Case No: CO/6719/2011

Neutral Citation Number: [2012] EWHC 3192 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/11/2012

Before :

MRS JUSTICE COX DBE

Between :

Claimant

CHARMAINE MOORE

- and -

(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

(2) LONDON BOROUGH OF BROMLEY

Defendants

Mr Stephen Cottle (instructed by **Community Law Partnership, Solicitors, Birmingham**) for the **Claimant**
Mr Stephen Whale (instructed by **Treasury Solicitors**) for the **Defendants**
London Borough of Bromley were not present and were not represented

Hearing dates: 12 October 2012

Judgment

Mrs Justice Cox :

Introduction

1. This is an application by Charmaine Moore (the Claimant) under s.288 of the Town and Country Planning Act 1990. She seeks an order quashing the decision of an inspector on her appeal, under s.78 of that Act, set out in his decision letter dated 9 June 2011.

2. After a site visit and a hearing held on 11 May 2011, the inspector dismissed her appeal against the London Borough of Bromley's refusal to grant her application for planning permission. She had applied to change the use of land from equestrian to a private Gypsy and Traveller caravan site, comprising one pitch accommodating one mobile home and one touring caravan.

3. Mr Cottle, appearing for the Claimant, contends that for the reasons set out in the grounds and developed in oral submissions, the inspector's decision was not within the powers of the 1990 Act, or that the Claimant's interests have been substantially prejudiced by a failure to comply with the relevant requirements in relation to that decision, as required by s.288. He challenges the decision as one which is characterised by a failure to make relevant findings and by material misdirections and as one which is, so far as the refusal of temporary permission is concerned, **"Wednesbury"** unreasonable.

4. Mr Whale, on behalf of the Secretary of State (the Defendant), the London Borough of Bromley (the Council) taking no part in these proceedings, submits that the Claimant's grounds amount effectively to an impermissible merits challenge, dressed up as a legal challenge. The inspector had a balance to strike, he was entitled to exercise his planning judgment in the way that he did and his decision, read as a whole, is unimpeachable.

5. Mr Cottle did not represent the Claimant at the hearing before the inspector. Mr Whale submits that some of the points being advanced in this application are entirely new points which were not raised before the inspector; and they ought not to be entertained by this Court. Mr Cottle disputes this, but in the alternative, to the extent that any point is considered to be new, he submits that it is a point of law with which I should deal. There were written submissions before me on the competing arguments in this respect.

However, it was agreed at the outset that I would hear arguments on the substantive points on the sensible basis that, if I did not consider them to have merit, it would be unnecessary to deal with the procedural dispute as to the extent to which, if at all, I could have regard to them.

The Background

6. The relevant background is set out at various points in the inspector's decision letter.

7. The appeal site is in Kent, at Archies Stables, Cudham Lane North, Cudham, Sevenoaks. It is situated within the Metropolitan Green Belt. It is located in countryside to the south of Cudham and adjoins fields used by the Girl Guides to the south, and a small area of protected woodland to the north.

8. The Claimant is a single parent who lives in the mobile home on the site with her three children, now aged 14, 13 and 7. It is their only home. It has always been accepted that the Claimant and her family are Romany Gypsy Travellers and the inspector identified her accommodation needs as being "for a single pitch on which she could site her mobile home and touring caravan".

9. The Claimant is also a disabled person. Medical evidence before the inspector showed that she had always suffered from "joint laxity", a condition which means that her bones come out of their sockets very easily and which requires her regularly to takes strong painkillers and anti-inflammatory medication. In addition she is currently being prescribed anti-depressant medication for depression and anxiety.

10. In addition to her medical condition the Claimant's previous living arrangements were found to be unusual. 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 29 Homefield Rise in Orpington. The house was used only as a day room, rather than permanent accommodation, and the family always slept in the caravan outside on the drive. The inspector accepted that this Claimant clearly had "an aversion to living in bricks and mortar".

11. In May 2008 the Claimant was granted conditional planning permission for a change of use of the appeal site, from agricultural

land to the keeping of a horse and the retention of a newly created access and hardstanding. Details of post and rail fencing to the north, west and south boundaries 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 attached to the permission restricted uses within the site, restraining the stationing or storage of a caravan or caravans. An appeal by the Claimant against that condition was dismissed in August 2009.

12. The Housing Association, as the Claimant's landlords, had previously sent written requests for her to remove the caravan and a horsebox from the Homefield Rise drive, in 2001 and 2004, but these requests had not been followed up. However, by letter dated 12 March 2010, the Claimant was given 28 days notice to remove the vehicles from the drive. A further letter, dated 1 April 2010, informed her that, if they were not removed, the Association would seek further legal advice and write again.

13. The Claimant's evidence, which was accepted, was that she could not afford to buy a site with planning permission. Nor had she applied to the Council for a pitch on one of the two Council-run sites in the borough which, as at the date of the hearing before the inspector, were found, on the information available, to be full with waiting lists.

14. In April 2010 the Claimant was refused planning permission for the stationing of a caravan on the appeal site and in June 2010 planning permission was refused for an additional storage building. Notwithstanding these refusals, on 9 July 2010 the Claimant and her children moved on to the site with her mobile home and the touring caravan, and her tenancy with the Housing Association was terminated. She has lived there with her children since that time. Further development has taken place 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.

15. The Claimant's application for change of use, dated 12 July 2010, was refused by the Council on 14 September 2010. The development described in the application had largely been carried

out, save for the proposal to remove the shed and toilet building and replace them with a utility building adjacent to the stables.

16. The Council commenced injunction proceedings in late 2010, which were deferred pending the outcome of the Claimant's appeal to the inspector. It is not in dispute that the Council are applying for the immediate removal of the unauthorised development and thus for the Claimant's immediate eviction from the site, and not for an order to be suspended on certain conditions.

17. At the hearing before the inspector the Claimant was represented by Dr Murdoch, Chartered Town Planner and planning consultant. On the Claimant's behalf it was conceded at the outset that the development amounted to "inappropriate development" in the Green Belt, for the purposes of Planning Policy Guidance No 2 (PPG2), and that it resulted in some loss of openness.

18. The main issues for determination by the inspector were therefore (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 identified harm to the Green Belt, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations such as to amount to very special circumstances. Mr Cottle submits that, given the Claimant's concession, it is that last issue which was the most important; and he focused upon it in oral submissions before me.

The Inspector's Decision

19. In view of the nature of the Claimant's challenge it is necessary to refer to the inspector's findings in some detail.

(a)(i) Openness

20. The inspector referred to Policy G1 of the London Borough of Bromley Unitary Development Plan 2006 (the UDP) and to PPG2, which advise that "inappropriate development is, by definition, harmful to the Green Belt and that this harm carries substantial weight". PPG2 refers to openness as the most important attribute of Green Belt land.

21. He took into account, in the Claimant's favour, (1) the fact that planning permission had already been granted for the stable, toilet,

access and for some of the fencing and hardstanding; and (2) the fact that, although a previous inspector had considered the permitted use of the land to represent its maximum capacity as an acceptable enterprise within the Green Belt, he had not considered the site in relation to its occupation by a Gypsy family. His decision did not therefore include consideration of ODPM Circular 01/2006 and its acknowledgement that sites for Gypsies and Travellers may be found in rural or semi-rural settings.

22. However, in the present case, the inspector found that the development clearly reduced the openness of the Green Belt. While the development was relatively small scale, the mobile home, touring caravan, close-boarded fencing and area of hardstanding all reduced openness. The proposed utility room would reduce it still further, because its size exceeded that of the toilet and shed to be removed. There was therefore conflict with the advice in PPG2 and with Policy G1 of the UDP.

23. He went on to state that Circular 01/2006 makes it clear that national planning policy on Green Belts applies equally to applications for planning permission from Gypsies and Travellers, as it does to the settled population. Further, he also noted that one of the Government's objectives as set out in the consultation draft PPS is to protect the Green Belt from development.

(ii) Effect on the Character and Appearance of the Area

24. The inspector did not consider that there was any harm caused by the site to the view from Cudham Lane North. The site was located above the level of the road and there was only a brief view into the site from the lane. Only the metal gates were clearly visible, but they were set well back. It is a busy country lane without footways, so that there would be few walkers in the area and the passing traffic would be travelling at some speed so that only fleeting glimpses of the development would be seen.

25. However, the mobile home, caravan and fencing were found to be clearly visible from a track to the south, which provides vehicular access to the Girl Guide camp and which is also a bridleway and footpath, which is part of the Cudham Circular Walk. The inspector found at paragraph 13:

"This path runs to the south of the field that lies to the south of the appeal site and for much of its length views of the appeal site are limited by a high hedge, although even in May there are glimpses through it. There is also a gateway into the field from where clear views of the development can be achieved. The development is harmful to that view as it is an urbanising feature in an otherwise rural landscape. While Gypsy and Traveller sites may be found in rural areas, by erecting closeboarded fencing and such features as the lamppost, the development is harmful in this location."

26. In answer to the Claimant's submission that this was a temporary effect only, which was capable of remedy, the inspector continued:

"I accept that the removal of the closeboarded fencing, the lamppost and the implementation of a landscaping scheme could, in time, reduce this visual impact. However the landscaping would take some time to mature and in the meantime the development causes visual harm to the appearance of the countryside, contrary to Policy BE1 of the UDP."

(iii) Highway Safety

27. The inspector was not troubled by the Council's concerns in this respect and his findings on this issue did not feature in the submissions of either side before me. He accepted that the mobile home would only be moved on or off the site on a very occasional basis; and that the Claimant only used the touring caravan to travel once a year, when she was away over the summer, because the education needs of her children prevented more frequent travelling. He noted that the Claimant would accept a personal permission, with a condition limiting the occupation of the site. He considered, further, that suitable conditions could ensure that highway safety was maintained, although he noted that any alterations to the access could have some implications for the established frontage planting and thus for the visibility of the site.

(b) Other Material Considerations

28. The inspector grouped together the following considerations advanced by the Claimant in support of her appeal: the need for sites for Gypsies and Travellers in the area; the individual needs of

the Claimant and her immediate family; the lack of suitable alternative sites that are both available and affordable; the likely outcome of refusing planning permission, including Human Rights considerations; and personal considerations including health and education. On the Claimant's behalf these were said, cumulatively, to constitute very special circumstances such as clearly outweigh the harm caused by inappropriate development and by the effects on openness and on the character and appearance of the site.

The need for sites for Gypsies and Travellers

29. The Council runs two sites for Gypsies and Travellers in the Borough. On the evidence before him the inspector concluded that there was undoubtedly some immediate need arising in the Borough, but that "the cited figures do not weigh heavily in favour of the appellant". The basis for the cited figures was not entirely clear and the inspector went on to hold (at paragraph 29) that "the exact level of such need is not known".

30. In the absence of any better information the inspector took as his starting point the January 2010 figure, showing thirty tolerated and six non-tolerated caravans on Gypsies' own land, and the number of caravans with temporary permission was only four. Circumstances had changed even in the six months since another appeal involving the Council was heard, in January 2011, when the Council had accepted that there was an unmet need of 33 pitches, and that that need was significant.

31. There was no longer any likelihood of a Site Allocations Development Plan Document being produced in the near future. The 2008 assessment of need had been replaced by the Report of the Panel into the Draft Replacement London Plan in March 2011. This Report recommended that provision be made on a sub-regional basis, to enable provision to be made by "local partnership working". During the period 2007-2017 the south east London Boroughs are required to provide 65-75 pitches. The individual figure for Bromley was shown to be 19, but this could be provided as part of the sub-regional provision.

32. Thus, a lower level of provision was recommended for Bromley and over a longer period. The caravan count figures for non-tolerated caravans in Bromley were low, with only six non-tolerated caravans in January 2010, although the Council also acknowledged the need

for additional provision to be made, to accommodate caravans for which there was temporary planning permission. Hence the inspector's conclusion that there was "some immediate need".

33. In relation to site availability, the inspector's conclusions appear at paragraph 18:

> "The Council runs two sites for Gypsies and Travellers in the Borough. The Council provided no evidence concerning waiting lists or turnover, but evidence to an Inquiry in December 2009 showed the sites to be full and to have a combined waiting list of 12 families. At the time the turnover was 2 or 3 pitches per year. These details were repeated at the Hearing concerning Southview in Swanley (Document 5). At the current Hearing the Council was not able to suggest any alternative sites that are suitable, available and affordable but argued that when Gypsies and Travellers have been forced to move off sites the Council has been able to offer pitches on its sites."

34. Mr Cottle places particular reliance on this paragraph which, on analysis, discloses the following. In December 2009 the two Council sites were full and there was a waiting list of 12 families, with a turnover of only 2–3 pitches per year. This was still the position at the earlier "Southview" hearing in January 2011 (see paragraph 21 of the decision letter). At the present hearing, some five months later, the Council provided no evidence concerning waiting lists or turnover and were unable to suggest any alternative sites that were suitable, available and affordable. The Council "argued" that when Gypsies and Travellers had been forced to move off sites the Council had been able to offer pitches on its sites, an assertion for which there was apparently no evidence advanced in support.

The individual needs of the Claimant and her children

35. These were accepted to be for a single pitch on which the Claimant could site her mobile home and touring caravan. After setting out the Claimant's accommodation history the inspector concluded as follows at paragraph 24:

> "I acknowledge that the appellant clearly has an aversion to living in bricks and mortar but she had lived for 12 years in Homefield Rise. There is no evidence to show that she was facing imminent eviction from that property; previous letters

requiring the removal of the caravan had never been followed up. In any case there is no suggestion that the appellant made any attempt to find alternative accommodation on a site with planning permission. She never contacted the Council or put herself on the waiting list for a pitch on a Council-run site. When she made the planning application for the caravan on the appeal site, she did not disclose that she was a Gypsy despite addressing the Planning Committee after receiving the letters from the Housing Association. While her evidence to the Hearing was that she would never consider moving to one of the Council-run sites due to anti-social behaviour by site residents, this behaviour was not supported by any hard evidence. The fact that in 2010 the Council-run sites were full and that there was a waiting list does not indicate that the pitches are hard to let; anti-social behaviour also occurs amongst the settled population. It seems to me that the circumstances surrounding the appellant's departure from Homefield Rise are such that the current lack of suitable accommodation carries only limited weight."

Personal Circumstances

36. After referring to her disability and current medication the inspector referred to a letter from her GP, written in March 2010 and therefore when she was still living in Orpington. No doubt this letter was submitted in support of her application for planning permission, which was refused in April 2010. The doctor's opinion was that moving to a caravan in a field would have a positive effect on this Claimant's mental health and on her joints. Moving to a roadside existence, however, would be harmful to her health. The inspector concluded that the Claimant's health needs carried "some weight".

37. The Claimant's three children, Bonny, Charmaine and Archie, had all attended the same primary school before moving to the appeal site. Bonny and Charmaine now attend secondary school and have settled in well. Charmaine, who is dyslexic, has assistance from a specialist dyslexia teacher. Archie, the youngest child, receives home education. Mr Cottle informed me, and it appears not to be in dispute, that one of the Claimant's daughters has recently been diagnosed as suffering from the same joint laxity disability as the

Claimant. This information, however, was not before the inspector when he made his decision.

38. The inspector considered that, as a whole, the children's education needs were not so unusual that they could not receive a similar education elsewhere. They had had a settled education before they moved. The settled education they now had was found to be a benefit which "carries some limited weight".

Were there very special circumstances which clearly outweighed the harm identified?

39. It is agreed that the inspector correctly directed himself to the relevant policy at paragraph 27 of his decision, as follows:

> "27. 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."

40. In view of the **"Wednesbury"** challenge to the inspector's conclusions on this issue, I set out in full the relevant findings at paragraphs 28–35.

> "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.

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. It is therefore necessary to consider whether temporary planning permission is appropriate

Temporary planning permission

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 Legal Framework

41. S.78 of the 1990 Act provides a right of appeal to the Secretary of State against a refusal of an application for planning permission by the local planning authority. By s.288(1)(b) of that Act any person aggrieved by the inspector's decision may question its validity in an application to this Court.

42. S.288(1)(b) provides as follows:

"288 **Proceedings for questioning the validity of other orders, decisions and directions.**

(1) If any person—

...

(b) is aggrieved by any action on the part of the Secretary of State to which this section applies and wishes to question the validity of that action on the grounds—

(i) that the action 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 action,

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

43. The general principles governing the approach of this Court to an application under s.288 are well known. It is long established that an inspector's decision under s.78 may be quashed only if it is found that she or he has acted perversely, has had regard to irrelevant material or failed to have regard to relevant material, or has failed to provide proper and adequate reasons for the decision (see **Seddon Properties v. SSE** [1978] JPL 835).

44. However, it is common ground that a party claiming **Wednesbury** unreasonableness on an issue of planning judgment faces a particularly daunting task and Mr Cottle acknowledged this in his submissions. It is for the planning inspector to assess the relative weight to be given to all the material considerations; and the assessment of those considerations can only be challenged on the ground that it is irrational or perverse. In **Tesco Stores Ltd v. Secretary of State for the Environment** [1995] 1 WLR 759 Lord Hoffman observed, at 780:

> "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 the Secretary of State."

45. In **The Queen on the Application of Newsmith Stainless Ltd v. Secretary of State for Environment, Transport and the Regions** [2001] EWHC Admin 74, Sullivan J, referring to the statutory grounds of challenge in s.288, said this at paragraphs 6–8 of his judgment.

> "6. An application under section 288 is not an opportunity for a review of the planning merits of an Inspector's decision. 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...."

46. The structure of and approach to a decision are largely matters for the judgment of the particular decision maker (see **Edinburgh City Council v. Secretary of State for Scotland** [1997] 1 WLR 1447 at 1459-60). This Court should therefore look broadly at the inspector's findings and reasoning and not focus on the minutiae (see **ELS Wholesale (Wolverhampton) Ltd. v. SSE** (1987)56 P and CR 69).

47. Further, in **The Queen on the Application of Delaney v. Secretary of State for Communities and Local Government** [2012] EWHC Admin 1303, Holman J held that the analysis and reasoned conclusions of the inspector as to permanent planning permission should also be "read across" into his analysis in respect of temporary planning permission (see paragraphs 45 and 54 of the judgment). Holman J was addressing himself in those paragraphs to some particular findings in that case, but I accept as a general proposition that it is unnecessary for an inspector to repeat expressly all those matters which are relevant to the question of temporary permission when he or she comes to deal with that matter. Whether temporary permission should be granted in any case is, however, a separate question, in which the applicable criteria may be different, as in this case. It must therefore be addressed separately and adequately reasoned.

48. It is common ground that the leading case on the need to provide adequate reasons in planning cases is **South Bucks District Council and Another v. Porter (No 2)** [2004] 1 WLR 1953, where Lord Brown summarised the authorities in the well-known passage at paragraph 36:

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

49. In relation to the issues raised in this case, the decision of the Court of Appeal in **Wychavon District Council v. Secretary of State for Communities and Local Government and Others** [2009] PTSR 19, is now the leading authority on the approach to Gypsy and Traveller sites in the context of Green Belt Policy.

50. In that case the appellants were Gypsies who purchased land in the Green Belt and stationed on it a touring caravan and a mobile home, in which they lived with their two young children. Their application

for planning permission was refused by the Council. Residential use of the site was in breach of planning control and constituted inappropriate development within the Green Belt for the purposes of Planning Policy Guidance.

51. On appeal a planning inspector granted the applicants temporary planning permission for five years, notwithstanding the fact that it would represent a material encroachment on the Green Belt and harm the surrounding area's character and appearance. Permission was granted on the grounds, amongst others, that the family's education and health needs and the current lack of alternative sites, as referred to in Circular 01/2006, constituted the "very special circumstances" within paragraph 3.2 of PPG2, so as to justify the grant of temporary planning permission. The Judge hearing the Council's appeal in this Court allowed their appeal, holding that the factors identified by the inspector were commonplace and could not amount to very special circumstances within paragraph 3.2.

52. Allowing the appellants' appeal the Court of Appeal held, in relation to the interpretation of Green Belt Guidance, that the words "very special" in paragraph 3.2 are not simply the converse of "commonplace". Rarity is not essential as a matter of ordinary language or of policy. At paragraphs 21–26 Carnwath LJ said, so far as is material, as follows:

> " **21** ... 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 ('the Strasbourg court') 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 gipsy 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 gipsy 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.

23 At the general level, a judgment must be made as to whether, or in what circumstances, the societal value attached to the protection of the homes of gipsies as individuals can in principle be treated as sufficiently important to outweigh the public value represented by the protection of the Green Belt. That might have been thought to be a matter properly to be addressed by the Secretary of State by way of national guidance. It would perhaps have been more helpful if PPG2 or the 2006 guidance had addressed this issue in terms. As it is, the guidance neither excludes nor restricts the consideration of any potentially relevant factors, including personal circumstances. PPG2 limits itself to indicating that the balance of such factors must be such as "clearly" to outweigh Green Belt considerations.

It is thus left to each inspector to make his own judgment as to how to strike that balance in a particular case.

24 At the particular level there has to be a judgment how if at all the balance is affected by factors in the individual case: for example, on the one hand, public or private need, or personal circumstances, such as compelling health or education requirements; on the other, particular factors increasing or diminishing the environmental impact of the proposals in the locality, or (as in this case) limiting its effect in time. This judgment must necessarily be one to be made by the planning inspector, on the basis of the evidence before him and his view of the site.

25 Although the matter may need to be considered at different levels, I see no reason to draw a rigid division between the two parts of the question posed by para 3.2....

...

26 ... I see no reason, in terms of policy or common sense, why the factors which make a case "very special" should not be the same as, or at least overlap with, those which justify holding that Green Belt considerations are "clearly outweighed". To my mind, the wording of para 3.2 ("will not exist unless") reinforces that view."

53. In relation to the inspector's application of the test on the particular facts of that case Carnwath LJ observed, at paragraphs 34–36:

" **34** ... the personal circumstances of the applicants and their children must be seen in the context of the real prospect of forced eviction from their home with no immediate alternative. This was an immediate threat, as the inspector noted...since the authority were already threatening prosecution.

35 In his concluding paragraphs the inspector was careful to spell out in detail the relative weight he gave to the different factors; including those of 'little weight' (the employment needs of Mr Butler, the first applicant), those worthy of 'greater weight' (the education and health needs of the children), and that attracting 'significant weight' (the lack of alternative sites). These considerations taken together did not amount to the 'very

special circumstances' needed to justify permanent permission. However, he took a different view of the case for a temporary permission, having regard to the prospect of the allocation of new sites over the next three to five years under the council's strategy. In that context, 'these matters, when taken together' clearly outweighed Green Belt considerations; and 'therefore' he concluded that 'these concerns combine' to constitute the very special circumstances necessary to justify grant of planning permission.

36 .... Against the background of the 2006 policy, and the expectation of sites becoming available in the near future, the inspector was entitled in law to treat the prospect of immediate eviction of a gipsy family with young children, who had nowhere else to go, as sufficiently "special" in itself to support his conclusion. As Lord Brown said of the *Porter (No 2)* case [2004] 1 WLR 1953, other inspectors might have taken a less generous view. But the conclusion is not perverse."

54. Finally, at paragraphs 42–43, Carnwath LJ referred to concerns as to precedent, making the following observations:

> " **42** Finally I should comment briefly on the authority's concern, in which the judge saw some 'force' ... that the inspector's decision if upheld might set an undesirable precedent for gipsies or travellers seeking temporary permissions in the Green Belt. I understand the concern, but I do not think it is for the court to provide a remedy. The legal and policy framework which I have discussed leaves significant discretion to inspectors at both general and specific levels. It is unsurprising, albeit perhaps unhelpful to local planning authorities, that the results may not always be consistent. But that is not itself indicative of illegality or irrationality.
>
> **43** The court's task is to enforce the law, not to fill in gaps in national policy.....Responsibility for providing consistent policy guidance lies with the Secretary of State. If the present guidance is insufficiently clear or complete, it is to her that complaints should be addressed."

55. Mr Whale places reliance on these passages in submitting that, whilst other inspectors may have taken a more generous view in the

present case, the inspector's decision to dismiss this Claimant's appeal cannot be said to be irrational or unreasonable.

The Grounds of Challenge

56. Mr Cottle raises six grounds of challenge, some of which appear to overlap and which, given the focus on irrationality in his oral submissions, I deal with in the following order:

(1) The inspector's conclusion that very special circumstances for the grant of a temporary permission did not exist was "Wednesbury" irrational and unreasonable; and he erred in failing to make required findings in relation to the risk of roadside existence (grounds 3 and 5 (a));

(2) Alternatively he failed to give adequate reasons when deciding not to grant a temporary permission in this case (ground 2);

(3) The inspector misdirected himself as to the weight to be attributed to this site's important contribution to regional need (ground 4(b));

Mr Cottle withdrew grounds 4(a) and (c) at the hearing.

(4) The inspector failed to take into account in his overall balancing exercise (a) the fact that any subsequent application is also likely to be in the Green Belt and to give rise to the same "inappropriate development" (ground 5(b)), and (b) the relative lack of additional harm (ground 6);

(5) The inspector misconstrued UDP Policy BE1; failed to make the required findings in relation to that Policy; or failed to state his reasons in relation to the long-term position (ground 1).

Irrationality and Reasons (Grounds 3 and 5(a))

57. Mr Whale submits that the inspector considered all the relevant factors, made findings both in favour of and adverse to the Claimant, carried across his analysis when considering temporary permission and concluded, as he was entitled to, that the material considerations relied on by this Claimant did not clearly outweigh the identified harm. That planning judgment was one for the inspector to make and this Court should not interfere. It cannot be

said to be irrational and his reasoning as to temporary planning permission is perfectly adequate.

58. Further, Mr Whale submits that there was no requirement for the inspector to make any finding as to whether or not the Claimant would have to live by the roadside, if permission were refused. In any event the finding sought would not assist the Claimant, given the unchallenged finding that roadside existence would be likely to be equally harmful to the Green Belt and potentially more harmful to the countryside. There is, he submits, no possibility that the inspector would have reached a different decision in any event.

59. I have considered Mr Whale's submissions carefully, mindful of the authorities referred to above and of the uphill task faced by any Claimant seeking to challenge as irrational the exercise of planning judgment by an inspector on a statutory appeal, and of the need to look broadly at his findings. I accept that his expertise, the fact that he has had the benefit of a site visit and has heard the evidence and the fact that it is for him to carry out the necessary balancing exercise, all caution against interference by this Court with the decision arrived at. His decision to refuse a permanent permission is not the subject of an irrationality challenge before me. However, in relation to his decision to refuse a temporary planning permission, in the particular circumstances of this case I find Mr Cottle's submissions compelling.

60. I accept, as a starting point, the fact that the Claimant conceded that the development of this site constituted inappropriate development in the Green Belt with resulting loss of openness, a concession with which the inspector agreed.

61. Notwithstanding the fact that this development was found to be "relatively small scale", the harm arising from inappropriate development was found to attract substantial weight. In addition, openness is identified in PPG2 as the most important attribute of Green Belt and its loss is, therefore, of some significance. It was in conflict with both the advice in PPG2 and Policy G1 of the UDP.

62. Further, the development was found to be harmful to the view from the south and, by the erection of fencing and features such as the lamppost, harmful in this location. Overall these factors were found to amount to a considerable level of harm. Mr Whale

described them as amounting to an extensive and weighty list of factors on the debit side for this Claimant.

63. Given that the identified harm must be "clearly outweighed" by other, very special circumstances and not just tip the balance the other way, Mr Whale submits that the inspector was entitled to conclude that the other considerations on the "credit side" were insufficient.

64. However, while the inspector's analysis is to be taken as carried across to his decision on temporary permission, the nature of the balancing exercise then changed, as the inspector noted at paragraphs 34-35.

65. First, the identified harm to the Green Belt would be for a limited period, reducing to some extent the weight to be attached to that harm.

66. Secondly, there were found to be no alternative, suitable, available and affordable sites in the area; there was no evidence to show that any would become available in the foreseeable future; there is no five-year supply of deliverable sites; and the plan-led process may not result in sites becoming available before 2014. In these circumstances the inspector noted that Circular 01/2006 advises that substantial weight should be given to the unmet need when considering whether a temporary permission is justified.

67. This, in my view, marked a significant change from the earlier finding that only "some weight" should be attached to the limited level of unmet need identified at paragraph 29, in circumstances where the exact level of such need was not clear. Paragraphs 45 and 46 of the Circular, to which the inspector referred, state as follows:

> "45. Advice on the use of temporary permissions is contained in paragraphs 108 - 113 of Circular 11/95, *The Use of Conditions in Planning Permission.* Paragraph 110 advises 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. 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 may 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 fact that temporary permission has been granted on this basis should not be regarded as setting a precedent for the determination of any future applications for full permission for use of the land as a caravan site. In some cases, it may not be reasonable to impose certain conditions on a temporary permission such as those that require significant capital outlay."

These paragraphs seems to me to give effect, in particular, to one of the main intentions of this Circular identified at paragraph 12, namely that it is "(i) to help to avoid Gypsies and Travellers becoming homeless through eviction from unauthorised sites without an alternative to move to".

68. The question is whether in this case the inspector's conclusion, in relation to temporary planning permission, that "in view of the amount of harm and all the other circumstances ... I do not consider that the balance would be tipped sufficiently for the material considerations to clearly outweigh the harm" was irrational and unreasonable.

69. In the particular circumstances of this case, in my judgment, it was. The only reasons given by the inspector for his decision to refuse temporary permission were that "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."

70. However, the substantial weight previously attaching to the harm arising from inappropriate development in the Green Belt fell to be reduced, 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.

71. The findings of the inspector in relation to the other material considerations in this case included the following:

(a) The Claimant's disability, namely "joint laxity", from which she has always suffered and which requires her regularly to take anti-inflammatory medication and strong painkillers. The nature of this condition was described by the inspector as one in which her bones move very easily move out of their sockets. In addition, she is currently taking antidepressant medication for treatment of depression and anxiety. The medical evidence available to the inspector was that moving to a caravan in a field would have a positive effect on her mental health and her joints; and that moving to a roadside existence would be harmful to her health.

(b) The Claimant as a Romany Gypsy Traveller had an aversion to living in bricks and mortar and she could not afford to buy a site with planning permission.

(c) As at January 2011 the two sites for Gypsies and Travellers run by the Council were full, with a waiting list of twelve families and with a turnover of two to three pitches per year.

(d) The Claimant has never been on any waiting list and she has not applied to the Council for a pitch.

(e) No evidence was adduced by the Council at this hearing that there were any alternative sites for this Claimant and her children that were suitable, available and affordable.

(f) The Council argued that they had previously been able to offer pitches on their sites when Gypsies and Travellers had been forced to move, but they adduced no evidence in this respect. There was, therefore, no evidence before the inspector as to the circumstances in which pitches had been offered to those forced to move, for example whether only those who had made a previous application for a pitch on their sites would be accommodated. The Claimant's

previous living arrangements were unusual, as the inspector found.

(g) The Council had already applied for the Claimant's immediate eviction from the site, which proceedings had been deferred pending the outcome of the Claimant's appeal.

(h) Refusal of permission would probably result in the Claimant and her children having to leave the site, resulting in the loss of their home and in a serious interference with their rights under Article 8 of the European Convention on Human Rights.

(i) Given the Claimant's aversion to bricks and mortar it was possible, although not certain, that a refusal of permission may result in this Claimant and her children having to resort to roadside existence. This would result in serious harm to the quality of both her life and the lives of her children. The inspector went on to find, at paragraph 31, that roadside existence "could" adversely impact upon the Claimant's health and upon her children's education. The medical evidence was, however, that a roadside existence "would" be harmful to this Claimant's health (see paragraph 25). The difference is important. In considering, at paragraph 31, only the possibility of adverse consequences for the Claimant's health in such circumstances, the inspector was in error.

72. In the balancing exercise carried out (at paragraphs 32–33) in relation to the qualified rights identified under Article 8, the inspector emphasised the legitimate aim of protecting the environment and the Green Belt and concluded that the harm caused by inappropriate development and the other identified harm was not clearly outweighed by the other material circumstances. However, Mr Cottle's challenge under this head is not to the balancing exercise carried out in relation to permanent planning permission.

73. For the reasons set out above, I accept his submission that the nature of that balancing exercise changed when the inspector considered the grant of a temporary permission. 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**, 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.

76. In **The Queen on the application of Sheridan and Others v. Basildon District Council** [2011] EWHC 2938 Admin, Ouseley J's attention was drawn to the provisions of s.11 of the Children Act and to the important decision of the Supreme Court in **ZH**

(Tanzania) v. Secretary of State for the Home Department [2011] UKSC 4, that for the purposes of Article 8(2) the best interests or well-being of a child were a primary consideration. The inspector in the present case did not have the benefit of this decision before him but, as Ouseley J held, at paragraph 129, "I accept that there is a duty on the District Council in taking decisions to have regard to the best interests of the child as a primary consideration ... The crucial factors for consideration are health and education". I agree.

77. In the present case the inspector appeared to recognise these as important factors. I accept Mr Cottle's submission that the question whether or not, on their eviction from the site, there is likely to be suitable, alternative accommodation available for a single Gypsy mother suffering from ill-health with three young children went directly to the balancing exercise required under Article 8 when considering the application for a temporary permission.

78. I accept his 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.

82. In the circumstances, given the clear view I have formed on these grounds of challenge, I shall deal with the remaining grounds more shortly than would otherwise be necessary. For the reasons set out below, I find that none of them affords any basis for interfering with the inspector's decision.

Ground 4(b)

83. Mr Cottle submits that the inspector decided, for the purposes of a permanent permission, that the figures for the unmet need in the area did not weigh heavily in favour of the Claimant (see paragraph 22). He submits that, as a matter of fact and law, the higher number of pitches required in the sub-region left room for only one view, namely that there is a considerable need for more pitches. By failing to factor in the extent of sub-regional need the inspector failed properly to direct himself in arriving at his overall conclusions at paragraphs 32 and 33.

84. I see no merit in this challenge. The inspector clearly attached some weight to the level of unmet need when considering the application for permanent permission, for the reasons he explained. The weight to be attached to this matter was entirely for the inspector to determine and it cannot be said, in my view, to leave room for only one view on the evidence before him.

Ground 5(b) and Ground 6

85. Mr Cottle's submission is, first, that the inspector erred in law in failing to make a required finding in a Green Belt case, in which even the two Council-run sites are also in the Green Belt and such sites that may become available are likely to be in the Green Belt in addition. He submits that, if the only available countryside in the Council's area is Green Belt and if it is true that any similar application that the Claimant might make, if refused permission, is

likely also to be in the Green Belt and to occasion the same harm by reason of inappropriate development then this factor would be relevant to the overall balancing exercise required under Article 8.

86. Putting to one side the objection that this is a new point, not raised below, the main difficulty for the Claimant, in my view, is that it is entirely hypothetical. There was no evidence before the inspector that the Claimant had already submitted, or would ever submit any other planning application, or that such an application would relate to a site in the Green Belt. In any event Mr Whale does not accept the submission that the whole of this Council's area is either urban or Green Belt. In my judgment ground 5(b) must fail.

87. Secondly, Mr Cottle submits that, assuming it is agreed that existing provision and any further provision is likely to be in the Green Belt, the inspector also failed to include a material consideration in his assessment, namely the absence of additional harm in that the site was capable of being screened so as not to significantly detract from the countryside. He contends that if provision is going to go in the countryside and the only available countryside in the Council's area is Green Belt, then it follows that the defining harm is not inappropriateness, but the additional local harm caused.

88. In my view this ground must also fail for the same reasons, principally because it is not agreed that existing and future provision is likely to be in the Green Belt and there is no finding by the inspector to support such an agreement. The position before the inspector at the time this appeal was heard was that the 2011 Panel Report had replaced the 2008 GTAA.

Ground 1

89. Mr Cottle submits that the inspector misconstrued UDP Policy BE1 which requires, so far as is relevant, that all development proposals, "(2) Should not detract from the existing street scene and/or landscape and should respect important views, skylines, landmarks or landscape features". He contends essentially that, at paragraph 13, the inspector erred in not applying the Policy flexibly, taking account of where new caravan sites for Gypsies and Travellers are likely to be developed. If the words "should not detract" are applied too strictly, to sites which might otherwise be acceptable on the fringes to urban settlements, they could be used to thwart further provision. The words "should not detract" should therefore

be read "should not significantly detract" or "unacceptably detract". In concluding that the appeal site failed to comply with Policy BE1 the inspector erred in failing to interpret these words in this way.

90. Alternatively, Mr Cottle submits that the inspector failed to make required findings and state that in the longer term, having regard to the localised visual harm, the removal of fencing and the potential for screening, the site would not significantly detract from the appearance of its countryside location so that there would, in fact, be substantial compliance with Policy BE1. Alternatively, he submits that the inspector's reasons in relation to Policy BE1 were inadequate.

91. Putting to one side, once again, Mr Whale's objection that this is an entirely new point which should not be entertained, I do not consider that it provides any grounds for challenging the inspector's decision in relation to the refusal of permanent planning permission in this case. It seems to me that the Claimant's case in this respect is not assisted by the fact that Dr Murdoch, the experienced planning consultant representing the Claimant before the inspector, submitted that "Policy BE1 is of questionable application to this Gypsy caravan site appeal as it is a general design policy that does not take account of the changes introduced by Circular 1/2006 and any purported breach of that policy needs to be considered in the context of the direction by the Secretary of State cited above".

92. I accept Mr Whale's submission that Policy BE1 was the culmination of a lengthy process of drafting, consultation and adoption, such that its express wording does not fall lightly to be rewritten in the way that Mr Cottle suggests. In any event, the inspector's analysis seems to me to be adequate and appropriate. It is simply not the case that the inspector found that any visual harm gave rise to a finding that the proposal was contrary to Policy BE1. He made clear findings as to the character and appearance which were in favour of the Claimant (see paragraph 12). He also acknowledged that Gypsy and Traveller sites may be found in rural areas. He then made findings adverse to the Claimant at paragraph 13. He recognised that the harm to the appearance of the area was localised and would probably reduce in time. However, the level of harm was found to be considerable, so as to give rise to a finding that the proposal was contrary to Policy BE1.

93. This appears to me to be consistent with the Council's conclusion, when refusing planning permission to the Claimant, that there was "unacceptable visual harm", contrary to Policy BE1. I agree with Mr Whale that the inspector adopted a lawful approach to the application of the terms of Policy BE1 to his findings of fact. This ground of challenge therefore fails in addition.

94. It follows that the Claimant's challenge to the inspector's decision based on these other grounds fails. It is unnecessary, in the circumstances, for me to resolve the dispute as to whether or not some of the grounds being advanced by Mr Cottle amounted to new points not taken below. However, his decision relating to temporary permission will be quashed for the reasons I have already given.