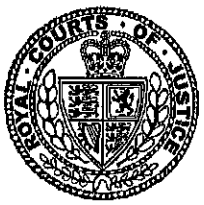

Neutral Citation Number: [2015] EWHC 1957 (Admin)

Case No: CO/525/2015

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 July 2015

Before :

THE HONOURABLE MRS JUSTICE LANG DBE

Between :

PATRICK REILLY	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	
(2) HINCKLEY AND BOSWORTH BOROUGH COUNCIL	**Defendants**

Marc Willers QC and Paul Clark (instructed by **South West Law Ltd**) for the **Claimant**
Sasha Blackmore (instructed by the **Government Legal Service**) for the **First Defendant**
The Second Defendant did not appear and was not represented

Hearing date: 2 July 2015

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MRS JUSTICE LANG DBE

Mrs Justice Lang:

1. The Claimant applies under section 288 of the Town and Country Planning Act 1990 ("TCPA 1990") to quash the decision of the First Defendant, dated 17 December 2014, made by an Inspector (Mr Gareth Symons) appointed by the First Defendant, to dismiss his appeal against the refusal of planning permission for the change of use of land known as The Good Friday Caravan Site, Bagworth Road, Leicestershire ("the site").

2. The Claimant is an elderly Irish Traveller who lives in a caravan, together with his wife and a friend who is a Romany Gypsy, on one of the 10 pitches on the site.

3. The site was previously used as stables, which burnt down. Thereafter the land was used by the Claimant and others for an unauthorised use, namely a caravan site. An enforcement notice was served by the Second Defendant. On 19 March 2010, the Claimant successfully appealed, and was granted temporary planning permission for three years, for a change of use of the land to use as a residential caravan site. Condition 1 required that, at the end of the three year period, the use was to cease and the site to be cleared and restored.

4. On 25 February 2013, the Claimant applied for planning permission for development of the land, without complying with condition 1. The application was refused by the Second Defendant on 15 August 2013, and the Claimant appealed.

5. On 16 August 2013 the Second Defendant issued an enforcement notice which required that the residential use of the land cease within 9 months and that the land be cleared and reinstated. The Claimant appealed against the enforcement notice.

6. The planning and enforcement notice appeals were conjoined, and considered by the Inspector at a 3 day planning inquiry.

7. On 17 December 2014, the Inspector:

   i) dismissed the Claimant's appeal (Appeal A) against the enforcement notice on ground (a);

   ii) extended the time for compliance with the enforcement notice, thus allowing the appeal solely in relation to ground (g);

   iii) dismissed the Claimant's appeal (Appeal B) against the refusal to grant planning permission for development of the land without complying with conditions subject to which a previous planning permission had been made.

Legal framework

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

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

10. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties v Secretary of State for the Environment* (1978) 42 P &CR 26. As Sullivan J. said in *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, at [6]:

> "An application under section 288 is not an opportunity for a review of the planning merits of an Inspector's decision...
>
> 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 increase in most planning cases because the Inspector is not simply deciding questions of fact, he or she is building a series of planning judgments ... Since a significant element of judgment is involved there will usually be scope for a fairly broad range of view, none of which can be categorised as unreasonable.
>
> 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...."

11. The determination of an application for planning permission is to be made in accordance with the development plan, unless material considerations indicate otherwise: section 38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004"), read together with section 70(2) TCPA 1990. The NPPF is a material consideration in planning decision-making (see NPPF paragraphs 11 to 13).

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

The Inspector's decision

13. At DL4-9, the Inspector identified the relevant national and local plan policies and in doing so noted that:

    i) Policy CS18 specified criteria against which planning applications for new Gypsy and Traveller sites should be assessed, including a requirement that new sites should have safe highway access (DL5);

    ii) Policy T5 of the Hinckley and Bosworth Local Plan was a relevant development plan policy (DL7); and

    iii) Policy IN5 of the *6 C's Design Guide* was also a material consideration (DL8).

14. The Inspector summarised the relevant parts of IN5, at DL9:

> "Policy IN5 covers access onto the road network. To maintain safety and the free flow of traffic, access onto the most important high-standard routes will be severely restricted. Elsewhere, particularly in urban locations, a more flexible approach applies. For access onto A and B Class roads restrictions on the increased use of existing accesses will normally apply where the speed limit is above 40 mph and roads where there is an existing safety problem. The local Highway Authority (LHA) will recommend refusal of any planning application that raises concerns about road safety. "

15. The Inspector identified the main issues as follows:

    i) The effect of the development on highway safety;

    ii) The effect of the development on the character and appearance of the area;

    iii) Whether the site is within a reasonable distance of local services and facilities;

    iv) Whether any harm and conflicts with the development plan would be outweighed by other considerations, including the supply of Gypsy pitches, and whether the condition in dispute under Appeal B is still necessary to allow sites to come forward to meet an unmet need in the Borough, the availability of alternative site accommodation, the personal circumstances of the site's residents and their human rights.

16. At DL11 the Inspector noted that in 2010 the previous Inspector had also considered highway safety:

> "The previous Inspector also considered the issue of highway safety. That assessment was based on a very similar planning policy background to that before me. There was also agreement between the parties, carried forward to these appeals, that Design Manual for Roads and Bridges (DMRB) visibility splays applicable to trunk roads are available which are greater

> than would normally be relevant to a B Class road even though the national speed limit applies. Against this background the previous Inspector found that the use of the access to serve 10 pitches would not unduly compromise highway safety."

17. At DL12 the Inspector noted that on 27 January 2011 there had been a road traffic collision involving a vehicle turning right into the appeal site which had tragically resulted in the deaths of two young women. The Inspector went on to say:

> "This is a very significant material consideration that as a matter of fact must be given paramount importance. I shall examine the circumstances of that crash to see what bearing it has on the current appeals."

18. After examining the circumstances of the accident, he stated at DL19:

> "It is acknowledged that the tragic sequence of events stemmed from an error of judgment by the driver of V1 who should not have turned into the appeal site access when he did. Had it not been for that rash manoeuvre the chain of events that then unfolded may not have occurred. However, a sequence of events like this or any other sequence is not needed for accidents to occur. Only two vehicles need to be involved for drivers and/or passengers to be harmed. Driver error also probably causes the majority of road accidents for various reasons. Errors in themselves are not reasons to set aside concerns about safety because they could happen again."

19. At DL20 the Inspector then referred back to the *6C's Design Guide* and said:

> "The 6C's Design Guide seeks to normally restrict access onto roads like this for very good highway safety reasons. The other accidents that have happened along this stretch of Bagworth Road, pre and post the Good Friday site, appear to have happened for different unrelated reasons. Nevertheless, while there has been only one accident at the appeal site access; it did result in two deaths that would not have occurred if the site had not been there. This is so significant in itself that it shows there is an existing safety problem. "

20. At DL21 the Inspector said:

> "It is very rare to assess schemes against such real first hand stark evidence. Highway safety assessments normally involve balancing risk against probability. Knowing what has happened removes the 'ifs' and 'buts' test. I cannot confidently predict that an accident involving a right turning vehicle would not occur again or find that using the access is safe. The 6C's Design Guide policy IN5 no longer has a criterion relevant to normally restricting accesses onto class A and B roads that do not have street lighting. However, that does not mean that the

> policy objection to the appeal scheme is diminished when an underlying aim of the policy is to maintain road safety. In any event, CS policy 18 requires the development to have safe highway access."

21. Finally, in DL22 the Inspector indicated that he had reached the conclusion that there was a very clear conflict with the highway safety aims of policy CS18, T5 and the 6C's Design Guide and that he attached *'the fullest weight possible to this finding'*.

22. At DL31-36 the Inspector addressed the need for additional site provision within the Second Defendant's Borough and in DL35 he concluded that the Second Defendant could demonstrate that it had a 5 year supply of specific deliverable sites.

23. At DL37-43 the Inspector addressed the availability of alternative sites for those living on the Good Friday Caravan Site and in DL43 the Inspector stated that:

> "The possibility that the Good Friday residents may have nowhere else to go weighs in favour of the appeal scheme and it also impacts on the other considerations set out below."

24. The Inspector then considered the personal circumstances of the site residents in DL44-46. He concluded in DL46 that they were *'undoubtedly significant material considerations that weigh in favour'* of the appeal proposal.

25. At DL47-54 the Inspector considered his findings on the main issues and, having considered the human rights of the site residents, explained why he had concluded that the planning appeal and the ground (a) enforcement notice appeal should be dismissed but that the ground (g) enforcement notice appeal should be allowed.

26. At DL47 the Inspector said:

> "I have attached the fullest weight possible to the issue of highway safety and significant weight to the harm to the character and appearance of the area. Balanced against this are the weights to be given to the site not being too far from access to services, considerations of the site's residents potentially having nowhere else to go and the adverse impacts that would have on the Gypsies education and health. I find that the issue of highway safety in particular is so significant that in the wider public interest this alone cannot be outweighed by the other considerations thus making it not possible to grant planning permission even on either a temporary or personal basis."

27. When considering the site residents' human rights in DL50 the Inspector recognized that the disruption they would experience would be significant and that:

> "... In all likelihood the site residents would have to vacate the site, which is their home, without any certainty of alternative accommodation being available....."

28. The Inspector also recognised the fact that the dismissal of the appeals might also infringe on their ability as members of an ethnic minority group to maintain their traditional ways of life.

29. Taking those factors into account, the Inspector said in DL52 that he had concluded that it would be proportionate to extend the time for compliance with the enforcement notice to 18 months in respect of use of the land, and 21 months for compliance with site restoration.

The Claimant's grounds

30. The Claimant submitted that the Inspector erred in two respects:

    i) When determining whether the site access was safe and what weight to attach to the highway safety issue, the First Defendant's Inspector wrongly took account of the possibility that an accident would be caused by the acts or omissions of a careless or negligent driver.

    ii) Given the evidence adduced by the parties and all the circumstances, the Inspector's decision to treat the highway safety issue as being of 'paramount importance' and to attribute 'the fullest possible weight' to that issue was perverse.

31. The Claimant relied on the following points:

    i) The same site access was used for the stables, for which planning permission had been given.

    ii) Aside from the fatal accident, no accidents had occurred from use of the site access from 2003 to date.

    iii) The visibility splays at the access to the site were more than sufficient to comply with recommended standards.

    iv) The required forward visibility of vehicles travelling behind those turning left or right into the site was available.

    v) Even at night, the driver of an approaching vehicle would be able to see the lights of a vehicle turning into the site.

    vi) The design of the site access had nothing to do with the fatal accident. The driver of V1 turned right into the site access across the path of an oncoming vehicle (V2), resulting in a collision which smashed both cars' headlights and left them stationery in the road. Two other cars travelling along the road then collided with the stationary cars from the first collision, not seeing them in time to stop. Two women from V2 who were standing in the road were killed.

    vii) The initial collision was the result of negligent and dangerous driving by the driver of V1, not because of any inherent danger in the site access.

Conclusions

32. It is beyond dispute that highway safety was one of the main issues in the appeal. The Second Defendant opposed the appeal on the ground that "the site access has been shown to be lethally dangerous".

33. In the 3 day inquiry, there was extensive evidence before the Inspector, including two expert witnesses, and written evidence from the fatal accident. There was also highway safety evidence from the previous appeal.

34. The Inspector also conducted a site visit, at night, when visibility was reduced.

35. Applying fundamental principles of planning law, it was the Inspector's task to evaluate the evidence, and make a series of planning judgments. The weight to be accorded to the various factors was a matter for the Inspector. As Sullivan J. explained in *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, at [6], it is difficult for an applicant to mount a successful challenge to such an exercise of planning judgment, on *Wednesbury* grounds. Particularly where, as here, the Inspector had the benefit of detailed evidence, representations and a site view.

36. Sullivan J. observed that "*as a significant element of judgment is involved, there will usually be scope for a fairly broad range of views, none of which can be categorised as unreasonable*". The fact that a different Inspector reached a different conclusion at the previous appeal was a matter for him to take into account, which he duly did, but it was not determinative of the appeal before him. Moreover, there was evidence before this Inspector which was not before the previous Inspector, namely, the circumstances of the fatal accident.

37. In my judgment, there was ample evidence upon which the Inspector was entitled to reach the conclusions set out in his Appeal Decision.

38. In summary, the B585 is a moderately busy road, which is part of a strategic lorry route linking to A roads. The volume of traffic fluctuates during the day, but it is invariably fast-moving and free-flowing. The speed limit is 60 mph, though average speeds are closer to 50 mph. The road, which is single carriageway, twists, turns and undulates. The problem is not what can be seen by drivers as they leave the appeal site, as the visibility splays are of an appropriate standard. The danger arises from other drivers who are not expecting to find vehicles turning in and out of a private drive off a fast road, thus increasing the risk of collisions. This is why the 6C's Design Guide restricts side access on to highways such as these. Daily movements to and from the 10 pitch site are likely to be about 70 – 100 movements per day (contrasted with an estimated 8 – 12 movements per day when the site was used as stables). The road travels through national forest and the caravan site is well hidden by vegetation.

39. The problem is exacerbated at night as the road is unlit, and visibility reduced by overhanging trees and roadside vegetation. The caravan site lights are not visible from the road. From his site visit, the Inspector found that an oncoming driver would find it difficult to see a vehicle turning right into the site, once its lights were turned into the site, away from the road.

40. It was common ground at the Inquiry that these risks could not be successfully mitigated by any signage or lighting or adaptation of the access.

41. The Inspector analysed the circumstances of the fatal accident in order to inform his assessment of the ongoing risk of the site access, which had been identified by the local authority long before the accident took place. In my view, he was entitled to do so.

42. The Inspector was well aware that "the tragic sequence of events stemmed from an error of judgment by the driver of V1 who should not have turned into the appeal site access when he did". However, as he correctly observed, driver error probably causes the majority of road accidents but errors in themselves are not reasons to set aside concerns about safety because they could happen again (DL20). I accept the First Defendant's submission that an Inspector considering highway safety ought to evaluate risks having regard to the likelihood of driver error and likely accidents, otherwise his planning judgment will be divorced from the realities of the proposal as it will operate in practice.

43. In any event, it is apparent that the risks which the Inspector identified existed independently of any driver error.

44. Finally, I consider that the weight which the Inspector accorded to the factor of highway safety to be both rational and within the legitimate scope of his judgment. Highway safety was a primary issue, and the safety both of site residents and road users was at risk.

45. In conclusion, the Claimant has failed to establish any error of law in the Inspector's decision and therefore the application is dismissed.