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Neutral Citation Number: [2020] EWHC 3036 (Admin)

Case No: CO/1012/2020 & CO/1009/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/11/2020

Before :

MRS JUSTICE LIEVEN

- -

Between :

(1) EMMA NIXON
(2) EAST HERTFORDSHIRE DISTRICT COUNCIL

Claimants

and

(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT

Defendant

and

(2) TIMOTHY MAHONEY

Interested Party

- -
- -

Mr Matthew Reed QC (instructed by **Gateley Legal**) for the **First Claimants**
Ms Caroline Bolton (instructed by **Sharpe Pritchard**) for the **Second Claimant**
Ms Sasha Blackmore (instructed by the **Government Legal Department**) for the **Defendant**
Mr Alan Masters (instructed by **Deighton Pierce Glynn**) for the **Interested Party**

Hearing dates: **3 and 4 November 2020**

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Approved Judgment

Mrs Justice Lieven DBE :

1. This case concerns a challenge to the decision of a planning inspector, C. Sherratt ("the Inspector"), dated 4 February 2020, concerning land off Chapel Lane, Letty Green, Little Hadham, Hertfordshire ("the site"). The appeal was made against the refusal of planning permission by East Hertfordshire District Council (EHDC) for change of use of land to 10 pitches for the stationing of 10 mobile homes, 10 touring caravans and 10 utility buildings ("the development").

2. The First Claimant is a local resident who lives near the site. She was part of a group of local residents who appeared at the inquiry as a rule 6 party. She is represented by Mr Reed QC. The Second Claimant is EHDC, represented by Ms Bolton. The Defendant is represented by Ms Blackmore and the Interested Party, who was the applicant for planning permission, is represented by Mr Masters. The latter is described below as the IP or the Appellant depending on the context.

3. There are a very large number of grounds of claim with some overlap between those brought by the First Claimant and those by EHDC. Holgate J ordered the parties to set out an agreed list of issues with the aim of making a more efficient and effective use of judicial time. This was only partially successful as the parties submitted a list of 19 issues, including with sub-issues a total of 39 issues. The more helpful way to categorise the issues is as follows:

    a. Issues around the interpretation of Development Plan policies HOU9 and HOU10 and other associated policies:

    i. whether the Inspector erred in respect of the location of the site, and whether to meet policy it needed to be either within or adjacent to a settlement (Nixon Ground One, EHDC Grounds One and Two);

    ii. whether the Inspector erred by taking into account land values (Nixon Ground Two and EHDC Ground Two);

    iii. whether the Inspector erred in respect of sustainable travel distances and the occupiers potentially not being nomadic (EHDC Ground Three (a));

    iv. that the Inspector should have expressly determined whether the occupiers fell within the definition in Annex 1 of the PPTS, i.e. were nomadic (EHDC Ground 3(b));

    b. Landscape and visual issues:

    i. whether the Inspector erred by finding that this was not a valued landscape within the meaning of [170] of the NPPF (Nixon Ground Three);

    ii. whether the Inspector erred in failing to consider the unmitigated landscape impact (Nixon and EHDC Ground Four);

iii. whether the Inspector erred by not considering the length of time it would take for the landscaping scheme to become established (Nixon and EHDC Ground Five);

c. Whether the Inspector erred in respect of the visibility splay (Nixon Ground Seven).

Some of these issues have sub-issues concerning whether or not the reasons were adequate or whether, even if the Inspector had erred, it would have made no difference to the outcome on the basis of *Simplex (GE Holdings) v SSE* (1989) 57 P&CR 306.

4. The Inspector conducted an inquiry over 7 days and undertook a site visit. The application was retrospective, the Interested Party and other persons having moved onto the site without planning permission and carried out various works over a Bank Holiday weekend (see DL48). Therefore, the Inspector had full knowledge of the appearance of the site and its surroundings.

5. The decision letter runs to 55 paragraphs. I will set out the key paragraphs in the sections of this judgment which deal with each of the issues. However, in summary, she found under the Development Plan policies that the site was in a sustainable location; that the development would not harm the character and appearance of the surrounding area; that there would be no unacceptable impact on highway safety and that a suitable access could be achieved. She decided that she did not need to determine the status of the Appellant and the proposed occupiers, or the need for the development, because she had found that the development was in accordance with the Development Plan. She took into account the fact that the development had taken place without permission, and thus was intentional unauthorised development, but that did not tip the balance against granting permission.

The Law

6. This is a challenge under s.288 of the Town and Country Planning Act 1990. The law in this field is exceptionally well trodden ground and the principles to be applied by the court were comprehensively set out by Lindblom LJ in *St Modwen Developments v Secretary of State* [2017] EWCA Civ 1643 at [6]:

> *"(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 v Secretary of State for the Environment (1981) 42 P. & C.R. 26 , at p.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 and another v Porter (No. 2) [2004] 1 W.L.R. 1953 , at p.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" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in Tesco Stores Limited v Secretary of State for the Environment [1995] 1 W.L.R. 759 , at p.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., as he then was, in Newsmith v Secretary of State for Environment, Transport and the Regions [2001] EWHC Admin 74 , at paragraph 6).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in Tesco Stores v Dundee City Council [2012] P.T.S.R. 983 , at paragraphs 17 to 22).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, South Somerset District Council v The Secretary of State for the Environment (1993) 66 P. & C.R. 80 , at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government [2012] EWHC 1419 (QB) , at paragraph 58). ..."

7. I would add to this list of overarching principles what Lord Carnwath said in *North Yorkshire CC v Samuel Smith Breweries* [2020] P&CR 8 at [21]:

"21. Much time was taken up in the judgments below, as in the submissions in this court, on discussion of previous court authorities on

> *the relevance of visual impact under Green Belt policy. The respective roles of the planning authorities and the courts have been fully explored in two recent cases in this court: Tesco Stores Ltd v Dundee City Council [2012] UKSC 13; [2012] P.T.S.R. 983 and Hopkins Homes Ltd v Secretary of State for Communities and Local Government [2017] UKSC 37; [2017] 1 W.L.R. 1865 . In the former Lord Reed, while affirming that interpretation of a development plan, as of any other legal document, is ultimately a matter for the court, also made clear the limitations of this process:*
>
> *"Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse …" ([19]).*
>
> *In the Hopkins Homes case ([23]–[34]) I warned against the danger of "over- legalisation" of the planning process. I noted the relatively specific language of the policy under consideration in the Tesco case, contrasting that with policies:*
>
> *"expressed in much broader terms [which] may not require, nor lend themselves to, the same level of legal analysis …"."*

8. Lord Carnwath's words have a particular resonance in the light of some of the arguments being advanced in this case.

ISSUE "A" GROUNDS – DEVELOPMENT PLAN

The Development Plan

9. The Development Plan for these purposes is the East Hertfordshire District Plan. As always, the Development Plan policies have to be considered as part of an overall structure and in a way that makes them fit together in a coherent manner. As is set out above, policies should not be construed as if they were statutes and an over legalistic approach must not be taken.

10. The structure of the Development Plan is that chapter 3 *The Development Strategy* sets out the broad strategy with the aim of delivering sustainable development in accordance with a broad locational hierarchy identified in DPS2:

> *"I. The strategy of the District Plan is to deliver sustainable development in accordance with the following hierarchy.*
>
> - *Sustainable brownfield sites;*

- *Sites within the urban areas of Bishop's Stortford, Buntingford, Hertford, Sawbridgeworth and Ware;*

- *Urban extensions to Bishop's Stortford, Hertford, Sawbridgeworth and Ware, and to the east of Stevenage, east of Welwyn Garden City and in the Gilston Area; and*

- *Limited development in the villages.*

11. It is important to note that DPS2 does not seek to prohibit development at any other location but sets out a hierarchy for consideration. To the degree that it needs to be, this is made clear in para 3.3.1 of the supporting text:

> *"3.3.1 This section sets out where growth should be focused, and where it should be restricted. This aim is to ensure that growth takes place in the most suitable locations in the District, i.e. where it needed, where it is deliverable, and where it is sustainable. This section sets out the broad policy framework, which is then carried through into the separate settlement-level policy sections."*

12. Chapter 4 is Green Belt and Rural Area beyond the Green Belt. The key policy is Policy GBR2 which states:

> *"I. In order to maintain the Rural Area Beyond the Green Belt as a valued countryside resource, the following types of development will be permitted, provided that they are compatible with the character and appearance of the rural area:*
>
> *(a) buildings for agriculture and forestry;*
>
> *(b) facilities for outdoor sport, outdoor recreation, including equine development in accordance with CFLR6 (Equine Development), and for cemeteries;*
>
> *(c) new employment generating uses where they are sustainably located, in accordance with Policy ED2 (Rural Economy);*
>
> *(d) the replacement, extension or alteration of a building, provided the size, scale, mass, form, siting, design and materials of construction are appropriate to the character, appearance and setting of the site and/or surrounding areas;*
>
> *(e) limited infilling or the partial or complete redevelopment of previously redeveloped sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings) in sustainable locations, where appropriate to the character, appearance and setting of the site and/or surrounding area;*
>
> *(f) rural exception housing in accordance with Policy HOU4 (Rural Exception Affordable Housing Sites);*

> *(g) accommodation for Gypsies and Travellers and Travelling Showpeople in accordance with Policy HOU9 (Gypsies and Travellers and Travelling Showpeople) or Non-Nomadic Gypsies and Travellers and Travelling Showpeople, in accordance with Policy HOU10 (New Park Home Sites for Non-Nomadic Gypsies and Travellers and Travelling Showpeople);*
>
> *(h) development identified in an adopted Neighbourhood Plan."*

13. The Claimants seek to rely on the supporting text at 4.6.1 which states:

> *"4.6.1 Green Belt in East Herts covers approximately one-third of the District. The remaining two-thirds of the District are located in the 'Rural Area Beyond the Green Belt'. This Rural Area is highly valued by the District's residents and visitors alike, particularly for it open and largely undeveloped nature. As such it forms an important part of the character of the District. It is a considerable and significant countryside resource, which Policy GBR2 seeks to maintain by concentrating development within existing settlements."* [emphasis added]

14. The policies most relevant to the consideration of applications for Gypsy and Traveller sites are HOU9, Part II, and HOU10. HOU9 covers nomadic Gypsies who fall within the definition in the national policy document Planning Policy for Traveller Sites (PPTS). HOU10 covers non-nomadic Gypsies and Travellers who fall outside the policy definition. In all other respects the relevant parts of the two policies are identical. HOU9 Part II states:

> *"HOU9 Part II:*
>
> *II. In order to identify exact locations within the areas allocated to meet the accommodation needs of Gypsies and Travellers and Travelling Showpeople listed above, and to assess suitability where planning applications are submitted for non-allocated sites, the following criteria should be satisfied:*
>
> *(a) the site is in a suitable location in terms of accessibility to existing local services;*
>
> *(b) the site is suitable in terms of vehicular access to the highway, parking, turning, road safety and servicing arrangements and has access to essential services such as water supply, sewerage, drainage, and waste disposal;*
>
> *(c) proposals make adequate provision for on-site facilities for storage, play, residential amenity and sufficient on-site utility services for the number of pitches or plots proposed;*
>
> *(d) the proposal is well related to the size and location of the site and respects the scale of the nearest settled community;*

> *(e) the site can be integrated into the local area to allow for successful co-existence between the site and the settled community;*
>
> *(f) proposals provide for satisfactory residential amenity both within the site and with neighbouring occupiers and therefore do not detrimentally affect the amenity of local residents by reason of on-site business activities, noise, disturbance, or loss of privacy;*
>
> *(g) proposals ensure that the occupation and use of the site would not cause undue harm to the visual amenity and character of the area and should be capable of being assimilated into the surrounding landscape without significant adverse effect;*
>
> *(h) the site is not affected by environmental hazards that may affect the residents' health or welfare or be located in an area of high risk of flooding, including functional floodplains;*
>
> *(i) within nationally recognised designations, proposals would not compromise the objections of the designation."*

15. The Claimants also rely on policy TRA1 which states that to achieve sustainability, proposals should primarily be located in places which enable sustainable journey to key services and facilities.

National policy

16. National policy on Gypsy and Traveller sites is set out in *Planning Policy for Traveller Sites* (2015) (the PPTS). Paragraph 25 states:

> *"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."*

The Decision Letter

17. The Inspector set out the policy framework at DL6-10. The Inspector identified at DL8 that the three key policy issues under HOU9 were:

> *"8. The starting point is to consider if the site is suitable for a gypsy and traveller site, having regard to relevant policies in the development plan. Policy HOU9 contains a number of criteria that planning applications for non-allocated sites should satisfy. Of particular relevance to this appeal are whether (a) the site is in a sustainable location in terms of accessibility to existing local services; (b) the site is suitable in terms of vehicular access to the highway, … road safety and servicing arrangements and has access to essential services such as water supply, sewerage, drainage and waste disposal; and that (g) proposals ensure that the occupation and use of the site would not cause undue harm to the visual amenity and character*

> *of the area and should be capable of being assimilated into the surrounding landscape without significant adverse effect."*

18. In DL11 she correctly sets out the policy tests in the national policy document, PPTS:

> *"11. Policy GBR2 accepts that gypsy and traveller sites can be accommodated in the rural area beyond the Green Belt. This is consistent with Planning Policy for Traveller Sites (PPTS) issued by the Government which does not seek to prevent gypsy and traveller sites from being in the countryside but rather that 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 any undue pressure on the local infrastructure. The main issues must therefore be considered in this context."*

19. At DL12-22 she considers the issue of whether the development is in a sustainable location. At DL13 she records that the site is 200m as the crow flies from the hamlet of Westland Green and 1000m from Hadham Ford. The former has no facilities, the latter limited facilities.

20. At DL16 she says "In the context of a rural setting, the appeal site is *"not "away from a rural settlement"....*" (i.e. the test in the PPTS).

21. At DL18-19 she deals with vehicle trips in the context of sustainability and says:

> *"18. The nomadic lifestyle of gypsies and travellers obviously involves travelling for both economic and other purposes, towing their caravan. This involves the use of a private vehicle irrespective of location and so, whilst travelling, the same opportunities for using public transport simply do not apply. When away travelling, it will be necessary to access services and facilities wherever they are, rather than leaving and returning to the site on a daily basis for work. In this sense, and notwithstanding the TRICS data referred to, I would therefore expect overall vehicle trips to be lower than those of the settled community who are working.*
>
> *19. In terms of other family members (or those that have ceased travelling if Policy HOU10 is to be applied) needing to access services and facilities including schools and medical establishments, the availability of these within a reasonable travelling distance is critical, bearing in mind that land in settlements or edge of settlements considered a suitable and sustainable location for housing for the settled population, is in most circumstances, simply not available to accommodate private gypsy and traveller sites. Opportunities to access regular bus services are therefore also less likely. In this case, the reasonable proximity to local schools, doctors and shops will certainly encourage shorter car journeys."*

22. At DL20 she refers to DPS2 and says:

> *"The Counsel refers to Policy DPS2, within its evidence although it was not referred to in the reason for refusal. This is an overarching policy that sets out the Council's strategy for delivering sustainable development, outlining the hierarchy for the location of development; the lowest tier being limited development in the villages. Whilst two allocations for gypsy sites form part of larger residential allocated sites, on the edge of settlements, prospective land values generally limit the possibility of private sites coming forward within or on the edge of settlements, if there is any prospect they may be suitable now or in the future for bricks and mortar housing. To apply this policy rigidly and out of context with PPTS and policies HOU9 and HOU10 it is likely to prohibit the ability for any sites intended to accommodate gypsies and travellers to come forward as windfalls. I do not therefore consider it a policy of direct relevance to this appeal. Similarly, the requirements of Policy TRA1 which require developments to ensure that a range of sustainable transport options are available to occupants or users, which may involve the improvement of pedestrian links, cycle paths, passenger transport network (including bus and/or rail facilities) and community transport initiatives are of less relevance to gypsy and traveller sites in the countryside."*

The Grounds, submissions and conclusions

23. The first Ground under this heading advanced by Mr Reed and Ms Bolton is that the Inspector misinterpreted HOU9/10(a) by finding that the proposed development did not have to be adjacent to or within settlements. Mr Reed accepts that HOU9/10(a) does not say that the development has to be within or adjacent to settlements, but he argues that if the Development Plan is read as a whole, and in particular with GBR2, DPS2 and TRA1(a) then it is clear that this is what is intended by the Development Plan. He seeks to apply GBR2, which itself seeks to have developments within existing settlements, as does DPS2.

24. Ms Bolton adds to this argument by referring to the PPTS paragraph 25 and the policy imperative to very strictly limit sites in the open countryside which are "*away from existing settlements…".*

25. I do not accept this Ground essentially for the reasons advanced by Ms Blackmore. The starting point is that the relevant policy – HOU9/10(a) - does not give any requirement for Gypsy sites to be in or adjacent to settlements. Those policies contain detailed criteria for the location of sites, but do not contain the restriction sought by the Claimants. That, in my view, is in the context of this Development Plan, the end of the point.

26. It is notable that where it is the policy intent that development should be restricted to being within settlements, for example in HOU4 (rural exception sites), the policy expressly says that development must be adjacent to the built-up area. No such words are used in HOU9/10. Further, the argument makes little sense of the policies viewed as whole. It is apparent that some of the development allowed for in GBR2 could not be within or adjacent to settlements, e.g. (a) buildings for agriculture or forestry and (c) replacement or alteration of existing buildings. Both of these categories must self-

evidently apply wherever the building or agricultural unit is. Therefore, an argument that DPS2 or GBR2 set an overarching requirement for development in the rural area to be within or adjacent to settlements simply cannot be right.

27. Mr Reed's reliance on paragraph 4.6.1 of the supporting text is in my view wrong. That sentence says *"... GBR2 seeks to maintain [the countryside] by concentrating development within existing settlements."* All this sentence is doing is referring to the limitations of development that is supported by GBR2 on the land beyond the Green Belt. As is clear from *R (Cherkley) v Mole Valley DC* [2014] EWCA Civ 567 the supporting text cannot change or override a policy, so if para 4.7.1 was trying to place an extra criteria into the policy, that would be unlawful in any event.

28. Mr Reed argued that he was not trying to breach the principle in *Cherkley* because he was using the supporting text to interpret the policy, rather than to become policy itself. However, what he is actually doing is trying to read words into the policy that are not there, and which do not need to be there for the policy to make perfectly good sense. As I have said, I do not consider there to be any proper basis for reading those words into the policy.

29. The PPTS paragraph 25 adds nothing to this argument because the Inspector found that the site was not "away from an existing settlement" in DL16, and this was a matter of planning judgement for her.

30. The next planning ground (Ground 2 for both Claimants) is that the Inspector erred at DL20 when she said *"prospective land values generally limit the possibility of private sites coming forward within or on the edge of settlements, if there is any prospect they may be suitable now or in the future for bricks and mortar housing".* Mr Reed and Ms Bolton argued that the Inspector had no evidence which would allow her to make this finding and therefore she either took into account an immaterial consideration or failed to give adequate reasons for her conclusion.

31. The issue of whether the value of land in or adjacent to settlements was such as to generally preclude that land being purchased for Gypsy and Traveller sites was raised in the inquiry. The Appellant's planning witness, Mr Woods, had made the land value point in his evidence, and said that it followed that such sites would inevitably be located beyond existing settlements. Mr Woods said he could only give two specific examples of Gypsy sites being promoted within an urban area, one in Essex and one in Manchester. It is correct to say that the evidence was very general and was not East Hertfordshire specific.

32. This Ground fails for a number of reasons. Firstly, there was evidence on the issue of land values precluding sites coming forward, albeit in a very general form. Therefore, the parties were fully aware of the issue as is shown by Mr Reed's Closing Submissions to the inquiry which expressly dealt with the argument. Secondly, the Inspector in DL20 only says that prospective land values "generally" limit the possibility of sites coming forward. She is not purporting to make a finding specifically about land values in East Hertfordshire. Thirdly, given that the issue was raised, if the rule 6 party or EHDC had wished to argue that there were available sites in or on the edge of sites in the area, or that land values in East Hertfordshire were such that the general proposition was wrong, they could have produced evidence to that effect. Fourthly, and related, it is a matter of common sense and likely to be well known to the Inspector, that land in East Herts in

or on the edge of settlements which is suitable for housing is likely to be of high value. In my view, the Claimants' argument smacks of unreality, the point being made by the Inspector at DL20 is obvious and did not require any more evidence than she had.

33. Mr Reed argued that the rule 6 party was not required to produce evidence and that the emphasis should have been on the Appellant (now IP) to produce evidence on land values. However, planning inquiries do not proceed on the basis of burdens of proof or strict evidential rules. The matter was in issue and if the rule 6 party had wished to produce evidence they could have done so. I have no doubt they did not do so because they knew that it would not be possible to produce evidence that showed that land values in East Herts were particularly low.

34. Ms Bolton also argued that there was no evidence that Mr Mahoney or the wider group would not be able to afford whatever the land value was on alternative sites. Ms Bolton in particular argued that the Inspector should not have made assumptions about Mr Mahoney's relative impecuniosity. On an issue such as this the Inspector could only take a broad approach. It would very rarely at a planning inquiry (or in a local authority decision) be appropriate to try to investigate the personal financial resources of the applicant. Personal permissions are relatively rarely justified, and access to funds available to an individual to purchase a site may be complicated. The Inspector only made the point in DL20 as "generally", and in my view she did not have to investigate the IP's finances to take this view; she was not making an illegitimate assumption about those finances and there was no error of law.

35. The Second Claimant sought to rely on the decision of Lang J in *Sykes v SSHCG* [2020] EWHC 112 at [57-58] for the proposition that the Inspector could not make an assumption about the Appellant's ability to purchase land without evidence. In my view this is a fact specific judgement about whether evidence was required before particular assumptions were made on the facts of that case. It does not assist on the question of whether the Inspector erred in this case.

36. Ms Bolton's third Ground ((a)(iii) above) is that the Inspector erred in DL50 when she had declined to determine whether the PPTS definition applied or not. Ms Bolton's argument is that in the last sentence of DL18 the Inspector finds that vehicle trips would be lower than in the settled community because the occupiers will spend time away travelling (i.e. being nomadic), but she had not found whether the site occupiers were nomadic Gypsies within HOU10.

37. I agree with Ms Blackmore that this argument fails to read the relevant parts of the DL as a whole and in context. DL12-22 is dealing with the sustainability of the location and the Inspector carefully considers the distance from facilities in DL13-17. At DL18 she finds that to the degree the occupiers are nomadic their overall trip generation will be lower than that of the settled community. At DL19 she considers the position to the degree they are not nomadic (i.e. fall within HOU10). She finds in that case that the key issue is the distance from services and that this will encourage *"shorter car trips".*

38. If these paragraphs are considered together then it is apparent that the Inspector has considered the position of nomadic and non-nomadic Gypsies in the context of the policy question she had to address, namely the sustainability of the development. She did not need to determine the degree to which the occupiers fell within HOU9 or 10, because she considered the sustainability issues in relation to both groups. This is

entirely sensible because the reality may well be that occupiers fall within both groups and the degree to which they travel or do not do so varies over time. Ms Bolton's approach is both overly legalistic, but also seeks to reduce the task of an Inspector to writing an examination paper. I can only remind the parties of the well-known dictum of Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, [271] is particularly apt here:

> *"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."*

39. Those words apply aptly to this Ground as with many of the others in this case. The Inspector's reasons and her analysis are entirely clear and well-founded if the DL is read fairly.

40. Ms Bolton has a closely related Ground that the Inspector had to determine whether the Appellant met the definition in Annex 1 of the PPTS and could not avoid determining the issue of the Appellant's nomadic status in DL50. In her skeleton argument this issue focuses on the Ground set out above, but in oral argument she said there was a duty to determine this matter, because at DL48 the Inspector records that there is a material consideration of great weight against the grant of permission. This was a case of "intentional unauthorised development" and thus the Written Ministerial Statement (WMS) applied. In those circumstances the Inspector was under a duty to determine the definitional issue in order to decide whether their nomadic status could outweigh the WMS consideration.

41. She also argued that PPTS paragraph 24(a) created a duty to consider need in any event. I think her argument was that if the LPA had met its local need, then that could be a factor against the grant of planning permission.

42. I find this argument somewhat convoluted. The Inspector did take into account the PPTS and in particular paragraph 24. However, she found that it was not necessary to make a determination on Gypsy status because she had found conformity with the Development Plan. Therefore, this is not a question of her failing to take account of the policy, as she plainly had it in mind, but decided that she did not need to make a determination. I think the Inspector's approach was lawful. Once she had decided that the development was in accordance with the Development Plan there was no obligation for her to go on to consider whether the occupiers were or were not nomadic.

43. Equally, she did not have to determine whether the LPA had met its need. It is clear from PPTS para 24(d) that where there is no "need" for further gypsy sites, the application still has to be considered in the light of all the policies. So the fact the LPA had met its need could not in itself be a reason for refusing permission. Again, Ms Bolton is trying to reduce the Inspector's task to answering a rather complicated examination paper.

ISSUE "B" GROUNDS – LANDSCAPE AND VISUAL IMPACTS

44. Paragraph 170 of the NPPF (2019) states:

> *"170. Planning policies and decisions should contribute to and enhance the natural and local environment by:*
>
> *a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*
>
> *b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;*
>
> *c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;*
>
> *d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*
>
> *e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and*
>
> *f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate."*

The decision letter

45. The DL addresses character and appearance of the area at DL23-34. In DL23 the Inspector correctly records the test in HOU9 that the development should not cause undue harm to the visual amenity and character of the area and should be capable of being assimilated into the landscape:

> *"23. In order to satisfy criterion (g) of Policy HOU9 the occupation and use of the site should not cause undue harm to the visual amenity and character of the area and should be capable of being assimilated into the surrounding landscape without significant adverse effect."*

46. DL24 and 25 state:

> *"24. The Council also relies upon landscape policies not referred to in the reason for refusal, to support its case; in particular Policies DES2 'Landscape Character', DES3 'Landscaping' and NE3 'Natural Environment'. In addition, the Council refers to a 2007 Supplementary Planning Document (SPD) entitled 'Landscape Character Assessment'.*

> *This sets out descriptions and guidance relating to the Landscape Character Areas (LCAs) within the District. The appeal site lies within the western perimeter of the Hadhams Valley LCA 93. To the west of this and bordering the site boundary is the LCA 89, Wareside – Braughing Uplands.*
>
> *25. The surrounding area comprises open fields punctuated with hedgerows and woodland copses. I concur with the views of both the Council's and appellant's landscape witnesses that the area is not a 'valued landscape' in the sense meant by paragraph 170 of the Framework. The surrounding area has no statutory status and is not identified as being of any particular quality that might differentiate it from other countryside in the development plan. It does however enjoy a tranquil rural landscape."*

47. At DL26 she set out where the site could be viewed from and the degree to which it would fit into the characteristics of the area. At DL29 she dealt with harm:

> *"29. The assessment to be made is whether it would cause undue harm to the visual amenity and character of the area and whether it is capable of being assimilated into the surrounding landscape without significant adverse effect. The landscape drawings show that the hardstanding areas which would provide a suitable surface for the stationing of a mobile home, touring caravan and utility building, could be restricted to the section of each plot closest to the access thus limiting the area of 'development' to the central areas. This would ensure a buffer of unsurfaced grassed areas at the outer most sections of each plot allowing for additional supplementary planting to that suggested around the perimeter of the site and between pitches. A paddock area is to be retained between the pitches and Chapel Lane. A condition controlling the actual layout of the site, thus ensuring the retention of the paddock area and limiting the extent of hardstanding areas and where caravans can be stationed could be imposed. Extensive landscaping of appropriate species would not appear out of place in this location and there is scope for the creation of hedges along with tree planting both along Chapel Lane, to the rear of the paddock adjacent to some of the pitches and along the access. This could be controlled through a suitably worded condition."*

48. At DL31 and 32 she dealt with the degree to which the site could be integrated into the landscape:

> *"31. On balance, it is considered that despite the number of pitches sought, whilst the development does cause some harm it is not undue harm and it is capable of being assimilated into the surrounding landscape without significant adverse effect subject to an appropriate scheme of landscaping, that reflects the surrounding area. I therefore find no conflict with Policy HOU9 in this regard.*
>
> *32. Policy DES2 'Landscape Character' requires development proposals to demonstrate how they conserve, enhance or strengthen the character and distinctive features of the district's landscape. This policy must be*

> *considered in the context of policies HOU9 and 10 and cannot be applied in such a way so as to frustrate the granting of planning permission even where it is found that the proposal would not cause undue harm and so would satisfy criterion (g) of those policies specific to gypsies and travellers. In any event, with appropriate landscaping, it is considered that the proposed development would conserve the character of the area."*

The grounds, submissions and conclusions

49. Mr Reed's first argument (issue (a)(i) above) is that the Inspector misdirected herself in relation to paragraph 170 of the NPPF because in DL25 she took the definition of a "valued landscape" in that paragraph as being set by whether the site had a statutory status or was identified in the Development Plan as having a particular landscape quality. Mr Reed argues that this is an error of law because authority shows that the words in brackets in paragraph 170 do not act as an exhaustive definition of "a valued landscape".

50. He referred to *Forest of Dean DC v SSHCLG* [2016] EWHC 2429 at [31]:

> *"31. As I have indicated, it was common ground between the parties before the Inspector that the relevant landscape was not designated; and, following Stroud, the issue for the Inspector was whether the landscape was "valued" in the sense that it had physical attributes which took it out of the ordinary. On the basis of the submissions made to him, that was quite clearly an issue that required determination."* [emphasis added]

51. Mr Reed argued that the Inspector did not engage with the question of whether there was anything about the landscape which "took it out of the ordinary", i.e. the test espoused in *Forest of Dean* and the cases referred to therein. The Inspector did not give reasons in respect of those parts of the Landscape Character Assessment (LCA) evidence of Mr Allen, which addressed the quality of the landscape in the area and concluded that some of it was amongst the best examples in the District. Mr Reed in his skeleton argument says *"it was necessary to contextualise the site and its surroundings against other areas in the district by way of the SPD and Mr Allen's observations."*

52. Ms Blackmore points out firstly, that EHDC did not argue that this was a valued landscape within the meaning of paragraph 170. Secondly, the Inspector did not make the error that Mr Reed alleged. The Inspector in DL24 was referring to the relevant SPD and the Landscape Character Assessment. Then in the first sentence of DL25 she refers to the nature of the area. In the second sentence she makes clear she is agreeing with EHDC and the Appellant's landscape witnesses that it is not valued within the meaning of paragraph 170 as it neither has a statutory designation nor is there anything that takes it out of the ordinary from other countryside in the development plan. The Inspector then refers to it being a tranquil rural landscape.

53. Ms Blackmore argues that the Inspector has assessed its general quality and applied the test in *Forest of Dean*. She then goes on in DL26 and 27 to consider views of the site which potentially might also go to whether it was a valued landscape.

54. In my view Ms Blackmore is plainly correct in her assessment. Ultimately the question of whether or not the area is a valued landscape is a matter of planning judgement. The Inspector applied paragraph 170 correctly by considering whether it was within a statutory designation and whether it had any particular qualities that took it out of the ordinary, which is what *Forest of Dean* said she ought to do. When the Inspector says in DL25 that the land is not identified as having any particular quality *"that might differentiate it from other countryside",* she is plainly agreeing with the Council and Appellant's landscape witnesses' conclusions and applying the test in *Forest of Dean* at [31]. The Inspector did not fall into the error alleged by Mr Reed of considering that the only relevant matters in determining whether this was a valued landscape were any statutory status or what was specifically identified in the Development Plan.

55. In my view Mr Reed's argument that the Inspector has failed to provide adequate reasons fails to consider the tests in *South Bucks v Porter (No 2)* at [36]. The type of reasons that Mr Reed is requiring in his skeleton, and which I set out in italics above at paragraph 52, are not the standard of reasons which the law requires. There is no obligation to deal with each point made in evidence and to explain in detail the assessments the Inspector has made. As Ms Blackmore says they could be characterised as "reasons for reasons".

56. The second issue under landscape is Nixon Ground 4 (EHDC Ground 4) that the Inspector had failed to take into account the unmitigated effects of the development. The argument is that in DL29-31 the Inspector is only considering the effect of the development after the proposed landscape mitigation has taken effect and not at the earlier stage when the landscaping scheme had little or no impact.

57. The third issue (Nixon and EHDC Ground 4) is closely related, namely that the Inspector failed to take into account the evidence that it would take 10 years for the proposed landscaping scheme to take effect.

58. The grant of planning permission contained two conditions relevant to landscaping. Condition 5 included:

> *"5. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:*
>
> *i) Within 3 months of the date of this decision a scheme for:*
>
> *• the means of foul and surface water drainage of the site;*
>
> *• proposed and existing external lighting on the boundary of and within the site;*
>
> *• the provision of adequate visibility splays at the site access;*
>
> *• the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas;*

> *• a scheme of tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities including details of safeguards and / or protective buffers against the Westland Green and Pigs Green Local Wildlife Site. Unless identified to be removed, all existing trees and hedgerows on the land, shall be retained. The scheme shall set out measures for their protection throughout the course of development;*
>
> *(hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.*
>
> *ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.*
>
> *iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.*
>
> *iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter retained.*
>
> *In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined."*

59. Condition 6 was a standard landscaping condition requiring maintenance and replacement of the landscaping over the period of 5 years.

60. At DL29 the Inspector describes the layout of the site saying:

> *"29. The assessment to be made is whether it would cause undue harm to the visual amenity and character of the area and whether it is capable of being assimilated into the surrounding landscape without significant adverse effect. The landscape drawings show that the hardstanding areas which would provide a suitable surface for the stationing of a mobile home, touring caravan and utility building, could be restricted to the section of each plot closest to the access thus limiting the area of 'development' to the central areas. This would ensure a buffer of unsurfaced grassed areas at the outer most sections of each plot allowing for additional supplementary planting to that suggested around the perimeter of the site and between pitches. A paddock area is to be retained between the pitches and Chapel Lane. A condition controlling the actual layout of the site, thus ensuring the retention of the paddock area and limiting the extent of hardstanding areas and where caravans can be stationed could be imposed. Extensive landscaping of appropriate species*

> *would not appear out of place in this location and there is scope for the creation of hedges along with tree planting both along Chapel Lane, to the rear of the paddock adjacent to some of the pitches and along the access. This could be controlled through a suitably worded condition."*

61. At DL30 she considered how the proposed landscaping would sit within the existing context.

62. At DL31-2 she concluded:

> *"31. On balance, it is considered that despite the number of pitches sought, whilst the development does cause some harm it is not undue harm and it is capable of being assimilated into the surrounding landscape without significant adverse effect subject to an appropriate scheme of landscaping, that reflects the surrounding area. I therefore find no conflict with Policy HOU9 in this regard.*
>
> *32. In any event, with appropriate landscaping, it is considered that the proposed development would conserve the character of the area."*

63. Neither Mr Reed nor Ms Bolton suggested that there was anything unusual about the site, the landscaping scheme, or the surroundings, which would lead to a conclusion that landscaping was less likely to grow successfully than on any other similar site.

64. In my view these two Grounds are completely hopeless. The Inspector was fully aware of the layout of the existing site and the degree to which it was visible with no landscaping in place. This was a retrospective application for planning permission and she had seen the site and the photographs. Obviously she knew that the site would be visible to some degree in the period until the landscaping became established. The fact that she did not refer to this is merely a reflection of the fact that it was so obvious that is was unnecessary to set it out.

65. Similarly, the Inspector obviously knew that it would take some time for the landscaping to become established. As I have said, there was nothing special about this site or the time the landscaping (trees and hedges) would take to grow. Mr Allen referred to a period of 10 years, but this will in part depend on the species, heights and densities that are agreed in the landscaping scheme under Condition 5. Mr Masters pointed me to the IP's landscaping evidence which indicated a mix of planting species and heights that would suggest some landscaping effects from well before 10 years. Plainly, some parts of the vegetation will establish earlier than 10 years. It must be remembered that a DL is addressed to parties who are knowledgeable about the issues and it is not necessary or indeed desirable that Inspectors should have to recite every point which will have been wholly obvious to the parties. The suggestion that the Inspector might have failed to take into account the fact that it takes some time for trees and hedges to grow (or should have given reasons to explain this fact) is so ludicrous it only has to be stated to be rejected.

ISSUE "C" – HIGHWAY GROUND

66. Mr Reed's Ground Seven is that the Inspector erred in law in relation to the 85th percentile speed assessment for the purposes of assessing the appropriate visibility splay. As the Inspector set out at DL35 the policy issue under NPPF paragraph 109 was whether there would be an unacceptable impact on highway safety, and under paragraph 108 whether a safe and secure access to the site could be achieved for all users. In practice the issue was whether a sufficient visibility splay could be provided at the site entrance, see DL39.

67. Under the Manual for Streets II the length of the visibility splay is set as a function of the 85th percentile speed on the road in question. The inspector considered this matter at DL42-44:

> *"42. The appellant's position changed having accepted the criticisms made by The Residents of Little Hadham in relation to the calculation of the 85th percentile speed. Re-calculating the 85th percentile based on the raw data of measured speeds recorded over a 24-hour period, an 85th percentile speed of 31 mph, instead of 30.3 mph, was derived. Whilst it exceeds the "at worst" position set out in the Design Guide this is only a marginal increase. Referencing Table 7.1 of Manual for Streets 2 (MfS) the Safe Stopping Distance (SSD) for 31 mph is 2m more than it would be for 30 mph. The appellant demonstrated that adequate visibility splays could be achieved in both directions from the newly created access, that being 2.4m x 34m. Indeed, it is the appellant's position that visibility requirements up to a design speed of 37mph may be accommodated (2.4m x 59m) and thus well within the parameters required for a safe access.*
>
> *43. The highways witness appearing for The Residents of Little Hadham observed traffic travelling between 30 and 40 mph along Chapel Lane. His assessment of speeds was based on following other vehicles along the lane and keeping at the same speeds. He suggests a visibility requirement of either 59m assuming a speed below 37mph or 74m assuming a speed of 40mph. Both 'y' distances are derived from MfS. There is no doubt, from my observations on site, that the latter cannot be achieved. However, the observed speeds were between 30 and 40 mph so there is no assessment of the most frequent speeds or the 85th percentile speed derived from this limited assessment.*
>
> *44. In terms of reliable data, I prefer that derived from the automated traffic count over a 24-hour period. The raw data provided indicates a recorded speed of 40.1 mph and another at 37.9 mph travelling eastbound that were specifically brought to my attention as being the fastest speeds. These are not however typical of most of the speeds recorded over the 24-hour period with the vast majority being between 20 and low-mid 30s. A couple are unusually low being only around 6 mph which it was accepted could perhaps be attributed to cyclists. In a westbound direction a top speed of 41.6mph was noted. This was significantly faster than most which fell in the upper 20's and low 30s bracket and so, again not representative of typical recorded speeds."*

68. EHDC did not raise a highway safety reason for refusal and did not argue at the inquiry that the visibility splay proposed did not provide a safe distance. The Appellant and the rule 6 party called highway witnesses, but neither EHDC nor the highway authority, Hertfordshire County Council did so.

69. There were two issues before the Inspector, what data set to use and what design speed to adopt for the purposes of the visibility splay. The Appellant had relied on an automatic traffic count over a 24 hour period, whereas the rule 6 party had assessed speed by following other cars. The Inspector said that she preferred the Appellant's approach on the data set.

70. The second issue was whether the Inspector should take the 85th percentile from a 24 hour period or from a 1 hour period. The rule 6 party argued that the 1 hour period should be taken, in essence because this was the higher speed and thus, on a precautionary approach, this speed should be used for calculating the length of the requisite visibility splay. If the 1 hour speed was taken this would be over 38mph, which would produce a visibility splay beyond that which could be achieved on the site.

71. Mr Reed argues that the Inspector failed to determine what period should be adopted and only considered the speed to be adopted. For the reasons advanced by Ms Blackmore I do not accept Mr Reed's argument. The First Claimant accepts that the Inspector adopted the Appellant's figures for the 85th percentile, this is clear from DL44 where she says she prefers the 24 hour period. This is because she wished to take a figure which is *"representative of typical recorded speeds",* see the last sentence of DL44. In my view this is sufficient to explain why she has taken the 24 hour approach and found the proposed visibility splay sufficient.

72. She could have said more and gone into greater detail as to why she preferred the 24 hour speed over the 1 hour on the basis of taking the typical speed. However, she did not offend the tests in *South Bucks v Porter (No 2)* as to the level of detail in reasoning that is required. In my view no one reading DL44 fairly and in its context could fail to understand why she preferred 24 hours over 1 hour data. Mr Reed says she should have taken a "precautionary approach", but neither the Manual for Streets (II) nor any other guidance requires a decision maker to take a precautionary or worst case approach. There was a judgement for her to make as to how the 85th percentile was reached and her approach was both rational and clear in the reasoning.

73. For these reasons I reject all the grounds of challenge and refuse the application.