Claim No. CO/870/2018

IN THE HIGH COURT OF JUSTICE
PLANNING COURT

IN AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

THE QUEEN
ON THE APPLICATION OF MARDEN PARISH COUNCIL

Claimant

-v-

HEREFORDSHIRE COUNCIL

Defendant

MR HARRY SMITH

Interested Party

REBUTTAL TO DEFENDANT'S SUMMARY CONTESTING THE CLAIM

INTRODUCTION

1. This short rebuttal seeks to deal briefly with the Defendant's grounds of resistance dated 12 March 2018 ("**DGS**"). The points already made in the grounds of challenge are not repeated. It is clear from the grounds of resistance that the Defendant's response has either misunderstood the points against it, or has continued to make the same error complained of in this matter by the Claimant.

2. Underpinning the Defendant's response is the reliance on the 'experience' and 'expertise' of the local authority. For the reasons which follow, this is quite telling and considering the simple facts of this case, it will become clear how little expertise has been applied to this case, and how any experience has led to the wrong judgement.

3. For the avoidance of doubt, any passages not directly rebutted should not be read to mean that they have been accepted.

RESPONSE

Generally

4. As to paragraph 5 of the DGS, the Defendant repeats the common ground that the report of 6 December 2017 was superseded. It seems lost on them, however, the significance of this and the way it relates to the claim. That report abandoned a wholly incorrect reasoning which was pointed out to the Defendant by an objector. That report, if it was not withdrawn, would almost undoubtedly have resulted in a successful challenge on behalf of the Claimant. The revised committee report relies on a completely different justification for the recommendation to approve.

5. The passages cited in the SFG are not repeated here. The simple point repeated is that it is possible to draw a straight in relation to the Defendant's flawed approach from that abandoned and superseded report, to the committee report related to this appeal. The expertise of the Defendant, on which the DGS seeks to draw strength, is called into question when one recalls that the committee report had to be completely re-written due to a major misinterpretation of law.

6. As to paragraph 6 of the DGS, the Defendant repeats its error when analysing the material impact this proposal will have on the site. Quite apart from the question about whether the proposal extends the area of land, the Defendant fails to grapple with the fact that what is being placed on the site is going to more than double the impact, without those impacts being properly assessed. Especially in relation to paragraph 25 of the PPTS.

7. As to paragraph 8 of the DGS, the courts are yet to test the PPTS in any detail at all, and not just about the implications of the new definition of travellers. What the Defendant offers is its own understanding that 'the substantial effects in terms of the definition' is to simply return to what was in place in 2006. This is mere assertion, the point about the need for the court to grapple with the facts of this case, and crucially the matter of interpretation of the PPTS stands.

8. Paragraph 9 of the DGS is revealing. The Defendant's position appears to be that it treated this site as one which drew strength from the question of shortfall in deliverable

sites. In so far as it was important to the planning judgement exercised, this response is based on an incorrect assertion that the Defendant's draft Traveller Sites DPD states that there is a shortfall of deliverable sites. The OR refers to the Defendant's November 2015 traveller needs assessment. That may well have identified a shortfall but it predates the application of the revised PPTS definition of traveller status and the draft Traveller Sites DPD, which has now been submitted to the Planning Inspectorate for consideration. The draft Traveller Sites DPD concludes that needs can be fully addressed.

9. Paragraph 16 of the DGS has failed to grapple with the points made in the challenge. There is no argument of fact raised here. Up to 17 people had been mentioned as being potential occupiers in the Interested Party's documents. It is reasonable to assume that the applicant's teenage children would also start families in the near future. Given the nearest community has approximately 10 to 12 houses, there is clearly the potential for the site to become dominant.

10. At paragraph 18 of the DGS, the error of the Defendant's approach is repeated, namely to see this site as a lawful gypsy site as a starting point.

11. The errors of ignoring the history of the site, the personal permission, and the misapplication of the PPTS are all repeated.

Ground 1

12. The Defendant appears to be confused as to what passages are being placed before the court in relation to the PPTS. To that end, the court is referred to paragraphs 42-47 inclusive. The fundamental question in relation to Ground 1, for example, is related to the lack of proper engagement with paragraph 25 of the PPTS. This is not dealt with properly by the response from the Defendant. At paragraph 19, the DGS fails to grapple with the challenge against it, and this position contradicts the protocol response. The approach taken by the Defendant has, wrongly, treated this site as one where the principle of development has been established. The effect of this is to have failed to undertake a proper assessment of the impacts.

13. The committee report may have been lengthy, but this is not a reflection on its quality but rather the number of voluminous objections received, and the errors in the previous report, which had to be withdrawn.

14. As to paragraph 20 of the DGS, the Defendant once again seeks to draw strength from the 'experience' of dealing with these types of developments. For the aforementioned reasons, the council's experience and expertise is open to question. It cannot be a defence for a decision that is ultimately fundamentally flawed.

15. The way the Defendant attempts to answer the challenge on this ground generally is revealing. All that is offered, beyond 'experience', is that the relevant passages have been quoted (see para 22 for example) and a new meaning is now supposedly ascribed. It is submitted that the substance of this challenge remains as strong as it was in the grounds of challenge. Those submissions are not repeated.

Ground 2

16. The response to this ground (24-26) has both misunderstood the challenge and/or completely failed to address the points made by the Claimant. What seems to be lost on the Defendant, as set out in the grounds, is that the previous permission is critical to the assessment of these proposals. This remains a personal permission, akin to a temporary permission, which is now going to be significantly and unrecognisably transformed – something which the Defendant has clearly failed to properly assess.

17. Further to this, in terms of visual impacts assessment (25), why would a decision-maker treat the impact differently to a 'bricks and mortar' application? The impact is going to impact visually, whether that is a house made of bricks and mortar, or a permanent site for 6 caravans or pitches and a day room. This submission only further undermines the Defendant's position.

18. Finally, as to paragraph 26, it appears that the Defendant's response suggests there is a policy pursuant to which gypsies and travellers have cheaper access to the planning system. This is not about imposing excessive requirements. It is simply about ensuring

that a proper assessment was undertaken, which for the reasons set out in the grounds has not been done.

Grounds 3 & 4

19. The Defendant fails to address the concerns raised in relation to the adequacy of the plans submitted. This is not about whether the Interested Party had done what would be expected for a 'small family gypsy site'. There has to be a minimum standard and the Defendant must then undertake a rigorous assessment as to the impact. These plans purported to include a recognised metric scale but they were clearly not drawn to it. The plans submitted were inadequate, with serious consequences, and the Defendant's answer to this cannot be that it was a matter of planning judgement. The points made in relation to this ground in the statement of facts and grounds are not repeated.

20. Attached to this response is the site location plan showing the red line, with the block plan already included in the bundle. This will help illustrate further the serious consequences in the approach taken to the submitted plans, leaving the Defendant with little control even with the benefit of the attached conditions. The point being that the red line area is much bigger than the area identified on the block plan for the stationing of caravans and the day room on which the assessments have been based.

21. This argument will be further elaborated upon in the hearing, should the court grant permission.

22. As to Ground 4, the Defendant fails to grapple with the failure to consider and adequately assess the information sent to them in relation to the Interested Party and his family. This is not a matter of disagreement and it goes to the heart of the matter given this was a permission granted in the light of claimed special circumstances. This point, once again, appears to be lost on the Defendant.

CONCLUSION

23. For all of the above reasons, the summary grounds resisting the challenge has simply not addressed the fundamental questions raised.

24. The court is respectfully requested to grant permission.

MR HASHI MOHAMED

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26 March 2018

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REBUTTAL TO THE DEFENDANT'S SUMMARY CONTESTING THE CLAIM

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