted for the 'change of use of stables to livery yard'. The appellant defines a 'livery yard' as a use of land best described as 'the keeping of horses'. This is not an agricultural use and as such constitutes development requiring planning permission. The stables to which that permission relates have subsequently been replaced but those replacement stables are on land covered by the enforcement notice and currently in use for the keeping of horses.

23. This leads the appellant to the view that the use taking place across the land covered by the enforcement notice is misdescribed and should more properly be described as a 'mixed used for the stationing of caravans for residential purposes and the keeping of horses'.

24. Two points flow from this. Firstly, the stables granted planning permission under reference 7/0596/08/F/HOD was a different (and notably smaller) building than the replacement stables now on the site and currently used for the keeping of horses. The latter are therefore an entirely different development to that approved in October 2008 and under a very different set of prevailing circumstances. I am therefore not persuaded that the planning permission granted under reference 7/0596/08/F/HOD transfers to the replacement stables building.

25. The second point relates to the nature of the use for which the replacement stables are used. The guidance entitled 'Keeping horses' published by the Department for Environment, Food and Rural Affairs (Defra) defines a livery yard as being where horses are housed and cared for in return for payment, but do not belong to the owner of the yard. Similarly, guidance entitles 'Keeping horses commercially', also published by Defra, defines a livery yard as being where horses are housed and cared for in return for payment or reward, but do not belong to the owner of the yard. The Oxford English Dictionary (OED) defines a livery stable, and also a livery yard, as a stable where horses are kept at livery or let out for hire. The OED defines 'at livery' as a horse kept for the owner and fed and cared for at a fixed charge.

26. The essence of the definitions used by Defra and the OED are that a livery stable or yard entails horses kept for the owner in return for payment or reward. That appears to be the case for the livery yard granted planning permission in October 2008 under reference 7/0596/08/F/HOD: indeed, the fact that planning permission was applied for and granted tends to suggest that the 'to' use as a livery yard proposed was materially different to the 'from' use as stables.

27. But that is not the case with the stables currently on the site. Some of the horses stabled there do belong to the landowner (the appellant). Others are owner by residents of the site and are stabled there by permission of the appellant. The common denominator, on the evidence before me, is that none of the horses are kept in the stables in return for payment or reward. It follows that the present use of the stables is not as a livery yard as defined by Defra or in the OED. In my view, the present use of stables is more properly described as being ancillary to the stationing on the land of caravans for residential purposes.

28. In this respect, the use alleged in the notice can be distinguished on its facts from that considered under appeal reference APP/X1355/C/14/222237546 wherein the Inspector found that the notice "should allege that the site is in mixed use for residential use and the keeping of horses, even if the Council would not require the equestrian activity to cease". The use of the current appeal site is not a mixed use, with the keeping of horses being ancillary to the primary use of the land for the stationing of caravans for residential occupation.

29. I conclude that the appellant is not correct to describe the use taking place on the land as a mixed use for the stationing of caravans for residential purposes and the keeping of horses. I further conclude that the matters alleged in the notice have occurred. Accordingly, the appeal on ground (b) fails.

Appeal A: The appeal on ground (c)

30. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal is this ground is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.

31. On 29 July 2013, temporary planning permission for existing the use of mobile home as a residential dwelling in conjunction with horse livery and cattery/rescue centre operating on the site at that time (Council Ref: 07/13/0465/F). In September 2014, that temporary permission was extended for a further period of 3 years (Council Ref: 07/14/0674/F).

32. The appellant relies on section 57(4) of the 1990 Act which provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out. On that basis, the appellant contends that the stationing of a mobile home for residential purposes on the site is lawful by reason of planning permission 07/14/0674/F.

33. In that context, the appellant further relies on the judgment in *Pioneer Aggregates UK v SSE* [1985] 1 AC 132 which sets out the ways in which a planning permission, once implemented, can be lost. None of those mechanisms involved a use that continues beyond the time limit set by a condition imposed on a temporary planning permission. It follows that a planning permission for a material change of use that is granted subject to a time limiting condition does not expire at the end of that period but remains extant, albeit any continuing use would be in breach of that condition and the remedy for that breach is an application to vary or remove the time limiting condition.

34. There is no dispute that planning permission 07/13/0465/F was lawfully implemented, at which point the change of use took place. Planning permission 07/14/0674/F merely extended that use. However, the use permitted by planning permission 07/13/0465/F was very specific, as set out in the description of the development permitted on the Decision Notice. The use thereby permitted, and which took place with the implementation of that permission, was 'use of mobile home as a residential dwelling *in conjunction with* horse livery and cattery/rescue centre' (emphasis added). It follows that the use permitted, and implemented, was not solely for use of a mobile home as a residential dwelling. It was something different, and more involved, than that.

35. Moreover, the use as a mobile home was subject to conditions, including that the permission was for limited a period limited period only (Condition 2) and personal to the then applicants (Condition 3). In both cases, the stated reason for imposing those conditions was to meet the special need/circumstances of the applicants. This reflected the requirement for someone to be permanently based at the site in connection with the horse livery and the cattery/rescue centre. The imposition of conditions must accord with the six tests set out in the Planning Practice Guidance (PPG), including that they are necessary to make the development acceptable in planning terms. It follows that the use of the mobile home as a residential dwelling in conjunction with horse livery and cattery/rescue centre was necessary for a planning purpose particular to the circumstances at that time.

36. I have already found that the stables on the land are not operating as a livery yard. There is currently no cattery/rescue centre operating on the land. It follows that the use the mobile home(s) on the site is not in conjunction with horse livery and a cattery/rescue centre. It is therefore not the same use permitted by planning permission 07/13/0465/F, and which took place upon implementation of that planning permission. The corollary is that neither section 57(4) of the 1990 Act nor the judgement in *Pioneer Aggregates UK* are of assistance to the appellant in this case[2].

37. Even setting aside the point about the use of the mobile home not being in conjunction with horse livery and a cattery/rescue centre, there is a further consideration here. Planning permission 07/13/0465/F was for use of a mobile home for residential use in the singular. The breach of planning control alleged in the enforcement notice is the stationing of caravans and mobile homes in the plural: there were a total of eight mobile homes on the land at the time of my site visit. In my view, the increased quantum of mobile homes on the land

[2] For that reason, I have not rehearsed in detail here the evidence and submissions on this point.

constitutes a use of a different character to that granted under planning permission 07/13/0465/F. It is settled case law that a change in the character of a use can result in a material change of use requiring planning permission. In my opinion, as a matter of fact and degree, that is what has occurred in this case.

38. As originally made, the Appellant's appeal on ground (c) focused on whether the hardstanding is attacked by the notice. This point was not pursued in the appellant's closing submissions but neither was it expressly withdrawn. For completeness, I will therefore consider it here.

39. Two points immediately arise. Firstly, the notice specifically requires the removal of all the *tarmac* from the Land from the Land (emphasis added). In giving her evidence, Ms. White explained that this was deliberate in order to distinguish the newly laid hardstanding (i.e the tarmac) from existing hardstanding that the Council accepts is now lawful through the passage of time. Furthermore, Ms White accepted the proposition put to her in cross examination that even if the notice does attack the pre-existing lawful hardstanding, ground (c) should succeed to that extent.

40. The formation and laying out of hardstanding typically falls within the definition of engineering operations for the purposes of section 55(1) of the Act. This would include the laying of tarmac over a pre-existing hard surface, as has happened here. By reason its extent and depth, the tarmac laid at the appeal site comprises, as a matter of fact and degree, an engineering operation and therefore development for the purposes section 55(1) of the Act. Section 57 of the 1990 Act states that planning permission is required for development. There is no planning permission, deemed or otherwise, in place for this tarmac.

41. I conclude, on the balance of probability, that the breach of planning control constituted by the matters stated in the notice does constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

Appeal A: The appeal on ground (d)

42. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In this case, the appeal on ground (d) only relates to the tarmac. In order to succeed on this ground, the appellant must show that the laying of this tarmac has been substantially complete for a period of four years beginning with the date of the breach. The relevant date is therefore 31 October 2019. The test in this regard is the balance of probability and the burden of proof is on the appellant.

43. Areas of hardstanding are visible in aerial photographs taken in April 2010, April 2013 and June 2018. In all those photographs, the hardstanding is light brown in colour. The Council is aware that the previous lawful uses of the land incorporated an amount of hard surfacing and the Council is not seeking the removal of this lawful hard surfacing. It is for that reason that the Council has specifically used the word "tarmac" in the enforcement notice in order to avoid any suggestion that the removal the hard surface is required.

44. However, in an aerial photograph taken in April 2020, the same area now appears dark grey in colour. It is markedly different in appearance from the hardstanding in the earlier photographs. An aerial photograph taken a year

later, in April 2021, shows the hardstanding extending over a greater area and having a dark grey colour consistent with that of the hardstanding in the 2020 photograph. It is also consistent with the tarmac surface that was present at the time of my site visit.

45. The appellant explains that he moved onto the site in November 2019. This date is after the aerial photographs showing the hardstanding as having a light brown colour but before the later photographs showing the surface as a dark grey colour. It is therefore more likely than not that the dark grey surface shown in the post-2020 photographs is a covering of tarmac laid by the appellant at some point between acquiring the site in November 2019 and April 2020. Indeed, the appellant does not dispute that the tarmac is new development. As such, as a matter of fact and degree, the engineering operation was not substantially complete on the relevant date.

46. Accordingly, on the balance of probability, the appeal on ground (d) fails.

Appeal A: the appeal on ground (a) and the deemed planning application, and Appeal B

47. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The appeal site is within the Green Belt. In relation to Appeal A, the Council has stated two substantive reasons for issuing the enforcement notice, from which the main issues raised are:

- whether the breach of planning control alleged in the notice is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework), the PPTS and the development plan
- the effect on the openness of the Green Belt,
- the effect of the development on highway safety, and
- if the breach of planning control alleged in the notice is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

48. Appeal B raises the same main issues.

Whether the proposal is inappropriate development for the purposes of the Framework, the PPTS and the development plan

49. Paragraph 155 of the Framework provides that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include a material change of use of the land. However, this must be read alongside Paragraph 16 of the PPTS, which states that traveller sites (temporary or permanent) in the Green Belt are inappropriate development. The appellant does not dispute that the developments subject to Appeals A and B are inappropriate development within the Green Belt.

50. Paragraph 154 of the Framework indicates that, with some exceptions, local planning authorities should regard the construction of new buildings as inappropriate in the Green Belt. One of the exceptions is the provision of

appropriate facilities (in connection with the existing use of land or a change of use) for outdoor recreation. On that basis, the appellant contends that the new stable building is not inappropriate development in the Green Belt. The Council does not disagree with that approach.

51. I do not agree. In my view, the primary purpose of the new stable building is for the keeping of horses as part of the traditional way of life of members of the travelling community resident on the site. It is ancillary to the primary use of the land for the stationing of caravans for residential occupation. The provision of outdoor recreation might be a secondary activity associated with the keeping of horses in that building, but on my understanding of the evidence given by the appellant's witnesses that is not the primary reason. Consequently, I consider that the new stable block does not qualify as one of the exceptions listed paragraph 154 of the Framework, and as such is inappropriate development in the Green Belt.

52. It is also important to consider precisely what the exception in paragraph154 of the Framework covers. That paragraph provides that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are: … b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; *as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it* (emphasis added).

53. Consequently, even if the stables could be considered to be for the purposes of outdoor sport and/or outdoor recreation, they would need to accord with the proviso set out in paragraph 154 relating to the openness of the Green Belt and the purposes of including land within it. In my view, they do not.

54. In that context, it was held in *Fordent Holdings Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2844 (Admin) that in each case it will be for the decision maker to decide whether a particular building which is, or buildings which are, claimed to be appropriate facilities for outdoor sport or recreation to decide whether what is proposed preserves openness and does not conflict with the purposes of including land within the Green Belt. The judgment goes on to state that, if it does, then what is proposed will come within the potential exception created by the second bullet point in the list in Paragraph 89 of the Framework[3]. If it does not then it will fall within the scope of the first sentence of that paragraph and can be permitted only if very special circumstances are made out.

55. Photographs provided as part of the Council's evidence reveal that the previously existing stable building was a rustic, small scale, timber building. The existing stables are considering larger in terms of both length and height, and therefore in volume. The existing stables building therefore has a greater impact on the openness of the Green Belt than the building it replaced. It is settled case law that even a "limited adverse impact on openness" would mean that openness was not preserved. If follows that openness cannot be preserved if there is a finding that there would be an adverse impact on it of any kind. For that reason, the existing stables cannot possibly be said to preserve the openness of the Green Belt.

[3] Now paragraph 154

56. The enlargement of the stable building also conflicts with one of the purposes of including land within Green Belt insofar as it encroaches further into it.

57. For all the above reasons, and notwithstanding the views of the witnesses at the Inquiry, I consider the new stable building is inappropriate development in the Green Belt. I will consider the effect of the stable building on the openness of the Green Belt below.

58. Policy GB1 of the Broxbourne Local Plan (Local Plan) states that within the Green Belt planning applications will be determined in line with the provisions of the Framework. It follows that the developments subject to Appeals A and B are inappropriate development within the Green Belt for the purposes of the development plan.

59. I therefore conclude that the breach of planning control alleged in the enforcement notice, and the development proposed in the application subject to Appeal B, is inappropriate development in the Green Belt for the purposes of the Framework and the PPTS, as well as Policy GB1 of the Local Plan. Paragraph 152 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

The effect on the openness of the Green Belt

60. The Courts have held that matters relevant to the openness of the Green Belt are a matter of planning judgement, and that openness can have both a spatial aspect as well as a visual aspect. The Council has not alleged any harm to the character and appearance of the area, and my assessment of any visual effects of the development is confined to the effect on the openness of the Green Belt.

61. The breach of planning control subject to Appeal A is not the same development as that proposed in Appeal B. The breach of planning control alleged in the enforcement notice is the material change of use to a residential caravan site by the stationing caravans of and mobile homes on the Land along with associated operational development. The latter includes the laying of the tarmac, a new stable building, a building used as a gym and the entrance gates. The development proposed in Appeal B is a material change of use of land to the stationing of caravans for residential purposes, and the laying of hardstanding ancillary to that use, on smaller site (being part of that subject to the enforcement notice). It follows that the quantum of development is different in Appeal A to Appeal B, and that impact on the openness of the Green Belt is accordingly different.

The stationing of caravans for residential purposes

62. A total of eight mobile homes have been stationed in a line on the southern section of the area of tarmac. I understand that one of these will shortly be removed from the site, and replaced by a mobile home currently sited elsewhere on the site. These mobile homes are not buildings or structures but, because of their number, size and spacing, they harm the openness of the Green Belt in spatial terms. I recognise that the mobile homes are not widely visible from outside of the appeal site. Nevertheless, for the same reasons, the stationing of these mobile homes adversely impacts on the openness of the Green Belt in visual terms when viewed from within the site itself.

63. I also recognise that the mobile homes are caravans and by definition are capable of being moved. This reduces the effect on the openness of the Green Belt to some extent. However, in practice, these mobile homes are intended to provide a static base from which the occupants can travel to work and access local facilities. It is therefore unlikely that these caravans will move frequently, if at all, or move very far if they do. I therefore consider the fact that they are technically capable of being moved only reduces the impact on the openness of the Green Belt only to a marginal extent. Consequently, the stationing of the mobile homes results in significant harm to the openness of the Green Belt.

The area of tarmac

64. The laying of this tarmac was an engineering operation, the effect of which was to change the physical nature of the land. The area covered by the tarmac is extensive. This area of tarmac has very little impact on the openness of the Green Belt in spatial terms. However, compared with the previous hard surface, the change in the physical nature resulting from the new tarmac has a significant impact on the openness of the Green Belt in visual terms. This is very evident from the aerial photographs of the site in which the new tarmac is much more obvious and visually intrusive that the pre-existing hardstanding. Consequently, the new tarmac causes significant harm to the openness of the Green Belt, notwithstanding that it is not widely visible from outside of the site.

The new stable building

65. The new stable building is significantly larger in footprint and volume than the stable building that it replaced. In both spatial and visual terms, the new stable building therefore substantially harms the openness of the Green Belt in both spatial and visual terms.

66. In reaching that conclusion, I fully recognise that the keeping of horses forms an important part of gypsy and traveller culture. Several of the witnesses indicated that they keep horses in the stables or on the land, and spoke to how the children residing on the site benefitted from interacting with those horses. Nevertheless, that does not alter the impact of the stables building on the openness of the Green Belt.

The gym building

67. This new structure introduces a significant volume of new built form onto the site. By reason of its size, height and volume, the gym building substantially harms the openness of the Green Belt in both spatial and visual terms. I recognise that the gym is required by the appellant in connection with his profession and that some of the children that reside on the site benefit to some degree from the presence of that facility. Nevertheless, those factors do not go to the status of the building as inappropriate development within the Green Belt or its impact on the openness of the Green Belt.

The entrance gates

68. The entrance gates are operational development associated with the stationing of the caravans for residential use, and as such are technically caught by the notice. However, the Council has indicated that it did not intend to enforce against those entrance gates. Accordingly, I have discounted them entirely from my consideration of the openness of the Green Belt and will correct the notice the exclude them from the breach of planning control that is alleged.

69. In relation to Appeal A, I conclude that the total harm to the openness of the Green Belt resulting from the material change of use of the land to a residential caravan site and the associated operational development amounts substantial harm[4]. In relation to Appeal B, I conclude the total harm to the openness of the Green Belt resulting from the proposed material change of use of land to the stationing of caravans for residential purposes and the laying of hardstanding ancillary to that use also amounts to significant harm[5].

Highway safety

70. The considerations in relation to this issue were clearly set out in Ms Hart's evidence, and may be summarised as:

- there are no footways leading to the site along the highway, which is subject to 60mph restricted speed limit.
- there is no street lighting and limited grass verge to walk on
- pedestrians would have to walk on the carriageway of Cock Lane from/to the junction with Harmonds Wood Close footway some 500m to the east, which represents a highway safety concern.

71. The stretch of Cocks Lane from which access to the appeal is gained is clearly and unattractive and inhospitable environment for pedestrians. The appellant contends that Cocks Lane is "nothing unremarkable" and no different from many country lanes. That may well be correct. However, that does not mean other country lanes are necessarily a safe and attractive environment for pedestrians. It would be a matter of fact and degree in each case.

72. In this case, there is no evidence before me in terms of accident statistics, traffic counts or average vehicle speeds. For example, I have not been made aware of any accidents involving pedestrians on this stretch of Cocks Lane, including since the stationing of caravans for residential occupation commenced in or around 2019. Nevertheless, it was apparent from my site visit that vehicles do travel at speed along this stretch of Cocks Lane, if not at 60mph then at something approaching that.

73. The combination of relatively high speeds, no street lighting and no footway introduces a very real risk of vehicular/pedestrian conflict. Even in broad daylight, it was not a comfortable environment to be in as a pedestrian: and that is without being encumbered by pushing a wheelchair/pushchair, or being accompanied by young children. It would be an extremely uncomfortable environment for pedestrians during the hours of darkness or in poor visibility.

74. I am mindful that the stationing of caravans for residential occupation on the appeal site could result in this stretch of Cocks Lane being used on a regular basis by up to eight households, some with young children. Moreover, the risk would not be limited to pedestrian movements generated by the appeal site itself. There would also be an attendant risk to other pedestrians from vehicular traffic emanating from the appeal site.

75. I recognise that pedestrians could use public footpaths from the point at which Cock Lane and the A10 intersect. Even so, pedestrians would still need to enter the carriageway from that point to the access to the appeal site. The

[4] As distinct from the weight to be attached to that harm.
[5] Again, as distinct from the weight to be attached to that harm.

County Council as highway authority did not attend the Inquiry but their consultation response includes the comment that "pedestrians would have to route on the carriageway for the full length which represents a highway safety concern". Whilst falling short of an objection on highway safety grounds, this comment shows that the highway authority does have concerns over highway safety resulting from the development.

76. I share those concerns. The risk of personal injury due to vehicular/pedestrian conflict would be low, but the consequences potentially severe. In giving her evidence, Ms Hart accepted that on the scale of harm caused by a development, this was at the lesser end. Nevertheless, such harm carries significant weight.

Other considerations

General need for additional gypsy and traveller accommodation

77. There is a significant unmet need for additional gypsy and traveller accommodation in the Borough. The appellant has produced a detailed analysis of the current Gypsy and Traveller Accommodation Assessment (GTAA) for the Borough. It is significant that the GTAA has a baseline date of March 2017 and was therefore prepared prior to the Court of Appeal judgment in *Lisa Smith v SSLUHC* [2022] EWCA Civ 1391, in which it was held that the definition in the 2015 version of the PPTS excluding gypsies and travellers that are longer able to travel due to age or illness (disability) was discriminatory.

78. At the baseline date for the GTAA in March 2017 there was an immediate need for 37 pitches. By 2022, there should have been a minimum of 73 pitches in the Borough. By 2027 there should be a minimum of 78 pitches in the Borough, increasing to 81 by 2029. However, to date, the pitch provision has been 35 pitches, leaving a need for 46 pitches to satisfy a 5-year supply from the date of the Inquiry. Put another way, the actual provision represents less than half of the minimum identified need. Moreover, that position has is likely to have been exacerbated since the judgment in *Lisa Smith*. This is not challenged by the Council.

Lack of alternative pitch provision

79. It was held in *Angela Smith v Doncaster MBC* [2007] EWHC 1034 (Admin) that alternative sites must be available, affordable, acceptable and suitable. The Council accepts that there are no alternative accommodation options for the appellant and the resident families that meet the criteria set out in *Angela Smith*. Similarly, doubling up on existing pitches and roadside encampments are not to be considered lawful alternative sites. The dismissal of these appeals would therefore result in the families having to resort to an unlawful roadside existence, with all of the attendant implications.

Lack of a 5-year housing land supply

80. The PPTS requires that local planning authorities (a) identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets and (b) identify a supply of specific, developable sites, or broad locations for growth, for years 6 to 10 and, where possible, for years 11-15.

81. The Council can neither demonstrate a 5-year supply nor broad locations for growth for years 6 to 10 years. It has also confirmed that the position is unlikely change in the emerging Local Plan.

Failure of policy

82. It is clear from the shortfall of sites provided compared to the need for pitches identified on the GTAA that the Council have not allocated sufficient sites to meet their properly assessed minimum accommodation needs. In that respect, the development plan is not meeting the needs of the travelling community. Furthermore, the Local Plan is entirely closed to non-definitional Gypsy & Travellers and to those who are not currently living on the three existing sites within the Borough.

83. In considering this issue, it is necessary to consider the background and context. The key element of the background is that a significant proportion of the Borough is within the Green Belt. It is National policy that traveller sites in the Green Belt are inappropriate development. That sets the context for planning policy for the Borough, as considered by the Inspector in determining whether the Local Plan sound through the Examination in Public (EiP).

84. In finding the Local Plan to be sound, the Inspector clearly considered that needs may arise from travellers who wish to move into the Borough from other parts of Hertfordshire, Essex, London or elsewhere in the future. Even though the EiP pre-dated the judgement in *Lisa Smith*, the Inspector also took into account that some families that may not meet the national definition. On that basis, the Inspector considered that the Local Plan should build in flexibility to accommodate additional needs that may arise. Ultimately, the Inspector concluded that:

"In so far as any such needs would arise from the existing communities, policy GT1 (as modified) is sufficiently flexible to deliver additional provision. In terms of other needs that may arise, policy H3 states that the Council will seek a mix of housing on development sites that provide for a mix of occupiers. This could be used to deliver additional accommodation for travellers if clear evidence of additional needs emerged. Furthermore, my recommended modification to the reasoned justification for policy GB2 would ensure that disused glasshouse sites in the Green Belt could be redeveloped with self-build accommodation for gypsies and travellers. Overall, therefore, the Plan should be effective in ensuring that needs can be met".

85. It is evident from the shortfall in pitch provision that, in practice, the policy has not worked as envisaged by the Inspector. Nevertheless, Ms Hart does not consider this to mean that there has been a failure of policy. In her view, the development plan "could" meet needs and that policies H3 and GB2 provide "the potential to" meet the need. In doing so she accepted that there would have to be "proactive intervention" but considered that "could" happen. Furthermore, on behalf of the appellant, Mr. Green accepted that if the Council were proactive, they might be able to "do something".

86. It is fair to say that the Council's policies in relation to gypsy & traveller development have not achieved the outcomes envisaged by the Inspector in finding the Local Plan to be sound. Taking a pro-active approach in the future may enable the Council to regain some of the lost ground but that cannot affect the situation at this time. Therefore, looked at in the round and even taking

into account all the constraints imposed by the Green Belt in the Borough, it is fair to say the Council's policy has not worked out in practice. In that sense that, there has a been a failure of policy. However, I adopt the approach taken by the Inspector in relation to the appeal in relation to Land at Shortwood Road, Pucklechurch (APP/P0119/C/07/2037529), who considered that affording weight to the failure of policy would introduce a form of double counting in which cause and effect are added together.

Likely location of future gypsy and traveller sites

87. In order to provide for the expansion of the three family sites set out in Policy GT1 the Council had to remove those sites from the Green Belt. Practically all of the land outside of the Green Belt in this area is within the built-up area on the edge of the M25. The appellant considers, and I agree, that this does not present a viable or economic option for gypsy and traveller site development.

88. It follows that there is a very strong likelihood that the location of future gypsy and traveller sites would be on what is now Green Belt land. Paragraph 17 of the PPTS is clear that:

"Green Belt boundaries should be altered only in exceptional circumstances. If a local planning authority wishes to make an exceptional, limited alteration to the defined 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 do so only through the plan-making process and not in response to a planning application".

89. An assessment as to the appropriate future location for sites in the Green Belt is therefore more properly done at Local Plan stage through a Green Belt review, which is exactly was exactly what the Council did when it went through its previous local plan process and removed land from the Green Belt resulting in policy GT1. The Council's Local Development Scheme, published in December 2023, indicates that at present the Council is proposing a single Development Plan Document, namely the Broxbourne Local Plan Partial Review. However, this partial review only relates to two specific policies and does not include the provision of gypsy & traveller sites. Consequently, there can be no guarantee as to how many sites, if any, might be identified through any future Local Plan process, or when any sites identified might become available.

90. The most likely outcome of gypsy and traveller sites ultimately not being available or suitable would be that the appellant and families resident on the site would have to resort to an unlawful roadside existence, with all of the attendant implications. I have already taken into account that the current lack of alternative pitch provision would result in the families having to resort to an unlawful roadside existence. The difficulty in determining the quantum and likely location of future gypsy and traveller sites is therefore an extension of that issue. In that respect, this issue also represents a form of double counting which should not attract additional weight.

Fallback position

91. The principle of a fallback position requires a comparison of the impact of the development subject to the enforcement notice against the effect of what other development could lawfully take place use. In this case, the development permitted by planning permission 07/13/0465/F had, by a significant margin, a

less harmful impact on the openness of the Green Belt than the existing use of the appeal site. Consequently, whilst it would be perfectly open to the appellant to revert to the development permitted by planning permission 07/13/0465/F, that would in no way justify the retention of the use and associated operational development subject to the enforcement notice.

Extant planning permission for a livery

92. The appellant maintains that if the enforcement notice is upheld and he cannot remain living on the site, he will take up the permission for the livery stables (07/13/0465/F). Given that the appellant has a passionate interest in horses, I have no reason to doubt that. However, even setting aside whether the reversion to the 'livery permission' would require the attendant reversion to the buildings in situ at that time, in terms of the openness of the Green Belt that would be a favourable outcome (i.e: the removal of the eight mobile homes, the gym building, the larger stables building and the tarmac). Consequently, for the same reason as in relation to the fallback position above I attach no weight to this possibility.

Animal welfare

93. The appellant maintains that one of the benefits of residential occupation on site would be to increase the level of care to be given to any animals that live on the land. This is undoubtedly true to a certain extent. However, no good evidence has been provided as to any specific medical issues or needs that the animals on site have which would mean that their welfare is better attended to with residential occupation on site and could not be provided by someone living off-site.

Personal circumstances of the residents on the appeal site

94. The parties agreed that the personal circumstances of the residents on the appeal site only need to be considered if I was to find that the other material considerations claimed are insufficient to clearly outweigh the identified harm. I concur with that approach. It is, however, convenient to briefly set out those personal circumstances here, not least because they feed into the considerations below relating to the human rights of those individuals.

95. The personal circumstances of the appellant and the resident families were set out in their respective witness statements and in most cases elaborated upon in oral evidence. It is neither necessary nor appropriate to rehearse that evidence in detail here. It is sufficient to record that several of the residents are experiencing health issues for which they require access to medical facilities. In some cases, this includes issues relating to their mental health, including anxiety around the possibility of reverting to a roadside existence.

96. There are currently 14 children living on the appeal site, including a newborn child. In addition, at the time of the Inquiry two of the residents on the site were pregnant. The site will provide the continuing opportunity for the families to secure consistent access to education and health services, one of the principal aims of the PPTS. Having a stable base also enables the families and children to integrate into the local community, with the children securing regular attendance at school.

97. I have no doubt that it would be in the best interest of all the children residing on the site to remain there as a stable base, not only from which to access

education and medical facilities but also to remove the children from the prospect of the dangerous environments of a roadside existence. It is also clear that the children living on the site benefit from interaction with the horses kept there and the facilities in the gym building. It would be in their best interests to continue to do so.

98. The best interest of these children is a primary consideration, and inherently carries as much weight as any other consideration.

Human Rights and the Public Sector Equality Duty

99. I am fully aware that the dismissal of this appeal would result in the appellant and the other occupiers on the site losing their homes. This would interfere with their rights under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA). In particular, their rights under Article 8 (right for respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property) would be interfered with. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.

100. The issue of an enforcement notice is in accordance with the law, specifically section 172 of the 1990 Act. Accordingly, there is a clear legal basis for the interference with the rights under Article 8 and Article 1 of the First Protocol held by the appellant and the other occupiers of the site.

101. The appeal site is within the Green Belt, the protection of which is an important element of National planning policy, as set out in the Framework. I have found that the breach of planning control alleged in the enforcement notice (Appeal A) and the development for which planning permission is sought (Appeal B) each constitute inappropriate development in the Green Belt. The Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I have also found that the breach of planning control subject to notice and the development for which planning permission is sought both harm of the openness Green Belt and presents a risk to pedestrian safety. Dismissing the appeals and upholding the enforcement notice would therefore be in the public interest.

102. Against this harm, there is a significant unmet need for gypsy and traveller sites in the Borough. The Council cannot point to a five-year supply of sites. There are no suitable alternative sites available. Upholding the notice would therefore result in the appellant and his family losing their home and, in all likelihood, would oblige some if not all of the residents on the site to return to a roadside existence, with all the implications that would bring. I also have the best interests of the children residing on the site at the forefront of my mind.

103. Balancing all these factors, I consider that the interference with the Article 8 rights held by the appellant and the other families residing on the site would be significant, but would be both necessary and proportionate in the event that the notice is upheld or in refusing to grant a permanent planning permission. In reaching that conclusion, I am satisfied the policy objective could not be achieved by means that interfere less with the appellant's rights and those of the other residents of the site.

104. The appellant and the other residents on the site share the protected characteristic of race for the purposes of the Public Sector Equality Duty under section 149 of the Equality Act 2010. Upholding the notice or refusing to grant a permanent permission would impact negatively on their way of life and would reduce the opportunities available to them. It would also deny or reduce the opportunities available to foster good relations with the settled community, including those of the children at their school.

Conditions

105. A condition restricting the number of pitches and caravans on the site would be necessary, albeit this would vary between Appeal and Appeal B. A condition requiring that no vehicle over 3.5 tonnes (save for vehicles used for the transportation of horses) shall be stationed, parked or stored on this site is necessary, as is a condition limiting and the number of commercial vehicles to one per pitch. A condition requiring that no commercial activities shall take place on the land would be necessary, but I see no reason why a livery yard should be excluded from that requirement: there is no livery yard on the site at present and that would be extending the terms of the permission sought, which is not permissible. A condition requiring that no external lighting shall be installed on the site unless approved in writing by the local planning authority in accordance with the approved scheme is necessary.

106. Conditions restricting the occupation of the caravans to gypsy and travellers, or to specific persons, would need to be considered in the context of whether the personal circumstances of the occupiers of the site is a determinative factor. Similarly, a condition restricting any permission to a temporary period would fall to be considered if a permanent permission was not appropriate.

Appeal A: Green Belt balancing exercise and conclusion on the ground (a) appeal

107. In accordance with paragraph 148 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development. In addition to this definitional harm, I conclude that the total harm to the openness of the Green Belt resulting from the material change of use of the land to a residential caravan site and the associated operational development amounts substantial harm. That is a matter to which I attach substantial weight. I attach significant weight to the risk to pedestrian safety. These harms could not be overcome by the imposition of suitably worded conditions.

108. Against this, as a primary consideration I attach substantial weight to the best of interest of the children to remain residing on the appeal site. I attach significant weight to the high level of unmet need in the Borough and to the fact that the Council is not able to demonstrate 5-year housing land supply. I also attach significant weight to the lack of any suitable alternative sites. For the reasons set out above, I attach negligible weight to the welfare of the animals on the site. There is no 'fall back' position open to the appellant to which I can attach any weight. The failure in policy and the likely availability of future sites both constitute double-counting to which I attach no weight.

109. Consequently, in weighing the balance, the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other

considerations, such that the very special circumstances necessary to justify the development do not exist.

110. In this scenario, it is then necessary for me to factor the weight to be given to the personal circumstances of all the occupiers of the site into the equation. It is apparent from the evidence that I have read and heard that the personal circumstances of those occupiers would be best served by remaining on the site. However, whilst I fully recognise that those circumstances, particularly insofar as they relate to personal health, are of considerable importance to those individuals, in my view there is no compelling or overriding reason to suggest that the residents (either any one individual or collectively) must remain on the site. For that reason, I only attach significant weight to those personal circumstances[6].

111. Paragraph 16 of the PPTS indicates 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 (emphasis added). The inclusion of the word 'unlikely' in that paragraph is a clear indication that, in some situations, personal circumstances and unmet need are capable of clearly outweighing harm to the Green Belt and any other harm so as to establish very special circumstances.

112. This not one of those situations. Even when that significant weight is added into the balance, the harm by reason of inappropriateness and any other harm, is still not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist.

113. Having regard to the above, I conclude the breach of planning control is contrary to Policies GB1 and TM2 of the Broxbourne Local Plan 2018-2033. These policies are consistent, or at least broadly consistent, with the Framework. These policies respectively provide, amongst other things, that within the Green Belt planning applications will be considered in line with the Framework and that development will not be permitted where is a severe impact on the highway network. I have not been advised of any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

114. In this case, because of the substantial harm to the openness of the Green Belt resulting from the operational development associated with the use of the site, the balance does not shift when a temporary planning permission is considered. Furthermore, I have already found that the personal circumstances of the occupiers of the site are not sufficient to justify a personal permission. For those reasons, I have not considered a temporary and/or personal permission further.

115. Section 177(1)(a) of the 1990 Act provides that, on determination of an appeal under Section 174, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to any part of the land to which the notice relates.

[6] The appellant suggests that I should attach substantial weight to these personal circumstances.

116. Further to that provision, I have considered whether I could grant planning permision for the stationing of caravans/mobile homes on the southern section of the area of tarmac in isolation, these being part of the matters stated in the notice and a part of the site to which the notice relates. This would avoid the substantial harm to the openness of the Green Belt resulting from the associated operational development, and therefore shift the balance in relation to the existence of very special circumstances.

117. The difficulty is specifying the location of those mobile homes in any planning permission that may be granted. The red line area to which the enforcement notice relates extends considerably beyond the part of the site on which most of the static caravans are located, and to which the remaining mobile home is likely to be moved shortly. Consequently, without a plan specifying a smaller site area, I am not able to define with sufficient precision the area to which the planning permission would relate. I have considered whether I could use the plan submitted as part of the planning application subject to Appeal B for that purpose, but because the description of development is different (the plans specifically show 7 static caravans), that is not an option open to me. Consequently, I am not in a position to grant planning permission for part of the matters or part of the site.

118. Accordingly, I conclude that planning permission ought not be granted and that the appeal on ground (a) should be dismissed.

Appeal B: Green Belt balancing exercise and conclusion

119. The balance does, however, shift when the proposed development on the smaller site subject to Appeal B is considered. In this case, the weight to be afforded to the definitional harm remains substantial but the harm to the Green Belt through loss of openness is much reduced. This now attracts significant weight, as does the risk to pedestrian safety.

120. Against that, the weight to be afforded to the best of interest of the children residing on the appeal site remains as substantial. The weight to be given to the high level of unmet need in the Borough remains as significant, as does the weight to be afforded to the fact that the Council is not able to demonstrate 5-year housing land supply. The weight to be given to the lack of any suitable alternative sites remains as significant. The weight to be afforded to the welfare of the animals on the site remains negligible, but still carries some weight.

121. Consequently, in weighing the balance for this smaller site, the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do exist. Permanent planning permission may therefore be granted, subject to conditions.

122. In this scenario, it is not necessary for me to factor the weight to be given to the personal circumstances of the occupiers of the site into the equation. It follows that a personal permission would not be appropriate, albeit it is necessary to restrict occupation of the site to any persons that meet the definition of gypsies and travellers set out in the PPTS, for whom the benefits of a settled base from which to travel and access medical/educational facilities would equally apply.

123. Accordingly, I conclude that Appeal B should be allowed subject to the conditions set out in the Formal Decision below.

Appeal A: the appeal on ground (f)

124. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice include to cease the use of the Land as a residential caravan site, to remove all caravans and mobile homes from the Land, to remove all buildings and structures from the Land (except the one specifically excluded) and to remove all the tarmac from the Land. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.

125. The requirement at paragraph 5 (ii) of the notice, as I already propose to vary it, requires all caravans and mobile homes to be removed from the Land. This would catch all caravans on the site for whatever purpose, including those that could be lawfully stationed on the land for a number of purposes. This requirement is not necessary to achieve the purpose of the notice, and is therefore excessive. I shall vary the notice to only require the removal of caravans that are an integral part of/facilitate the breach of planning control alleged in the notice. In any event, this requirement will be largely superseded by the grant of planning permission in Appeal B.

126. The requirement at paragraph 5(iii) of the notice, as I already propose to vary it, requires that all buildings and structures are removed from the Land (except the one that is diagonally hatched black on the attached plan). One of the buildings on the site that would be caught by this requirement is the stables building. That building is an integral part of the breach of planning control alleged in paragraph 3 the notice ('along with associated operational development'). The removal of the stables building is therefore necessary to achieve the purpose of the notice and is not excessive.

127. The requirement at paragraph 5(iv) of the notice, as I already propose to vary it, requires that all the tarmac is removed from the Land, including the area shown shaded with a black pattern on the attached plan. The Council has made it very clear that the use of the word 'tarmac' was deliberate in order to distinguish the newly laid hardstanding (i.e the tarmac) from the previously existing hardstanding. The laying of this tarmac is an integral part of the breach of planning control alleged in the notice. The removal of the tarmac, as opposed to the underlying previously existing tarmac, is therefore necessary to achieve the purpose of the notice and is not excessive. In any event, this requirement will be superseded by the grant of planning permission in Appeal B.

128. The requirement at paragraph 5 (vi) of the notice requires that the land is restored by seeding the land using native grass seed. Prior to the breach of planning control taking place, a significant part of the land was not grassland. This requirement is therefore goes beyond what is necessary to achieve the purpose of the notice and is therefore excessive. I shall vary the notice to

require that the land is restored to its condition prior to the breach of planning control taking place. This would dovetail neatly with the requirement at paragraph 5(iv) of the notice and would be consistent with Section 173(4) of the 1990 Act.

129. Accordingly, the appeal on ground (f) succeeds to the extent set out above but fails in all other respects.

Appeal A: the appeal on ground (g)

130. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice varies from 3 months to 6 months, with full compliance required within 6 months. The appellant seeks a period of compliance of 2 years for compliance with the requirement at paragraph 5 (i) of the notice, followed by the sequential approach set out in the remaining requirements of the notice.

131. The extended period of compliance sought by the appellant is to enable the occupiers living on the site to find alternative accommodation, having regard to the lack of suitable, affordable, available, and acceptable alternative sites. However, the period of two years sought by the appellant is tantamount to a temporary planning permission, but without the benefit of conditions to mitigate the harm caused by the development. In any event, I have already found under the appeal on ground (a) that a temporary planning permission would not be appropriate in this case.

132. The situation has moved on since the appeal was made, insofar as permanent planning permission will now be granted for seven of the eight pitches on the appeal site following the success of Appeal B. This leaves a requirement for the occupiers of one pitch to find an alternative site (it not being open to me change the description of development of the planning permission to be granted to include the eighth pitch).

133. Having heard and reflected upon the evidence given at the Inquiry, Ms White revised her position[7] and suggested in oral evidence that a 12-month period for compliance with steps i)[8] would be appropriate, with the rest of the steps following in the same sequential order as before. In the view of the lack of suitable alternative sites, I consider that allowing a whole year to find one alternative site and to the remove that caravan would be reasonable.

134. However, I see no reason to amend the period for compliance in relation to the other steps. There is no reason why those steps cannot be carried out in parallel with the search for an alternative site. Moreover, I have been presented with no compelling evidence to show that the steps could not physically be carried out within the timescales specified in the notice. Indeed, the appellant has explicitly accepted that the period for compliance with sequential steps (iii) to (vi) is achievable.

135. Accordingly, the appeal on ground (g) succeeds to that limit extent I will vary the notice accordingly. The appeal on ground (g) fails in all other respects. I am satisfied that this would be a proportionate response to the breach of planning control that has occurred.

[7] Subsequently confirmed in writing to be the Council's position.
[8] As I propose to vary it, to cease the use of the Land as a residential caravan site.

Conclusion

136. For the reasons given above, I conclude that the Appeal A should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

137. For the reasons given above, I conclude that the Appeal B should succeed and I shall grant planning permission subject to conditions.

138. Section 180(1) of the 1990 Act as amended provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

139. The permission that I shall grant pursuant to Appeal B will be limited by a condition to the material change of use of land to the stationing of caravans for residential purposes comprising 7no. static caravans, 6no. touring caravans, and the laying of hardstanding ancillary to that use. It follows that the requirement at paragraphs 5(i), 5 (ii) and 5(iv) of the notice will cease to have effect in that respect. It further follows that the requirement to remove all caravans and mobile homes from the Land will now only relate to the eighth mobile home that was present on the land at the time of my site visit.

Formal Decisions

Appeal A Ref: APP/W1905/C/23/3334117

140. It is directed that the notice is corrected by:

- in paragraph 3 of the notice, inserting the word 'material' before the words 'change of use'
- in paragraph 3 of the notice, inserting the letter 'a' between the words 'land to' and 'caravan site' and the word 'of' between the words 'stationing' and 'caravans'
- in paragraph 3 of the notice, after the words 'along with associated operational development, add the words 'with the exception of the entrance gates'

141. It is directed that the notice is varied by:

- in paragraphs 5(i), 5(ii), 5(iii) and 5(iv) deleting the word 'Permanently'
- in paragraph 5(ii), after the words 'remove all caravans and mobile homes from the Land' adding the words 'that were integral to and which facilitated the breach of planning control that has taken place'.
- deleting paragraph 5(v) in its entirety and substitute there the words 'Restore the Land to its condition prior to the breach of planning control taking place'
- in paragraph 6, steps (i) and (ii), deleting '3 months' and '4 months' respectively and substituting there '12 months'

142. Subject to the corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/W1905/W/23/3327012

143. The appeal is allowed and planning permission is granted for the material change of use of the land to the stationing of caravans for residential purposes, and the laying of hardstanding ancillary to that use, at Woodland Stables, Cock Lane, South Heath, Hertfordshire EN11 8LS, subject to the following conditions:

1. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex A of the Planning Policy for Travellers Sites.

2. Notwithstanding the submitted plans, there shall be no more than 7 pitches on the site, and no more than 7 static caravans and 6 touring caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan sites Act 1968, as amended, stationed on the site at any one time.

3. No vehicle over 3.5 tonnes (save for vehicles used for the transportation of horses) shall be stationed, parked or stored on the land.

4. No more than one commercial vehicle per pitch shall be kept, stored or parked on the land and that shall only be for use by the occupiers of the caravans hereby permitted.

5. No commercial activities shall take place on the land, including use as a livery yard and the storage of materials.

6. No external lighting shall be installed on the site unless details of the position, height and type of lights have been submitted to and approved in writing by the local planning authority. The external lighting shall be installed and operated in accordance with the approved details and no other external lighting shall be installed or operated.

Paul Freer

INSPECTOR

APPEARANCES

For the appellant:

Mr Michael Rudd	Of Counsel

He called:

Mr Billy Joe Saunders	Appellant
Ms Josephine Connors	
Mr Maurice Smith	
Ms Nicola Hutchins	
Mr Taylor Smith	
Mr Charlie Boswell	
Mr Matthew Green	Director, Green Planning Studio Limited

For the Local Planning Authority

Ms Leanne Buckley-Thomson	Of Counsel

She called:

Ms Laura White BSc (Hons)	Senior Planning Enforcement Officer
Ms Louise Hart BA (Hons) MSc LRTPI	Principal Planning Officer

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Opening submissions on behalf of the Appellant
2. Opening submissions on behalf of the Local Planning Authority
3. Signed Witness Statement of Ms Josephine Connors
4. Signed Witness Statement of Mr Maurice Smith
5. Signed Witness Statement of Ms Nicola Hutchins
6. Signed Witness Statement of Mr Taylor Smith
7. Signed Witness Statement of Charles Boswell
8. List of Draft Conditions
9. Signed Witness Statement of Mr Thomas Saunders
10. Extracts from guidance published by the Department for Environment, Food & Rural Affairs titled 'Keeping horses' and 'Keeping horses commercially'
11. Closing submissions on behalf of the Local Planning Authority
12. Closing submissions on behalf of the Appellant

10.2.3. Collins vs SSCLG & Fylde Borough Council (2013)

Neutral Citation Number: [2013] EWCA Civ 1193

Case No: C1/2012/2806

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
His Honour Judge Pelling QC
[2012] EWHC 2760 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/10/2013

Before :

LORD JUSTICE RICHARDS
LORD JUSTICE FLOYD
and
SIR DAVID KEENE

- -

Between :

Elizabeth Collins	**Appellant**
- and -	
(1) Secretary of State for Communities and Local Government	**Respondent**
(2) Fylde Borough Council	

- -
- -

Stephen Cottle (instructed by **Lester Morrill Solicitors**) for the **Appellant**
Rupert Warren QC (instructed by **The Treasury Solicitor**) for the **Respondent**
Fylde Borough Council did not appear on the appeal

Hearing date : 18 July 2013

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Approved Judgment

Lord Justice Richards :

1. The appellant is one of a group of 78 travellers (including 39 children) who since November 2009 have been living in caravans on a site of about 2.4 hectares to the south east of the village of Hardhorn, near Blackpool. Fylde Borough Council, the local planning authority, issued an enforcement notice alleging that the use of the land had been changed without planning permission from equestrian and agricultural use to use as a residential caravan site. An application for planning permission for that change of use was refused. Appeals were then brought both against the enforcement notice and against the refusal of planning permission. The appeals were recovered for determination by the Secretary of State, who appointed an inspector to hold a public local inquiry. The inspector's report recommended that the appeals be dismissed and that the enforcement notice be upheld, subject to immaterial corrections and variations. In a decision letter dated 18 August 2011 the Secretary of State agreed with the inspector's recommendations.

2. The next phase of the case was a challenge under section 288 of the Town and Country Planning Act 1990 against the refusal of planning permission, and an appeal under section 289 of the Act against the decision to uphold the enforcement notice. In a characteristically clear and robust judgment, HHJ Pelling QC, sitting as a deputy High Court Judge in the Administrative Court, dismissed the section 288 challenge and, although granting permission to appeal under section 289, dismissed the substantive appeal.

3. The appellant then sought permission to appeal to this court against the judge's order. McCombe LJ directed that the application for permission in respect of the section 288 challenge be adjourned to a "rolled-up" hearing but granted permission in respect of the section 289 appeal. It is unnecessary to go into the procedural reasons why he adopted that course. Before us, Mr Warren QC for the Secretary of State disavowed any procedural concerns and raised no objection to our hearing both matters as substantive appeals. That is plainly the appropriate course, and in my view permission to appeal in respect of the section 288 challenge should be granted accordingly.

4. It is uncontroversial that the refusal of planning permission for, and enforcement against, use of the appeal site for residential caravans was likely to leave the traveller families without a permanent base and having to resort to a roadside existence. The question that arises in that context, and the central issue on the appeal to this court, is whether the best interests of the children were taken properly into account by the Secretary of State in reaching his decision. To answer that question it is necessary to examine (i) the correct general approach towards consideration of the best interests of children in planning decisions of this kind, and (ii) the specific reasoning in the decision letter and in the passages of the inspector's report adopted in the decision letter.

5. In relation to general approach, there is a substantial measure of common ground between the parties but the areas of disagreement are important.

6. In relation to specific reasoning, the problem is that neither the inspector nor the Secretary of State referred in terms to the best interests of the children – the decision

preceded the recent planning case-law on the subject – and it is necessary to decide whether the correct approach was nevertheless followed in substance.

General approach

7. Article 3.1 of the United Nations Convention on the Rights of the Child provides: "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". The way in which that international obligation has been translated into, and is to be given effect in, our national law has been the subject of detailed examination by the Supreme Court in the context of immigration and asylum in *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 AC 166, and in the context of extradition in *H(H) v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25, [2012] 3 WLR 90. Both those cases explain in particular how the best interests of the child should be taken into consideration when considering the proportionality of interference with rights under article 8 of the European Convention on Human Rights.

8. The Secretary of State has conceded in recent cases at first instance, and conceded before us, that the principle articulated in those cases should also be applied in the context of planning. As it was put in the skeleton argument of Mr Rupert Warren QC on the present appeal, "the [Secretary of State for Communities and Local Government] accepts that in light of the reasoning in *ZH* in particular (at [21]), there is a broad consensus in support of the idea that in all decisions concerning children, their best interests must be of primary importance, and that planning decisions by him ought to have regard to that principle".

9. In considering how the principle is to be applied, it is necessary to bear in mind the statutory framework for planning decisions of this kind. Section 70(2) of the Town and Country Planning Act 1990 provides that in dealing with an application for planning permission a local planning authority "shall have regard to (a) the provisions of the development plan, so far as material to the application, (b) any local finance considerations, so far as material to the application, and (c) any other material considerations". The Secretary of State is subject to the same obligation in relation to an application recovered for determination by him. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that "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". The development plan therefore has a special status within the decision-making process but may be outweighed by other material considerations. It is well established that relevant rights to family or private life under article 8 fall to be taken into account as other material considerations and can be properly accommodated in that way within the decision-making process. Where the article 8 rights of a child are engaged, the best interests of the child can and should be taken into consideration in the article 8 analysis in the manner explained in *ZH (Tanzania)* and *H(H)*. The decision-maker may be subject to other duties relating to the welfare of children (I refer below to section 11 of the Children Act 2004), but they are unlikely to add anything of substance in relation to best interests where article 8 is engaged.

10. In *Stevens v Secretary of State for Communities and Local Government* [2013] EWHC 792 (Admin), which is perhaps the first occasion on which the Secretary of State made a clear concession that the principle in *ZH (Tanzania)* and *H(H)* applies in the planning context, Hickinbottom J considered at some length the judgments in those cases and how they affect the approach to be taken by a planning decision-maker. He derived the following propositions from the authorities (at [69]):

> "(i) Given the scope of planning decisions and the nature of the right to respect for family and private life, planning decision-making will often engage article 8. In those circumstances, relevant article 8 rights will be a material consideration which the decision-maker must take into account.
>
> (ii) Where the article 8 rights are those of children, they must be seen in the context of article 3 of the UNCRC, which requires a child's best interests to be a primary consideration.
>
> (iii) This requires the decision-maker, first, to identify what the child's best interests are. In a planning context, they are likely to be consistent with those of his parent or other carer who is involved in the planning decision-making process; and, unless circumstances indicate to the contrary, the decision-maker can assume that that carer will properly represent the child's best interests, and can properly represent and evidence the potential adverse impact of any decision upon that child's best interests.
>
> (iv) Once identified, although a primary consideration, the best interests of the child are not determinative of the planning issue. Nor does respect for the best interests of a relevant child mean that the planning exercise necessarily involves merely assessing whether the public interest in ensuring planning controls is maintained outweighs the best interests of the child. Most planning cases will have too many competing rights and interests, and will be too factually complex, to allow such an exercise.
>
> (v) However, no other consideration must be regarded as more important or given greater weight than the best interests of any child, merely by virtue of its inherent nature apart from the context of the individual case. Further, the best interests of any child must be kept at the forefront of the decision-maker's mind as he examines all material considerations and performs the exercise of planning judgment on the basis of them; and, when considering any decision he might make (and, of course, the eventual decision he does make), he needs to assess whether the adverse impact of such a decision on the interests of a child is proportionate.
>
> (vi) Whether the decision-maker has properly performed this exercise is a question of substance, not form. However, if an inspector on an appeal sets out this reasoning with regard to

> any child's interests in play, even briefly, that will be helpful not only to those involved in the application but also to the court in any later challenge, in understanding how the decision-maker reached the decision that the adverse impact to the interests of the child to which the decision gives rise is proportionate. It will be particularly helpful if the reasoning shows that the inspector has brought his mind to bear upon the adverse impact of the decision he has reached on the best interests of the child, and has concluded that impact is in all the circumstances proportionate ...."

11. In my judgment, that list of propositions is an accurate and helpful summary. Mr Cottle took issue with some of it, but for reasons given below I do not accept his criticisms.

12. Mr Cottle submitted that proposition (iii), in particular, was deficient in failing to list the factors that a decision-maker needs to address when determining a child's best interests. He referred to the provisions of section 1 of the Children Act 1989 concerning the welfare of a child. The section includes, in subsection (3), a list of factors to which the court shall have regard when considering whether to make, vary or discharge certain orders under that Act. The first four of the factors listed are "(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding); (b) his physical, emotional and educational needs; (c) the likely effect on him of any change in his circumstances; and (d) his age, sex, background and any characteristic of his which the court considers relevant". Mr Cottle submitted that although the section is not directly applicable, the list (or that part of it) provides a useful aide-memoire for decision-makers in the planning context. He made a similar point in relation to factors identified in section 10 of the Children Act 2004, which again has no direct application: it concerns arrangements to be made by local authorities to promote cooperation between them and others with a view to improving the well-being of children. He referred also to paragraph 1.1 of the UNHCR Guidelines on Determining the Best Interests of the Child (considered in *ZH (Tanzania)* at [25]), which states that the term "best interests" broadly describes the well-being of the child, and to the checklist of factors at Annex 9 to those Guidelines, under the headings of "Views of the Child", "Safe Environment", "Family and Close Relationships", and "Development and Identity Needs".

13. Mr Cottle's submissions sought to bring into this area a greater degree of elaboration than in my view is appropriate. I would avoid specific aide-memoires or checklists. Hickinbottom J's proposition (iii) is not, and does not purport to be, a complete statement of what may be relevant to the evaluation of a child's best interests in a particular case, but as a broad statement of the likely position in the general run of planning decisions it seems to me to be unobjectionable. It leaves open for consideration any factor that is relevant to the well-being of a child in the circumstances of a particular case.

14. Mr Cottle also sought to bring into play section 11 of the Children Act 2004 and the statutory guidance issued in relation to it. By subsection (2) of section 11, each person and body to whom the section applies must make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children; and by subsection (4), each such person and body must in

discharging their duty under the section have regard to any guidance given to them for the purpose by the Secretary of State. It is common ground, however, that the section does not apply to the Secretary of State in relation to his planning functions and that it cannot therefore have any direct application in this case, though it does apply to local authorities in relation to the exercise of their functions generally (see subsection (1)). I do not think that section 11 would add materially to the analysis in any event. It was one of the provisions of national law taken into account in *ZH (Tanzania)* in discussing the importance of the best interests of the child in the application of article 8 (see [23], per Lady Hale). The statutory guidance under section 11 underlines the breadth of the general requirement to safeguard and promote the welfare of children (it refers in paragraph 2.8 to protection from maltreatment, prevention of impairment of health of development, ensuring that children are growing up in circumstances consistent with the provision of safe and effective care, and enabling them to have optimum life chances and to enter adulthood successfully), but it contains nothing specific in relation to planning functions.

15. A further point raised by Mr Cottle concerns the ascertainment of the child's own wishes. Article 12 of the UNCRC states that a child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body; and I have referred already to Mr Cottle's reliance on the factors in section 1 of the Children Act 1989, which include "the ascertainable wishes and feelings of the child concerned ...". It is highly unlikely that a planning decision-maker (or, as here, an inspector appointed to hold a public inquiry and make recommendations to the Secretary of State) will need to hear directly from any children affected by the decision. The child's wishes, and matters relating to the child's best interests generally, will normally be conveyed sufficiently through evidence from other sources, including social enquiry reports and the evidence of parents or carers.

16. Decision-makers must of course be equipped with sufficient evidence on which to make a proper assessment of the child's best interests. At least in a case where the applicant is professionally represented, however, they are entitled to assume that the relevant evidence has been placed before them unless something shows the need for further investigation. If it is thought that the issue has not been adequately addressed by the parties they can be invited to give further consideration to it, for example by the letter sent out by the inspector with questions for the parties before a public inquiry. But as Hickinbottom J said at [58] of *Stevens*, disagreeing to this extent with the observations of HHJ Thornton QC in *Sedgemoor District Council v Hughes* [2012] EWHC 1997 (QB), it will not usually be necessary for the decision-maker to make their own enquiries as to evidence that might support the child's best interests.

17. The discussion of how children's best interests are to be taken into account in planning decisions gains no assistance from national planning guidance. For example, the guidance directly relevant to this case, namely *Planning policy for traveller sites*, issued by the Department for Communities and Local Government in March 2012, does not refer to children's best interests in the (non-exhaustive) list of issues that local planning authorities should consider when considering planning applications for traveller sites. The guidance was issued before the Secretary of State's concession that the principle in *ZH (Tanzania)* and *H(H)* applies in the planning context, and it plainly needs revision to take account of the point. The

Secretary of State may also wish to consider the provision of guidance to inspectors on the issue, including the possible inclusion of reference to children's best interests in the letters sent out to the parties in advance of a public inquiry.

18. In the present case, as I have said, the inspector's report and the Secretary of State's decision letter also pre-dated the recent planning case-law on the subject, and the arguments and evidence were not addressed in terms to the best interests of the children on the site. I turn to consider whether, in substance, the decision nevertheless took proper account of their best interests.

Whether due consideration was given to the best interest of the children in this case

The inspector's report

19. In order to understand the balancing exercise carried out by the inspector, it is necessary to refer first, though briefly, to his conclusions as to the harm resulting from the development. He found that (i) the development resulted in a significant and substantial adverse impact on the landscape and a significant and substantial impact on visual amenity, and that this harm could not be overcome by effective landscaping measures within a reasonable period of time; (ii) a residential caravan site of this scale did not respect the small scale of Hardhorn village; and (iii) the development would result in material harm to highway safety. Other potentially adverse matters considered by him were found to be of little or no weight. They included the problem of criminal and anti-social behaviour related to the appeal site.

20. In a detailed examination of the need for and provision of sites for gypsies and travellers, he referred to the lack of an identified need for sites in the Fylde Borough but found that the evidence of need in the wider area was a significant material consideration weighing in the appellants' favour.

21. The inspector then turned to consider the accommodation needs and personal circumstances of the occupants of the appeal site:

> "*The accommodation needs of the occupants of the site and the availability of alternative sites*
>
> 118. The site is occupied by 78 people, including 39 children. With the exception of two Scottish Travellers, they are all Irish Travellers. Irish Travellers are a distinct ethnic and cultural group with a long history of travelling around Britain and Ireland in large groups. Mrs Heine's evidence summarises (at paragraph 6.10) the results of a study of Irish Travellers. It refers to problems of disadvantage and marginalisation, high levels of discrimination, harassment, a lack of sites and insecure, unhealthy living conditions. Irish Travellers are less likely to have a settled base than many Romany Gypsies.
>
> 119. Irish Travellers in general and this group in particular attach great importance to travelling and living together as an extended family. This group has been unable to do so until now because no site has been available. They comprise four

> closely related family groups and have led a highly nomadic life, never living in houses. They have travelled extensively, mostly in the north of England and particularly in the area between Stockport in the south and Blackpool and Fleetwood in the north. They have lived on the roadside or on other unauthorised sites, including land in Blackpool, Fylde and Wyre districts. They have frequently been moved on by the police, often at short notice. Their need is for a site of sufficient size to accommodate the group in order to allow easy access to basic sanitary facilities and to provide a settled base from which to travel for work purposes and allow better access to health, education and other services.
>
> ...
>
> 121. There are no alternative sites realistically available within Fylde, either for the group as a whole or for its component families. Nor has the Council suggested that sites are available in the wider surrounding area. ... Their need for accommodation and the lack of suitable realistically available alternative sites weigh in favour of the development.
>
> *The personal circumstances of the occupants of the site*
>
> 122. A roadside existence does not preclude all access to education. Nevertheless, it is very likely that if the travellers were obliged to leave the appeal site with no alternative site to go to there would be serious disruption to the education of the 22 children currently attending school. It is also likely that the education of those on school waiting lists would be disrupted. Mrs Hartley has no medical qualifications but her work requires close liaison with health professionals. Her evidence on medical matters is detailed and credible. A roadside existence would make access to health care considerably more difficult, with the potential for a harmful effect on the health of some members of the group, including those with significant existing medical conditions."

22. He went on to note in paragraph 123 that sustainability was enhanced by the benefits of a settled site in terms of access to health and education, and avoidance of long-distance travelling and environmental damage associated with unauthorised encampments.

23. Turning to the overall balance in respect of permanent or temporary permission, he considered that substantial weight should be given to the harm to the landscape and the harm to visual amenity; moderate weight to the failure of the development to respect the scale of the nearest settled community; and considerable weight to the harm to road safety. On the other hand, the unmet need for sites in the wider area was worthy of considerable weight, and there was also considerable uncertainty as to when and how that wider need would be addressed and met. There were no available

and suitable alternative sites for this large group of travellers either in Fylde or in the wider area. Further:

> "... They have a strong personal need for a settled base from which to access work, education, medical and other services and this site is in a reasonable sustainable location. Eviction from this site would probably lead to a roadside existence and that would be likely to adversely affect those on the site with significant medical conditions and the children's access to education. Reversion to a roadside existence could also have adverse environmental and other impacts elsewhere. These are also considerations worthy of substantial weight in the appellants' favour."

Nevertheless, having particular regard to the effect on the landscape, visual amenity and highway safety, he considered that the overall balance did not justify the granting of permanent planning permission for the development.

24. He then turned to consider whether temporary planning permission should be granted. He referred to guidance that a temporary permission may be justified where it is expected that the planning circumstances will change at the end of the period of temporary permission. But he found that in this case it was "not reasonably clear that planning circumstances would change at the end of a defined period leading to a reasonable likelihood of an alternative site being available". He said that a temporary permission would limit the harm caused by the development by limiting its duration, and would avoid the prospect of the appellants having to leave the site in the near future with no alternative site to go to. However, having regard to what he had already said and to the nature and extent of the harm to the landscape, visual amenity and highway safety, he did not consider that a temporary permission could be justified even if substantial weight were given to unmet need.

25. He dealt next with the time for compliance with the enforcement notice, concluding that it should be extended to 12 months.

26. There followed a section of the report headed "Human Rights". The inspector referred first to the need to take rights under article 8 into consideration. He stated that the likelihood that, if the appeals were dismissed, the families would be required to vacate their homes without any certainty of suitable alternative accommodation meant that there would be an interference with their homes and with their private and family lives. He appreciated the difficulties they would face without an authorised site in pursuing their traditional way of life. He continued:

> "135. This interference with the rights of the appellants and their families must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8. With regard to both permanent and temporary permissions, the harm which would continue to be caused by the development, particularly in terms of the protection of the environment and safety, is considerable. Taking into account all the material considerations, including the appellants' personal circumstances, I am satisfied that this legitimate aim can only

> be safeguarded by the dismissal of these appeals combined with the extension of the period for compliance with the requirements of the enforcement notice to which I refer above .... The protection of the public interest cannot be achieved by means which are less interfering of the appellants' rights. Such a decision would therefore be proportionate and necessary in the circumstances and hence would not result in a violation of the appellants' rights under Article 8 of the European Convention on Human Rights."

27. The inspector's report went on to consider points raised under articles 6 and 14 of the European Convention on Human Rights.

The decision letter

28. The decision letter was addressed to the appellants' planning consultant, Mrs Heine. It tracked the inspector's report. The Secretary of State agreed with the inspector's principal conclusions on harm caused by the development, though he considered that the incidents of criminal and anti-social behaviour attracted somewhat greater weight than suggested by the inspector. Like the inspector, he concluded that the evidence of need for sites for gypsies and travellers in the wider area was a significant material consideration weighing in the appellants' favour. The decision letter continued:

> "<u>The accommodation needs of the occupants of the site and the availability of alternative sites</u>
>
> 19. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR118-121, with regard to the accommodation needs of the occupants of the site and the availability of alternative sites. He agrees that there are no alternative sites realistically available within Fylde, whether for the group as a whole or for its component families, and he notes that the Council did not suggest that sites are available in the wider surrounding area (IR121). He further agrees that the need of the appellants for accommodation and the lack of suitable and realistically available alternative sites weighs in favour of the development (IR121).
>
> <u>The personal circumstances of the occupants of the site</u>
>
> 20. The Secretary of State has given careful consideration to the evidence submitted on personal circumstances, including your proof of evidence (dated January 2011) and the written health assessment from Nicola Hartley of 'Making Space' (dated December 2010). He agrees with the Inspector that, if the travellers were obliged to leave the site with no alternative site to go to, there would be serious disruption to the education of the children currently attending school (IR122). The Secretary of State is satisfied that the evidence in this case justifies attributing significant weight to continuity of education. The Secretary of State shares the Inspector's view

> that a roadside existence would make access to health care considerable more difficult, with the potential for a harmful effect on the health of some members of the group, including those with significant existing medical conditions (IR122). He attributes moderate weight to the health needs of the site occupants."

29. The reference in that paragraph to specific consideration of the evidence is of some significance. The proof of evidence of Mrs Heine contained lengthy passages relating to "the personal needs of the site occupants to be settled" (referring *inter alia* to the importance attached by them to the extended family, to the need to live and travel together as a group, and to the distress and disruption caused by roadside camping), to "the education needs of the children" (including the numbers at school and the benefits of schooling) and to "the health needs of site occupants" (with a cross-reference to the detail in Ms Hartley's health assessment). Ms Hartley's assessment, in turn, referred to the benefits of access to consistent healthcare, education and local services and amenities through living on the appeal site, and expressed concern about the physical and mental wellbeing of the families if they were required to leave the site. It gave specific, anonymised information about the health problems of a number of families on the site.

30. To return to the decision letter, the Secretary of State went on to express agreement with the inspector's conclusions on sustainability, before turning to the overall balance. As to the balance, the decision letter stated that the Secretary of State had given very careful consideration to the inspector's reasoning and conclusions. He agreed with the inspector as to the weight to be given to the various elements of harm resulting from the development. The decision letter continued:

> "24. With regard to the matters put forward in support of the appeals, the Secretary of State has concluded that unmet need is a significant material consideration weighing in the appellants' favour .... He has also concluded that the accommodation needs of the site occupants and the availability of alternative sites weighs in favour of the development (paragraph 19 above). The Secretary of State has attributed significant weight to continuity of education and moderate weight to the occupants' health needs (paragraph 20 above). These matters, and the avoidance of potential adverse impacts which may arise if the appellants were to take up a roadside existence, are all considerations which the Secretary of State weighs in support of the appeal scheme."

31. The decision letter stated that having carefully balanced those considerations, the Secretary of State concluded that the overall balance did not justify the granting of permanent planning permission. In relation to temporary permission, he took the view, for the reasons given by the inspector, that it was not reasonably clear that planning circumstances in Fylde Borough would change for the occupants of the site at the end of a defined period. However, for the avoidance of doubt, he had considered the appellants' contention that a five year temporary permission should be considered. He agreed with the inspector that a temporary permission would limit the harm caused by the development by limiting its duration, and would also avoid the

prospect of the appellants having to leave the site in the near future with no alternative site to go to. However, having regard to those matters and to the nature and extent of the harm to the landscape, visual amenity and highway safety, he agreed with the inspector that a temporary permission could not be justified and that the planning balance would not alter even if substantial weight were given to unmet need.

32. Under the heading "Human Rights", the decision letter stated:

> "28. The Secretary of State has given careful consideration to the Inspector's reasoning and conclusions at IR134-139 with regard to the site occupants' rights under Articles 6, 8 and 14 of the European Convention on Human Rights. For the reason given by the Inspector, he agrees that dismissal of the appeals would be an interference with the occupants' homes and with their private and family lives (IR134). However, such interference must be balanced against the wider public interest and, like the Inspector, he is satisfied that the legitimate aim of protecting the environment and safety can only be safeguarded by the dismissal of these appeals combined with the extension of the period for compliance with the requirements of the enforcement notice (IR135). He agrees with the Inspector that such a decision would be proportionate and necessary in the circumstances and hence would not result in a violation of the appellants' rights under Article 8 of the European Convention on Human Rights (IR135)."

33. The decision letter then considered articles 6 and 14, and the proposed conditions, before setting out "Overall Conclusions", as follows:

> "31. The Secretary of State considers, overall, that the appeal development is not in accordance with the development plan as it would cause harm to the landscape character of the area, visual amenity and highway safety. He has gone on to consider whether there are any material considerations which would outweigh this conflict. He has taken into account the factors that weigh in favour of the appeals which include the unmet need for sites in the wider area, the lack of available and suitable alternative sites, the strong personal need of the appellants for a settled base and the likely adverse effects on the appellants of a reversion to a roadside existence. However, he considers that these factors do not outweigh the conflict with the development plan."

The appellant's submissions

34. Mr Cottle made clear in his oral submissions that the appeal to this court was limited to the refusal of *temporary* planning permission. His case was that the decision was legally flawed and that there existed a realistic possibility that temporary permission would have been granted if there had been a lawful assessment under article 8, taking the best interests of the children properly into account.

35. He submitted that no consideration of the best interests of the 39 children on the site was in fact sought or undertaken. The Secretary of State simply failed to ask the right questions. The exercise undertaken was along the traditional lines illustrated by *Basildon District Council v Secretary of State for the Environment, Transport and the Regions* [2001] JPL 1184, at [33], taking into account the personal circumstances of the traveller families as material considerations. It did not identify all the factors relevant to an assessment of the children's best interests or take those best interests into account as a primary consideration.

36. He submitted further that the article 8 balancing exercise was undertaken at too late stage, after the overall decision had already been made not to grant planning permission. Article 8 should normally be considered as an integral part of the decision-maker's approach to material considerations and not in effect as a footnote: see *Lough v First Secretary of State* [2004] EWCA Civ 905, [2004] 1 WLR 2557, at [48].

37. An alternative submission was that there was a deficiency in the reasons given for the refusal of temporary planning permission, in that the decision letter did not make clear that the decision was informed by a correct understanding of the content or legal importance of the children's best interests.

Discussion

38. I do not accept that there was a failure to consider article 8 as an integral part of the decision-making process. All the matters relevant to article 8 were considered in detail in the course of the reasoning that led to the view that neither permanent nor temporary planning permission was justified. The view was then taken, with due regard to those matters, that such a refusal would be a proportionate interference with the article 8 rights of the occupiers of the site. The section on article 8 was not a footnote. It came towards the end of the decision letter but built on what had come before, and it preceded the overall conclusion that planning permission should be refused.

39. Equally, there is no substance to the reasons challenge. It is clear in particular that the decision in relation to temporary permission factored in all the points already considered in relation to permanent permission, as well as taking into account the specific additional considerations relevant to the question of temporary permission. Whether the best interests of the children were taken properly into account in the overall exercise is a question of substance, to be answered by reference to the detailed reasoning of the decision letter as a whole (including the passages of the inspector's report to which it refers). That reasoning is sufficiently clear to enable the question to be answered one way or the other. The appeal cannot succeed on the basis of a deficiency in the reasons given.

40. Judge Pelling found that the children's best interests had been taken properly into account:

> "26. In my judgment, once it is accepted that the question is one of substance not form, and once it is accepted that the decision letter and Inspector's report have to be read together, the claimant's submission that the decision maker failed to treat

the best interests of the children as a primary consideration cannot be maintained. The personal circumstances and accommodation needs of the occupants of the site necessarily included the children who lived at the site, and that issue was expressly identified by the Inspector as being two of the main considerations relevant to the appeal – see the report at paragraph 83. The Inspector identified expressly that there were 39 children who lived at the site – see paragraph 118 of the report. He referred in terms to the problems of disadvantage and marginalisation, and insecure and unhealthy living conditions – see paragraph 118 of the report. He acknowledged that the claimants had frequently been moved on by the police, often at short notice – see again paragraph 118 of the report [in fact paragraph 119] – and that the claimants, and, therefore, by necessary implication, the children, had a need for a site with easy access to sanitary facilities and which provided a settled base allowing better access to health and education. This latter point was necessarily a reference specifically to the needs of the children who lived at the site.

27. At paragraph 122 the Inspector acknowledged the serious adverse effect on the education needs of the children on site and the deleterious effect on the health of the claimants, and therefore their children, of not having homes on a settled site .... The Secretary of State's approach was to attribute 'significant weight' to the education issue and 'moderate weight' to the health issue.

28. ... I conclude that it is difficult to read either the report of the Inspector or the decision letter as treating the education and health issues as anything other than primary considerations. They were considered as such. In paragraph 24 of the decision letter, the first defendant said in terms that significant weight had been attached to the continuity of education, and moderate weight to the occupants' health needs, as supporting the scheme. The judgment of the first defendant was, however, that substantial weight was to be given to the harm to the landscape resulting from the development and the harm to visual amenity. He also attached considerable weight to the harm to road safety. This led the first defendant to conclude that the overall balance of these issues did not justify the grant of permission.

29. In my judgment, there was nothing wrong in substance with this approach. Neither the first defendant nor the Inspector treated those considerations that pointed towards a refusal as '... inherently more significant ...' than the interests of the children on site. Thus there was not a departure by the first defendant or the Inspector from the approach set out by Baroness Hale in *ZH* as a matter of substance. Rather, the

> approach of the decision-maker was that contemplated by Baroness Hale, namely that following a fact-sensitive analysis of all the material considerations relevant to the particular appeals under considerations, he had concluded that the negative factors identified outweighed cumulatively the best interests of the children, being primarily their education and health needs."

41. I have had doubts as to the correctness of Judge Pelling's conclusion. Nobody concerned in the case was thinking at the material time about the way in which the best interests of the children should be addressed; and whilst the question is one of substance, not form, I feel cautious about concluding that the decision-maker happened nonetheless to adopt the correct approach in substance. I have been troubled in particular about whether the best interests of the children can be said to have been identified as such and to have been kept at the forefront of the mind as a primary consideration in reaching the decision.

42. In the end, however, I have come down in agreement with Judge Pelling. I accept that in substance the Secretary of State was of the view that the best interests of the children coincided with those of their families as a whole and lay in remaining on the site, because of the general advantages of a settled home and because of the particular considerations of continuity of education and access to health care; but that the children's best interests and the other factors telling in favour of the grant of planning permission were outweighed by the harm that would be caused by such a grant. The allocations of weight to the various individual factors, and the carrying out of the overall balancing exercise, were consistent with treating the children's best interests as a primary consideration throughout: those best interests were not necessarily determinative and could properly be found to be outweighed by the identified harm. Importantly, I do not see how the analysis might realistically have been different in substance if the best interests of the children had been dealt with in express terms that would now be considered appropriate. In so far as it was suggested by Mr Cottle that there might have been other matters bearing on the children's best interests, I take the view that the inspector and the Secretary of State were entitled to proceed in this case by reference to the material put before them by the applicants for planning permission, and they evidently gave careful consideration to that material. Moreover, nothing concrete has been put forward in the subsequent legal challenge to show that there was any material omission in relation to the best interests of any of the children concerned.

43. It is difficult to see what basis there could have been in any event for the grant of *temporary* planning permission in this case. The inspector drew attention, at paragraph 129 of his report, to the guidance in paragraph 45 of Circular 01/2006 that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission, as for example where a local planning authority is preparing its site allocations DPD. The inspector made a finding at paragraph 130 that it was not reasonably clear that the planning circumstances would change so as to lead to a reasonable likelihood of an alternative site being available at the end of a defined period. There was, as it seems to me, no other feature of the case that might have justified the grant of temporary permission in the event of permanent permission

being refused. The arguments concerning the best interests of the children apply to the duration of their childhood and would apply also to the childhood of other children born in the future. If those arguments told in favour of the grant of planning permission, it would realistically have to be a permanent permission, not a permission limited in time to, say, three or five years. That, however, was not the basis on which the case was pursued in this court.

Conclusion

44. For those reasons I would dismiss the appeals.

Lord Justice Floyd :

45. I agree.

Sir David Keene :

46. I also agree.

10.2.4. Moore v SSCLG & London Borough of Bromley (2013)

Neutral Citation Number: [2013] EWCA Civ 1194

Case No: C1/2012/3236

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
Mrs Justice Cox
[2012] EWHC 3192 (Admiu)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/10/2013

Before :

LORD JUSTICE RICHARDS
LORD JUSTICE FLOYD
and
MR JUSTICE SALES

- -

Between :

Charmaine Moore	**Claimant/ Respondent**
- and -	
(1) Secretary of State for Communities and Local Government **(2) London Borough of Bromley**	**Defendant/ Appellant**

- -
- -

Stephen Whale (instructed by **The Treasury Solicitor**) for the **Secretary of State**
Charles George QC and Stephen Cottle (instructed by **Community Law Partnership**) for the **Respondent**
The London Borough of Bromley did not appear on the appeal

Hearing date : 15 July 2013

- -

Approved Judgment

Lord Justice Richards :

1. This appeal relates to a site known as Archies Stables, situated in Green Belt countryside to the south of Cudham, near Sevenoaks, Kent. The claimant below (the respondent to the appeal) is a single parent who owns the site and lives on it in a mobile home with her three children, aged 14, 13 and 7. She and her family are Romany gypsy travellers. She applied for planning permission for change of use of the site to use as a "Gypsy and Traveller caravan site comprising 1 pitch accommodating one mobile home and one touring caravan". The application was refused by the local planning authority (the London Borough of Bromley) and, on appeal, by an inspector appointed by the Secretary of State. The claimant brought a challenge under s.288 of the Town and Country Planning Act 1990 against the inspector's decision. Cox J upheld the challenge in so far as it related to the refusal of temporary planning permission and quashed the inspector's decision. The Secretary of State now appeals against Cox J's order. The issues in the appeal are fact-specific rather than of wider importance.

The factual background

2. The background is set out at paras 6-18 of Cox J's judgment, from which I take the following.

3. Before she moved to the appeal site in July 2010, the claimant and her children had lived for some 12 years in a caravan situated on the front drive of a rented Housing Association property at Orpington. The house was used only as a day room and the family always slept in the caravan. The inspector accepted that the claimant clearly had "an aversion to living in bricks and mortar".

4. In May 2008 the claimant was granted conditional planning permission for a change of use of the appeal site from agricultural use to the keeping of a horse and the retention of a newly created access and hardstanding. Details of post and rail fencing were also subsequently approved. In late 2008 further planning permission was granted for a stable and storeroom, and for hardstanding for a horsebox and trailer parking. In 2009 planning permission was granted for a brick-built toilet building. A condition restrained the stationing or storage of a caravan on the site. In April 2010 planning permission for the stationing of a caravan on the site was refused, and in June 2010 planning permission for an additional storage building was refused.

5. In March 2010 the claimant was given notice by the Housing Association to remove her vehicles from the drive of the property at Orpington. Notwithstanding the absence of relevant planning permission, in July 2010 she and her children moved to the appeal site with her mobile home and touring caravan, and her tenancy with the Housing Association was terminated. Her evidence to the inspector, which was accepted, was that she could not afford to buy a site with planning permission. She had not applied to the council for a pitch on one of the two council-run sites in the borough, but as at the date of the hearing before the inspector they were found to be full and with waiting lists.

6. Immediately after moving onto the appeal site the claimant made the planning application which is the subject of the present proceedings. Further development has taken place on the site since then, without planning permission, including the

construction of a further area of hardstanding, the erection of close-boarded timber fencing and steel gates, and the erection of a timber shed and lamppost.

7. The planning application was refused in September 2010. In late 2010 the council commenced injunction proceedings, which were deferred pending the outcome of the claimant's appeal to the inspector (and thereafter the outcome of the challenge to the inspector's decision). It was not in dispute before Cox J that the council's application was for the immediate removal of the unauthorised development and thus the claimant's immediate eviction from the site.

The inspector's decision

8. The main issues before the inspector were (a) the effect of the development on (i) the openness of the Green Belt, (ii) the character and appearance of the Green Belt, (iii) highway safety in the vicinity of the appeal site; and (b) whether the harm to the Green Belt by reason of inappropriateness and any other harm was clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development. This approach reflected the relevant provisions of PPG2, accurately summarised at para 27 of the inspector's decision:

> "Paragraph 3.1 of PPG2 sets out the general presumption against inappropriate development in the Green Belt and says that such developments should not be approved, except in very special circumstances. Paragraph 3.2 says that inappropriate development is, by definition, harmful to the Green Belt and that it is for the appellant to show why permission should be granted. It further says that very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations."

9. The inspector's detailed findings in respect of harm are set out in Cox J's judgment. For present purposes it suffices to set out the inspector's own summary, at para 28 of his decision:

> "28. There is no dispute that there is harm arising from inappropriateness which attracts substantial weight. In addition there is some harm to the openness of the Green Belt. There is also harm to the appearance of the area, although this is localised and it is probable that this harm could be reduced, in time, with the implementation of a suitable landscaping scheme and the removal of some of the unauthorised development. However, further analysis of the access requirements may result in the loss of some of the frontage planting. All told, however, the effect of the development on the Green Belt and the appearance of the area amount to a considerable level of harm."

10. The "other considerations" relied on cumulatively by the claimant as clearly outweighing the harm were the need for sites for gypsies and travellers in the area; the individual needs of the claimant and her family; the lack of suitable alternative sites

that were both available and affordable; the likely outcome of refusing planning permission, including human rights considerations; and personal considerations including health and education. The inspector's detailed findings in respect of those matters are again set out in Cox J's judgment. In short, the inspector found that there was some immediate need for sites in the borough but that the figures did not weigh heavily in favour of the claimant; and that the circumstances surrounding the claimant's departure from her Housing Association property were such that the current lack of suitable accommodation carried only limited weight. He referred to the fact that the claimant suffered from "joint laxity" for which she was on strong painkillers and anti-inflammatories; she was on anti-depressants for depression and anxiety; her doctor had written that moving to a caravan in a field would have a positive effect on her mental health and her joints; and moving to a roadside existence would be harmful to her health. He said that her health needs carried some weight. He referred to the fact that two of the children attended school (and one of them saw a specialist dyslexia teacher), whilst the third received home education. He said that a settled education was a benefit and carried some limited weight.

11. The inspector went on to consider whether those other considerations clearly outweighed the harm he had identified:

> "29. Against this harm it is necessary to weigh the other considerations advanced by the appellant. In particular there appears to be an immediate need for additional Gypsy and Traveller sites, although the exact level of such need is not known. The need arising in the Borough, 19 pitches by 2017, as identified in the Panel Report is significantly lower than the agreed level of need in other recent appeals in the Borough. The caravan count figure for non-tolerated caravans in January 2010 was low. Notwithstanding the absence of an exact known level of immediate need, some weight must be attached to the unmet need. It is not disputed that there are no suitable alternative sites in the area that are affordable and available; there is no evidence to show that any will become available in the foreseeable future. There is no 5-year supply of deliverable sites and this weighs in favour of the development.
>
> 30. I give considerable weight to the probability that a refusal of permission will result in the appellant having to leave the site. An injunction has been applied for by the Council. However, the appellant has not applied to the Council for a pitch on a Council-run site and it may be that the Council would not seek her eviction from the appeal site before a suitable pitch became available. Her failure to apply for a pitch means that this possible source of alternative accommodation has not been explored.
>
> 31. Due to her proven inability to settle in a house, and the fact that she has voluntarily given up the tenancy of her Housing Association accommodation, means that it is probable she could not settle into bricks and mortar. It is possible, therefore, that a refusal of permission may result in the appellant resorting

> to roadside camping. This would result in serious harm to the quality of her life and to that of her children and it could adversely impact upon her health and on the children's education. As most of the Borough is either urban or in the Green Belt, roadside camping would be likely to be equally harmful to the Green Belt and potentially more harmful to the countryside. However, there is no certainty that refusal of planning permission would result in her having to resort to roadside camping.
>
> 32. Nevertheless, the appellant and her children could be evicted from this site if this appeal fails. This would be likely to result in the loss of their home and result in a serious interference with their rights under Article 8 of the *European Convention on Human Rights*. However, these are qualified rights and so there needs to be a balance between the rights of the appellant and her children and those of the wider community. In this case the interference would be due to pursuing the legitimate aim of protecting the environment.
>
> 33. The protection of the Green Belt is accorded great importance in national and local policy; it is reiterated in emerging policy. ODPM Circular 01/2006 supports a plan-led process of the identification and allocation of sites and also reaffirms the policy advice in PPG2. While the Council no longer has a target date for the production of a site allocations DPD the plan-led process is nonetheless on-going as evidenced by the *Draft Replacement London Plan*. I conclude that the harm by reason of inappropriateness, and the other identified harm, is not clearly outweighed by the other considerations."

12. That was the reasoning that led the inspector to refuse permanent planning permission. He went on immediately to consider the question of temporary planning permission, as follows:

> "34. Paragraphs 45 and 46 of ODPM Circular 01/2006 set out the transitional arrangements for considering planning applications in circumstances where sites have not yet been secured through the development plan process. It identifies how this relates back to paragraphs 108-113 of Circular 11/95 *The Use of Conditions in Planning Permissions*. In this case there is a limited level of unmet need for sites. There are no alternative suitable sites that are available and affordable. The plan-led process may result in sites becoming available in 2014. In these circumstances advice in the Circular is that substantial weight should be given to the unmet need in considering whether a temporary permission is justified.
>
> 35. There is therefore a change in the balance in that substantial weight must now be attached to the unmet need. In addition, there would be reduced harm to the Green Belt due to

> that harm being for a limited period. However, in view of the amount of harm and all the other circumstances identified above, I do not consider that the balance would be tipped sufficiently for the material considerations to clearly outweigh the harm. In such circumstances temporary planning permission would not be appropriate."

The judgment of Cox J

13. Cox J found that the inspector's refusal of temporary planning permission was unlawful. Her reasoning was as follows (at paras 64 ff). She pointed out that the substantial weight attaching to the harm arising from inappropriate development in the Green Belt fell to be reduced in the case of a temporary permission, because it would be limited in time. Further, the advice in Circular 01/2006 meant that substantial weight was now to be attached to the level of unmet need in the area: she cited paragraphs 45-46 of the Circular, to which the inspector had referred, and noted that they seemed to give effect to one of the main intentions of the Circular as identified at paragraph 12, namely "to help to avoid gypsies and travellers becoming homeless through eviction from unauthorised sites without an alternative site to move to". She then summarised the inspector's findings in relation to the other material considerations, including the findings relating to the claimant's health and the children's education, the fact that refusal of permission would probably result in the claimant and her children having to leave the site, and the absence of evidence that there were any alternative sites that were suitable, available and affordable.

14. Having repeated that the nature of the balancing exercise changed when the inspector was considering a temporary rather than a permanent permission, she continued:

> "73. … Further, in this case, the vulnerable position of Gypsies generally and the need for special consideration to be given to their needs, to which Carnwath LJ referred in *Wychavon* [*Wychavon District Council v Secretary of State for Communities and Local Government* [2008] EWCA Civ 692, [2009] PTSR 19], had a particular focus when considering temporary permission for this Claimant. In addition to her status as a single Gypsy mother with three young children, she was a person with compelling health needs, for whom the consequences of refusal of a temporary planning permission were potentially extremely serious.
>
> 74. In circumstances where no alternative sites were available, or likely to become available in the foreseeable future; where injunction proceedings for immediate eviction had already been started; where the inspector found that the Claimant and her children would probably have to leave the site if permission were refused; where there was a recognised risk that the Claimant and her children, once evicted, would have to resort to roadside existence, which would harm the Claimant's health and cause serious harm to the quality of life of the Claimant and her children; and where there was no evidence that the Claimant, once evicted, would in fact be offered a pitch on one

> of the Council-run sites or indeed anywhere else in the area, the decision that the other material considerations in this case were not sufficient to clearly outweigh the identified harm and to justify the grant of temporary permission was, in my judgment, irrational.
>
> 75. The inspector's tentative findings, that there was no certainty that the Claimant would resort to a roadside existence, and that the Council may not evict the Claimant before a pitch becomes available, do not save the decision to refuse a temporary permission, when considered in the context of the other findings referred to above. The probability that the Claimant and her children would have to leave the site; the lack of any finding as to where they would go once evicted; and, in particular, the medical opinion as to the adverse effects of roadside existence upon this Claimant's health, the adverse effects upon the continuity of her children's education and upon the quality of life for them all cannot in my judgment be said to constitute other than very special circumstances."

15. She expressed agreement with Ouseley J in *R (Sheridan) v Basildon District Council* [2011] EWHC 2938 (Admin), para 129, that for the purposes of article 8(2) there was a duty to have regard to the best interests of the children as a primary consideration, and that the crucial factors for consideration were health and education. She said that in the present case the inspector appeared to recognise these as important factors. She accepted the submission of Mr Cottle, counsel for the claimant, that the question whether or not, on eviction from the site, there was likely to be suitable alternative accommodation available for the family went directly to the balancing exercise required under article 8 when considering the application for a temporary permission. She continued:

> "78. I accept [Mr Cottle's] submission that, in this case, it was incumbent on the inspector, for the purposes of that balancing exercise, to make clear findings as to what would happen in this case once the Claimant was evicted and, in particular, whether it was more likely than not that the Claimant and her children would have to move to a roadside existence or whether, alternatively, they would be offered accommodation on a suitable, alternative site.
>
> 79. I do not accept Mr Whale's submission that such a finding was not necessary. In my view this issue went to the heart of the balancing exercise required in this case. Nor do I accept his submission that the inspector was not asked expressly to make such a finding and cannot now be criticised for not making it. The Claimant's case, as expressed in the witness statement she submitted at the hearing, was that the appeal site was her only home and that she and her children had no lawful site where they could park their caravans and live. The whole basis of her case in support of a temporary permission was that she had nowhere else to go.

> 80. Given the importance of these factors and their relevance to the necessary, balancing exercise I cannot accept Mr Whale's submission that the inspector's findings on these points would have made no difference to his decision. Nor does the inspector's finding that roadside camping would be likely to be equally harmful to the Green Belt answer the point, without clear findings as to all the relevant circumstances to be weighed in the balance.
>
> 81. For all these reasons I consider that the inspector failed to make relevant findings, as required, and that his decision to refuse a temporary planning permission to this Claimant was irrational and cannot stand. Alternatively, I consider that his decision on the issue of temporary permission was inadequately reasoned and that, for that reason in addition, his decision cannot stand.

The Secretary of State's case on the appeal

16. There are three grounds of appeal: (1) Cox J was wrong to find that the inspector's decision not to grant temporary planning permission was irrational; (2) she was wrong to find that it was necessary for the inspector to make a finding as to what would happen once the claimant was evicted, and that such a finding might have made a difference to the decision; and (3) she was wrong to find that the inspector's decision on temporary planning permission was inadequately reasoned and that this was a sufficient basis for quashing the decision.

17. In his submissions on ground 1, Mr Whale emphasised that a *Wednesbury* challenge is not to be used as a cloak for a rerun of the arguments on the planning merits, that the *Wednebsury* threshold is a difficult obstacle for an applicant to surmount, and that an applicant alleging that an inspector has reached a *Wednesbury* unreasonable conclusion on matters of planning judgment faces a particularly daunting task (see *R (Newsmith Stainless Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, per Sullivan LJ at paras 6-8). The inspector did not take irrelevant matters into account or fail to take relevant matters into account. The factors on the "debit" side and "credit" side considered by him in the context of permanent planning permission were carried over into his consideration of temporary planning permission, with an express recognition that the balancing exercise changed in the context of temporary permission. The conclusion he reached was a matter of planning judgment and was reasonably open to him: it cannot be said that no reasonable inspector would have refused temporary planning permission. In deciding to the contrary, Cox J entered impermissibly into the area of judgment on the planning merits.

18. In relation to ground 2, Mr Whale submitted that the inspector was entitled in the circumstances to find that resort to roadside camping was a "possibility" if planning permission was refused, without going further. It was probable that if permission was refused the claimant would have to leave the site, and probable that she could not settle into bricks and mortar; but, as the inspector said at paragraph 30, she had not applied to the council for a pitch on a council-run site and it might be that the council would not seek her eviction from the appeal site before a suitable pitch became

available. The absence of necessity for the inspector to go further was reinforced by the fact that the main issues identified at paragraph 5 of his decision did not include the *likelihood* of the claimant having to resort to roadside camping.

19. Mr Whale submitted in any event that a clear finding that the effect of refusal of permission was likely to be roadside camping would have made no difference to the decision. The inspector took into account the adverse effects of roadside camping on the family and also the harm it would cause to the Green Belt and the countryside.

20. Mr Whale described ground 3 as parasitic upon grounds 1 and 2. He pointed to the limited basis on which Cox J found an inadequacy of reasons, and submitted that the inspector's reasoning met the test articulated in the well known passage from the judgment of Lord Brown in *South Bucks District Council v Porter (No.2)* [2004] 1 WLR 1953, at para 36. He submitted further that even if Cox J's conclusion on reasons was correct, it should not have led to the quashing of the inspector's decision, though he recognised that this was an exercise of judicial discretion with which this court would be reluctant to interfere.

Discussion

21. I do not accept that in reaching her conclusions Cox J strayed impermissibly into a judgment on the planning merits. She directed herself by reference to the relevant authorities, including *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 and *R (Newsmith Stainless Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, and it seems to me that she approached the *Wednesbury* challenge with due regard to the hurdle to be overcome by a claimant advancing such a challenge.

22. The question of temporary planning permission fell to be considered in the light of the guidance contained in Circular 01/2006. Paragraphs 45-46 of the Circular were directly in point:

> "45. … Where there is unmet need but no available alternative gypsy and traveller site provision in an area but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need, local planning authorities should give consideration to granting a temporary permission.
>
> 46. Such circumstances arise, for example, in a case where a local planning authority is preparing its site allocations DPD. In such circumstances, local planning authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified …."

The inspector cited those paragraphs and acknowledged that substantial weight had to be attached to the unmet needs when considering the question of temporary permission. Cox J was in my view right, however, to go further by spelling out the link between this and the Circular's stated intention of helping to avoid gypsies and travellers becoming homeless through eviction from unauthorised sites without an

alternative site to move to; and against that background, Cox J was right to scrutinise the inspector's reasoning with care.

23. I would attach particular importance, as did Mr George QC in his submissions on behalf of the claimant, to the judge's criticism of the inspector's failure to make any finding as to whether it was more likely than not that the claimant and her children would have to resort to roadside camping if temporary permission were refused. I agree with the judge that a finding on this issue went to the heart of the balancing exercise required and that it was not sufficient simply to treat it as "possible" or as "no certainty".

24. If the family was likely to face a roadside existence in the event of refusal of temporary permission, it would involve a far more serious interference with their article 8 rights, especially through the impact on health and education, than if they were likely to obtain alternative accommodation. Thus the issue went to the core of the article 8 analysis. Moreover, the "other material considerations" advanced by the claimant included "the likely outcome of refusing planning permission including human rights considerations" (para 17 of the inspector's decision), which underlined the need for a finding on likelihood.

25. The question whether the family was likely to resort to a roadside existence was also important in relation to the "harm" side of the balance. On the inspector's own finding, at para 31 of his decision, roadside camping would be likely to be equally harmful to the Green Belt and potentially more harmful to the countryside. Of course, the grant of temporary permission would still result in the harm identified by the inspector, and it may not be strictly accurate to describe that harm as being cancelled out or neutralised by the harm that would result from the refusal of temporary permission, but the overall balance would necessarily be affected if the harm resulting from the refusal of temporary permission would be equal to or greater than the harm resulting from the grant of such permission. The judge did not deal with the point in quite this way but it goes to support the conclusion she reached.

26. There was ample material before the inspector on which to make a finding as to the likelihood of roadside camping if temporary permission was refused. The point does not fall for decision, but I doubt whether on that material he could reasonably have reached any conclusion other than that roadside camping was a likelihood. The council's injunction application, although on hold pending the appeal to the inspector, was for the claimant's immediate eviction; and as the judge said at para 71(e) and (f) of her judgment, the council had adduced no evidence that there were any alternative sites or as to the circumstances in which pitches had been offered previously to those forced to move. It is difficult to see what realistic alternative the family had to a roadside existence.

27. In my judgment, it is far from inevitable that the inspector would have reached the same conclusion if he had made a finding on the likelihood of roadside camping and had followed through its implications in the respects considered above.

28. Accordingly, the judge was in my view correct to place the weight she did on this issue when reaching her conclusion on *Wednesbury* unreasonableness. More generally, her conclusion is one that in my view she was entitled to reach: I am not persuaded that the inspector's refusal of temporary planning permission was a

reasonable reflection of the factors he was required to take into account in that context.

29. That makes it unnecessary for me to consider her alternative finding that the inspector's decision was inadequately reasoned.

30. I should mention for completeness that Cox J's discussion of the duty to have regard to the best interests of the children as a primary consideration in the decision-making process (see paragraph 15 above) did not feature materially in the argument before us. The issue was left to one side, in the knowledge that the relevant principles were due to be examined in the case of *Collins v Secretary of State for Communities and Local Government*, which was listed for hearing at a later date and judgment in which has since been handed down (see [2013] EWCA Civ 1193).

Conclusion

31. For the reasons given, I would dismiss the appeal.

Lord Justice Floyd :

32. I agree.

Mr Justice Sales :

33. I also agree.

10.2.5. Turner v. SSCLG & EDC (2016)

Case No: C1/2015/3507

Neutral Citation Number: [2016] EWCA Civ 466
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT
MRS JUSTICE LANG DBE
[2015] EWHC 2788 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/05/2016

Before :

LADY JUSTICE ARDEN
LORD JUSTICE FLOYD
and
LORD JUSTICE SALES

- -

Between :

John Turner	**Appellant**
- and -	
(1) Secretary of State for Communities and Local Government	**Respondents**
(2) East Dorset Council	

- -
- -

Michael Rudd (instructed by **Hawksley's Solicitors**) for the **Appellant**
Richard Kimblin QC (instructed by **Government Legal Department)** for the **Respondent**
The 2nd Respondent did not appear and was not represented

Hearing dates : 4 May 2016

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Judgment

Lord Justice Sales:

1. This is an appeal from the judgment of Lang J in which she dismissed an application under section 288 of the Town and Country Planning Act 1990 to quash a decision of a Planning Inspector to refuse to grant planning permission for development of a plot of land on Barrack Road, West Parley, Ferndown, Dorset ("the site"). The site is located in the South East Dorset Green Belt. The appellant developer submits that the Inspector erred in his interpretation and application of para. 89 of the National Planning Policy Framework ("the NPPF") concerning the circumstances in which development on the Green Belt may not be regarded as inappropriate and in his approach to the concept of the "openness" of the Green Belt.

Factual background

2. Barrack Road is characterised by a mix of residential and commercial properties spasmodically placed along the road. The eastern side of the road where the site is located does not have a continuously built up frontage. The site is in open countryside, and not in an urban area or settlement.

3. There is a static single unit mobile home stationed on the site which is used for residential purposes. Adjacent to this is a substantial area of a commercial storage yard which is used for the storage of vehicles; the preparation, repair, valeting and sale of commercial vehicles and cars; the ancillary breaking and dismantling of up to eight vehicles per month; and the ancillary sale and storage of vehicle parts from a workshop on the site. A certificate of lawful existing use was granted in 2003 for the mobile home and lawful use has been established in respect of the storage yard in a planning appeal decision. We were told that the storage yard has capacity to park some 41 lorries as an established lawful use of the site.

4. The appellant's application for planning permission is for a proposal to replace the mobile home and storage yard with a three bedroom residential bungalow and associated residential curtilage. Another area of land adjacent to the site would be retained to continue the existing commercial enterprise. In his application, the appellant compared the proposed redevelopment with the existing lawful use of the land for the mobile home and 11 parked lorries in order to suggest that the volume of the proposed bungalow would be less than the volume of the mobile home and that many lorries and that, accordingly, the proposed redevelopment "would not have a greater impact on the openness of the Green Belt" than the existing lawful use of the site, with the result that it should not be regarded as inappropriate development in the Green Belt (para. 89 of the NPPF).

5. The local planning authority refused the application. The Inspector, Mr Philip Willmer, dismissed the appellant's appeal. He found that the proposed redevelopment was inappropriate development in the Green Belt, notwithstanding that it would replace the existing lawful use of the site, and that there were no "very special circumstances" (para. 87 of the NPPF) which would justify the grant of permission for the development. The judge dismissed the application to quash his decision.

The policy framework

6. This appeal turns on the application of the NPPF, and in particular para. 89. Section 9 of the NPPF is headed "Protecting Green Belt land". It starts at paras. 79-81 with a statement of some broad principles:

> "79. 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.
>
> 80. Green Belt serves five purposes:
>
> * To check the unrestricted sprawl of large built-up areas;
>
> * to prevent neighbouring towns merging into one another;
>
> * to assist in safeguarding the countryside from encroachment;
>
> * to preserve the setting and special character of historic towns; and
>
> * to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
>
> 81. Once Green Belts have been defined, local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land."

7. The provisions relating to inappropriate development are at paras. 87-90:

> "87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
>
> 88. 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, is clearly outweighed by other considerations.
>
> 89. A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:
>
> * buildings for agriculture and forestry;

> * provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;
>
> * the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
>
> * the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
>
> * limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or
>
> * limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
>
> 90. Certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These are:
>
> * mineral extraction;
>
> * engineering operations;
>
> * local transport infrastructure which can demonstrate a requirement for a Green Belt location;
>
> * the re-use of buildings provided that the buildings are of permanent and substantial construction; and
>
> * development brought forward under a Community Right to Build Order."

The Inspector's decision

8. An important part of the appellant's case before the Inspector was his contention that his application fell within the sixth bullet point in para. 89 of the NPPF, so that the proposed development by building the bungalow would not count as inappropriate development in the Green Belt. The Inspector dismissed this contention in paras. 8 to 15 of his decision. At para. 8 he set out the sixth bullet point and recorded the appellant's argument and at para. 9 he explained that the development would not constitute limited infilling. The issue therefore turned on the question of impact on the openness of the Green Belt. The Inspector dealt with this as follows:

“10. The appellant contends that if the development were to go ahead then, in addition to the loss of the volume of the mobile home, or potentially a larger replacement double unit, a further volume of some 372.9 cubic metres, equivalent to eleven commercial vehicles that he has demonstrated could be stored on the appeal site, might also be off set against the volume of the proposed dwelling, thereby limiting the new dwelling’s impact on the openness of the Green Belt.

11. Openness is essentially freedom from operational development and relates primarily to the quantum and extent of development and its physical effect on the appeal site. The Certificate of Lawful Existing Use conveys that the use of the land may be for a mobile home rather than a permanent dwelling. In this respect the mobile home may be replaced with another and I have no doubt, if planning permission is not granted for this development, that over time this may well occur. However, the Certificate of Lawful Existing Use is for the use of the land for the siting of a mobile home for residential purposes, which is distinct from the replacement of one dwelling with another.

12. In my view, therefore, no valid comparison can reasonably be made between the volume of moveable chattels such as caravans and vehicles on one hand, and permanent operational development such as a dwelling on the other. While the retention of the mobile home and vehicles, associated hardstandings etc., will inevitably have their effect on the openness of the Green Belt, this cannot properly be judged simply on measured volume which can vary at any time, unlike the new dwelling that would be a permanent feature. I am therefore not persuaded that the volume of the mobile home and the stored/displayed vehicles proposed to be removed should be off-set in terms of the development’s overall impact on openness.

13. Accordingly, while the replacement of the current single unit mobile home, or even a replacement double unit and vehicles, with the new dwelling might only result in a marginal or no increase in volume, these two things cannot be directly compared as proposed by the appellant.

14. I noted that existing commercial vehicles were parked on either side of the access road to the site during my site visit. However, as I saw, due to their limited height they do not close off longer views into the site. On the other hand the proposed bungalow, as illustrated, that would in any case be permanent with a dominating symmetrical front façade and high pitch roof, would in my view obstruct views into the site and appear as a dominant feature that would have a harmful impact on openness here.

> 15. For the reasons set out I consider that the proposed development would have a considerably greater impact on the openness of the Green Belt and the purpose of including land within it than the existing lawful use of the land. I therefore conclude that the proposal does not meet criterion six of the exceptions set out in paragraph 89 of the Framework and, therefore, would be inappropriate development, which by definition is harmful to the Green Belt. I give substantial weight to this harm."

9. It is this part of the Inspector's reasoning which is under challenge. (I should mention that although in paras. 11 and 12 of the decision the Inspector referred to "operational development" rather than simply "development", the judge correctly found that this was an immaterial slip and there is no appeal in that regard). Having found that the redevelopment was inappropriate development in the Green Belt, it is unsurprising that the Inspector found that there were not adequate grounds to justify the grant of planning permission.

The appeal: discussion

10. On the appellant's section 288 application the appellant had three grounds of challenge to the Inspector's decision, of which two are relevant on this appeal: (i) the Inspector failed to treat the existing development on the site as a relevant material factor to be taken into account in considering whether the sixth bullet point of para. 89 was applicable, and (ii) the Inspector wrongly conflated the concept of openness in relation to the Green Belt with the concept of visual impact. The judge rejected all the grounds of challenge and the appellant now appeals to this Court, relying again on these two grounds.

11. In his oral submissions, Mr Rudd developed the first ground somewhat. His submission was that the Inspector was wrong to say that no valid comparison could be made between the volume of moveable chattels (mobile home and lorries) on the site and a permanent structure in the form of the proposed bungalow; on the proper construction of the concept of "openness of the Green Belt" as used in the sixth bullet point in para. 89 of the NPPF the sole criterion of openness for the purpose of the comparison required by that bullet point was the volume of structures comprising the existing lawful use of a site compared with that of the structure proposed by way of redevelopment of that site ("the volumetric approach"); a comparison between the volume of existing development on the site in this case in the form of the mobile home and 11 lorries as against the volume of the proposed bungalow showed that there would be a lesser impact on the openness of the Green Belt if the existing development were replaced by the bungalow and the Inspector should so have concluded; and the Inspector erred by having regard to a wider range of considerations apart from the volume of development on the site (including the factor of visual impact) in para. 14 of the decision on the way to reaching his conclusion at para. 15. This last point overlaps with the second ground of challenge and it is appropriate to address both grounds together, as the judge did.

12. I do not accept these submissions by Mr Rudd. First, in so far as it is suggested that the Inspector did not address himself to the comparative exercise called for under the sixth bullet point in para. 89, the suggestion is incorrect. The Inspector set out that

bullet point and then proceeded to make an evaluative comparative assessment of the existing lawful use and the proposed redevelopment in paras. 10 to 15 of the decision.

13. The principal matter in issue is whether the Inspector adopted an improper approach to the question of openness of the Green Belt when he made that comparison. The question of the true interpretation of the NPPF is a matter for the court. In my judgment, the approach the Inspector adopted was correct and the judge was right so to hold.

14. The concept of "openness of the Green Belt" is not narrowly limited to the volumetric approach suggested by Mr Rudd. The word "openness" is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.

15. The question of visual impact is implicitly part of the concept of "openness of the Green Belt" as a matter of the natural meaning of the language used in para. 89 of the NPPF. I consider that this interpretation is also reinforced by the general guidance in paras. 79-81 of the NPPF, which introduce section 9 on the protection of Green Belt Land. There is an important visual dimension to checking "the unrestricted sprawl of large built-up areas" and the merging of neighbouring towns, as indeed the name "Green Belt" itself implies. Greenness is a visual quality: part of the idea of the Green Belt is that the eye and the spirit should be relieved from the prospect of unrelenting urban sprawl. Openness of aspect is a characteristic quality of the countryside, and "safeguarding the countryside from encroachment" includes preservation of that quality of openness. The preservation of "the setting … of historic towns" obviously refers in a material way to their visual setting, for instance when seen from a distance across open fields. Again, the reference in para. 81 to planning positively "to retain and enhance landscapes, visual amenity and biodiversity" in the Green Belt makes it clear that the visual dimension of the Green Belt is an important part of the point of designating land as Green Belt.

16. The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the concept of openness of the Green Belt has no visual dimension itself.

17. Mr Rudd relied upon a section of the judgment of Green J sitting at first instance in *R (Timmins) v Gedling Borough Council* [2014] EWHC 654 (Admin) at [67]-[78], in which the learned judge addressed the question of the relationship between openness of the Green Belt and visual impact. Green J referred to the judgment of Sullivan J in *R (Heath and Hampstead Society) v Camden LBC* [2007] EWHC 977 (Admin); [2007] 2 P&CR 19, which related to previous policy in relation to the Green Belt as set out in Planning Policy Guidance 2 ("PPG 2"), and drew from it the propositions

that "there is a clear conceptual distinction between openness and visual impact" and "it is therefore wrong *in principle* to arrive at a specific conclusion as to openness by reference to visual impact": para. [78] (Green J's emphasis). The case went on appeal, but this part of Green J's judgment was not in issue on the appeal: [2015] EWCA Civ 10; [2016] 1 All ER 895.

18. In my view, Green J went too far and erred in stating the propositions set out above. This section of his judgment should not be followed. There are three problems with it. First, with respect to Green J, I do not think that he focused sufficiently on the language of section 9 of the NPPF, read as part of the coherent and self-contained statement of national planning policy which the NPPF is intended to be. The learned judge does not consider the points made above. Secondly, through his reliance on the *Heath and Hampstead Society* case Green J has given excessive weight to the statement of planning policy in PPG 2 for the purposes of interpretation of the NPPF. He has not made proper allowance for the fact that PPG 2 is expressed in materially different terms from section 9 of the NPPF. Thirdly, I consider that the conclusion he has drawn is not in fact supported by the judgment of Sullivan J in the *Heath and Hampstead Society* case.

19. The general objective of PPG 2 was to make provision for the protection of Green Belts. Paragraph 3.2 stated that inappropriate development was, by definition, harmful to the Green Belt. Paragraph 3.6 stated:

> "Provided that it does not result in disproportionate additions over and above the size of the original building, the extension or alteration of dwellings is not inappropriate in Green Belts. The replacement of existing dwellings need not be inappropriate, proving the new dwelling is not materially larger than the dwelling it replaces …"

20. It was the application of this provision which was in issue in the *Heath and Hampstead Society* case. It can be seen that this provision broadly corresponds with the fourth bullet point in para. 89 of the NPPF and that it has a specific focus on the relative size of an existing building and of the proposed addition or replacement.

21. The NPPF was introduced in 2012 as a new, self-contained statement of national planning policy to replace the various policy guidance documents that had proliferated previously. The NPPF did not simply repeat what was in those documents. It set out national planning policy afresh in terms which are at various points materially different from what went before. This court gave guidance regarding the proper approach to the interpretation of the NPPF in the *Timmins* case at para. [24]. The NPPF should be interpreted objectively in accordance with the language used, read in its proper context. But the previous guidance – specifically in *Timmins*, as in this case and in *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386; [2015] 1 P & CR 36 to which the court in *Timmins* referred, the guidance on Green Belt policy in PPG 2 – remains relevant. In particular, since in promulgating the NPPF the Government made it clear that it strongly supported the Green Belt and did not intend to change the central policy that inappropriate development in the Green Belt should not be allowed, section 9 of the NPPF should not be read in such a way as to weaken protection for the Green Belt: see the *Redhill Aerodrome* case at [16] per Sullivan LJ, quoted in *Timmins* at [24].

22. The *Heath and Hampstead Society* case concerned a proposal to demolish an existing residential building on Metropolitan Open Land (which was subject to a policy giving it the same level of protection as the Green Belt) and replace it with a new dwelling. Sullivan J rejected the submission that the test in para. 3.6 was solely concerned with a mathematical comparison of relevant dimensions: [19]. However, he accepted the alternative submission that the exercise under para. 3.6 was primarily an objective one by reference to size, where which particular physical dimension was most relevant would depend on the circumstances of a particular case, albeit with floor space usually being an important criterion: [20]. It was not appropriate to substitute a test such as "providing the new dwelling is not more visually intrusive than the dwelling it replaces" for the test actually stated in para. 3.6, namely whether the new dwelling was materially larger or not: [20]. As Sullivan J said, "Paragraph 3.6 is concerned with the size of the replacement dwelling, not with its visual impact": [21]. In that regard, also at para. [21], he relied in addition on para. 3.15 of PPG 2 which made specific provision in relation to visual amenities in the Green Belt. Neither para. 3.6 of PPG 2 (with its specific focus on comparative size of the existing and replacement buildings) nor para. 3.15 of PPG 2 refer to the concept of the "openness of the Green Belt". They do not correspond with the text of the sixth bullet point in para. 89 of the NPPF, and section 9 of the NPPF contains no provision equivalent to para. 3.15 of PPG 2. It is therefore not appropriate to treat this part of the judgment in *Heath and Hampstead Society* as providing authoritative guidance on the interpretation of the sixth bullet point in para. 89 of the NPPF. At paras. [22] and [36]-[38] Sullivan J emphasised that the relevant issue in the case specifically concerned the application of para. 3.6 of PPG 2 and whether the proposed replacement house was materially larger than the existing house.

23. At para. [22] Sullivan J said, "The loss of openness (i.e. unbuilt on land) within the Green Belt or Metropolitan Open Land is of itself harmful to the underlying policy objective". Since the concept of the openness of the Green Belt has a spatial or physical aspect as well as a visual aspect, that statement is true in the context of the NPPF as well, provided it is not taken to mean that openness is *only* concerned with the spatial issue. Such an interpretation accords with the guidance on interpretation of the NPPF given by this court in the *Timmins* and *Redhill Aerodrome* cases, to the effect that the NPPF is to be interpreted as providing no less protection for the Green Belt than PPG 2. The case before Sullivan J was concerned with a proposed new, larger building which represented a spatial intrusion upon the openness of the Green Belt but which did not intrude visually on that openness, so he was not concerned to explain what might be the position under PPG 2 generally if there had been visual intrusion instead or as well.

24. Sullivan J gives a general reason for the importance of spatial intrusion at para. [37] of his judgment:

> "The planning officer's approach can be paraphrased as follows:
>
> > 'The footprint of the replacement dwelling will be twice as large as that of the existing dwelling, but the public will not be able to see very much of the increase.'

> It was the difficulty of establishing in many cases that a particular proposed development within the Green Belt would of itself cause 'demonstrable harm' that led to the clear statement of policy in para. 3.2 of PPG 2 that inappropriate development is, by definition, harmful to the Green Belt. The approach adopted in the officer's report runs the risk that Green Belt of Metropolitan Open Land will suffer the death of a thousand cuts. While it may not be possible to demonstrate harm by reason of visual intrusion as a result of an individual – possibly very modest – proposal, the cumulative effect of a number of such proposals, each very modest in itself, could be very damaging to the essential quality of openness of the Green Belt and Metropolitan Open Land."

25. This remains relevant guidance in relation to the concept of openness of the Green Belt in the NPPF. The same strict approach to protection of the Green Belt appears from para. 87 of the NPPF. The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there. But, as observed above, it does not follow that openness of the Green Belt has no visual dimension.

26. What is also significant in this paragraph of Sullivan J's judgment for present purposes is the last sentence, from which it appears that Sullivan J considered that a series of modest visual intrusions from new developments would be a way in which the essential quality of the openness of the Green Belt could be damaged, even if it could not be said of each such intrusion that it represented demonstrable harm to the openness of the Green Belt in itself. At any rate, Sullivan J does not say that the openness of the Green Belt has no visual dimension. Hence I think that Green J erred in *Timmins* in taking the *Heath and Hampstead Society* case to provide authority for the two propositions he sets out at para. [78] of his judgment, to which I have referred above.

27. Turning back to the Inspector's decision in the present case, there is no error of approach by the Inspector in his assessment of the issue of impact on the openness of the Green Belt. In paras. 11 to 13 the Inspector made a legitimate comparison of the existing position regarding use of the site with the proposed redevelopment. This was a matter of evaluative assessment for the Inspector in the context of making a planning judgment about relative impact on the openness of the Green Belt. His assessment cannot be said to be irrational. It was rational and legitimate for him to assess on the facts of this case that there is a difference between a permanent physical structure in the form of the proposed bungalow and a shifting body of lorries, which would come and go; and even following the narrow volumetric approach urged by the appellant the Inspector was entitled to make the assessment that the two types of use and their impact on the Green Belt could not in the context of this site be "directly compared as proposed by the appellant" (para. 13). The Inspector was also entitled to take into account the difference in the visual intrusion on the openness of the Green Belt as he did in para. 14.

Conclusion

28. For the reasons given above, I would dismiss this appeal.

Lord Justice Floyd:

29. I agree.

Lady Justice Arden DBE:

30. I also agree.

10.2.6. South Cambs v SSCLG & Brown & Inspectors decision (2008)

Neutral Citation Number: [2008] EWCA Civ 1010

Case No: C1/2007/2282/QBACF

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
(MR JUSTICE KEITH)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/09/2008

Before:

PRESIDENT OF THE FAMILY DIVISION
LORD JUSTICE SCOTT BAKER
and
SIR ROBIN AULD

- -

Between:

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL	**Appellant**
- and -	
SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	**First Respondent**
-and-	
ARCHIE BROWN	**Second Respondent**
-and-	
JULIE BROWN	**Third Respondent**

- -

(Transcript of the Handed Down Judgment of
WordWave International Limited
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190 Fleet Street, London EC4A 2AG
Tel No: 020 7404 1400, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

- -

Robert McCracken Q.C and Saira Kabir Sheikh (instructed by **Sharpe Pritchard**) for the **Appellant**
James Strachan (instructed by **The Treasury Solicitor**) for the **First Respondent**
Marc Willers (instructed by **Community Law Partnership)** for the **Second Respondent**

Hearing date: 26 June 2008

- -

Judgment

Lord Justice Scott Baker :

1. This is an appeal by South Cambridgeshire District Council ("the Council") against the decision of Keith J. on 18 September 2007 when he dismissed the Council's application under s.288 of the Town and Country Planning Act 1990 ("the 1990 Act").

2. By that application the Council had sought to challenge the decision of an inspector, Lucy Drake BSc MSc MRTPI, given in a decision letter dated 12 April 2006. She had allowed an appeal under s78 of the 1990 Act by Mr and Mrs Brown, who are the second and third respondents to the present appeal. The first respondent is the Secretary of State for Communities and Local Government. The inspector granted the Browns personal permission for:

> "Residential use – the siting of caravans, utility block and mobile chalet/medical unit for a disabled person."

on land at The Arches, Schole Road, Willingham Cambridgeshire ("the appeal site").

Background

3. The Browns are gypsies. They come from gypsy families in the local area to the appeal site. They previously led a travelling lifestyle but this was curtailed by the birth of their third child, a daughter, Kelly Marie at Hinchinbrook Hospital, Huntingdon in 1996.

4. She was born with an acute and life threatening condition. It is called microcephaly with severe global developmental delay. She was expected to live for no more than a few weeks, but she is now eleven and has managed to survive with the support of regular medical assistance and special care. This continues to be required both on an ongoing and emergency basis. She cannot walk unaided and has a wheelchair. All intimate and personal care has to be undertaken by a responsible adult.

5. Since her birth the Browns have sought to remain on sites in the local area to enable Kelly to obtain the ongoing medical care and attention that she needs and to attend a nearby special school.

6. The inspector concluded that while the development proposed was not in accordance with the Development Plan and would cause harm to the character and appearance of the local area, that harm was outweighed by other material considerations, most particularly the exceptional circumstances of the Brown family and the needs of their disabled daughter. She therefore granted conditional personal planning permission. Those conditions are important and in particular, for present purposes, conditions 1 and 2 which are:

> "1. The occupation of the site hereby permitted shall be carried on only by Archie and/or Julie Brown and their resident dependants.
>
> 2. When the land ceases to be occupied by those named in condition 1 the use hereby permitted will cease and all caravans, structures, materials and equipment brought onto the

> land in connection with the use including the utility block hereby approved shall be removed. Within three months of that time the land shall be restored to its condition before the use commenced."

7. Keith J. rejected the Council's various grounds of challenge to the validity of the inspector's decision. He subsequently refused permission to appeal to this Court and permission to appeal was again refused on paper by Pill L.J. However, at an oral hearing before Hallett L.J on 8 February 2008 she granted permission "with a very considerable degree of hesitation and on one ground only." That ground is whether Keith J. was correct in stating, as he did in paragraph 34 of his judgment reciting paragraph 74 of the inspector's determination, that:

> "In seeking to determine the availability of alternative sites for residential gypsy use, there is no requirement in planning policy or case law for an applicant to prove that no other sites are available or that particular needs could not be met from another site."

The subject matter of this appeal is therefore a very narrow point.

Legislative background

8. S.57 of the 1990 Act provides the general requirement that, subject to certain exceptions, planning permission is necessary to carry out any development of land. Development means the carrying out of certain operations or the making of any material change in the use of the buildings or the land. (s.55).

9. A person may apply to a local planning authority for planning permission (s.62). Where such an application is made a local planning authority may grant it unconditionally or subject to such conditions as it thinks fit, or it may refuse permission (s.70(1)).

10. S.70(2) provides that in dealing with an application for planning permission the authority should have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.

11. S.38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") provides that:

> "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."

12. S.78 of the 1990 Act provides that a person may appeal to the Secretary of State against a local planning authority's failure to determine an application for planning permission within the prescribed time period.

S.79(1) provides:

> "(1) On an appeal under s.78 the Secretary of State may:

(a) allow or dismiss the appeal or;

(b) reverse or vary any part of the decision of the Local Planning Authority (whether the appeal relates to that part of it or not);

(c) and may deal with the application as if it had been made to him in the first instance."

13. The Development Plan in the present case comprised:

"(i) The Cambridgeshire and Peterborough Structure Plan 2003, and

(ii) The South Cambridgeshire Local Plan adopted in 2004."

14. S.288 of the 1990 Act provides:

"(1) If any person –

(a) is aggrieved by an order to which this section applies and wishes to question the validity of that order, on the grounds –

(i) that the order is not within the powers of this Act, or

(ii) that any of the relevant requirements have not been complied with in relation to that order or…..

he may make an application to the High Court under this section."

The remainder of the section is not relevant for present purposes.

15. It is necessary to make the following general observations about s.288.

(i) A decision may only be challenged on ordinary administrative law grounds. *Seddon Properties Ltd v Secretary of State* (1978) P + CR 26.

(ii) Interpretation of policy is the matter for the decision maker. Where the interpretation is one that the policy is reasonably capable of bearing there is no basis for intervention by the court. *R v Derbyshire County Council ex parte Woods* [1997] JPL 958.

(iii) The weight to be attached to material considerations and matters of planning judgment are within the exclusive jurisdiction of the decision maker. *Tesco Stores Ltd v Secretary of State* [1995] 1WLR 759.

(iv) A decision letter must be read in good faith, and references to polices must be taken in the context of the general thrust of the reasoning. The adequacy of the reasons is to be assessed by reference to whether the decision in question leaves room for general doubt as to what the decision maker has decided and why. *South Somerset District Council v Secretary of State* [1993] 1PLR 80 and *Clarke Homes Ltd v Secretary of State* (1993) 66 P + CR 263.

(v) There is no obligation on the decision maker to refer to every material consideration, only the main issues in dispute. *Bolton Metropolitan Borough Council v Secretary of State* (1995) 71 P + CR 309.

(vi) Reasons can be briefly stated, the degree of particularity depending on the nature of the issues falling for decision. The reasoning must not give rise to substantial doubt as to whether there was error of law, but such an inference will not readily be drawn. *South Bucks District Council v Porter* (No.2) [2004] UKHL 33.

The decision letter

16. The inspector set out her findings and the reasons for them in a very full and careful decision letter. It is perfectly clear from that letter that the case turned on exceptional circumstances.

17. She began by setting out the background to the appeal, identifying the nature of the appeal site and the Brown family's occupation and circumstances. Importantly, she referred to a previous appeal decision dismissing an appeal against an enforcement notice by the Council, reciting key conclusions of the previous inspector. She acknowledged that that recent decision was an important material consideration in the appeal before her.

18. She then summarised the relevant planning policy before distilling what she saw as the four main issues. These were:

> "(i) Whether, and the extent to which, the development complied with the criteria within Local Plan Policy HG 23.
>
> (ii) The provision of and need for additional gypsy sites in the district.
>
> (iii) The personal circumstances of the Brown family.
>
> (iv) The accommodation needs and alternative accommodation options for the Brown family."

It has never been challenged that these were the main issues before her.

19. The inspector then set out the reasons for her decision addressing each of the four main issues in turn. She began with the issue of compliance with Local Plan Policy HG 23 and concluded that while the proposal satisfied seven out of the nine criteria it failed to accord with two. These were whether the site would, either on its own or cumulatively, have a significant adverse effect on the rural character and appearance, or the amenities of the surrounding area, and whether the site could satisfactorily be assimilated into its surroundings by existing or proposed landscaping. Accordingly she found that the development conflicted with the policy as a whole. She also found corresponding conflict with the terms of Structure Plan Policy 7/4 and Local Plan Policy EN1 (at least in the short to medium term) in respect of the impact of the development upon the character and appearance of the area. She correctly directed herself that it was therefore necessary to consider whether there were other material

considerations that outweighed the provisions of the Development Plan and the harm that would be caused to the character and appearance of the area.

20. The inspector next set out her reasoning for concluding that there was a substantial need for additional gypsy sites in the district. She said at para 52:

> "There is limited, and over-subscribed, capacity on the local authority owned sites and recent grants of planning permission for additional sites, especially at Chesterton Fen Road have only partially eased the situation there. The Council accept (paragraph 6.19 of Mr Koch's proof) that other parts of the allocation may not come forward in the near future. While this situation does not justify, on its own, the grant of planning permission for gypsy use on land which fails to meet the requirements of Local Plan HG23, the clear evidence of currently unmet need at a local level and the recent quantative estimates of demand at local and sub-regional levels with limited immediate availability of suitable land it is a material consideration in assessing such proposals, and in particular the realistic alternative accommodation options for the individuals involved."

I should add that it is accepted that the provision for gypsies in the South Cambridgeshire District Council area is better than in many others.

21. At para 50 the inspector considered newly issued Government Guidance in para 33 of Circular 01/06 and the requirement not just to identify gypsy sites for Development Plan documents, but the need for local planning authorities to demonstrate that they were suitable and that there was a realistic likelihood that such sites would be made available for that purpose, how much land would be made available and the time scales for such provision. In the following paragraph she noted that the Council was still facing significant problems in dealing with the demand, despite its best endeavours and that there were disappointingly few grants of planning permission pursuant to Policy HG23.

22. The inspector dealt with the third issue namely the personal circumstances of the Brown family at paras 53 – 65. She said this at para 59:

> "I have no reason to doubt the genuine nature of Mr Brown's statement that during 2004 he made extensive inquiries locally in and around Cambridge, Huntingdon and Ely for another site but all his inquiries came to nothing, there being no official or legal sites available to them. Nor Mrs Brown's comment that finding alternative land to move to was the constant topic of conversation amongst the indigenous gypsies on Smithy Fen from around 2002. My own experiences of gypsy inquiries in East Cambridgeshire (May 2004) and Huntingdonshire (January 2006) would support the position that in E. Cambs all three local Council-owned gypsy sites were full and that vacancies rarely arose and that the only public site in Huntingdonshire, at St. Neots, had been full for many years."

23. She recorded that Mrs Brown had asked Mr Duncan, who regularly undertook the gypsy count for South Cambridgeshire, was well known to them, had been aware that they were looking for an alternative site for some time. She asked him for help and advice but he had not been able to assist her. As far as she was concerned the Council was aware of her predicament but was unable to help. Mr Koch's evidence was that, had the family contacted the planning department, officers would have explained the substance of the Council's policies but not directed them to any particular site.

The inspector reached this conclusion at para 65.

> "In my view the personal circumstances of the Brown family are exceptional, even amongst the gypsy community, because of the intolerable situation they found themselves in at Smithy Fen and the acute needs and strains on the family arising from Kelly Marie's difficulties. Not surprisingly these factors and the outstanding dedication of Mrs Brown to her family's needs and the uncertainty arising from their current and possibly future situation, has taken its toll on Mrs Brown who is taking medication for stress related matters. The personal circumstances of the family must be given considerable weight as a material consideration in this case."

24. The inspector then turned to the fourth issue namely the accommodation needs and alternative accommodation options for the Brown family. She accepted that the local historic ties and complex network of support for Kelly Marie made a strong case for the appropriate site to be in the triangle formed by Huntingdon, Cambridge and Ely. She dealt with specific site size requirements for two caravans due to Kelly Marie's needs. She found a lack of availability of any suitable Council run sites to meet the family's needs. She also noted that affordability was a key consideration for the Brown family. She then dealt with the issue of other private sites. Whilst accepting that there might be other pieces of land in the relevant area that would meet all the criteria in Local Plan Policy HG23 she found that, to be realistic, they needed to be available, affordable and suitable for the Brown family. And that Mr Brown (who had been looking from 2002 – 2004) had been unable to find such a site. She concluded that Chesterton Fen Road did not currently have any sites to meet the Browns' needs. She summarised the position at para 74.

> "In seeking to determine the availability of alternative sites for residential gypsy use, there is no requirement in planning policy, or case law, for an applicant to prove that no other sites are available or that particular needs could not be met from another site. Indeed such a level of proof would be practically impossible. The case of *Simmons*, relied upon by the Council, establishes no such requirement, even in the Green Belt. The lack of evidence of a search and the clear availability of alternative sites in more suitable locations elsewhere, can undoubtedly weigh against the applicant where there are policy or other objections to a proposed development. Equally, evidence of a search by an applicant over a reasonable area for a reasonable length of time and the absence of any obvious alternatives weigh in favour of him. But there is no absolute

> requirement for an applicant to prove he has explored and exhausted all possible alternative options before planning permission can be granted; or for a local authority to identify an alternative site before being able to refuse planning permission for another and adequately justify their decision at appeal. These are just material considerations to be weighed in the overall balance."

25. The inspector went on to say at paras 77 and 78 that there was no evidence to indicate a suitable and affordable alternative site would become available in the foreseeable future. If the planning authority were to enforce the requirements of the notice the only realistic option would be a return to life on the road. Although it was unlikely that the authority would take such a course it could not be ruled out and the hardship to the family would be unimaginable.

26. The inspector's overall conclusions are in paras 84 et seq. She said the appeal site did not lie in the Green Belt and there was no need for a finding of very special circumstances to justify the development. In many ways it was a good site for a single gypsy family. It was compliant with most of the Local Plan Policy Criteria in HG23 but it conflicted with the Structure Plan Policy and Local Plan Policy in that the development would have a significant adverse effect at least in the short to medium term on the rural character and appearance of local area. However, against this had to be weighed other material considerations. These were:

- The clear evidence of a significant under supply of gypsy sites in the District and wider area which was unlikely to be resolved for several years.

- The particular and exceptional circumstances of the Brown family, including their forced displacement from their home in Smithy Fen, their accommodation needs and the additional and compelling special needs of Kelly Marie.

- The absence of any evidence to suggest that a suitable and affordable alternative site would become available to the family in the foreseeable future.

The issue on this appeal

27. Turning to the point on which permission to appeal was granted, namely whether there is any requirement on the Browns to prove non-availability of other sites or that their particular needs could not be met from another site, the critical passage in the inspector's decision is at para 74 which I have recited above. Keith J.'s conclusion is to be found at para 39 of his judgment where he said:

> "The fact of the matter is that section 38(6) of the 2004 Act required the inspector to conduct a balancing exercise. That involved first determining whether there were material considerations which might suggest that the development should be allowed even though it conflicted with the provisions of the development plan. If the evidence revealed the existence of one or more such material considerations, the inspector then had to conduct a balancing exercise and decide whether those

> considerations in fact outweighed the provisions of the development plan and the harm which would be caused if the development was allowed to proceed. I see no basis for saying that if one of those material considerations is said to be the non-availability of a suitable alternative site it is for the (applicant) for planning permission to prove such non-availability. As with any other material consideration, the question is whether the evidence which the parties have chosen to call reveals the existence or non-existence of another site which would meet the needs of the applicant for planning permission. In these circumstances I do not believe that the inspector's approach to the burden of proof was flawed."

28. Before the inspector it was an unchallenged finding of fact that the Browns had a need for a site on which to station their caravans and maintain their gypsy lifestyle. None of the family had ever lived in a house and this was not an appropriate alternative option.

29. Mr McCracken Q.C, for the appellant, takes issue with the inspector's statement at para 84 that this is not a Green Belt case and that therefore there is no need for a finding of very special circumstances to justify the development. For my part, I can see no objection to the inspector's statement. We were referred to a number of authorities as was Keith J. Before Keith J. the appellant relied on three. Keith J. found that none of them supported the appellant's contention that the burden was on the Browns to show that they had done all that reasonably could be done to find a site that catered for their needs but that no such site was available.

30. The first authority is *Rhodes v Minister of Housing and Local Government* [1963] 1 ALL ER 300. The question there was whether the Minister, on a planning application for use of land as an airport, had to consider whether an alternative site for the airport was available. Paull J. concluded at p.302 F-G that it was not for the Minister to "rout round" for an alternative site, though if it had been shown at the inquiry that there was an alternative suitable site that was a material consideration which the inspector had to take into account. Keith J. said the judge was doing no more than stating what would be a material consideration for the Minister to consider if the existence of an alternative suitable site emerged at the hearing. He was not laying down how the existence of such a site should be established. I agree.

31. The second case was *Trusthouse Forte Ltd v Secretary of State for the Environment* (1986) 53 P CR & 293. In that case an application for planning permission to build a hotel within the Green Belt was refused on the basis that the severe shortage of hotel accommodation in the area could be met at an alternative site, though no such sites were identified. Simon Brown J. (as he then was) concluded that while it was generally desirable that a planning authority should identify the possibility of meeting any supposed need by reference to specific identifiable alternative sites it would not always be essential or appropriate to do so. He said at p.299:

> "Where, however, there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when a development is bound to have significant adverse

> effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it."

And at p.301:

> "The extent to which it will be for the developer to establish the need for his proposed development on the application or appeal site rather than for an objector to establish that such need can and should be met elsewhere will vary. However, in cases such as this, when the Green Belt planning policy expressly provides that the need for a motel on the site proposed, not merely in the area generally, has to be established in each case the burden lies squarely upon the developer."

32. *Trusthouse Forte* was a Green Belt case and at that time neither s38(6) of the 2004 Act or its predecessor had become part of our law. As Keith J pointed out in the present case there was nothing in the Development Plan akin to the provision in the Green Belt planning policy which Simon Brown J regarded as decisive. In my judgment all that *Trusthouse Forte* establishes is that whether the developer is required to justify why he should be allowed to develop the site depends upon the circumstances.

33. The third case was *First Secretary of State v Simmons* [2005] EWCA Civ 1295. That was another Green Belt case in which para 3.1 of Planning Policy Guidance 2 (1995) required very special circumstances to justify inappropriate development. Pill L.J. said at para 22:

> "The comment that the lack of evidence of a search, a finding which I accept the Secretary of State was entitled to make on the evidence, weighed against the respondent's case could have been better put, as counsel for the appellant at this hearing has put it. He put it on the basis that an applicant for permission in this context, who has not done all he might have done to seek a site which is less unattractive in planning terms, may have more difficulty in discharging the burden of showing very special circumstances justifying the grant of planning permission on this site:

Keith J rightly dismissed *Simmons* as adding nothing to the argument because, like *Trusthouse Forte,* it was a case about development within the Green Belt.

34. Mr McCracken further relies on *McCarthy v Secretary of State for Communities and Local Government* [2006] EWCA (Admin) 3287. That case concerned the land at Smithy Fen which the Browns had left in 2004. *McCarthy* was not drawn to the attention of the judge. At para 15 in *McCarthy* Judge Gilbart Q.C, who was sitting as a Deputy High Court Judge, said:

> "15.The issue here turned in part on whether there were alternative sites to which the claimants could move if permission was refused. There was some discussion between

Mr Mould Q.C. and the Court in argument about whether in such a case it is incumbent on an applicant for planning permission to demonstrate that no alternative sites exist. There can be a danger of turning the principles derived from *Secretary of State v Edwards* [1994] 1 PLR 62 (CA) into a test which applicants for planning permission must pass. *Edwards* is a case on whether the existence of alternative sites can justify refusal, not a case on whether it is necessary to prove that there is an absence of alternative sites in order to gain a consent. An applicant for planning permission will only have to show that there is an absence of alternative sites if:

> "(a) The relevant Development Plan Policy, Secretary of State's policy or other policy, which is a material consideration states that an applicant will be expected to do so;
>
> (b) His proposal would otherwise cause harm or conflict with policy to a degree which would justify refusal, and he argues that there are reasons why a site must be found to accommodate the use which he proposes. Then the absence of an alternative site may be considered by the decision maker to outweigh the harm done."

16. Plainly the greater the harmful effects, or the more serious the breach of policy, the harder the applicant will have to work to show that there is no realistic alternative, and that his proposal would effect a real public convenience or advantage which would justify the grant of permission. Thus it is that, at the top end of the scale, in a case of proposed inappropriate development in a Green Belt the evidential and persuasive burden on the applicant is very substantial. It is less substantial, but may still be significant lower down the scale.

17. In this case, all the parties must have appreciated that if the Secretary of State had concluded that there would be harmful effects on the countryside and that the proposal did not for that reason comply with policy HG23, then he would be bound to dismiss the appeals unless the case for provision at this site outweighed the reasons for refusal; see section 38(6) of the 2004 Act. He found that the grant of permission would make a significant contribution to meeting the general need for sites. His conclusion at paragraph 37 shows that he did not consider that that outweighed the reasons for refusing permission. That was a decision which he was entitled to reach. He was then bound to refuse permission unless he had evidence which led him to conclude that there were no alternative sites to which the claimants could relocate. On the evidence, he was not satisfied that the claimants could not relocate elsewhere…… "

35. In my judgment reading this passage as a whole the learned Deputy High Court Judge is doing no more than emphasising that the issue of alternative sites will depend on all the circumstances. He correctly identified the danger of turning the principles derived from *Secretary of State v Edwards* [1994] PLR 62 (CA) into a test which applicants for planning permission must pass. As he noted, *Edwards* was a case on whether the existence of alternative sites could justify refusal, not a case on whether it was necessary to prove that there was an absence of alternative sites in order to gain consent. Nor do I think that the judge's statement that he was bound to refuse permission unless he had evidence which led him to conclude that there were no alternative sites to which the claimants could relocate was intended to be a statement of the law. That observation was specifically directed to the case in front of him. The Smithy Fen applicants in that case did not have the exceptional needs of the Browns, nor in fact had they searched for alternatives and the inspector had concluded that there were indeed alternatives that might be suitable for them in the general area. If Judge Gilbart was indeed intending to lay down a statement of principle of law, in my view he was wrong and in any event what he said is not binding on this court.

36. In my judgment the law is clear. The position is governed by s38(6) of the 2004 Act. The Development Plan is determinative unless material considerations indicate otherwise. There is no burden of proof on anyone. It is a matter for the planning authority, or in this case the inspector, to decide what are the material considerations and, having done so, to give each of them such weight as she considered appropriate. That, so it seems to me, is a matter of planning judgment.

37. Mr James Strachan, for the first respondent, advanced four propositions.

- The inspector was correct in her analysis at paragraph 74. Planning applications must be decided in accordance with the Development Plan unless material considerations indictate otherwise. The weight to be given to a material consideration is for the decision maker.

- The decision in the Smithy Fen appeal does not show any contrary policy.

- Even if the Smithy Fen appeal did manifest a different approach it is not a difference in policy.

- The debate is in any event sterile because the inspector identified that the Browns had in fact searched for alternative sites but none was available.

I accept each of these submissions, the first of which seems to me to dispose of the appeal.

38. Although permission to appeal was given solely on the ground indicated, Mr McCracken also sought to argue that the inspector's reasons for her decision were inadequate. The thrust of this point is, I think, the suggestion that a different approach was being taken from that in the *McCarthy*/*Smithy Fen* case and that that needed explanation and justification. Mr McCracken points out that the *Smithy Fen* decision was only a few months earlier than the inspector's decision in the instant case. It involved an application by gypsies and a nearby site within the same district. The same policies applied as did the likely availability of alternative sites within the locality. Mr McCracken puts it this way in his reply. The inspector did not

acknowledge that a different approach had been taken and did not even mention it in the decision letter. He says that this offends the principle of consistency in decision making: see *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P + CR 137, 145.

39. The judge dealt with this at paras 40 and 41 of his judgment. He referred to the inspector's report in the Smithy Fen case, saying para 7.40 was the only one which could be said to show his approach had been to require the appellants to prove that no alternative sites were available. Para 7.40 reads:

> "This is not a case where the evidence establishes that no alternative sites are available. The occupants have not looked for alternative sites. They have not sought planning permission for the use of unused land at the Pine Lane site. Nor have they investigated vacant authorised plots at Setchel Drove or Water Lane. Undoubtedly, finding sites is not easy but a structured, thorough search exercise is necessary if it is to be argued that harm in one location has to be accepted because no alternative sites exist. Furthermore, there is no reason for confining any search to South Cambridgeshire District as the occupants have no need to be resident in this district. The individual occupiers have different travelling histories extending to different areas all around the country. They have not searched widely for sites."

40. Keith J. said he did not think this showed the inspector was requiring *the appellant* to prove that no alternative sites were available. What he said was that it was a case where *the evidence* established that no alternative sites were available. He did not say it was a case in which the appellants had not established that no alternative sites were available.

41. Both the inspector's report and the Secretary of State's decision letter in the Smithy Fen case were before the inspector in the present case; they were an appendix to the planning officer's report.

For my part I am quite unpersuaded there is anything in this point.

Conclusion

42. In my judgment the inspector approached the question of alternative sites in an impeccable fashion and Keith J. was correct to conclude that there was no basis for interfering under s.288 of the 1990 Act. This was an exceptional case where the personal circumstances of the Browns family justified departure from the Development Plan. These circumstances were a material consideration which the inspector properly took into account as a material consideration under s.38(6) of the 2004 Act. The grant of planning permission subject to the conditions cannot be faulted.

43. I would dismiss the appeal.

Sir Robin Auld:

44. For the reasons given by Scott Baker L.J, I agree that the appeal should be dismissed.

The President:

45. I agree.

10.2.7. Stevens v SSCLG & Guildford Borough Council (2013)

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Neutral Citation Number: [2013] EWHC 792 (Admin)
Case No CO/1689/2011

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

Royal Courts of Justice
Strand, London, WC2A 2LL
10/04/13

B e f o r e :

MR JUSTICE HICKINBOTTOM

Between:

JANE STEVENS — **Claimant**

- and -

(1) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

(2) GUILDFORD BOROUGH COUNCIL — **Defendants**

Marc Willers and Alex Grigg (instructed by Lester Morrill Solicitors) for the Claimant
Hereward Philpott and Sarah Hannett (instructed by the Treasury Solicitor)
for the First Defendant
The Second Defendant did not appear and was not represented

Hearing dates: 9 October 2012, and 21 January 2013
Further written submissions: 23-28 January 2013

HTML VERSION OF JUDGMENT

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Mr Justice Hickinbottom:

Introduction

1. This application, made under section 288 of the Town and Country Planning Act 1990 ("the 1990 Act"), raises important issues as the approach of both planning decision-makers and the court to proportionality in circumstances in which a planning decision engages the right to respect for family life under article 8 of the European Convention on Human Rights, and in particular involves the rights of children.

Background

2. The Claimant Jane Stevens and her family are Gypsies, for whom living in caravans is an integral part of their ethnic identity, recognised under both European law (Commission for Racial Equality v Dutton [1989] QB 783) and domestic law (for example, as a protected characteristic under the Equality Act 2010).

3. The Claimant lives with her partner and extended family, which includes several children. Since mid-2009, they have lived on land known as The Paddocks, Rose Lane, Ripley, Woking, Surrey ("the Site"), a plot of agricultural land, divided off from open paddock land, without any planning history, which they have developed into a caravan site for two static and three touring caravans, together with a hardstanding, utility shed, and cess pool, and a stable block and yard for keeping horses. The family group includes two young children who in the year to June 2010 attended a local primary school.

4. On 22 May 2009, the Claimant applied to the Second Defendant planning authority ("the Council") for retrospective planning consent for the stationing of the caravans etc on the Site as a single family site.

5. The Site abuts the Ripley Conservation Area, and is located within a Green Belt and, as such, it has been the subject to central government guidance from time-to-time. At the relevant time, that guidance was contained in the Secretary of State's Planning Policy Guidance Note PPG2 "Green Belts" ("PPG2"), upon which this judgment focuses. PPG2 has since been replaced by the National Planning Policy Framework ("the NPPF"), although the relevant aims and provisions in the new guidance do not appear to have altered materially.

6. The aim of the policy was set out in paragraphs 1.4 and 1.5 of PPG2, thus:

> "Intentions of policy
>
> 1.4 The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of Green Belts is their openness. Green Belts can shape patterns of urban development as sub-regional and regional scale, and help to ensure that development occurs in locations allocated in development plans. They help to protect the countryside, be it in agricultural, forestry or other use. They can assist in moving towards more sustainable patterns of urban development….
>
> Purposes of including land in Green Belts
>
> 1.5 There are five purposes of including land in Green Belts:
>
> - to check the unrestricted sprawl of large built-up areas;
>
> - to prevent neighbouring towns from merging into one another;
>
> - to assist in safeguarding the countryside from encroachment;
>
> - to preserve the setting and special character of historic towns; and
>
> - to assist in urban regeneration, by encouraging the recycling of derelict and other urban land."

The substance of those aims is repeated in paragraphs 79-80 of the NPPF.

7. How those aims were translated into practice is set out in paragraphs 3.1 and 3.2 of PPG2, which imposed a presumption against inappropriate developments (i.e. developments which conflict with the purposes of including land within the Green Belt and do not maintain openness):

> "3.1 The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved, except in very special circumstances….
>
> 3.2 Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the **Secretary of State** will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development."

The substance of that guidance is retained in paragraphs 87-88 of the NPPF:

> "87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
>
> 88. 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, is clearly outweighed by other considerations."

8. Therefore, by definition, any inappropriate development will result in harm to the Green Belt; and, under both PPG2 and the NPPF, in making planning decisions, planning authorities (and, in their turn, inspectors appointed by the **Secretary of State** to decide appeals) were and are required to give "substantial weight" to such harm; but that potential harm might nevertheless be outweighed by other material considerations. Where it is clearly outweighed, then a development that harms the Green Belt may be allowed.

9. PPG2 indicated that, as a matter of policy, any material change in the use of Green Belt land would be inappropriate unless it maintains openness and does not conflict with the purposes of including land within the Green Belt. The Claimant has throughout rightly conceded that the change of use of the Site which has taken place does constitute an inappropriate development, and that the development does result in a loss of openness.

10. She also accepts that the Site is not suitable, in planning terms, as a permanent base for her and her extended family. Consequently, when she applied for retrospective planning permission, she did so for temporary permission, for a period of four years.

11. That period was chosen because, whilst at the relevant time Gypsy and Traveller sites were generally sparse (for the historical background, see R (Knowles & Knowles) v Secretary of State for Work and Pensions [2013] EWHC 19 (Admin) ("Knowles & Knowles") at [5]-[10]) and there was a need for further sites in the local area, in 2006 a Gypsy and Traveller Accommodation Assessment was carried out on behalf of the Council and other adjacent local authorities. At the relevant time, the Council was preparing a Site Allocation Development Plan with a view to addressing that need through the provision of new sites; and it was expected that a timetable for the identification of sites would be in place within 3-4 years. Planning Circular 01/2006, "Planning for Gypsy and Traveller Sites", advised that, where there was an unmet need but a reasonable expectation that new sites would likely become available to meet that need, then local authorities should consider granting temporary permission. The Claimant considered that four years would give sufficient time to pursue a grant of planning permission for another site in the light of the expected Site Allocation Development Plan. There is no evidence before me as to how the assessment of need for further Gypsy and Traveller sites and the identification of sites to meet any such need has progressed, if at all, since then.

12. The Claimant's application for planning permission was refused by the Council on 19 February 2010. On 22 March 2010, the Council issued an enforcement notice, requiring the use of the Site as a caravan site to cease, and for the permanent removal of all caravans etc within three months.

13. The Claimant appealed against both the refusal of planning permission and the enforcement notice. As his inspector, the **Secretary of State** appointed Wendy McKay ("the Inspector"), who consolidated the appeals. There was a hearing and a site visit on 21 September 2010, at which the Claimant was represented by Ms Alison Heine, a planning consultant. On 11 January 2011, the Inspector issued a decision refusing both appeals, except she varied the enforcement notice to give a year (rather than three months) for compliance.

The Application

14. In this application, the Claimant seeks an order under section 288 of the 1990 Act to quash the Inspector's decision dismissing the Claimant's appeal against the Council's decision to refuse retrospective planning permission. No challenge has been made to the Inspector's decision in relation to the enforcement notice.

15. The section 288 application is made on two grounds, namely:

> Ground 1: The Inspector's conclusion that the development had a significant adverse visual impact was founded upon a factual finding for which there was no evidential basis, namely that the development is "… prominent from private land within the Conservation Area, including the first floor windows of houses on High Street…".

Ground 2: The Inspector erred in her approach in relation to the best interests of the children of the Claimant's extended family.

16. I will deal with those grounds in turn.

Ground 1: Improper Factual Finding

17. This ground developed during the course of the proceedings. Initially, it was put primarily on the basis that the Inspector did not make her concerns about the visual impact of the development clear; so that the Claimant did not have a proper opportunity to address those concerns, in breach of both regulation 14 of the Town and Country Planning (Hearings Procedure) (England) Rules 2000 (SI 2000 No 1626) and the rules of natural justice. However, at the hearing before me, Mr Willers for the Claimant refocused the ground, conceding that visual impact was raised as an issue before the Inspector, but contending that she erred in finding that the development was "… prominent from private land within the Conservation Area, including the first floor windows of houses on High Street…" because there was no evidence upon which such a finding could properly have been made. That finding was the basis of the Inspector's conclusion that the development had a significant adverse visual impact, a conclusion to which she gave "moderate weight" in assessing whether the balance was in favour of granting planning permission. Without that factor in the balance, Mr Willers submitted that the Inspector could have made a different decision; and therefore the decision she did make should be quashed.

18. However, I do not find that submission at all persuasive.

19. There was quite clearly evidence upon which the Inspector was entitled to make the challenged finding. There was evidence from Ripley Parish Council that: "The development is clearly visible from Ripley Conservation Area by users of Ripley Court Playing Fields and the Scout HQ and the residents of Chapel Farm and other properties on the west end of the High Street as the development is on raised ground" (4 November 2009 letter from the Clerk to the Council). A resident of one of the West End cottages in the High Street also said: "The development is in fact in full view from the rear of West End Cottages" (6 November 2009 letter). Indeed, before the Inspector Ms Heine on behalf of the Claimant accepted that, "[The site] can be seen from the first floor windows of houses on the High Street in Ripley" (which is in the Conservation Area) – although, in her opinion, that was not harmful to views out of the Conservation Area, because it was across several fields (May 2010 Report, page 3; and Hearing Statement, paragraph 2.5). In addition, although she did not of course go into any of the High Street houses, the Inspector did attend a site visit, and at least viewed the High Street from the development site.

20. With respect to Mr Willers' resilient attempt to do so, it is simply not arguable that the Inspector did not have any evidence upon which to make the finding that she did. As I have indicated, leaving aside other evidence, it was conceded by the Claimant that the development could be seen from the properties on the High Street, or some of them; and, in particular, from the first floor of those properties. The extent to which that view was harmful – and, indeed, the extent to which the development was "prominent" from the High Street properties – were matters of planning judgment for the Inspector.

21. There is no even arguable error by the Inspector in respect of this ground.

Ground 2: The Interests of the Children

Introduction

22. As the Claimant's main ground, Mr Willers submitted that the Inspector had erred in her approach to the rights and interests of the Claimant's children. He accepted that the Green Belt policy in PPG2 had a number of legitimate aims in the public interest (see paragraphs 6-9 above). However, he submitted that the Inspector was correct in considering that, in the exercise she undertook of balancing the various considerations material to the planning decisions with which she was concerned, Article 8 was engaged, such that the rights of the Claimant and her children to respect for their family and private life had to be taken into consideration. In the balancing exercise of public interest and private rights inherent in the planning decision to be made, as a public body the Inspector was required to consider whether the dismissal of the appeal would have a disproportionate adverse effect on the Claimant's children.

23. Whilst, as Mr Willers accepted, on the face of her decision the Inspector performed that exercise, he submitted that she failed properly to take into account the best interests of the children. Article 3 of the United Nations Convention on the Rights of the Child ("the UNCRC") and ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4; [2011] 2 AC 166 ("ZH (Tanzania)") require the best interests of the children to be "a primary consideration" in any proportionality assessment under article 8, i.e. those interests must be identified and given at least as much weight as any other material consideration. The Inspector erred because, as required by paragraph 3.2 of PPG2 (see paragraph 7 above), she gave the harm caused to the Green Belt by the inappropriate development "substantial weight"; but gave the best interests of the children only "moderate weight". The failure to give the interests of the children the weight she was required to give them was fatal to her determination to dismiss the appeal; because, if she had given proper weight to those interests, her determination might have been different. Her decision to dismiss the Claimant's appeal should consequently be quashed.

24. Mr Philpott for the Secretary of State submitted that, although the Inspector was not referred to the UNCRC and her decision was prior to the delivery of the Supreme Court judgments in ZH (Tanzania), she did not err. In substance, she treated the best interests of the Claimant's children appropriately, and in accordance with the requirements of article 8 and the UNCRC.

The Claimant's Children

25. Before I come on to deal with the legal principles, it would be helpful to set out the evidence before the Inspector relating to the Claimant's children.

26. Specific evidence was sparse. It primarily concerned the schooling of the two children who were at that time in local primary school, and comprised a letter from the Headteacher dated 24 June 2010. That letter formally set out the children's achievements at the school. One had made good progress, but it was thought necessary that she repeat the year she had just completed. The attainment of the other was two years behind her chronological age, and she had had additional tuition funded by Traveller Education Support. The letter concluded:

> "Both children attend regularly, are polite and well behaved and are integrated into the school."

There were apparently other children of school age on the site, but no evidence as to any schooling they might have had. The only other evidence before the Inspector specifically concerning the children was that one of the older children had apparently recently been to hospital.

27. In her decision, at paragraph 40, the Inspector faithfully set out all of that evidence concerning the children. More generally, she noted that the Council accepted that there was an unmet need for Gypsy sites in its area; and found that there was then no alternative site provision to meet that shortfall in Gypsy site provision. Specifically, she found that there were no alternative pitches on any other Gypsy sites in the Council's area which were currently available for the Claimant and her family. Consequently, if the enforcement notice were upheld and they were evicted from the site, then it was likely that they would be living "on the road" and moving from one unauthorised site to another (paragraph 35).

28. The Inspector set out her conclusion thus (paragraph 48):

> "The Appellant and her family have a need to be settled. There is a general benefit in them having a settled base from which to access educational and medical services. The Appellant's eviction from the site would be likely to result in enforced roadside camping. This would have implications not only for herself and her family, but also could also result in adverse environmental and other impacts elsewhere. These are all factors to which a moderate amount of weight can be attributed."

29. In the face of the PPG2 requirement that harm to the Green Belt be given "substantial weight", it is that attribution of only "moderate weight" to the best interests of the children of which particular complaint is now made.

30. With regard to the children there was no further evidence before me, as to the position either at the time of the Inspector's report (September 2010) or now. Nor was there any evidence of any progress that might have been by the Council, for example, in identifying additional land for Gyspy sites.

Identification of the Issues

31. The use of land is not an absolute right: by its very nature, particularly in a country such as this with its limited available land, it requires some control.

32. Regulation of land use is essentially a matter of public policy, which is required to balance the interests of individuals to use their land as they wish, the rights and interests of other landholders, and the obvious public interest in controlling development.

33. The political nature of planning decisions is reflected in the scheme which regulates them. Thus, planning permission from the local planning authority is required for any development of land (section 57(1) of the 1990 Act); and the determination of a grant of planning permission must be made having regard to the relevant provisions of "the development plan" and "to all other material considerations" (section 70(2)). What constitutes "the development plan" is prescribed by statute (section 38 of the Planning and Compulsory Purchase Act 2004): broadly, in the public interest, it seeks to prioritise land for development, and to protect a variety of characteristics. When preparing a development plan, a local planning authority has to take into account guidance issued by the **Secretary of State**, which indicates matters that are to be given particular consideration or weight in the public interest. Where regard must be given to the development plan in a planning determination (including a determination of a grant of planning permission), then "the determination must be made in accordance with the plan unless material considerations indicate otherwise" (section 38(6) of the 2004 Act). In respect of individual decisions granting or refusing planning permission, under section 78 of the 1990 Act there is a statutory appeal to the **Secretary of State** who usually conducts such an appeal through an inspector from the Department's Inspectorate, who has appropriate planning experience and expertise.

34. The 1990 Act also provides procedures for making application to this court to question the legality of a development plan (section 287), or of other decisions identified in section 284 including (by virtue of section 284(3)(b)) an inspector's decision on an appeal under section 78 (section 288). In either case, in recognition of the fact that this court generally does not have the particular appropriate expertise to make planning judgments, this court's powers of relief are limited to quashing the relevant decision, if found to be unlawful. Section 288(5)(b) therefore provides:

> "On any application under this section the High Court... if satisfied that the order or action in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it, may quash that order or action."

35. The courts themselves have long-recognised that town and country planning involves acute, complex and interrelated social, economic and environmental implications, and that Parliament has consequently entrusted its regulation to administrative decision-makers with planning experience and expertise, namely planning authorities (whose planning officers and committees also have local knowledge), and on appeal the **Secretary of State** acting through inspectors. Certainly, the courts have eschewed any suggestion that they should engage with the merits of planning decision-making, leaving such decisions to the appointed decision-makers, on the basis of guidance promulgated by the **Secretary of State**. It is well-recognised by the courts that planning decisions quintessentially require planning judgments of fact and degree, the merits of which are a matter entirely for the appointed administrative decision-makers. The limited role of the court in these circumstances has been emphasised in a number of cases (see, e.g., R (Alconbury Developments Ltd) **v Secretary of State for** the Environment, Transport and the Regions [2001] UKHL 23; [2001] 2 All ER 929 ("Alconbury") at [60] per Lord Nolan, [129] per Lord Hoffmann and [159] per Lord Clyde; and R (Newsmith Stainless Ltd) **v Secretary of State for** the Environment, Transport and the Regions [2001] EWHC 74 (Admin) ("Newsmith") at [7] per Sullivan J as he then was). This principle was forcefully emphasised by Lord Hoffmann in the following passage from Tesco Stores Ltd **v Secretary of State for** the Environment [1995] UKHL 22; [1995] 1 WLR 759 ("Tesco Stores") at [56]-[57]:

> "56… 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.
>
> 57. This distinction between whether something is a material consideration and the weight 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 local planning authority or **Secretary of State**."

In Alconbury, having considered the relevant European Court authorities, Lord Hoffmann (at [129]) said that those cases did not require the court to substitute its decision for that of the administrative authority, and that such a requirement would not only be contrary to the jurisprudence of the European Court but "profoundly undemocratic".

36. Hence, according to this principle, in any challenge to such a planning decision, the courts are restricted to considering the legality of the decision-making process. The principle is well-established. Indeed, hardly a challenge to an inspector's decision goes by without the party seeking to uphold it referring to that passage from Lord Hoffmann's opinion in Tesco Stores, and relying upon it as incontrovertibly establishing that principle.

37. Of course, that does not mean that a planning determination cannot be challenged in the courts: effectively, it may be challenged on any of the conventional public law grounds, which are the basis of section 288 challenges and which of course focus on process (see Seddon Properties Ltd **v Secretary of State for** the Environment (1978) 42 P & CR 26). So a challenge can, for example, be founded on the ground that the decision-maker's approach to the decision-making exercise was wrong.

38. It is also a ground of challenge that the decision-maker has reached a conclusion that is perverse or Wednesbury unreasonable, i.e. it is outside the range of decisions to which a decision-maker could reasonably come. However, to prove Wednesbury unreasonableness in a planning context is particularly challenging, because it has long been recognised that planning decision-makers have a wide margin of discretion within which they can make a lawful decision, because (i) the decision involves the application of social policy (see Connors **v** United Kingdom (2005) 40 EHRR 9 at paragraph 82); (ii) the decision requires consideration of complex multiple policy-based planning issues in respect of which there is a significant element of judgment involved, properly reserved to the executive (see the references to Alconbury and Newsmith at paragraph 35 above); and (iii) as a planning committee of a local planning authority or as an inspector on behalf of the **Secretary of State**, the decision-makers have particular of expertise and experience, and indeed have been chosen under a statutory scheme precisely because they have that expertise and experience. For similar reasons, and to reflect that wide margin of discretion, the courts pay considerable deference to a planning decision by one of those decision-makers.

39. In terms of how a planning decision-maker must lawfully approach his task, by virtue of section 70 of the 1990 Act he is required to take into account all material considerations. Although I shall return to this point in the context of the court's approach to section 288 applications (see paragraph 85(i) below), it was common ground before me that, as a matter of domestic law, for the purposes of section 70, "material considerations" include any article 8 rights that are engaged. Article 8 of the European Convention on Human Rights provides:

> "1. Everyone has the 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."

Given the nature of those rights, and the scope of planning decisions, it is likely that article 8 will be engaged in many planning decision-making exercises. In particular, there will often be relevant children; and the manner in which their interests should be taken into account in such circumstances is in issue in this application.

40. Furthermore, the engagement of article 8 also gives rise to a potential problem for courts that are required to consider challenges to planning decisions which engage article 8, because, whilst planning decisions quintessentially involve matters of planning judgment, into the merits of which the courts have firmly declined to stray, on a challenge to a decision for breach of human rights, the House of Lords have held that, where the proportionality of the impact of a decision on human rights is at issue, that is a substantive question to be objectively determined by the court, and not a procedural one that requires the court to investigate the decision-making process (R (SB) v Governors of Denbigh High School [2006] UKHL 15: [2007] 1 AC 100 ("SB") and Miss Behavin' Ltd v Belfast City Council [2007] UKHL 19; [2007] 3 All ER 1007 ("Miss Behavin")).

41. Thus, in SB, Lord Bingham said (at [29]):

> "The focus at Strasbourg is not and has never been on whether a challenged decision or action is the product of a defective decision-making process, but on whether, in the case under consideration, the applicant's Convention rights have been violated";

and, consequently, what matters in any case is "the practical outcome, not the quality of the decision-making process" (at [31]).

42. The question of the court's role in such a case was directly in issue in Miss Behavin'. The case concerned an application for a licence for a Belfast backstreet sex shop, in the face of determination by the council that the appropriate number of sex shops in that area was "nil". The sale of pornography, just, engages the right to freedom of expression in article 10. In refusing a licence for the sex shop, the council failed to take into account the harm to those rights that a refusal of a licence would entail. The Northern Ireland Court of Appeal held that they erred in failing to do so, and they set aside the decision ([2005] NICA 35), the judgment of the court (Kerr LCJ, Sheil LJ and Hart J) finding, in traditional judicial review terms (at [65]):

> "We have also concluded that the appellant's rights under article 10 of ECHR and article 1 of the First Protocol to the convention were engaged and that the council failed to conduct the necessary balancing exercise in order to determine whether interference with those rights could be justified. The circumstances of the case are not such as would enable the conclusion to be reached that, if the council had considered the matter properly, it is inevitable that the application would have been rejected.

On that basis, the council would have to reconsider the licence application, this time properly performing the balancing exercise that proportionality required.

43. However, the House of Lords held that this was the wrong approach for the court to have taken. Baroness Hale said (at [31]):

> "The first, and most straightforward, question is who decides whether or not a claimant's Convention rights have been infringed. The answer is that it is the court before which the issue is raised. The role of the court in human rights adjudication is quite different from the role of the court in an ordinary judicial review of administrative action. In human rights adjudication, the court is concerned with whether the human rights of the claimant have in fact been infringed, not with whether the administrative decision-maker properly took them into account."

Lord Hoffmann put it even more bluntly. It did not matter, he said, whether the council had or had not indulged in any "formulaic incantation" with regard to proportionality:

> "Either the refusal infringed the respondent's Convention rights or it did not. If it did, no display of human rights learning by the Belfast City Council would have made the decision lawful. If it did not, it would not matter if the councillors had never heard of article 10 or the First Protocol" (at [13]).

The fact that the council had not engaged with the proportionality exercise they, as a public authority performing public functions, were required to perform by virtue of section 6 of the Human Rights Act 1998, was not an error which was of any legal moment – because the court was bound to conduct that exercise itself, in any event. Unsurprisingly perhaps, on the facts of the case, each of their Lordships had no difficulty in finding that that the restriction of such activities on social policy grounds was an entirely proportionate interference with the rights of the pornography peddling licence applicants.

44. But, in coming to that conclusion, they considered the merits, and gave the weight they considered appropriate to the various material considerations, including social policy of not having sex shops in that part of Belfast (a good deal) and to the harm to the right of freedom of expression (not much). In doing so, they reflected the comments of Lord Steyn in (R (Daly) v Secretary of State for the Home Department [2001] UKHL 26; [2001] 2 AC 532 ("Daly") at [27], that, when a court considers proportionality, it may be necessary to attend to "the relative weight accorded to interests and considerations" by the primary decision-maker.

45. It can therefore be seen at once that, where the courts are required to adjudicate upon a planning decision where article 8 is engaged, there is, at first blush, tension between well-established planning jurisprudence and now equally well-established human rights principles with regard to the correct approach.

46. This application gives rise to issues concerning both the approach of a planning decision-maker when article 8 is engaged, and approach of the court when planning decisions are challenged. I will deal with those issues in turn.

Article 8 and Planning Decisions

47. In this application, article 8 is undoubtedly engaged; and Mr Philpott, rightly, did not suggest otherwise.

48. In determining a planning application, a local planning authority and an inspector appointed to deal with a section 78 appeal are exercising public functions, and are "public authorities" within the meaning of section 6 of the Human Rights Act 1998. It would therefore be unlawful for them to make a decision which is incompatible with a Convention right, including the article 8 right to respect for family life. As I indicate below (paragraph 85(i)), I consider that it is uncontrovertible that, where article 8 rights are is in play, they are a material consideration for the purposes of section 70 of the 1990 Act. That was, as I have indicated, common ground before me.

49. In this case, the Inspector found that, if planning permission were refused and the enforcement notice stayed in place, and as a result the Claimant and her family were evicted from the Site, then they would be unlikely be able to find a legal site and they would be forced to pitch at the roadside. In particular, that would have a significant adverse impact upon the children. Over and above the obvious adverse impact that such disruption would cause, the two children in school would lose the stable home that has enabled them to obtain schooling and, no doubt, other facilities such as health services. Article 8 was in play.

50. However, the right to respect for family life is not absolute: interference with that right can be justified by the state if that interference is (i) for a legitimate aim, (ii) in accordance with the law, and (iii) necessary in the public interest. In this case, as Mr Willers accepted, the dismissal of the planning appeal by the Inspector was for a legitimate aim namely the protection of a Green Belt (see paragraphs 5 and following above), and was in accordance with the domestic planning regime.

51. Whether the interference is "necessary" in this context, is dependent upon whether it is proportionate to the legitimate aims pursued by the state. It has always been recognised that that requires a context-specific exercise to be performed, in which "the nature, context and importance of the right asserted and the extent of the interference… must be balanced against the nature, context and importance of the public interest asserted as justification" (Human Rights Law and Practice, Lester & Pannick, 1st Edition (1999) at paragraph 4.8.43). With the benefit of over a decade of applying the provisions of the Convention through the Human Rights Act

1998, it is now clear that this balancing exercise is a particularly sophisticated one (see, and compare with the above extract from the 1999 Edition of the same book, Human Rights and Practice, Lester, Pannick and Herberg, 3rd Edition (2009) at paragraph 4.8.4, to which I am indebted).

52. In particular, article 8 concerns a broad range of often ill-defined personal interests, many of which may be in play at the same time. Some are negative rights, requiring the state to refrain from interfering with family or private life; whilst others are positive rights, requiring the state to facilitate family or private life in some particular way: for example, article 8 imposes a positive obligation to facilitate the Gypsy way of life (Chapman v United Kingdom [2001] 33 EHRR 18 at paragraph 96). Any individual is likely to have a number of article 8 interests, which themselves may be diverse and, in any balancing exercise, some may fall on one side of the balance whilst others my fall on another side.

53. Whilst those interests demand "respect", they are of course not guaranteed. The public interest and/or the rights and interests of others may justify interference with an individual's article 8 rights; and, just as the possible interests covered by article 8 are wide-ranging and diverse, so are the potential justifiable limitations. In addition to matters of public interest (which may themselves be many and/or diffuse), in most decision-making exercises involving an individual's article 8 rights, there are likely to be a number of other individuals, each of whom may have his or her own article 8 rights and other legitimate interests, which again may not all fall on the same side of the balance. Furthermore, the decision-making process may not simply be binary: there may be several or even many possible resulting decisions. For example, a planning decision in favour of a grant may be subject to any number of various conditions; and the effect of a decision which would requires removal of a development may be postponed for a period.

54. Therefore, whilst this balancing exercise "is inherent in the whole Convention" (Cossey v United Kingdom (1990) EHRR 622 at paragraph 37), because of the multi-stranded nature of article 8 and its concern with relationships between individuals as well as the relationship of individuals and the state, the exercise is often singularly complex when article 8 is in play. The result is that "… the [European Court of Human Rights] is increasingly approaching the issue of justification [in the context of article 8] by use of such fair balance analysis"(paragraph 4.8.4 of Lester, Pannick and Herberg, 3rd Edition). Another result is that a decision-making exercise involving article 8 rights, especially in a complex setting, may be amenable to more than one, perfectly lawful, result.

55. Where action by the state affects a family, whether the action is disproportionate in its interference with their article 8 rights has to be looked at by reference to the family unit as a whole and by reference to the impact upon specific individual members of the family (Beoku-Betts **v Secretary of State for** the Home Department [2008] UKHL 39; [2009] AC 115 at [20] per Lord Brown of Eaton-under-Heywood). Where those family members include children, then their article 8 rights have to be interpreted in the light of general principles of international law, including obligations imposed on the state by international conventions (ZH (Tanzania) at [21]-[23] per Baroness Hale). In this context, the most important obligations on the United Kingdom are those derived from the UNCRC. Article 3(1) provides:

> "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."

When a child's article 8 rights are engaged, they must be looked at in the context of the UNCRC or, as it has been put, "through the prism of article 3(1)" (HH v Deputy Prosecutor of the Italian Republic, Genoa; F-K v Polish Judicial Authority [2012] UKSC 25; [2012] 4 All ER 539 ("HH") at [155] per Lord Wilson).

56. At the hearing before me, Mr Philpott initially sought to argue that the relevant provisions of the UNCRC (and, hence, the principles of ZH (Tanzania) derived from it) do not apply to planning determinations by the **Secretary of State**, because they have not been incorporated into our domestic law in respect of such decisions, neither section 11 of the Children Act 2004 nor section 55 of the Borders, Citizenship and Immigration Act 2009 (both of which were referred to in ZH (Tanzania)) as applying to the **Secretary of State** in this context. However, in his written submissions of 23 January 2013, Mr Philpott conceded (if I might say so, rightly) that, in the light of HH, R (MP) **v Secretary of State for** Justice [2012] EWHC 214 (Admin), R (Collins) **v Secretary of State for Communities** and **Local Government** [2012] EWHC 2760 (Admin) especially at [21]-[23], and AZ **v Secretary of State for Communities** and **Local Government** [2012] EWHC 3660 (Admin) especially at [81(4)], article 3(1) of the UNCRC and the principles of ZH (Tanzania) do apply to planning determinations of both **local** planning authorities and the **Secretary of State**. Consequently, it became common ground that, in making her determination, the Inspector was bound to treat the best interests of the Claimant's children as a "primary consideration"; the remaining issue being as to whether the Inspector's decision to refuse the appeal against the refusal of planning permission did, in substance, do so (as Mr Philpott submitted) or not (as Mr Willers contended).

57. The question of what is meant by treating the best interests of the children as "a primary consideration" has vexed a number of courts, and it occupied a considerable amount of the debate before me. There is at its heart a challenging issue; but that can be pared down, by disposing of matters which are not, in my view, as difficult.

58. First, it seems to me, as the cases repeatedly confirm, that article 3 of the UNCRC self-evidently requires the identification of what the best interests of any child are. In some cases, perhaps where the interests of a child and his primary carer are not necessarily the same, that may itself be a testing question; but in most contexts there is unlikely to be any antagonism between the wishes of that carer and a child's best interests, and the question of what the best interests of the children are may not be difficult. In a planning context, in which the child lives with a parent or other primary carer who has an interest in the relevant planning proceedings, a stable home is almost always going to be in that child's best interests, together with all that that brings including educational opportunities. Where that home is put in jeopardy in a planning application (and particularly where the result may be homelessness, or camping by the roadside), the interests of a carer who has an interest in the application and the best interests of the child are most likely to coincide, as they do in this case. In cases in which those interests do coincide, the carer will usually be in the best position to put forward evidence as to the potential adverse impact a decision may have upon any child; and the planning decision-maker (or, in any challenge, the court) will be entitled to assume that any and all relevant evidence of the child's best interests is put before it by that carer. Although of course there may be cases in which circumstances are such that carers cannot be relied upon to ensure that a child's best interests are brought fully to the attention of the court, it will not usually be necessary for the decision-maker or court to make its own enquiries as to evidence that might support those obvious best interests. To that extent, I respectfully disagree with the comments of His Honour Judge Thornton QC sitting as Deputy High Court Judge in the context of planning enforcement proceedings in Sedgemoor District Council v Hughes [2012] EWHC 1997 (QB) at [32], that a planning decision-maker or the court will routinely be required to produce social enquiry or welfare reports on all children whose interests are or may be adversely impacted by any planning decision or even any planning enforcement decision.

59. Second, article 3 clearly does not make the best interests of any child determinative, such that no decision can be taken other than one in conformity with those interests (ZH (Tanzania) at [26] per Baroness Hale). Nor does it mean that the best interests of any child are "paramount" or "*the* primary consideration" (ZH (Tanzania) at [25] per Baroness Hale).

60. Third, with respect to the judges who have taken a different view (see, e.g., HH at [144]-[145] per Lord Kerr), in my view it does not mean that the identified best interests of any child must be considered temporally or logically first – and then the cumulative effect of other considerations assessed to evaluate whether they outweigh those interests. Whereas that may possibly be a valuable approach in some cases (for example, in the relatively simple, and vanishingly rare, case where the only rights and interests in contention are a single identifiable public interest, and the easily identifiable article 8 rights of a single child), where the best interests of children are only one factor amongst a complex panoply of public and private interests and rights, it is in my view unlikely to be appropriate. Whilst of course the UNCRC and ZH (Tanzania) require the best interests of children to be taken into account in a specific way, I do not consider that that requires such a gross distortion of the well-established planning decision-making process, or similar processes in other administrative fields where social policy factors are in play with full force and the adverse impact on children is indirect. Indeed, in a field such as planning, I would regard that approach as usually wrong, because the interests of any relevant children cannot properly be regarded as something distinct and apart from the necessary section 70 balancing exercise: they are an integral, and important, part of that exercise (see paragraph 85(i) below, and the authorities referred to there).

61. The real question, therefore, is this: if any child's best interests are not determinative of a planning issue, what is the consequence of making them "a primary consideration" rather than simply "a material consideration"?

62. Mr Willers submitted that they must be given more, or at least as much, weight as any other consideration. However, there is room for confusion here. Human rights only have life in the context of an individual case: they cannot exist in a vacuum, and can only be properly considered in a case-specific context. The weight to be given to article 8 rights in a particular case will depend upon (in the words of Lester & Pannick: see paragraph 51 above), "the nature, context and importance of [the] right or interest" and, because weight is a concept which inherently involves relativism, also "the nature, context and importance of the public interest asserted as justification" – as well as, one might add, the nature, context and importance of the rights and interests of other individuals where these are engaged. As Lord Steyn said in Daly at [28], in cases involving Convention rights, as in the law generally, "context is everything".

63. The "weight" of a consideration is merely a reference to the importance attached to it. Although I do not wish to become embroiled in concepts of deep physics or philosophy, in my respectful view, confusion has arisen because "weight" in the context of the exercise required by section 70 (of taking into account, when making an relevant planning decision, all material considerations) has been used in two different ways: the inherent weight or importance of a factor at a policy level before consideration of the individual circumstances, and the weight or importance of a factor, relative to other factors, after that examination. That distinction is effectively identified by Lord Wilson in HH at [155], when he says, of the UNCRC article 3 imperative:

> "The rights of children under article 8 must be examined through the prism of article 3(1)…. Thus, in the present inquiry, article 8 affords to the best interests of the three children a substantial weight which, following examination, other factors may earn and even exceed but with which, under the law of the article, they do not start."

In other words, before any consideration of the individual circumstances of the child or any other material considerations, the best interests of any child can be said to have "a substantial weight" in the sense of an importance that no other consideration exceeds; but that evaluation may alter once the individual circumstances of those interests and other factors are considered and assessed. Therefore, whilst it might be said at a policy level that a particular factor should be given a particular "weight" (e.g. "moderate" or "substantial"), where it is the very function of a decision-maker to attach weight to considerations which are material to the decision he is required to make, as he proceeds with his examination of the circumstances of an individual case, he must adjust the *relative* weighting to that which, in his judgment, the circumstances of the case require. On examination of all the material factors, the importance of one consideration may reduce (or, of course, increase), compared with others. There is no reason why any such change cannot properly be reflected in the designation given to the weight of those factors: it is not sensible to require a decision-maker to stick formulaically with the designation he is required to start with. The matter is one of substance, not form. That applies equally to weight or importance that policy documents such as PPG2 require to be afforded to particular planning public policy factors, and to the weight or importance that article 3 of the UNCRC requires as a matter of policy to be given to the best interests of a child.

64. Where reference is made to the "weight" of a consideration, it is therefore important to identify whether this is a reference to the importance attached to that consideration as a matter of policy, without consideration of the individual circumstances of a particular case; or whether it is a reference to the weight of that consideration relative to other considerations after an examination of all material considerations by a decision-maker in the context of a specific case.

65. Article 3(1) of the UNCRC and ZH (Tanzania) are concerned with the importance that, as a matter of policy, should be attached to the best interests of a child when those interests are in play in a decision-making process. That is why Baroness Hale said that no other material consideration can be treated as "inherently more significant than the best interests of the children" (ZH (Tanzania) at [26] per Baroness Hale); in other words, no other consideration should be regarded as inherently more important than the best interests of any child, simply because of its own nature. That is focused upon the importance of the best interests of the children without examination of the individual circumstances of the case. Upon investigation of those circumstances and assessment of all material factors, however, as Lord Wilson explains (in HH at [155], quoted at paragraph 63 above), other factors may upon examination "earn or exceed" the best interests of the child in terms of weight. In HH, Lord Mance also captured the essence of this part that the best interests of any child should play when he said (at [98]):

> "… This means, in my view, that such interests must always be at the forefront of any decision maker's mind, rather than that they need to be mentioned first in any formal chain of reasoning or that they rank higher than any other considerations. A child's best interests must themselves be evaluated. They may in some cases point only marginally in one, rather than the other, direction. They may be outweighed by other considerations pointing more strongly in another direction."

This also, it seems to me, explains the judgment of Lord Kerr (at [145]), where he said that "no factor can be given greater weight than the interests of the child". He was there referring to the inherent importance of the best interests of a child.

66. Whilst the best interests of a child might (and, following ZH (Tanzania), must) properly be afforded an importance or a weight as great as any other material consideration prior to examination of the individual circumstances of a case, it is in my view unhelpful and analytically wrong to say that those interests must continue to have more importance or weight than any other right or interest, throughout a process in which that decision-maker is exercising his very function of attaching importance or giving weight to all material considerations, including those which are "primary" and those that start, as a matter of policy, with a hallmark of particular importance. It would be a logically impossible task if there were more than one child, with differing "best interests". It would also prohibit, for example, a decision-maker giving more weight to one strand of a child's best interest than another, which a decision-maker must have the power to do. For example, in Collins (cited in paragraph 56 above), the decision-maker attributed – the court found, unexceptionably – "significant" weight to the adverse effect of a potential decision on the education of the relevant children, but only "moderate" weight to the issue of their health. That reflected the relative importance of those different interests of the child, in the view of the decision-maker.

67. Two final points on the interests of children, in the field of planning. First, in making any assessment, even where a child's parents have breached planning controls (which would, of course, be a material consideration), in considering the child's interests, the decision-maker has to bear in mind that the child is not to blame for any breach (see Baroness Hale in ZH (Tanzania) at [33], and in HH at [12]).

68. Second, as I have already emphasised, planning is quintessentially an area of social policy. As a consequence, for the reasons I set out below, a planning decision-maker has a wide margin of discretion in the exercise he performs, holding in balance the public interest and the rights of individuals. Furthermore, in some areas of social policy and control, although emphasising that the balancing exercise is always context-specific, the courts recognise that interference with article 8 rights may only outweigh the public interest where that interference is exceptional. Therefore, in the context of decisions to extradite which impact on article 8 rights, "the consequences of interference with article 8 rights must be exceptionally serious before this can outweigh the importance of extradition…" (Norris v The Government of the Unites States of America [2010] UKSC 9 at [56] per Lord Phillips), a principle equally strong in the context of extradition even where the article 8 rights are those of children (HH at [162] per Lord Wilson). Immigration is another area in which it has been said that the decisions taken pursuant to the lawful operation of immigration control will be proportionate in all save a small minority of cases (Razgar v Secretary of State for the Home Department [2004] UKHL 27; [2004] 2 AC 368 at [21] per Lord Bingham). I am not to be taken as advocating an "exceptionality" test – Lord Phillips in Norris makes clear why such a test is inappropriate here – and, of course, the context in which human rights are considered includes the area of administration in which any particular decision or measure is made – extradition and immigration are very different from planning. But it is not to be assumed in an area of social policy such as planning that article 8 rights (even of children, whose interests must be treated as primary) will often outweigh the importance of having coherent control over town and country planning, important not only in the public interest but also to protect the rights and freedoms of other individuals (see, e.g., Lough v First Secretary of State [2004] EWCA Civ 905; [2004] 1 WLR 2557 ("Lough") at [54] per Keene LJ). In practice, in my view, such cases are likely to be few.

69. From these authorities, in respect of the approach of a planning decision-maker, the following propositions can be derived.

i) Given the scope of planning decisions and the nature of the right to respect for family and private life, planning decision-making will often engage article 8. In those circumstances, relevant article 8 rights will be a material consideration which the decision-maker must take into account.

ii) Where the article 8 rights are those of children, they must be seen in the context of article 3 of the UNCRC, which requires a child's best interests to be a primary consideration.

iii) This requires the decision-maker, first, to identify what the child's best interests are. In a planning context, they are likely to be consistent with those of his parent or other carer who is involved in the planning decision-making process; and, unless circumstances indicate to the contrary, the decision-maker can assume that that carer will properly represent the child's best interests, and properly represent and evidence the potential adverse impact of any decision upon that child's best interests.

iv) Once identified, although a primary consideration, the best interests of the child are not determinative of the planning issue. Nor does respect for the best interests of a relevant child mean that the planning exercise necessarily involves merely assessing whether the public interest in ensuring planning controls is maintained outweighs the best interests of the child. Most planning cases will have too many competing rights and interests, and will be too factually complex, to allow such an exercise.

v) However, no other consideration must be regarded as more important or given greater weight than the best interests of any child, merely by virtue of its inherent nature apart from the context of the individual case. Further, the best interests of any child must be kept at the forefront of the decision-maker's mind as he examines all material considerations and performs the exercise of planning judgment on the basis of them; and, when considering any decision he might make (and, of course, the eventual decision he does make), he needs to assess whether the adverse impact of such a decision on the interests of the child is proportionate.

vi) Whether the decision-maker has properly performed this exercise is a question of substance, not form. However, if an inspector on an appeal sets out his reasoning with regard to any child's interests in play, even briefly, that will be helpful not only to those involved in the application but also to the court in any later challenge, in understanding how the decision-maker reached the decision that the adverse impact to the interests of the child to which the decision gives rise is proportionate. It will be particularly helpful if the reasoning shows that the inspector has brought his mind to bear upon the adverse impact of the decision he has reached on the best interests of the child, and has concluded that that impact is in all the circumstances proportionate. I deal with this further in considering article 8 in the context of court challenges to planning decisions, below.

Article 8 and Court Challenges to Planning Decisions

70. I have already identified the tension between the long line of planning authorities which instil in us that planning merits are a matter exclusively for the expert decision-makers assigned the task under the statutory scheme – local planning authorities and inspectors on behalf of the **Secretary of State** – with the court only being concerned with the legality of their decision-making process; and the more recent, but now well-established, line of authorities which emphasise that, where human rights are in play, then it is for the court to make an objective assessment as to whether an adverse impact of a decision on those rights is proportionate. The conventional role of the court in planning cases (even if in the form of an application to quash under section 288 of the 1990 Act) is effectively one of considering procedural legal propriety, akin to judicial review; but, as Lord Bingham and Baroness Hale emphasised in SB and Miss Behavin' respectively (see paragraph 40 above), the role of the court in considering whether there has been a breach of human rights is different, the court being concerned, not with procedure, but the substantive issue of whether the individual's human rights have in fact been breached. On the basis of Miss Behavin', whether the decision-maker whose decision is challenged has conducted that proportionality exercise or not, is irrelevant: it is for the court to conduct that exercise, giving the weight to material factors that it considers appropriate (see paragraphs 40-44 above).

71. What, then, is the correct approach of the court when one material factor in a planning decision is a potential infringement of article 8 rights which requires a proportionality exercise to be conducted?

72. Before me, all parties to a greater or lesser degree submitted that, in a section 288 application where article 8 rights are in play, the planning jurisprudence to which I have referred should apply, and SB/Miss Behavin' should not – the court should not be concerned with merits, which Parliament has assigned to expert and experienced decision-makers and with which the courts are not properly equipped to deal. It was suggested that, if it were otherwise, given the large number of planning cases which might give rise to some potential infringement of article 8, the statutory planning scheme could not sensibly operate. If the courts began taking planning decisions on their merits, that would severely undermine the planning scheme as a whole, which has been put in place by Parliament. As such, as Lord Hoffmann emphasised in Alconbury (see paragraph 35 above), it would be "profoundly undemocratic".

73. Furthermore, to the extent that SB and Miss Behavin' require the court to consider proportionality substantively, they have been described, extra-judicially, as "problematic and not obviously desirable" (J Beatson, S Grosz, T Hickman, R Singh and S Palmer, Human Rights: Judicial Protection in the United Kingdom (2008), which includes an illuminating and commendable exposition of the issues raised: see paragraphs 3-114 et seq, and paragraphs 6-50 et seq). The concerns expressed, for example about the court taking over decision-making from a primary decision-maker assigned the task by democratically elected Parliament (see, e.g., paragraph 3-123), are real and legitimate.

74. However, SB and Miss Behavin' cannot be completely ignored; the approach required by those two House of Lords cases is, of course, binding on me. Furthermore, it is no complete answer to the tension between the approach advocated in those cases and the planning cases to which I have referred that the court in the former did not advocate "a shift to a merits review" (see, e.g., Daly at [28] per Lord Steyn, and SB at [30] per Lord Bingham); because a proportionality review clearly requires some consideration of merits.

75. In my view, it is helpful to take a step back. Even under traditional judicial review grounds, merits given to material factors are not entirely out of bounds: they have to be examined at least to the extent of ascertaining whether the decision in question was one to which no reasonable decision-maker could have come (Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223 ("Wednesbury")) or, in other words, was a decision "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it" (Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374 at 410 per Lord Diplock). The weight accorded to particular factors by the decision-maker may be so manifestly excessive or manifestly inadequate such that the resulting decision falls within that category (see, e.g., R **v Secretary of State for** Trade and Industry ex parte BT3G Ltd [2001] EuLR 325 at [187] per Silber J).

76. As Lord Steyn indicated in Daly at [25]-[28], the jurisprudential basis for the principle of proportionality is very different from that of common law irrationality. To begin with, the criteria are more precise and more sophisticated than merely broad logical outrageousness and irrationality. The question required to be answered by the court is whether the impairment of the relevant right or freedom is more than necessary to accomplish the public interest objective (Daly at [27]). That too requires consideration of merits, but, as Lord Steyn identifies, compared with Wednesbury, it demands a somewhat more intense review of both the weight afforded to relevant factors and the balance which the decision-maker has struck. The court's consideration of the article 8 rights, as with all human rights (but particularly those which involve family life) demands a review of particular intensity. If the interference with those rights would not only require children to leave a stable environment with access to schooling and health facilities, but also to camp with their families by the roadside, the level of intensity will of course be substantial (if authority were required for that self-evident proposition, see R (Smith) v South Norfolk Council [2006] EWHC 2772 (Admin) at [62] per Ouseley J).

77. However, although the basis for and intensity of review are different, there is considerable overlap in practical approach between a challenge on traditional grounds of judicial review and on the proportionality grounds. As Lord Slynn observed in Alconbury (at [51]), although there is a difference at a jurisprudential level between the principle and approach of the courts to assessing whether a decision is unlawful as being Wednesbury unreasonable and in breach of an individual's human rights as being a disproportionate infraction of them, the difference in practice is not as great as is sometimes supposed. Lord Steyn himself indicated in Daly (at [27]) that, whichever approach were adopted, the result would be the same in most cases.

78. In particular, just as the Wednesbury doctrine gives a decision-maker a margin of discretion, the courts have consistently recognised that, in considering whether an adverse impact on the human rights of an individual is proportionate to other legitimate aims, there will be many cases where there is no single right answer. They have recognised that, when making a decision engaging human rights, primary decision-makers have a legitimate margin of discretion, or proper area of judgment: when a decision falls within that margin, then the courts will not interfere with it (see, e.g., R v Director of Public Prosecutions ex parte Kebeline [1999] UKHL 43, [2000] 2 AC 326 at page 381 per Lord Hope, SB at [64] per Lord Hoffmann, Miss Behavin' at [46] per Lord Mance).

79. Where the legislature or executive is engaged in making decisions and choices in the general field of economic or social policy, such as in this case, it is well-established that the state has a wide margin of discretion: because, in respect of what is in the public interest on social and economic grounds, it is in the best position to judge (see, e.g., Stec v United Kingdom (2006) 43 EHRR 1017 at paragraph 52, R (RJM) v Secretary of State for Work and Pensions [2008] UKHL 63 at [56]-[57] per Lord Neuberger, R (S) v Secretary of State for Justice [2012] EWHC 1810 (Admin) and Knowles & Knowles at [87]-[88]). That principle has been emphasised in cases concerning social control (in, e.g., Miss Behavin' itself at [16] per Lord Hoffmann), including planning (Lough at [43(g)-(h)] per Pill LJ). The justification for this wide margin of discretion in such areas was given by Lord Hoffmann in Miss Behavin' (at [16]):

> "This is an area of social control in which the Strasbourg court has always accorded a wide margin of appreciation to member states, which in terms of the domestic constitution translates into the broad power of judgment entrusted to local authorities by the legislature. If the local authority exercises that power rationally and in accordance with the purposes of the same, it would require very unusual facts for it to amount to a disproportionate restriction on convention rights."

80. Of course, the human right involved in Miss Behavin' was the freedom of expression in the form of the right to sell pornographic material in the backstreets of Belfast which, important as that no doubt might have been to some, could only possibly have engaged article 10 "at a very low level" (Lord Hoffmann at [16]). The rights were not strong and, as I have already suggested, it was not entirely surprising that, although the Northern Ireland Court of Appeal had not considered this conclusion inevitable, each of their Lordships in that case clearly considered that the restriction of such activities on social policy grounds was an entirely proportionate interference with those rights. But the expression of principle with regard to the margin of discretion granted to a decision-maker when exercising a decision-making function in an area of social control is nevertheless good, and not undermined by the apparent weakness of the human rights relied upon in that case.

81. As Lord Hoffmann indicated, that margin of discretion has with it the implication that, when considering a challenge on human rights grounds in an area of social control, the court will give substantial deference to the decision of the decision-maker, where he has careful weighed the various competing considerations and concluded that the action in question is proportionate and lawful. As Lord Neuberger said in Miss Behavin' (at [91]):

> "… [W]here [a decision-maker] has properly considered the issue in relation to a particular application, the court is inherently less likely to conclude that the decision ultimately reached infringes the applicant's rights."

(See also SB at [26] and [31] per Lord Bingham; and Miss Behavin' at [26] per Lord Rodger, and at [37] per Baroness Hale). That deference will be the stronger when the primary decision-maker is particularly expert and/or experienced (and especially so when Parliament has assigned him as decision-maker on the basis of that expertise and/or experience) and/or acts in a quasi-judicial capacity, as a planning inspector does.

82. Therefore, although the lawfulness of process is not determinative, process may well be important to the court's determination of whether the human rights of the person challenging the relevant decision have in fact been breached; because, if the decision-maker (say, an inspector appointed to deal with a section 78 planning appeal) gets the process right, then the courts will give deference to his decision, and afford him a wide margin of error in making it. As Lord Hoffmann put it in Miss Behavin' (see paragraph 79 above), in those circumstances, it will take "very unusual facts" for a finding to be made by a court that there had been a disproportionate restriction on Convention rights.

83. Where a decision-maker is required to perform a decision-making exercise involving a number of public interest and private rights, one of which demands a proportionality balance to be performed, this overlap in approach is obviously helpful. In any event, problems deriving from the approach required by SB and Miss Behavin' are, in practice, likely to be few. In any proceedings, the court will be faced with a single question, namely whether the challenged decision disproportionately infringes an individual's human rights. In considering that question, it will give due deference to the decision of the primary decision-maker, because he has been assigned the decision-making task by Parliament, and he will usually have particular expertise and experience in the relevant decision-making area. Such a decision-maker will be accorded a substantial margin of discretion. The deference and margin of discretion will be the greater if he has particular expertise and experience in the relevant area, and/or if he is acting in a quasi-judicial capacity. If the decision-maker has clearly engaged with the article 8 rights in play, and considered them with care, it is unlikely that the court will interfere with his conclusion.

84. Nevertheless, there may be cases where he has clearly not done so at all, or not done so properly. In those cases, I do not consider that, in every case where the primary decision maker has not properly engaged with the human rights issues, Miss Behavin' requires the court itself to grapple with the weight of those issues compared with public interest factors, irrespective of the area of administration involved and irrespective of the expertise and experience of the primary-decision-makers assigned to that task. In areas of high complexity where primary decision-making has been carefully assigned by Parliament, it seems to me that it would defy logic, and democratic principles, if the court was required to enter into an arena reserved to that decision-maker and in doing so to give appropriate weight to all sorts of social policy factors, as well as private rights and interests, no matter how ill-suited to the task the court might be, how expert the primary decision-maker might be and how relatively small the human rights issue is in the context of the decision-making process as a whole. In my view, it is arguable, even after Miss Behavin', that there are some cases in which it would be appropriate and lawful for the court to quash the primary decision-maker's decision and, effectively, require him to re-make that decision, this time properly taking into account the human rights in play as a material factor.

85. However, that is an issue which does not arise in this case, because of the specific nature of section 288 applications and the limited matters in fact in issue in this claim.

i) It was common ground before me that, for the purposes of section 70 of the 1990 Act, any article 8 rights that are in play are a material consideration that a planning decision-maker is bound to take into account. I have no doubt that that is so. It is well-established that, in a field such as planning, the interests of any relevant children cannot properly be regarded as something distinct and apart from the necessary section 70 balancing exercise: they are an inherent, integral, and important, part of that exercise. As Weatherup J said in In re an Application by HM (A Minor) [2004] NIQB 85 at [47] :

> "… [T]he type of balancing exercise that is required to satisfy Article 8 it is an inherent part of the planning process in which the planning authorities balance public and private interests."

That principle has been consistently confirmed by our courts (see Lough at [48] per Pill LJ; McCarthy v Secretary of State for Communities and Local Government [2006] EWHC 3287 at [39(f)] per His Honour Judge Gilbart QC sitting as Deputy High Court Judge (permission to appeal being refused on this ground: [2007] EWCA Civ 510); Langton v Secretary of State for Communities and Local Government [2008] EWHC 3256 (Admin) at [13] also per Judge Gilbart; Flattery v Secretary of State for Communities and Local Government [2010] EWHC 2868 (Admin) at [48]-[49] per Lindblom J; AJ (India) v Secretary of State for the Home Department [2011] EWCA Civ 1191 at [43] per Pill LJ; and HH at [98] per Lord Mance, quoted above at paragraph 65).

ii) If the inspector fails to take a material consideration into account, as a matter of general public law principles, he errs in law. Section 70 requires him to take all material considerations into account; and, if he fails to do so, his decision is not "within the powers of [the 1990] Act" for the purposes of section 288(5)(b) (quoted at paragraph 34 above).

iii) By section 288(5)(b), this court is restricted by way of remedy to quashing a decision of an inspector that is not within the powers of the 1990 Act. It is therefore necessarily the case that, even if this court considers an inspector's decision unlawful on the ground that he failed properly to take into account as a material consideration article 8 rights in play, then it can only quash that decision. It would not be open to this court to make a new decision in its place.

iv) In this application, neither party suggested that, if I were to find the inspector had failed properly to take into account the relevant article 8 rights, then this court should begin performing the section 70 balancing exercise giving the weight I considered appropriate to all of the material considerations, including all planning policy factors as well as article 8 rights. Indeed, all parties appeared to view that prospect with some alarm. They submitted that I should treat the case as any other case of a failure of an

inspector to take into account a material consideration. All submitted that, if that error is material (in the sense that, without it, the decision would or may have been different) then I should quash the decision.

86. I heard submissions on the point of time at which the proportionality assessment should be made. That is not in issue in this application, because the Claimant does not seek to rely upon any evidence now that was not before the Inspector. I do not, therefore, give a concluded view. However, without prejudice to any other proceedings a claimant may bring if circumstances have changed or further evidence emerged since the date of an Inspector's decision, I am provisionally persuaded by Mr Philpott's submissions on this point, i.e. that the court should consider the assessment of proportionality as at the date of the Inspector's decision. Lord Bingham in SB at [30] said that the question of proportionality must be judged "by reference to the circumstances prevailing at the relevant time", which seems to me to be the time when the interference with the rights occurred. It is the Inspector's decision which requires the claimant and any children to leave the relevant site, and therefore the date of the alleged interference with the relevant article 8 rights. Furthermore, as I have emphasised above, the court is only concerned with the legality of the Inspector's decision – and can only quash that decision, by way of relief – and consideration of changes in circumstance since that decision seems to me to be logically inconsistent with the nature of a section 288 application. However, having expressed those initial views, I leave that issue to be determined in a claim in which is it is a live issue.

87. In terms of the proper approach of the court when dealing with a section 288 application in which article 8 is engaged, so far as relevant to this claim, the following propositions can therefore be derived from the cases.

    i) The application does not require a full merits review. It requires review on traditional judicial review grounds, together with consideration of whether the resulting decision engages article 8 and, insofar as it does, whether the adverse impact of the decision on the article 8 rights engaged is proportionate to the legitimate aims sought to be protected (including both the public interest, and the rights and interests of other individuals).

    ii) In considering whether the decision breached relevant article 8 rights, the court is required to consider the merits, with appropriate scrutiny, but it should do so bearing in mind that the inspector's function, assigned to him by the statutory scheme and ultimately Parliament, is to consider the merits of all material considerations, including any article 8 rights that are engaged. The inspector is an expert and experienced, and acts in a quasi-judicial capacity, which each warrant a wide margin of discretion. He is acting in an area of social policy, which in itself attracts a wide margin of discretion. As a result, considerable deference ought to be attached to his conclusion.

    iii) Proportionality is a question of substance and not form. If the inspector has clearly engaged with the article 8 rights in play, and considered them with care, given his wide margin of discretion, it is unlikely that the court will interfere with his conclusion on grounds of proportionality. If he has not –even if he has not referred to article 8 rights at all – on usual principles, the court will not quash his decision if his error is immaterial. If his error is material, then it is open to the court to find that the interference with the relevant human rights is in any event proportionate; or quash the decision.

    Application of the Principles to this Application

88. Mr Willers submitted that the Inspector erred because, as required by paragraph 3.2 of PPG2 (see paragraph 7 above), in her decision she gave the harm caused to the Green Belt by the inappropriate development "substantial weight"; but gave the best interests of the children only "moderate weight". Article 8 coupled with article 3 of the UNCRC required her to give the best interests of the children at least as much weight as she gave to any other consideration. In failing to do so, she materially erred in law.

89. Mr Willers addressed this submission in two ways.

90. First, he submitted that paragraph 3.2 of PPG2 was itself unlawful, by requiring that "substantial weight" be given to harm to the Green Belt and indicating that harm caused by the development is "clearly outweighed" by other considerations.

91. I cannot accept that submission. As I have indicated, human rights claims are necessarily context-specific, and this submission could only be good if it meant that any human rights claim would inevitably be dealt with improperly. That is clearly not the case. The policy is, of course, only a policy, capable of being overridden for good reason by the circumstances of a particular case – but in any event it expressly allows for harm to the Green Belt to be overridden by other material considerations, including article 8 rights. Whilst such development is only to be allowed "in very special circumstances", such circumstances are defined in paragraph 3.2 as those in which "… harm is clearly outweighed by other considerations", which must include infringements of article 8 rights. The policy cannot arguably be bad for requiring those other factors to outweigh harm "clearly". This is simply a mark of the fact that, in areas of social control, the relevant social policy will not easily or often be overridden (see paragraph 68 above).

92. His second, main submission was that the inspector erred in the particular decision, because she gave the harm to the Green Belt "substantial" weight, and only "moderate" weight to the best interests of the children. However, I do not find that submission compelling, either.

93. It is trite to say that the Inspector's decision letter has to be read as a whole. It comprises 56 paragraphs. Needless to say, there were many issues for her to cover, paragraph 11 of her decision identifying thirteen main issues, including the following:

> "….
>
> - The need for additional Gypsy sites.
> - Whether alternative sites are available for the occupiers of the Site.
> - The Development Plan Gypsy policy background.
> - The personal needs and circumstances of the site occupants.
> - Human rights".

94. She dealt with those five related issues, in turn, from paragraph 30 onwards in her decision. She concluded that there was an unmet need for Gypsy sites within the borough (paragraph 34), and, if the enforcement notice were upheld and the Claimant and her extended family evicted, it was likely that they would be living "on the road" and moving from one unauthorised location to another (paragraph 35). She noted (in paragraph 40), that the Claimant's two girls were in school, and she refers to the Headteacher's letter of 24 June 2010 (to which I refer at paragraph 26 above), which she had clearly read and taken fully into account. She also refers to the then-recent visit of another child to hospital.

95. In the circumstances, whilst she did not use the phrase "best interests" – her decision was of course pre-ZH (Tanzania) – it is clear that the Inspector had the best interests of the children at the forefront of her mind. Those were for a stable home, and focused upon access to schooling and medical services. The Inspector referred to each of those elements. From paragraph 45 onwards, she performed the balancing exercise she was, by section 70 of the 1990 Act, required to perform. In referring to the children's benefit from a settled home with access to educational and medical services in paragraph 48 as being attributed "moderate weight", that is clearly her assessment of the relative weight she considered appropriate for those factors after examining all of the material considerations, and she is not giving the children's best interests inherently less weight than the harm to which the development has given rise. From the context, that is plain.

96. She was fully entitled, after that analysis with which fault cannot be found, to conclude, as she did, that the dismissal of the appeal against the refusal of planning permission, subject to an extension for compliance with the enforcement notice, would not have a disproportionate impact upon the Claimant and her family. It is noteworthy that the extension of the enforcement period was expressly made on account of the Claimant's young children, and their educational and health needs

(paragraph 50). That confirms that the Inspector maintained the children's best interests at the forefront of her mind throughout her examination of the material considerations.

97. Whilst, had the Inspector had the benefit of ZH (Tanzania), she may well have phrased her decision differently, in my judgment she clearly in substance identified the best interests of the children; she identified all of the evidence before her that appertained to those interests; she did not afford any other consideration inherently more weight; and throughout her examination of the material considerations, she maintained those interests of the children at the forefront of her mind. In those circumstances, she properly took the interests of the Claimant's children into account, as she was required to do under article 8 in the context of article 3 of the UNCRC as explained in ZH (Tanzania); and her conclusion that the interference with the children's interests was proportionate fell well within her margin of discretion. On an objective view, I am in no doubt that, in this case, that interference was clearly proportionate.

Conclusion

98. For those reasons, each of the challenges to the decision letter fails, and I consequently dismiss the application.

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10.2.8. Ward V SSLUHC and Basildon District Council (2024)

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Case No: CO/466/2022
AC-2022-LON-001196

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

Royal Courts of Justice
Strand, London, WC2A 2LL
25 March 2024

B e f o r e :

MRS JUSTICE LANG DBE

Between:

WINIFRED HELEN WARD	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES	
(2) BASILDON DISTRICT COUNCIL	**Defendants**

Stephen Cottle (instructed by the Public Interest Law Centre) for the Claimant
Killian Garvey (instructed by the Government Legal Department) for the First Defendant
The Second Defendant did not appear and was not represented

Hearing date: 7 March 2024

HTML VERSION OF JUDGMENT APPROVED

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This judgment was handed down remotely at 10 am on 25 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mrs Justice Lang :

1. The Claimant applies, under section 288 of the Town and Country Planning Act 1990 ("TCPA 1990"), for a statutory review of the decision, made on 30 December 2021, by an Inspector, appointed by the First Defendant, which dismissed Mr Mark Cooper's appeal against the refusal of planning permission by the Second Defendant ("the Council") for a material change of use of land in the Green Belt for the stationing of caravans for residential occupation, on the south side of Carlton Road, Bowers Gifford, Basildon ("the Site").

2. The Claimant resides at the Site with Mr Cooper and their three children in one mobile home and one touring caravan. The Claimant is an Irish Traveller and Mr Cooper is a Romani Gypsy. Mr Cooper was the applicant for planning permission and the appellant in the appeal under section 78 TCPA 1990. He has not been joined as a claimant in this application because he has not been able to obtain legal aid. The Claimant has been granted legal aid and she is a person aggrieved by the decision, within the meaning of section 288(1)(a) TCPA 1990 as she is at risk of losing her home.

3. The Council is the local planning authority.

Grounds of challenge

4. There is a dispute between the parties over the extent of the grant of permission to apply for statutory review.

5. The grounds of challenge as originally pleaded, when the claim was filed on 8 February 2022, were as follows:

i) **Ground 1**. The Inspector erred in law when she concluded in paragraph 24 of the Decision Letter ("DL/24") that 'substantial weight' should be attributed to *both* the harm in the Green Belt by reason of inappropriateness and the harm to the openness of the Green Belt.

ii) **Ground 2**. The Inspector's decision not to grant a temporary planning permission which would be personal to the First Claimant and her family was disproportionate and irrational.

6. Permission to apply for statutory review was refused on the papers by Johnson J. on 24 June 2022. The Claimant renewed her application for permission on Ground 2 only. Ground 1 was not pursued.

7. The oral renewal hearing took place on 8 November 2022. HH Judge Walden-Smith, sitting as a Judge of the High Court, refused permission on all grounds. During the hearing, she allowed Counsel for the Claimant to rely upon new grounds which were only made orally and not recorded in writing, either before or immediately after the renewal hearing. They were summarised in paragraph 12 of her judgment, as follows:

> "Mr Cottle significantly expanded the extent of his challenge … that ground to contend that there was a failure to apply the public sector equality duty; that there was a failure to consider an absence of policy for the provision of sites; that some of the inspector's decisions were not supported by evidence; and there was a failure to have regard to the best interests of the children."

8. Upon an appeal to the Court of Appeal, Lewison LJ granted permission to apply for statutory review, on 25 January 2023, for the following reasons:

> "I do not underestimate the difficult of challenging what, on its face, appears to be a carefully reasoned balance of the various factors for and against the grant of planning permission. I do, however, consider that it is at least arguable that in para [25] of the DL the inspector in making the transition from "primary consideration" to "significant weight" (as opposed to "substantial weight" used elsewhere in the DL made an error of law. There is also some force in the Appellant's contention that the inspector, in addition to balancing the various factors, ought to have given greater consideration to the question of proportionality (dealt with simply as a conclusion in one sentence of para [31] of the DL)."

9. Mr Garvey, Counsel for the First Defendant, contends that the grant of permission was limited to the two issues specified in the 'Reasons' section of Lewison LJ's order.

10. Mr Cottle, Counsel for the Claimant, submits that, in the Court of Appeal, permission was sought and granted on the basis of the Grounds of Appeal submitted by him, in particular:

> "3. Having regard to all the circumstances (and particularly the small scale of the proposed development, the consequential degree of harm to the Green Belt and the matters which the Inspector identified should be attributed 'significant weight' in favour of the appeal) the Inspector's decision not to grant temporary planning permission made personal to the Claimant and her family was disproportionate and perverse.
>
> 4. Such is the combined weight of the matters relied upon in support of the appeal, such was the very limited extent of harm that the Inspector found was caused by the proposal given it is situated in a settlement, said to be a degree of harm, it was not a fair reflection of the factors to then go on to conclude that that harm was so substantial that it was not clearly outweighed. The substantial weight that must be given to protection of the green belt was so obviously outweighed it was perverse to decide otherwise and it was relevant to know what the profound health need was, that the Inspector was referring to."

11. In the 'Permission to appeal skeleton argument', Mr Cottle stated, at paragraph 17, that there was only one ground of appeal, namely, the ground set out in paragraph 3 of the Grounds of Appeal, taken from paragraph 21 of the Statement of Facts and Ground (in its original form).

12. In the light of the skeleton argument and the grounds of appeal, I consider that Lewison LJ must have treated the sole ground of challenge as being the text set out in paragraph 3 of the Grounds of Appeal. He did not grant permission on some grounds and not others because there was only one ground before him. The further grounds raised orally before HH Judge Walden-Smith were not before him.

13. Ground 2 was widely drafted. Mr Cottle submits that Lewison LJ gave permission for Ground 2 to be pursued in its entirety. Mr Garvey submits that Lewison LJ did not accept that the entirety of Ground 2 was arguable. He found that the Inspector's decision "on its face, appears to be a carefully reasoned balance of the various factors for and against the grant of planning permission". Lewison LJ only identified two arguable errors of law within Ground 2, which were as follows:

    i) In DL/25, the Inspector in making the transition from "primary consideration" to "significant weight" (as opposed to "substantial weight" used elsewhere in the DL) made an error of law.

    ii) The Inspector, in addition to balancing the various factors, ought to have given greater consideration to the question of proportionality, dealt with simply as a conclusion in one sentence of DL/31.

14. In my view, the decision is ambiguous and could be read either way. Therefore, I have decided to give the Claimant the benefit of the doubt and proceed on the basis that permission was granted for Ground 2 as then pleaded.

15. A further complication is that the parties subsequently submitted to the Court directions which they had agreed between themselves, which permitted the Claimant to file an Amended Statement of Facts and Grounds ("SFG"). An Administrative Court Office Lawyer made an order accordingly on 14 April 2023.

16. In the Amended SFG, Mr Cottle recast his case with a substantial amount of new text. He re-numbered the Grounds, so that what was Ground 2 has become Ground 1. The Amended Grounds may be summarised as follows:

    i) **Ground 1: irrationality**. The Inspector's decision not to grant a temporary planning permission was disproportionate and perverse.

    ii) **Ground 2: children's best interests**. The Inspector misdirected herself by regarding the primary consideration of achieving the outcome that was in the best interests of the children as attracting less weight than the public interest in protecting the Green Belt.

    iii) **Ground 3: proportionality**. In carrying out the balancing exercise required by Article 8 ECHR, the Inspector failed to give sufficient consideration to the issue of proportionality. Further or alternatively, she failed to give sufficient reasons for her conclusion.

    iv) **Ground 4: flawed balancing exercise**. The Inspector's balancing exercise was flawed because she failed to factor in the right ingredients.

17. Ground 4 was not pleaded in the original SFG, and so Lewison LJ did not grant permission to pursue it. However, I have considered the specific points made under Ground 4 when determining Grounds 1 and 3.

Factual background

The Site and planning policies

18. The Site, which is about 527 sq. ft in size, is located on the south side of Carlton Road, Bowers Gifford, Basildon within the North Benfleet former Plotlands Estate. The Site is within the Metropolitan Green Belt. 63% of the Council's District is designated Green Belt; the rest is urban development. It lies between the built up areas of Basildon and Benfleet. The area is characterised by sporadic, low density, low rise residential development, interspersed with open, undeveloped plots of land. The Claimant submitted that the proposal was essentially infill development but the Council disagreed, as development on the land bordering the east and south was unauthorised, and affected the character of the area.

19. The development plan is the Basildon District Local Plan Saved Policies 2007. The Saved Policies are part of the Basildon District Local Plan, adopted in 1998, so the Local Plan is very out-of-date. There are no policies for meeting the accommodation needs of travellers. In 2018 a Basildon Borough Site Potential Study was published which assessed existing sites and found a significant shortfall.

20. The Green Belt is defined under Policy BAS GB1 of the saved Local Plan. It states: "The boundaries of the Green Belt are drawn with reference to the foreseen long term expansion of the built up areas acceptable in the context of the stated purposes of the Green Belt and to the provisions specified in this Plan". It does not set out criteria for

development within the Green Belt.

21. The Statement of Common Ground set out evidence about the inadequate supply of traveller sites, and the need for development on the Green Belt, some of which was agreed and some of which was disputed by the parties. The Inspector determined the issues at DL/14-17, finding that the Council did not have a 5 year supply of deliverable sites to meet the current and historic need for pitches. There was a clear and immediate need for sites in Basildon.

Use of the Site

22. Mr Cooper has owned the Site since 2014. The Site was previously used for grazing horses. After hardstanding was laid, Mr Cooper stationed two caravans on the Site, in December 2017.

23. Mr Cooper, the Claimant and three children live in two caravans (a tourer and a static caravan) on the Site. There is a grassed amenity area for play and grazing for a pony/donkey. Living on a permanent site enables the children to attend school and other local activities, and to access medical and other services as may be required.

24. Mr Cooper was born and brought up in Basildon, and his parents and brothers live nearby. Two of his children live with his ex-partner in the Basildon area. Therefore it is important to him to live near Basildon.

25. The Claimant was born and brought up in West London. She suffers from severe anxiety and depression, and she is vulnerable by reason of her learning disability. Stability and familiarity are important to her.

26. The Council served two enforcement notices (which were later withdrawn). The Council also obtained an injunction, the terms of which were not available to me.

27. On 22 October 2018 Mr Cooper applied for part-retrospective planning permission (permanent or temporary) for a material change of use of land for stationing of caravans for residential occupation with associated development (hard standing and a day room constructed of either brick or wood).

28. The Council refused planning permission on 19 February 2019 for the following reasons:

> "The proposal represents inappropriate development in the Green Belt, contrary to its aims and objectives. The absence of suitable pitches in the borough in tandem with unmet need weighs in favour of the proposal, as does a demonstrable lack of a 5-year land supply and the weight attached to these factors is significant. However, these factors, in conjunction with the applicant's personal circumstances, are not sufficiently compelling to amount to very special circumstances and clearly outweigh the substantial harm cause to the openness of the Green Belt caused by the proposal and therefore overcome the attributable policy objections. The proposal does not accord with the aims of the Basildon's Local Plan Policies BAS GB1 & BAS BE12; policies contained in Chapter 13 of the National Planning Policy Framework 2019; The Planning Policy for Traveller Sites 2015 and policies contained in Basildon's Emerging Local Plan."

29. The Claimant appealed against the refusal of planning permission. The Inspector (Nicola Davies BA DipTP MRTPI) held a hearing and made a site visit in November 2021. At DL/7, she identified the main issues as follows:

i) The effect of the proposal on the openness of the Green Belt; and

ii) Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal?

30. After a thorough review of the issues, the Inspector concluded, at DL/34:

> "**Conclusion**
>
> 34. The proposed development would, by definition, be harmful to the Green Belt, and I attach substantial weight to the harm to the Green Belt having regard to the policy in the Framework. The proposal would also result in harm to the openness of the Green Belt. The benefits of the other considerations, including those personal circumstances of the appellant and his family, do not clearly outweigh this harm. Consequently, there are not the very special circumstances necessary to justify inappropriate development in the Green Belt whether on a permanent or temporary basis. There would be no violation of the human rights on this occasion."

Legal and policy framework

The development plan and material considerations

31. 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."

Gypsies and travellers

32. I have been assisted by the judgment of Coulson LJ in *Bromley LBC v Persons Unknown & Ors* [2020] EWCA Civ 12, [2020] PTSR 1043, in which he described the position of Gypsies and Travellers as follows:

> "4. Romany Gypsies have been in Britain since at least the 16th century, and Irish travellers since at least the 19th century. They are a particularly vulnerable minority. They constitute separate ethnic groups protected as minorities under the Equality Act 2010 (see *R (Moore) v Secretary of State for Communities and Local Government (Equality and Human Rights Commission intervening)* [2015] EWHC 44 (Admin); [2015] PTSR D14), and are noted as experiencing some of the worst outcomes of any minority across a broad range of social indicators (see, for example, Department for Communities and Local Government, *Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers* (2012) and Equality and Human Rights Commission, *England's most disadvantaged groups: Gypsies, Travellers and Roma* (2016)).
>
> 5. A nomadic lifestyle is an integral part of Gypsy and Traveller tradition and culture. While the majority of gipsies and travellers now reside in conventional housing, a significant number (perhaps around 25%, according to the 2011 United Kingdom census) live in caravans in accordance with their traditional way of life. The centrality of the nomadic lifestyle to the gipsy and traveller identity has been recognised by the European Court of Human Rights. In *Chapman v United Kingdom* (2001) 33 EHRR 18, the court held at para 73:
>
> > "The court considers that the applicant's occupation of her caravan is an integral part of her ethnic identity as a Gypsy, reflecting the long tradition of that minority of following a travelling lifestyle. This is the case even though, under the pressure of development and diverse policies or from their own volition, many gipsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate, for example, the education of their children. Measures which affect the applicant's stationing of her caravans therefore have a wider impact on the right to respect for home. They also affect her ability to maintain her identity as a Gypsy and to lead her private and family life in accordance with that tradition."

6. In the UK, there is a long-standing and serious shortage of sites for gypsies and travellers. A briefing by the Race Equality Foundation found that gipsies and travellers were 7·5 times more likely than white British households to suffer from housing deprivation (Race Equality Foundation, *Ethnic Disadvantage in the Housing Market: Evidence from the 2011 census,* April 2015). The lack of suitable and secure accommodation includes not just permanent sites but also transit sites. This lack of housing inevitably forces many Gypsies and Travellers onto unauthorised encampments."

Planning policy for traveller sites

33. The Government's 'Planning policy for traveller sites' ("PPTS") was updated in December 2023). It is intended to be read in conjunction with the National Planning Policy Framework ("the Framework").

34. The policy's aims are set out, so far as is material, in paragraphs 3 and 4 ("PPTS/3-4")

"3. The government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.

4. To help achieve this, government's aims in respect of traveller sites are:

…..

(d) that plan-making and decision-taking should protect Green Belt from inappropriate development

……

(f) that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective

….."

35. Development in the Green Belt is considered in Policy E:

"**Policy E: Traveller sites in Green Belt**

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.

……."

36. The determination of planning applications is addressed in Policy H:

"**Policy H: Determining planning applications for traveller sites**

…

24. Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:

a) the existing level of local provision and need for sites

b) the availability (or lack) of alternative accommodation for the applicants

c) other personal circumstances of the applicant

d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites

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.

25. Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.

……

27. 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)."

37. I agree with Mr Garvey that Mr Cottle was mistaken in relying upon the policy for plan-making in PPTS/13, as the PPTS clearly distinguishes between the local planning authority's functions of making plans, and its function of determining individual planning applications.

The Framework: Green Belt policy

38. The Framework is a material consideration when planning decisions are made under section 70 TCPA 1990 and section 38(6) PCPA 2004.

39. Section 13 of the Framework, under the heading "Protecting Green Belt land" describes the objectives of Green Belt policy, as follows:

"142. 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. Green Belt serves five purposes:

a) to check the unrestricted sprawl of large built-up areas;

b) to prevent neighbouring towns merging into one another;

c) to assist in safeguarding the countryside from encroachment;

d) to preserve the setting and special character of historic towns; and

e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land."

40. Guidance on determining planning applications in the Green Belt provides, so far as is material:

"152. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

153. 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."

Statutory review applications under section 288 TCPA 1990

41. In *Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin), Lindblom LJ set out principles applicable to a claim under section 288 TCPA 1990, at [19], which include the following:

"(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to rehearse every argument relating to each matter in every paragraph: see the judgment of Forbes J in *Seddon Properties Ltd v Secretary of State for the Environment* (1978) 42 P & CR 26, 28.

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the principal important controversial issues. An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration: see the speech of Lord Brown of *Eaton-under-Heywood in South Bucks District Council v Porter (No 2)* [2004] 1 WLR 1953, 1964B—G.

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, provided that it does not lapse into Wednesbury irrationality (see *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223) to give material considerations whatever weight [it] thinks fit or no weight at all: see the speech of Lord Hoffmann in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780F—H. And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision: see the judgment of Sullivan J in *Newsmith Stainless Ltd v Secretary of State for the Environment, Transport and the Regions (Practice Note)* [2001] EWHC Admin 74 at [6]; [2017] PTSR 1126, para 5 (renumbered).

……."

42. An Inspector's 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 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.

43. Two citations from the authorities listed are relevant in this case.

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

"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."

ii) *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."

44. The general principles of judicial review are applicable to a challenge under section 288 TCPA 1990. An Inspector is subject to the general public law duty to make a rational decision, taking into relevant matters and disregarding irrelevant matters, and to give proper and adequate reasons for his decision: *Seddon Properties v Secretary of State for the Environment* (1978) 42 P & CR 26, per Forbes J..

45. However, a Claimant cannot use a rationality challenge as a vehicle for challenging the merits of legitimate planning judgments. In *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, Sullivan J. said at [6] – [8]:

"6. … An allegation that an Inspector's conclusion on the planning merits is *Wednesbury* perverse is, in principle, within the scope of a challenge under section 288, but the court must be astute to ensure that such challenges are not used as a cloak for what is, in truth, a rerun of the arguments on the planning merits.

7. In any case, where an expert tribunal is the fact finding body the threshold of *Wednesbury* unreasonableness is a difficult obstacle for an applicant to surmount. That difficulty is greatly increased in most planning cases because the Inspector is not simply deciding questions of fact, he or she is reaching a series of planning judgments. For example: is a building in keeping with its surroundings? Could its impact on the landscape be sufficiently ameliorated by landscaping? Is the site sufficiently accessible by public transport? et cetera. Since a significant element of judgment is involved there will usually be scope for a fairly broad range of possible views, none of which can be categorised as unreasonable.

8. Moreover, the Inspector's conclusions will invariably be based not merely upon the evidence heard at an inquiry or an informal hearing, or contained in written representations but, and this will often be of crucial importance, upon the impressions received on the site inspection. Against this background an applicant alleging an Inspector has reached a *Wednesbury* unreasonable conclusion on matters of planning judgment, faces a particularly daunting task ..."

Irrationality and proportionality

46. In *R(Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin) the Divisional Court provided a comprehensive description of irrationality as a ground of challenge, per Carr J. at [98]:

> "98. The second ground on which the Lord Chancellor's Decision is challenged encompasses a number of arguments falling under the general head of "irrationality" or, as it is more accurately described, unreasonableness. This legal basis for judicial review has two aspects. The first is concerned with whether the decision under review is capable of being justified or whether in the classic *Wednesbury* formulation it is "so unreasonable that no reasonable authority could ever have come to it": see *Associated Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223, 233-4. Another, simpler formulation of the test which avoids tautology is whether the decision is outside the range of reasonable decisions open to the decision-maker: see e.g. *Boddington v British Transport Police* [1998] UKHL 13; [1999] 2 AC 143, 175 (Lord Steyn). The second aspect of irrationality/unreasonableness is concerned with the process by which the decision was reached. A decision may be challenged on the basis that there is a demonstrable flaw in the reasoning which led to it - for example, that significant reliance was placed on an irrelevant consideration, or that there was no evidence to support an important step in the reasoning, or that the reasoning involved a serious logical or methodological error….."

47. The Claimant submitted that the nature of a review on rationality grounds depends upon the significance of the right interfered with; the degree of interference involved, and the extent to which the court is competent to re-assess the balance which the decision maker was required to make.

48. The Claimant referred to *Pham v Secretary of State for the Home Department* [2015] 1 WLR 1591, in which the claimant challenged a citizenship deprivation order, which had the effect of depriving him of EU citizenship, on the basis that it did not comply with the principle of proportionality in EU law. The Court held that the issue was not properly before it but in any event doubted whether applying EU law would produce a different outcome, given the flexible approach the courts adopted to standards of review. Lord Reed identified categories of cases in which a proportionality principle had been applied at [114] and [118]. Lord Mance went further and said that the tool of proportionality would be both valuable and available in that case. However, as the Supreme Court judgment in *R(Keyu) v Secretary of State for the Foreign and Commonwealth Affairs* [2016] AC 1335 made clear, reasonableness and not proportionality remains the generally applicable standard in cases without a Convention right or EU law dimension (per Lord Neuberger at [132] – [133]). Post-Brexit, cases are unlikely to have an EU law dimension.

49. In this case, Article 8 ECHR is engaged because the Claimant and her family are liable to lose their home, which is an interference with their rights under Article 8(1). Under Article 8(2), the interference can only be justified if it is "necessary in a democratic society" which means that it must be in pursuit of a pressing social need, justified by sufficient reasons, and it must be proportionate to the social need; that is to say, it must go no further than is necessary to secure that need.

50. In *Bank Mellat v HM Treasury* [2013] UKSC 39, Lord Sumption reviewed the authorities on proportionality, at [20], and set out the test to be applied, in the following terms:

> "Their effect can be sufficiently summarised for present purposes by saying that the question depends on 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. These four requirements are logically separate, but in practice they inevitably overlap because the same facts are likely to be relevant to more than one of them."

51. In this case, the Inspector recognised that Article 8 ECHR was engaged, and applied the proportionality test in making her decision. This Court is required to assess whether she did so lawfully, as part of the statutory review. However, as Hickinbottom J. explained in *Stevens v Secretary of State for Communities and Local Government* [2013] EWHC 792 (Admin), [2013] JPL 1383, at [85], in a statutory review this Court should not decide whether or not the interference was proportionate. Its role is confined to identifying any error of law and remitting the application for reconsideration, if necessary.

Green Belt land and travellers

52. The First Defendant relied upon the case of *Samuel Smith Old Brewery v North Yorkshire County Council* [2020] UKSC 3, in which Lord Carnwath JSC, giving the judgment of the Supreme Court, held that impacts on the Green Belt were all matters of planning judgment, not law, at [39]:

> "39. With respect to Lindblom LJ's great experience in this field, I am unable to accept his analysis. The issue which had to be addressed was whether the proposed mineral extraction would preserve the openness of the Green Belt or otherwise conflict with the purposes of including the land within the Green Belt. Those issues were specifically identified and addressed in the report. There was no error of law on the face of the report. Paragraph 90 does not expressly refer to visual impact as a necessary part of the analysis, nor in my view is it made so by implication. As explained in my discussion of the authorities, the matters relevant to openness in any particular case are a matter of planning judgement, not law."

53. In *R(Sefton MBC) v Secretary of State for Housing Communities and Local Government* [2021] EWHC 1082 (Admin), in which HH Judge Eyre QC, sitting as a Judge of the High Court, gave the following helpful guidance on the application of the Framework's Green Belt policies, at [32] – [34]:

> "32 The claimant's approach to the interpretation of paragraph 144 is vitiated by an excessively forensic analysis and by a failure to read that paragraph in the light of paragraph 143. It is paragraph 143 which sets out the proposition that inappropriate development is by de?nition harmful to the Green Belt and it is paragraph 143 which sets out the requirement that such development should not be approved unless there are very special circumstances. The second sentence of paragraph 144 is, in terms, setting out the only situation in which it will be appropriate to ?nd that there are very special circumstances. It is clearly intended as an elucidation and development of paragraph 143. The ?rst sentence of paragraph 144 is to be read in the light of the paragraph which precedes it and the sentence in the same paragraph which follows it. That ?rst sentence is not setting out a new requirement separate from paragraph 143 but is part and parcel of the elucidation of paragraph 143 which paragraph 144 is intended to provide.
>
> 33 The claimant's argument is also ?awed by taking metaphorical language unduly literally. The reference to "substantial weight" being given to harm is ultimately a metaphor as is the reference to the harm being "clearly outweighed" by other considerations. The exercise to be undertaken is not one of balancing weights on scales nor even one of saying that harm to the Green Belt is equivalent to a particular weight (say ten stone) while a di?erent circumstance such as an applicant's family circumstances can never be rated as equivalent to more than a di?erent weight (say ?ve stone). Rather, the language of weight and weighing is being used to emphasise the importance of the Green Belt. It is used to make it clear to decision-makers that they cannot approve inappropriate development in the Green Belt unless the considerations in favour of the development are such as truly constitute very special circumstances so that the development can be permitted notwithstanding the importance given to the Green Belt. The realisation that the reference to weight is ultimately a metaphor highlights a practical di?culty in the approach for which Mr Riley-Smith presses. How is the decision-maker to decide what is equivalent to "substantial + substantial"? The claimant envisages the balancing exercise being quasi-mathematical but if that is the appropriate exercise then paragraph 144 fails to provide the decision-maker with guidance as to the values to be placed in the necessary mathematical calculations.
>
> 34 When paragraphs 143 and 144 are read together they can be seen as explaining that very special circumstances are needed before inappropriate development in the Green Belt can be permitted. In setting out that explanation they emphasise the seriousness of harm to the Green Belt in order to ensure that the decision-maker understands and has in mind the nature of the very special circumstances requirement. They require the decision-maker to have real regard to the importance of the Green Belt and the seriousness of any harm to it. They do not, however, require a particular mathematical exercise nor do they require substantial weight to be allocated to each element of harm as a mathematical exercise with each tranche of substantial weight then to be added to a balance. The exercise of planning judgement is not to be an arti?cially sequenced two-stage process but a single exercise of judgement to assess whether there are very special circumstances which justify the grant of permission, notwithstanding the particular importance of the Green Belt."

54. The Claimant submitted that this was a case analogous to *Moore v Secretary of State for Communities and Local Government* [2013] EWCA Civ 1194 where the Court of Appeal was not persuaded that an inspector's refusal of temporary planning permission was a reasonable reflection of the factors he was required to take into account (per

Richards LJ at [28]). Cox J., at first instance, held that the balancing exercises for temporary and permanent permissions were necessarily different, and that the serious difficulties that the family would face if evicted constituted 'very special circumstances' rendering it irrational for the inspector to refuse temporary planning permission.

55. The Claimant referred to *West Glamorgan CC v Rafferty* [1987] 1 WLR 457, a judicial review of a local authority's decision to evict gypsies from a site, in which Ralph Gibson LJ observed, at 477A-B, the "court is not …. precluded from finding a decision to be void for unreasonableness merely because there are admissible factors on both sides of the question".

56. In *Wychavon DC v Secretary of State for Communities and Local Government* [2008] EWCA Civ 692, [2009] PTSR 19, Carnwath LJ gave guidance on an earlier iteration of the 'very special circumstances' test, in the following terms:

> "(i) Interpretation of Green Belt guidance
>
> 21 I say at once that in my view the judge was wrong, with respect, to treat the words "very special" in para 3.2 of PPG2 as simply the converse of "commonplace". Rarity may of course contribute to the "special" quality of a particular factor, but it is not essential, as a matter of ordinary language or policy. The word "special" in PPG2 connotes not a quantitative test, but a qualitative judgment as to the weight to be given to the particular factor for planning purposes. Thus, for example, respect for the home is in one sense a "commonplace", in that it reflects an aspiration shared by most of humanity. But it is at the same time sufficiently "special" for it to be given protection as a fundamental right under the Convention. Furthermore, case law of the European Court of Human Rights … places particular emphasis on the special position of gipsies as a minority group, notwithstanding the wide margin of discretion left to member states in relation to planning policy: see *Chapman v United Kingdom* (2001) 33 EHRR 399 and the comments of Lord Brown of Eaton-under-Heywood in *Kay v Lambeth London Borough Council* [2006] 2 AC 465, para 200. Thus, in the *Chapman* case, at para 96, the Strasbourg court recognised that the gipsy status did not confer "immunity from general laws intended to safeguard the assets of the community as a whole, such as the environment" but added:
>
> > "96. . . . the vulnerable position of gipsies as a minority means that *some special consideration should be given to their needs and their different lifestyle* both in the relevant regulatory planning framework and in arriving at the decisions in particular cases … . To this extent, there is thus a positive obligation imposed on the contracting states by virtue of article 8 to facilitate the Gypsy way of life …." (Emphasis added.)
>
> The special position of gipsies in this respect is reflected in the 2006 circular.
>
> 22 Against this background, it would be impossible in my view to hold that the loss of a Gypsy family's home, with no immediate prospect of replacement, is incapable in law of being regarded as a "very special" factor for the purpose of the guidance. That, however, is far from saying that planning authorities are bound to regard this factor as sufficient in itself to justify the grant of permission in any case. The balance is one for member states and involves issues of "complexity and sensitivity": see *Chapman v United Kingdom* 33 EHRR 399, para 94. That is a judgment of policy not law, and it needs to be addressed at two levels: one of general principle, the other particular to the individual case."

Best interests of the child

57. Article 3(1) of the United Nations Convention on the Rights of the Child 1989 ("UNCRC") provides:

> "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."

58. In *ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2 AC 166, the Supreme Court concluded that the best interests of the child should be taken into consideration when considering the proportionality of interference with rights under Article 8 ECHR in an immigration context. Subsequently the Secretary of State for Levelling Up, Housing and Communities accepted that the "best interests" principle should also be applied in the context of planning.

59. In *Stevens v Secretary of State for Communities and Local Government [2013] EWHC 792 (Admin)*, *[2013] JPL 1383* Hickinbottom J. set out the general principles for assessing the best interests of the child in the context of a planning decision at [69]:

> "(i) Given the scope of planning decisions and the nature of the right to respect for family and private life, planning decision making will often engage art.8. In those circumstances, relevant art.8 rights will be a material consideration which the decision maker must take into account.
>
> (ii) Where the art.8 rights are those of children, they must be seen in the context of art.3 of the UNCRC, which requires a child's best interests to be a primary consideration.
>
> (iii) This requires the decision maker, first, to identify what the child's best interests are. In a planning context, they are likely to be consistent with those of his parent or other carer who is involved in the planning decision-making process; and, unless circumstances indicate to the contrary, the decision maker can assume that that carer will properly represent the child's best interests, and can properly represent and evidence the potential adverse impact of any decision upon that child's best interests.
>
> (iv) Once identified, although a primary consideration, the best interests of the child are not determinative of the planning issue. Nor does respect for the best interests of a relevant child mean that the planning exercise necessarily involves merely assessing whether the public interest in ensuring planning controls are maintained outweighs the best interests of the child. Most planning cases will have too many competing rights and interests, and will be too factually complex, to allow such an exercise.
>
> (v) However, no other consideration must be regarded as more important or given greater weight than the best interests of any child, merely by virtue of its inherent nature apart from the context of the individual case. Further, the best interests of any child must be kept at the forefront of the decision maker's mind as he examines all material considerations and performs the exercise of planning judgment on the basis of them; and, when considering any judgment he might make (and, of course, the eventual decision he does make), he needs to assess whether the adverse impact of such a decision on the interests of a child is proportionate.
>
> (vi) Whether the decision maker has properly performed this exercise is a question of substance, not form. However, if an inspector on an appeal sets out this reasoning with regard to any child's interests in play, even briefly, that will be helpful not only to those involved in the application but also to the court in any later challenge, in understanding how the decision maker reached the decision that the adverse impact to the interests of the child to which the decision gives rise is proportionate. It will be particularly helpful if the reasoning shows that the inspector has brought his mind to bear upon the adverse impact of the decision he has reached on the best interests of the child, and has concluded that impact is in all the circumstances proportionate. …"

60. Hickinbottom J. then went on to consider the Court's role in reviewing a proportionality issue in the course of an application under section 288 TCPA 1990, and gave guidance in the following terms:

> "85. ….
>
> (i) It was common ground before me that, for the purposes of section 70 of the 1990 Act, any article 8 rights that are in play are a material consideration that a planning decision-maker is bound to take into account. I have no doubt that that is so. It is well-established that, in a field such as planning, the interests of any

relevant children cannot properly be regarded as something distinct and apart from the necessary section 70 balancing exercise: they are an inherent, integral, and important, part of that exercise……

(ii) If the inspector fails to take a material consideration into account, as a matter of general public law principles, he errs in law. Section 70 requires him to take all material considerations into account; and, if he fails to do so, his decision is not "within the powers of [the 1990] Act" for the purposes of section 288(5)(b)…...

(iii) By section 288(5)(b), this court is restricted by way of remedy to quashing a decision of an inspector that is not within the powers of the 1990 Act. It is therefore necessarily the case that, even if this court considers an inspector's decision unlawful on the ground that he failed properly to take into account as a material consideration article 8 rights in play, then it can only quash that decision. It would not be open to this court to make a new decision in its place.

(iv) In this application, neither party suggested that, if I were to find the inspector had failed properly to take into account the relevant article 8 rights, then this court should begin performing the section 70 balancing exercise giving the weight I considered appropriate to all of the material considerations, including all planning policy factors as well as article 8 rights. Indeed, all parties appeared to view that prospect with some alarm. They submitted that I should treat the case as any other case of a failure of an inspector to take into account a material consideration. All submitted that, if that error is material (in the sense that, without it, the decision would or may have been different) then I should quash the decision."

61. The Court of Appeal in *Collins v Secretary of State for Communities and Local Government [2013] EWCA Civ 1193, [2013] PTSR 1594* approved Hickinbottom J.'s list of principles at [69].

62. In the immigration case of *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74, [2013] 1 WLR 3690, Lord Hodge JSC, giving the judgment of the Supreme Court, set out the following principles which had been agreed between the parties, at [10]:

"(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."

The Inspector's witness statement

63. When the First Defendant filed his Detailed Grounds of Resistance, he also filed a witness statement from the Inspector, dated 20 July 2023, which stated:

"Ground 2 of the claim alleges that by affording substantial weight to harm to the Green Belt (for example at paragraph 24), that was a greater degree of weight than the significant weight I afforded to the best interests of the children (at paragraph 25).

However, I did not treat substantial as being a greater (or different) amount of weight than significant.

3. I tend to use the terms 'significant', 'moderate' or 'limited' when referring to different degrees of weight in my decision letters. However, paragraph 148 of the NPPF says, *"When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt"*. I reiterate this terminology in paragraphs 7, 20, 23 and 27 of my decision letter where I refer to harm to the Green Belt. This terminology is, therefore, consistent with the NPPF.

4. The Collins Online dictionary and thesaurus defines substantial to mean: ..…

5. The Collins Online dictionary and thesaurus defines significant to mean: …..

6. I know that inspectors often use the words 'substantial' and 'significant' in an interchangeable way. This is even reflected in national policy, for example in paragraph 49(a) of the NPPF. Thus, I do not regard a substantial weight as being greater than a significant weight. So whilst I tend to use the word 'significant' when describing weight, given the NPPF uses the word substantial when referring to the Green Belt, I adopted that term. But, in doing so, I did not afford this any greater weight than when I used the word significant elsewhere in my decision.

7. I am aware that the best interests of the children must be a primary consideration. I note this point specifically at paragraph 33 of the decision. In treating this as a primary consideration, there was no other matter that I afforded greater weight. The distinction between my use of 'substantial' and 'significant' simply reflected the NPPF's use of the word substantial in respect to Green Belt. For the purposes of my planning balance, the two words constituted the same degree of weight.

8. As regards the Claimant's third ground of challenge, as regards proportionality, I did have regard for the impact of the proposal on the best interests of the child and whether a personal or temporary permission was proportionate. My conclusion that dismissing the appeal would be proportionate and necessary expanded upon my earlier conclusions.

Further, I expanded upon the impacts on the children at paragraph 33. I equally had this at the forefront of my mind, as I referred to it in the final sentence of paragraph 34. I also referred to the impacts upon the children at paragraphs 19 and 27. I had regard for the impacts on the children and this was a primary consideration in my decision. However, in my planning judgement, it was proportionate and necessary that these interests were overcome by the adverse impacts associated with the development (including in respect to a personal or temporary permission)."

64. Witness statements of this nature, which respond to a legal challenge, are generally considered inappropriate because they "create all the dangers of rationalisation after the event, fitting answers to omissions into the already set framework of the decision letter, risking demands for the Inspector to be cross-examined on his statement, and creating suspicion about what had actually been the reasons …. " per Ouseley J. in *Ioannou v Secretary of State for Communities and Local Government* [2013] EWHC 3945 (Admin).

65. In this case, the First Defendant had permission to file evidence with its Detailed Grounds of Resistance, and the Claimant made no objection to the filing of the statement or its content. Therefore I was not aware of it until I read the papers on the day before the hearing. By that stage, both parties had prepared their skeleton arguments and submissions on the basis of the statement, and both wanted to rely upon it, for different reasons. In these circumstances, I concluded that it was contrary to the overriding

objective to exclude the witness statement and so adjourn a long overdue hearing so that the parties could re-cast their cases, and it was also artificial and possibly unfair to the parties for the Court to ignore the Inspector's evidence in determining the claim.

The Inspector's assessment

66. The Inspector structured her decision in four main sections: (1) Green Belt; (2) Other Considerations; (3) Planning Balance and Human Rights; and (4) Conclusion. On a fair reading of the decision letter, I consider that Inspector applied her findings in sections 1 and 2 when reaching her conclusions on the planning balance and Article 8 ECHR in section 3.

(1) Green Belt

67. The Inspector made the following findings.

68. Policy BAS GB1 of the Local Plan, which set out the Green Belt boundaries, supported the Framework's aim to prevent urban sprawl and keep the land within Green Belts permanently open (DL/9). However, as it did not include management criteria for development within the Green Belt, the Inspector considered the objectives of the Framework and the PPTS to be more applicable (DL/13).

69. The parties agreed that the proposal would represent inappropriate development in the Green Belt (DL/10). Therefore by definition it was harmful (paragraph 152 of the Framework).

70. Although the scale of the development was small, it would reduce the openness of the Green Belt by placing a caravan and dayroom on a location which had previously been free from development. The negative effect on the openness of the Green Belt was an additional degree of harm, in addition to the harm arising from the inappropriate nature of the development (DL/11).

71. The proposed material change of use was also inappropriate development because, by reference to paragraph 138 of the Framework, it would not preserve openness and it would conflict with purposes to check urban sprawl and to safeguard the countryside from encroachment (DL/12).

72. In my view, the Inspector directed herself correctly on the Green Belt policies, and applied them appropriately to the evidence. Paragraph 153 of the Framework advised that she should give "substantial weight to any harm to the Green Belt", and accordingly she gave "substantial weight" to the inappropriate development and the harm to the openness of the area (DL/24). Policy E of the PPTS, advises that traveller sites are inappropriate development in the Green Belt, and subject to the best interests of the child, personal circumstances and unmet need are unlikely to outweigh harm to the Green Belt. The Inspector's findings on the Green Belt were weighed in the planning balance and taken into account in the assessment of proportionality in section 3.

(2) Other Considerations

Supply of traveller sites

73. The Inspector made the following findings on the supply of traveller sites in the area.

74. The Council did not have a 5 year supply of land to address the current and historic need for pitches within the Borough. There was a clear and immediate need for sites in Basildon. The Inspector gave the lack of sites significant weight in favour of the proposal when considering the planning balance and proportionality (DL/14).

75. Although the Council submitted that it was currently seeking to address the lack of sites through the emerging Local Plan, any potential traveller sites would not come forward until sometime after its adoption, and would then be allocated through the relevant plan process (DL/15).

76. The Inspector found that Bowers Gifford Parish was earmarked for residential development, but any allocations for traveller sites would have to be considered through the relevant plan adoption process (DL/15).

77. At DL/17, the Inspector considered the requirements in the PPTS for local planning authorities to set targets for pitches, and to assess need. She considered the Claimant's criticisms of the 2018 survey, which was being used to inform the emerging Local Plan. She concluded that this would be a matter for the Local Plan examination and did not alter the fact that the Council did not currently have a 5 year supply of pitches.

78. The Claimant argued that development on the Green Belt was likely to occur in future, or had already occurred, in any event. The undisputed evidence before the Inspector, in the Statement of Common Ground, was that 63% of the Council's District was designated Green Belt and the rest was in urban areas. The Claimant contended (at paragraph 9 of the Statement) that the Council relied on land in the Green Belt to meet the need for more dwellings and traveller sites. The Council's position was that they were "relying on a mix or *[of?]* infill sites and a substantial redevelopment of the town centre to provide many new residential units, as well as Green Belt sites to full *[?fulfil]* the Borough's future housing needs" (my suggested typographical corrections are included in brackets).

79. The Inspector made the following findings on this issue, at DL/16:

> "16. Basildon Borough is constrained by its Green Belt designation with limited undeveloped land available outside of it. I acknowledge that there are other lawful sites or tolerated sites in the Green Belt plotland areas. However, I have not been directed to any within the vicinity of the appeal site, other than that of a long-standing planning application for a traveller plot on Grange Road that remains undetermined. It is not clear at this point in time how the emerging Local Plan would overcome the policy presumption against sites in the Green Belt or address the historic shortfall of pitch provision. Whilst it has been suggested that the emerging Local Plan may seek to facilitate development in the Green Belt, given the early stage of that plan very little weight can be attributed to this possibility."

80. In my view, the Inspector was entitled to make these findings on the use of Green Belt land, on the basis of the evidence and submissions before her. She was also entitled to conclude that little weight could be placed on the emerging Local Plan, applying the guidance in Framework/48. This conclusion was a point in the Claimant's favour, as the Council was seeking to rely on the emerging Local Plan in support of its case. Contrary to the Claimant's submissions, the Inspector was not required in law to give these factors separate weight in the balancing exercise.

81. The Claimant argued at the hearing before me that the Inspector should have acknowledged that, if the Claimant was forced to live "a roadside existence", it would be in the Green Belt, and thus cause harm. The First Defendant submitted that this point was not raised before the Inspector, nor in the grounds for statutory review. If it had been raised, my view is that the Inspector would have recognised that this was a possibility, in line with her findings in DL/16 that so much of the District was Green Belt, though there was insufficient evidence to assess how likely that was to be the case. Moreover, there was no evidence before her as to the likelihood that the authorities would enforce against unauthorised roadside camping in the Green Belt, to avoid harm to the Green Belt.

82. The Claimant criticised the Inspector for not giving significant weight to the Council's lack of an up-to-date Local Plan. In my view, the Inspector made a reasonable exercise of judgment by giving significant weight, at DL/14, to the key issue which was the lack of sites, which she explained was a result of the Council's failure to identify a 5 year supply of land in the Local Plan (as required by PPTS/10). The Inspector then elaborated further at DL/26 where she acknowledged the national and regional need for pitches, to which she attached significant weight, and went on to say that the Council's failure to demonstrate an up to date 5 year supply of deliverable pitches did not address the housing needs of the appellant, contrary to the Government's objectives.

The housing needs of the Claimant and her family

83. The Claimant and Mr Cooper were of mixed heritage and so would not be accepted on many traveller sites. Site sharing was unlikely to be an option for them and so they could not benefit from future allocations for multi-pitch sites under the emerging Local Plan. This carried significant weight in favour of the proposal when considering the planning balance and proportionality (DL/18).

84. Mr Cooper had family ties with gypsies living within the Borough. The Claimant and Mr Cooper had five children between them, three of whom lived with them at the Site. The school age children were attending school locally. The family was registered with a local health provider. The Claimant had on-going serious health conditions and it was important for her to have stability and familiarity (DL/19).

85. Mr Cooper owned the Site and he advised the Inspector that he had no other site available to him and other family members could not accommodate them. The Council could not suggest suitable alternative sites. Mr Cooper considered that he and his family would be forced to live a roadside existence, without a fixed address (DL/20).

86. The Inspector found that the lack of an alternative site and the personal circumstances of the family carried significant weight in favour of the proposal when considering the planning balance and proportionality.

87. The Claimant criticised the Inspector for considering the lack of an alternative site and the personal circumstances of the family together in this way, arguing that significant weight should have been accorded to each factor. In my view, this was a matter for the Inspector's judgment. It was not unreasonable for her to consider the housing needs of the family as a single factor, at DL/20, particularly bearing in mind that she separately accorded significant weight to the problems arising from the family's mixed heritage, and to the best interests of the children (at DL/25).

88. At DL/22, the Inspector took into account that there was local support for the proposal. However, that had to be considered in terms of the wider public interest and the great importance attached to protecting the Green Belt. The Inspector was not required, as a matter of law, to accord this consideration specific weight in the planning balance.

(3) Planning balance and Human Rights

89. At DL/23, the Inspector correctly directed herself in accordance with the statutory test, namely, that determinations must be made in accordance with the development plan unless material considerations indicate otherwise. In accordance with the guidance in *Stevens,* she identified and assessed the Article 8 rights of the family, and in particular the best interests of the children, as material considerations.

90. At DL/24, the Inspector found that the proposal would be inappropriate development in the Green Belt, which carried substantial weight, as required by Framework/152 and 153. The scheme would also result in harm to the openness of the area; such harm also carried substantial weight.

91. At DL/25, the Inspector found that it was in the best interests of the children involved to have a settled base which affords them access to education and other services. Applying the principles established in the case law I have set out above, she stated that this was "a primary consideration". She attached significant weight to the best interests of the children.

92. At DL/26, the Inspector acknowledged the national and regional need for pitches, to which she attached significant weight. She referred again to the Council's failure to demonstrate an up to date 5 year supply of deliverable pitches which did not address the housing needs of Mr Cooper and his family.

93. The Inspector considered and acknowledged the personal housing needs of the Mr Cooper, the Claimant and their children, and the benefit of having a settled base close to health care facilities and education, along with the lack of available sites in the Borough and elsewhere. These factors had significant weight. However, applying the test in Framework/153, the Inspector did not consider that these matters, would "clearly outweigh the substantial harm to the Green Belt" and justify inappropriate development in the Green Belt (DL/27).

94. The Inspector considered and applied the guidance in the PPTS on the grant of a temporary planning permission, namely, a local planning authority's failure to demonstrate an up to date 5 year supply of deliverable sites should be treated as a significant material consideration, but not where the proposal is on Green Belt land. The Inspector attached significant weight to this (DL/29).

95. The Inspector also found that the harm to the Green Belt would take place over any temporary period of occupation of the Site (DL/29).

96. In considering a time limited occupation, the Inspector recognised that the bar would be set at a lesser level than that of a permanent permission. Mr Cooper said he would accept a condition allowing a 5 year occupation of the Site. The Inspector found that the harm to the Green Belt would exist over that time (DL/30).

97. The Inspector's findings on Article 8 were at DL/31, as follows:

> "31. I have had regard to the Human Rights Act 1998 and rights under Article 8 in respect of the private and family life and the home and the rights of the children. The applicant and his family are in clear need of a pitch and would benefit from being settled where his family can access health care facilities and education. In dismissing the appeal this would result in the occupiers not having a settled home in which to locate. This would be an interference of the appellant's rights under Article 8 of the Convention incorporated into the Act. Nonetheless, I find that the issue of inappropriateness in relation to the Green Belt along with the resulting harm to the openness is so substantial and that, in the wider public interest, it cannot be clearly outweighed by the personal circumstances of the appellant and/or the other considerations. I have considered whether a lesser requirement or alternative would overcome the harm. For those reasons give above, I have ruled out the possibility of imposing a temporary or personal permission. Dismissing the appeal would be proportionate and necessary."

98. At DL/32 and 33, the Inspector discharged the public sector equality duty under the Equality Act 2010, by having regard to the family's traditional way of life, and their personal circumstances, including the Claimant's health. She expressly had regard to the best interests of the children as a primary consideration. These matters were clearly taken into account by the Inspector in making her decision. They were accorded specific weight: see DL/18-29; DL/25, DL/27, DL/31.

Ground 1 and 3

Claimant's submissions

99. **Under Ground 1**, the Claimant contended that the Inspector's decision not to grant a temporary planning permission was disproportionate and perverse.

100. The Claimant accepted that whether "very special circumstances" existed, for the purposes of Framework/153, was a matter for the Inspector's planning judgment. However, that was not determinative of the issue. The countervailing considerations relied upon by the Claimant clearly outweighed the harm to the Green Belt on any reasonable view. The Inspector explained in her witness statement that the term "significant" carried the same degree of weight as "substantial" when used in the DL. She only used the term "substantial" in respect of the Green Belt harm in order to comply with the guidance in Framework/153. This lent support to the claim, as the substantial weight accorded to Green Belt harm was outweighed by the much greater number of facts in favour of the proposal which also attracted substantial weight.

101. Following *Moore*, this was a case where the Court should find that the Inspector's refusal of temporary planning permission was not a reasonable reflection of the factors she was required to take into account. It was irrational in the sense that there was an error of reasoning which robbed the decision of logic.

102. **Under Ground 3**, the Claimant contended that in carrying out the proportionality exercise required by Article 8 ECHR, the Inspector failed to give sufficient consideration to the issue of proportionality and failed to give sufficient reasons.

103. The Inspector's conclusion did not properly take into account the different directions in which the public interest was pulling, and the balancing exercise was flawed.

104. The Inspector erred by failing to give greater consideration to the question of proportionality in the context of a temporary permission.

105. The Inspector erred in failing to count interference with human rights as a material consideration of substantial weight in its own right.

106. The last sentence of DL/31 was insufficiently reasoned. The proportionality exercise, as described in *Bank Mellat*, required more of the Inspector.

Conclusions

107. I have considered Grounds 1 and 3 together to avoid duplication, as both rely on proportionality.

108. I addressed the law on irrationality and proportionality at Judgment/47-51.

Irrationality

109. The Claimant rightly conceded that the "very special circumstances" test was a matter of judgment for the Inspector. In *Samuel Smith Old* Brewery, the Supreme Court confirmed that an inspector's assessment of the impact of a development on the openness of the Green Belt was a matter of planning judgment, not law.

110. The Claimant submitted that the number of factors in favour of the proposal outweighed the number of factors against, and since they were all accorded the same weight, the Inspector should have granted temporary planning permission. However, as HH Judge Eyre QC explained in *Sefton* (Judgment/53), this assessment is not a mathematical exercise; it is a matter of planning judgment. The Government attaches great importance to the Green Belt (Framework/142) and inappropriate development in the Green Belt is subject to a stringent test of "very special circumstances" which only exist where the potential harm to the Green Belt (and any other harm) is "clearly outweighed by other considerations" (Framework/153). It is therefore unsurprising that the test may not be met, even where the number of factors in favour of the proposal exceed the number of factors against it.

111. In this case, the Inspector carefully considered all the relevant factors, and made findings and reached rational conclusions which were clearly open to her, in the exercise of her judgment. In reality, the Claimant seeks to make an impermissible challenge to the merits of her decision-making.

112. The decision of the Court of Appeal in *Moore* was a conclusion reached on the particular facts and decision-making in that case. The facts and decision-making in this claim are clearly distinguishable.

Proportionality

113. In my judgment, on a fair reading of the decision letter, applying the principles set out in the case law at Judgment/42-43, the Inspector's assessment of proportionality under Article 8 ECHR did not merely comprise one sentence at the end of DL/31, when she concluded that "[d]ismissing the appeal would be proportionate and necessary". Her assessment was based upon all the findings made, and conclusions reached, earlier in the DL where she had thoroughly explored all the relevant factors. This reading accords with the guidance of Sir Thomas Bingham MR in *Clarke Homes* that the issue is whether "the decision …. leaves room for genuine as opposed to forensic doubt" as to what the decision-maker has decided and why. "This is an issue to be resolved ….. on a straightforward down-to-earth reading of his decision letter, without excessive legalism or exegetical sophistication".

114. At DL/31, the Inspector clearly identified the interference with the Article 8 right to a private and family life, the home, and the rights of the children. In summary, the family were in clear need of a pitch and would benefit from being settled where they can access health care facilities and education. Dismissing the appeal would result in the family not having a settled home.

115. The Inspector explained why the interference was necessary, stating that the issue of inappropriateness in relation to the Green Belt, along with the resulting harm to the openness of the Green Belt, was so substantial that, in the wider public interest, it was not outweighed by "the personal circumstances of the appellant and/or the other considerations". I have no doubt that the Inspector had well in mind the needs and best interests of the children, as she had just referred to them earlier in the same paragraph, as well as at DL/19, DL/25 and DL/27.

116. The Inspector considered whether there was an alternative measure which would be less intrusive, namely, a temporary or personal permission. The Inspector acknowledged, at DL/30, that in the case of time-limited planning permission, the bar would be set at a lesser level than that of a permanent permission. However the harm to the Green Belt would still exist for the duration of the occupation of the Site, which was contrary to the wider public interest in the protection of the Green Belt.

117. In *Stevens*, (at [69(vi)]), the Court acknowledged that the proportionality exercise can be briefly stated. In my view, a planning inspector should not be required to set out the legal test of proportionality in the way that a judge is expected to do. The Inspector is not writing an "examination paper" (*South Somerset District Council* at Judgment/43). It is sufficient to identify the key elements of the proportionality exercise, which the Inspector did here. When the Inspector's conclusions on Article 8 are read in the context of her findings and conclusions earlier in the DL, it is apparent that she did take into account the competing considerations. Her consideration of proportionality, in the context of a temporary permission, was sufficient.

118. The Claimant contended that the Inspector erred in failing to count interference with human rights as a material consideration of substantial weight in its own right. In my view, there was no requirement in law to do so. The Inspector gave significant weight (which she treated as substantial weight) to the conduct by the Council which gave rise to the interference with the family's human rights, namely, the eviction from their home. She then correctly identified this as an interference with their Article 8 rights.

119. The standard of reasons required in a planning appeal was set out by Lord Brown in *South Buckinghamshire District Council v Porter (No 2)* [2004] 1 WLR 1953, at [36]. The reasons given 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. Reasons need refer only to the main issues in the dispute and not to every material consideration, and the reasons can be briefly stated, with the "degree of particularity required depending entirely on the nature of the issues falling for decision".

120. In my judgment, the Inspector's reasons met the required legal standard, for the reasons I set out in Judgment/113 – 117.

121. Therefore Grounds 1 and 3 do not succeed.

Ground 2

122. Under Ground 2, the Clamant submitted that the Inspector erred in law in DL/25 by regarding the primary consideration of achieving the outcome that was in the best interests of the children as attracting less than substantial weight. In *Zoumbas*, at [10], the Supreme Court confirmed that "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". The substantial weight to be attached to the Green Belt should have been equated with the substantial weight to be attached to achieving the best interests of the child.

123. In her witness statement, at paragraph 7, the Inspector stated:

> "I am aware that the best interests of the children must be a primary consideration. I note this point specifically at paragraph 33 of the decision. In treating this as a primary consideration, there was no other matter that I afforded greater weight. The distinction between my use of 'substantial' and 'significant' simply reflected the NPPF's use of the word substantial in respect to Green Belt. For the purposes of my planning balance, the two words constituted the same degree of weight."

The Claimant did not seek to challenge the veracity of this evidence.

124. I accept the First Defendant's submission that the word 'substantial' does not denote a greater quantum of weight than 'significant': see the dictionary definitions provided by the Inspector; *R v Golds* [2016] UKSC 61, at [27] and [40]; *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17, at [31]; and the authorities cited in 'Words and Phrases Legally Defined" (see the First Defendant's skeleton argument at paragraph 2.10).

125. At DL/25, the Inspector expressly treated the best interests of the children as a primary consideration. This was confirmed at DL/33. I am satisfied that she did not treat any other consideration as inherently more significant.

126. Therefore Ground 3 does not succeed.

Ground 4

127. Under Ground 4, the Claimant submitted that the Inspector "failed to factor in the right ingredients for a lawful decision". This pleading was outside the scope of the grant of permission to apply for statutory review. Nonetheless, the First Defendant was content for me to consider it, to avoid further litigation. Dealing with the points made in turn, the Inspector was obviously aware that the Site was small (DL/11), but she did not find that the harm at the lowest end of the scale. At DL/16 she addressed the difficult matter of whether and to what extent the Council could or would make pitch provision on Green Belt land in future. The Inspector did not find any local harm in addition to the Green Belt harm. Finally, at Judgment/82, I found that the Inspector's findings and conclusions, in regard to the Council's failure to meet the accommodation needs of travellers under its Local Plan, were a reasonable exercise of judgment on her part.

128. Therefore Ground 4 does not succeed.

Final conclusion

129. The claim for statutory review is dismissed for the reasons set out above.

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10.3. Government Documents

10.3.1. Green Belt Circular 1955

Circular No. 42/55

MINISTRY OF HOUSING AND LOCAL GOVERNMENT
WHITEHALL, LONDON, S.W.1

SIR,

3rd August, 1955

GREEN BELTS

1. Following upon his statement in the House of Commons on April 26th last (copy attached), I am directed by the Minister of Housing and Local Government to draw your attention to the importance of checking the unrestricted sprawl of the built-up areas, and of safeguarding the surrounding countryside against further encroachment.

2. He is satisfied that the only really effective way to achieve this object is by the formal designation of clearly defined Green Belts around the areas concerned.

3. The Minister accordingly recommends Planning Authorities to consider establishing a Green Belt wherever this is desirable in order:

(*a*) to check the further growth of a large built-up area;

(*b*) to prevent neighbouring towns from merging into one another; or

(*c*) to preserve the special character of a town.

4. Wherever practicable, a Green Belt should be several miles wide, so as to ensure an appreciable rural zone all round the built-up area concerned.

5. Inside a Green Belt, approval should not be given, except in very special circumstances, for the construction of new buildings or for the change of use of existing buildings for purposes other than agriculture, sport, cemeteries, institutions standing in extensive grounds, or other uses appropriate to a rural area.

6. Apart from a strictly limited amount of "infilling" or "rounding off" (within boundaries to be defined in Town Maps) existing towns and villages inside a Green Belt should not be allowed to expand further. Even within the urban areas thus defined, every effort should be made to prevent any further building for industrial or commercial purposes; since this, if allowed, would lead to a demand for more labour, which in turn would create a need for the development of additional land for housing.

7. A Planning Authority which wishes to establish a Green Belt in its area should, after consulting any neighbouring Planning Authority affected, submit to the Minister, as soon as possible, a Sketch Plan, indicating the approximate boundaries of the proposed Belt. Before officially submitting their plans, authorities may find it helpful to discuss them informally with this Ministry either through its regional representative or in Whitehall.

8. In due course, a detailed survey will be needed to define precisely the inner and outer boundaries of the Green Belt, as well as the boundaries of towns and villages within it. Thereafter, these particulars will have to be incorporated as amendments in the Development Plan.

9. This procedure may take some time to complete. Meanwhile, it is desirable to prevent any further deterioration in the position. The Minister, therefore, asks that, where a Planning Authority has submitted a Sketch Plan for a Green Belt, it should forthwith apply provisionally, in the area proposed, the arrangements outlined in paragraphs 5 and 6 above.

I am, Sir,

Your obedient Servant,

A. B. VALENTINE.
Under Secretary.

The Clerk of the Council,
Local Planning Authorities.
County District Councils (for information).
England and Wales.

Annex to Circular No. 42/55

STATEMENT BY THE RT. HON. DUNCAN SANDYS, M.P., MINISTER OF HOUSING AND LOCAL GOVERNMENT, IN THE HOUSE OF COMMONS ON 25th APRIL, 1935

"I am convinced that, for the well-being of our people and for the preservation of the countryside, we have a clear duty to do all we can to prevent the further unrestricted sprawl of the great cities.

The Development Plans submitted by the local planning authorities for the Home Counties provide for a Green Belt, some 7 to 10 miles deep, all around the built-up area of Greater London. Apart from some limited rounding-off of existing small towns and villages, no further urban expansion is to be allowed within this belt.

These proposals if strictly adhered to, should prove most effective. For this the authorities in the Home Counties deserve much credit.

In other parts of the country, certain planning authorities are endeavouring, by administrative action, to restrict further building development around the large urban areas. But I regret that nowhere has any formal Green Belt as yet been proposed. I am accordingly asking all planning authorities concerned to give this matter further consideration, with a view to submitting to me proposals for the creation of clearly defined Green Belts, wherever this is appropriate.

However, I do not intend on this account to hold up my approval of Development Plans already before me. Additional provisions for Green Belts can be incorporated later."

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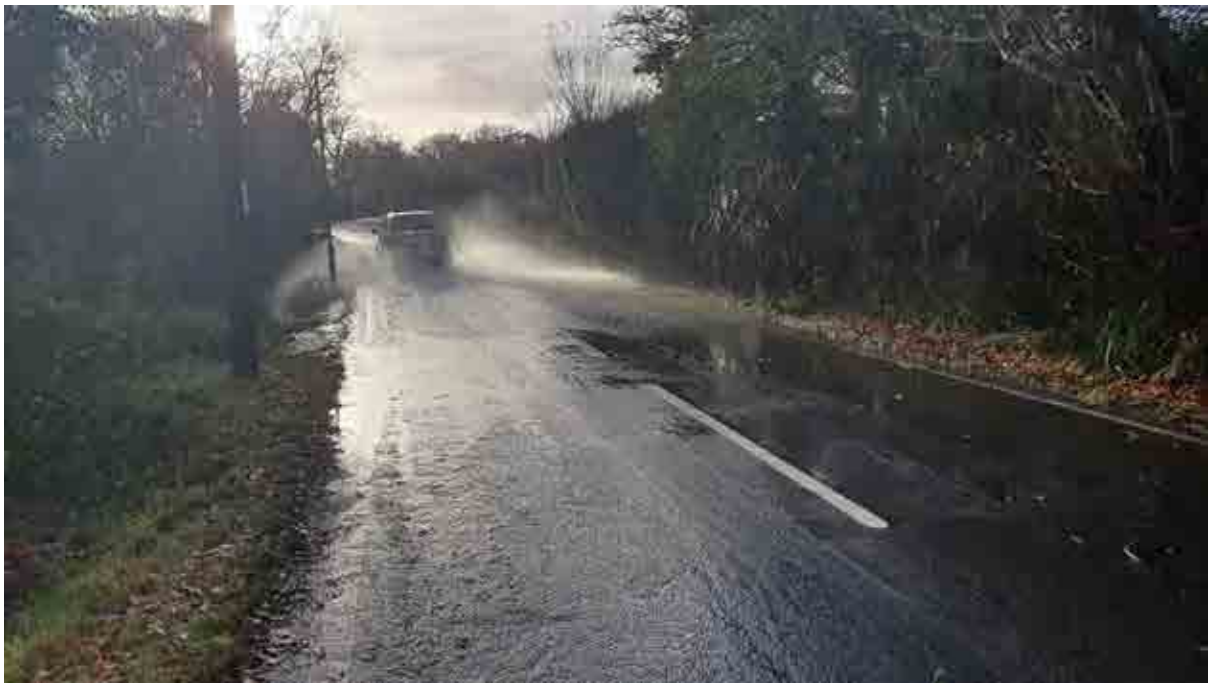
HER MAJESTY'S STATIONERY OFFICE
1955: Reprinted 1962
Price 3d. net
DS 98004/1 Wt. 4074 K16 3/62 CL
75-9999

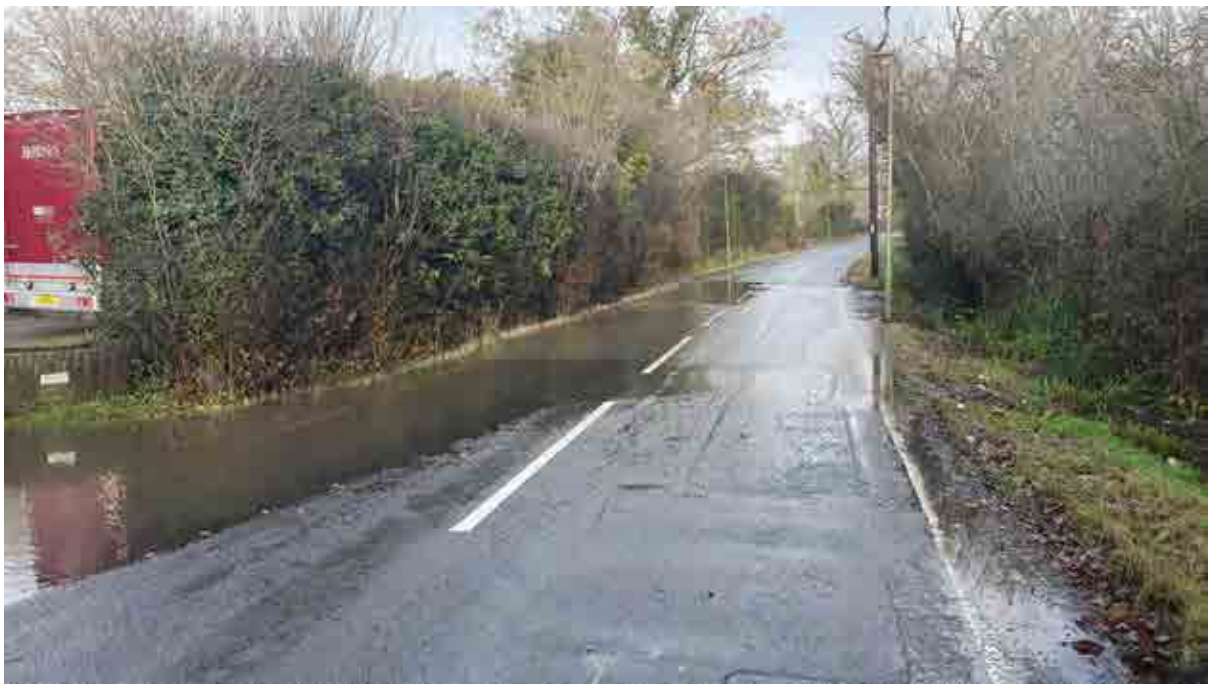
10.4. Photographic Evidence

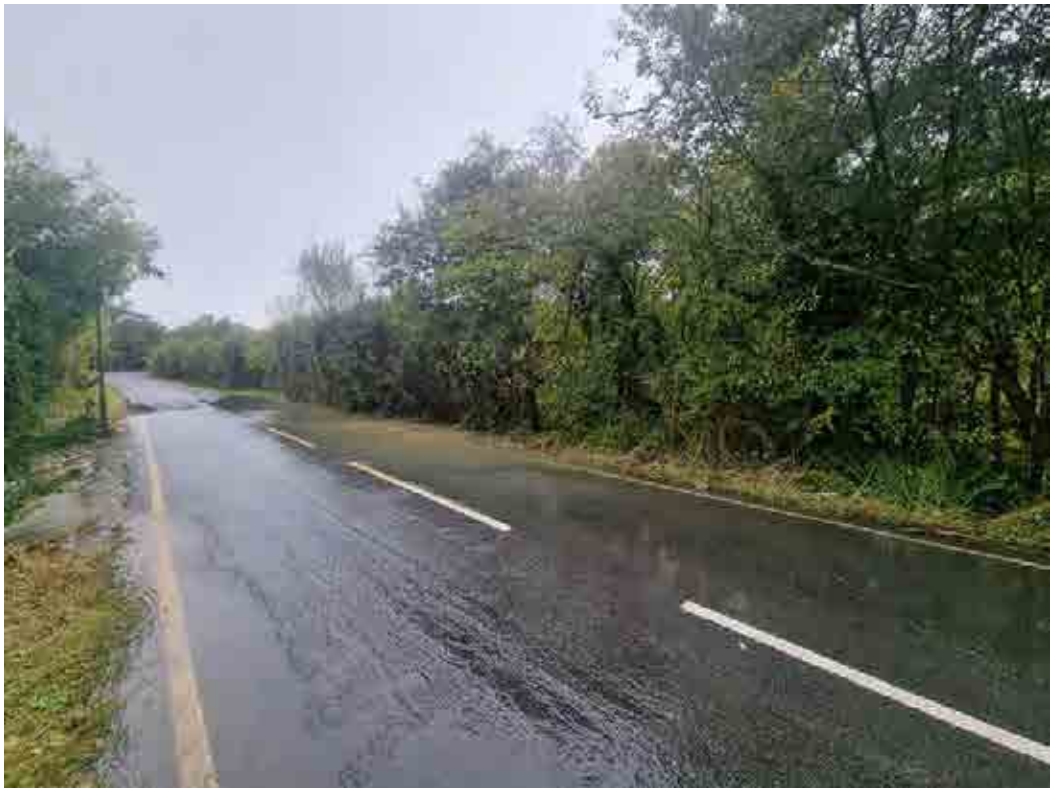
10.4.1. Flooding

Photos of flooding

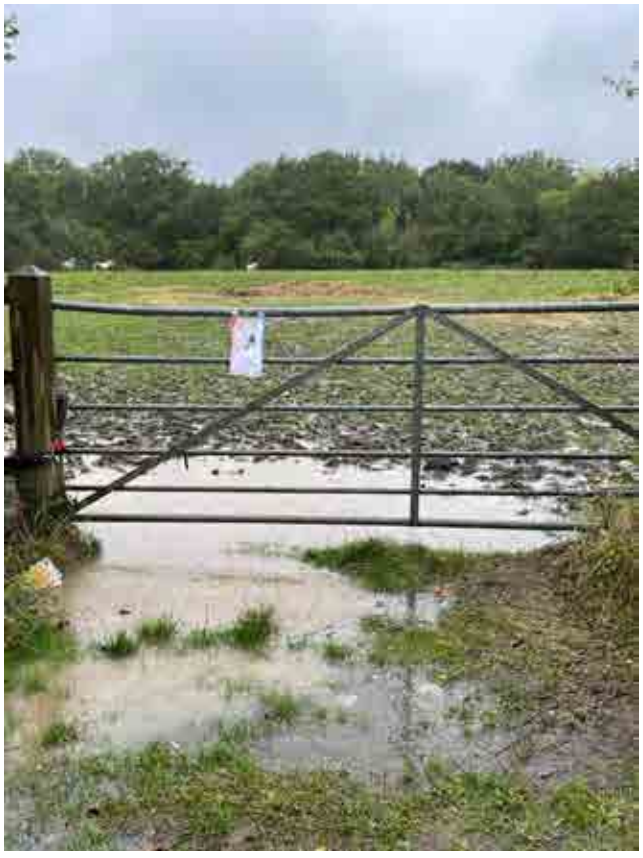
Mays Lane Flooding by Dollis Brook

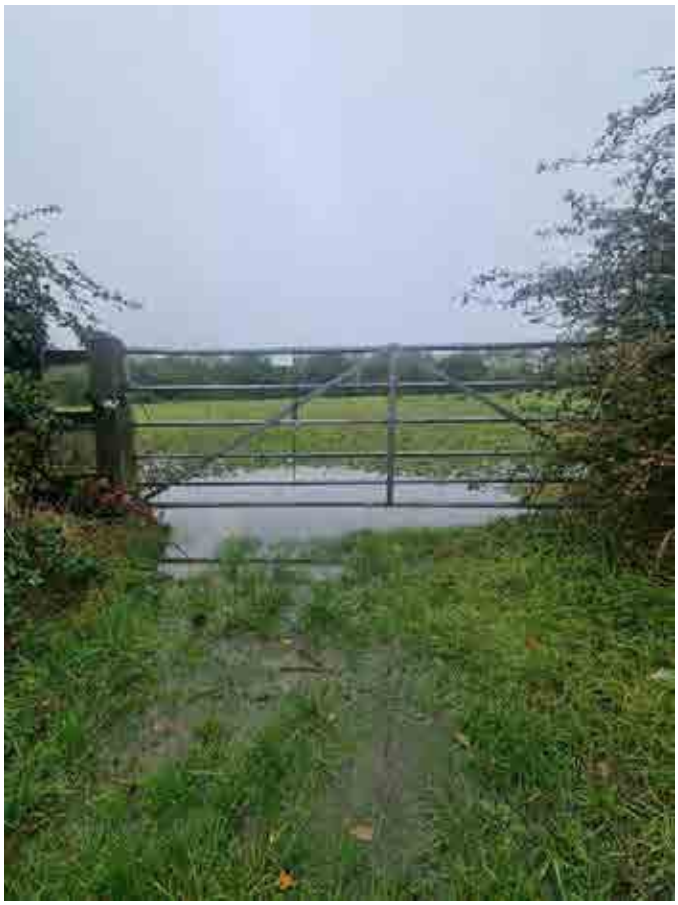


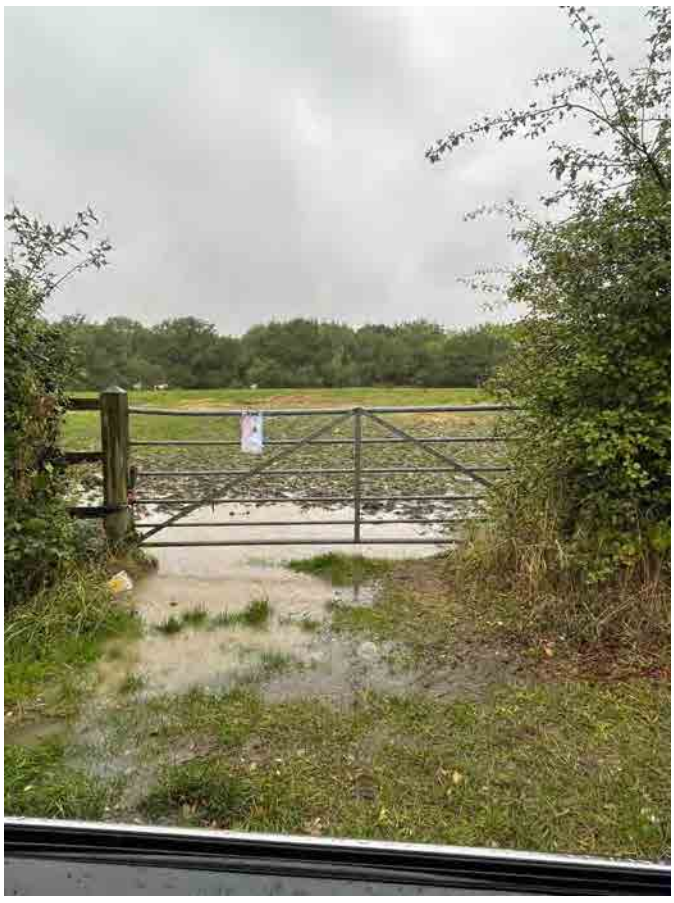




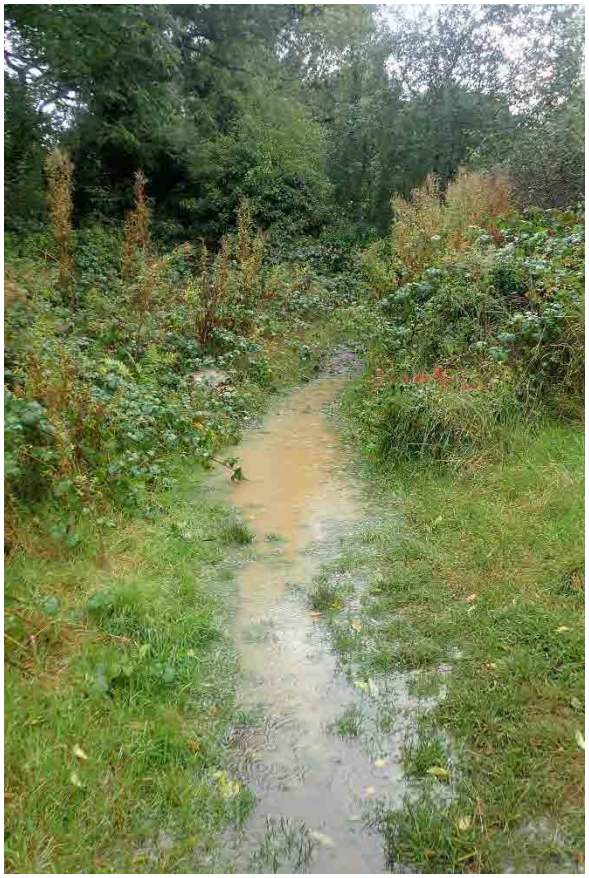
Surface water flooding at appeal site access

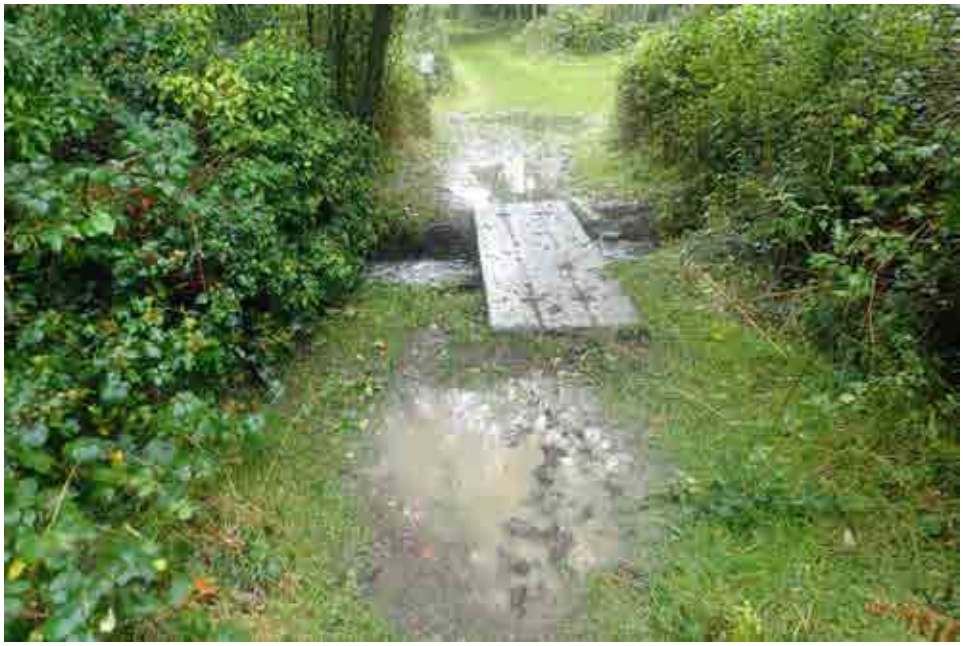






Flooding at base of Whitings Hill behind appeal site





Trenches behind appeal site